



**MEDICAL CANNABIS DISPENSARY**  
**INFORMATION**  
(PLEASE PRINT)

Today's date: 11/15/2012		City ID #	MCD11105
<b>DISPENSARY INFORMATION:</b>			
Legal name under which the Dispensary will be operating: MAGNOLIA WELLNESS OAKLAND			
Federal Tax ID#: 27-3402066		State Employer ID#: 303-2987	
Corp/LLC/LLP# (if applicable): 3299456			
Physical address of proposed Dispensary location (P.O. Box will not satisfy this requirement): 161 Adeline Street, Oakland, CA 94607			
Physical description (e.g. one story commercial building) of proposed Dispensary location: 20,000 sq ft, 2 story, commercial building ( current occupant use include administrative offices, restaurant and medical services)			
Property Owner Name: 161 Adeline LLC		Property Owner Telephone Number: 510-286-8200	
Property Owner Address: 1155 Third Street, Suite 230, Oakland, CA 94607			
Assessor Parcel Number: 04-25-1-2		Zoning District: General Industrial	
CHECK ONE: With regard to the above property, the Dispensary applicant:			
<input type="checkbox"/> Owns	<input type="checkbox"/> Has signed Lease on (date) _____		<input checked="" type="checkbox"/> Has option to lease
Onsite Telephone Number (if one already exists): N/A			
FAX Number (if one already exists): N/A			

*List information for person authorized to accept Service of Process on behalf of the Dispensary:*

Name:	Magnolia Wellness c/o David Spradlin		
Address (PO Box(es) will not satisfy this requirement):	2804 Gateway Oaks DR, STE 200 Sacramento, CA 95833		
Phone Number(s) where person can be reached 24 hours a day:			
Home:	N/A	Cell:	Work:

**161 Adeline LLC**

1155 Third Street, Suite 230  
Oakland, CA 94607  
510/286-8200

November 12, 2012

Arturo Sanchez  
Office of the City Administer  
City of Oakland  
250 Frank Ogawa Plaza  
Oakland, CA

Re: Magnolia Wellness' Medical Cannabis Dispensary Application  
161 Adeline Street

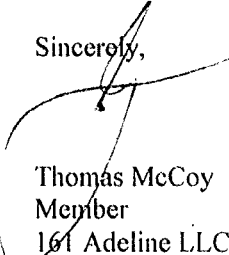
Dear Mr. Sanchez,

The purpose of this letter is to confirm that 161 Adeline LLC and Magnolia Wellness Collective are involved in exclusive negotiations to lease approximately 3,500 sq ft of commercial space at 161 Adeline Street, Oakland.

We look forward to concluding a lease agreement with Magnolia Wellness Collective in the near future.

Feel free to call me if you have any questions,

Sincerely,



Thomas McCoy  
Member  
161 Adeline LLC



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Federal Tax ID#: 27-3402066		State Employer ID#: 303-2987	
Corp/LLC/LLP# (if applicable): 3299456			
Physical address of proposed Dispensary location (P.O. Box will not satisfy this requirement): 5500 Martin Luther King Jr. Way, Oakland, CA 94609			
Physical description (e.g. one story commercial building) of proposed Dispensary location: 1500 Sq. Ft. Retail suite in a mixed use building. Other tenants include an organic coffee shop and two residences that will eventually be converted to administrative space.			
Property Owner Name: Steve Yoshimura		Property Owner Telephone Number: 510-913-3131	
Property Owner Address: 2554 Martin Luther King Junior Way Berkeley, CA 94704			
Assessor Parcel Number: 14-1208-18-2		Zoning District: CN-3	
CHECK ONE: With regard to the above property, the Dispensary applicant:			
<input type="checkbox"/> Owns	<input type="checkbox"/> Has signed Lease on (date) _____		<input checked="" type="checkbox"/> Has option to lease
Onsite Telephone Number (if one already exists): N/A			
FAX Number (if one already exists): N/A			

*List information for person authorized to accept Service of Process on behalf of the Dispensary:*

Name: Magnolia Wellness c/o David Spradlin		
Address (PO Box(es) will not satisfy this requirement): 2804 Gateway Oaks DR, STE 200 Sacramento, CA 95833		
Phone Number(s) where person can be reached 24 hours a day:		
Home: N/A	Cell: [REDACTED]	Work: [REDACTED]



**RE: PROPOSAL TO LEASE ADDRESS: 5500 MARTIN LUTHER KING JR. WAY, OAKLAND, CA**

Dear Steve Yoshimura and Nakamura Realty,

On behalf of the Magnolia Wellness, the following is a proposal to lease.

This letter includes the terms upon which the below referenced Lessee may be willing to enter into negotiations for a lease of the referenced property. Not all of the essential terms required for a lease are contained herein; additional terms may arise as our discussions continue.

This letter is not intended to bind any of the persons or entities referred to herein to either conduct negotiations for or enter into a lease agreement. No person or entity referred to in this letter shall have any rights against or obligations to the other unless and until a lease agreement has been fully executed by all parties.

We would like to propose the following:

<b>LESSOR:</b>	Steve Yoshimura- Nakamura
<b>LESSEE:</b>	Magnolia Wellness
<b>PREMISES:</b>	Approx. 1,400 sq. ft. space at 5500 MLK Jr. Way, Oakland, CA
<b>USE:</b>	Lessee shall be permitted to use the premises as a natural wellness center and licensed marijuana retail dispensary.
<b>TERM:</b>	Five (5) years.
<b>OPTIONS:</b>	Lessee shall have the right to renew for two additional (3) year periods. Lessee will consider lease with option to purchase the building.
<b>POSSESSION DATE:</b>	Lease beginning September 1, 2012.
<b>LEASE/RENT COMMENCEMENT:</b>	Property will be held off the market upon execution of this LOI by both parties. A fee of \$1,200 per month will be paid to owners beginning 9/01/2012 to hold property off the market and until Magnolia has been granted permission by the City to operate said facility at said location.  Once Magnolia has been granted approval to operate at said facility Rent shall be paid as noted below.
<b>BASE RENT:</b>	\$2.00 per square foot per month.
<b>RENT INCREASES</b>	Annual increase of five percent (5%) of base rent to adjust for cost of living increase after the first year of operation.  Any increase in the building property tax, as a result of Magnolia's improvements, shall pass through to Magnolia Wellness as an additional cost.
<b>SECURITY DEPOSIT:</b>	No security deposit, rather, \$1,200 per month will be given to hold the property off the market until public hearing process is completed and City determines said location to be allowable for its intended use.
<b>ADDITIONAL SPACE:</b>	Should additional space become available in the building, Magnolia Wellness will have first right of refusal on all space. All additional space will not exceed \$2.00 per square foot.

**DELIVERY CONDITION:** Premises shall be delivered as is.

**TERMINATION CLAUSE:** Lease termination after due process and authentication of an asset forfeiture letter received by the Federal government.

**INDEMNIFICATION:** Magnolia Wellness shall indemnify the landlord around all losses related to any enforcement actions of the Federal government through an Indemnification Statement approved by legal counsel.

**COMMUNITY OUTREACH:** Meet with all tenants in the building and hold an open house for neighbors to come by and learn about Magnolia and our vision.

**LESSEE'S WORK:** All improvements will include requested planning, including space, lighting, security, fire, ventilation, construction, etc., with plans done by licensed architect Graham Hill of Concordia Architects. Improvements will be permitted by the City of Oakland Bldg. Department and Fire Department. Improvements to be made by a licensed contractor approved by landlord. Tenant will pay for all building ADA improvement costs triggered by occupancy. Leased space is returned to original condition at the end of occupancy period.

**SIGNAGE:** Lessee, at Lessee's expense, shall have the right to install maximum allowable signage. One (1) wall sign not to exceed 10 sq. ft. in area and/or one (1) identifying sign not to exceed 2 sq. ft. in area. All signage will be approved with proper planning before implementation.

**PARKING:** Ample Street Parking

**CONTINGENCY:** This LOI is contingent upon Magnolia Wellness' approval through a public hearing process and receipt of a license to operate as a Wellness Center and Dispensary in Oakland, CA.

**BROKER COMMISSION:** David Spradlin is representing the tenant. Landlord is represented by Steve Yoshimura.

**PROPOSAL EXPIRATION:** October 1, 2012

Please respond to this proposal at your earliest convenience. If you have any questions or comments, please contact me at [REDACTED]

We look forward to your immediate response.

Sincerely,

David Spradlin  
Magnolia Wellness Executive Director

**AGREED AND ACCEPTED:**

**LESSOR**

\_\_\_\_\_  
By: Steve Yosh

Its: \_\_\_\_\_

Date: 8/31/12

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSEE**

\_\_\_\_\_  
By: David Spradlin

Its: \_\_\_\_\_

Date: F-29-N

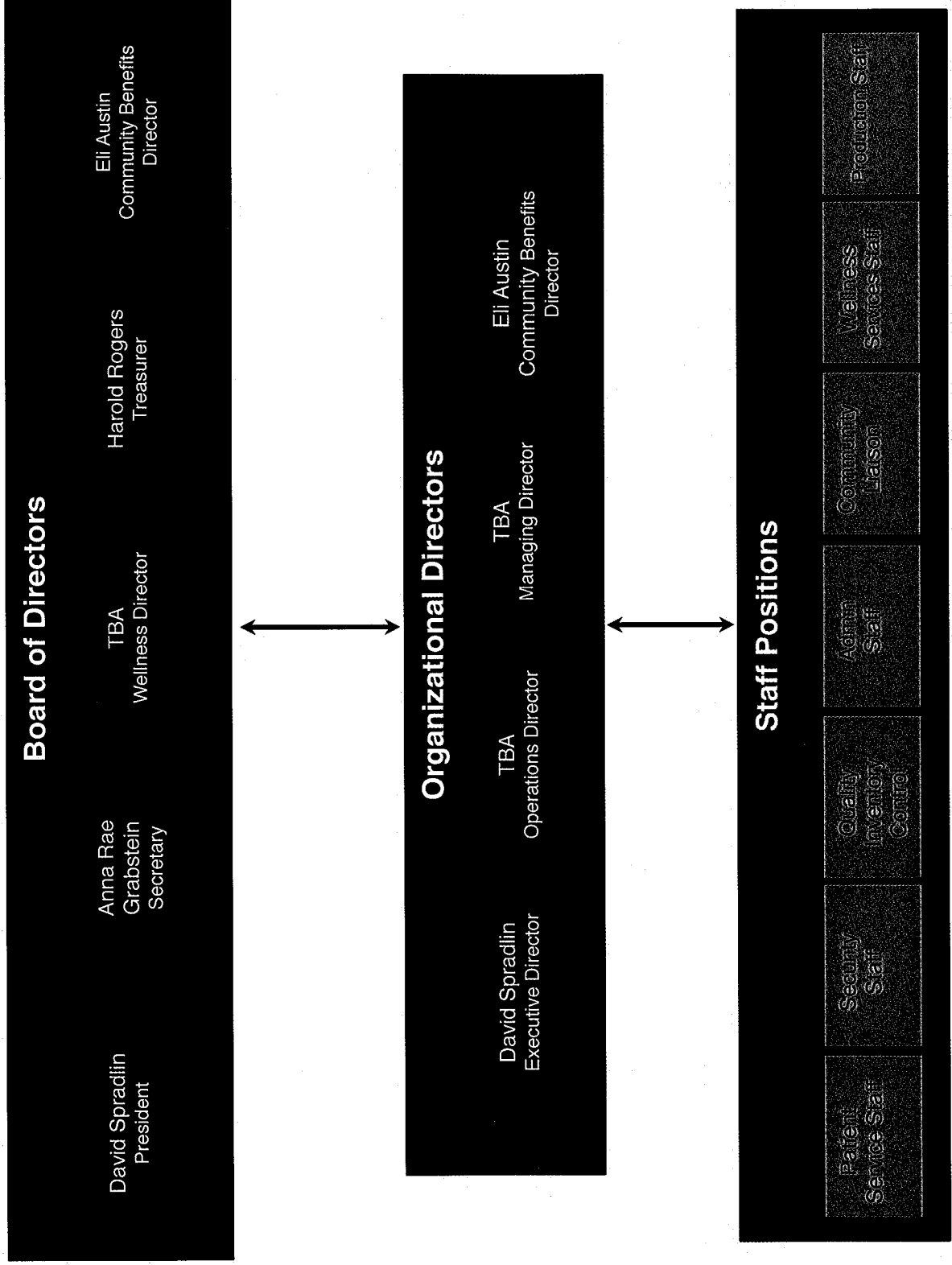
## Overview

The organization is comprised of dedicated professionals that bring real life experience of years of hard work to the medical cannabis industry in an effort of providing the most complete and well-thought alternative wellness program to patients in need. The collective Board of Directors and key staff members have the breadth of experience and education in business, organization, financial budgeting and accounting, security design, record keeping, web site management, personnel and human resource management, employee relations and training, and not-for-profit agency experience to confidently submit this application and begin this venture. In researching this new venture the Board of Directors determined that all key staff members should be fully informed and knowledgeable in all legal, business, cultivation, security, and confidentiality avenues required for managing and operating a cannabis dispensary and therefore will require that all key staff complete the program at Oaksterdam University. Our organization has also developed a close and personal relationship with Americans for Safe Access, the industry's leading policy and patient advocacy group and has attended their "Putting Patients First" seminar in an effort to better understand how to deliver patient-focused care in our efforts.

- Oaksterdam University is America's first cannabis college, founded in 2007, to provide students with the highest quality training for the cannabis industry. The professional faculty is comprised of the most recognized names in the California medical cannabis legalization movement.
- Americans for Safe Access (ASA) provides legal training for and medical information to patients, attorneys, health and medical professionals and policymakers throughout the United States. The mission of ASA is to ensure safe and legal access to cannabis (marijuana) for therapeutic uses and research.

In addition, our Board and Management are all very passionate about alternative healing and medical cannabis therapies. Being patients helps them to understand the needs of patients, and in turn provide care that is compassionate and caring. Many of us have experienced close friends and family members suffering from severe conditions of nausea, pain, and wasting from conditions such as cancer, and have found the traditional offerings very limiting. These experiences have convinced us that we can find a better path for patients who are in need of specialized care and we have developed a team of health and industry professionals to lead our efforts. Our Executive Director is a veteran of the medical cannabis industry, and staff has many other great experiences that will add a lot to the organization. Our Board of Directors provide a firm backing and knowledge of how to run a professional and successful organization and will provide much needed direction and stability to our effort. Collectively we possess the necessary skills, experience and training to provide an exceptional service to the Oakland community.

# Organizational Chart



**ALL POSITIONS SHALL DIRECTLY SERVE THE NEEDS OF MAGNOLIA WELLNESS PATIENT MEMBERS**



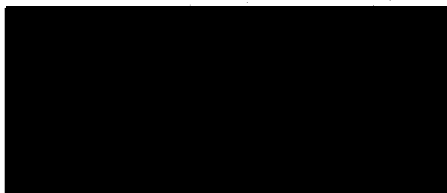
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# Key Staff Resumes

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Oakland

# David Spradlin



## Education

Castro Valley High School 1994-1998  
California Contractor's Licensing School 2004  
Oaksterdam University 2009

## Work Experience

B&K Roofing 1998-2003

Assistant/Journeyman/Foreman

Starting as a roofers assistant, I quickly learned the skills necessary to not only successfully install all types of modern and traditional waterproofing systems. Eventually becoming a project foreman, overseeing both commercial and residential projects and crews of as many as 25 people.

Ryder Roofing 2003-2009

Owner/Operator

As owner and operator of Ryder Roofing I oversaw the general operations of the firm. Bidding, contract negotiations, bookkeeping, stocking inventory, and job management were all required parts of daily operations. Focusing on primarily residential projects, Ryder Roofing eventually employed 17 full-time employees and had as many as 7 projects going at any one time.

Magnolia Wellness Collective 2009-Present

Founding Member and Director of Operations

Magnolia Wellness was founded in November of 2009 with the goal of providing Sacramento County with a model dispensing collective, serving all the needs of patients in the area, which up to that point was not being done effectively. Starting with only five members, within the first year of operation, Magnolia Wellness had over 12,000 members and it's current membership well exceeds 20,000 patients. Magnolia Wellness currently employs 22 full time staff and 7 sub-contractors.

Uncle Buck's Bakery 2010-Present

Head of Quality Oversight and Marketing

Uncle Buck's Bakery is a collective of patients providing top quality, tested cannabis based edibles to other collective members in Northern California. Uncle Buck's Bakery's mission is to provide the highest quality, tested medicinal edibles on the market. While also providing patients with specific dosages on every unit.

Orangevale Beautiful 2011-Present

Director

Created to allow Magnolia Wellness to take part in charities and fundraising opportunities in the community of Orangevale, without the controversial issue of cannabis coming into play. Our members are both cannabis patients and non cannabis patients who have come together to work towards addressing the many needs of the community.

## Achievements

- The founding and development of Magnolia Wellness from it's inception to present has been an amazing experience. From an idea formed between five people committed to providing the patients of Sacramento County with the "next level" of service and watching that vision take shape and develop into

on of largest and most well operated and respected operations in the state has truly been one of proudest accomplishments thus far in life.

- Received the Steep Hill Lab's Award for "Outstanding Commitment to Safe Cannabis" in the winter of 2010.
- Coordinating efforts between Magnolia Wellness and Blood Source (the nation's largest blood collecting organization) to execute Orangevale's first ever community blood-drive, where over 25 pints of blood were collected.
- Collecting well over 4 tons of food, 1 ton of toys, 200 fully stocked backpacks, and 100 Easter Baskets through Magnolia Wellness's various collection drives.
- Watching Magnolia Wellness become the first and only medical cannabis collective to be invited into a local chamber of commerce in all of Sacramento County.
- Being awarded "Best Booth" at the 2011 High Times Cannabis Cup. This was particularly nice because of all the work we put into creating the "Magnolia Experience" at the event. So to have it be so well received was an amazing feeling.
- Committing to donate over \$10,000 to the Susan G. Komen Race for the Cure and over \$1,200 to the American Diabetes Association.
- Donating over \$100,000 worth of free medication to patients suffering from HIV/AIDS, cancer, and Chron's Disease and Colitis.

## Activities

- Fitness – Both weight-training and cardio workouts have provided both stress relief and give me time to meditate on issues that I otherwise don't always have time to address in my daily routines.
- Fundraising – I find a great relief and sense of satisfaction in raising capital for different causes that are close to my heart. I find it both rewarding and challenging to bring people to understand the value of their contribution to the point that they receive the same feeling of satisfaction that I experience in their gift.
- Coaching – I coached my son's baseball team for the first time this past season and found it to be one of the most rewarding and centering experiences of my life. I look forward to participating in coaching for years to come.
- Architecture – The art and sense of collective accomplishment I get from viewing and experiencing architecture in all of it's forms has always been a centering experience for me. It is a passion I hope to have the ability to pursue later in life.

## Affiliations

- Americans for Safe Access – The nation's largest patient advocacy group.
- California NORML – Non-Profit membership organization dedicated to reforming California's medical marijuana laws.
- National Cannabis Industry Association – Industry's only federal lobbying organization.
- CAPSCE – Organization of medical cannabis edible producers who's goal is to raise the standard of edible production to match that of other food industry standards and develop standardized dosages for the industry.

# AnnaRae Grabstein

## Overview of Expertise

Years of experience demonstrate an ability to meet the demands associated with leadership roles in a variety of diverse settings. A passion and capacity for creative thinking has led to excellence in areas of business leadership, organizational development, community outreach, strategic planning, team supervision and socially responsible business practice. Extensive experience working with medical cannabis businesses and advocacy organizations, and creating professional solutions for such.

## Education

<b>University of San Francisco</b> Masters in Business Administration (MBA) <i>Concentration: Finance and Entrepreneurship</i>	current
<b>New College of California</b> Bachelors of Arts (BA), Ecology and Sustainability <i>Concentration: Green Building</i>	2007
<b>University of California, Santa Cruz</b> <i>Concentration: Community Studies, Latin American Latino Studies</i>	2000-2003
<b>Lowell High School, San Francisco</b>	1999

## Experience

<b>Chief Executive Officer (CEO), Steep Hill Lab</b>	Feb 2010-present
<ul style="list-style-type: none"><li>■ Provides business leadership, management, strategic planning and business development for the nations first medical cannabis analysis laboratory.</li><li>■ Supervises department directors in carrying out departmental responsibilities including laboratory operations, research and development, sales, marketing, web development, and finance</li><li>■ Closely control brand identify and marketing campaigns.</li><li>■ Interface with legal and financial counsel as well as certification and licensing organizations</li><li>■ Represent Steep Hill Lab in public relations with government bodies, the media, and in public appearances</li><li>■ Oversee finances and build operational budgets</li><li>■ Create and implement employee manuals and staffing programs</li><li>■ Consult with clients (dispensaries, local municipalities, cultivators, permit applicants, educators) to develop operational standards for quality control programs</li><li>■ Oversight and collaborative development of the first standardized packaging and product safety program for medical cannabis (SafeCannabis TM)</li><li>■ Oversight and collaborative research and development for innovative technologies offering an instant, on-site potency testing machine and software interface to manage quality control and testing</li></ul>	

**Director of Operations, Steep Hill Lab**

Nov 2009-Feb 2010

- Manage all aspects of operations necessary in a medical cannabis laboratory start-up business: business plan creation, bookkeeping, facility management, etc.

**Site Manager, Rising Sun Energy Center**

May 2009-Sept 2009

- Manage an Outreach Coordinator and team of 12 Energy Specialists in a non-profit energy audit, green jobs training program funded by grants from PG and E and the California Public Utilities Commission
- Trained employees for home energy retrofits including installation of water saving devices, energy saving mechanisms, sustainable heating and cooling, and site specific sustainable resource management
- Implement client database and CRM system
- Devising marketing and outreach strategies

**Workforce Training and Urban Garden Coordinator, Berkeley Youth Alternatives**

May 2008-May 2009

- Managed 15 at-risk, probation teenage interns in an urban garden and non-profit workforce-training program as part of the Health and Environmental Awareness Training Center.
- Co-managed two community gardens totaling one acre of urban food farms. Produce distributed to the local community for free or below market rates.
- Secured \$50,000 in donations from private companies.
- Created curricula addressing healthy food systems, organic agriculture, resource management, green building, renewable energy, food justice, community service and nutrition.
- Fulfilled and documented contracts for the City of Berkeley to maintain 2 city parks staffed with teen-intern labor.
- Promoted the innate potential of the youth in the program through green sector job training, academic counseling, leadership development and team building, in tandem with social workers and probation officers.

**Health and Garden Teacher, Oakland Based Urban Gardens (OBUGS)**

Jan 2008-June 2008

- Nutrition and Garden Educator for elementary school children in West Oakland public schools.
- Created curricula using art and experiential learning in the garden.
- Taught healthy cooking, food origins and nutrition to elementary students.

**Owner, Sustainable Catering and Event Planning, Sacred Kitchen**

June 2003-April 2008

- Sustainable catering, nutrition consultation and event planning
- Contractor for general event production, venue logistics, catering.
- Hired and managed event staff
- Catered gourmet organic meals for groups of up to 300 people.

**Farm Education Coordinator, Sol Food Farm**

Sept 2004-Dec 2007

- Hosted Youth-to-farm programs for students.
- Managed 40 member Community Supported Agriculture (CSA) program

## Professional and Community Involvement

<b>Treasurer</b> Repeal Cannabis Prohibition Act 2012	current
<b>Steering Committee</b> NORML Women's Alliance	2009-current
<b>Think Tank Advisor</b> Cannabis Law Institute	2009-current
<b>Member</b> National Cannabis Industry Association (NCIA)	2010-current
<b>Member</b> Medical Cannabis Association (MCA)	2010-current
<b>California Medical Cannabis Patient</b>	2000-current

## Certifications and Extended Learning

<b>Certified Permaculture Designer (PD)</b> Green Valley Village	2007
<b>CPR Certified</b> ARC and AHA Certified	2009
<b>Nutrition Education Training</b> Bauman College	2004
<b>Pacific Energy Center</b> World Water and Resource Lecture Series	2006

## **Harold Rogers, Jr.**

### **OBJECTIVE**

I want to contribute strong leadership abilities, interpersonal skills, along with highly applicable work experience, to your firm as a Financial Service Representative.

### **PROFESSIONAL PROFILE**

Excellent knowledge of Financial Products  
Creative problem solver who applies business knowledge to achieve results

10 years Small Business Manager  
Proficient in marketing and contact management  
Fluent with MS Office  
Good understanding of technology including networks, databases (MS NT ACCESS, DBII, SQL) HTML and Java Script

13 years Project Management experience  
Strong work ethic  
9 years Brokerage Operations Experience  
Exceptional relationship building skills  
Outstanding presentation / public speaking skills  
Proven customer service provider  
Ability to manage multiple projects simultaneously

### **PROFESSIONAL EXPERIENCE HISTORY**

Central Contract Specialist-California Affordable Housing Initiative Inc May 2009 to Present  
Operations Manager – Financial Telesis Incorporated March 2008 to December 2008  
Project Manager - Essex National Securities Incorporated April 2006 to February 2008  
Director - Da House of Suds June 2000 to April 2006  
Business Analyst - E\*Offering April 1999 to May 2000  
Project Manager - Charles Schwab and Co. June 1993 to March 1999  
Customer Service Representative - Charles Schwab March 1980 to June 1993

### **PROFESSIONAL EXPERIENCE**

#### **Central Contract Specialist**

Portfolio Manager, that is responsible for the timely completion of multi-million dollar U.S. Department of Housing and Urban Development HUD project-based Section 8 transactions. Currently responsibilities include 57 of 523 properties in the CAHI portfolio. Accountable for the accurate and timely processing of owner-agent submitted contract renewals and rent adjustments for Section 8 properties comprising more than 3800 units. In charge of the accurate reconciliation, processing, and approval of owner/agent Section 8 vouchers and special claims, that total approximately ten million dollars on a monthly basis. Provide analysis, interpretation, and implementation of regulations, policies, and procedures of the *(HUD) Section 8 Renewal Policy Guide, the Multifamily Asset Management and Project Servicing Handbook, Management and Occupancy Handbook, and Code of Federal Regulations* pertaining to project-based Section 8 multifamily properties. Evaluate and reconcile owner/agent submitted financial and project data in conflict with the HUD databases. Assessment of owner/agent submissions for compliance with established procedure, and *Multifamily Assisted Housing Reform and Affordability Act of 1997* regulations and issuing directives to insure compliance. Duties also include establishing and maintaining amicable working relationships with HUD project managers, property owners and agents associated with 523 Section 8 multifamily properties in Northern California.

## **Operations Manager**

Learned daily operations of the Mutual Funds, Equity, and Annuity Processing and used that knowledge to assist with business requirements for a new account opening and order entry processing system. Presented the new system to original pilot team  
Maintained bug log and worked with business partners to resolve outstanding issues and system bugs. Created Project plan and developed deliverables task log.

## **Entrepreneur**

Transformed undeveloped family owned coin Laundromat into a successful, complete laundry service that has seen revenues increase 500%. Wrote company's project plan, business requirements, administration, operational, customer service procedures for laundry delivery service. Applied HTML knowledge to development "Da House of Suds" ecommerce Website. Created training program to assist employee development. From understanding business cycles I effectively implemented procedures that reduced operating cost, improved quality, productivity and increased profitability.

## **Project Management / Securities Operations**

Member of project team that changed Charles Schwab's customer and account database. Completed project reduced time required to open new customer's accounts by 18%. Provided implementation details of newly created system to all 16,000+-company employees. Used Subject Matter knowledge of new accounts to assist with translating business requirements to development team. Created a customers requirements matrix that was used to help with data mapping. Lead business role in the development and staging the testing environment. Reported all bugs from UAT to the development team and maintain their status in an ACCESS database. Devised UAT test scripts, administered test to testing team of six, tracked and resolved bugs with programmers. Trained over 500 operations and branch field employees on new screens. Effectively applied knowledge of systems and products to assist with changes to procedures.

## **Web Development**

Project Manager on web development team, that was responsible for gathering business requirements for Startup Company's original website. Managed Projects that integrated website with other business functions. Wrote and implemented call center policies, procedures, protocol and training. Set up call center phone system, complete with ACD capabilities and provide all necessary research, budget negotiation, and recommendation for selected system.

## **Accomplishments**

Turned class project into profitable family business 2000 to present  
Worked my way up from entry level position to Project Manager III  
91% of performance review exceeded job expectations. Charles Schwab 18 years  
Assisted former Da House of Suds employee in starting her own house cleaning business  
30 years of consecutive employment

## **EDUCATION**

**Santa Rosa Junior College, City College San Francisco, and Patten University**

Course work included finance, marketing, business development and strategic planning

**Schwab University**

Project Management Courses

**Learn IT Learning Centers**

MS PowerPoint, Project, VISCO, ACCESS, EXCEL, HTML, Dreamweaver



**Length:** 1 year

**Duties:** Sold suits and fine tailored clothing providing outstanding personal service to each customer. Provided premium professional service offering clothing fitting, personal shoppers and acting as a one stop shop for the customer. This includes shoes, socks, suits, sports coats, belts, sweaters, shirts, pants and tuxedos as well.

**Job Title:** Unit Supervisor

**Employer:** Lincoln Child Center, Oakland, CA

**Length:** 7 years

**Duties:** Managed and supervised residents and counselors in a treatment center for Severely Emotionally Disturbed residents. Responsible for the daily operation of the residential unit of the organization. This consists of recordkeeping, meal planning and working with families for possible reunification. Hiring, counseling, training and termination of staff were part of the duties. Ensured the organization was always in compliance with the title 22 regulations.

**Skills:** Counseling, Office Skills, Knowledge of Human Resource Management, Computer literate, Good Communication Skills, People Oriented, Supervision of Staff

**Education:** BA Political Science University of Northern Iowa  
Group Home Administrator Initial Certification  
Certificate - How to Manage Disruptive Behavior

CA Drivers License Class: C (passenger car)

Willing to Relocate

**Additional Comments:** Most of my experience is managing people from all walks of life for 20+ years.

***References Available Upon Request.***

## ELI AUSTIN



Summary: 10+ years managerial and supervisor experience managing group homes or treatment centers in a therapeutic community environment. My objective is to pursue an upper management position.

### **Objective: PROGRAM MANAGER/SUPERVISOR**

**Job Title:** Outreach Worker/Case Manager Measure Y

**Employer:** Healthy Oakland, Oakland, CA

**Length:** 3 years

**Duties:** Worked with the City of Oakland Mayor's Outreach Team violence prevention under the Measure "Y" program. The outreach includes at risk youth and adults (ages 14 to 35) on parole or probation. The focus is to stop the violence and provide services to these individuals within the community. When promoted to case manager, the responsibilities included making referrals for employment, education and health services. After needs and assessments were completed, other referrals such as housing and counseling are given. Intervention and gang prevention services are provided. Also reentry wrap around services for formerly incarcerated individuals.

**Job Title:** Sales Associate

**Employer:** MACY'S, SF, CA

**Length:** 2 years

**Duties:** Selling tailored clothing and suits, emphasizing accessories such as ties, shoes, belts, including sports jackets. Responsible for selling and stocking merchandise and as well as maintaining the cleanliness of the store. Worked with the public regarding clothing exchanges and returns, and all aspects of customer services. Responsible for opening and closing registers and balancing the cash registers.

**Job Title:** Wardrobe Consultant

**Employer:** The Men's Wearhouse, SF, CA

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# Authorizations for Release

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Oakland



**MEDICAL CANNABIS DISPENSARY**  
**INFORMATION**  
(PLEASE PRINT)

Today's date: 10/10/11		City ID # MCD11105	
<b>DISPENSARY INFORMATION:</b>			
Legal name under which the Dispensary will be operating: Mag Wellness, Inc.			
Federal Tax ID#: 27-3402066		State Employer ID#: 11-658827	
Corp/LLC/LLP# (if applicable): C3299456			
Physical address of proposed Dispensary location (P.O. Box will not satisfy this requirement): 3421 Telegraph Avenue, Oakland, CA 94609			
Physical description (e.g. one story commercial building) of proposed Dispensary location: two story store and office building			
Property Owner Name: Beau International, LLC		Property Owner Telephone Number:	
Property Owner Address: 238 Sheridan Road, Oakland, CA			
Assessor Parcel Number: 009-0737-052		Zoning District: Chinatown Central	
CHECK ONE: With regard to the above property, the Dispensary applicant:			
<input type="checkbox"/> Owns		<input checked="" type="checkbox"/> Has signed Lease on (date) 10/4/2011	
<input type="checkbox"/> Has option to lease			
Onsite Telephone Number (if one already exists): N/A			
FAX Number (if one already exists):			

List information for person authorized to accept Service of Process on behalf of the Dispensary:

Name: David Spradlin	
Address (PO Box(es) will not satisfy this requirement): [REDACTED]	
Phone Number(s) where person can be reached 24 hours: [REDACTED]	
cel Home: [REDACTED]	Cell: [REDACTED] Work: [REDACTED]



**MEDICAL CANNABIS DISPENSARY**  
**REGISTRATION FORM**  
**OWNER / MANAGER INFORMATION**  
(PLEASE PRINT)

To be completed for each owner and manager—(as defined under Chapter 5.80 of the Oakland Municipal Code)

Today's date: 10/10/11		City ID #:	
<b>PARTNER/OWNER/MANAGER INFORMATION</b>			
Last Name: Spradlin		First: David	Middle: Michael
Alias(es):		Date of Birth: [REDACTED]	
Height: 6'1	Weight: 225	Hair: Brown	Eyes: Blue
Gender: male			
Mailing Address: P.O. #2858 Granite Bay, CA 95746			
Residence Address (P.O. Box will not satisfy this requirement):			
City: [REDACTED]		State: [REDACTED]	Zip Code: [REDACTED]
Telephone number(s) (where individual can be reached 24 hrs a day): [REDACTED]			
California DL/ID Number: [REDACTED]		Other Government Photo ID Number (if applicable):	
*Attach copy of a valid government issued photo identification card of license			

<b>RESIDENCE HISTORY</b>
If at above residence is less than ten (10) years, list prior residence addresses you have had for the past ten (10) years. Attach additional pages if necessary.

Number and Street Name: [REDACTED]		
City: [REDACTED]	State: [REDACTED]	Zip: [REDACTED]
Length of Stay: 6 years		
Contact Person: Stephanie Belva	Phone: (925) 917-0254	

Number and Street Name: [REDACTED]		
City: [REDACTED]	State: [REDACTED]	Zip: [REDACTED]
Length of Stay: 3 years		
Contact Person: Linda Johnson	Phone: (510) 881-1979	

Number and Street Name: [REDACTED]		
City: [REDACTED]	State: [REDACTED]	Zip: [REDACTED]
Length of Stay: 1 year		
Contact Person: N/A	Phone: [REDACTED]	

### EMPLOYMENT HISTORY

Beginning with you current employment, list your work history for the previous ten (10) years. Attach a separate sheet of paper to complete your list if necessary.

Company Name: <u>Magnolia Wellness Collective</u>			
Address: <u>9198 Greenback Lane</u> <u>Suit #204</u>			
City: <u>Orangevale</u>	State: <u>CA</u>	Zip: <u>95662</u>	
Phone Number: <u>(916) 865-7351</u>	Supervisor/Contact Name: <u>Mike Allarea</u>		
Dates of Employment: <u>Nov. '09 to Present</u>			
Description of Job Duties: <u>Operations Manager</u>			
Reason Left Employment? <u>Still Employed</u>			

Company Name: <u>Exder Roofing</u>			
Address: <u>[REDACTED]</u>			
City: <u>[REDACTED]</u>	State: <u>[REDACTED]</u>	Zip: <u>[REDACTED]</u>	
Phone Number: <u>(800) 510-3761</u>	Supervisor/Contact Name: <u>David Spallin</u>		
Dates of Employment: <u>Dec '04 - Nov '09</u>			
Description of Job Duties: <u>Project Manager</u>			
Reason Left Employment? <u>Company went out of business.</u>			

Company Name: <u>B &amp; K Roofing</u>			
Address: <u>80 Drownstone Rd.</u>			
City: <u>Oakley</u>	State: <u>CA</u>	Zip: <u></u>	
Phone Number: <u></u>	Supervisor/Contact Name: <u>Terry Montgomery</u>		
Dates of Employment: <u>1998 - Dec '04</u>			
Description of Job Duties: <u>Roofer</u>			
Reason Left Employment? <u>Moved out of area</u>			

### CRIMINAL HISTORY

List all criminal convictions, other than infraction traffic violations, the jurisdiction of the conviction, and the circumstances thereof. Attach additional pages if necessary.

Crime:	Date of Crime:
Jurisdiction:	
Circumstances:	

N/A

Crime:	Date of Crime:
Jurisdiction:	
Circumstances:	

Crime:	Date of Crime:
Jurisdiction:	
Circumstances:	

<i>COLLECTIVE HISTORY</i>
<p>Using a separate sheet of paper, provide a detailed explanation of your involvement with any other Collective.</p> <p>This includes, but not limited to: the name and address of the collective; the capacity in which you were involved with the collective; whether the collective is or was the subject of any criminal investigation or prosecution, civil investigation, administrative action or civil lawsuit; whether you or the collective with which you are or were associated has ever been denied, or is in the process of being denied, registration, a permit, a license or any other authorization to operate in any other city, county or state; and whether you or the collective with which you are or were associated has ever had a registration, license, permit or any other authorization to operate in any other city, county or state suspended or revoked, and the reasons therefore.</p>

## **Collective History**

Magnolia Wellness was established in 2009 in Orangevale, CA. The collective opened in Sacramento County at a time when there were no regulations for medical cannabis dispensing collectives in the area. There were no moratoriums or ban in place, and the collective was issued a business license by the County. Much like the City of Oakland experienced in 2004-2005 the County allowed for dozens of dispensaries to open and has since began working to create a regulatory ordinance to bring them into compliance.

Magnolia has worked actively with the County of Sacramento since August of 2010 having meetings with all of the County Supervisors and their staff to develop an ordinance for Sacramento County. The County has developed a draft ordinance based on several other ordinances in place throughout the State, but mostly patterned after the City of Sacramento's ordinance that was adopted in November of 2010. In June 2011 the County of Sacramento publically announced their desire to develop an ordinance and had their first stakeholder meeting, which was not as successful as hoped, and the County decided to hold additional stakeholder meetings to understand language in their proposed ordinance that would be beneficial to all parties involved.

They hosted 3 stakeholder meetings which ended in September 2011. As a result of needing further clarification and understanding about medical cannabis, Magnolia brought together several industry experts to sit on a panel to educate the constituents in the County, as well as County officials, as to the benefits of medical cannabis and the need for an ordinance. At this time the County is developing language that should be re-introduced to County Supervisors in February of 2012 for a vote.





## AUTHORIZATION FOR RELEASE OF INFORMATION

I, the undersigned, declare that I am the applicant described and identified in this application for registration in the City of Oakland.

I authorize all persons, institutions, organizations, schools, governmental agencies, employers, references, or any others not specifically included in the preceding characterization, to release to the City Administrator for the City of Oakland any files, records, or information of any type regarding:

*(If Applicant is Business Entity, Insert Legal Name of Business Entity Below:)*

Mag Wellness, Inc a California non profit  
ENTITY  
Mutual Benefit Corporation

*(If Applicant is Individual, Insert Legal Name and Date of Birth Below:)*

NAME	DATE OF BIRTH
------	---------------

The information is being requested by the City Administrator to properly evaluate my qualifications for registration as a Medical Cannabis Dispensary by the City of Oakland. A copy of this Authorization shall be as valid and provide the same authorization as the original.

Print Name of Individual or person authorized to sign on behalf of business entity:	David M. Spradlin
Title: (if applicable)	President
Signature:	<i>David Spradlin</i>
Date:	10/10/11
Address:	
City, State, Zip:	
Cell Phone Number:	
Email Address:	
City ID #:	MCD11105



## AFFIDAVIT

I, the undersigned, declare under penalty of perjury that to the best of my knowledge, the information contained in this application for Medical Cannabis Dispensary Registration, and its supporting documentation, is truthful, correct, and complete; and, the information contained in this application and its supporting documentation discloses all facts regarding the applicant and associated individuals necessary to allow the City Administrator to properly evaluate the applicant's qualifications for registration.

If the applicant is a business entity, I, as the person signing below do hereby represent and warrant that the business entity is authorized to do business in California and that I have full rights, powers and authority to sign on behalf of the applicant and carry out all actions contemplated by this application, and that any Notice of Completed Registration issued to the applicant constitutes valid, binding and enforceable obligations of the applicant and the applicant shall abide by the provisions of said Notice. Attached to this Affidavit is proof, reasonably satisfactory to the City Administrator, confirming the foregoing representations and warranties.

I, the undersigned, agree that any information subsequently submitted to the City Administrator in conjunction with this application or its supporting documentation meets the same standard as set forth above.

I, the undersigned, further agree and understand that this application will be classified as a public record and will be available for inspection by the public, except with regard to the release of information which is classified as controlled, private, or protected under the California Public Records Act or restricted by other law.

I, the undersigned, further agree and acknowledge that I may be required to provide additional information, as needed, for a complete investigation by the City Administrator.

I, the undersigned, further agree and recognize that I am responsible for obeying all Federal, State and local laws.

***I, the undersigned, further agree and understand that any misrepresentations, omissions or falsifications in this application or any documents attached thereto or amendments thereto will be immediate grounds for the City Administrator to deny this request for registration and/or immediate grounds for revocation of the Notice of Completed Registration.***

Print Name Here:	Mag Wellness, Inc / David M. Spradin
Title:	President
Signature:	David Spradin
Date:	10/10/11
Address:	
City, State, Zip:	
Contact Phone No:	

# REQUEST FOR LIVE SCAN SERVICE

Applicant Submission

ORI: CA001090 Type of Application: LICENSE  
Code assigned by DOJ  
 Job Title or Type of License, Certification or Permit: MEDICAL CANNABIS DISPENSARY

## Agency Address Set Contributing Agency:

OAKLAND POLICE DEPARTMENT

04764

Agency authorized to receive criminal history information

Mall Code (five digit code assigned by DOJ)

455 7TH STREET

SCT. D. DONOVAN *Nancy Marous*

Street No. Street or P.O. Box

Contact Name (Mandatory for all school submissions)

OAKLAND

CA

94607

(510) 238-2189

City

State

Zip Code

Contact Telephone No.

Name of Applicant:  
(please print)

Last

First

MI

Alias:

Last

First

Driver's License No.

Date of Birth: 9-12-80

Sex:

☒ Male

☐ Female

Misc. No. BIL. 120181

Agency Billing Number

Height: 6'1

Weight: 240

Misc. No:

N/A

Eye Color: Blue

Hair Color: Brown

Home Address

Place of Birth: San Leandro

SOC:

Your Number:

OCA No. (Agency Identifying No.)

Level of Service

☒ DOJ

☐ FBI

If resubmission, list Original ATI No.

Employer: (Additional response for agencies specified by statute)

Employer Name

Magnolia Wellness

Street No.

Street or P.O. Box

Mall Code (five digit code assigned by DOJ)

9198 Greenback Ln. Suite 204

N/A

City

State

Zip Code

(916) 865-7351

Agency Telephone No. (optional)

Live Scan Transaction Completed By:

OAKLAND POLICE DEPARTMENT

Name of Operator

Date: OCT 11 2011

Transmitting Agency

ATI No:

Amount Collected/Billed





## AUTHORIZATION FOR RELEASE OF INFORMATION

I, the undersigned, declare that I am the applicant described and identified in this application for registration in the City of Oakland.

I authorize all persons, institutions, organizations, schools, governmental agencies, employers, references, or any others not specifically included in the preceding characterization, to release to the City Administrator for the City of Oakland any files, records, or information of any type regarding:

*(If Applicant is Business Entity, Insert Legal Name of Business Entity Below:)*

\_\_\_\_\_  
ENTITY

*(If Applicant is Individual, Insert Legal Name and Date of Birth Below:)*

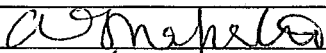
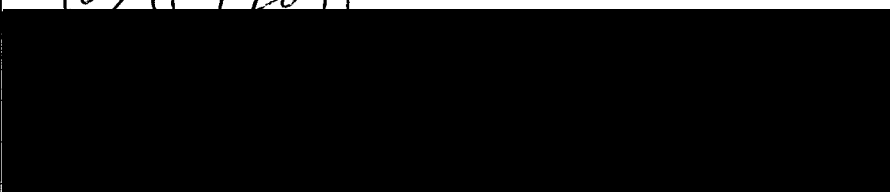
Anna Rae Grabstein

NAME

12/10/81

DATE OF BIRTH

The information is being requested by the City Administrator to properly evaluate my qualifications for registration as a Medical Cannabis Dispensary by the City of Oakland. A copy of this Authorization shall be as valid and provide the same authorization as the original.

Print Name of Individual or person authorized to sign on behalf of business entity:	Anna Rae Grabstein
Title: (if applicable)	
Signature:	
Date:	10/11/2011
Address:	
City, State, Zip:	
Cell Phone Number:	
Email Address:	
City ID #:	



## AFFIDAVIT

I, the undersigned, declare under penalty of perjury that to the best of my knowledge, the information contained in this application for Medical Cannabis Dispensary Registration, and its supporting documentation, is truthful, correct, and complete; and, the information contained in this application and its supporting documentation discloses all facts regarding the applicant and associated individuals necessary to allow the City Administrator to properly evaluate the applicant's qualifications for registration.

If the applicant is a business entity, I, as the person signing below do hereby represent and warrant that the business entity is authorized to do business in California and that I have full rights, powers and authority to sign on behalf of the applicant and carry out all actions contemplated by this application, and that any Notice of Completed Registration issued to the applicant constitutes valid, binding and enforceable obligations of the applicant and the applicant shall abide by the provisions of said Notice. Attached to this Affidavit is proof, reasonably satisfactory to the City Administrator, confirming the foregoing representations and warranties.

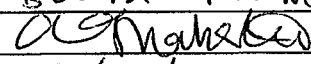

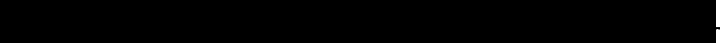

I, the undersigned, agree that any information subsequently submitted to the City Administrator in conjunction with this application or its supporting documentation meets the same standard as set forth above.

I, the undersigned, further agree and understand that this application will be classified as a public record and will be available for inspection by the public, except with regard to the release of information which is classified as controlled, private, or protected under the California Public Records Act or restricted by other law.

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I, the undersigned, further agree and recognize that I am responsible for obeying all Federal, State and local laws.

***I, the undersigned, further agree and understand that any misrepresentations, omissions or falsifications in this application or any documents attached thereto or amendments thereto will be immediate grounds for the City Administrator to deny this request for registration and/or immediate grounds for revocation of the Notice of Completed Registration.***

Print Name Here:	Anna Rae Grabstein
Title:	Board Member
Signature:	
Date:	10/11/2011
Address:	
City, State, Zip:	
Contact Phone No:	

# REQUEST FOR LIVE SCAN SERVICE

Applicant Submission

ORI: CA001090 Type of Application: LICENSE  
Code assigned by DOJ

Job Title or Type of License, Certification or Permit: MEDICAL CANNABIS DISPENSARY

Agency Address Set Contributing Agency:

OAKLAND POLICE DEPARTMENT

04764

Agency authorized to receive criminal history information

Mail Code (five digit code assigned by DOJ)

455 7TH STREET

SGT. D. DONOVAN

Street No. Street or P.O. Box

Contact Name (Mandatory for all school submissions)

OAKLAND CA 94607

(510) 238-2189

City State Zip Code

Contact Telephone No.

Name of Applicant:  
(please print)

Grabstein Anna Rae  
 Last First MI

Alias:

Last First

Driver's License No.

Date of Birth: 12-10-81

Sex: ☐ Male ☒ Female

Misc. No. BIL - 120181

Agency Billing Number

Height: 5'10

Weight: 175

Misc. No:

N/A

Eye Color: hazel

Hair Color: brown

Home Address

Place of Birth:

San Francisco, CA

SOC:

Your Number:

OCA No. (Agency Identifying No.)

Level of Service

☒ DOJ

☐ FBI

If resubmission, list Original ATI No.

Employer: (Additional response for agencies specified by statute)

Steep Hill Lab

Employer Name

1530 E. 12th St.

Street No. Street or P.O. Box

Mail Code (five digit code assigned by DOJ)

Oakland CA

94606

(510) 688-4446

City State

Zip Code

Agency Telephone No. (optional)

Live Scan Transaction Completed By:

Name of Operator

Date:

OCT 11 2011

OAKLAND POLICE

6284 GRA149

Transmitting Agency

ATI No.

Amount Collected/Billed



## AUTHORIZATION FOR RELEASE OF INFORMATION

I, the undersigned, declare that I am the applicant described and identified in this application for registration in the City of Oakland.

I authorize all persons, institutions, organizations, schools, governmental agencies, employers, references, or any others not specifically included in the preceding characterization, to release to the City Administrator for the City of Oakland any files, records, or information of any type regarding:

*(If Applicant is Business Entity, Insert Legal Name of Business Entity Below:)*

\_\_\_\_\_  
ENTITY

*(If Applicant is Individual, Insert Legal Name and Date of Birth Below:)*

Harold Rogers Jr      1-15-1960  
NAME      DATE OF BIRTH

The information is being requested by the City Administrator to properly evaluate my qualifications for registration as a Medical Cannabis Dispensary by the City of Oakland. A copy of this Authorization shall be as valid and provide the same authorization as the original.

Print Name of Individual or person authorized to sign on behalf of business entity:	Harold Rogers Jr
Title: (if applicable)	BOARD MEMBER
Signature:	Harold Rogers Jr
Date:	10-11-11
Address:	
City, State, Zip:	
Cell Phone Number:	
Email Address:	
City ID #:	Med11105



## AFFIDAVIT

I, the undersigned, declare under penalty of perjury that to the best of my knowledge, the information contained in this application for Medical Cannabis Dispensary Registration, and its supporting documentation, is truthful, correct, and complete; and, the information contained in this application and its supporting documentation discloses all facts regarding the applicant and associated individuals necessary to allow the City Administrator to properly evaluate the applicant's qualifications for registration.

If the applicant is a business entity, I, as the person signing below do hereby represent and warrant that the business entity is authorized to do business in California and that I have full rights, powers and authority to sign on behalf of the applicant and carry out all actions contemplated by this application, and that any Notice of Completed Registration issued to the applicant constitutes valid, binding and enforceable obligations of the applicant and the applicant shall abide by the provisions of said Notice. Attached to this Affidavit is proof, reasonably satisfactory to the City Administrator, confirming the foregoing representations and warranties.

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Print Name Here:	Harold Rogers Jr
Title:	Board Member
Signature:	Harold Rogers Jr
Date:	10-11-11
Address:	
City, State, Zip:	
Contact Phone No:	



# REQUEST FOR LIVE SCAN SERVICE

Applicant Submission

ORI: CA001090 Type of Application: LICENSE  
Code assigned by DOJ

Job Title or Type of License, Certification or Permit: MEDICAL CANNABIS DISPENSARY

Agency Address Set Contributing Agency:

OAKLAND POLICE DEPARTMENT

04764

Agency authorized to receive criminal history information

Mail Code (five digit code assigned by DOJ)

455 7TH STREET

SGT. D. DONOVAN NANCY MARCUS

Street No. Street or P.O. Box

Contact Name (Mandatory for all school submissions)

OAKLAND

CA

94607

(510) 238-2189

50.238.3294

City

State

Zip Code

Contact Telephone No.

Name of Applicant:  
(please print)

Rogers

Harold

A

Alias:

Last

First

Driver's License N

Date of Birth:

1-15-60

Sex:

☒ Male

☐ Female

Misc. No. BIL

120181

Agency Billing Number

Height:

5' 6"

Weight:

195

Misc. No:

N/A

Eye Color:

BRN

Hair Color:

BLK

Home Address

Place of Birth:

MILWAUKEE WIS

SOC:

City, State and Zip Code

Your Number:

OCA No. (Agency Identifying No.)

Level of Service

☒ DOJ

☐ FBI

If resubmission, list Original ATI No.

Employer: (Additional response for agencies specified by statute)

PA House of Suits

Employer Name

377 40th St

Street No.

Street or P.O. Box

Mail Code (five digit code assigned by DOJ)

OAK

CA

94607

City

State

Zip Code

Agency Telephone No. (optional)

Live Scan Transaction Completed By:

Jenny meef

Date:

OCT 11 2011

**OAKLAND POLICE  
DEPARTMENT**

Name of Operator

628420H151

Transmitting Agency

ATI No.

Amount Collected/Billed



## AUTHORIZATION FOR RELEASE OF INFORMATION

I, the undersigned, declare that I am the applicant described and identified in this application for registration in the City of Oakland.

I authorize all persons, institutions, organizations, schools, governmental agencies, employers, references, or any others not specifically included in the preceding characterization, to release to the City Administrator for the City of Oakland any files, records, or information of any type regarding:

*(If Applicant is Business Entity, Insert Legal Name of Business Entity Below:)*

\_\_\_\_\_  
ENTITY

*(If Applicant is Individual, Insert Legal Name and Date of Birth Below:)*

ELI AUSTIN  
NAME

2-13-58  
DATE OF BIRTH

The information is being requested by the City Administrator to properly evaluate my qualifications for registration as a Medical Cannabis Dispensary by the City of Oakland. A copy of this Authorization shall be as valid and provide the same authorization as the original.

Print Name of Individual or person authorized to sign on behalf of business entity:	ELI AUSTIN
Title: (if applicable)	BOARD MEMBER
Signature:	ELI AUSTIN
Date:	10/11/11
Address:	
City, State, Zip:	
Cell Phone Number:	
Email Address:	
City ID #:	MCD11105



## AFFIDAVIT

I, the undersigned, declare under penalty of perjury that to the best of my knowledge, the information contained in this application for Medical Cannabis Dispensary Registration, and its supporting documentation, is truthful, correct, and complete; and, the information contained in this application and its supporting documentation discloses all facts regarding the applicant and associated individuals necessary to allow the City Administrator to properly evaluate the applicant's qualifications for registration.

If the applicant is a business entity, I, as the person signing below do hereby represent and warrant that the business entity is authorized to do business in California and that I have full rights, powers and authority to sign on behalf of the applicant and carry out all actions contemplated by this application, and that any Notice of Completed Registration issued to the applicant constitutes valid, binding and enforceable obligations of the applicant and the applicant shall abide by the provisions of said Notice. Attached to this Affidavit is proof, reasonably satisfactory to the City Administrator, confirming the foregoing representations and warranties.

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***I, the undersigned, further agree and understand that any misrepresentations, omissions or falsifications in this application or any documents attached thereto or amendments thereto will be immediate grounds for the City Administrator to deny this request for registration and/or immediate grounds for revocation of the Notice of Completed Registration.***

Print Name Here:	ELI AUSTIN
Title:	BOARD MEMBER
Signature:	<i>Eli Austin</i>
Date:	10/11/11
Address:	
City, State, Zip:	
Contact Phone No:	

# REQUEST FOR LIVE SCAN SERVICE

Applicant Submission

ORI: <u>CA001090</u> Code assigned by DOJ	Type of Application: <u>LICENSE</u>
Job Title or Type of License, Certification or Permit: <u>MEDICAL CANNABIS DISPENSARY</u>	
Agency Address Set Contributing Agency:	
<u>OAKLAND POLICE DEPARTMENT</u>	<u>04764</u>
Agency authorized to receive criminal history information	Mall Code (five digit code assigned by DOJ)
<u>455 7TH STREET</u>	<u>SGT. D. DONOVAN</u>
Street No. <u>OAKLAND</u> State <u>CA</u> Zip Code <u>94607</u>	Contact Name (Mandatory for all school submissions)
City <u>OAKLAND</u> State <u>CA</u> Zip Code <u>94607</u>	<u>(510) 238-2189</u>
	Contact Telephone No.
Name of Applicant: <u>AUSTIN ELI</u>	
(please print) Last First MI	
Alias: Last First	Driver's License No. [REDACTED]
Date of Birth: <u>2-13-58</u> Sex: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Misc. No. BIL. <u>120181</u>
Height: <u>6'4</u> Weight: <u>220</u>	Agency Billing Number
Eye Color: <u>BRN</u> Hair Color: <u>BLK</u>	Misc. No: <u>N/A</u>
Place of Birth: <u>IOWA</u>	Home Address: [REDACTED]
SOC: [REDACTED]	
Your Number: _____	Level of Service <input checked="" type="checkbox"/> DOJ <input type="checkbox"/> FBI
OCA No. (Agency Identifying No.)	
If resubmission, list Original ATI No. _____	
Employer: (Additional response for agencies specified by statute)	
<u>N/A</u>	
Employer Name _____	
Street No. _____	Mall Code (five digit code assigned by DOJ)
Street or P.O. Box _____	
City _____	Agency Telephone No. (optional)
State _____	
Zip Code _____	
Live Scan Transaction Completed By: <u>JANIE MEERS</u>	Date: <u>OCT 11 2011</u>
OAKLAND POLICE DEPARTMENT	Name of Operator
Transmitting Agency	ATI No. <u>6284 AVE 150</u>
	Amount Collected/Billed

Complete

Complete



---

# Registration Questionnaires

---

Oakland



## MEDICAL CANNABIS DISPENSARY REGISTRATION QUESTIONNAIRE

(Please Print)

NAME: David Spradlin CITY ID # MCD11105

Next to each question, please answer "Yes" or "No." If you answer "Yes" to any of the questions, please attach a separate sheet of paper explaining your answer and providing all information necessary for the City Administrator to confirm the information you provided, including, but not limited to the jurisdiction where the activity occurred.

A "Yes" answer does not necessarily mean you will be denied registration. Additional documentation may be requested by the City Administrator if the information presented is deemed insufficient to complete the investigation.

THE FOLLOWING QUESTIONS MUST BE ANSWERED BY ALL APPLICANTS: For purposes of this questionnaire, "you" shall mean any person, firm, association, organization, partnership, business trust, company, corporation, public agency, school district, the State of California and its political subdivisions, and/or instrumentalities thereof.

1. <u>NO</u>	Have you ever applied for or received a license, certificate, permit, or registration to practice in a regulated profession under any name other than the name listed on this application?
2. <u>NO</u>	Have you ever had a license, certificate, permit, or registration to practice in a regulated profession denied, suspended or revoked, or in any way conditioned, curtailed, limited, or restricted in or by any jurisdiction including Oakland?
3. <u>NO</u>	Is any administrative, civil or criminal action pending against you now by any licensing or regulatory agency?
4. <u>NO</u>	Have you ever been party to a lawsuit as either a plaintiff or defendant where the lawsuit involves allegations of unlawful business practices, fraud, breach of contract, or unlawful detainer?
5. <u>NO</u>	Have you ever been convicted of a crime involving fraud, dishonesty or deceit?
6. <u>NO</u>	In the last five (5) years, have you been convicted of a felony?
7. <u>NO</u>	Have you ever applied for a permit to carry a concealed weapon?
8. <u>NO</u>	Have you ever been the restrained party or petitioner of a Restraining Order, Preliminary or Permanent Injunction?
9. <u>NO</u>	Have you owned or leased premises that have been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the premises to be a nuisance within the last (5) years?
10. <u>NO</u>	If you are a corporation is the corporation in good standing and authorized to do business in California? If yes, please provide proof.
11. <u>NO</u>	Are you currently on parole or probation for possession, sale, distribution or transportation of a controlled substance?
12. <u>NO</u>	Have you ever operated a Medical Cannabis Dispensary in the City of Oakland? If yes, please describe the circumstances surrounding that operation, including but not limited to: the dates of operation, the length of time the operation lasted, what permits or licenses were obtained for that operation, etc.)



## MEDICAL CANNABIS DISPENSARY REGISTRATION QUESTIONNAIRE

(Please Print)

**NAME:** Anna Rae Grabstein

**CITY ID #**

**Next to each question, please answer "Yes" or "No."** If you answer "Yes" to any of the questions, please attach a separate sheet of paper explaining your answer and providing all information necessary for the City Administrator to confirm the information you provided, including, but not limited to the jurisdiction where the activity occurred.

A "Yes" answer does not necessarily mean you will be denied registration. Additional documentation may be requested by the City Administrator if the information presented is deemed insufficient to complete the investigation.

**THE FOLLOWING QUESTIONS MUST BE ANSWERED BY ALL APPLICANTS:** For purposes of this questionnaire, "you" shall mean any person, firm, association, organization, partnership, business trust, company, corporation, public agency, school district, the State of California and its political subdivisions, and/or instrumentalities thereof.

1. <u>NO</u>	Have you ever applied for or received a license, certificate, permit, or registration to practice in a regulated profession under any name other than the name listed on this application?
2. <u>NO</u>	Have you ever had a license, certificate, permit, or registration to practice in a regulated profession denied, suspended or revoked, or in any way conditioned, curtailed, limited, or restricted in or by any jurisdiction including Oakland?
3. <u>NO</u>	Is any administrative, civil or criminal action pending against you now by any licensing or regulatory agency?
4. <u>NO</u>	Have you ever been party to a lawsuit as either a plaintiff or defendant where the lawsuit involves allegations of unlawful business practices, fraud, breach of contract, or unlawful detainer?
5. <u>NO</u>	Have you ever been convicted of a crime involving fraud, dishonesty or deceit?
6. <u>NO</u>	In the last five (5) years, have you been convicted of a felony?
7. <u>NO</u>	Have you ever applied for a permit to carry a concealed weapon?
8. <u>NO</u>	Have you ever been the restrained party or petitioner of a Restraining Order, Preliminary or Permanent Injunction?
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## MEDICAL CANNABIS DISPENSARY REGISTRATION QUESTIONNAIRE

(Please Print)

**NAME:** Harold Rogers Jr.

**CITY ID #** MCD11105

**Next to each question, please answer "Yes" or "No."** If you answer "Yes" to any of the questions, please attach a separate sheet of paper explaining your answer and providing all information necessary for the City Administrator to confirm the information you provided, including, but not limited to the jurisdiction where the activity occurred.

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## MEDICAL CANNABIS DISPENSARY REGISTRATION QUESTIONNAIRE

(Please Print)

<b>NAME:</b> ELI AUSTIN	<b>CITY ID #</b> MCD11105
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Next to each question, please answer "Yes" or "No." If you answer "Yes" to any of the questions, please attach a separate sheet of paper explaining your answer and providing all information necessary for the City Administrator to confirm the information you provided, including, but not limited to the jurisdiction where the activity occurred.

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# Affidavits

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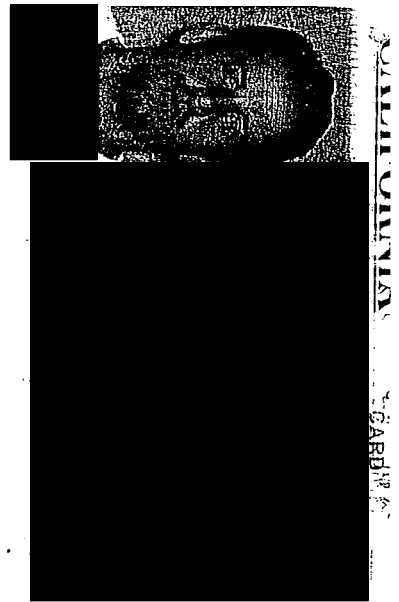
Oakland

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# CA State Identification Cards

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Oakland



CALIFORNIA DRIVER LICENSE

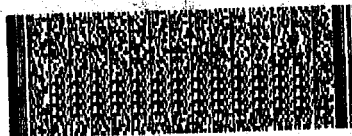


11/01/2010

110158330840401



CLASS: C-Veh w/GVWR ≤26000, No WC  
ENDORSEMENTS: NONE  
RESTRICTIONS: NONE

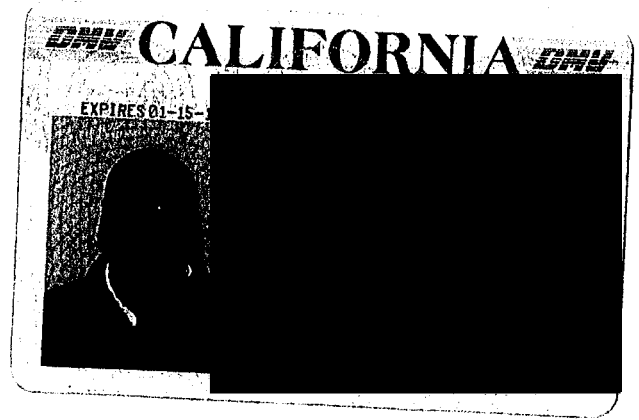


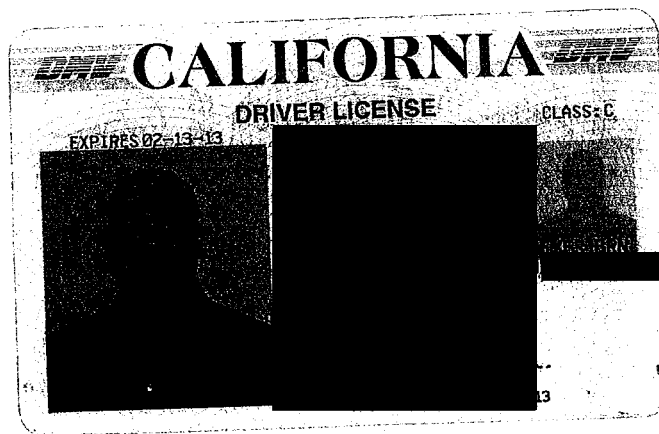
This license is treated as a license to  
drive a motor vehicle; it does not  
entitle eligibility for sample proof,  
motor registration or public bene fit.

121081

*Signature*

Rev 04/10/2010







OFFICE OF THE CITY ADMINISTRATOR

SPECIAL BUSINESS PERMITS

• 1 Frank H. Ogawa Plaza, 11<sup>th</sup> Floor

• Oakland, CA 94612

Nancy Marcus, Administrative Assistant I  
Email: nmarcus@oaklandnet.com

Phone: 510-238-3294  
Fax: 510-238-7084

October 6, 2011 2011

Applicant #MCD11105  
9198 Greenback Lane #204  
Orangevale, CA 95662

Dear Applicant # MCD11105

Please be advised that the results of your Mapping & Research for your location at: **3421 Telegraph Ave.** shows that the property you have chosen is not in the allowable area because

1. The location is in proximity to residential zones
2. The location is in proximity to a park

This does not prohibit you from submitting your application if you feel it is an appropriate location and should be exempt from location requirements. However, it will be up to you to provide sufficient justification to consider a waiver of location requirements.

Should your application go forward to Phase II, a notification of the public hearing will be sent to all property owners within the 600' buffer zone. Friendly reminder, if you choose to go forward and submit your application, the application fee is non-refundable.

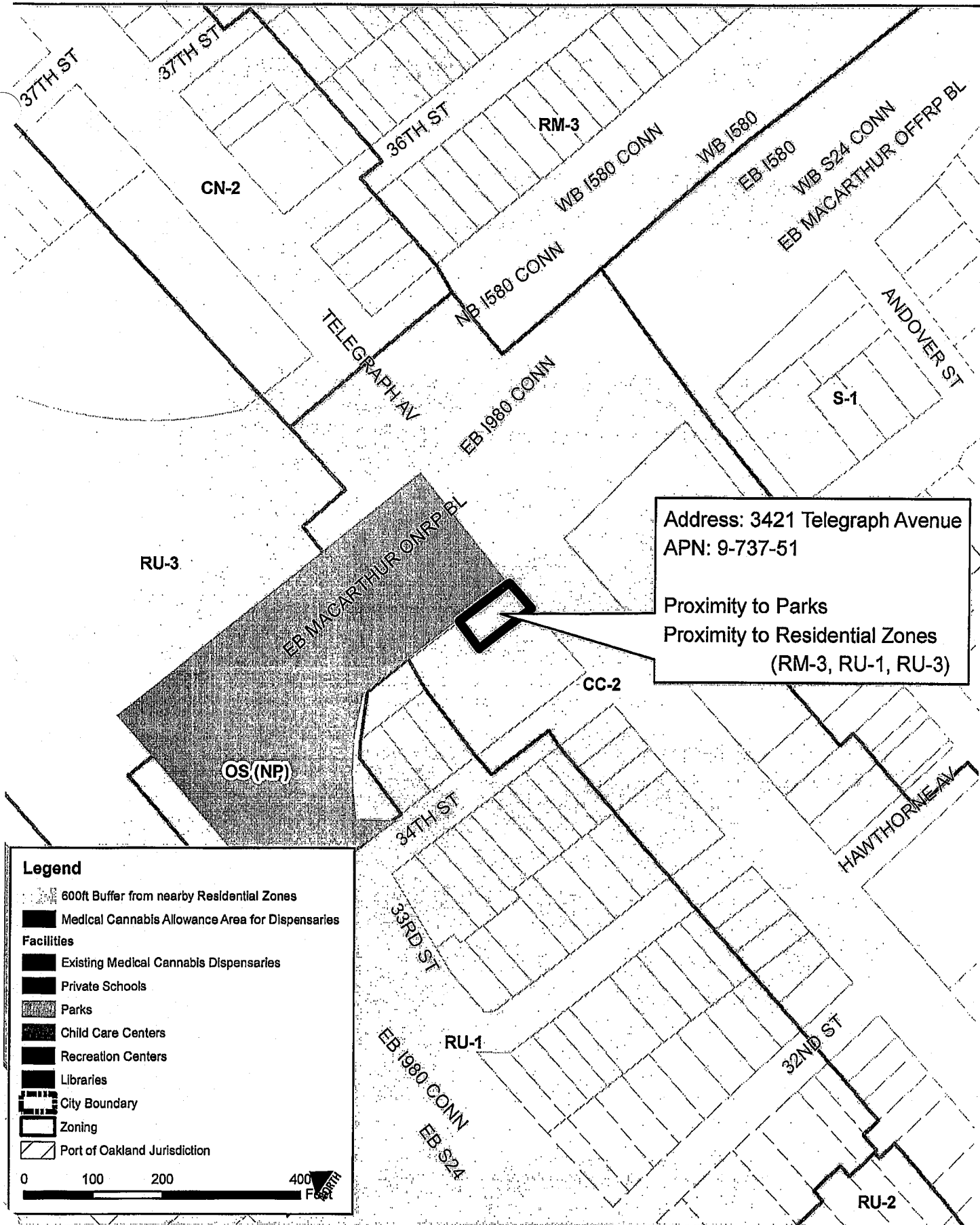
Please submit this letter with your application for proof of mapping & research.

Sincerely,

Nancy Marcus  
Administrative Assistant I  
Special Business Permits

Enclosure: Map





# **Medical Cannabis Dispensary Analysis** **3421 Telegraph Avenue**

# **MAGNOLIA WELLNESS COLLECTIVE**



## **Tax Statement for the City of Oakland**

I hereby certify, under penalty of perjury, that the information provided in this statement is true and correct. No one on the Magnolia Board of Directors or management team has ever operated a medical cannabis business in the City of Oakland and therefore there are no back taxes dues from any of our members.

Dated: 10/14/11

Signed David Spradlin  
David Spradlin, Executive Director



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# Tax Returns

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Magnolia Wellness and David Spradlin

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# Operating Period Pro Forma

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Magnolia Wellness

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# Profit and Loss Year-to-Date

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Magnolia Wellness

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# EXHIBIT 6-b

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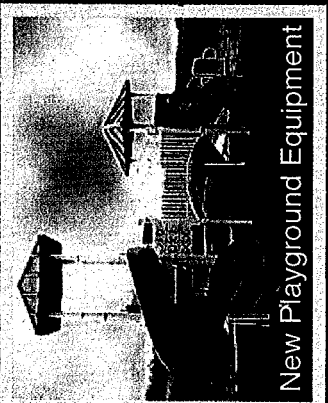
## Grove Shafter Upgrade Details

Updated Basketball Courts

Urban Garden Project

New Playground Equipment

Exercise and Fitness Area



## New Playground Equipment



# Updated Basketball Courts



## Exercise and Fitness Area



# Urban Garden Project

Our plans for Grove Shafter Park Upgrades include the creation of a Community Garden, the development of an exercise and fitness area, and installation of modern playground equipment and basketball court. We believe these upgrades will increase the usability of the park and decrease criminal activity in the area.

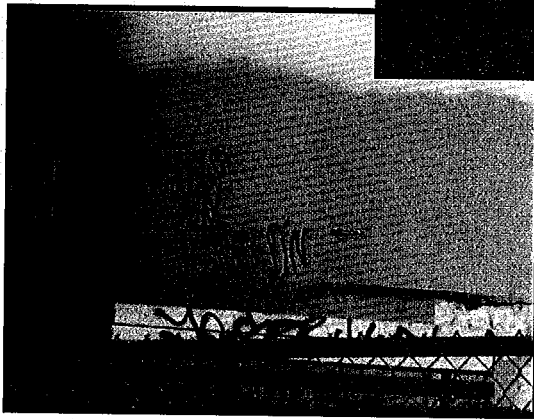
# CURRENT STATE OF GROVE SHAFTER AND THE NEIGHBORHOOD



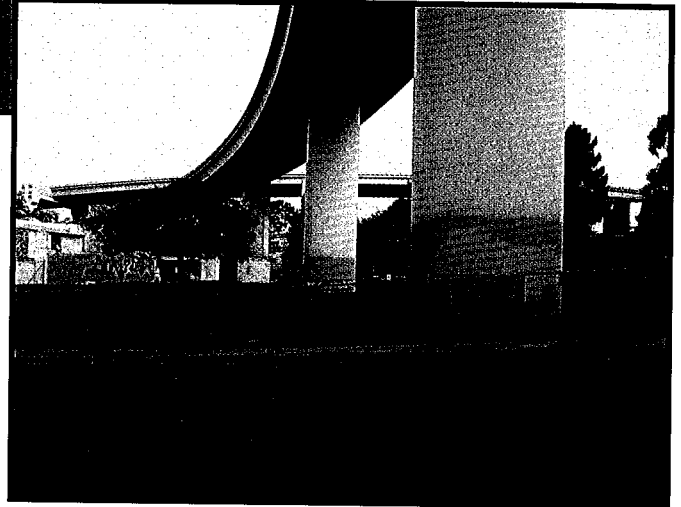
Currently Underused and Run Down Park



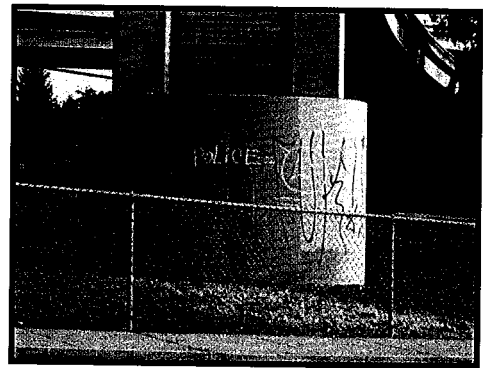
Litter



Graffiti



Aged and Dangerous Playground  
where "children do not play"  
Proposed Community Garden



Neighborhood Blight.  
Clean Up Days needed





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# FACILITY PLAN

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Overviews of the collective's plan to manage, maintain, and outfit our facility to meet the needs of the organization and the community in a responsible and secure manner.

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RFPA CITY ID#: MCD11105

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## About 3421 Telegraph Avenue

We believe this facility is an ideal location for because it clearly represents the medical atmosphere and professional nature of our organization. After long and careful consideration of many different types of facilities, we believe this facility is best suited to house the holistic wellness services model that we plan on implementing because it embodies our organization's mission and vision. Our unique services will help local patients find a complete wellness program and encourage healthy living. The facility will enable us to provide these services in an environment that is conducive to healing and projects the medical and alternative therapies goals of our Wellness Services department. This facility will provide the organization with a wonderful opportunity to establish a true healing center that meets the expectations of the medical community and provides a wealth of goodwill and positive influence on the patients we serve. We believe in the merits of our program and look forward to establishing a long-lasting partnership with the local community.

## Advantages of the Facility

- Convenient central location
- Spacious facility with room for expanded wellness services
- ADA Compliance with minor work
- Plenty of off-street parking
- Easy to secure and monitor
- Facility will not impact the peace, order or welfare of the local community
- Local transit is readily available
- Build out design will improve the facility and neighborhood
- The building is extremely suitable for medical patients
- Building aesthetics are discreet

## The Location

The chosen location provides the ideal setting for this type of operation. Other locations explored lacked in quality and convenience and were not conducive to wellness services. We believe this facility is a great choice for this type of business and will help to revitalize the Korea Northgate neighborhood through providing added security, economic viability, and responsible partnerships. The location will help to serve a large portion of the Oakland community that is currently underserved due to clustering of facilities in the downtown area. We believe it is important to have a clean, safe, and convenient location that is easy to access for patients from all over Oakland. The facility at 3421 Telegraph Avenue is located in an area that will be meet all of those standards, and then some.

The existing building and site are perfect for this type of facility due to location, easy freeway access, existing transit connections, distance from schools, and a naturally secluded setting. The

property is zoned Commercial (CN3), which allows this type of land use with the approval of a use permit.

The existing building is surrounded by businesses that are not considered sensitive land uses by the City. Adjoining and surrounding businesses have similar operating hours, do not cater to teens or young adults, and some do not serve the public at all. The location is extremely convenient, while still benefiting from the natural separation of the surrounding freeways, roads and landscape. The collective organization is excited to be a part of revitalizing the area, and this facility will become one more positive step in this process.

## **The Facility/Existing Site Plan**

The building is perfectly suited to house the collective's operations. With plenty of square footage, we have the ability to service an adequate volume of patient members without creating an impact on other building tenants or traffic flow. The building construction plans meet all ADA compliance standards for persons with disabilities, and is easily adapted to meet these standards. The facility ideally located on the ground floor providing Magnolia members a convenient entrance that will not impact neighbors and ensure safety, security, and privacy.

## **Proposed Facility Improvements**

The organization is focused on providing the perfect environment for patients to find natural healing by utilizing the convenient and professional location and incorporating a facility renovation that will create a clean, calm and serene facility. It is important to provide not only an array of services to our patients, but a highly maintained and organized facility in order to achieve the best healing process possible. To achieve this, Magnolia will make floor plan changes, using fresh and innovative interior design, unique architectural features, advanced technology, and incorporating green construction methods and materials whenever possible.

The proposed floor plan changes include some space reconfigurations, room expansions, and material upgrades. We will be defining the reception and securing it with walls and windows for patients to arrive and wait comfortably to be checked in. The lobby will have a secured check in area with cameras to monitor new patient arrivals and activity in the lobby. Once a patient is granted access after registering with the collective, a buzz in door will be unlocked and a security team member will guide the patient in one at a time (see our *Safety and Security Plan* for more information on security at the entrance lobby). The main room past the lobby will be where patients can secure medication, gather medical information, research food preparation guidelines and recipes, receive information on additional healing services, access our library, as well as register for available classes and treatments. The remainder of the facility ideally will be converted to service areas, including a large multi-use room for educational seminars and exercise/yoga classes, a classroom for seminars and support groups, and a treatment room for alternative therapies, such as acupuncture. All facility windows are security glass and will be

outfitted with window film to limit visibility and to make the windows more private and secure. The collective will also add secure separation walls to segregate the private business and inventory control areas from the member area of the clinic. These will be secured with steel entry doors and equipped with biometric lock technology. All of these changes and upgrades will be done in compliance with California Building Code and Oakland Municipal Code requirements while working with the Oakland Building Services and Permitting Department.

Our interior design plan is focused on innovative and intelligent new products, materials, and systems to create a quality space built around comfort, energy/resource efficiency, confidentiality, security, and sustainability. Examples of products to be utilized include: recycled carpet from Mohawk's Smart Strand carpet line, reclaimed or recycled wood for furniture and built-ins, stained and polished concrete floors in the main room and high foot traffic areas, LED lighting, Lutron light controls to promote energy use saving, low-VOC nontoxic paint, low flow lavatory faucets for water consumption saving, dual flush toilets, climate control systems, air filtration system that eliminates allergens and odors, and recycled glass or concrete countertops.

Green Construction Company will complete the facility improvements. They are licensed contractors registered with the State of California- license number 892278. They have worked on many projects in Oakland and the surrounding areas and are dedicated to using local licensed subcontractors, material suppliers, and local furniture stores throughout all phases of construction and interior furnishing to help boost local companies and local jobs.

The facility is extremely spacious and will have ample room to meet all of the needs of running an effective dispensing collective and holistic healing center.

## **Construction Permits and Estimated Timeline**

The following are permits we anticipate needing from the City before beginning the build out:

- Planning/Zoning Use Permit
- Signage Permit
- Demo Permit
- Building Permit
- Electrical Permit
- Mechanical/Plumbing Permit

Our estimated timeline is this, if we are granted a permit by February 1<sup>st</sup> :

- February 1- Begin Build Out Planning and Permitting Process
- 30 days to complete detailed construction plans and construction documents
- 4-6 weeks to obtain permits (Begin Demo as soon as demo permit is complete)
- 90 days to complete build-out and install fixtures

Our estimated time to open the facility would be May, 15<sup>th</sup> 2012.

### **Accommodation of Persons with Disabilities (ADA Compliance)**

Since persons with disabilities constitute a considerable number of the clinic's expected members the facility must meet or exceed the National Americans with Disabilities (ADA) as well as the State of California Handicap Access codes. The improvement plans meet all ADA and CA HA requirements, and is easily adapted to do so. There will be appropriate and updated access points at all entrances to the building. All doors, hallways and restrooms will be compliant, and all interior or exterior improvements will incorporate all necessary standards to remain ADA compliant. The parking lot will have designated ADA parking spots with proper signage in place consistent with the City of Oakland Parking Requirements. Our service counters and service areas will all have ADA access points, as well, including appropriate height counters and tables. The main entrance at the rear of the building will have a new ADA compliant ramp, with a handrail for easy access for disabled patients.

### **Parking Plan**

The facility will has an ample sized parking lot, and our organization has 25-30 dedicated stalls, including two handicapped spaces. The current parking stalls provided are consistent with the City's requirements and the facility currently meets or exceeds the parking requirements as specified in the City's Development Code. Parking areas will be regularly monitored by Magnolia staff for safety and security (for more information please see Magnolia's *Safety and Security Plan*).

### **Exterior Lighting Plan**

The building will have existing exterior lighting that meets Oakland Municipal Code requirements for sufficient foot-candles and color rendition. This will ensure safety by providing more than adequate lighting to identify criminal activity on the property from a distance of at least 40 feet. There are lights in the parking areas and attached to all four sides of the building that meet the requirements for outdoor lighting in Oakland. We will be adding additional lighting in areas according to recommendations by The Loss Prevention Group, a local security consulting firm. As noted in *the Safety and Security Plan*, the facility planning will include a review by specialists in Defensive Space Planning, a system of analyzing and planning of the parking, lighting, structure and landscape of an area (the environment) and to mitigate and control through environmental design the potential for crime and delinquency.

### **Air Filtration System**

Of public concern is the odor that is emitted by Cannabis, and for this we will install Honeywell's F-90 Electronic Air Purifiers in the dispensing and product handling areas to remove any aromas

that may come from the handling of medicine. This system is standard for use in this type of facility. Vapors are collected on the Honeywell cells and carbon filters included in each unit. The F90 provides Coanda air distribution by drawing in dirty air from below, cleaning it electronically, and discharging the cleaned air in four directions parallel with the ceiling. All air filtered out of the collective will also pass through an approved carbon filter before being released; ensuring no odors will be evident exterior to the collective facility.

### **Access to Public Transportation**

AC Transit regularly services area. The number 1 line regularly services Telegraph Avenue every 15 minutes, stopping on the corner of 34<sup>th</sup> and Telegraph directly in front of the building. The 800 all-nighter line also stops in front of the facility. In addition dozens of lines travel down MacArthur Blvd. to drop people at MacArthur BART station just 3 blocks north. Bay Area Rapid Transit (BART) trains run to MacArthur BART from all over the Bay, as this station is a transfer for all BART lines. East Bay Paratransit also services the area to provide rides and care to disabled persons in the area.

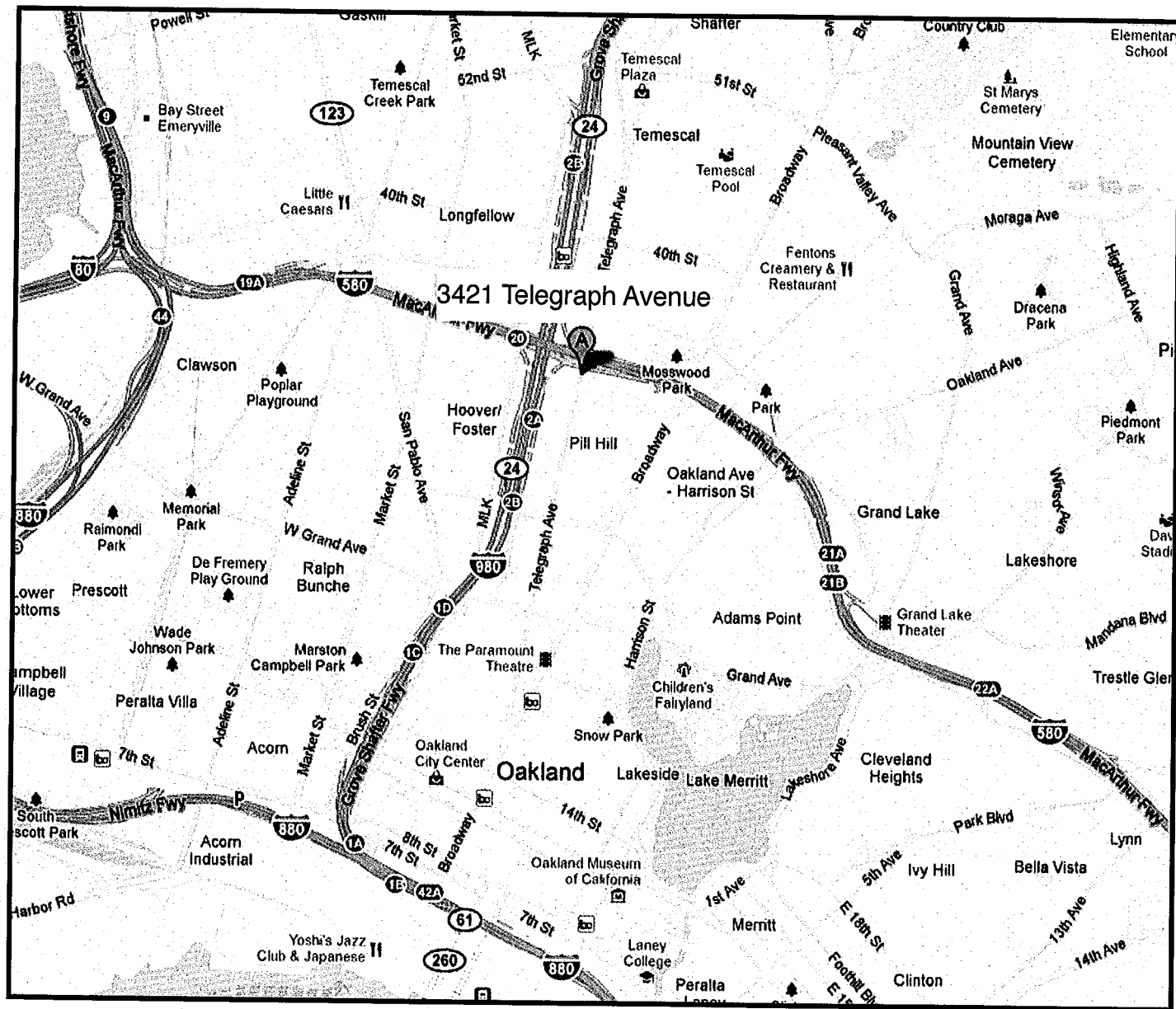
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# EXHIBIT 7-a

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## Location Map

# LOCATION MAP





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# EXHIBIT 7-b

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## Letter of Intent to Lease Property

license to operate as a Wellness Center and Dispensary in  
Oakland ,CA.

**BROKER COMMISSION:** David Spradlin is representing the tenant. Landlord is  
represented by Bestway Investment and Realty agent Suk Hee  
Yoo.

**PROPOSAL EXPIRATION:** March 1, 2012

Please respond to this proposal at your earliest convenience. If you have any questions or  
comments, please contact me at [REDACTED]

We look forward to your immediate response.

Sincerely,

David Spradlin  
Magnolia Wellness Executive Director

**AGREED AND ACCEPTED:**

**LESSOR**

\_\_\_\_\_

By: \_\_\_\_\_

Its: Beau International LLC

Date: 10/4/2011

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSEE**

\_\_\_\_\_

By: \_\_\_\_\_

David Spradlin

Its: \_\_\_\_\_

Magnolia Wellness

Date: 10/4/11

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# EXHIBIT 7-c

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Copy of Lease to Begin in 2012

warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/444th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

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

**2.4 Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

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

**2.6 Vehicle Parking.** Lessee shall be entitled to use the number of parking spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles.**" Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

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

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

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to

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Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

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

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

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

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

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of the delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Commencement Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within 4 months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

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

4. **Rent.**

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

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

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

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

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

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

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

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

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

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

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

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

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

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

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

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

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

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

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

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or

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deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

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

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

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

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to

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be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

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

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

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

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

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

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

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the

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condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

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

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

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

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

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

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

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the

foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

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

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

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

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

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

**8. Insurance; Indemnity.**

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

**8.2 Liability Insurance.**

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

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insurance carried by Lessor, whose insurance shall be considered excess insurance only.

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

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

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

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

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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

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

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

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements.

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

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

**8.6 Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

**8.7 Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such

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defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

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

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

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

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

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

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

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

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to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

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

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

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

9.6 **Abatement of Rent; Lessee's Remedies.**

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

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph

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**10.3 Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

**10.4 Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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

**11. Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

**12. Assignment and Subletting.**

**12.1 Lessor's Consent Required.**

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

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

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

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

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

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

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

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

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

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

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

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

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

**12.3 Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

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

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

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

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

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

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

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

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

  
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following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

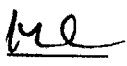
(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a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

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

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

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

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from

  
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liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

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

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

13.6 **Breach by Lessor.**

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

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

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

15. **Brokerage Fees.**

15.1 **Additional Commission.** If a separate brokerage fee agreement is attached then in addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the

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Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule attached to such brokerage fee agreement.

**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

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

**16. Estoppel Certificates.**

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

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

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

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

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

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

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

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

**22. No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

**23. Notices.**

**23.1 Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a

Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

**23.2 Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

**24. Waivers.**

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

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

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

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

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

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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

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

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applicable to any gross negligence or willful misconduct of such Broker.

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

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

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

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

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

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

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

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

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

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective

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*[Signature]*  
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purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

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

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

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

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

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

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

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

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

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

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

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

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

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

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or

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other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

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

43. **Authority; Multiple Parties; Execution.**

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

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

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

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

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

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

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

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

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

50. This agreement is contingent upon Lessor and Lessee to obtain own legal advisor's final approval of this agreement on or before 02/10/2012.

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

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

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

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

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

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

Executed at: 3421 Telegraph Ave, Oakland, CA

On: 10-4-11

By LESSOR:

By LESSEE:

David Spradlin

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Beau International LLC

By: 

Name Printed: Mi Cha Oh

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

Federal ID No. \_\_\_\_\_

**BROKER:**

Bestway Investments & Realty

Attn: Suk Hee Yoo

Title: Broker/Owner

Address: 5900 Shattuck Ave, #204

Oakland, CA 94609

Telephone: (510) 547-4989

Facsimile: (510) 547-0371

Email: sukhee@bestwayinvestments.com

Federal ID No. 94-3303059

Broker/Agent DRE License #: 00847035

**BROKER:**

Attn: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Broker/Agent DRE License #: \_\_\_\_\_

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

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FORM MTN-10-1/10E



# RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

Dated 09/29/2011

By and Between (Lessor) Beau International LLC

(Lessee) The Magnolia Wellness

Address of Premises: 3421 Telegraph Ave  
Oakland, CA 94609

Paragraph 1.7f

## A. RENT ADJUSTMENTS:

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

☐ I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): \_\_\_\_\_

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

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

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the ☐ first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"): \_\_\_\_\_. The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

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

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## OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

**Dated** 09/29/2011

**By and Between (Lessor)** Beau International LLC

**By and Between (Lessee)** The Magnolia Wellness

**Address of Premises:** 3421 Telegraph Ave

Oakland, CA 94609

Paragraph 1.3a

**A. OPTION(S) TO EXTEND:**

Lessor hereby grants to Lessee the option to extend the term of this Lease for 60 (Sixty) additional month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 3 but not more than 6 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

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

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

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

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

☐ **I. Cost of Living Adjustment(s) (COLA)**

a. On (Fill in COLA Dates): \_\_\_\_\_

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

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

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

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(Fill in Other "Base Month"):

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

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

☒ **II. Market Rental Value Adjustment(s) (MRV)**

a. On (Fill in MRV Adjustment Date(s)) \_\_\_\_\_

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

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

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

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

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

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

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

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☐ **III. Fixed Rental Adjustment(s) (FRA)**

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The New Base Rent shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. NOTICE:**

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

**C. BROKER'S FEE:**

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.

ME

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

we

INITIALS

PAGE 3 OF 3

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DS  
INITIALS

FORM OE-3-8/00E



## AIR COMMERCIAL REAL ESTATE ASSOCIATION GUARANTY OF LEASE

WHEREAS, Beau International LLC, hereinafter  
"Lessor", and Magnolia Wellness, hereinafter  
"Lessee", are about to execute a document entitled "Lease" dated 09/29/2011  
known as 3421 Telegraph Ave, Oakland, CA 94609 concerning the premises commonly  
wherein Lessor will lease the premises to Lessee, and  
WHEREAS, David Semellin  
hereinafter "Guarantors" have a financial interest in Lessee, and  
WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guaranty of Lease.

NOW THEREFORE, in consideration of the execution of said Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed by Lessor and Guarantors that: (i) the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and (ii) said Lease may be assigned by Lessor or any assignee of Lessor without consent or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease.

No notice of default by Lessee under the Lease need be given by Lessor to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors following any breach or default by Lessee under the Lease without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation that Guarantors may have against Lessee.

Guarantors do hereby subordinate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors to do and provide the same to Lessor. The failure of the Guarantors to provide the same to Lessor shall constitute a default under the Lease.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns. Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantors under this Guaranty.

Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantors under this Guaranty.

No provision of this Guaranty or right of the Lessor can be waived, nor can the Guarantors be released from their obligations except in writing signed by the Lessor.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in the county in which the leased premises are located and the Guarantors consent to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State in which the leased premises are located and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of such State.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to full reimburse all attorney's fees reasonably incurred.

If any Guarantor is a corporation, partnership, or limited liability company, each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorized to execute this Guaranty on behalf of such entity.

If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the AIR Commercial Real Estate Association, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.

Executed at: Oakland, CA.  
On: Oct. 4 2011  
Address: 2421 Telegraph Ave.  
Oakland, CA. 94609

David Spracklin

"GUARANTORS"

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# EXHIBIT 7-d

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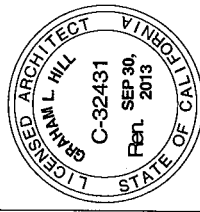
Existing Floor Plan

Project Name:

Magnolia Wellness  
Center

Address:

3421 Telegraph Ave  
Oakland, CA 94609



#	DATE	ISSUE	BY
1.			

PRELIMINARY:  
NOT FOR  
CONSTRUCTION

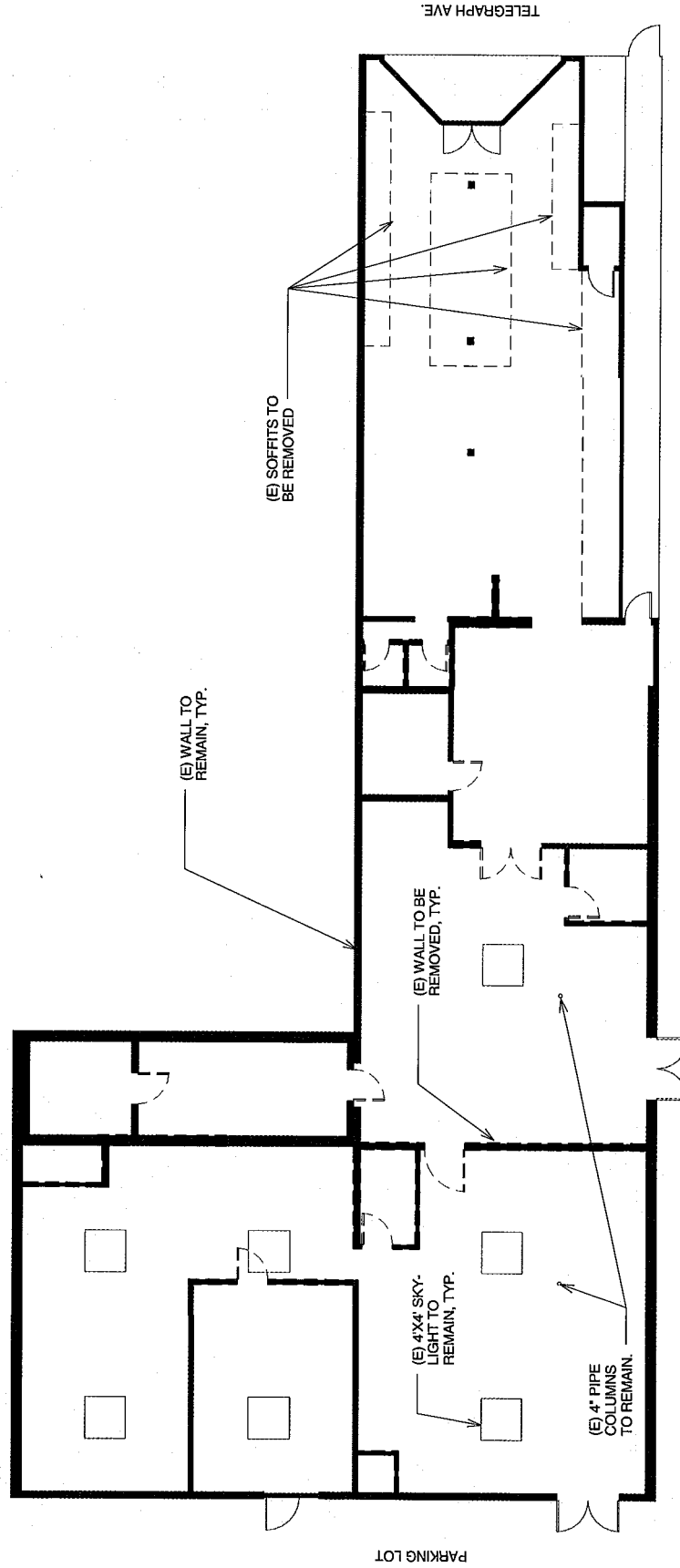
DATE 10.10.2011  
DRAWN BY

DEMO PLAN

SHEET NUMBER

A0.1

ALL DIMENSIONS AND NOTATIONS ARE  
APPROXIMATE. THESE CONSTITUTE ORIGINAL AND  
MAY BE SUBJECT TO CHANGE WITHOUT NOTICE AND  
MAY NOT BE REPRODUCED, COPIED OR DISCLOSED  
WITHOUT WRITTEN CONSENT OF THE ARCHITECT



1 Demo Plan  
3/32" = 1'-0"



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# EXHIBIT 7-e

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Proposed Floor Plan



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# EXHIBIT 7-f

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## Site Plan

PATIENT  
PARKING AREA

3421 Telegraph Ave. Oakland.

(N) ADA RAMP  
AND LANDING

34TH ST.

REGULAR STALLS	24
ADA STALLS	2
<b>TOTAL:</b>	<b>26</b>

1 Site  
1" = 40'-0"

# A1.0

ALL DRAWINGS AND WRITTEN MATERIAL  
APPEARING HEREIN CONSTITUTE ORIGINAL AND  
UNPUBLISHED WORK OF THE ARCHITECT AND  
MAY NOT BE DUPLICATED, USED OR DISCLOSED  
WITHOUT WRITTEN CONSENT OF THE ARCHITECT

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# EXHIBIT 7-g

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Artist Renderings and Photos- Interior/Exterior

# RENDERING 1: MAGNOLIA LOBBY/RECEPTION/CHECK IN

