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Workshop 2

The Good, the Bad and the Unintended in Retail Cannabis Leasing

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WRITTEN MATERIALS

Amid changing demographics, technologies, and consumer behaviors, the future of American retail is in flux. Demand for retail space has declined, vacancy has increased, concessions are on the rise.¹ In response, retail operators across the nation are engaging new business models to revitalize properties and revenues.² In connection, many retail landlords are looking to explore what role cannabis leasing could play in this new business model—and for good reason.

The cannabis industry is booming. Today, 17 states and the District of Columbia permit recreational cannabis use, and 36 states allow medical cannabis use. In 2020, legalized sale of cannabis in the United States reached a record \$17.5 billion dollars, an increase of roughly 50% over 2019. Legal cannabis use is increasing and, in the most penetrated market, Colorado, nearly 50% of adults now use cannabis.³ This trends appears likely to continue.

Beyond industry growth, individual cannabis operations present many favorable attributes. First, the highly-regulated industry insulates cannabis tenants from online competition that adversely affects traditional retail tenants. Additionally, cannabis tenants are insulated from physical competition in a multitude of states because permit numbers are limited. Third, licensing requirements restrict the location and mobility of cannabis tenants, which in turn highly incentivizes them to perform under their leases. Fourth, point-of-sale requirements mean that customers must physically visit a cannabis tenant's dispensary, driving foot traffic. Most importantly, landlord are often able to charge premium rental rates to cannabis tenants; not uncommonly 200% or more of the prevailing market rate.

¹ National Association of Realtors Research Group, *Commercial Real Estate Trends & Outlook: April 2021*, National Association of Realtors, <https://cdn.nar.realtor/sites/default/files/documents/2021-04-commercial-real-estate-trends-and-outlook-04-27-2021.pdf> (last accessed June 7, 2021).

² Esther Fung, *That Vacated Sears Store May Reopen as a Public School*, WALL STREET JOURNAL (May 4, 2021), <https://www.wsj.com/articles/that-vacated-sears-store-may-reopen-as-a-public-school-11620120601> (last accessed June 7, 2021).

³ Will Yakowicz, *U.S. Cannabis Sales Hit Record \$17.5 Billion as Americans Consume More Marijuana Than Ever Before*, FORBES (March 3, 2021), <https://www.forbes.com/sites/willyakowicz/2021/03/03/us-cannabis-sales-hit-record-175-billion-as-americans-consume-more-marijuana-than-ever-before/?sh=184018e62bcf> (last accessed June 7, 2021).

[^] The authors would like to thank Jon M. Schoenwetter, Associate of Cozen O'Connor, for his useful comments and suggestions on these written materials.

That said, retail cannabis leasing presents unique challenges and risks, chiefly that cannabis remains a federally-scheduled substance. The Controlled Substances Act of 1970, by 21 U.S.C. §856(a)(1), specifically prohibits knowingly opening, leasing, renting, using, or maintaining any place to permanently or temporarily manufacture, distribute, or use any controlled substance. Accordingly, landlords face additional risks in leasing to cannabis tenants including, but not limited to: (i) losing the premises or shopping center (and the rent paid by the cannabis tenant) because of civil or criminal forfeiture; (ii) losing its property insurance coverage; (iii) defaulting under its loan documents for failing to comply with applicable laws and/or other provisions thereof; (iv) violating private land use covenants, conditions, or restrictions; (v) having difficulty selling the premises or shopping center while occupied by the cannabis tenant; (vi) having difficulty refinancing the shopping center while occupied by the cannabis tenant; (vii) having difficulty enforcing the lease against the cannabis tenant; (viii) having difficulty maintaining banking and financial services; (ix) violating the terms of leases with other tenants; and (ix) being criminally prosecuted. That said, many landlords have determined that the rewards of a retail cannabis lease outweigh these risks.

Once the decision to lease to a cannabis tenant has been made, as with any retail leasing, the initial substantive step is drafting the letter of intent. As retail cannabis leasing presents many “unique” requests, standard letters of intent are ill-suited for opening negotiation. Indeed, the parties will need to modify many standard lease provisions and insert several non-standard provisions through-out lease negotiations. Addressing these items at the outset with a specially drafted letter of intent will help all parties avoid unnecessary costs and unfruitful negotiations. The principal purpose of these written materials is to illustrate what modifications or insertions a sophisticated landlord or tenant will include in their respective retail cannabis letter of intent.

To this end, the first section of these materials identifies both necessary and desirable modifications in letters of intent for cannabis leases, along with example provisions. These example provisions and discussion will provide background for drafting a retail cannabis letter of intent. The second section of these written materials demonstrates how a traditional retail letter of intent may be revised to incorporate the particularities of real cannabis leasing, with examples and comparisons against a traditional and cannabis retail letter of intent.

[end section]

Modifications to the Letter of Intent for Retail Cannabis Leasing

Absent specialization in the cannabis leasing space, most landlords and operators begin lease negotiations by providing the tenant with a standard form retail lease. Described below are common revisions, example provisions, and discussion regarding how such a lease may or should be modified to recognize the unique nature of cannabis leasing. The authors believe that significant efficiencies and savings arise when each of the provisions below can be incorporated into the letter of intent.

Applicable Laws. Most leases will require the tenant to operate the premises in accordance with all “applicable laws”. For most leases, a standard definition is sufficient and rarely negotiated:

“*Applicable Law(s)*” means all applicable federal, state, or local laws, rules or regulations.

As stated above, leasing for a cannabis use is a violation of federal law, specifically, the Controlled Substances Act, therefore this standard definition does not work in retail cannabis leasing. At a minimum, a cannabis lease will remove federal laws from the definition and sophisticated leases will instead expressly exclude federal laws to the extent inconsistent with the lease:

“*Applicable Law(s)*” means: (i) state and local laws and regulations from any governmental authority with jurisdiction over the Permitted Use or the Premises; and (ii) and federal laws, but only to the extent not inconsistent with state and local laws allowing Tenant to use the Premises for the Permitted Use.

In addition, sophisticated leases will from time-to-time reference the state cannabis law to, among other things, define any commencement contingencies. Accordingly, most cannabis tenants and landlords will look to include a defined term, often the “Act”, to facilitate this reference.

Commencement Contingencies. In traditional retail leasing, the tenant is often bound to take the premises “as-is” upon execution of the lease or at some later date certain. During negotiations, the tenant and landlord may qualify this obligation by requiring the landlord to make certain improvements to the premises or deliver a certificate of occupancy. For tenants with significant bargaining power, the failure to complete these task by a certain date may permit the tenant to terminate the lease.

In retail cannabis leasing, tenants routinely ask for, and receive, a right to terminate the lease if they fail to obtain a cannabis license. Unlike a building permit, the lease parties often do not have the benefit of past practice upon which to assess the likelihood of obtaining a cannabis license because of the newness of the state licensing agency. Furthermore, as the number of license applicants often exceeds the number of permitted licenses, and as the criteria for awarding licenses often relies upon “soft” factors, tenants are generally unwilling to commit to a lease unless they receive a license. However, most states require, as part of the application process, that the applicant described where they will conduct business. Generally, this requirement means that applicants must have a signed lease in order to apply for a license.

This “chicken-and-egg” problem manifests commonly as a contingency whereby the tenant is permitted to terminate the lease if they fail to obtain a license. Typical cannabis lease provisions:

Due Diligence. Tenant shall apply for any and all Licenses and diligently pursue same as soon as reasonably practicable after the Effective Date. The parties acknowledge that the rules governing the application for, and operation of, cannabis-related businesses are newly implemented, generally untested in courts of law, and without meaningful prior application or interpretation by the State. On account of this uncertainty, Tenant’s receipt of Licenses shall be a condition precedent to all of Tenant’s performance obligations under this Lease. Further, Landlord shall assist Tenant, at Tenant’s sole cost and expense, in obtaining all necessary Licenses including, but not limited to, cooperating in any inspections ordered by the Regulating Authorities.

Delivery of Premises. Landlord shall deliver the Premises to Tenant in broom-swept condition, free and clear of waste, debris, furniture, and all other non-fixtures, for occupancy no later than ten (10) days after the date upon which Tenant delivers to Landlord written notice that: (i) Tenant has secured all Licenses or (ii) Tenant elects to take possession without having secured all Licenses (whichever, the “*Commencement Date*”). If Tenant has not received all Approvals by [•], [•], then Tenant may terminate this Lease upon written notice to Landlord. If the Commencement Date does not occur within ten (10) days following Tenant’s notice because of Landlord’s failure to deliver the Premises as required by this Section, or other breach of this Lease, Tenant shall have no obligation to make payments of Rent until same is cured and, alternatively, may terminate this Lease effective immediately upon written notice to Landlord. In such event, Landlord shall immediately return the Security Deposit to Tenant.

Sophisticated landlords will often modify this provisions to make the termination right mutual and establish an outside date for obtaining the license. Not uncommonly, cannabis tenants and landlords also agree to a significant “lock-up” or “success” fee whereby the landlord is entitled to receive a sum of money if the tenant fails to secure a license—essentially converting the contingency to an early termination right with a breakage fee.

No Percentage Rent /Anti-Joint Venture/. Traditional retail leases commonly require the tenant to pay as rent a percentage of its gross sales from the premises. Cannabis leases should not provide for percentage rent for two reasons. First, licensing requirements have strict reporting rules regarding ownership. These rule often require a cannabis operator to disclose its “beneficial owners” (i.e., the person to whom profits flow). Receipt of percentage rent could cause the landlord to be deemed a beneficial owner, which could jeopardize the license and subject both landlord and tenant to civil and criminal liabilities. Second, many landlords believe that accepting percentage rent would lead to unfavorable analysis under the Racketeer Influenced and Corrupt Organizations Act (RICO), whereby landlord could be classified as part of a “criminal enterprise” should RICO be enforced. Sophisticated leases will also provide language disclaiming any relationship other than landlord-and tenant for the same reason.

Landlord Access Rights. Traditional retail leases commonly feature provisions regarding the landlord’s right to enter upon the premises for various reasons (i.e., inspecting, maintaining, showing the premises to investors, lenders, or prospective tenants, etc...). The parties will often agree to qualify this entry upon notice and some duty to minimize inconvenience:

Landlord’s Entry. Upon reasonable prior notice (except for standard recurrent entries and emergencies), Landlord may enter the Premises at any reasonable hour to perform its obligations under this Lease. During the last nine (9) months of the Term, Landlord may enter the Premises with reasonable prior notice to Tenant to show the Premises to prospective tenants. Landlord shall make commercially reasonable efforts to minimize any disruption to Tenant’s business operations or inconvenience to Tenant resulting from Landlord’s entry under this Section, including, without limitation, making commercially reasonable efforts to schedule any such entry at a time that is mutually convenient for the parties.

All cannabis licensing laws and regulations place security restrictions on dispensaries. These security restrictions often limit who may enter the dispensary and what areas they may access. Accordingly, sophisticated cannabis tenants will negotiate significant restrictions on the landlord’s right of entry in order to comply with these security restrictions. For example:

Landlord’s Limited Right of Access. Landlord and Tenant recognize the Act imposes security requirements on Tenant that necessarily restrict Landlord’s right to enter upon the Premises. The foregoing restricts the persons capable of entering the areas of a cultivation, dispensary, processing or testing facility wherein marijuana or marijuana-related products are stored, cultivated or processed (“*Restricted Access Areas*”). Accordingly, notwithstanding any language to the contrary, and in order to provide a security plan sufficient to meet the requirements of the Act, Landlord and its agents shall not be granted access to the Restricted Access Areas unless

accompanied by Tenant or Tenant's authorized agents. Landlord and its agents shall have the right to enter at reasonable times any other portion of the Premises other than Restricted Access Areas upon seventy two (72) hours' prior written notice to Tenant for the purpose of (i) inspecting the Premises, (ii) showing the same to prospective purchasers or lenders, (iii) showing the same to prospective lessees within two hundred seventy (270) days of the end of the Term and (iv) making such alterations, repairs, improvements or additions to the Premises or the Center as Landlord may be required to make pursuant to the terms of the Lease. Landlord's right of entry in all circumstances shall be subject to the laws, rules, and regulations imposed by the Regulating Authorities, including but not limited to the security and safety measures imposed upon Tenant under the Act. Access to the Center other than during normal business hours will be subject to such rules and regulations as Landlord reasonably requires, including without limitation the rules and regulations attached as *Exhibit [•]*.

When a cannabis tenant has sufficient bargaining power, it is not uncommon for the lease to provide that any prospective tenants or other parties the landlord may tour through the premises execute and deliver a non-disclosure agreement either pre-negotiated or acceptable to tenant. Significant cannabis tenants look to include this additional requirement to avoid, or provide remedies for, corporate-espionage.

Allocation of Enforcement Action Risks. Perhaps the most contentious element of cannabis lease negotiation is the allocation of risk between landlord and tenant. In traditional retail leases, the parties allocate risk pursuant to an indemnities section. Usually, the tenant will indemnify the landlord for various damages and losses the landlord incurs as a result of tenant's actions or inactions. An example:

Indemnity by Tenant. Landlord shall not be liable to Tenant or to Tenant's employees, agents, or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Premises caused by the negligence or misconduct of Tenant, its employees, subtenants, licensees or concessionaires, or of any other person entering the Premises under express or implied invitation of Tenant, or arising out of the use of the Premises by Tenant and the conduct of its business therein, or arising out of any Event of Default; and Tenant hereby agrees to indemnify Landlord and its partners, members, affiliates and subsidiaries, and all of their respective officers, trustees, directors, employees, stockholders, partners, representatives, servants, insurers, and agents and Landlord's designated property management company (collectively, the "*Landlord Indemnitees*") and hold each of the Landlord Indemnitees harmless from any loss, cost, expense, damage, or claim arising out of such damage or injury. Except for the gross negligence of Landlord, its agents, employees or contractors, and to the extent permitted by Applicable Law(s), Tenant agrees to indemnify, defend and hold harmless the Landlord Indemnitees from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Premises and arising from the use and occupancy of the Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or due to any other act or omission of Tenant, its subtenants, assignees, invitees, employees, contractors or agents. Landlord shall in no event be liable to Tenant or any other person for any consequential damages, special or punitive damages, or for loss of business, revenue, income or profits and Tenant hereby waives any and all claims for any such damages. Notwithstanding anything to the contrary contained in this Section, all property of Tenant and its contractors, employees, customers and invitees, kept or stored on the Premises, whether leased or owned by any such parties, shall be so kept or stored at the sole risk of Tenant and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers. Landlord or its agents shall not be liable for interference with light or other intangible rights. The furnishing by Tenant of the insurance required under this Lease shall not be deemed to limit Tenant's obligations under this Section. This Section shall survive the expiration or earlier termination of this Lease.

Commonly, tenants will negotiate to limit the scope and triggering standards for these indemnity provisions. For tenants with significant bargaining power, leases may even feature a mirror landlord indemnity.

In addition to the common risks allocated in traditional retail leases, sophisticated cannabis leases allocate the risk of an enforcement action. Specifically, cannabis tenants will look to include an acknowledgement of these risks by the landlord and expressly exclude losses and damages arising out of such risks from the tenant indemnity:

Allocation of Risk; Indemnity. The Controlled Substances Act of 1970 (“CSA”), by 21 U.S.C. §856(a)(1), specifically prohibits knowingly opening, leasing, renting, using, or maintaining any place to permanently or temporarily manufacture, distribute, or use any controlled substance. It is certain that Tenant’s activities on the Premises will involve a Schedule I controlled substance as defined in 21 U.S.C. § 801 et. seq. in at least one of the manners proscribed. Accordingly, Landlord faces additional risks in leasing to Tenant including, but not limited to: (i) losing the Premises or Center (and the rent paid by Tenant) because of civil or criminal forfeiture; (ii) losing its property insurance coverage; (iii) defaulting under its loan documents for failing to comply with applicable laws and/or other provisions thereof; (iv) violating private land use covenants, conditions, or restrictions; (v) having difficulty selling the Premises or Center while occupied by Tenant; (vi) having difficulty refinancing the Center while occupied by the Tenant; (vii) having difficulty enforcing the lease against the Tenant; (viii) having difficulty maintaining banking and financial services; (ix) violating the terms of leases with other tenants; and (ix) being criminally prosecuted.

Acknowledgement of Risk. Notwithstanding Landlord’s understanding of the additional risks that necessarily arise by leasing the Premises to Tenant, Landlord desires to enter into this Lease.

Tenant Indemnity. Tenant covenants and agrees to indemnify, defend and save Landlord harmless from and against any and all injury, loss, claims, actions, damages, liability, costs and expense including reasonable attorneys’ fees resulting from loss of life, personal or bodily injury, damage to property, or other incident arising from or out of any occurrence in, upon or at the Premises or the occupancy or use by Tenant of the Premises, or occasioned anywhere, wholly or in part, by any act, neglect, or omission of Tenant Parties (all, except to the extent caused by the negligence or willful misconduct of Landlord); *provided, however, Tenant shall not indemnify, defend or save Landlord harmless from, and Landlord shall not seek any recompense or remedy in law or equity against Tenant for, any loss or damage, costs, attorneys’ fees or expenses resulting from or arising out of: (i) any of the risks enumerated in Section [•] (i)-(ix) above, whether occasioned by governmental or private action based on regulations or contracts now or hereafter enacted or entered, including but not limited to: (a) enforcement actions taken pursuant to the CSA or any state corollary, (b) any civil or criminal penalties, fines or the possibility of imprisonment because of Tenant’s engagement in the Permitted Use or the transactions contemplated in this Lease, or (c) loss of business opportunity or interference with prospective or existing business relationships due to Tenant’s engagement in the Permitted Use; (ii) any violation or enforcement, heretofore or hereafter, of any federal or state civil, criminal, or forfeiture laws, and/or any federal or state licensing, permitting, authorization, or regulation, whenever existing as may be amended from time to time, including, without limitation any laws or regulations relating to marijuana (cannabis), hemp, drugs, and/or controlled substances, including but not limited to the CSA, (iii) lack, failure or loss of title to the Property or the Premises or any defect in or lien or encumbrance on the title to the Property or to the Premises, including the unmarketability of such title, other than mechanic’s liens occasioned by Tenant’s failure to pay contractors or materialmen for Tenant Improvements and/or alterations made pursuant to Section [•]; or (iv) any failure to comply with the guidelines and/or restrictions set forth in the Agriculture Improvement Act, as the same has existed heretofore or shall exist hereafter, including, without limitation, the version of the Act passed in 2018 (otherwise known as the “Farm Bill”), as the same may as may be amended from time to time.*

Landlords will generally oppose the indemnity carve out language above in italics and instead insist on the standard indemnity featured in their other retail leases. Ultimately, the inclusion of this acknowledgement and indemnity exclusion will depend upon the bargaining power of the cannabis tenant.

Insurance. Most all leases require the tenant to maintain certain insurance coverage. In traditional retail leasing, tenants look to align policies and limits with the coverage they already carry. The process is the same in retail cannabis leasing. However, cannabis tenants often have difficulty obtain coverages that are otherwise commonplace. For example, many large insurers will not underwrite owned and un-owned automobile liability coverage for cannabis businesses because of uncertainty with so-called “drugged driving” laws. Accordingly, any sophisticated cannabis tenant will submit insurance provisions to its insurance provider for comment. Cannabis tenants often need to removed certain coverages and revise any minimum A.M. Best Insurance Report thresholds in order to comply with their leases. Additionally, sophisticated cannabis tenants will often qualify their insurance requirements with a phrase similar to “unless such policies or coverage are not commercially available to Tenant with reasonable deductibles on account of Tenant’s operation of the Permitted Use.” Alternatively, cannabis tenants with significant bargaining power may look to obtain a blanket self-insurance right.

Termination Rights. In traditional retail leasing, tenants usually commit to take the premises for the entire lease term. Longer term leases may occasionally feature a negotiated early termination part way through the term, often in exchange for a “breakage fee” calculated on a number of base rent installments, unamortized tenant improvement costs and brokerage fees, and certain expenses of reletting. Outside of this early termination right—and termination following a major casualty or condemnation—it would be unusual for a traditional retail lease to provide a tenant with any right to terminate the lease prior to the expiration of the term.

Similar to allocation of risk and indemnities, sophisticated cannabis landlords and tenants are aware of the possibility of a federal enforcement action under the Controlled Substances Act. In the event of such an enforcement action, each of the tenant and landlord have an incentive to end the landlord-tenant relationship. For landlord, the incentive relates to reacquiring the premises and reletting it to a new tenant. For tenant, the incentive relates to winding down its business and applying available cash to contesting the enforcement action. Accordingly, sophisticated cannabis leases often provide either party the right to terminate the lease upon an enforcement action or the reasonable belief that an enforcement action is imminent:

Controlled Substance Act Preemptive Termination. While the parties understand that the United States Congress has enacted legislation that prevents the United States Department of Justice from spending funds to prevent states from implementing their own state laws that authorize the use, distribution, possession or cultivation of medical marijuana, the parties acknowledge that, on the Effective Date, the Permitted Use is in violation of the CSA. In the event the federal government begins to actively enforce the CSA and either Tenant or Landlord is criminally prosecuted or, in their sole reasonable discretion, believes it is at risk of criminal prosecution by federal authorities or, in the case of Landlord, that the Premises is at risk of an *in rem* civil forfeiture (or similar seizure notice) by the federal government pursuant to 18 U.S.C. § 981 or other applicable governmental regulations, then either Tenant or Landlord may terminate the Lease with no further obligations or recourse to either party (“*Preemptive Termination*”), by giving six (6) months’ written notice to the other party (“*Preemptive Termination Notice*”), wherein the Lease will automatically terminate on the last day of the sixth (6th) month thereafter or upon such other date as the parties mutually agree in writing (“*Preemptive Termination Date*”). In the event of a Preemptive Termination, the Tenant shall surrender the Premises on or before the Preemptive Termination Date, be liable to Landlord only for amounts due under the Lease as prorated to the date of surrender, and Landlord shall promptly return the Security Deposit, following which neither of the parties shall have any further liabilities or obligations under this Lease.

In addition to the above termination right, sophisticated cannabis tenants will also seek to include a right to terminate the lease if: (i) a change in law prevents tenant from operating the permitted use at the premises or (ii) tenant’s license is revoked:

Frustration of Purpose Termination. If Tenant is prohibited from operating or engaging in the Permitted Use at the Premises at any time during the Term due to (i) a change in the Applicable Law(s), or variation in the regulations or rules of the Regulating Authorities from those laws in existence as of the Effective Date, or (ii) revocation, termination, or loss of the Licenses permitting such activities, then Tenant shall have the right to immediately terminate this Lease without penalty upon written notice to Landlord. Upon such termination, Tenant shall surrender the Premises to Landlord as soon as practicable and Landlord shall promptly return the Security Deposit, following which neither of the parties shall have any further liabilities or obligations under this Lease.

Landlords generally oppose these additional termination rights because they have essentially no control over laws or license compliance. Except where the cannabis tenant has substantial bargaining power, landlords generally permit these additional termination rights only when the tenant “purchases” them through higher base rent. Occasionally, cannabis tenants and landlords meet in the middle and expressly exclude the termination right where a tenant’s negligence, actions or failure to act results in loss of the license. Additionally, sophisticated cannabis tenants will seek to revise the casualty and condemnation sections such that any casualty or condemnation that causes tenant to lose its license permits tenant to terminate the lease.

Landlord’s Liens. Many landlords are accustomed to receiving, whether by a specific grant in the lease or by state law, a security interest in the goods and trade fixtures located within a retail premises. Generally, negotiation of the so-called “landlord’s lien” provision is limited to whether such lien will be subordinate to other financing that may be secured by such goods and trade fixtures or whether tenant will be allowed to further encumber, modify, or remove them. For example:

Landlord’s Lien. In addition to any statutory lien for rent in Landlord's favor, Landlord shall have and Tenant hereby grants to Landlord a continuing security interest for all rentals and other sums of money becoming due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper and other personal property of Tenant situated on or in the Premises, and such property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord hereunder shall first have been paid and discharged. In the event of a default under this Lease, Landlord shall have, in addition to any other remedies provided herein or by law, all rights and remedies under the Uniform Commercial Code, including without limitation the right to sell the property described in this Section at public or private sale upon five (5) days' notice to Tenant. Tenant hereby agrees to execute such financing statements and other instruments necessary or desirable in Landlord's discretion to perfect the security interest hereby created. Any statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto.

In retail cannabis leasing, a general concern arises about how landlord’s security interest will be construed because cannabis and cannabis-related products will be located in the premises (i.e., will the security interest be construed as a “beneficial interest”). Furthermore, regardless of the language in the lease, cannabis landlords should not, and likely will not, be willing to enter upon the premises and seize any of tenant’s cannabis or cannabis-related products for obvious reasons. Accordingly, sophisticated cannabis leases will often exclude tenant’s cannabis or cannabis-related products from the property that is subject to the landlord’s lien. For cannabis tenants with bargaining power, or in less sophisticated cannabis leases, the parties often agree to an explicit waiver of any such security interest:

Lien Waiver. Landlord waives all statutory liens, contractual liens, and any other so-called “landlord’s liens” by which it may be entitled to assert against any of Tenant’s personal property, trade fixtures, or inventory including, without limitation, any of Tenant’s cannabis or cannabis-related products within the Premises, as security for the payment of rent or the performance of any other obligation of Tenant hereunder.

Relocation Rights. In traditional retail leasing, it is common for the landlord to have the right to relocate non-anchor tenants. Cannabis tenants will vigorously oppose any relocation right because their cannabis license will be restricted to the specific physical location stated in the license. Obtaining approval to operate at a different location may be expressly or effectively prohibited by the licensing scheme or otherwise subject to significant administrative burdens. Accordingly, cannabis leases often contain an express prohibition on relocation. A landlord unwilling to forego relocation rights will end cannabis use lease discussions.

Tenant Exclusives/Prohibited Uses. Landlords and tenants are familiar with exclusives from negotiation of traditional retail leases. In negotiating exclusives, tenants look to extract a commitment from the landlord that they will not lease space in the shopping center to any of tenant's competitors. Landlords strive to exclude entirely or otherwise narrow the scope of the tenant's exclusive right in order to avoid conflict with other leases and provide the landlord with maximum flexibility in future leasing decisions.

Tenant's Exclusive Use. So long as Tenant continuously operates the Premises for the Permitted Use, Landlord shall not lease space within the Center to anyone for the purpose of operating within the Center a movie theater, or conducting a business requiring the use of auditoriums exceeding 10,000 square feet for meetings and conventions at the Center, without Tenant's prior written approval. This restriction shall not apply to the operation of restaurant or banquet facilities.

In most states, cannabis tenants are not concerned about their landlord leasing space within the shopping center to another cannabis tenant because cannabis license requirements will generally prohibit conglomeration of cannabis businesses within one area. This may be sufficient for many cannabis tenants. Other cannabis tenants will look to succinctly express their exclusive right:

Exclusive Use. So long as Tenant is in possession of the Premises, Landlord shall not lease any portion of the Building or Property to any other tenant engaged in activities governed by the Act.

In addition sophisticated cannabis tenants will want radius restrictions on the landlord in order to expand the area over which the tenant's cannabis exclusive applies for two reasons: (i) the "rush to market" and (ii) location restrictions, or "foot rules", in the cannabis laws.

The "rush to market." occurs in the first phase of cannabis sales legalization when many applicants begin to vie for a limited number of licenses. In order to obtain those licenses, these applicants generally need to secure leases. All of these applicants enter the leasing market at roughly the same time looking for roughly the same type of space and in the same locations. This time is especially crucial to cannabis businesses as most states will not accept an application until they have a signed lease.

A radius restriction is especially beneficial to a cannabis tenant that is working with a landlord that owns multiple buildings in the same geographic area, as the radius restriction will exclude the landlord from leasing to other cannabis business not only in the shopping center, but in other buildings owned by the landlord or its affiliates in an attempt to make it more difficult for other cannabis businesses to obtain leases (and thereby holding up their applications).

The "foot rules" are also an important driver for tenant exclusives in cannabis retail because of typical state and municipal cannabis laws and ordinances. In many states cannabis dispensaries cannot be located within 1,000, 1,500, or some other number of feet from a list of uses, such as schools, churches, drug dependency treatment programs, playgrounds or parks. Especially in high density, mixed-use neighborhoods, these "foot rules" can effectively leave only a handful of buildings suitable for a dispensary location. Accordingly, these foot rules limit supply and provide additional incentive for cannabis tenants to seek exclusives and radius restrictions during the "rush to market" phase.

Additionally, sophisticated cannabis tenants will look beyond the initial "rush to market" and seek to apply these "foot rules" to restrict landlord's from leasing space to the listed uses in the future. These cannabis tenants seek to

address the possibility that landlord may lease space in the shopping center to a school and that the cannabis authority may attempt to revoke or relocate its licenses because their dispensary is no longer 1,000 feet away from a school. An example:

Prohibited Lessees. Landlord hereby covenants that, whether directly or by a Landlord Party, it shall not lease, license, or otherwise permit the use or occupancy of the Center, or any other property owned by Landlord or Landlord Parties within the City, to any entity: (i) operating as a public or private before-or-after-school program, child-care program, youth outreach program, tutoring program, grade school, vocational school, secondary school, college, junior college, university, preparatory academy, educational center, trade school, gymnasium, test-preparation facility, property used for school purposes owned or leased to any school or school board, or any other place or program in which children or young adults are commonly enrolled; (ii) performing functions common to local government, such as operating a library, museum, public housing, or maintaining a place of public gathering; (iii) serving as place of worship similar in function or purpose to a church, mosque, synagogue, or other spiritual center; (iv) housing, treating, diagnosing, counseling, or rehabilitating individuals suffering from mental infirmities or drug, alcohol, or other chemical dependency; (v) conducting business as medical or recreation cannabis dispensary, however defined in the Act; (vi) operating as a recreational facility such as a video arcade or pinball facility, playground, including any outdoor facility intended for recreation and containing apparatus intended for the potential recreation of children including, but not limited to, basketball courts, sports fields, skating rinks, concession stands, or swing sets; (vii) any parking lots or parking spaces appurtenant to any of the uses and operations provided hereinabove; or (viii) any easements to any of the uses and operations provided hereinabove. Landlord's negative covenant herein is an express condition precedent to all monetary obligations of Tenant under this Lease and Tenant shall be entitled to seek injunctive relief and any other available remedy at law or equity against Landlord in the event of Landlord's breach of this covenant.

Arbitration. Just as in traditional retail leasing, disputes arise between cannabis landlords and tenants. However, because cannabis remains a scheduled substance under federal law, landlord and tenants may have difficulty enforcing the lease in court. For example, the subject matter of the lease could be determined illegal and a bankruptcy court may decline to confirm a landlord's bankruptcy plan that includes revenue from an illegal activity.

Accordingly, many cannabis leases feature arbitration clauses. While the enforcement of any arbitration award will still be subject to the above enforceability issues, requiring arbitration guaranties the parties that the merits of their dispute will be reviewed, rather than being summarily dismissed by a court.

Change-in-Law. All observers are aware that cannabis laws have been, and will likely continue to be, in a state of flux and undergoing rapid change. Unlike with traditional retail leasing, cannabis landlords and tenants should expect the laws that govern cannabis businesses to materially change during the lease term. Accordingly, sophisticated cannabis leases will provide for changes that are commonly anticipated.

Take, for example, how a medical use state may legalize recreational use at a later date. For cannabis tenants with significant bargaining power, this potential change in law is often addressed in the Permitted Use definition, which will proactively authorize "the sale of recreational use cannabis or cannabis-related products along with such other uses for which Tenant is permitted to engage in under the Act, and all supplements and revisions thereto from time to time."

Sophisticated cannabis tenants will be aware of these changes in law as they occur and add pre-approval for such changes in their leases. For example, states (beginning with New Jersey) have begun to allow on-site consumption at dispensaries, often through a license endorsement. Such an expanded use right can be quite valuable to a cannabis tenant. A tenant-favorable provision:

On-Site Consumption. If allowed by the Act during any period within the Term, Tenant shall be permitted to seek permission from the Regulating Authorities to host on-site consumption of marijuana or marijuana-related products (“On-Site Endorsement”). If Tenant elects to apply for an On-Site Endorsement, Landlord shall comply in good faith with requests for information, participation or approval made by the Regulating Authorities as a condition to receipt of an On-Site Endorsement. Tenant shall bear all expenses and costs associated with obtaining, maintaining and renewing any On-Site Endorsement, including: (i) reimbursement of Landlord's reasonable, out-of-pocket costs accrued in participating in the approval process, and (ii) altering the Premises to comply with the ventilation and air quality requirements established by the Regulating Authorities. If Tenant obtains an On-Site Endorsement, Tenant shall have the right to install any air handling, exchange or filtering systems required by the Regulating Authorities. Landlord acknowledges that some odors and smoke may be associated with on-site consumption at the Premises and that the presence of such odors and smoke shall not constitute a breach of this Lease, or a violation of any rules or regulations of Landlord, and shall not be deemed noxious or offensive.

Importantly, this provision permits not only on-site consumption, but also any alterations the cannabis authority requires tenant to make to the premises as a condition of the endorsement. Sophisticated cannabis tenants will look to expand this pre-approval to any work letter or alterations section in order to obtain blanket approval on any alteration required by the cannabis authority.

On the other hand cannabis landlords generally seek to define uses narrowly and place the risk of change in law on the tenant. The incentive to landlords is that any favorable change in law will permit negotiation on rent (i.e., the landlord will withhold consent to recreation sale or on-site consumption until the tenant agrees to increase the base rent). In the middle, cannabis landlords and tenants occasionally agree to include multiple base rent schedules, where tenant's engagement in a different permitted use will cause a different schedule to apply.

[end section]

Restrictions on Retail Cannabis Use

The prior sections of these materials addressed those salient issues sophisticated cannabis landlords and tenants consider when negotiating retail leases. Vis-à-vis traditional retail leasing, some may come to conclude that retail cannabis leasing merely “tacks on” additional discussion and drafting in relation to these issues. That conclusion is, however, incorrect: retail cannabis leasing also imports a corollary process of title review and due diligence rarely conducted in the traditional retail leasing space.

Prior to entering into a lease for cannabis retail use, sophisticated cannabis tenants, and their prospective landlords, need to consider whether retail cannabis use—or all cannabis use for that matter—is prohibited by use restrictions above and apart from the required municipal and state licenses. Use restrictions may be found in documents that are typically recorded and have varying titles, including, “Covenants, Conditions and Restrictions,” “Declaration of Use Restrictions,” or “Reciprocal Easement Agreement.” Use restrictions may also be found in recorded deeds. Additionally, it is important to be aware that use restrictions are not always recorded: use restrictions may be found in other leases for space in the shopping center, in the bylaws or rules and regulations of associations that manage the shopping center, and in agreements with cities that regulate the use or development of space at the shopping center.

Sophisticated cannabis tenants will often negotiate with their landlords to deliver copies of these documents as part of the lease contingency or due diligence period. In many respects, these provisions are similar to those found in purchase and sale agreements, whereby the seller is required to deliver documents, reports, and permits to the purchaser. For example:

Property Documents. Immediately upon Effective Date, but in no event more than fifteen (15) days thereafter, Landlord shall deliver all documents, reports, records, and permits within its control that in any way restrict the permissible uses of the Premises or Center including, without limitation, the following (“Property Documents”):

- (i) Landlord’s vesting deed, along with any documents recorded in the land records that restrict the use of the Premises or the Center such as covenants, conditions and restrictions, declarations of use restrictions, reciprocal easement agreements, condominium bylaws or declarations, mortgages or deeds of trust, and memorandums of purchase options or leases affecting the permissible uses of the Premises or Center;
- (ii) any variances, conditional use permits, development agreements, or other allowances received from, or agreements entered into with, governmental authorities that expand, limit or qualify the utilization of the Premises or the Center, whether recorded or unrecorded; and
- (iii) unrecorded documents or agreements between Landlord, other tenants, or third parties such as leases, loan agreements, letters of understanding, and association or condominium rules and regulations.

As used in this Section, the phrase “within its control” shall mean those documents, reports, records, and permits to which Landlord or Landlord Parties personally hold physical or electronic possession, or over which such possession is readily attainable by request to any of Landlord’s business partners, officials of the city or county in which the Premises and Center are located, or contained in the public land records.

Cannabis tenants with significant bargaining power may be able to secure a provision such as the above. However, many landlords will oppose this request because of administrative burden and confidentiality goals. Accordingly, it is not uncommon for landlords to reject such a provision entirely or qualify their obligations to providing only those documents which underlie exceptions in the landlord’s owner’s policy of title insurance. In such cases, sophisticated

cannabis tenants will: (i) order a title report and pull these documents from the land records for independent review, and (ii) seek certain representations and warranties from the landlord which generally provide that the retail cannabis lease does not conflict with or cause landlord, the Premises or the Center to be in breach, default, or violation of any other obligations.

In analyzing these documents for potentially problematic restrictions, cannabis landlords and tenants should be aware that many of the prohibited use provisions found in recorded documents as well as in leases and association rules were written at a time when the legalization of cannabis was not a consideration or even a remote possibility. Therefore, use provisions very rarely state that “retail or medical cannabis sales are a prohibited use” unless the document in questions is of a recent vintage. Instead, certain prohibitions have had what could be seen as an unintended effect of prohibiting cannabis retailers from leasing space in shopping centers. Examples include prohibitions on (i) any business selling drug-related paraphernalia or products; (ii) any retail uses that is not consistent with a first-class shopping center; or (iii) any use that is a violation of any law, ordinance, or regulation, or is otherwise unlawful.

This issue of translating restrictions to present-day cannabis use was recently before the Eastern District of Pennsylvania in the case of *PharmaCann Penn, LLC v. BV Development Superstition RR, LLC et al.*, No. 4625 (E.D. Pa. Mar. 14, 2018). There, the court was prepared to rule on whether a deed that contained a prohibition against “unlawful” uses prohibited a medical marijuana dispensary from operating at the property because, as stated above, the sale of cannabis remains a violation of federal law, even though state law permitted the use at the property. However, the case was dismissed by the plaintiff before the court had the opportunity to rule on whether the deed’s “unlawful” use restriction prohibited the sale of cannabis. Such a ruling on whether federal or state law controls cannabis sales would have far reaching effects. Regardless, sophisticated cannabis landlords and tenants should recognize the possibility of adverse rulings on this matter and, accordingly, conduct their diligence in a conservative manner.

Lastly, diligent review of use restriction takes on special importance when the premises is located in a mixed use development. Over the last decades, mixed-use developments—or projects that contain elements of commercial and residential space—have become increasingly favored by zoning laws, local politicians, and the general public. Today, many, if not all, major metropolitan areas feature neighborhoods built around mixed-use developments that commonly feature shopping center-like amenities and tenants on ground floors and residential apartments, hotels, and/or office space on higher levels. Many retail cannabis businesses look to open business in these mixed-use neighborhoods because of generally higher density, foot traffic, household incomes, and social acceptance of cannabis.

Usually, these developments are organized as condominiums featuring one unit for each use classification [i.e., one retail unit for the ground floor shops, one residential unit for the upper level apartments, one hotel unit for the hotel, and one office unit for the office space]. Not uncommonly, each of these units will then organize a sub-condominium in order to allocate the space within each unit to the end user. For example, if the development is to contain residential condominiums, as opposed to apartments, then the developer will sub-condo the residential unit into individual units. Each owner of a residential condominium will then comply with the bylaws and rules of the sub-condominium as well as the bylaws and rules of the “master” condominium. Importantly, each owner of a residential condominium will usually vote for members of the sub-condominium board, who will then in turn appoint members to the “master” condominium board. This structure is extremely important to sophisticated cannabis tenants as the members of the “master” and “retail” condominium boards often have the ability amend bylaws and rules, of which major amendments may be subject to owner referendum in some circumstances.

Unless a cannabis tenant has significant bargaining power they rarely have any say in how the condominium owners, of which their landlord is one, vote on these matters. Furthermore, even for those cannabis tenants who are able to negotiate some control in how their landlords vote, this vote usually amounts to a minority influence within the “retail” sub-condominium and a minute minority influence at the “master” condominium level.

Accordingly, it is especially important for cannabis landlords and tenants to carefully analyze condominium bylaws and association rules *not only for whether their cannabis use is permitted, but also for unit owner*

protections [veto rights], voting powers, and amendment thresholds.⁴ As illustrated in *Tomkins, Douglas et al. v. Aspenhof Condominium Association*, 2020CV030112 (9th Dist. Colo. Dec. 11, 2020), failing to conduct proper diligence within this setting can have disastrous outcomes.

Tomkins concerns a mixed-use commercial & residential building located in Aspen, Colorado. This building was structured as a condominium comprised of ten commercial units and nine residential units. On April 1, 2017, Douglas Tomkins entered into a three-year lease with Osiris, LLC for one of his commercial units. This Lease expressly permitted Osiris, LLC to operate a “retail marijuana establishment”, a use that was not prohibited by the condominium declaration. With lease in hand, Osiris, LLC applied for, and received, a license to operate a retail cannabis dispensary at the premises. During 2020, Osiris, LLC exercised its option to extend the lease term by three years to March 31, 2021. Subsequently, the owners of the residential units became displeased with Osiris, LLC.

Accordingly, the owners of the residential units proposed to amend the condominium declaration to prohibit cannabis uses on or above the second floor of the building. The unit Mr. Tomkins leased to Osiris, LLC was on the building’s second floor. Over Mr. Tomkin’s objection, this amendment passed on August 31, 2020. Shortly thereafter, the association began to issue violation notices to Mr. Tomkins—which eventually increased to \$500 per diem assessments—on the basis that his lease to Osiris, LLC violated the condominium’s amended declaration. Mr. Tomkins refused to pay the per diem assessments and the condominium association began to lien his units.

Mr. Tomkins brought action against the condominium association seeking, among other things, a declaratory judgment invalidating the amended declaration’s use restriction as to his lease with Osiris, LLC and a preliminary injunction against the condominium association’s per diem assessments for the alleged violation. On June 8, the court denied Mr. Tomkin’s motion for preliminary injunction, reasoning that Mr. Tomkins had implied or constructively consented to the amendment provisions of the condominium declaration when he purchased his units and that the condominium had complied with such provisions when it amended the declaration on August 31, 2020.

While the court has not yet fully resolved Mr. Tompkins claims on the merits, this situation is clearly one that any cannabis landlord or tenant would desire to avoid. For the landlord, this declaration amendment resulted in competing and mutually-exclusive obligations: (i) cease leasing to a cannabis tenant and (ii) perform under the retail cannabis lease. Further, annualized violation assessments of \$150,000, liened units, and legal fees likely destroyed the benefit of the lease. In the traditional retail leasing space, this issue could likely have been avoided by some accommodation in which the tenant relocated. However, as to a cannabis tenant, relocation is a largely illusory option given that licenses are granted to specific premises and often extremely burdensome to amend.

Accordingly, and in contrast to many aspects of retail cannabis leasing, both the landlord and tenant are “on the same side” when it comes to condominium and association diligence. In some instances, this issue is immaterial if the cannabis landlord, whether by voting power or unit owner protections [veto rights], can effectively prevent the type of amendment that occurred in *Tomkins*. However, in other instances that is not the case and each of the cannabis landlord and tenant will seek to take steps to mitigate the risk of a future, adverse change in condominium bylaws or association rules.

Perhaps the most favorable solution is to request a condominium estoppel certificate as part of the lease contingency or due diligence process. This certificate would, at minimum, provide that the permitted use under the lease does not violate the condominium bylaws or association rules and, ideally, would note that a *Tomkins*-like amendment to such documents cannot occur without the express consent of the landlord. For cannabis tenants and landlords with significant bargaining power, obtaining an agreement prohibiting the condominium from making a *Tomkins*-like amendment to such documents without the consent of landlord and/or tenant may also be possible.

⁴ The authors will note that recent trends to “revitalize” traditional shopping centers into amenity locations and diversify tenant bases have caused larger traditional shopping centers to embrace a similar condominium structure. Accordingly, many of the diligence principles discussed in relation to mixed use developments may be applicable to traditional shopping centers as well.

Absent participation from the condominium or association, the cannabis landlord and tenant must allocate the risk of a future, adverse amendment among themselves. Here, sophisticated cannabis tenants will seek representations and warranties from their landlords that the permitted use does not, and will not, violate the condominium bylaws or association rules. Landlords commonly reject such a representation and warranty entirely or narrow it to a representation of current fact (i.e., the permitted use does not violate the condominium bylaws or association rules as they currently exist). Cannabis landlords with significant bargaining power may even seek to obtain an early termination right, whereby they can terminate the retail cannabis lease if the lease or the tenant cause the landlord to breach, default, or violate its obligations under the condominium bylaws or association rules.

Ultimately, many retail cannabis leases are silent or ambiguous on this issue. Regardless, the underlying task for cannabis landlords and tenants is to determine whether the landlord has complete control over use restrictions that are, or can become, applicable to the premises. In cases where the landlord does not have complete control, an estoppel certificate from the condominium or association and additional representations and warranties are all appropriate.

[end section]

Retail Cannabis Use – Virtual/Implied Exclusives

As noted in prior discussions, local municipalities through their licensing requirements and zoning laws often place location restrictions on retail cannabis businesses. The reasons for these restrictions are largely two-fold: (i) to prevent the conglomeration of dispensaries in a single neighborhood or market, and (ii) to avoid locating dispensaries near other uses that the governing authorities deem incompatible with or inadvisable for proximity to a dispensary (commonly, residential buildings, schools, playgrounds, substance dependency clinics, churches, parks and open spaces).

A cannabis landlord needs to consider what uses will be prohibited under the applicable zoning laws or the cannabis statutes if it grants a retail cannabis lease within its shopping center. First, in many states the practical effect of granting one retail cannabis lease will preclude the landlord from granting another within the same shopping center. Most all sophisticated cannabis tenants will memorialize this practical effect as an affirmative obligation of landlord within the lease. Second, several large, national anchor tenants require, as part of their form lease, that the landlord refrain from leasing space within the shopping center to cannabis businesses. Accordingly, granting a retail cannabis lease may cause a landlord to lose out on a replacement anchor tenant down the road. Third, a neighboring owner's cannabis retail tenant may cause the neighbors that own a part of the same shopping center or nearby retail space to be restricted in certain ways. For instance, in Peoria, Arizona, an adult use marijuana business may not be located within 1,000 feet of a liquor store. Once the adult use marijuana business is open, all of the retail space within a 1,000 feet radius of the business is restricted from being used as a liquor store. It is important to be aware of the unintended effect that a marijuana use may have on surrounding space. For the unsophisticated cannabis landlord, certain aspects of this implied/virtual exclusive issue are particularly prone to oversight:

1. Anchor tenant grocery stores that sell alcoholic beverages;
2. Common elements or other premises intended for the amusement or recreation of children;
3. Daycares, churches and schools;
4. Bus stops and public transit hubs; and
5. Areas of potential redevelopment to residential use.

Cannabis landlords must undertake an investigation as to current and prospective uses near any proposed retail cannabis lease in order to assess these risks. Cannabis tenants must also undertake a similar assessment in order to determine whether a specific location is likely to be rejected by the licensing authority for proximity reasons. Once the risks are known, the lease negotiations may include an allocation of the such risks along with negative covenants of landlord and/or tenant to reduce such risks. Ultimately, the rent charged for the retail cannabis lease is often adjusted to compensate the landlord for its diminished use of adjoining retail space.

[end section]

Sample Letters of Intent

Outside of specialized cannabis landlords, tenants and brokers, the authors have found that most parties prepare and submit letters of intent for cannabis leases based upon their traditional retail lease letter of intent. The result of this process is generally silent on the critical and desirable terms discussed in the prior section. These inadequate letters of intent commonly reveal that there is, in fact, no agreement between the parties on critical terms. Worse, this revelation occurs only after having expended time and effort in preparing the initial or second draft of the lease.

As retail cannabis leases differ substantially from traditional retail leases, so too must retail cannabis letters of intent. The purpose of this section is to assist landlords, tenants, and brokers in modifying their standard retail lease letters of intent to account for the particularities of cannabis leasing.

To that end, this section contains:

1. a standard, traditional retail letter of intent
2. a modified version thereof for retail cannabis leasing, and
3. a comparison demonstrating the difference between the two letters.

LETTER OF INTENT [TRADITIONAL RETAIL]

_____, 2021

Attn: _____

Re: Letter of Intent to Lease [•]

Dear [•],

This Letter of Intent (“**LOI**”) is delivered to you as an expression of interest by [•] (“**Tenant**”) to lease from [•] (“**Landlord**”), certain Premises within the building commonly known as [•] (“**Center**”) subject to a lease agreement (“**Lease**”) consistent with the terms and conditions below:

1. Premises: Approximately [•] rentable square feet within the Center, commonly known as Suite [•] (“**Premises**”) and as set forth in more detail on Exhibit A attached hereto.

The Premises constitutes [•] percent ([•]%) of the rentable square feet of the Center (such percent, “**Tenant’s Share**”).
2. Commencement Date: The Lease shall commence on [•] (“**Commencement Date**”), provided Tenant delivers the evidence that it has obtained the insurance coverage required of it pursuant to the Lease.

Tenant shall accept the Premises in its “as-is” condition on the Commencement Date and, except for any Landlord’s Work, Landlord shall have no obligation to prepare or alter the Premises for Tenant’s occupancy.
3. Term: The initial term of the Lease shall begin on the Commencement Date and expire on the last day of the [•] calendar month thereafter (“**Term**”).

Tenant shall have no option to extend or renew the Term.
4. Base Rent: Tenant shall pay, in equal monthly installments in advance on the first day of each calendar month without offset, demand, or invoice, \$[•] in annual base rent (“**Base Rent**”). Upon each annual anniversary of the Rent Commencement Date, Base Rent shall increase by [•]%.

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5. Percentage Rent: In addition to Base Rent, Tenant shall pay percentage rent equal to [•]% of Tenant's gross sales in excess of certain breakpoint amounts ("**Percentage Rent**"), all as set forth in more detail on Exhibit B attached hereto.
- If, following the first annual anniversary of the Rent Commencement Date, Tenant shall fail to achieve gross sales in excess of \$[•] during any 12 month period, Landlord shall have the right to terminate the Lease. If Landlord terminates the Lease as provided above, then Tenant shall have the right to reinstate the Lease by paying to Landlord within 10 days of such termination the difference between: (a) the Percentage Rent actually paid to Landlord during such period and (b) the Percentage Rent Tenant would have paid to Landlord if Tenant's gross sales were equal to the figure above.
6. Additional Rent: In addition to Base Rent, Tenant shall pay as additional rent ("**Additional Rent**"): (a) Tenant's Share of Operating Expenses and Real Estate Taxes; (b) the cost of all heat, electricity, gas, sewer, and other utilities used at the Premises which, if not separately metered, may be assessed to Tenant in accordance with Landlord's reasonable estimation of such use; and (b) any and all other monetary obligations of Tenant under the Lease.
7. Rent Commencement Date: Tenant's obligation to pay Base Rent, Percentage Rent, and Additional Rent shall begin upon [•] ("**Rent Commencement Date**"). Notwithstanding the preceding, Tenant shall pre-pay the 1st monthly installment of Base Rent concurrently with its execution of the Lease.
8. Permitted Use: Tenant shall be permitted to use the Premises only for the retail sale of [•] under the trade name of [•], along with administrative and storage use necessary thereto and for no other use ("**Permitted Use**").
9. Maintenance: Tenant shall be responsible for maintaining the Premises in good condition and repair. Landlord shall have the right, but not obligation, to make any repairs or maintenance the responsibility of Tenant under the Lease at Tenants cost and expense.
10. Alterations: Tenant shall be permitted to make decorative, non-structural alterations to the Premises without Landlord's prior written consent, provided that such alterations do not interfere with or overload the building systems of the Center, are not visible from the exterior of the Premises, and do not exceed \$[•] in the aggregate in any calendar year. All other alterations are subject to Landlord prior written approval, which Landlord shall not unreasonably withhold, provided that such alterations are consistent with the Permitted Use, comply with Landlord's construction rules for the Center, and shall be removed by Tenant upon the expiration or earlier termination of the Lease.
11. Security Deposit: Tenant shall pay a security deposit equal to \$[•] concurrently with its execution of the Lease.

Retail Cannabis Leasing

12. Guarantor: [•] shall unconditionally guaranty the prompt payment and performance of Tenant under the Lease pursuant to the terms and conditions of Landlord's standard unconditional guaranty.
13. Landlord's Work: Landlord shall not perform any base building construction or alterations, except as provided on Exhibit C attached hereto ("**Landlord's Work**").
14. Tenant's Work: Tenant shall, at Tenant's sole cost and expense, perform all work necessary to fully fixture and stock the Premises such that it shall be open for business to the general public on or before the Rent Commencement Date. All such work shall be subject to the construction rules Landlord maintains for the Center.
15. Improvement Allowance: Landlord shall not provide an improvement allowance to Tenant.
16. Parking: Tenant shall have the non-exclusive right to use the Center's parking facilities, subject to compliance with Landlord's parking rules.
17. Relocation: Landlord shall be permitted to relocate the Premises pursuant to Landlord's standard practices as set forth in the Lease.
18. Expansion Options: Tenant shall have no options to expand the Premises or lease other premises within the Center.
19. Right of First Refusal: Tenant shall have no right of first refusal or right of first offer over the Premises or other premises within the Center.
20. Assignment and Subletting: Landlord's consent shall be required for any assignment, subletting, or direct or indirect transfer of the Lease or Tenant's interest in the Premises ("**Transfer**"). A corporate consolidation, merger, or reorganization shall constitute a Transfer for which Landlord's consent is required. A change in control of Tenant, the entities or persons holding direct or indirect control of Tenant, or the ultimate beneficial owners of Tenant or such entities shall constitute a Transfer for which Landlord's consent is required. Landlord shall not unreasonably withhold its consent to a specific Transfer provided that: (a) such Transfer is not a subterfuge to avoid an obligation or liability; (b) Tenant occupies all of the Premises initially let to Tenant under the Lease; (b) Tenant shall have provided Landlord with at least 30 days advance written notice of its intent to Transfer the Premises; (c) Tenant shall have provided Landlord with documents, acceptable to Landlord in its sole and absolute discretion, evidencing such Transfer at least 15 days in advance thereof; (d) evidence reasonably acceptable to Landlord that, after such Transfer, the transferee will have a tangible net worth at least equal to that of Tenant's on the effective date of the Lease; (e) evidence reasonably acceptable to Landlord that, after such Transfer, the transferee will have sufficient cash or near cash equivalents to cover at least 1 calendar year of the then applicable Base Rent, Additional Rent, and Percentage Rent charges due or estimated due under the Lease; (f) such transferee has not inquired of Landlord about leasing any premises within the Center within the last calendar year; (g) the business of such transferee shall not conflict with Landlord's obligations under any other lease within the

Center; (h) Tenant shall pay to Landlord its standard transfer processing fee; and (i) no Event of Default is continuing under the Lease.

In no event shall any Transfer release Tenant from primary liability under the Lease.

Landlord shall have the right to recapture the Premises upon receipt of any request for Transfer.

Landlord shall be entitled to 100% any amounts due from any transferee in excess of the amounts due from Tenant to Landlord under the Lease.

21. Other Stores: Tenant shall not open another store engaged in or competing with the Permitted Use within [•] miles of the Center. If Tenant does open such a store, then the gross sales from such store shall constitute gross sales from the Premises and be subject to the Percentage Rent provided for in the Lease.
22. Continuing Operation: Tenant shall continuously occupy and operate the Premises for all days and hours during which the Center is open to the general public. Tenant shall keep the Premises in compliance with all applicable laws along with the building rules and regulations Landlord maintains for the Center.
23. Landlord Access: Tenant shall permit Landlord or its representatives to enter upon the Premises to make inspection thereof, perform Landlord's obligations under the Lease, tour prospective tenants or investors, in connection with any refinancing or sale of the Center, and to ensure the safety of the Premises, other premises, the Center, or any property or persons located thereon or thereabout. Except in the event of an emergency, Landlord shall use reasonable efforts to provide advance written or oral notice of any such entry. Tenant shall not change the locks or access codes to any of the Premises without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.
24. Signage: Tenant's signage shall be subject to Landlord's approval in all respects, Tenant shall be entitled to install signage on the exterior of the Premises at Tenant's sole cost and expense. Tenant shall remove its signage upon the expiration or earlier termination of the Lease. Landlord shall provide signage for Tenant in any directories of the Center pursuant to Landlord's standard practices.
25. Insurance: Tenant shall procure at its expense and keep in force the following insurance with coverages, limits, and deductibles as Landlord shall require: (a) commercial general liability insurance on an occurrence basis naming Landlord as an additional insured against any and all claims for bodily injury and property damage occurring in or about the Premises arising out of Tenant's use and occupancy of the Premises; (b) personal property insurance on an occurrence basis insuring all merchandise, equipment, trade fixtures, inventory, fixtures, and personal property located on or in the Premises for perils covered by the causes of loss, special form (all risk), and coverage for flood, earthquake, and boiler and machinery (if applicable), including business interruption insurance; (c) workers' compensation insurance in accordance with statutory law and

employers liability insurance; (d) plate glass insurance insuring all plate glass on the Premises; and (e) boiler and machinery insurance on any HVAC or other equipment located within the Premises.

The policies shall be with companies rated [•] or better in the most current issue of A.M. Best's Insurance Ratings Guide.

26. Indemnification: Tenant shall indemnify and hold Landlord harmless from all losses, liabilities, claims, damages, and expenses (including actual attorneys' fees and court costs) incurred by Landlord in connection with enforcing the terms and conditions of the Lease or arising out of Tenant's occupancy of, use of, or conduct of business at or about the Premises or Center.
27. Hazardous Materials: Tenant shall not cause or suffer the handling, using, manufacturing, or disposing of any materials deemed hazardous or regulated by any environmental law in or about the Premises or Center.
28. Event of Default: Tenant shall be in default of the Lease upon (each, an "**Event of Default**"): (a) a failure to perform any monetary obligation when due that continues for more than 5 days thereafter, without notice from Landlord; (b) a failure to perform any non-monetary obligation when due that continues for more than 30 days after written notice from Landlord, provided that no such notice shall be due if Landlord gave notice of a breach of the same provision of the Lease within the prior 12 calendar months; and (c) such other failures or occurrences provided in the Lease.
29. Self Help & Offset: Tenant shall have no right to: (a) perform work on behalf of Landlord or (b) offset or withhold sums due under the Lease.
30. Termination Rights: Except in connection with a Major Casualty or Major Condemnation (as defined in the Lease), Tenant shall have no rights to terminate the Lease prior to the expiration of the Term.
31. Landlord's Lien: Tenant shall grant to Landlord a security interest, whether by statute or by the filing of a financing statement, in and to the personal property and trade fixtures located within the Premises as additional security for Tenant's prompt payment and performance under the Lease.
32. Brokerage: Except for [•], Tenant has not engage any real estate brokerage in connection with the Premises or Lease ("**Tenant's Broker**"). Landlord shall compensate Tenant's Broker pursuant to a separate writing. Except for Tenant's Broker, Tenant shall indemnify Landlord for any claims to brokerage fees, finders fees, or commissions asserted by or through Tenant.
33. Confidentiality: Landlord and Tenant agree to maintain the confidentiality of the terms and conditions of this LOI, which obligation shall be binding on both parties and shall survive the expiration or termination of this letter of intent.

This LOI is not intended to be, nor should it be interpreted or construed as, a contract between Tenant and Landlord and is only intended to advance discussions between the parties concerning a possible Lease. Either Tenant or

Retail Cannabis Leasing

Landlord may, for any reason or no reason whatsoever, with or without cause, on written notice to the other party, terminate discussions or negotiations at any time, and any such termination shall be without obligation or liability whatsoever. Notwithstanding any written or verbal communication(s) or series of communications to the contrary, the parties shall not be deemed to have entered into the Lease, or any other binding agreement, unless and until: (a) the terms and conditions of a Lease have been fully negotiated by Tenant and Landlord; (b) Tenant's and Landlord's senior management have approved the terms and conditions of the Lease and have approved the execution of a formal document intended to evidence the same; and (c) both Tenant and Landlord have fully executed and delivered a binding Lease agreement.

If the terms and conditions of this LOI are acceptable to you, please countersign below and return a scanned copy thereof to the undersigned on or before [•], 2021.

Respectfully,

[•]

Name: [•]
Title: [•]
Email: [•]

AGREED:

[•]

Name: _____
Title: _____
Email: _____

[EXHIBITS OMITTED]

LETTER OF INTENT [CANNABIS RETAIL]

_____, 2021

Attn: _____

Re: Letter of Intent to Lease [•]

Dear [•],

This Letter of Intent (“**LOI**”) is delivered to you as an expression of interest by [•] (“**Tenant**”) to lease from [•] (“**Landlord**”), certain Premises within the building commonly known as [•] (“**Center**”) subject to a lease agreement (“**Lease**”) consistent with the terms and conditions below:

1. Premises: Approximately [•] rentable square feet within the Center, commonly known as Suite [•] (“**Premises**”) and as set forth in more detail on Exhibit A attached hereto.

The Premises constitutes [•] percent ([•]%) of the rentable square feet of the Center (such percent, “**Tenant’s Share**”).

2. Commencement Date: The Lease shall commence five (5) business days after the last occurring of: (a) the date that Landlord delivers possession of the Premises to Tenant in the condition required by the Lease, (b) the date Tenant receives a license to operate the Permitted Use at the Premises from the applicable governmental authorities, along with any construction permits, variances, non-conforming use exceptions, zoning changes, and/or other approvals that Tenant—in its sole, subjective discretion—determines are necessary to operate the Permitted Use in conformance with its proprietary design, manner, and operational objectives (“**Commencement Date**”), provided Tenant delivers the evidence that it has obtained the insurance coverage required of it by the Lease.

Except for any Landlord’s Work, Landlord shall have no obligation to prepare or alter the Premises for Tenant’s occupancy.

On or prior to the Commencement Date, Landlord shall cause any condominium or association to which the Premises is subject to deliver an estoppel certificate in form and substance reasonably acceptable to Tenant providing, at a minimum: (i) that Tenant is entitled to rely on and is in fact relying on the statements contained in such certificate; (ii) the Lease including, without limitation, the Permitted Use thereunder, is not

prohibited by the respective rules, bylaws, agreements, or declarations of such condominium or association; and (iii) the respective rules, bylaws, agreements, or declarations of such condominium or association may not be modified or amendment to cause the Permitted Use, to be prohibited thereunder without the express written consent of Landlord.

After the fully execution of the Lease but prior to the Commencement Date, Tenant shall be permitted early access to the Premises for purposes of space planning, measuring, and other activities common of retail tenants entering into a lease.

3. **Commencement Contingency:** If the Commencement Date has not occurred by [•], [•] for any reason, either of Tenant or Landlord shall be permitted to terminate the Lease upon written notice to the other. If Landlord has complied with the delivery requirements specified in the Lease and Tenant elects to terminate the Lease pursuant to the terms herein, then Tenant shall pay to Landlord a sum equal to \$[•] commensurately with the delivery of such notice.
4. **Term:** The initial term of the Lease shall begin on the Commencement Date and expire on the last day of the [•] calendar month thereafter ("**Initial Term**").

Tenant shall have [•] ([•]) options of [•] ([•]) years each to renew the Term of the Lease of the Premises. any such renewal shall be on the same terms and conditions as the Initial Term, except that Base Rent shall be revised to equal the then-fair market rent for similar space operated for the Permitted Use within the [•] market area. If Landlord and Tenant are unable to agree upon such fair market rent, the parties shall each cause a qualified real estate broker or consultant to submit a proposed fair market rent to a third broker, which will then select whichever proposed fair market rent most closely approximates such third broker's opinion thereof. The applicable fair market rent shall not be subject to a floor based upon any Base Rent applicable to the Initial Term.
5. **Base Rent:** Tenant shall pay, in equal monthly installments in advance on the first day of each calendar month without offset, demand, or invoice, \$[•] in annual base rent ("**Base Rent**"). Upon each annual anniversary of the Rent Commencement Date, Base Rent shall increase by [•] %.
6. **Additional Rent:** In addition to Base Rent, Tenant shall pay as additional rent ("**Additional Rent**"): (a) Tenant's Share of Operating Expenses and Real Estate Taxes; (b) the cost of all heat, electricity, gas, sewer, and other utilities used at the Premises which, if not separately metered, may be assessed to Tenant in accordance with Landlord's reasonable estimation of such use; and (b) any and all other monetary obligations of Tenant under the Lease.
7. **Rent Commencement Date:** Tenant's obligation to pay Base Rent, Percentage Rent, and Additional Rent shall begin upon the first day of the month that is [•] months after the Commencement Date ("**Rent Commencement Date**"). Notwithstanding the preceding, Tenant shall pre-pay the 1st monthly installment of Base Rent concurrently with its execution of the Lease.

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8. Permitted Use: Tenant shall be permitted to use the Premises as a [•] for all purposes permitted under the Act including, without limitation, and change in the Act that permits Tenant to host on-site consumption within the Premises, along with administrative and storage use necessary thereto and for no other use (“**Permitted Use**”). The Permitted Use shall not be an event of default under the Lease or considered a public or private nuisance. Landlord shall acknowledge same and waive any claim related thereto, including any claim of indemnification in the event Landlord becomes subject to any federal enforcement action, including a Seizure Notice.
9. Exclusives: Landlord shall covenant against leasing any other premises within the Center, or any other buildings owned by Landlord or its affiliates within the city of [•], [•] to: (a) any other business engage in activities governed under the Act and (b) any entity or use which would preclude Tenant from engaging in the Permitted Use at the Premises under the Act.
10. Maintenance: Tenant shall be responsible for maintaining the Premises in good condition and repair. Landlord shall have the right, but not obligation, to make any repairs or maintenance the responsibility of Tenant under the Lease at Tenants cost and expense.
11. Alterations: Tenant shall be permitted to make decorative, non-structural alterations to the Premises without Landlord’s prior written consent, provided that such alterations do not interfere with or overload the building systems of the Center, are not visible from the exterior of the Premises, and do not exceed \$[•] in the aggregate in any calendar year. All other alterations are subject to Landlord prior written approval, which Landlord shall not unreasonably withhold, provided that such alterations are consistent with the Permitted Use, comply with Landlord’s construction rules for the Center, and shall be removed by Tenant upon the expiration or earlier termination of the Lease.
- Notwithstanding the preceding, Tenant shall be permitted to make any alterations required by the Act upon notice to, but without the consent of, Landlord.
12. Security Deposit: Tenant shall pay a security deposit equal to \$[•] concurrently with its execution of the Lease.
13. Guarantor: [•] shall unconditionally guaranty the prompt payment and performance of Tenant under the Lease pursuant to the terms and conditions of Landlord’s standard unconditional guaranty.
14. Landlord’s Work: Landlord shall not perform any base building construction or alterations, except as provided on Exhibit C attached hereto (“**Landlord’s Work**”).
15. Tenant’s Work: Tenant shall, at Tenant’s sole cost and expense, perform all work necessary to fully fixture and stock the Premises such that it shall be open for business to the general public on or before the Rent Commencement Date. All such work shall be subject to the construction rules Landlord maintains for the Center.
16. Improvement Allowance: Landlord shall not provide an improvement allowance to Tenant.

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17. Parking: Tenant shall have the non-exclusive right to use the Center's parking facilities, subject to compliance with Landlord's parking rules.
18. Relocation: Landlord shall have no right to relocate Tenant from the Premises.
19. Expansion Options: Tenant shall have no options to expand the Premises or lease other premises within the Center.
20. Right of First Refusal: Tenant shall have no right of first refusal or right of first offer over the Premises or other premises within the Center.
21. Assignment and Subletting: Landlord's consent shall be required for any assignment, subletting, or direct or indirect transfer of the Lease or Tenant's interest in the Premises ("**Transfer**"). Landlord shall not unreasonably withhold its consent to a specific Transfer provided that: (a) such Transfer is not a subterfuge to avoid an obligation or liability; (b) Tenant occupies all of the Premises initially let to Tenant under the Lease; (c) Tenant shall have provided Landlord with at least 30 days advance written notice of its intent to Transfer the Premises; (d) Tenant shall have provided Landlord with documents, acceptable to Landlord in its sole and absolute discretion, evidencing such Transfer at least 15 days in advance thereof; (e) such transferee has not inquired of Landlord about leasing any premises within the Center within the last calendar year; (f) the business of such transferee shall not conflict with Landlord's obligations under any other lease within the Center; and (g) no Event of Default is continuing under the Lease.
- In no event shall any Transfer release Tenant from primary liability under the Lease.
- Landlord shall be entitled to 50% any amounts due from any transferee in excess of the amounts due from Tenant to Landlord under the Lease.
- Notwithstanding the preceding, should any such transferee has a net worth equal to or greater than the net worth of Tenant upon the effective date of the Lease and/or any guarantor of such transferee has a net worth equal to or greater than the net worth of Guarantor on the effective date of the Guaranty, then Tenant and /or Guarantor shall be released from liability provided such transferee and replacement guarantor executed and deliver to Landlord a commercially reasonable assumption of lease and / or guaranty agreement.
- Notwithstanding the preceding, tenant shall be permitted as of right to assign the Lease in connection with a corporate reorganization, consolidation or merger or to any entity that acquires all or substantially all of the assets or equity of Tenant.
22. Other Stores: Tenant shall not open another store engaged in or competing with the Permitted Use within [•] miles of the Center.
23. Continuing Operation: Tenant shall continuously occupy and operate the Premises for all days and hours during which the Center is open to the general public. Tenant keep the Premises in compliance with all applicable laws including,

without limitation, the [•] (“**Act**”) and the building rules and regulations Landlord maintains for the Center, provided such rules and regulations do not materially and adversely affect the rights and obligations of Tenant under the Lease or the Act and are applied to all tenants of the Center on a non-discriminatory basis.

24. Preemptive Termination: In the event the Landlord, Tenant, Premises, or Center become the subject of or, in the reasonable determination of any such parties, is about to become the subject of, any civil or criminal forfeiture action or otherwise enforcement of the Controlled Substances Act or the Racketeering Influenced and Corrupt Organizations Act, such party shall be permitted to terminate the lease, effective [•] months after written notice thereof is delivered to the other party.
25. Frustration of Purpose: Tenant shall be entitled to early termination of the Lease upon written notice to Landlord following either of: (i) a change in law such that prevents Tenant from engaging in the Permitted Use in materially the same manner as Tenant could or would be able to engage in the Permitted Use upon the effective date of the Lease, or (ii) the revocation, termination, or other loss of the Licenses required to operate the Permitted Use at the Premises.
26. Landlord Access: Landlord’s right of entry in all circumstances shall be subject to applicable law including, without limitation, the security and safety measures imposed upon Tenant under the Act, and shall not include access to any area in which cannabis is displayed or held unless accompanied by Tenant or Tenant’s authorized personnel. Landlord may tour prospective replacement tenants through the Premises only during the last 9 months of the Lease, provided that such tour complies with the Act and such replacement tenant agrees to execute and deliver a non-disclosure agreement, a form of which is to be attached to the Lease.
27. Signage: Tenant shall be entitled to install signage on the exterior of the Premises at Tenant’s sole cost and expense, subject only to applicable law and Landlord’s consent, not to be unreasonably withheld, conditioned or delayed. Tenant shall remove its signage upon the expiration or earlier termination of the Lease. Landlord shall provide signage for Tenant in any directories of the Center pursuant to Landlord’s standard practices.
28. Insurance: Each of Landlord and Tenant shall procure at its expense and keep in force insurance with coverages, limits, and deductibles to be set forth in the Lease, provided that either party shall be permitted to self-insure if any such coverage is not commercially available upon reasonable rates.
29. Indemnification: Landlord and Tenant shall mutually indemnify and hold harmless the other from damages, liabilities, claims, and expenses (including reasonable attorneys’ fees and court costs), subject to terms, conditions, and limitations to be negotiated in the Lease; provided, however, that such indemnity shall expressly exclude any of the foregoing arising from the Permitted Use including, without limitation, civil or criminal forfeiture or seizure.

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30. Hazardous Materials: Tenant shall not cause or suffer the handling, using, manufacturing, or disposing of any materials deemed hazardous or regulated by any environmental law in or about the Premises or Center.
31. Event of Default: Tenant shall be in default of the Lease upon (each, an “**Event of Default**”): (a) a failure to perform any monetary obligation when due that continues for more than 5 days after notice from Landlord; (b) a failure to perform any non-monetary obligation when due that continues for more than 30 days after written notice from Landlord, unless such breach is not of a nature reasonably curable in said 30-day period, in which event Tenant shall have 90 days to effect such curative action provided Tenant engages in and diligently pursues such cure.
32. Dispute Resolution: Should any dispute arise between Landlord and Tenant related to the Premises, Center, or the Lease, each party agrees to submit such dispute to binding arbitration pursuant to terms and conditions to be described in the Lease.
33. Self Help & Offset: Tenant shall have no right to: (a) perform work on behalf of Landlord or (b) offset or withhold sums due under the Lease.
34. Landlord’s Lien: Tenant’s trade fixtures and personal property shall under no circumstances be considered appurtenances to the Premises, and Landlord shall waive any statutory or contractual lien rights in and to all of Tenant’s trade fixtures and personal property.
35. Declarations, Bylaws, Rules Landlord shall represent and warrant that it will not, without the prior written consent of Tenant, which may be withheld in Tenant’s sole and absolute discretion, consent to a modification or amendment of any rules, bylaws, agreements, or declarations of any condominium or association to which the Premises is subject which would cause the Permitted Use to be in violation thereof.
36. Brokerage: Except for [•], Tenant has not engage any real estate brokerage in connection with the Premises or Lease (“**Tenant’s Broker**”). Landlord shall compensate Tenant’s Broker pursuant to a separate writing. Except for Tenant’s Broker, Tenant shall indemnify Landlord for any claims to brokerage fees, finders fees, or commissions asserted by or through Tenant.
37. Confidentiality: Landlord and Tenant agree to maintain the confidentiality of the terms and conditions of this LOI, which obligation shall be binding on both parties and shall survive the expiration or termination of this letter of intent.
- The Lease shall provide that any public statements made by either party related to the Lease, Premises, Center, Permitted Use, or identity of the parties shall be submitted to the other party for approval, which shall not be unreasonably withheld, conditioned or delayed.

This LOI is not intended to be, nor should it be interpreted or construed as, a contract between Tenant and Landlord and is only intended to advance discussions between the parties concerning a possible Lease. Either Tenant or Landlord may, for any reason or no reason whatsoever, with or without cause, on written notice to the other party,

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terminate discussions or negotiations at any time, and any such termination shall be without obligation or liability whatsoever. Notwithstanding any written or verbal communication(s) or series of communications to the contrary, the parties shall not be deemed to have entered into the Lease, or any other binding agreement, unless and until: (a) the terms and conditions of a Lease have been fully negotiated by Tenant and Landlord; (b) Tenant's and Landlord's senior management have approved the terms and conditions of the Lease and have approved the execution of a formal document intended to evidence the same; and (c) both Tenant and Landlord have fully executed and delivered a binding Lease agreement.

If the terms and conditions of this LOI are acceptable to you, please countersign below and return a scanned copy thereof to the undersigned on or before [•], 2021.

Respectfully,

[•]

Name: [•]
Title: [•]
Email: [•]

AGREED:

[•]

Name: _____
Title: _____
Email: _____

[EXHIBITS OMITTED]

LETTER OF INTENT [TRADITIONAL CANNABIS RETAIL]

_____, 2021

Attn: _____

Re: Letter of Intent to Lease [•]

Dear [•],

This Letter of Intent (“**LOI**”) is delivered to you as an expression of interest by [•] (“**Tenant**”) to lease from [•] (“**Landlord**”), certain Premises within the building commonly known as [•] (“**Center**”) subject to a lease agreement (“**Lease**”) consistent with the terms and conditions below:

1. Premises: Approximately [•] rentable square feet within the Center, commonly known as Suite [•] (“**Premises**”) and as set forth in more detail on Exhibit A attached hereto.

The Premises constitutes [•] percent ([•]%) of the rentable square feet of the Center (such percent, “**Tenant’s Share**”).

2. Commencement Date: The Lease shall commence ~~on [•] five (5) business days after the last occurring of:~~ (a) the date that Landlord delivers possession of the Premises to Tenant in the condition required by the Lease, (b) the date Tenant receives a license to operate the Permitted Use at the Premises from the applicable governmental authorities, along with any construction permits, variances, non-conforming use exceptions, zoning changes, and/or other approvals that Tenant—in its sole, subjective discretion—determines are necessary to operate the Permitted Use in conformance with its proprietary design, manner, and operational objectives (“**Commencement Date**”), provided Tenant delivers the evidence that it has obtained the insurance coverage required of it ~~pursuant to~~ by the Lease.

~~Tenant shall accept the Premises in its “as-is” condition on the Commencement Date and, except~~ for any Landlord’s Work, Landlord shall have no obligation to prepare or alter the Premises for Tenant’s occupancy.

On or prior to the Commencement Date, Landlord shall cause any condominium or association to which the Premises is subject to deliver an estoppel certificate in form and substance reasonably acceptable to Tenant providing, at a minimum: (i) that Tenant is entitled to rely on and is in fact relying on the statements contained in such certificate; (ii) the Lease including, without limitation, the Permitted Use thereunder, is not prohibited by the respective rules, bylaws, agreements, or declarations of such condominium or association; and (iii) the respective rules, bylaws, agreements, or declarations of such condominium or association may not be modified or amendment to cause the Permitted Use, to be prohibited thereunder without the express written consent of Landlord.

After the fully execution of the Lease but prior to the Commencement Date, Tenant shall be permitted early access to the Premises for purposes of space planning, measuring, and other activities common of retail tenants entering into a lease.

3. Commencement Contingency: If the Commencement Date has not occurred by [•], [•] for any reason, either of Tenant or Landlord shall be permitted to terminate the Lease upon written notice to the other. If Landlord has complied with the delivery requirements specified in the Lease and Tenant elects to terminate the Lease pursuant to the terms herein, then Tenant shall pay to Landlord a sum equal to \$[•] commensurately with the delivery of such notice.

4. ~~3.~~Term: The initial term of the Lease shall begin on the Commencement Date and expire on the last day of the [•] calendar month thereafter (“**Initial Term**”).

~~Tenant shall have no option to extend or renew the Term.~~

Tenant shall have [•] ([•]) options of [•] ([•]) years each to renew the Term of the Lease of the Premises, any such renewal shall be on the same terms and conditions as the Initial Term, except that Base Rent shall be revised to equal the then-fair market rent for similar space operated for the Permitted Use within the [•] market area. If Landlord and Tenant are unable to agree upon such fair market rent, the parties shall each cause a qualified real estate broker or consultant to submit a proposed fair market rent to a third broker, which will then select whichever proposed fair market rent most closely approximates such third broker's opinion thereof. The applicable fair market rent shall not be subject to a floor based upon any Base Rent applicable to the Initial Term.

5. ~~4.~~Base Rent: Tenant shall pay, in equal monthly installments in advance on the first day of each calendar month without offset, demand, or invoice, \$[•] in annual base rent (“**Base Rent**”). Upon each annual anniversary of the Rent Commencement Date, Base Rent shall increase by [•]%.

~~5. Percentage Rent: In addition to Base Rent, Tenant shall pay percentage rent equal to [•]% of Tenant's gross sales in excess of certain breakpoint amounts (“**Percentage Rent**”), all as set forth in more detail on Exhibit B attached hereto.~~

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~~If, following the first annual anniversary of the Rent Commencement Date, Tenant shall fail to achieve gross sales in excess of \$[.] during any 12 month period, Landlord shall have the right to terminate the Lease. If Landlord terminates the Lease as provided above, then Tenant shall have the right to reinstate the Lease by paying to Landlord within 10 days of such termination the difference between: (a) the Percentage Rent actually paid to Landlord during such period and (b) the Percentage Rent Tenant would have paid to Landlord if Tenant's gross sales were equal to the figure above.~~

6. Additional Rent: In addition to Base Rent, Tenant shall pay as additional rent (“**Additional Rent**”): (a) Tenant’s Share of Operating Expenses and Real Estate Taxes; (b) the cost of all heat, electricity, gas, sewer, and other utilities used at the Premises which, if not separately metered, may be assessed to Tenant in accordance with Landlord’s reasonable estimation of such use; and (b) any and all other monetary obligations of Tenant under the Lease.
7. Rent Commencement Date: Tenant's obligation to pay Base Rent, Percentage Rent, and Additional Rent shall begin upon ~~[.]~~ the first day of the month that is [.] months after the Commencement Date (“**Rent Commencement Date**”). Notwithstanding the preceding, Tenant shall pre-pay the 1st monthly installment of Base Rent concurrently with its execution of the Lease.
8. Permitted Use: Tenant shall be permitted to use the Premises ~~only for the retail sale of [.] under the trade name of [.] as a [.]~~ for all purposes permitted under the Act including, without limitation, and change in the Act that permits Tenant to host on-site consumption within the Premises, along with administrative and storage use necessary thereto and for no other use (“**Permitted Use**”). The Permitted Use shall not be an event of default under the Lease or considered a public or private nuisance. Landlord shall acknowledge same and waive any claim related thereto, including any claim of indemnification in the event Landlord becomes subject to any federal enforcement action, including a Seizure Notice.
9. Exclusives: Landlord shall covenant against leasing any other premises within the Center, or any other buildings owned by Landlord or its affiliates within the city of [•], [•] to: (a) any other business engage in activities governed under the Act and (b) any entity or use which would preclude Tenant from engaging in the Permitted Use at the Premises under the Act.
10. ~~9.~~ Maintenance: Tenant shall be responsible for maintaining the Premises in good condition and repair. Landlord shall have the right, but not obligation, to make any repairs or maintenance the responsibility of Tenant under the Lease at Tenants cost and expense.
11. ~~10.~~ Alterations: Tenant shall be permitted to make decorative, non-structural alterations to the Premises without Landlord’s prior written consent, provided that such alterations do not interfere with or overload the building systems of the Center, are not visible from the exterior of the Premises, and do not exceed \$[.] in the aggregate in any calendar year. All other alterations are subject to Landlord prior written approval, which Landlord shall not unreasonably withhold, provided that such alterations are consistent with

the Permitted Use, comply with Landlord's construction rules for the Center, and shall be removed by Tenant upon the expiration or earlier termination of the Lease.

Notwithstanding the preceding, Tenant shall be permitted to make any alterations required by the Act upon notice to, but without the consent of, Landlord.

12. ~~41.~~ Security Deposit: Tenant shall pay a security deposit equal to \$[•] concurrently with its execution of the Lease.
13. ~~42.~~ Guarantor: [•] shall unconditionally guaranty the prompt payment and performance of Tenant under the Lease pursuant to the terms and conditions of Landlord's standard unconditional guaranty.
14. ~~43.~~ Landlord's Work: Landlord shall not perform any base building construction or alterations, except as provided on Exhibit C attached hereto ("**Landlord's Work**").
15. ~~44.~~ Tenant's Work: Tenant shall, at Tenant's sole cost and expense, perform all work necessary to fully fixture and stock the Premises such that it shall be open for business to the general public on or before the Rent Commencement Date. All such work shall be subject to the construction rules Landlord maintains for the Center.
16. ~~45.~~ Improvement Allowance: Landlord shall not provide an improvement allowance to Tenant.
17. ~~46.~~ Parking: Tenant shall have the non-exclusive right to use the Center's parking facilities, subject to compliance with Landlord's parking rules.
18. ~~47.~~ Relocation: Landlord shall ~~be permitted~~ have no right to relocate Tenant from the Premises ~~pursuant to Landlord's standard practices as set forth in the Lease.~~
19. ~~48.~~ Expansion Options: Tenant shall have no options to expand the Premises or lease other premises within the Center.
20. ~~49.~~ Right of First Refusal: Tenant shall have no right of first refusal or right of first offer over the Premises or other premises within the Center.
21. ~~20.~~ Assignment and Subletting: Landlord's consent shall be required for any assignment, subletting, or direct or indirect transfer of the Lease or Tenant's interest in the Premises ("**Transfer**"). ~~A corporate consolidation, merger, or reorganization shall constitute a Transfer for which Landlord's consent is required. A change in control of Tenant, the entities or persons holding direct or indirect control of Tenant, or the ultimate beneficial owners of Tenant or such entities shall constitute a Transfer for which Landlord's consent is required.~~ Landlord shall not unreasonably withhold its consent to a specific Transfer provided that: (a) such Transfer is not a subterfuge to avoid an obligation or liability; (b) Tenant occupies all of the Premises initially let to Tenant under the Lease; (b) Tenant shall have provided Landlord with at least 30 days advance written notice of its intent to Transfer the Premises; (c) Tenant shall have provided Landlord with documents, acceptable to Landlord in its sole and absolute discretion,

evidencing such Transfer at least 15 days in advance thereof; (d) ~~evidence reasonably acceptable to Landlord that, after such Transfer, the transferee will have a tangible net worth at least equal to that of Tenant's on the effective date of the Lease;~~ (e) ~~evidence reasonably acceptable to Landlord that, after such Transfer, the transferee will have sufficient cash or near cash equivalents to cover at least 1 calendar year of the then applicable Base Rent, Additional Rent, and Percentage Rent charges due or estimated due under the Lease;~~ (f) such transferee has not inquired of Landlord about leasing any premises within the Center within the last calendar year; (g) the business of such transferee shall not conflict with Landlord's obligations under any other lease within the Center; (h) ~~Tenant shall pay to Landlord its standard transfer processing fee; and (i) and (f)~~ no Event of Default is continuing under the Lease.

In no event shall any Transfer release Tenant from primary liability under the Lease.

~~Landlord shall have the right to recapture the Premises upon receipt of any request for Transfer.~~

Landlord shall be entitled to ~~100~~50% any amounts due from any transferee in excess of the amounts due from Tenant to Landlord under the Lease.

Notwithstanding the preceding, should any such transferee has a net worth equal to or greater than the net worth of Tenant upon the effective date of the Lease and/or any guarantor of such transferee has a net worth equal to or greater than the net worth of Guarantor on the effective date of the Guaranty, then Tenant and /or Guarantor shall be released from liability provided such transferee and replacement guarantor executed and deliver to Landlord a commercially reasonable assumption of lease and / or guaranty agreement.

Notwithstanding the preceding, tenant shall be permitted as of right to assign the Lease in connection with a corporate reorganization, consolidation or merger or to any entity that acquires all or substantially all of the assets or equity of Tenant.

22. ~~21.~~ Other Stores:

Tenant shall not open another store engaged in or competing with the Permitted Use within [•] miles of the Center. ~~If Tenant does open such a store, then the gross sales from such store shall constitute gross sales from the Premises and be subject to the Percentage Rent provided for in the Lease.~~

23. ~~22.~~ Continuing Operation:

Tenant shall continuously occupy and operate the Premises for all days and hours during which the Center is open to the general public. Tenant shall keep the Premises in compliance with all applicable laws ~~along with~~ including, without limitation, the [•] ("Act") and the building rules and regulations Landlord maintains for the Center, ~~provided such rules and regulations do not materially and adversely affect the rights and obligations of Tenant under the Lease or the Act and are applied to all tenants of the Center on a non-discriminatory basis.~~

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24. Preemptive Termination: In the event the Landlord, Tenant, Premises, or Center become the subject of or, in the reasonable determination of any such parties, is about to become the subject of, any civil or criminal forfeiture action or otherwise enforcement of the Controlled Substances Act or the Racketeering Influenced and Corrupt Organizations Act, such party shall be permitted to terminate the lease, effective [•] months after written notice thereof is delivered to the other party.
25. Frustration of Purpose: Tenant shall be entitled to early termination of the Lease upon written notice to Landlord following either of: (i) a change in law such that prevents Tenant from engaging in the Permitted Use in materially the same manner as Tenant could or would be able to engage in the Permitted Use upon the effective date of the Lease, or (ii) the revocation, termination, or other loss of the Licenses required to operate the Permitted Use at the Premises.
26. Landlord Access: Landlord's right of entry in all circumstances shall be subject to applicable law including, without limitation, the security and safety measures imposed upon Tenant under the Act, and shall not include access to any area in which cannabis is displayed or held unless accompanied by Tenant or Tenant's authorized personnel. Landlord may tour prospective replacement tenants through the Premises only during the last 9 months of the Lease, provided that such tour complies with the Act and such replacement tenant agrees to execute and deliver a non-disclosure agreement, a form of which is to be attached to the Lease.
- ~~23. Landlord Access:~~ ~~Tenant shall permit Landlord or its representatives to enter upon the Premises to make inspection thereof, perform Landlord's obligations under the Lease, tour prospective tenants or investors, in connection with any refinancing or sale of the Center, and to ensure the safety of the Premises, other premises, the Center, or any property or persons located thereon or thereabout. Except in the event of an emergency, Landlord shall use reasonable efforts to provide advance written or oral notice of any such entry. Tenant shall not change the locks or access codes to any of the Premises without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.~~
27. ~~24.~~ Signage: ~~Tenant's signage shall be subject to Landlord's approval in all respects,~~ Signage: Tenant shall be entitled to install signage on the exterior of the Premises at Tenant's sole cost and expense, subject only to applicable law and Landlord's consent, not to be unreasonably withheld, conditioned or delayed. Tenant shall remove its signage upon the expiration or earlier termination of the Lease. Landlord shall provide signage for Tenant in any directories of the Center pursuant to Landlord's standard practices.
28. ~~25.~~ Insurance: Each of Landlord and Tenant shall procure at its expense and keep in force the following insurance with coverages, limits, and deductibles as Landlord shall require: (a) commercial general liability insurance on an occurrence basis naming Landlord as an additional insured against any and all claims for bodily injury and property damage occurring in or about the Premises arising out of Tenant's use and occupancy of the Premises; (b) personal property insurance on an occurrence basis insuring all merchandise, equipment, trade fixtures, inventory, fixtures, and personal

~~property located on or in the Premises for perils covered by the causes of loss, special form (all risk), and coverage for flood, earthquake, and boiler and machinery (if applicable), including business interruption insurance; (c) workers' compensation insurance in accordance with statutory law and employers liability insurance; (d) plate glass insurance insuring all plate glass on the Premises; and (e) boiler and machinery insurance on any HVAC or other equipment located within the Premises. to be set forth in the Lease, provided that either party shall be permitted to self-insure if any such coverage is not commercially available upon reasonable rates.~~

29. Indemnification:

Landlord and Tenant shall mutually indemnify and hold harmless the other from damages, liabilities, claims, and expenses (including reasonable attorneys' fees and court costs), subject to terms, conditions, and limitations to be negotiated in the Lease; provided, however, that such indemnity shall expressly exclude any of the foregoing arising from the Permitted Use including, without limitation, civil or criminal forfeiture or seizure.

~~The policies shall be with companies rated [*] or better in the most current issue of A.M. Best's Insurance Ratings Guide.~~

~~26. Indemnification:~~

~~Tenant shall indemnify and hold Landlord harmless from all losses, liabilities, claims, damages, and expenses (including actual attorneys' fees and court costs) incurred by Landlord in connection with enforcing the terms and conditions of the Lease or arising out of Tenant's occupancy of, use of, or conduct of business at or about the Premises or Center.~~

30. ~~27.~~ Hazardous Materials:

Tenant shall not cause or suffer the handling, using, manufacturing, or disposing of any materials deemed hazardous or regulated by any environmental law in or about the Premises or Center.

31. ~~28.~~ Event of Default:

Tenant shall be in default of the Lease upon (each, an "**Event of Default**"): (a) a failure to perform any monetary obligation when due that continues for more than 5 days ~~thereafter, without~~ after notice from Landlord; (b) a failure to perform any non-monetary obligation when due that continues for more than 30 days after written notice from Landlord, ~~provided that no such notice shall be due if Landlord gave notice of a breach of the same provision of the Lease within the prior 12 calendar months; and (c) such other failures or occurrences provided in the Lease.~~ unless such breach is not of a nature reasonably curable in said 30-day period, in which event Tenant shall have 90 days to effect such curative action provided Tenant engages in and diligently pursues such cure.

32. Dispute Resolution:

Should any dispute arise between Landlord and Tenant related to the Premises, Center, or the Lease, each party agrees to submit such dispute to binding arbitration pursuant to terms and conditions to be described in the Lease.

33. ~~29.~~ Self Help & Offset:

Tenant shall have no right to: (a) perform work on behalf of Landlord or (b) offset or withhold sums due under the Lease.

Retail Cannabis Leasing

- ~~30. Termination Rights: Except in connection with a Major Casualty or Major Condemnation (as defined in the Lease), Tenant shall have no rights to terminate the Lease prior to the expiration of the Term.~~
- ~~31. Landlord's Lien: Tenant shall grant to Landlord a security interest, whether by statute or by the filing of a financing statement, in and to the personal property and trade fixtures located within the Premises as additional security for Tenant's prompt payment and performance under the Lease.~~
34. Landlord's Lien: Tenant's trade fixtures and personal property shall under no circumstances be considered appurtenances to the Premises, and Landlord shall waive any statutory or contractual lien rights in and to all of Tenant's trade fixtures and personal property.
35. Declarations, Bylaws, Rules Landlord shall represent and warrant that it will not, without the prior written consent of Tenant, which may be withheld in Tenant's sole and absolute discretion, consent to a modification or amendment of any rules, bylaws, agreements, or declarations of any condominium or association to which the Premises is subject which would cause the Permitted Use to be in violation thereof.
36. ~~32.~~ Brokerage: Except for [•], Tenant has not engage any real estate brokerage in connection with the Premises or Lease ("Tenant's Broker"). Landlord shall compensate Tenant's Broker pursuant to a separate writing. Except for Tenant's Broker, Tenant shall indemnify Landlord for any claims to brokerage fees, finders fees, or commissions asserted by or through Tenant.
37. ~~33.~~ Confidentiality: Landlord and Tenant agree to maintain the confidentiality of the terms and conditions of this LOI, which obligation shall be binding on both parties and shall survive the expiration or termination of this letter of intent.
- The Lease shall provide that any public statements made by either party related to the Lease, Premises, Center, Permitted Use, or identity of the parties shall be submitted to the other party for approval, which shall not be unreasonably withheld, conditioned or delayed.

This LOI is not intended to be, nor should it be interpreted or construed as, a contract between Tenant and Landlord and is only intended to advance discussions between the parties concerning a possible Lease. Either Tenant or Landlord may, for any reason or no reason whatsoever, with or without cause, on written notice to the other party, terminate discussions or negotiations at any time, and any such termination shall be without obligation or liability whatsoever. Notwithstanding any written or verbal communication(s) or series of communications to the contrary, the parties shall not be deemed to have entered into the Lease, or any other binding agreement, unless and until: (a) the terms and conditions of a Lease have been fully negotiated by Tenant and Landlord; (b) Tenant's and Landlord's senior management have approved the terms and conditions of the Lease and have approved the execution of a formal document intended to evidence the same; and (c) both Tenant and Landlord have fully executed and delivered a binding Lease agreement.

If the terms and conditions of this LOI are acceptable to you, please countersign below and return a scanned copy thereof to the undersigned on or before [•], 2021.

Respectfully,

[•]

Name: [•]
Title: [•]
Email: [•]

AGREED:

[•]

Name: _____
Title: _____
Email: _____

[EXHIBITS OMITTED]