

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**NEW RIVER GORGE  
DEVELOPMENT COMPANY, LLC,  
Plaintiff,**

**v.**

**VERANO WV, LLC, and  
VERANO HOLDING CORPORATION,  
Defendants.**

**Fayette County Circuit Court  
Civil Action No. 22-C-104  
Honorable Paul M. Blake, Jr.**

**MOTION TO REFER TO BUSINESS COURT DIVISION**

Defendants, Verano WV, LLC (“Verano WV”) and Verano Holding Corporation (“Verano Holdings”) (collectively “Defendants”), by counsel, and pursuant to Rule 29 of the *West Virginia Trial Court Rules*, respectfully request that the above-styled action be referred to the Business Court Division for all further proceedings.

**Background**

This action arises from a May 23, 2022 build-to-suit lease (“the Lease”) between Plaintiff, New River Gorge Development Company, LLC (“Plaintiff”) and Verano WV which obligates Plaintiff to deliver a building to be used by Verano WV as a medical cannabis dispensary (“the Premises”).<sup>1</sup> According to Plaintiff, Verano WV breached the Lease when one of its employees sent an e-mail to one of Plaintiff’s employees stating in relevant part as follows:

Hope all is well with you and the family. Apologies for the slow response with our construction team and your architect but unfortunately the reason for the delay is because there’s been a shift in our West Virginia strategy to only open four stores at this time. My hope was to continue to move forward with this location as it’s a ground up and the likelihood of us being fully operational is likely a year from now. This could give us ample time to see how our four new locations perform. Ownership wouldn’t budge so we’re left with no choice but to terminate our lease agreement.

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<sup>1</sup> Plaintiff attached the Lease to its Complaint, which, along with Defendants’ November 18, 2022 motion to dismiss and the current docket are attached to this motion as Exhibits A, B, and C, respectively. See *infra* ¶ 2

I wanted you to be aware of this prior to getting lawyers involved with hopes of you and I attempting to resolve the lease termination. Appreciate your time and feel free to reach out to me on my cell at [REDACTED] if needed.<sup>2</sup>

According to Plaintiff, Verano WV's transmittal of that e-mail operated as a breach of the Lease and thus entitled Plaintiff to choose from several default remedies enumerated in the Lease.<sup>3</sup>

In response, Defendants have moved to dismiss the Complaint, asserting that Plaintiff fails to state a claim for which relief may be granted. Defendants assert that Plaintiff seeks default remedies under the Lease, but Plaintiff does not and cannot plead an actual event of default that would entitle it to the requested default remedies.

Because Plaintiff's breach of contract claim presents a dispute between business entities on a matter of significance to the transactions and operations of those businesses and involving commercial issues, the resolution of which would benefit from the specialized treatment of the Business Court Division, Defendants move that this action be referred to the Business Court Division, as the following explains:

### **Discussion**

1. Rule 29.04 of the *West Virginia Trial Court Rules* provides that claims regarding significant transactions and operations between business entities are eligible for referral to the Business Court Division if beneficial. This case presents such a circumstance.

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<sup>2</sup> E-mail to Casey Bowling from Rocky Afo (June 29, 2022), attached to Compl.

<sup>3</sup> See Compl. ¶ 10 ("By email dated June 29, 2022, Verano WV notified New River Gorge Development of its termination of the Lease via email . . ."); *id.* ¶ 12 ("Verano WV unilaterally elected to terminate the Lease . . ."); *id.* ¶ 13 (alleging that Plaintiff was not in default of the Lease "[a]s of the date of termination of the Lease by Verano WV"); *id.* ¶ 14 "Verano WV, without cause, wrongfully terminated its contractual agreement . . ."); *id.* ¶¶ 17-18 (incorporating previously alleged facts about purported effect of June 22, 2022 e-mail and then alleging entitlement to elect one or more default remedies in paragraph 16 of Lease).

2. Pursuant to Rule 29.06(a)(1) of the *West Virginia Trial Court Rules*, a copy of Plaintiff's Complaint and all exhibits; Defendants' motion to dismiss, memorandum in support, and all exhibits; and the docket sheet are attached hereto as **Exhibits A** through **C**, respectively.

3. Rule 29.06(a)(1) of the *West Virginia Trial Court Rules* provides that "[a]ny party . . . may seek a referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of Appeals of West Virginia."

4. "Business Litigation" is defined as an action in which:

- (1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
- (2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and
- (3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

W. Va. Trial Ct. R. 29.04(a).

5. This action is a model case for transfer to the Business Court Division. The claims are "of significance to the transactions [and] operations" between Plaintiff and Defendants, all business entities.

6. Plaintiff's Complaint alleges that, as a result of Defendants' purported breach of the Lease, Plaintiffs are entitled to, *inter alia*, "payment due and owing [for the] entire remaining

unpaid Rent and Additional Rent for the balance of the Lease”<sup>4</sup> The initial term of the Lease was to run ten years and the base rent for that time period would amount to more than \$1 million.<sup>5</sup> Put simply, Plaintiff is placing at issue in this litigation many aspects of a detailed, ten-year, build-to-suit lease between the parties and seeking more than \$1 million in damages.

7. Defendants’ motion to dismiss asks the circuit court to construe the unambiguous terms of the Lease and the June 29, 2022 e-mail attached to the Complaint as a matter of law and to conclude that Plaintiff fails to state a breach of contract claim on which relief can be granted.<sup>6</sup> More specifically, Defendants assert (1) the June 29, 2022 e-mail did not operate as a “notice of termination” as Plaintiff alleges; (2) transmission of the e-mail was not an event of default enumerated in the Lease; and (3) Plaintiff thus is not entitled to default remedies when it cannot first establish an event of default.

8. This dispute thus involves commercial issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution and which will benefit from the specialized knowledge of the judges of the Business Court Division.

9. The principal claim in this action does not involve any of the subjects listed in Rule 29.04(a)(3) that are excluded from the definition of “Business Litigation.”

10. Defendants are not aware of any additional related actions which are pending or which may be filed in the future.

WHEREFORE, for the reasons set forth above, and pursuant to Rule 29 of the *West Virginia Trial Court Rules*, Defendants move that the Chief Justice of the West Virginia Supreme Court of Appeals refer this case to the Business Court Division.

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<sup>4</sup> See Pl.’s Compl. ¶¶ 18(3), 21.

<sup>5</sup> See Lease, Ex. A to Pl.’s Compl., at 2, ¶ 1(f)–(g).

<sup>6</sup> See generally, Ex. B.



**Respectfully submitted,**

**VERANO WV, LLC, and  
VERANO HOLDINGS CORP.,**

**By counsel,**

/s/ Russell D. Jessee

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Christopher S. Etheredge (WVSB No. 13835)

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Charleston, WV 25326-1588

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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**NEW RIVER GORGE  
DEVELOPMENT COMPANY, LLC,  
Plaintiff,**

**v.**

**VERANO WV, LLC, and  
VERANO HOLDING CORPORATION,  
Defendants.**

**Fayette County Circuit Court  
Civil Action No. 22-C-104  
Honorable Paul M. Blake, Jr.**

**CERTIFICATE OF SERVICE**

I hereby certify that the undersigned has this day, the 28th of November, 2022, filed the foregoing **MOTION TO REFER TO BUSINESS COURT DIVISION** via electronic filing, which will send a copy and service notification to the following counsel of record:

Charles R. Hughes, Esquire  
S. Andrew Stonestreet, Esquire  
BOWLES RICE LLP  
P.O. Box 1386  
Charleston, WV 25325-1386

I further certify that I served a true and accurate copy of the foregoing **MOTION TO REFER TO BUSINESS COURT DIVISION** upon the below by United States Mail, first class, postage prepaid in an envelope addressed as follows on the 28th day of November, 2022:

Deborah Hendrick, Clerk  
Fayette County Circuit Court  
P.O. Box 600  
100 North Court Street  
Fayetteville, WV 25840

The Hon. Paul M. Blake, Jr.  
Fayette County Courthouse  
100 North Court Street, Suite 4  
Fayetteville, WV 25840

Berkeley County Judicial Center  
Business Court Division  
Suite 2100  
380 W. South Street  
Martinsburg, WV 25401

/s/ Russell D. Jessee  
Russell D. Jessee (WV #10020)  
STEPTOE & JOHNSON PLLC  
P.O. Box 1588  
Charleston WV 25326-1588  
(304) 353-8000

# **EXHIBIT**

## **A**



## West Virginia E-Filing Notice

CC-10-2022-C-104

Judge: Thomas H. Ewing

**To:** Charles Hughes  
chughes@bowlesrice.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA  
New River Gorge Development Company, LLC, a West Virginia limited liability comp v. Verano  
WV, LLC, a West Virginia limited liability company  
CC-10-2022-C-104

The following complaint was FILED on 9/1/2022 1:35:35 PM

Notice Date: 9/1/2022 1:35:35 PM

Deborah Hendrick  
CLERK OF THE CIRCUIT COURT  
Fayette County  
100 North Court Street  
FAYETTEVILLE, WV 25840

(304) 574-4249

# COVER SHEET

E-FILED | 9/1/2022 1:35 PM  
CC-10-2022-C-104  
Fayette County Circuit Clerk  
Deborah Hendrick

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF FAYETTE COUNTY WEST VIRGINIA

**New River Gorge Development Company, LLC, a West Virginia limited liability comp v. Verano WV, LLC, a West Virginia limited liability company**

**First Plaintiff:** ☒ Business ☐ Individual ☐ Government ☐ Other

**First Defendant:** ☒ Business ☐ Individual ☐ Government ☐ Other

**Judge:** Thomas H. Ewing

## COMPLAINT INFORMATION

**Case Type:** Civil

**Complaint Type:** Contract

**Origin:** ☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

**Jury Trial Requested:** ☒ Yes ☐ No **Case will be ready for trial by:** 9/29/2023

**Mediation Requested:** ☐ Yes ☒ No

**Substantial Hardship Requested:** ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: Charles Hughes, 600 Quarrier St, Charleston, WV 25301

## SERVED PARTIES

**Name:** Verano WV, LLC, a West Virginia limited liability company  
**Address:** 415 North Dearborn St., 4th Floor, Chicago IL 60654  
**Days to Answer:** 30                      **Type of Service:** Filer - Secretary of State

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**Name:** Verano Holdings Corp., a British Columbia corporation  
**Address:** 415 North Dearborn St., 4th Floor, Chicago IL 60654  
**Days to Answer:** 30                      **Type of Service:** Filer - Secretary of State

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IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

**NEW RIVER GORGE DEVELOPMENT COMPANY, LLC,**  
a West Virginia limited liability company,

Plaintiff,

v.

Civil Action No.: \_\_\_\_\_  
Judge \_\_\_\_\_

**VERANO WV, LLC,**  
a West Virginia limited liability company, and  
**VERANO HOLDINGS CORP.,**  
a British Columbia corporation

Defendants.

**COMPLAINT**

Plaintiff, New River Gorge Development Company, LLC ("**New River Gorge Development**"), by and through counsel, Bowles Rice LLP, states as follows for its Complaint ("**Complaint**") against Defendants Verano WV, LLC ("**Verano WV**") and Verano Holdings Corp. ("**Verano Holdings**"):

**PARTIES**

1. Plaintiff is, and was at all times relevant to this Complaint, a West Virginia limited liability company authorized to conduct business in the State of West Virginia, with an office address of 1016 Wal Street, Summersville, West Virginia 26651.

2. Defendant Verano WV, is, and at all times relevant hereto was, a West Virginia limited liability company conducting business in the State of West Virginia, with a principal office address, as registered with the Office of the West Virginia Secretary of State, of principle place of business 415 North Dearborn Street, 4th Floor, Chicago, Illinois 60654 and a notice of process address, as registered with the Office of the West Virginia Secretary of State, of URA Services, Inc., 109 Grafton Road, Townshend, Vermont 05353.

3. Upon information and belief, Defendant Verano Holdings is a corporation existing under the laws of the Province of British Columbia, with its principle office at 415 North Dearborn Street, 4th Floor, Chicago, Illinois 60654.

### **JURISDICTION & VENUE**

4. Jurisdiction is proper in the Circuit Court of Fayette County, West Virginia: the property subject to this dispute is located in Oak Hill, Fayette County, West Virginia and the lease was signed by the parties in Fayette County, West Virginia.

5. Pursuant to the provisions of W. Va. Code §56-1-1, venue is proper in the Circuit Court of Fayette County, West Virginia, because the events and/or omissions giving rise to the claims(s) herein occurred, and/or are continuing to occur, in Fayette County, West Virginia

6. This Court has jurisdiction of this matter, and venue is proper in this Court pursuant to W. Va. Code § 56-1-1.

### **FACTUAL BACKGROUND**

7. On May 23, 2022, New River Gorge Development and Verano WV entered into a lease agreement covering certain real property located in Oak Hill, Fayette County, West Virginia (the “**Lease**”). A copy of the Lease is attached hereto as Exhibit A and is incorporated herein by reference.

8. Verano Holdings is named as the guarantor in the Lease.

9. The Lease is a valid, legally cognizable and recognized contractual agreement between Verano WV and New River Gorge Development and was duly executed by the parties.

10. By email dated June 29, 2022, Verano WV notified New River Gorge Development of its termination of the Lease via email (the “**Notice of Termination**”). A copy of the Notice of Termination is attached hereto as Exhibit B.



11. The Notice of Termination states that Verano shifted its “West Virginia strategy to only open four stores at this time . . . Ownership wouldn’t budge so [Verano is] left with no choice but to terminate our lease agreement.”

12. Verano WV unilaterally elected to terminate the Lease and Verano WV’s stated reason for termination of the Lease is without basis under the Lease.

13. As of the date of termination of the Lease by Verano WV, New River Gorge Development was not in default of the Lease.

14. Verano WV, without cause, wrongfully terminated its contractual agreement and New River Gorge Development has been damaged as a result of said breach.

15. New River Gorge incurred significant expenses in connection with developing the Property for Verano WV including, but not limited to, design and engineering costs, and legal costs in connection with negotiating the Lease for which New River Gorge Development has not been compensated.

16. The Defendants have also failed to compensate New River Gorge Development for monies which remain due and owing to New River Gorge Development under the Lease.

### **BREACH OF CONTRACT**

17. Plaintiff realleges each and every allegation set out in paragraphs 1 through 16 of this Complaint as if set out fully herein.

18. Pursuant to Paragraph 16 of the Lease, New River Gorge Development Company may at its election, “exercise any one or more of the following options, the exercise of any of which shall not be deemed to preclude the exercise of any others herein listed or otherwise provided by statute or general law at the same time or in subsequent times or actions”:

(1) Terminate Tenant's right to possession under the Lease and re-enter and retake possession of the Premises and relet or attempt to relet the Premises on behalf of Tenant at such rent and under such terms and conditions as Landlord may deem best under the circumstances for the purpose of reducing Tenant's liability. Landlord shall not be deemed to have thereby accepted a surrender of the Premises, and Tenant shall remain liable for all Rent, Additional Rent, or other sums due under this Lease and for all damages suffered by Landlord because of Tenant's breach of any of the covenants of the Lease.

(2) Declare this Lease to be terminated, ended and null and void, and re-enter upon and take possession of the Premises whereupon all right, title and interest of Tenant in the Premises shall end.

(3) Accelerate and declare the entire remaining unpaid Rent and Additional Rent for the balance of this Lease to be immediately due and payable forthwith, and the present value of same for the balance of the Term of the Lease, net of amounts actually collected by Landlord, shall become immediately due thereupon and be paid to Landlord. Such present value shall be determined utilizing a discount rate of six percent (6%); and Landlord may, at once, take legal action to recover and collect the same.

19. Verano Holdings unconditionally guaranteed the punctual performance of all of Verano WV's obligations and covenants under Lease pursuant to Section 36 of the Lease.

20. As the guarantor and/or surety of Verano WV's obligations under the Lease, Verano Holdings is responsible and liable for Verano's payment obligations arising out of the Lease.

21. Demand for payment due and owing entire remaining unpaid Rent and Additional Rent for the balance of the Lease has been made upon the Defendants and the Defendants, through its employee(s), representative(s) and/or corporate officer(s), has refused to pay to New River Gorge Development the money which is and which remains due and owing to New River Gorge Development under and pursuant to the Lease.

22. New River Gorge Development is also entitled to interest on any amounts of unpaid rent as per the terms of the Lease.

23. Further, New River Gorge Development is entitled to its reasonable costs and attorneys' fees as the non-breaching party in accordance with the terms of the Lease.

24. Any and all condition(s) precedent to payment to New River Gorge Development of the money which it is owed have been satisfied.

25. New River Gorge Development has been damaged as a result of the material breach of the Lease is continuing to presently suffer damages.

**WHEREFORE**, having fully set forth its Complaint against Defendants, Plaintiff New River Gorge Development demands judgment against the Defendants and prays that this Honorable Court enter an Order awarding Plaintiff, New River Gorge Development:

a. judgment against the Defendants in an amount deemed sufficient to fairly and fully compensate New River Gorge Development for Verano WV's material breach of contract; and,

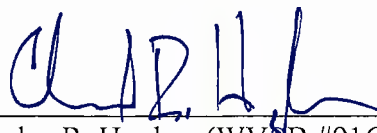
b. judgment against Defendants so as to compensate New River Gorge Development for the costs associated with the development of the Property, the Lease, and the filing and pursuit of this action, including pre-judgment and post-judgment interest, any and all other applicable fees and costs, and,

c. any and all such other and further relief as this Honorable Court may deem proper, rewardable and just.

**THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.**

**NEW RIVER GORGE DEVELOPMENT  
COMPANY, LLC**

By Counsel

  
\_\_\_\_\_  
Charles R. Hughes (WV SB #9167)  
BOWLES RICE LLP  
Post Office Box 1386  
Charleston, West Virginia 25325-1386  
(304)-347-1100  
chughes@bowlesrice.com

# EXHIBIT A

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of May 23, 2022 (the "Effective Date"), by and between **NEW RIVER GORGE DEVELOPMENT COMPANY, LLC**, a West Virginia limited liability company ("Landlord"), and **VERANO WV, LLC**, a West Virginia limited liability company ("Tenant"), and **VERANO HOLDINGS CORP.**, a British Columbia corporation ("Guarantor").

WITNESSETH:

1. **DEFINITIONS**

Landlord: NEW RIVER GORGE DEVELOPMENT COMPANY, LLC  
Address: 1016 Wal Street  
Summersville, West Virginia 26651  
Email: casey@bowlinginsurancewv.com  
Phone: 304.677.1678

(i) Tenant: VERANO WV, LLC  
Address: c/o Verano Holdings Corp.  
415 North Dearborn Street, 4th Floor  
Chicago, Illinois 60654  
Email: Chris.Fotopoulos@verano.com  
Phone: 312.819.4859

(ii) Guarantor: VERANO HOLDINGS CORP.  
Address: 415 North Dearborn Street, 4th Floor  
Chicago, Illinois 60654  
Email: Chris.Fotopoulos@verano.com  
Phone: 312.819.4859

(c) "**Premises**": The Premises consists of a to be constructed approximately 3,500 square foot freestanding single story building (the "**Building**") on an approximately 0.72 acre parcel of land that is part of that certain real property situated on Mall Road in Oak Hill, West Virginia, being assessed in Oak Hill Corp. District as Tax Map 2, parcel 10 as shown on the West Virginia GIS Map attached hereto as Exhibit "A", and incorporated herein by reference (the "**Property**"). The Property shall be subdivided by Landlord, and the Building shall be located on the 0.72 acre parcel of land to the east of Mall Road and to the west of U. S. Route 19 on the northeast part of the Property as shown as Lot 1 on the Preliminary Subdivision Exhibit for New River Gorge Development attached hereto as Exhibit "B", and incorporated herein by reference (the "**Verano Parcel**"). The Verano Parcel shall be approximately 0.72 acres and in addition to the Building, shall also include a parking lot totaling at least 38 parking spaces, inclusive of 2 handicap parking spaces, as well as all other easements and rights of record related thereto. Upon final approval of Landlord's subdivision of the Property to create the Verano Parcel, Exhibit "A" attached hereto shall be replaced, in its entirety, with a legal description that only includes the Verano Parcel. For the avoidance of doubt and to ensure clarity, the Premises shall only include the Verano Parcel with the Building on it once the Property is subdivided by Landlord and the Premises shall not include the entire Property.

(d) "**Permitted Use**": The operation of a cannabis retail dispensary, whether medical, adult use or otherwise, in accordance with any and all applicable laws, rules, or regulations approved or adopted by the State of West Virginia, Department of Public Health ("**WVDPH**"), or other State of West Virginia, County of Fayette or City of Oak Hill governmental body, which laws may be approved or adopted from time to time. The Permitted Use includes, but is not limited to, the sale to retail customers of cannabis flower, cannabis oil and cannabis infused products, together with such other legal uses permitted under West Virginia law, which may be necessary or ancillary related thereto,

including, but not limited to, general office uses, sale of cannabis paraphernalia and sale of soft goods and other related retail and general office purposes.

- (e) **"Rent Commencement Date"**: the earlier of One-Hundred Eighty (180) days after the Delivery Date (as defined below), or Tenant's opening of business to the public in the Premises.
- (f) **"Term"**: The initial term of the Lease (the **"Term"**) shall commence on the Delivery Date, and expire on the last day of the month in which the Tenth (10th) year anniversary of the Rent Commencement Date falls. Provided no default under this Lease has occurred and is continuing beyond any applicable notice and/or cure period, Tenant shall have the right and option to extend the Lease as set forth in Section 22. Within thirty (30) days after the Delivery Date, Landlord and Tenant shall execute a Rent Commencement Letter in substantially the same form as Exhibit "C".
- (g) **"Base Rent"**:

The following sums per month as defined in Section 3:

Lease Year	Annual Base Rent	Monthly Base Rent
Year 1	\$109,375.00	\$9,114.58
Year 2	\$111,562.50	\$9,296.88
Year 3	\$113,793.75	\$9,482.81
Year 4	\$116,069.63	\$9,672.47
Year 5	\$118,391.02	\$9,865.92
Year 6	\$120,758.84	\$10,063.24
Year 7	\$123,174.01	\$10,264.50
Year 8	\$125,637.49	\$10,469.79
Year 9	\$128,150.24	\$10,679.19
Year 10	\$130,713.25	\$10,892.77
<b>If 1<sup>st</sup> Extension Option exercised:</b>		
Year 11	\$133,327.51	\$11,110.63
Year 12	\$135,994.06	\$11,332.84
Year 13	\$138,713.95	\$11,559.50
Year 14	\$141,488.23	\$11,790.69
Year 15	\$144,317.99	\$12,026.50
<b>If 2<sup>nd</sup> Extension Option exercised:</b>		
Year 16	\$147,204.35	\$12,267.03
Year 17	\$150,148.44	\$12,512.37
Year 18	\$153,151.41	\$12,762.62
Year 19	\$156,214.43	\$13,017.87
Year 20	\$159,338.72	\$13,278.23

All Base Rent shall be payable in monthly installments in advance, on the first (1st) day of each calendar month included within the Term of this Lease. If the Rent Commencement Date is not the first day of a month, then the Base Rent and Additional Rent (as defined herein) shall be prorated on a per diem basis, and the full amount of Rent (as defined herein) due shall be paid on the first day of the next succeeding month. Rent for any

fraction of a month at the commencement or expiration of the term, or in which the rate thereof changes pursuant hereto, shall be prorated on a per diem basis.

All Rent payable by Tenant to Landlord under this Lease, plus any other costs incurred by Landlord in connection with the Premises, shall be paid to Landlord, without deduction or offset, except as provided herein, at its address specified in Section 1(a) above or at such place Landlord may hereafter specify by written notice to Tenant.

2. **GRANT OF PREMISES AND TERM.** Landlord, in consideration of the Rent hereinafter to be paid and of the covenants, conditions and agreements to be kept and performed by Tenant, hereby leases, lets and demises to Tenant, and Tenant hereby leases from Landlord for the Term, the Premises, the Building and the Property as described above in Section 1(c).

3. **RENT.** Tenant covenants and agrees to pay to Landlord, without deduction or offset, Base Rent and Additional Rent (as such term is defined below, and together are referred to herein as "**Rent**") for the Premises as described above in Section 1(g). Tenant's rent obligations shall commence on the Rent Commencement Date. Rent due for any partial month of occupancy at the beginning or end of the Term of the lease will be prorated, such proration to be based on the actual number of days in the partial month. Subsequent monthly Rent shall then be due on the first day of each calendar month commencing on the first date of each succeeding month during the full Term of this Lease together with any applicable sales and use tax or other such tax on rentals or other payments hereunder as may be applicable from time to time at the then current rate.

"**Additional Rent**" shall mean and be deemed to include all sums other than Base Rent payable by Tenant to Landlord under this Lease, including, without limitation, payments with respect to Real Estate Taxes, payments with respect to late fees, overtime or excess service charges, damages, and interest and other costs related to Tenant's failure to perform any of its obligations under this Lease. Whenever under the terms of this Lease any sum of money is required to be paid by Tenant in addition to the Rent herein reserved, whether or not such sum is herein described as "Additional Rent" or a provision is made for the collection of said sum as "Additional Rent", said sum shall nevertheless, at Landlord's option, if not paid when due, be deemed Additional Rent, and shall be collectible as such with the next installment of Rent thereafter falling due hereunder. Landlord agrees to perform a reconciliation of all Landlord's insurance costs, or other Additional Rent collected by Landlord pursuant to this Lease once each calendar year, and to provide Tenant with a statement showing such reconciliation. In the event a reconciliation contemplated by this paragraph demonstrates that Tenant owes additional amounts such amounts shall be due and payable to Landlord on the date that Tenant's next monthly payment is due. In the event such reconciliation demonstrates that Tenant is entitled to a reimbursement of any amount, Landlord shall pay Tenant such amount within thirty (30) days of the reconciliation.

In the event Tenant objects to such reconciliation within 90 days after its receipt, Tenant shall have the right after reasonable notice and at reasonable times to inspect Landlord's insurance and Additional Rent records with respect to the Premises at Landlord's accounting office. If, after such inspection, Tenant still disputes the annual reconciliation, upon Tenant's written request therefor, a certification as to the proper amount of Landlord's insurance costs, or other Additional Rent collected by Landlord pursuant to this Lease shall be made by an independent certified public accountant mutually agreed to by Landlord and Tenant. If Landlord and Tenant cannot mutually agree to an independent certified public accountant, then the parties agree that Landlord shall choose an independent certified public accountant to conduct the certification as to the proper amount of Tenant's proportionate share of Landlord's insurance costs, or other Additional Rent collected by Landlord pursuant to this Lease for the period in question. Such certification shall be final and conclusive as to all parties. If the certification reflects that Tenant has overpaid or underpaid, the procedures stated in the prior paragraph will apply. Tenant and Landlord agree to split the cost of such certification and the investigation with respect thereto.

**Triple Net Lease.** This is a triple net lease. In addition to payment of all rents, taxes, assessments and governmental impositions, as herein provided, Tenant shall pay all operating costs and expenses, it being the intent of this Lease that Landlord is to receive the Rent above specified as net and

clear of all costs and charges arising from or relating to the Premises and Tenant is to pay all charges and expenses of every nature that may be imposed or incurred through the operation of the Premises and its appurtenances in any manner during the Term of this Lease, subject to any carveouts as detailed herein.

4. **USE OF PREMISES.** The Premises shall be used by Tenant for the Permitted Use as described above in Section 1(d), and for no other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall not do or permit to be done in or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any state or local law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated, or which is prohibited by any restrictions or covenants of record restricting the use of the Premises, or in any standard form of fire insurance policy or will in any way increase the existing rate of or affect any fire or other insurance upon the Premises or any of its contents, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of its contents. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose (as reasonably determined by Landlord), and Landlord agrees that it has not and will not, at any time during the Term of the Lease, determine that the Permitted Use constitutes such an improper, immoral, unlawful or objectionable purpose; nor shall Tenant cause, maintain, or permit any nuisance (as reasonably determined by Landlord or by law) in or about the Premises or commit or suffer to be committed any waste in, on, or about the Premises. Landlord acknowledges that the Permitted Use is currently illegal under federal law, but agrees not to prevent Tenant from using the Premises for the Permitted Use.

Without limiting the generality of this Section 4, Tenant specifically acknowledges and agrees to conform to all laws, statutes, orders, rules, regulations and ordinances promulgated by the State of West Virginia regarding the use of the Premises as a marijuana dispensary in all material respects during the Term. Tenant shall at all times comply with all laws, rules, and regulations promulgated by the WVDPH related to the operation of a marijuana dispensary, as well as other state and local laws that apply to the Property, except to the extent that the failure would reasonably be expected to have a material adverse effect on Tenant's business or its ability to comply with its obligations under this Lease. Without limiting the generality of the foregoing, each party shall at all times, at its own expense, obtain and maintain all licenses, certifications, credentials, authorizations, and permits necessary to conduct that portion of its business relating to the exercise of its rights and the performance of its obligations under this Lease.

Tenant shall use commercially reasonable efforts to complete Tenant's Work and open for business to the public for the Permitted Use not later than the Rent Commencement Date. Thereafter, Tenant covenants and agrees to operate its business on the Premises diligently and continuously throughout the Term at all commercially reasonable times and days that Tenant customarily is open for business in the State of West Virginia. Tenant will operate its business on the Premises in a first class and reputable manner. Tenant shall keep the Premises well lighted and in a safe, neat, and clean condition throughout the Term. Tenant agrees to take such actions as may be commercially reasonably necessary or as Landlord may commercially reasonably require for the prevention or remedy of any nuisance to or impact on the improvements related to the Permitted Use.

5. **ASSIGNMENT AND SUBLETTING.** Tenant may not assign the right of occupancy under this Lease, or any other interest therein, or sublet of the Premises, or any portion thereof without the express prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Tenant shall have the right to sublet or assign its interests under this Lease to a Permitted Transferee (as defined below) without obtaining the consent of Landlord. Any sale or change of all of the assets of Tenant, or the beneficial or record ownership of and/or power to vote the majority of the outstanding capital stock/equity interests of Tenant in, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, shall be deemed to be an assignment which shall require the prior written consent of Landlord. Tenant absolutely shall have no right of assignment or subletting if it is then in default of this Lease beyond the expiration of applicable cure periods.



In the event Tenant subleases or assigns any of its rights or interests under this Lease to any party, including any Permitted Transferee, such sub-tenant or assignee must agree in writing to assume and perform all of Tenant's obligations under this Lease. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments or sublettings.

In the event of the transfer and assignment by Landlord of its interest in this Lease and/or sale of the Premises containing the Premises, either of which it may do at its sole option, Landlord shall thereby be released from any further obligations hereunder and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. The provisions of Section 29 hereafter dealing with "Notices" shall be amended to provide the correct names and addresses of the assignee or sublessee.

Notwithstanding anything to the contrary contained herein, and provided Tenant is not then in default hereof beyond the expiration of any applicable cure periods, Tenant shall have the right to assign this Lease, or sublease the Premises, or any part thereof, without charge and without Landlord's consent being required, to (i) any entity which is a wholly-owned subsidiary of Tenant or any of Tenant's principals, so long as such entity shall remain a wholly-owned subsidiary of Tenant or any of Tenant's principals; or (ii) the purchaser of all or substantially all of the assets or stock or membership interests of Tenant; (iii) the new or surviving corporation in the event of the merger or consolidation of Tenant; (iv) any entity succeeding to the business operated by Tenant at the Premises; (v) an entity which is an affiliate of Tenant or any entity wholly-owned or controlled by any of the principals of Tenant; or (vi) the entity to which the entire Verano concept and substantially all of the related Verano facilities are sold (collectively, the "**Permitted Transferees**"); provided, however, in connection with such an assignment to any Permitted Transferee, i. the Permitted Transferee has, either alone or combined with such Permitted Transferee's parent or new guarantor, a Net Worth in excess of Two Million Dollars (\$2,000,000.00) ii. the Permitted Transferee expressly assumes all the obligations of Tenant under the Lease; and iii. Landlord is given thirty (30) days' prior written notice of Tenant's intent to assign the Lease to a Permitted Transferee under this subparagraph along with any supporting documentation detailing the Permitted Transferee qualifies as a Permitted Transferee and that the Permitted Transferee has agreed to assume all the obligations of Tenant. "**Net Worth**" for a person or entity shall mean the difference between (i) the consolidated total assets of such person or entity (excluding goodwill and intangibles), and (ii) the consolidated total liabilities of such person or entity, in each case as reflected on such person's or entity's consolidated balance sheet prepared according to generally accepted accounting principles in the United States of America as in effect from time to time or prepared according to other commercially reasonable accounting principles accepted around the World such as International Financial Reporting Standards (IFRS).

6. **TRANSFER BY LANDLORD.** If Landlord assigns, sells or conveys its interest in the Lease or Premises, Landlord shall be released from any future liability upon any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, and Tenant agrees to look solely to the successor in interest of Landlord. This Lease shall not be affected by such sale and Tenant agrees to attorn to the purchaser or assignee.

7. **ACCESS TO PREMISES.** Tenant shall have access to the Premises twenty-four (24) hours a day, seven (7) days per week. Landlord or its authorized agent or agents shall have the right to enter upon the Premises upon two (2) days written notice to Tenant at all reasonable times (subject to West Virginia cannabis law restrictions) for the purposes of inspecting the same, preventing waste, making such repairs as Landlord may consider necessary (but without any obligation to do so), and showing the Premises to prospective tenants (to prospective tenants only in the last six (6) months of the Term), mortgagees and/or purchasers. Notwithstanding anything to the contrary in the foregoing, if in Landlord's reasonable discretion there is an emergency situation in the Premises, Landlord may enter the Premises upon no notice or shorter notice than two (2) days as the emergency situation may require.

Anything to the contrary contained herein notwithstanding, and in view of the governmental restrictions on the control of Tenant's inventory, Landlord agrees that it will not access the Premises at any time during the Term of this Lease without permitting Tenant's representative to accompany Landlord for the duration of all such access, subject to an emergency situation; provided, however, if approval from the State or any other Governmental Authorities (as hereinafter defined) is necessary in order for Landlord or any other Landlord's representative to access or inspect the Premises, Tenant shall use commercially reasonable efforts to obtain such approval for such visit, appraisal, assessment or inspection.

8. Intentionally Deleted.

9. **REPAIRS AND MAINTENANCE.** Subject to provisions in this Lease relating to damage, destruction or condemnation of the Premises, Tenant shall, at Tenant's sole cost and expense, other than specific carveouts below, be responsible for all repairs, replacements and maintenance of the Premises, including without limitation, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, interior walls, the interior and exterior finish surface of exterior walls, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Tenant, in keeping the Premises in good order, condition, and repair, shall exercise and perform good maintenance practices. Tenant'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. Tenant shall, during the Term of this Lease, keep the exterior appearance of the Premises in the same condition as on the Rent Commencement Date (consistent with the exterior appearance of other similar facilities of comparable age, size and materials in the vicinity), including, when necessary, the exterior repair of the Premises. Tenant is responsible for removal of snow and ice, if any, from the sidewalks adjacent to the Premises. Tenant shall, at Tenant's sole cost and expense, obtain quarterly maintenance agreements for the heating, ventilation, and air conditioning ("HVAC") for, and with a contractor specializing and experienced in the inspection, maintenance, and service of the HVAC and, upon Landlord's written request, will provide a copy of same to Landlord. If Tenant should fail to make timely repairs, replacements or maintenance, Landlord may elect to do so upon thirty (30) days' written notice to Tenant (or if such repair, replacement, or maintenance cannot be reasonably cured within such thirty (30) days written notice, then within sixty (60) days after such written notice, provided that Tenant has promptly commenced such cure and diligently pursues same to completion) or immediately in the event of an emergency. In the event Landlord performs such duties on behalf of Tenant, any sums so paid by Landlord shall be deemed to be Additional Rent owing by Tenant to Landlord and due and payable within thirty (30) days of written notice from Landlord to Tenant as Additional Rent.

Tenant will not injure the Premises, but will maintain the Premises in a clean, attractive condition and in good and lawful repair and condition. Upon termination of this Lease, Tenant will surrender and deliver the Premises to Landlord in substantially the same condition in which they existed at the Rent Commencement Date, excepting only ordinary wear and tear damage arising from any cause not required to be repaired by Tenant, and alterations arising out of construction activities approved by the Landlord pursuant to Section 11 below. All damage caused by Tenant, reasonable wear and tear excepted, shall be repaired and the Premises restored such that on or before the last day of the Lease, the Premises shall be delivered up broom swept free of Tenant's product, furniture, and equipment in good and rentable condition with all restoration work completed, and any excess materials and construction equipment used in the restoration process removed from the Premises. Tenant's obligation hereunder shall survive the expiration or sooner termination of the Lease. This Section 9 shall not apply in the case of damage or destruction by fire or other casualty which is covered by insurance (as to which Section 13 hereof shall apply) or damage resulting from an Eminent Domain taking (as to which Section 14 hereof shall apply).

Notwithstanding anything to the contrary in the foregoing, Landlord shall be responsible at its sole cost and expense, without a right of reimbursement from Tenant, for all repairs and replacements to the foundation, exterior structural walls, and roof (and roof membrane) of the Premises. If Landlord fails to

perform Landlord's obligations under this Section 9, Tenant may choose, after ten (10) days' prior written notice to Landlord (except in the case of an emergency, in which case no such notice shall be required), to perform such obligations on Landlord's behalf, and put the Premises in good order, condition, and repair at Landlord's expense. If Tenant performs Landlord's obligations, Landlord shall reimburse Tenant within thirty (30) days of written notice for the cost thereof, by either, at Tenant's option, sending a check to Tenant, or crediting Tenant towards future Rent.

Tenant shall have a duty to keep in good condition and maintain the HVAC with a quarterly maintenance contract, at Tenant's sole cost and expense, procure and maintain a contract, with copies to Landlord, in customary form and substance, for and with a contractor specializing and experienced in the inspection, maintenance, and service of the HVAC for the Premises. However, Landlord reserves the right, upon notice to Tenant, to procure and maintain the contract for the HVAC systems, and if Landlord so elects, Tenant shall reimburse Landlord upon thirty (30) days' written notice to Tenant for the cost thereof as Additional Rent. Notwithstanding anything in this Lease to the contrary, Landlord shall be responsible for the replacement of any portion of the HVAC system which requires replacement within the first five (5) years of Tenant's occupancy of the Premises, at Landlord's sole cost and expense with no right of reimbursement from Tenant.

Except as provided above, it is intended by the Parties hereto that Landlord has no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of Tenant. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease. Landlord shall use commercially reasonable efforts to cause any necessary repairs to be made promptly; provided, however, that Landlord shall have no liability whatsoever for any delays in causing such repairs to be made, including, without limitation, any liability for injury to or loss of Tenant's business, nor shall any delays entitle Tenant to any abatement of Rent or damages, or be deemed an eviction of Tenant in whole or in part.

10. **RECIPROCAL EASEMENT AND LICENSE AGREEMENT.** Tenant acknowledges, understands and agrees that the Property is subject to that certain "Shopping Center Reciprocal Easement and License Agreement", dated August 19, 1993, and of record in the Office of the County Clerk of Fayette County, West Virginia in Deed Book 505, page 802, a copy of which, along with all its amendments, is attached hereto as Exhibit "E" (as further amended by two amendments, the "**Easement Agreement**"). The Property is part of the Developer Parcel (as defined and described in the Easement Agreement).

Tenant further acknowledges, understands and agrees that – for the purposes of the Easement Agreement – it shall reimburse Landlord, as Additional Rent, for Tenant's pro rata share of any costs incurred by Landlord as an "Owner" (as such term is defined in the Easement Agreement) under the Easement Agreement, but only to the extent (i) of the proportionate share of the Premises in relation to the usable area of the Property and to the Developer Parcel, and (ii) such terms may actually apply to the Premises and to Landlord as the "Responsible Owner" as set out in the Easement Agreement. For the avoidance of doubt and to ensure clarity, as of the Effective Date, Tenant's pro rata share is estimated to be 18.75%, being its share of the usable area of all subdivided parcels located within the Property, which, as of the Effective Date, is estimated to consist of a total of 3.84 acres, inclusive of the Premises (0.72 acres / 3.84 acres), as depicted on Exhibit B-1 hereto. Additionally, to ensure clarity, Tenant, its employees and patrons shall have access to the Premises via the private road called Mall Road and shall be able to use it pursuant to the Easement Agreement as well as Landlord has to maintain Mall Road pursuant to the Easement Agreement, which maintenance costs Landlord can charge Tenant via Additional Rent pursuant to the foregoing percentages.

11. **UTILITIES.** Tenant shall maintain in its name, where possible, separate utility accounts with the applicable providers and shall pay for, all water, gas, heat, light, power, telephone, telecommunications, and other utilities and services supplied to the Premises and be solely responsible for all costs and expenses related thereto. Tenant shall promptly pay all charges for electricity, water,



gas, telephone service, sewerage service, trash/refuse collection, cable, and any other utilities furnished to the Premises and shall promptly pay any deposits and maintenance charges therefor. If any utility services are not separately metered to Tenant, Tenant shall pay a commercially reasonable proportion of all charges jointly metered based upon percentage of square footage of the Premises. Additionally, if Landlord would like to submeter any utilities at the Premises, such submeter cost shall be at Landlord's sole cost and expense without a right of reimbursement from Tenant.

12. **DELIVERY DATE; CONSTRUCTION; TENANT IMPROVEMENTS.**

(a) The date Landlord delivers possession of the Premises to Tenant is referred to herein as the "**Delivery Date**".

(b) Tenant's taking possession of the Premises on the Delivery Date shall be conclusive evidence of Tenant's acceptance thereof and that Tenant has accepted the Premises "AS IS," and that the Premises are in good order and satisfactory condition. Tenant acknowledges that: (a) neither Landlord nor Landlord's agents or employees have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose; (b) except as expressly provided herein this Lease and Exhibit D, neither Landlord nor its agents or employees have agreed to undertake any alterations or construct any improvements to the Premises; (c) Tenant has been advised that it should inspect the condition of the Premises, including without limitation HVAC, electrical and fire sprinkler systems and any structural or environmental matters and the present and future suitability of the Premises for Tenant's intended use; and (d) Tenant has been advised, excepting anything relating to Landlord's Work, to satisfy itself regarding the Premises' compliance with the Americans with Disabilities Act and all other applicable requirements, including all municipal, county, state and federal laws, ordinances, rules and regulations, orders, permits and zoning, the requirements of any applicable fire insurance underwriter or rating bureau, and any covenants, restrictions or other matters of record relating to the Tenant, the Premises or the use thereof (collectively, "**Laws**"). Tenant further acknowledges, by taking possession of the Premises, that as of the Delivery Date: (e) Tenant has been given access to the Premises and has made such investigation as it deems necessary with reference to the matters set forth in this Section, is satisfied with reference thereto, and assumes all responsibility therefor as the same relate to Tenant's occupancy of the Premises and/or the terms of this Lease; and (f) neither Landlord nor any of its agents or employees has made any oral or written representations or warranties regarding said matters or the condition of the Premises other than as expressly set forth in this Lease. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, IT IS UNDERSTOOD AND AGREED THAT THE PREMISES ARE BEING LEASED "AS IS", WITHOUT ANY REPRESENTATION OR IMPLIED WARRANTY OF LANDLORD. LANDLORD HAS NOT MADE ANY REPRESENTATIONS OR IMPLIED WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER WITH RESPECT TO THE PREMISES, ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR IMPLIED WARRANTY REGARDING SUITABILITY, HABITABILITY, QUALITY OF CONSTRUCTION, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ENVIRONMENTAL CONDITION OR COMPLIANCE WITH ENVIRONMENTAL OR OTHER APPLICABLE LAWS, INCOME TO BE DERIVED THEREFROM OR EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ITS OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME UNLESS THE SAME ARE CONTAINED HEREIN OR MADE A PART HEREOF.

(c) The Delivery Date shall be five (5) business days after Tenant confirms in writing that "**Landlord's Work**", as detailed on Exhibit D attached hereto, is completed to its commercially reasonable satisfaction. Within sixty (60) days after the Effective Date, Landlord shall provide Tenant with plans and specifications (inclusive of a colored elevation plan) for Landlord's Work ("**Landlord's Plans**"). Tenant shall have ten (10) days thereafter receipt of Landlord's Plans to review, and approve or deny Landlord's Plans. If Tenant reasonably denies Landlord's Plans, Landlord shall have ten (10) days thereafter such denial to revise Landlord's Plans to comply with Tenant's comments and resubmit to Tenant for approval. This process shall continue until Tenant reasonably approves Landlord's Plans. After Tenant has reasonably approved Landlord's Plans, Landlord shall endeavor to begin Landlord's

Work, and complete Landlord's Work as soon as commercially reasonably possible thereafter Tenant's approval of Landlord's Plans.

(i) If Landlord does not complete Landlord's Work within Two Hundred Seventy (270) days after Tenant's approval of Landlord's Plans, Tenant, at its option, shall have the on-going option to terminate this Lease upon written notice to Landlord anytime after Two Hundred Seventy (270) days and before Landlord sends the Completion Notice (as defined below).

(ii) If at anytime within Two Hundred Seventy (270) days after Tenant's approval of Landlord's Plans, Landlord, or Landlord's contractor, encounters conditions on or in the Property that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Landlord's Plans, or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Landlord Plans, Landlord shall promptly provide written notice to Tenant of such conditions. Within ten (10) business days upon Tenant's receipt of such written notice from Landlord, Tenant shall then have the option to, at its expense and at no cost to Landlord, pay for any increase in costs resulting from those conditions as provided herein. In the event Tenant either does not exercise its option hereunder, or does not otherwise provide written notice to Landlord of its option within ten (10) business days, Landlord shall have the option to terminate this Lease upon written notice to Tenant.

If Tenant or Landlord exercises its option to terminate this Lease pursuant to Section 12(c)(i) or (ii), neither party shall owe any further duty to the other under this Lease, except Landlord shall refund any monies paid from Tenant to Landlord.

Once Landlord believes that Landlord's Work is complete pursuant to Landlord's Plans, Landlord shall notice Tenant in writing of its completion (the "**Completion Notice**") and Tenant shall then be given a reasonable amount of time thereafter receipt of the Completion Notice to walk the Premises and determine if Landlord's Work has been constructed pursuant to Landlord's Plans. After receipt of the Completion Notice, Tenant and its agents shall have the right to enter and inspect the Premises to ensure that it is in good condition and satisfies Landlord's Plans. If after receipt of the Completion Notice and inspection of the Premises, Tenant is not reasonably satisfied Landlord's Work meets Landlord's Plans, Tenant may, at its option, request Landlord to correct whatever it reasonably deems necessary to correct, or choose to take possession and correct Landlord's Work itself at Landlord's cost, which cost shall be reimbursed to Tenant within thirty (30) days of submission of an invoice to Landlord. Once Tenant confirms in writing that Landlord's Work is completed to its commercially reasonable satisfaction, Landlord shall deliver the Premises to Tenant on the Delivery Date.

(d) Tenant shall cause its architect and/or engineer to prepare "**Tenant's Plans**" for the initial improvements to be constructed on the Premises by Tenant for Landlord's review and commercially reasonable approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Tenant's Plans are not approved or rejected within ten (10) business days of delivery, Tenant's Plans shall be deemed approved. Landlord's review of Tenant's plans and specifications are solely for Landlord's convenience, and Landlord's approval of such plans and specifications shall not constitute evidence of compliance of such plans with any applicable local or state governmental code or regulation governing the same or the adequacy thereof for Tenant's proposed use of the Premises. Once the Tenant's Plans are approved ("**Tenant's Approved Plans**"), the improvements to be constructed in accordance therewith are referred to herein as the "**Initial Improvements**". Following the preparation and approval of Tenant's Approved Plans, Tenant, at its sole cost and expense, subject to the Allowance (defined below), shall construct the Initial Improvements and all finish work including installation of trade fixtures and furnishings, security equipment and décor, required from time to time to make the Premises suitable for Tenant's occupancy and operation of its business therein, in a good and workmanlike manner substantially in accordance with Tenant's Approved Plans ("**Tenant's Work**"). Notwithstanding anything to the contrary in this Section 12, Tenant shall be responsible at Tenant's sole cost and expense for all work, construction and installation in the Premises (including but not limited to all Tenant's Work and all fixtures, furniture, equipment and other office installations), subject to the Allowance.

(e) Landlord shall provide Tenant with an allowance of \$50,000.00 (the "**Allowance**"). The Allowance may be used for the Initial Improvements, which may include hard and soft costs associated with the Initial Improvements to the Premises, and may include furniture, fixtures, equipment and any audio-visual needed in the Premises. Tenant shall be paid the Allowance upon completion of the Initial Improvements and the provision to Landlord of such commercially reasonable documentation as Landlord shall commercially reasonably request as evidence that Tenant has paid its contractors in full and such contractors have waived their rights to any lien on the Premises in connection therewith. Landlord shall pay the Allowance to Tenant within ten (10) business days after its receipt of the requested supporting documentation.

(f) Except for non-structural improvements and alterations in the aggregate amount of \$50,000.00 or less, Tenant shall not make any other installations, alterations or additions in or to the Premises ("**Other Improvements**") without securing the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Any Other Improvements shall be made at Tenant's sole cost and expense. At the time Landlord's consent to any Other Improvements is requested, Tenant shall submit to Landlord plans and specifications for such Other Improvements. In preparation of plans for any Other Improvements, Tenant shall utilize the services of a licensed architect or general contractor reasonably acceptable to Landlord. Tenant shall provide Landlord with copies of all of Tenant's plans for construction of the Other Improvements. None of Tenant's work shall be commenced unless and until such items have been submitted to and approved by Landlord. Additionally, Landlord may condition its approval of any such Other Improvements upon Tenant providing satisfactory evidence or assurance of Tenant's ability to pay for such Other Improvements (including, without limitation, a payment or performance bond). Landlord's consent to or approval of any Other Improvements (or the plans therefor) shall not constitute a representation or warranty by Landlord, nor Landlord's acceptance, that the same comply with sound architectural and engineering practices or with all applicable Laws (as defined herein), and Tenant shall be solely responsible for ensuring all such compliance. It shall be Tenant's sole responsibility to obtain any zoning changes or variances, use permits, building permits, and any other authorizations or approvals necessary for any Other Improvements Tenant is permitted hereunder to make to the Premises. Notwithstanding the foregoing, Landlord shall, subject to the terms hereof and otherwise at no cost or expense to Landlord, reasonably and timely cooperate with Tenant in the process of obtaining necessary and requisite permits and approvals to facilitate timely completion of any Other Improvements. Tenant shall apply for such building permit and other permits, authorizations, and approvals as promptly as practicable after the Rent Commencement Date and shall thereafter diligently pursue the issuance thereof.

(g) All construction work, alterations, and improvements performed by Tenant shall be done in a workmanlike manner with first-class materials and workmanship, and in compliance with all laws and with the provisions of this Lease. In the event any work, alterations, or improvements constructed by Tenant do not so comply, Tenant shall, at Tenant's sole cost and expense, make such changes as are necessary for compliance. No construction work, alterations, or improvements shall be commenced until Tenant has obtained all required permits and authorizations. Before performing the Tenant's Work, Tenant shall deposit with Landlord certificates of insurance as required by this Lease, and comply with other commercially reasonable requirements which may be set forth herein or commercially reasonably imposed by Landlord. Tenant shall undertake all of Tenant's Work in a good and workmanlike manner and shall keep the Property, Building and Premises free and clear of any statutory materialman's liens or mechanic's liens. During the term of any construction, the insurance required by this Lease shall be endorsed, at Tenant's expense, to insure against the hazards of construction (including, if applicable, occupation during construction) pursuant to a "builder's risk" clause satisfactory to Landlord in its sole discretion. All entries on the Premises and all work done by or on behalf of Tenant shall be at Tenant's sole risk. Upon completion of any such work, alterations, or improvements Tenant shall deliver to Landlord final lien waivers from all contractors who performed such work, alterations, or improvements.

13. **INDEMNITY**. Tenant shall indemnify, protect, defend, and hold harmless the Premises, Landlord and Mortgagee, and their respective members, managers, employees, agents, contractors, partners, from and against any and all claims, actions, demands, suits, proceedings, orders, losses



(including loss of rents), damages, liens, judgments, penalties, reasonable out-of-pocket attorneys' and consultants' fees, expenses, and/or liabilities (collectively, "**Claims**") arising out of, involving, or in connection with: (a) the use and/or occupancy of the Premises by Tenant; (b) the conduct of Tenant's business on the Premises; (c) any act, omission, fault, or neglect on or about the Premises of Tenant, its agents, employees, contractors, subtenants, licensees, visitors, or invitees; or (d) any breach or default under, or violation of, any terms hereof by Tenant, except to the extent such Claim is the result of Landlord's gross negligence or willful misconduct. If any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant shall upon notice defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall reasonably cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be defended or indemnified. This Section shall survive the expiration or sooner termination of this Lease. Notwithstanding anything to the contrary in the foregoing, Landlord and Mortgagee, and their respective members, managers, employees, agents, contractors, partners, acknowledge that Tenant's Permitted Use is federally illegal and that Tenant will not be required to indemnify any Claims relating solely to the federal illegality of Tenant's Permitted Use, Landlord's only recourse being to terminate this Lease.

Except as expressly provided to the contrary in this Lease, Landlord and Landlord's agents and employees shall not be liable for, and Tenant waives all claims for, damage to property sustained by Tenant, employees, agents, or contractors, or any other person claiming by, through, or under Tenant, resulting from any accident in or upon the Premises, including, but not limited to, claims for damage resulting from: (a) any equipment or appurtenances becoming out of repair; (b) injury done or occasioned by wind, water, or other act of God; (c) any defect in, or failure of, plumbing, heating or air-conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings, or walks; (d) broken glass; (e) the backing-up of any sewer pipe or downspout; (f) the bursting, leaking, or running of any tank, tub, sink, sprinkler system, water closet, water pipe, drain, or any other pipe or tank in, upon, or about the Premises; (g) the escape of steam or hot water; (h) water, snow, or ice being upon, or coming through the roof, skylights, doors, stairs, walks, or any other place upon, or near the Premises, or otherwise; (i) the falling of any fixtures, plaster, or stucco; (j) fire or other casualty; (k) any act, omission, or negligence of other tenants of adjoining or contiguous buildings, or of adjacent or contiguous property. Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any tenant or other occupant of the Premises, or by any owner or occupant of adjoining or contiguous property. Landlord shall not be liable for any injury or damage to person or property resulting in whole or in part from the criminal activities of others. To the extent not covered by normal fire and extended coverage insurance, Tenant agrees to pay for all damage to the Premises caused by Tenant, or any of its employees, agents, or contractors.

Notwithstanding anything to the contrary in the foregoing, Tenant shall not be liable for, and Landlord will indemnify, defend and save Tenant harmless of and from, all fines, suits, damages, claims, demands, losses and actions (including attorney's fees) for any injury to person or damage to or loss of property on or about the Premises caused by the negligence or misconduct or breach of this Lease by Landlord, its employees, subtenants, licensees, invitees or by any other person entering the Premises under express or implied invitation of Landlord.

14. **DAMAGE BY FIRE OR THE ELEMENTS.** In the event that fifty percent (50.0%) or more of the Premises should be destroyed by fire or other casualty or in the event that the Premises should be so damaged that rebuilding or repairs cannot be completed within one hundred eighty (180) days after the date of such damage, Tenant may, to the extent it is not responsible for such destruction or damage, at its option, by written notice to the Tenant given not more than thirty (30) days after the date of such fire or other casualty, terminate this Lease. In such event, the Rent shall be abated during the unexpired portion of this Lease effective with the date of such fire or other casualty.

In the event the Premises should be damaged by fire, tornado, wind, hail or other casualty covered by Tenant's Insurance (as defined in Section 30 below), but only to such extent that rebuilding or repairs can be completed within one hundred eighty (180) days after the date of such damage, or if the damage should be more serious but Tenant elects not to terminate this Lease in accordance with the preceding paragraph, then Tenant shall, within the later of: (i) one hundred eighty

(180) days after the date of such damage; or (ii) one hundred eighty (180) days after such election, commence to rebuild or repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition in which the Premises were immediately prior to the happening of the casualty. Notwithstanding the foregoing, if such rebuilding or repairs are not completed within one hundred eighty (180) days after the date of such damage despite Tenant proceeding with reasonable diligence to restore the Premises to substantially the same condition in which the Premises were immediately prior to the happening of the casualty, Tenant may, at its option, by written notice to Landlord given not more than thirty (30) days after the date which is one hundred eighty (180) days after the date of such fire or other casualty, terminate this Lease, in which event Tenant shall assign to Landlord, as applicable, any and all insurance proceeds as a condition to any such termination. Notwithstanding anything to the contrary in the foregoing, in the event any mortgagee, or the holder of any deed of trust, security agreement or mortgage on the Premises, should require that the insurance proceeds be used to retire the mortgage debt, Tenant shall have no obligation to rebuild, and this Lease shall terminate upon notice to Tenant. To ensure clarity and for the avoidance of doubt, Tenant shall not have to rebuild the Premises if it does not have access to insurance proceeds for the entire cost of the reconstruction of the Premises.

15. **EMINENT DOMAIN.** If the whole or a material portion of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or private purchase in lieu thereof, then at Landlord's option, but not otherwise, the term hereby demised, and all rights of Tenant hereunder shall immediately cease and terminate, and the Rent shall be adjusted as of the date of such termination. Tenant shall be entitled to no part of the award made for such condemnation (or other taking) or the purchase price thereof. Nevertheless, anything to the contrary notwithstanding, likewise at Landlord's option, but not otherwise, if the Premises are unaffected by such condemnation (or other taking), then this Lease and each and every one of its provisions shall continue in full force and effect. If this Lease should be terminated under the provisions of this paragraph, Rent shall be payable up to the date that possession is taken by the taking authority, and Landlord shall refund to Tenant any prepaid unaccrued Rent less any sum or amount then owed by Tenant to Landlord.

Notwithstanding the foregoing, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss which Tenant might incur in suffering an early termination of this Lease and having to relocate and remove Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment or having its personal property taken.

If there shall be a partial taking, and Landlord and Tenant mutually agree the remainder of the Premises is suffice for Tenant's Permitted Use, this Lease shall remain in full force and effect, but the Rent shall be prorated on a square footage basis and Landlord shall pay to demise the Premises to ensure it is enclosed with four (4) walls.

16. **DEFAULT.** Landlord, at its election, may exercise any one of the options referred to below upon the happening, or at any time after the happening, of any one or more of the following events which shall be deemed to be a default by Tenant hereunder, to wit:

Tenant's failure to pay any Rent, Base Rent, Additional Rent, or any other sums payable hereunder when due for a period of five (5) business days after written notice from Landlord. If, however, Landlord gives such a written notice of failure to pay Rent, Base Rent, Additional Rent or other amount due hereunder three (3) times in any twelve (12) month period, any additional failure to pay any Rent, Base Rent, Additional Rent or other amount due hereunder when due within that twelve (12) month period shall be considered a Default, without the requirement of any written notice by Landlord;

Tenant's failure to observe, keep or perform any one of the other non-monetary terms, covenants, agreements or conditions of this Lease for a period of thirty (30) days after written notice from Landlord (or if such performance of non-monetary terms,



covenants, agreements or conditions cannot be reasonably cured within thirty (30) days, then within ninety (90) days after such notice, provided that Tenant has promptly commenced such cure and diligently pursues same to completion);

The bankruptcy of Tenant;

Tenant making an assignment for the benefit of creditors;

A receiver or trustee being appointed for Tenant with regard to a substantial portion of Tenant's assets;

Tenant's voluntary petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, arrangement or insolvency law;

Tenant's interest under this Lease being modified or altered by any unauthorized assignment or subletting or by operation of law; or

Any of the goods or chattels of Tenant used in, or incident to, the operation of Tenant's business in the Premises being seized, sequestered, or impounded by virtue of, or under authority of, any legal proceeding.

In the event of any of the foregoing happenings, Landlord, at its election, may exercise any one or more of the following options, the exercise of any of which shall not be deemed to preclude the exercise of any others herein listed or otherwise provided by statute or general law at the same time or in subsequent times or actions:

Terminate Tenant's right to possession under the Lease and re-enter and retake possession of the Premises and relet or attempt to relet the Premises on behalf of Tenant at such rent and under such terms and conditions as Landlord may deem best under the circumstances for the purpose of reducing Tenant's liability. Landlord shall not be deemed to have thereby accepted a surrender of the Premises, and Tenant shall remain liable for all Rent, Additional Rent, or other sums due under this Lease and for all damages suffered by Landlord because of Tenant's breach of any of the covenants of the Lease.

Declare this Lease to be terminated, ended and null and void, and re-enter upon and take possession of the Premises whereupon all right, title and interest of Tenant in the Premises shall end.

Accelerate and declare the entire remaining unpaid Rent and Additional Rent for the balance of this Lease to be immediately due and payable forthwith, and the present value of same for the balance of the Term of the Lease, net of amounts actually collected by Landlord, shall become immediately due thereupon and be paid to Landlord. Such present value shall be determined utilizing a discount rate of six percent (6%); and Landlord may, at once, take legal action to recover and collect the same.

No re-entry or retaking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention be given to Tenant, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent or Additional Rent or other monies due to Landlord hereunder or of any damages accruing to Landlord by reason of the violations of any of the terms, provisions and covenants herein contained. Landlord's acceptance of Rent or Additional Rent or other monies following any event of default hereunder shall not be construed as a Landlord's waiver of such event of default. No forbearance by Landlord of action upon any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions, and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or

construed to constitute a waiver of any other violation or default. Legal actions to recover for loss or damage that Landlord may suffer by reason of termination of this Lease or the deficiency from any reletting as provided for above shall include the deficiency from any reletting as provided for above shall include the expense of repossession or reletting and any repairs or remodeling undertaken by Landlord following repossession.

The parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

The parties hereto agree that any and all suits for any and every breach of this Lease shall be instituted and maintained only in those courts of competent jurisdiction in the county or municipality in which the Premises is located. In the event it shall become necessary for either party at any time to institute an action related to this Lease, or any of the provisions hereof, or any of its statutory or common law rights, then the prevailing party shall be entitled to reimbursement of all reasonable out-of-pocket court costs and attorney's fees it has incurred.

In the event Tenant fails to pay to Landlord within five (5) days after the same is due any installment of rental or other sum to be paid to Landlord which may become due hereunder, Landlord will incur additional expenses in an amount not readily ascertainable and which has not been elsewhere provided for between Landlord and Tenant. If Tenant should fail to pay to Landlord within five (5) days after the same is due any installment of rental or other sum to be paid hereunder, Tenant will pay Landlord on demand a late charge of five percent (5%) of the total monthly payment thereof. Further, any sums not paid when due will bear interest at the lesser of (i) eight percent (8%) annually or (ii) the highest rate allowed by law. Failure to pay such late charge upon demand therefor shall be an event of default hereunder. Provision for such late charge shall be in addition to all other rights and remedies available to Landlord hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Landlord's remedies in any manner.

Time is of the essence of this Lease, and in case Tenant shall fail to perform the covenants on its part to be performed at the time fixed for the performance of such respective covenants by the provisions of this Lease, Landlord may declare Tenant to be in default of such Lease.

Notwithstanding anything to the contrary in the foregoing or this Lease, Landlord acknowledges and agrees that it shall in no event be entitled to any Landlord's lien under this Lease, whether statutory or otherwise, or any other lien rights or similar interest in or to, any of the Tenant's personal property containing cannabis or any derivative of or from cannabis, including, without limitation, any equipment, inventory, good or other item. Landlord further acknowledges and agrees that the Lease shall contain an express waiver by Landlord of any such right, interest or lien in and to such personal property of Tenant. Similarly, Landlord expressly acknowledges and agrees that no license or permit obtained by Tenant may serve as security for any obligation of Tenant to Landlord, that Landlord shall in no event assert or claim an interest in any license or permit of Tenant, and no such license or permit may be encumbered, seized or realized upon by Landlord or otherwise available as a remedy for any default, breach or other failure to perform under this Lease.

17. **SUBORDINATION; TENANT ATTORNMENT.** In consideration of the execution of this Lease by Landlord, Tenant accepts this Lease subject to any deeds of conveyance and any deeds of trust, master leases, security interest or mortgages and all renewals, modifications, extensions, consolidations and replacements of the foregoing which might now or hereafter constitute a lien upon the Premises or improvements therein or thereon or upon the Premises and to zoning ordinances and other Premises and fire ordinances and governmental regulations relating to the use of the property. Although no instrument or act on the part of Tenant shall be necessary to effectuate such subordination, Tenant shall, nevertheless, for the purpose of confirmation at any time hereafter, within fifteen (15) business days after request in a commercially reasonable form(s) prescribed by Landlord, either reasonably negotiate and comment, or execute, any instruments, estoppel certificates, release or other documents that may be

commercially reasonably requested or required by any purchaser or any holder of any superior interest for the purposes of subjecting and subordinating this Lease to such deed of conveyance or to the lien of any such deed of trust, master lease, security interest, mortgage, or superior interest.

Notwithstanding the foregoing, (a) at all times when Tenant is not in default under this Lease beyond the expiration of any applicable cure periods, Tenant's possession of the Premises shall not be disturbed as a result of any foreclosure or deed in lieu of foreclosure; and (b) Landlord shall use commercially reasonable efforts, at Landlord's cost, to secure, within forty five (45) days after the Rent Commencement Date of this Lease, or after the date of any subsequent refinancing by Landlord of the Premises during the Term of this Lease, from each mortgagee and/or ground or underlying lessor under any mortgage or ground or underlying lease, currently encumbering title to the property upon which the Premises are located, or hereafter executed by Landlord, a non-disturbance agreement reasonably satisfactory to Tenant which non-disturbance agreement at a minimum must provide that notwithstanding such subordination, Tenant's possession of the Premises shall not be disturbed so long as Tenant shall not be in default, after expiration of all applicable cure periods, in the payment of any sum or in the performance of any duty or obligation on Tenant's part to be paid or performed under this Lease.

If any Mortgagee or any successor or assignee thereof or any purchaser at a foreclosure sale or by deed in lieu of foreclosure succeeds to the rights of Landlord under this Lease, then upon their request, Tenant shall attorn to such Mortgagee, successor, assignee, or purchaser as Tenant's landlord under this Lease. Tenant shall, within thirty (30) days following request by such Mortgagee, successor, or assignee, either sign or commercially reasonably negotiate, acknowledge, and deliver any instrument that such Mortgagee, successor, assignee, or purchaser commercially reasonably requests to evidence the attornment. If any Mortgagee requires any modifications of this Lease, then, provided such modifications do not materially adversely affect Tenant, Tenant shall, within thirty (30) days following Tenant's receipt of a request, either sign or commercially reasonably negotiate, acknowledge, and deliver to Landlord a lease amendment prepared by Landlord that shall make the required modifications.

18. **QUIET ENJOYMENT.** Provided Tenant has performed all of the terms, covenants, agreements and conditions of this Lease, including the payment of Rent and all other sums due hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term as may be extended.

19. **CONSTRUCTION LIENS.** Tenant is prohibited from making, and agrees not to make, alterations in the Premises except as approved by Landlord pursuant to Section 11 above, and Tenant will not permit any construction lien or liens to be placed upon the Premises or improvements thereon during the term hereof caused by or resulting from any work performed, materials furnished or obligation incurred by or at the request of Tenant, and in the case of the filing of any such lien, Tenant will promptly pay same. If default in payment thereof shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, Landlord shall have the right and privilege, at Landlord's option, of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including reasonable out-of-pocket expenses, interest, and attorney fees, shall be so much additional indebtedness hereunder due from Tenant to Landlord and shall be repaid to Landlord within thirty (30) days of receiving a bill therefor, together with interest at the lesser of i. eight percent (8%) annually or ii. the highest rate allowed by law until repaid, and if not so paid within thirty (30) days of the rendition of such bill shall constitute default under Section 15 hereof. Nothing in this Lease shall be deemed to be, or construed in any way as constituting, the consent or request of Landlord, expressed or implied, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, alteration or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials which might in any way give rise to the right to file any lien against Landlord's interest in the Premises. Tenant shall notify any contractor making improvements to the Premises of the provisions regarding liens contained in this Lease.

20. **ENVIRONMENTAL WARRANTY AND INDEMNIFICATION AGREEMENT.**

This Section of the Lease shall govern any and all issues regarding Hazardous Materials.

(a) Definitions:

The terms Hazardous Substance, Release and Transportation shall have the same meanings and definitions as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. §6901 et seq., and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, provided, however that as used herein the term Hazardous Substance shall also include: (a) any Pollutant or Contaminant as those terms are defined by CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or as otherwise identified by, the Resource Conservation and Recovery Act as Amended, 42 U.S.C. §6901 et seq., or regulations promulgated thereunder (collectively "RCRA") and any other applicable state or local law or regulation; (c) crude oil, petroleum, and fractions or distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; (e) any infectious waste or medical waste as defined by any applicable federal or state laws or regulations; and (f) any fungal or other biologic material which may present a health risk. The terms Treatment and Disposal shall have the same meanings and definitions as set forth in RCRA.

"Environmental Laws" means all applicable federal, state, and local laws, regulations, and ordinances relating to public health and safety and protection of the environment, including but not limited to those statutes, laws, regulation and ordinances identified in this Section 19 all as amended and modified from time to time.

"Contamination" means the presence of Hazardous Substance in concentrations which require remediation under applicable Environmental Laws.

(b) Representations, Warranties and Covenants.

(i) Tenant represents, warrants and covenants to Landlord that during Tenant's possession of the Premises:

Tenant will obtain and comply with all governmental permits required by the Environmental Laws relating to the Permitted Use at the Premises.

Tenant will not permit to occur any release or disposal of Hazardous Substances, on, in, under, or from the Premises. Tenant, however, will be permitted to generate, manufacture, store, treat and transport, in compliance with all Environmental Laws, those Hazardous Substances necessary in Tenant's business. Tenant agrees to provide Landlord with Material Safety and Data Sheets for all Hazardous Substances used in Tenant's business.

Tenant will notify Landlord in writing of all written complaints, claims, citations, demands, inquiries, reports, notices or spills or releases of Hazardous Substances relating to compliance with Environmental Laws within five (5) business days of Tenant's receipt thereof. To the extent possible, Tenant will promptly cure and resolve any such actions and proceedings that result from any Contamination caused in whole or in part by any of the Tenant Parties. Tenant will keep the Premises free of any lien imposed pursuant to any Environmental Law for any Contamination caused in whole or in part by any of the Tenant Parties.

If Tenant fails to undertake to cure a violation of any of the foregoing warranties, representations, and covenants within a reasonable time, Landlord may cause the removal of any Contamination from the Premises in accordance with Environmental Laws. As to Contamination caused in whole or in part by any of the Tenant Parties, the reasonable costs of any remediation of said Contamination required by Environmental Laws will be Additional Rent under this Lease, and such reasonable costs will become due and payable on demand by Landlord, but only if Tenant fails to undertake to comply with this paragraph within a reasonable time.

Tenant agrees to indemnify, defend, and hold Landlord, its affiliates, and their respective shareholders, directors, officers, directors, employees, and agents free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including reasonable out-of-pocket attorneys' fees and investigation costs, whether defending or prosecuting any litigation, claim or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against the foregoing in connection with or arising from or out of:

- (A) any Contamination which has been caused by Tenant, in, or under or affecting all or any portions of the Premises after the Effective Date;
- (B) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Section of the Lease by Tenant;
- (C) any violation or claim of violation by Tenant of any Environmental Law that Tenant does not diligently undertake to resolve within a commercially reasonable time.

Tenant's indemnification obligations shall survive the expiration or termination of this Lease for a period one (1) year.

(ii) As of the Effective Date Landlord represents, warrants and covenants to Tenant that:

- (A) to the best of its knowledge, without the benefit of inspection and analysis, there is no Contamination on the Premises;
- (B) to the best of its knowledge, without the benefit of inspection and analysis, there is no existence of an amount of Hazardous Substance on the Premises that Landlord thinks could reasonably, after the Effective Date, lead to a Contamination on the Premises;
- (C) Landlord has not permitted and will not permit to occur any release or disposal of Hazardous Substances, on, in, under, or from the Premises during the Term;
- (D) Landlord will notify Tenant in writing of all written complaints, claims, citations, demands, inquiries, reports, notices or spills or releases of Hazardous Substances relating to compliance with Environmental Laws within five (5) business days of Landlord's receipt thereof; and
- (E) Landlord agrees to remove or cause the removal of, at its sole cost and expense without a right of reimbursement from Tenant, Hazardous Substances or Contamination not generated by Tenant on the Premises, or not allowed upon the Premises by Tenant, including, but not limited to, anything existing before the Effective Date or anything brought to the Premises after the Effective Date so long as Tenant did not cause it, and agrees to indemnify, defend, and hold Tenant, its affiliates, and its respective shareholders, directors, officers, directors, employees, and agents free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' fees and investigation costs, whether defending or prosecuting any litigation, claim or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Tenant in connection with or arising from the existence of such Hazardous Substances or Contamination on the Premises, or out of a breach of any of the foregoing representations, warrants and covenants.

Landlord's indemnification obligations stated above shall survive the expiration or earlier termination of this Lease.



21. **FORCE MAJEURE.** Neither party shall be required to perform any covenant or obligation in this Lease, nor be liable in damages to the other party, so long as the performance or nonperformance of the covenant or obligation is delayed, caused, or prevented by an act of God, or any conditions or circumstances outside such party's reasonable control (collectively, "**Force Majeure**"); provided however, that the foregoing shall not apply to or excuse the payment of Rent or any other sum of money owing or to be paid pursuant to this Lease. Circumstances beyond a party's control may include: strikes; lockouts; sit-downs; unanticipated governmental actions; civil commotions; unusual transportation delays; the unanticipated or unusual inability to obtain services, labor, or materials or reasonable substitutes therefor; riots; floods; pandemics or epidemics; washouts; explosions; earthquakes; fire; storms; extreme weather (including wet grounds or inclement weather which prevents construction); acts of the public enemy; wars; Insurrections; and/or any other unanticipated cause not reasonably within the control of Landlord or Tenant, as the case may be, or which by the exercise of due diligence Landlord or Tenant, as the case may be, is unable, wholly, or in part, to prevent or overcome. Notwithstanding anything to the contrary contained in this Lease, if this Lease specifies a period of time for performance of an obligation of either party, that time period shall be extended by the period of any delay, prevention, or stoppage in such party's performance caused by a Force Majeure.

22. **SEVERABILITY.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease, then and in the event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby.

23. **OPTION TO RENEW.** Provided no default under this Lease has occurred and is continuing beyond any applicable notice and/or cure period at the time notice is given or at the expiration of the Term, as the same may be extended, Tenant shall have the right and option, exercisable by giving written notice thereof to Landlord at least seven (7) months but not more than ten (10) months prior to the expiration of the Term, as the same may be extended, to extend the Lease Term for two (2) renewal periods of five (5) years each (each a "**Renewal Term**"); provided, however, in the event Tenant fails to provide Landlord timely notice of its exercise of any Renewal Term, Landlord agrees to provide to Tenant written notice of such failure to extend at least six (6) months prior to the expiration of the Term, after which Tenant shall have an additional five (5) business days to elect to extend the Lease Term pursuant to a Renewal Term (for the avoidance of doubt and to ensure clarity, if Landlord gives notice before seven (7) months prior to the expiration of the Term, Tenant shall always have until seven (7) months prior to decide, but after seven (7) months prior, Tenant will have five (5) business days after Landlord's notice if Landlord's notice comes after seven (7) months prior). If Tenant fails to notify Landlord in writing of its intent to extend the Term within such five (5) business day period, said option to extend the Lease Term pursuant to a Renewal Term shall lapse and be of no further force or effect. The Rent of each Renewal Term shall be governed by Section 1(g).

24. **HOLDING OVER.** The failure of Tenant to surrender the Premises on the date provided herein for the expiration of the Term of this Lease (or at the time the Lease may be terminated otherwise by Landlord), and the subsequent holding over by Tenant, with or without the consent of Landlord, shall result in the creation of a tenancy at will at 125% of the Rent payable at the time of the date provided herein for the expiration of this Lease or at the time the Lease may be terminated otherwise by Landlord (which Landlord and Tenant agree is a fair and reasonable sum under such circumstances and is not a penalty). This provision does not give Tenant any right to hold over at the expiration of the Term of this Lease, and shall not be deemed, the parties agree, to be a renewal of the Lease term, either by operation of law or otherwise.

25. **RENT A SEPARATE COVENANT.** Tenant shall not for any reason withhold or reduce Tenant's required payments of Rent and other charges provided in this Lease, it being expressly understood and agreed by the parties that the payment of Rent and Additional Rent is a covenant by Tenant that is independent of the other covenants of the parties hereunder.

26. **JOINT AND SEVERAL LIABILITY.** If two or more individuals, corporations, partnerships, or other business associations (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other business

association to pay Rent and perform all other obligations hereunder shall be deemed to be joint and several. In like manner, if Tenant named in this Lease shall be a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several.

27. **ENTITY TENANCY.** The undersigned officer of Tenant hereby warrants and certifies to Landlord that Tenant is a limited liability company in good standing and is authorized to do business in the State of West Virginia. The undersigned officer of Tenant hereby further warrants and certifies to Landlord that he or she, as such officer, is authorized and empowered to bind Tenant to the terms of this Lease by his or her signature thereto. Landlord, before it accepts and delivers this Lease, may require Tenant to supply it with a certified copy of the authorizing resolution authorizing the execution and performance of this Lease by Tenant.

28. **BROKERAGE COMMISSION.** Tenant represents and warrants to Landlord that neither it nor its officers nor agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiations or making of this Lease, and Tenant agrees to indemnify and hold harmless Landlord from any and all claims, liabilities, costs and expenses (including attorneys' fee) incurred as a result of any inaccuracy in the foregoing representation and warranty. Landlord represents and warrants to Tenant that neither it nor its officers nor agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiation or making of this Lease, and Landlord agrees to indemnify and hold harmless Tenant from any and all claims, liabilities, costs and expenses (including attorneys' fees) incurred as a result of any inaccuracy in the foregoing representation and warranty. No commission shall be due to any broker or finder in relation to this Lease.

29. **AMENDMENTS.** This Lease contains the entire agreement between the parties hereto and may not be altered, changed or amended, except by written instrument signed by both parties hereto. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord and addressed to Tenant, nor shall any custom or practice which may grow up between the parties in the administration of the provisions hereof be construed to waive or lessen the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof. The terms, provisions, covenants, and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest, assigns, and legal representatives, except as otherwise herein expressly provided.

30. **NOTICES.** Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered or given when (a) actually received if in person, (b) signed for or "refused" as indicated on the postal service return receipt, or (c) confirmation of receipt of electronic mail either over the phone or via a response electronic mail. Delivery may be by personal delivery or by United States mail, postage prepaid, certified or registered mail, or by receipted overnight mail addressed to the parties hereto at the respective addresses set out opposite their names below, or by electronic mail to the electronic mail address set out below, or at such other address as they may hereafter specify by written notice delivered in accordance herewith:

Landlord	NEW RIVER GORGE DEVELOPMENT COMPANY, LLC
Address:	1016 Wal Street Summersville, West Virginia 26651 Email: casey@bowlinginsurancewv.com Phone: (304) 677-1678

With a copy to:	Charles R. Hughes, Esq. BOWLES RICE LLP 600 Quarrier Street Charleston, West Virginia 25301 Email: chughes@bowlesrice.com Phone: (304) 347-1100
-----------------	--

Tenant: VERANO WV, LLC  
Address: c/o Verano Holdings Corp.  
415 North Dearborn Street, 4th Floor  
Chicago, Illinois 60654  
Email: Chris@verano.com  
Phone: 312.819.4859

Guarantor: VERANO HOLDINGS CORP.  
Address: 415 North Dearborn Street, 4th Floor  
Chicago, Illinois 60654  
Email: Chris.Fotopoulos@verano.com  
Phone: 312.819.4859

31. **INSURANCE.**

Tenant shall carry and maintain in force during the Term of the Lease after the completion of Tenant's Initial Improvements (during Tenant's Initial Improvements, Tenant shall carry and maintain "Builder's Risk" insurance pursuant to Section 12), at its expense, the following insurance on forms and through underwriters acceptable to Landlord in its commercially reasonable discretion:

(a) Commercial General Liability Insurance on an "occurrence" basis for the benefit of Tenant and Landlord as additional insured against claims for "bodily injury" liability including without limitation bodily injury, death or property damage liability with combined single limits of not less than Five Million Dollars (\$5,000,000.00) aggregate, such insurance may be furnished under a "primary" policy and/or an "umbrella" policy, provided that it is primary insurance and not excess over or contributory with any insurance in force for Landlord. Such insurance on the Premises shall name Landlord as an additional insured; and

(b) Commercial property insurance covering all causes of loss insurable under a "Causes of Loss - Special Form" policy insuring the entire Premises, including Tenant's Work and, trade fixtures and signs, located at the Premises whether owned by Landlord or Tenant in amounts and coverages not less than those reasonably required by Landlord's Mortgagee from time to time or, if there is no Mortgagee, then for 100% replacement cost value without Tenant being deemed a co-insurer under the terms of the applicable policy, and against such additional periods and for such other commercially reasonable amounts as may from time to time be required by Landlord without deduction for physical depreciation thereof; and

(c) Business interruption or force rent insurance on a Special Form basis in an amount not less than the sum of (i) the base rent then payable under this Lease for a period of one year, (ii) an amount equal to all Real Estate Taxes and Insurance payable under this Lease for a like period, and (iii) an amount equal to all sales taxes payable under this Lease for a like period. Such insurance on the Premises shall name Landlord as loss payee (or upon Landlord's request, Landlord's mortgagee); and

(d) Workers' Compensation insurance in the amount required by law and employer's liability coverage of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and covering all persons employed by Tenant on the Premises; and

(e) If the Premises are located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, flood insurance which shall be in an amount equal to the maximum insurable value of the Premises (excluding Tenant's improvements and property within the Premises) under the federal flood insurance program; provided, however, that flood insurance will not be required on any portion of the Premises that is not located in a special flood hazard area. Such insurance on the Premises shall name Landlord as loss payee (or upon Landlord's request, Landlord's mortgagee). For the



avoidance of doubt and to ensure clarity, as of the Effective Date, the entire Premises is not in a special flood hazard area as it is in Zone X; and

- (f) Such other insurance as may be reasonably required by Landlord or its lenders in connection with the Premises or Tenant's activities in the Premises because such other insurance is standard for similar properties in the market where the Premises is located, provided that such other insurance can be obtained by Tenant in the marketplace at commercially reasonable rates.

Tenant shall deliver policies of such Tenant Insurance or certificates evidencing, to Landlord's reasonable satisfaction, present insurance in the forms identified above, to Landlord on or before the date that is five (5) days prior to the Delivery Date, and thereafter promptly upon Landlord's request; and, in the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates timely, Landlord may, at its option and after five (5) days' written notice to Tenant, procure same for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Rent within thirty (30) days after delivery to Tenant of bills therefor. Such policies or certificates shall provide that Tenant Insurance shall not terminate, expire or be altered in any way except upon thirty (30) days prior written notice to Landlord from the insurer. Nothing contained in this Section shall in any way limit the extent of Tenant's liability under any of the other provisions of this Lease.

All insurance policies shall be written with insurance companies having a policyholder rating of at least "A-" and a financial size category of at least "Class XI" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies, and authorized to engage in the business of insurance in the State in which the Premises are located. The hazard and property insurance policy and the commercial general liability insurance policy shall each name Landlord, Landlord's directors, officers, partners, agents, employees, and managing agent, and Landlord's lender as additional insureds and loss payees to the extent reasonably insurable and identified in writing to Tenant, and shall provide that it may not be terminated or modified in a way that would materially diminish coverages afforded Landlord under this Lease without thirty (30) days' advance notice to Landlord. The minimum limits of insurance specified in this Section 30 shall in no way limit or diminish Tenant's liability under this Lease.

If Tenant should fail to pay any Tenant Insurance when due, required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects pay such Tenant Insurance. In the event Landlord pays any such Tenant Insurance on behalf of Tenant, any sums so paid by Landlord shall be deemed to be so much Additional Rent owing by Tenant to Landlord and due and payable upon demand as Additional Rent plus interest at the lesser of i. eight percent (8%) annually or ii. the highest rate allowed by law, from the date of payment by Landlord until repaid by Tenant. In the event Landlord is required to so pay for any such Tenant Insurance on behalf of Tenant, Tenant acknowledges and agrees that Landlord shall not have any personal liability to Tenant of any kind of nature with respect to the Tenant Insurance or any matters covered thereby, including, without limitation, with respect to (i) the amounts of any such coverages or endorsements issued or available for issuance in connection therewith, and/or (ii) any of Tenant's fixtures or property of any kind within the Premises or otherwise.

The insurance policies required pursuant to this Section 31 are referred to collectively as the "**Tenant Insurance**". Tenant shall be solely responsible for any deductibles payable under the Tenant Insurance in the event of any insured loss covered by such Tenant Insurance.

**32. MUTUAL WAIVER OF SUBROGATION.** Landlord and Tenant, up to the amounts collected under their respective insurance policies, each waive any and all rights that either party may have against the other, and release each other from all liability or responsibility to the other or to anyone claiming through or under them (by way of subrogation or otherwise), for any loss or damage to the premises, any alterations or fixtures, or any trade fixtures, inventory or other personal property of any kind or nature whatsoever, which loss or damage is caused by or results from a risk insured against under any insurance policy, in force at the time, carried by the party suffering the loss or damage, notwithstanding that such loss or damage was caused by the fault or negligence of such other party, its agents, servants,

employees, representatives, contractors, licensees, invitees, or guests. Both Landlord and Tenant shall obtain a waiver of subrogation from their respective insurance company. Any increased premium cost incurred by Landlord or Tenant by reason of such waiver shall be paid by Tenant.

33. **TAXES.** Tenant shall be liable for and pay all sales tax on rent, taxes levied against personal property and trade fixtures placed by Tenant in the Premises, and all real estate taxes levied against the Premises.

(a) **Real Estate Tax Payments.** During each year of the Term of this Lease, so long as Landlord timely provides Tenant with the real estate tax bills for the Premises, Tenant shall pay directly to the taxing authority, and provide Landlord with written evidence of the same promptly upon Landlord's written request therefor, all taxes, assessments and special assessments, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind or nature whatsoever, including without limitation, municipal, school, county, open space taxes and business improvement and special improvement district assessments, levied, assessed or imposed at any time by any Authority (collectively, the "**Real Estate Taxes**") upon or against the Premises and/or any part thereof, and any rights or interests appurtenant thereto (hereinafter collectively referred to as the "**Taxable Property**") which will be due and payable for that particular year.

(b) Should any alteration or improvement performed by or for Tenant during the Term cause an increase in one or more Real Estate Taxes, Tenant shall pay to Landlord the full cost of all Real Estate Taxes resulting from such increase in assessment. If, due to a future change in the method of taxation or in the taxing authority, a franchise, license, income, transit, profit or other tax, fee, or governmental imposition, however designated, shall be levied, assessed, or imposed against Landlord, the Taxable Property (or any part thereof) or the rent or profit therefrom in lieu of, in addition to, or as a substitute for, all or any part of the Real Estate Taxes, then such franchise, license, income, transit, profit, or other tax, fee, or governmental imposition shall be deemed to be included within the definition of Real Estate Taxes for the purposes hereof. Real Estate Taxes shall be determined without reference to any abatement or exemption from or credit against Real Estate Taxes applicable to all or part of the Taxable Property. Notwithstanding the foregoing, Real Estate Taxes shall not include any general income tax, franchise tax, estate, or gift tax that is of general application rather than imposed solely on owners of real property, or any mortgage, recording, stamp, or transfer taxes payable in connection with the mortgaging, encumbering, transfer, sale or lease of all or part of the Taxable Property or of any beneficial interest in Landlord, or any portion thereof or interest therein.

(c) **Tenant's Right to Contest Tax.** Tenant shall have the right to contest the amount or validity, in whole or in part, of any Real Estate Taxes by appropriate proceedings diligently conducted in good faith, but only after payment of such Real Estate Taxes, unless such payment would operate as a bar to such contest or other provisions of law specifically permit Tenant to initiate and pursue such contest without making such payment, in which event, notwithstanding the provisions of this Section 33, payment of such Real Estate Taxes shall be postponed, if and only as long as:

(i) neither the Premises nor any part thereof, would, by reason of such postponement or deferment, be, in the sole judgment of Landlord, in danger of being forfeited or lost;

(ii) such contest shall not subject Landlord or any mortgagee to the risk of any civil or criminal liability; and

(iii) such contest shall not cause Landlord to be in default under any mortgage.

Additionally, Tenant shall have the right to seek a reduction in the assessed valuation of the Premises for real property tax purposes and to prosecute any action or proceeding in connection therewith.

(d) If Tenant should fail to pay any Real Estate Taxes when due, required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects pay such Real Estate Taxes. In the event Landlord pays any such Real Estate Taxes on behalf of Tenant, any sums so paid by Landlord shall be deemed to be so much Additional Rent owing by Tenant to Landlord and due and payable upon demand as Additional Rent plus interest at the lesser of i. eight percent (8%) annually or ii. the highest rate allowed by law, from the date of payment by Landlord until repaid by Tenant.

Any payment to be made pursuant to this Section with respect to the real estate tax year in which this Lease commences or terminates shall bear the same ratio to the payment which would be required to be made for the full tax year as that part of such tax year covered by the Term of this Lease bears to a full tax year.

34. **SIGNAGE.** Tenant shall be permitted to install a logo and color signage on the building facade or grounds and/or a pylon sign provided, however, that any such signs shall be compliant with all applicable laws, regulations, codes, restrictions, covenants and permits. Any such signs shall be installed at Tenant's sole expense, and Tenant shall indemnify, defend and hold harmless Landlord from and against any damages, claims, or injuries occurring in connection with or relating to such signs. Tenant shall be solely responsible for all costs associated with the manufacture, installation and maintenance of the signs. At the expiration of this Lease, Tenant shall remove all signs, at its sole expense, and shall repair any damage resulting from the installation or removal of the signs, reasonable wear and tear excepted.

35. **PARENT GUARANTY.** In consideration of the benefits inuring to Guarantor, Guarantor hereby unconditionally guarantees the punctual performance of all of Tenant's obligations and covenants under this Lease, including without limitation, the payment of all Rent, Additional Rent, indemnification payment or any other sum(s) required to be paid. This guaranty shall remain in full force throughout the initial Term of this Lease. The provisions of this Section shall be binding upon Guarantor and Guarantor's successors and assigns and shall inure to the benefit of Landlord and its successors and assigns; provided that, the obligations of Guarantor under this Section may not be assigned by Guarantor without the written consent of Landlord, which consent may not be unreasonably conditioned, delayed or withheld.

This guaranty is a guaranty of payment and performance and not of collection. Guarantor hereby waives notice of acceptance of this guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to it of Default by Tenant under this Lease and hereby waives diligence, presentment, protest, demand and suit on the part of Landlord in the enforcement of any liability, obligation or duty guaranteed hereby. Guarantor further agrees that Landlord shall not be first or concurrently required to enforce against Tenant or any other person, any liability, obligation or duty guaranteed hereby before seeking enforcement thereof against Guarantor. The liability of Guarantor under this Section shall not be affected by the insolvency, bankruptcy (voluntary or involuntary), or reorganization of Tenant, nor by the voluntary or involuntary liquidation, sale, or other disposition of all or substantially all of the assets of Tenant.

Landlord shall be entitled to bring any suit, action or proceeding directly against Guarantor for the enforcement of any provision of this Section, and it shall not be necessary in any such suit, action or proceeding to make Tenant a party thereto. This Guaranty may not be modified or amended without the prior written consent of Landlord, Tenant and Guarantor and any attempted modification or amendment without such consent shall be void.

Guarantor represents and warrants to Landlord that (a) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this guaranty; (b) Guarantor has full power, right and authority to enter into this guaranty of Lease; and (c) the provisions of this Section do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or

order applicable to Guarantor and no consent of any party, which consent has not been obtained, is required by Guarantor to enter into and deliver this guaranty.

36. **MISCELLANEOUS.**

(a) Waiver of Jury Trial. Landlord and Tenant hereby knowingly, voluntarily, and intentionally WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN THE EVENT OF ANY PROCEEDINGS based hereon, arising out of, under or in connection with this Lease or any documents contemplated to be executed in connection herewith or any course of conduct, course of dealings, statements (whether oral or written) or actions of either party arising out of or related in any manner with the Premises (including without limitation to rescind or cancel this Lease or any claims or defenses asserting that this Lease was fraudulently induced or is otherwise void or voidable). This waiver is a material inducement for Landlord to enter into and accept this Lease.

(b) This Lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this Lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

(c) The laws of the State of West Virginia shall govern the interpretation, validity, performance and enforcement of this Lease. If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby. All legal actions relating to this Lease shall be adjudicated in the courts of the State of West Virginia having jurisdiction in the county in which the Premises is located. Landlord and Tenant irrevocably consent to the personal and subject matter jurisdiction of those courts in any legal action relating to this Lease or any guaranty of Tenant's obligations under this Lease, and neither party shall assert, by way of motion, as a defense or otherwise, any objection to any such court being the venue of such legal action or claim that such venue is an inconvenient forum for either party or any principal of either party.

(e) The terms, provisions and covenants contained in this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest, permitted assigns and legal representatives except as otherwise herein expressly provided.

(f) Landlord and Tenant agree that they will from time to time, but no more than twice a year other than for prospective lenders or purchasers of the Premises or Tenant, upon written request by the other party, either review and comment, or execute, and deliver to the requesting party within fifteen (15) business days after demand therefor an Estoppel Certificate in Landlord's or Tenant's commercially reasonable form, as the case may be, certifying (a) that this Lease is in full force and effect and has not been modified (or, if modified, setting forth all modifications); (b) stating the date to which the Rent has been paid; (c) stating whether or not, to its actual knowledge, the other party is in default of its obligations under this Lease and if so, describing the default, including any event that has occurred which, with the serving of notice or the passage of time, or both, would give rise to a default; and (d) stating to its actual knowledge, any other factual matters reasonably requested by the other party or any person designated by the other party. Any certification delivered under this Section may be relied on by the third party for whom the certification is requested but shall not, as between Landlord and Tenant, affect their respective rights.

(g) Except as otherwise expressly provided herein, time shall be of the essence with respect to the performance of each of the parties' obligations hereunder. As used herein, the term "business" or "business days" shall mean any day that national banks in the county that the Premises are in are open for business, excluding Saturdays and Sundays.

(h) Notwithstanding any provision of this Lease, or any laws to the contrary, or the execution of this Lease by Tenant, this Lease shall not bind or benefit Landlord or Tenant, unless and until this Lease is signed and delivered by both Landlord and Tenant.



(i) No act or omission of Landlord or Tenant, or their respective employees, agents, or contractors, including the delivery or acceptance of keys, shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless it is in a writing signed by Landlord.

(j) The mutual obligations of Landlord and Tenant as provided herein are the sole consideration for this Lease and no representations, promises or inducements have been made by Landlord or Tenant other than as appear in this Lease.

(k) The captions in this Lease are for reference and convenience only and do not define the scope of this Lease or the intent, meaning or interpretation of any term. All Section references in this Lease shall, unless the context otherwise specifically requires, be deemed references to the Sections of this Lease.

(l) There shall be no presumption against the drafter of this Lease as both parties were represented by separate, independent counsel of its choosing.

(m) Wherever appropriate in this Lease, words of any gender used in this Lease shall be construed to include any other gender, and words in the singular shall include the plural, and vice versa, unless the context otherwise requires.

(n) Each party agrees to keep the terms of this Lease confidential and shall not disclose same to any other person not a party hereto without the prior written consent of the other, provided that either party may disclose the terms hereof to such accountants, attorneys, managing employees, and others in privity with any such party to the extent reasonably necessary for either party's business purposes.

(o) Should the government of the United States of America or any agency, authority or instrumentality thereof, or any quasi-governmental agency (i) request that Landlord or Tenant cancel the Lease or terminate the operation of the Premises for the Permitted Use or take any action to terminate, materially interfere, or materially disrupt Tenant's use of the Premises, (ii) fine, penalize, sanction, prosecute, or convict Landlord and/or Tenant, or threaten to fine, penalize, sanction, prosecute or convict Landlord and/or Tenant, (iii) seize or threaten to seize all or any portion of the Premises, any other property or assets of Landlord, and/or any property or assets of Tenant or its affiliates, or (iv) inform, notice, commence or threaten to commence any civil action against Tenant as a result of or in connection with Tenant's operation or proposed operation of its business at the Premises for the Permitted Use, Tenant shall be entitled to terminate the Lease by providing to Landlord a written termination notice (the "**Governmental Termination Notice**"). In the event Tenant delivers a Governmental Termination Notice to Landlord, the Lease shall terminate as of the date (the "**Governmental Termination Date**") set forth in the Governmental Termination Notice, provided that the Governmental Termination Date shall not be less than thirty (30) days after the date of the Governmental Termination Notice. Upon the Governmental Termination Date, Landlord and Tenant shall no longer owe the other any duty whatsoever under this Lease other than any surviving representations and warranties specifically stated hereunder.

(p) This Lease may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts put together shall constitute but one and the same Lease. Signatures sent by PDF or DocuSign, or similar electronic means, shall be effective and binding on the parties hereto.

37. **Exhibits** The following exhibits and attachments attached hereto are incorporated herein by this reference:

Exhibit A:	West Virginia GIS Map
Exhibit B:	Preliminary Subdivision Exhibit for New River Gorge Development

Exhibit C: Rent Commencement Letter  
Exhibit D: Landlord's Work  
Exhibit D-1: Building Rendering  
Exhibit D-2: Schematic Drawing  
Exhibit E: "Shopping Center Reciprocal Easement and License Agreement", dated August 19, 1993

38. **LANDLORD'S LENDER.** Landlord agrees that as of the Rent Commencement Date, Tenant's Permitted Use of the Premises has been approved by Landlord's lender or mortgagee, if any and to the extent so required. In the event either Landlord or Landlord's lender or mortgagee, at any time during the Term of this Lease, requires Tenant to (i) alter the Premises, or (ii) alter or cease its operations, because Tenant's Permitted Use is at that time unacceptable to Landlord's lender or mortgagee, Landlord shall reimburse Tenant for the total unamortized amount of the aggregate of all costs of all of Tenant's Work. This Section shall survive the termination of this Lease.

39. **RIGHT OF FIRST REFUSAL.** Tenant will have a right of first refusal to purchase the Premises on the terms and conditions of this Section 39. If Landlord desires to sell the Premises and accept a definitive, arms-length purchase contract for the Premises (the "**Contract**"), Landlord will thereafter provide to Tenant a copy of such Contract and Tenant will have a period of fifteen (15) business days within which to notify Landlord in writing whether or not it desires to purchase the Premises on the terms set forth in the Contract. If Tenant indicates that it is interested in purchasing the Premises, then Tenant will purchase the Premises on the terms set forth in the Contract. If Tenant fails to notify Landlord in writing within such fifteen (15) business day period or if Tenant notifies Landlord it does not desire to purchase the Premises pursuant to the Contract then Tenant shall forego its right of first refusal for that Contract only, and its right of first refusal shall remain intact for any subsequent sale that may occur due to the Contract being terminated and not fulfilled, or the new Landlord entering into a subsequent sale at a later date. Additionally, if after Tenant chooses not to exercise its rights to purchase the Premises pursuant to the Contract, the purchase price in the Contract is reduced by more than five percent (5%), or if there are material changes to the Contract, Landlord shall have to re-notice Tenant the new terms of the Contract and Tenant shall again have another fifteen (15) business day period to review and respond to whether or not it wants to purchase the Premises pursuant to the new Contract.

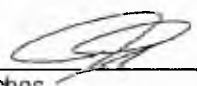
40. **ATTORNEYS' FEES.** If either party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, then the Prevailing Party (as hereafter defined) shall be entitled to reasonable out-of-pocket attorneys' fees in any such proceeding, action, or appeal thereon. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The reasonable out-of-pocket attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be in such amount as to fully reimburse all reasonable out-of-pocket attorneys' fees incurred in relation to the action or proceeding.

*[Remainder of this page intentionally left blank; signatures follow.]*

IN WITNESS WHEREOF, the undersigned authorities have hereunto executed this Lease as of the Effective Date.


**TENANT:**

**VERANO WV, LLC**, a West Virginia limited liability company

By:   
Name: George Archos  
Its: Authorized Signatory


**GUARANTOR:**

**VERANO HOLDINGS CORP.**, a British Columbia corporation

By:   
Name: George Archos  
Its: CEO

**LANDLORD:**

**NEW RIVER GORGE DEVELOPMENT COMPANY, LLC**, a West Virginia limited liability company

By:   
Name: CASEY BRUNEAU  
Its: MEMBER

# EXHIBIT B



----- Forwarded message -----

From: **Rocky Afo** <[rocky.afo@verano.com](mailto:rocky.afo@verano.com)>

Date: Wed, Jun 29, 2022 at 2:58 PM

Subject: Oak Hill strategy

To: Casey Bowling <[casey@bowlinginsurancewv.com](mailto:casey@bowlinginsurancewv.com)>

Casey,

Hope all is well with you and the family. Apologies for the slow response with our construction team and your architect but unfortunately the reason for the delay is because there's been a shift in our West Virginia strategy to only open four stores at this time. My hope was to continue to move forward with this location as it's a ground up and the likelihood of us being fully operational is likely a year from now. This would give us ample time to see how our four new locations perform. Ownership wouldn't budge so we're left with no choice but to terminate our lease agreement.

I wanted you to be aware of this prior to getting lawyers involved with hopes of you and I attempting to resolve the lease termination. Appreciate your time and feel free to reach out to me on my cell at 847-502-2394 if needed.

Best,

Rocky

**Rocky Afo**

Vice President, Real Estate Acquisitions

[rocky.afo@verano.com](mailto:rocky.afo@verano.com)    [847-502-2394](tel:847-502-2394)

[verano.com](http://verano.com)

415 N Dearborn St., 4<sup>th</sup> Floor

Chicago, IL 60654

**VERANO.**

# **EXHIBIT**

## **B**



## West Virginia E-Filing Notice

CC-10-2022-C-104

Judge: Paul M. Blake, Jr.

To: Russell Jessee  
russell.jessee@steptoe-johnson.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA  
New River Gorge Development Company, LLC, a West Virginia limited liability comp v. Verano  
WV, LLC, a West Virginia limited liability company  
CC-10-2022-C-104

The following motion was FILED on 11/18/2022 1:45:22 PM

Notice Date: 11/18/2022 1:45:22 PM

Deborah Hendrick  
CLERK OF THE CIRCUIT COURT  
Fayette County  
100 North Court Street  
FAYETTEVILLE, WV 25840

(304) 574-4249

**IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA**

**NEW RIVER GORGE  
DEVELOPMENT COMPANY, LLC,  
Plaintiff,**

**v.**

**Civil Action No. 22-C-104  
Honorable Paul M. Blake, Jr.**

**VERANO WV, LLC, and  
VERANO HOLDINGS CORPORATION,  
Defendants.**

**DEFENDANTS' MOTION TO DISMISS**

Defendants Verano WV LLC and Verano Holdings Corporation, by counsel and pursuant to Rule 12(b)(6) of the *West Virginia Rules of Civil Procedure*, move to be dismissed with prejudice from this action.

As set out more fully in Defendants' Memorandum of Law in support hereof, filed contemporaneously herewith, Plaintiff's Complaint fails to state a claim on which relief can be granted, and Defendants are entitled to dismissal as a matter of law.

Specifically, Plaintiff New River Gorge Development Company LLC seeks default damages pursuant to the parties' contract, but Plaintiff does not and cannot plead that an event of default occurred as the contract requires for Plaintiff to be entitled to default damages.

**Respectfully submitted,**

**VERANO WV, LLC, and  
VERANO HOLDINGS CORPORATION,  
By counsel,**

/s/ Russell D. Jessee

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*Counsel to Defendants Verano WV, LLC, and  
Verano Holdings Corporation*

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

NEW RIVER GORGE  
DEVELOPMENT COMPANY, LLC,  
Plaintiff,

v.

Civil Action No. 22-C-104  
Honorable Paul M. Blake, Jr.

VERANO WV, LLC, and  
VERANO HOLDINGS CORPORATION,  
Defendants.

MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS

Defendants Verano WV, LLC (“Verano WV”) and Verano Holdings Corporation (“Verano Holdings”) (collectively, “Defendants”), by counsel, state as follows in support of their motion to dismiss:

I. INTRODUCTION

Plaintiff New River Gorge Development Company, LLC (“Plaintiff”) has sued Defendants for breach of a build-to-suit lease. Plaintiff, the landlord under the lease, alleges that it is entitled to default remedies in the lease, particularly liquidated rent. Plaintiff, however, does not and cannot allege that there has been an event of default by Defendants, the tenant and the tenant’s guarantor, that would entitle Plaintiff to the requested default remedies.

The unambiguous terms of the lease contract require that Plaintiff *first* must establish an event of default *before* it is entitled to pursue default remedies. Plaintiff simply ignores this requirement and fails to plead that Defendants have committed any default event. Certainly, Plaintiff cannot establish that Verano WV has failed to pay rent when due; Plaintiff has not even constructed the building that Verano WV is to rent. Because Plaintiff does not and cannot allege an event of default according to the facts that it has pleaded, Plaintiff does not and cannot allege a

breach of the lease. Plaintiff thus fails to state a claim for breach of contract on which relief can be granted.

## II. BACKGROUND<sup>1</sup>

Plaintiff and Defendants entered into a build-to-suit lease (“the Lease”) on May 23, 2022, pursuant to which Plaintiff would construct a building on its property at the Oak Hill Mall and lease the building to Verano WV.<sup>2</sup> Specifically, the Lease obligates Plaintiff to deliver a building to be used by Verano WV as a medical cannabis dispensary (“the Premises”).<sup>3</sup>

The Lease provides that its initial term “shall commence on the Delivery Date,”<sup>4</sup> which the Lease defines as the date that Plaintiff “delivers possession of the Premises to [Verano WV].”<sup>5</sup> Under the unambiguous terms of the Lease, Verano WV would not owe any rent until “the earlier of One-Hundred Eighty (180) days after the Delivery Date . . . or [Verano WV’s] opening of business to the public in the Premises.”<sup>6</sup>

About one month after entering the Lease and before construction began, Defendants sent the following e-mail to Plaintiff on June 29, 2022:

Hope all is well with you and the family. Apologies for the slow response with our construction team and your architect but unfortunately the reason for the delay is because there’s been a shift in our West Virginia strategy to only open four stores

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<sup>1</sup> For the purposes of this motion only, Defendants “accept as true the well-pleaded allegations of the complaint.” *Choice Lands, LLC v. Tassen*, 224 W. Va. 285, 289, 685 S.E.2d 679, 683 (2008). As explained *infra* in the Legal Standards section, however, the Court need not accept as true unsupported or unwarranted conclusions or allegations contradicted by the Lease and the e-mail attached as exhibits to the Complaint.

<sup>2</sup> See Compl. ¶ 7. A copy of the Lease is attached to the Complaint and reattached to this motion as **Exhibit A** for ease of reference. Because Plaintiff attached the Lease to the Complaint, the Court may construe the Lease without converting this motion to dismiss to one for summary judgment. See W. Va. R. Civ. P. 10(c) (“A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.”).

<sup>3</sup> See Lease at 1, ¶¶ 1(c)–(d).

<sup>4</sup> *Id.* at 2, ¶ 1(f).

<sup>5</sup> *Id.* at 8, ¶ 12(a).

<sup>6</sup> See *id.* at 2, ¶ 1(e) (denoting “Rent Commencement Date”).



at this time. My hope was to continue to move forward with this location as it's a ground up and the likelihood of us being fully operational is likely a year from now. This could give us ample time to see how our four new locations perform. Ownership wouldn't budge so we're left with no choice but to terminate our lease agreement.

*I wanted you to be aware of this prior to getting lawyers involved with hopes of you and I attempting to resolve the lease termination.* Appreciate your time and feel free to reach out to me on my cell at [REDACTED] if needed.<sup>7</sup>

Although Plaintiff characterizes this e-mail as a “Notice of Termination,”<sup>8</sup> nothing in the e-mail delineates it as such. To the contrary, the subject line states “Oak Hill strategy.” Plaintiff’s characterization ignores the content and import of the e-mail, which clearly show Defendants’ intent to negotiate a termination following Plaintiff’s receipt of the e-mail—that is, to reach a “resol[ution]” through further discussion. Also, the e-mail did not follow the Lease’s notice provision; the e-mail was not copied to Plaintiff’s counsel, as the notice provision requires.<sup>9</sup> Defendants thus did not intend the e-mail to be a notice under the terms of the Lease, much less a notice of termination. The Court should disregard Plaintiff’s characterization of the June 29, 2022 e-mail.<sup>10</sup>

Although the June 29, 2022 e-mail did not, itself, breach the Lease, Plaintiff filed its Complaint on September 1, 2022, asserting one count for Breach of Contract based precisely on that flawed proposition. Plaintiff alleges that the June 29, 2022 e-mail immediately breached the

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<sup>7</sup> E-mail to Casey Bowling from Rocky Afo (June 29, 2022) (emphasis added), attached as **Exhibit B**). A copy of the e-mail also is attached to the Complaint, and thus the Court may consider the e-mail without converting this motion to dismiss to one for summary judgment. *See* W. Va. R. Civ. P. 10(c) (“A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.”).

<sup>8</sup> Compl. ¶ 10.

<sup>9</sup> *See* Lease at 19-20, ¶ 30.

<sup>10</sup> *See infra* § III(A) (citing decisions for propositions that Court may consider exhibits to Complaint in ruling on motion to dismiss and that language of exhibits prevails over contrary allegations in Complaint).

Lease upon transmittal by Defendants.<sup>11</sup> Plaintiff alleges that its entitlement to default remedies, which are specified in the Lease, arises solely from Defendants transmitting the June 29, 2022 e-mail.<sup>12</sup>

### III. ANALYSIS

#### A. Legal Standards<sup>13</sup>

Pursuant to Rule 12(b)(6) of the *West Virginia Rules of Civil Procedure*, dismissal is proper when the plaintiff fails to state a claim upon which relief can be granted. More specifically, a motion to dismiss should be granted “where it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations.” *Albright v. White*, 202 W. Va. 292, 298, 503 S.E.2d 860, 865 (1998) (internal cites and alterations omitted).

Although the Court construes well-pleaded factual allegations as true, the Court may freely ignore “legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations.”<sup>14</sup> Furthermore, “Rule 10(c) [of the *West Virginia Rules of Civil Procedure*] makes a copy of any written instrument that is an exhibit to a

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<sup>11</sup> See Compl. ¶ 10 (“By email dated June 29, 2022, Verano WV notified New River Gorge Development of its termination of the Lease via email . . . .”); *id.* ¶ 12 (“Verano WV unilaterally elected to terminate the Lease . . . .”); *id.* ¶ 13 (alleging that Plaintiff was not in default of the Lease “[a]s of the date of termination of the Lease by Verano WV”); *id.* ¶ 14 “Verano WV, without cause, wrongfully terminated its contractual agreement . . . .”).

<sup>12</sup> See *id.* ¶¶ 17-18 (incorporating previously alleged facts about purported effect of June 22, 2022 e-mail and then alleging entitlement to elect one or more default remedies in paragraph 16 of Lease).

<sup>13</sup> The Lease states that “[t]he laws of the State of West Virginia shall govern [its] interpretation, validity, performance and enforcement.” Lease at 24, ¶ 36(c).§

<sup>14</sup> *Forshey v. Jackson*, 222 W. Va. 743, 756, 671 S.E.2d 748, 761 (2008) (quoting Franklin D. Cleckley, et al., LITIGATION HANDBOOK ON WEST VIRGINIA RULES OF CIVIL PROCEDURE § 12(b)(6)[2], at 347); see also *Kopelman and Assocs., L.C. v. Collins*, 196 W. Va. 489, 493, 473 S.E.2d 910, 914 (1996) (while plaintiff “enjoys the benefit of all inferences that plausibly can be drawn from the pleadings, a party’s legal conclusions, opinions, or unwarranted averments of fact will not be deemed admitted”); *Fass v. Nowasco Well Service, Ltd.*, 177 W. Va. 50, 53, 350 S.E.2d 562, 564-65 (1986) (affirming dismissal of complaint that was “conclusory and imprecise”).

pleading a part thereof for all purposes. The contents of such exhibits may be considered as evidence for dispositive motions.”<sup>15</sup> The “general rule [is] that the exhibit prevails in the event of a conflict between an attached exhibit and the allegations of a complaint.”<sup>16</sup>

Regarding the Court’s authority to construe the Lease and rule on this motion, the West Virginia Supreme Court of Appeals has explained that “[i]t is the province of the court, and not of the jury, to interpret a written contract.” *Orteza v. Monongalia Cnty. Gen. Hosp.*, 173 W. Va. 461, 464, 318 S.E.2d 40, 43 (1984) (quoting Syl. Pt. 1, *Stephens v. Bartlett*, 118 W. Va. 421, 191 S.E. 550 (1937)). Furthermore, “[w]here the terms of a contract are clear and unambiguous, they must be applied and not construed.” Syl. pt. 2, *Bethlehem Mines Corp. v. Haden*, 153 W. Va. 721, 172 S.E.2d 126 (1969). In other words, “[i]t is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different contract for them.” Syl. Pt. 3, *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 128 S.E.2d 626 (1962).

Here, construing the unambiguous terms of the Lease as a matter of law, under no set of facts could the June 29, 2022 e-mail to Plaintiff from Defendants be an event of default that would entitle Plaintiff to its requested default damages.

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<sup>15</sup> *Aluise v. Nationwide Mut. Fire Ins. Co.*, 218 W. Va. 498, 505, 625 S.E.2d 260, 267 (2005) (quoting Cleckley, Davis and Palmer, *Litigation Handbook*, § 10(c), at 237).

<sup>16</sup> *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 165–66 (4th Cir. 2016) (citation omitted); *see also Massey v. Ojaniit*, 759 F.3d 343, 353 (4th Cir. 2014) (stating that, in resolving motion to dismiss, “we are not obliged to accept allegations that ‘represent unwarranted inferences, unreasonable conclusions, or arguments,’ or that ‘contradict matters properly subject to judicial notice or by exhibit’” (quoting *Blankenship v. Manchin*, 471 F.3d 523, 529 (4th Cir. 2006))).

**B. Plaintiff's Complaint fails to allege that an event of default occurred as the Lease requires for Plaintiff to be entitled to default remedies.**

“A claim for breach of contract requires proof of the formation of a contract, a breach of the terms of that contract, and resulting damages.”<sup>17</sup> Because Plaintiff seeks default remedies that are available only if there is an event of default, the breach that Plaintiff must prove is that Defendants have defaulted according to the terms of the Lease.<sup>18</sup> Thus, Plaintiff must prove that when Defendants sent the June 29, 2022 e-mail, that immediately constituted an event of default under the terms of the Lease. Under no set of facts, however, did the June 29, 2022 e-mail immediately constitute an event of default.

The Lease's “DEFAULT” provision permits Plaintiff to seek specified default remedies *only* “upon the happening, or at any time after the happening, of any one or more of the following events which shall be deemed to be a default by [Verano WV] hereunder, to wit:

[1] [Verano WV's] failure to pay any Rent, Base Rent, Additional Rent, or any other sums payable hereunder when due for a period of five (5) business days after written notice from [Plaintiff]. If, however, [Plaintiff] gives such a written notice of failure to pay Rent, Base Rent, Additional Rent, or other amount due hereunder three (3) times in any twelve (1) month period, any additional failure to pay any Rent, Base Rent, Additional Rent, or other amount due hereunder when due within that twelve (12) month period shall be considered a Default, without the requirement of any written notice by the landlord.

[2] [Verano WV's] failure to observe, keep or perform any one of the other non-monetary terms, covenants, agreements or conditions of this Lease for a period of thirty (30) days after written notice from [Plaintiff] (or if such performance of non-monetary terms, covenants, agreements or conditions cannot be reasonably cured within thirty (30) days, then within ninety (90) days after such notice, provided that [Verano WV] has promptly commenced such cure and diligently pursues same to completion);

[3] The bankruptcy of [Verano WV];

[4] [Verano WV] making an assignment for the benefit of creditors;

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<sup>17</sup> *Sneberger v. Morrison*, 235 W. Va. 654, 669, 776 S.E.2d 156, 171 (2015).

<sup>18</sup> *See* Compl. ¶ 18 (seeking default remedies available “[p]ursuant to Paragraph 16 of the Lease”).

[5] A receiver or trustee being appointed for [Verano WV] with regard to a substantial portion of [Verano WV's] assets;

[6] [Verano WV's] voluntary petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, arrangement or insolvency law;

[7] [Verano WV's] interest under this Lease being modified or altered by any unauthorized assignment or subletting or by operation of law; or

[8] Any of the goods or chattels of [Verano WV] used in, or incident to, the operation of [Verano WV's] business in the Premises being seized, sequestered, or impounded by virtue of, or under authority of, any legal proceeding.”<sup>19</sup>

Plaintiff does not plead that any of these default events has occurred. Indeed, Plaintiff completely ignores that its requested default remedies require that it first establish one of these eight events of default.

As an initial matter, Plaintiff does not and cannot allege that the June 29, 2022 e-mail constitutes any of the events of default in subdivisions [3] through [8]. In the e-mail, Verano WV does not announce its bankruptcy or its voluntarily petition for bankruptcy. Verano WV does not make an assignment for its creditors nor have its interest in the Lease modified by an unauthorized assignment. No receiver or trustee has been appointed to handle Verano WV's assets. And none of Verano's business goods are being seized in a legal proceeding.

To be entitled to damages for liquidated rent, Plaintiff would need to assert that Verano WV has failed to pay rent and thus defaulted under subdivision [1].<sup>20</sup> Under the plain terms of the Lease, however, Plaintiff's construction and delivery of the Premises is a condition precedent to Defendants' rent payment obligation.<sup>21</sup> Plaintiff has not fulfilled that condition precedent.

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<sup>19</sup> Lease at 12–13, ¶ 16 (numbering not in original but added for clarity).

<sup>20</sup> See Compl. ¶¶ 18, 21–25.

<sup>21</sup> See *supra* § II.

Plaintiff does not and cannot plead that it constructed and delivered the Premises for which it seeks rent. Verano WV thus does not owe and never has owed any rent to Plaintiff. Verano WV thus cannot possibly have defaulted on the Lease pursuant to subdivision [1] of paragraph 16.

The only remaining event of default for Plaintiff to assert is in subdivision [2] of paragraph 16's events of default: "failure to observe, keep or perform any one of the other non-monetary terms, covenants, agreements or conditions of this Lease for a period of thirty (30) days after written notice from [Plaintiff]." The June 29, 2022 e-mail cannot possibly have breached subdivision [2] immediately upon its transmittal, however.<sup>22</sup> Subdivision [2] requires that Verano WV be allowed a 30-day cure period after written notice from Plaintiff. Plaintiff does not and cannot plead that it provided Verano WV with any written notice of the default nor an opportunity to cure within 30 days.

Accordingly, Plaintiff has not pleaded and cannot plead that the June 29, 2022 e-mail constitutes any of the eight events of default according to the terms of paragraph 16 of the Lease.<sup>23</sup> Plaintiff thus has not pleaded and cannot plead any entitlement to any default remedy in paragraph 16 of the Lease based upon Defendants' transmittal of the June 29, 2022 e-mail. As Plaintiff's entitlement to its requested breach of contract remedies requires that Plaintiff plead and establish an event of default, which Plaintiff fails to do, Plaintiff has not pleaded a breach of contract claim against Defendants.<sup>24</sup>

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<sup>22</sup> See Compl. ¶¶ 10-12 (pleading that June 29, 2022 immediately breached Lease).

<sup>23</sup> It is thus beside the point that Plaintiff pleads it was not in default when Defendants sent the June 29, 2022 e-mail. See Compl. ¶ 13.

<sup>24</sup> Plaintiff's claim that it is entitled to default remedies despite not pleading an event of default is not the only example of Plaintiff ignoring the plain terms of the Lease. Plaintiff also demands a jury trial, *see* Compl. at 5, although Plaintiff specifically negotiated that the parties "hereby knowingly, voluntarily, and intentionally WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN THE EVENT OF ANY PROCEEDINGS based hereon, arising out of, under or in connection with this Lease," Lease ¶ 36(a) (emphasis in original).



**C. Defendants are entitled to their attorneys' fees upon dismissal of this action.**

Plaintiff alleges that it "is entitled to its reasonable costs and attorneys' fees as the non-breaching party in accordance with the terms of the Lease."<sup>25</sup> The litigation fees provision of the Lease, however, is bilateral:

If either party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, then the Prevailing Party (as hereafter defined) shall be entitled to reasonable out-of-pocket attorneys' fees in any such proceeding, action, or appeal thereon . . . The term, "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought . . .<sup>26</sup>

Once Defendants prevail on this motion, as they should, they will be the Prevailing Party entitled to have Plaintiff pay their attorneys' fees.

**IV. CONCLUSION**

Under the unambiguous terms of the Lease, Defendants may be held liable for default only to the extent that they have committed an enumerated event of default. Plaintiff, however, has not alleged and cannot allege that Defendants' mere transmittal of the June 29, 2022 e-mail was an event of default and thus a breach of the Lease. Accordingly, Defendants are entitled to dismissal of Plaintiff's claims as a matter of law. Furthermore, because dismissal necessarily means that Defendants are the "Prevailing Party," Defendants are entitled to their attorneys' fees.

WHEREFORE Defendants pray that this Honorable Court enter an ORDER granting Defendants' Motion to Dismiss and awarding to Defendants their attorneys' fees incurred in defending this action.

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<sup>25</sup> Compl. ¶ 23.

<sup>26</sup> Lease at 26, ¶ 40 (unnecessary emphasis removed).

**Respectfully submitted,**

**VERANO WV, LLC, and  
VERANO HOLDINGS CORPORATION,  
By counsel,**

/s/ Russell D. Jessee

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*Counsel to Defendants Verano WV, LLC, and  
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**IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA**

**NEW RIVER GORGE  
DEVELOPMENT COMPANY, LLC,**

**Plaintiff,**

**v.**

**Civil Action No. 22-C-104  
Honorable Paul M. Blake, Jr.**

**VERANO WV, LLC, and  
VERANO HOLDINGS CORPORATION,**

**Defendants.**

**CERTIFICATE OF SERVICE**

I hereby certify that the undersigned has this day, the 18th of November, 2022, filed the foregoing **MOTION TO DISMISS DEFENDANTS VERANO WV, LLC, AND VERANO HOLDINGS CORPORATION** and **MEMORANDUM OF LAW IN SUPPORT** via electronic filing, which will send a copy and service notification to the following counsel of record:

Charles R. Hughes, Esquire  
BOWLES RICE LLP  
P.O. Box 1386  
Charleston, WV 25325-1386

/s/ Russell D. Jessee  
Russell D. Jessee (WV #10020)  
STEPTOE & JOHNSON PLLC  
P.O. Box 1588  
Charleston WV 25326-1588  
(304) 353-8000

# EXHIBIT A

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of May 23, 2022 (the "Effective Date"), by and between NEW RIVER GORGE DEVELOPMENT COMPANY, LLC, a West Virginia limited liability company ("Landlord"), and VERANO WV, LLC, a West Virginia limited liability company ("Tenant"), and VERANO HOLDINGS CORP., a British Columbia corporation ("Guarantor").

WITNESSETH:

1. DEFINITIONS

Landlord: NEW RIVER GORGE DEVELOPMENT COMPANY, LLC  
Address: 1016 Wal Street  
Summersville, West Virginia 26651  
Email: casey@bowlinginsurancewv.com  
Phone 304.677.1678

(i) Tenant: VERANO WV, LLC  
Address: c/o Verano Holdings Corp.  
415 North Dearborn Street, 4th Floor  
Chicago, Illinois 60654  
Email: Chris.Fotopoulos@verano.com  
Phone: 312.819.4859

(ii) Guarantor: VERANO HOLDINGS CORP.  
Address: 415 North Dearborn Street, 4th Floor  
Chicago, Illinois 60654  
Email: Chris.Fotopoulos@verano.com  
Phone: 312.819.4859

(c) **"Premises"**: The Premises consists of a to be constructed approximately 3,500 square foot freestanding single story building (the "**Building**") on an approximately 0.72 acre parcel of land that is part of that certain real property situated on Mall Road in Oak Hill, West Virginia, being assessed in Oak Hill Corp. District as Tax Map 2, parcel 10 as shown on the West Virginia GIS Map attached hereto as Exhibit "A", and incorporated herein by reference (the "**Property**"). The Property shall be subdivided by Landlord, and the Building shall be located on the 0.72 acre parcel of land to the east of Mall Road and to the west of U. S. Route 19 on the northeast part of the Property as shown as Lot 1 on the Preliminary Subdivision Exhibit for New River Gorge Development attached hereto as Exhibit "B", and incorporated herein by reference (the "**Verano Parcel**"). The Verano Parcel shall be approximately 0.72 acres and in addition to the Building, shall also include a parking lot totaling at least 38 parking spaces, inclusive of 2 handicap parking spaces, as well as all other easements and rights of record related thereto. Upon final approval of Landlord's subdivision of the Property to create the Verano Parcel, Exhibit "A" attached hereto shall be replaced, in its entirety, with a legal description that only includes the Verano Parcel. For the avoidance of doubt and to ensure clarity, the Premises shall only include the Verano Parcel with the Building on it once the Property is subdivided by Landlord and the Premises shall not include the entire Property.

(d) **"Permitted Use"**: The operation of a cannabis retail dispensary, whether medical, adult use or otherwise, in accordance with any and all applicable laws, rules, or regulations approved or adopted by the State of West Virginia, Department of Public Health ("**WVDPH**"), or other State of West Virginia, County of Fayette or City of Oak Hill governmental body, which laws may be approved or adopted from time to time. The Permitted Use includes, but is not limited to, the sale to retail customers of cannabis flower, cannabis oil and cannabis infused products, together with such other legal uses permitted under West Virginia law, which may be necessary or ancillary related thereto,

including, but not limited to, general office uses, sale of cannabis paraphernalia and sale of soft goods and other related retail and general office purposes.

- (e) **"Rent Commencement Date"**: the earlier of One-Hundred Eighty (180) days after the Delivery Date (as defined below), or Tenant's opening of business to the public in the Premises.
- (f) **"Term"**: The initial term of the Lease (the **"Term"**) shall commence on the Delivery Date, and expire on the last day of the month in which the Tenth (10th) year anniversary of the Rent Commencement Date falls. Provided no default under this Lease has occurred and is continuing beyond any applicable notice and/or cure period, Tenant shall have the right and option to extend the Lease as set forth in Section 22. Within thirty (30) days after the Delivery Date, Landlord and Tenant shall execute a Rent Commencement Letter in substantially the same form as Exhibit "C".
- (g) **"Base Rent"**:

The following sums per month as defined in Section 3:

Lease Year	Annual Base Rent	Monthly Base Rent
Year 1	\$109,375.00	\$9,114.58
Year 2	\$111,562.50	\$9,296.88
Year 3	\$113,793.75	\$9,482.81
Year 4	\$116,069.63	\$9,672.47
Year 5	\$118,391.02	\$9,865.92
Year 6	\$120,758.84	\$10,063.24
Year 7	\$123,174.01	\$10,264.50
Year 8	\$125,637.49	\$10,469.79
Year 9	\$128,150.24	\$10,679.19
Year 10	\$130,713.25	\$10,892.77
<b>If 1<sup>st</sup> Extension Option exercised:</b>		
Year 11	\$133,327.51	\$11,110.63
Year 12	\$135,994.06	\$11,332.84
Year 13	\$138,713.95	\$11,559.50
Year 14	\$141,488.23	\$11,790.69
Year 15	\$144,317.99	\$12,026.50
<b>If 2<sup>nd</sup> Extension Option exercised:</b>		
Year 16	\$147,204.35	\$12,267.03
Year 17	\$150,148.44	\$12,512.37
Year 18	\$153,151.41	\$12,762.62
Year 19	\$156,214.43	\$13,017.87
Year 20	\$159,338.72	\$13,278.23

All Base Rent shall be payable in monthly installments in advance, on the first (1st) day of each calendar month included within the Term of this Lease. If the Rent Commencement Date is not the first day of a month, then the Base Rent and Additional Rent (as defined herein) shall be prorated on a per diem basis, and the full amount of Rent (as defined herein) due shall be paid on the first day of the next succeeding month. Rent for any



fraction of a month at the commencement or expiration of the term, or in which the rate thereof changes pursuant hereto, shall be prorated on a per diem basis.

All Rent payable by Tenant to Landlord under this Lease, plus any other costs incurred by Landlord in connection with the Premises, shall be paid to Landlord, without deduction or offset, except as provided herein, at its address specified in Section 1(a) above or at such place Landlord may hereafter specify by written notice to Tenant.

2. **GRANT OF PREMISES AND TERM.** Landlord, in consideration of the Rent hereinafter to be paid and of the covenants, conditions and agreements to be kept and performed by Tenant, hereby leases, lets and demises to Tenant, and Tenant hereby leases from Landlord for the Term, the Premises, the Building and the Property as described above in Section 1(c).

3. **RENT.** Tenant covenants and agrees to pay to Landlord, without deduction or offset, Base Rent and Additional Rent (as such term is defined below, and together are referred to herein as "**Rent**") for the Premises as described above in Section 1(g). Tenant's rent obligations shall commence on the Rent Commencement Date. Rent due for any partial month of occupancy at the beginning or end of the Term of the lease will be prorated, such proration to be based on the actual number of days in the partial month. Subsequent monthly Rent shall then be due on the first day of each calendar month commencing on the first date of each succeeding month during the full Term of this Lease together with any applicable sales and use tax or other such tax on rentals or other payments hereunder as may be applicable from time to time at the then current rate.

"**Additional Rent**" shall mean and be deemed to include all sums other than Base Rent payable by Tenant to Landlord under this Lease, including, without limitation, payments with respect to Real Estate Taxes, payments with respect to late fees, overtime or excess service charges, damages, and interest and other costs related to Tenant's failure to perform any of its obligations under this Lease. Whenever under the terms of this Lease any sum of money is required to be paid by Tenant in addition to the Rent herein reserved, whether or not such sum is herein described as "Additional Rent" or a provision is made for the collection of said sum as "Additional Rent", said sum shall nevertheless, at Landlord's option, if not paid when due, be deemed Additional Rent, and shall be collectible as such with the next installment of Rent thereafter falling due hereunder. Landlord agrees to perform a reconciliation of all Landlord's insurance costs, or other Additional Rent collected by Landlord pursuant to this Lease once each calendar year, and to provide Tenant with a statement showing such reconciliation. In the event a reconciliation contemplated by this paragraph demonstrates that Tenant owes additional amounts such amounts shall be due and payable to Landlord on the date that Tenant's next monthly payment is due. In the event such reconciliation demonstrates that Tenant is entitled to a reimbursement of any amount, Landlord shall pay Tenant such amount within thirty (30) days of the reconciliation.

In the event Tenant objects to such reconciliation within 90 days after its receipt, Tenant shall have the right after reasonable notice and at reasonable times to inspect Landlord's insurance and Additional Rent records with respect to the Premises at Landlord's accounting office. If, after such inspection, Tenant still disputes the annual reconciliation, upon Tenant's written request therefor, a certification as to the proper amount of Landlord's insurance costs, or other Additional Rent collected by Landlord pursuant to this Lease shall be made by an independent certified public accountant mutually agreed to by Landlord and Tenant. If Landlord and Tenant cannot mutually agree to an independent certified public accountant, then the parties agree that Landlord shall choose an independent certified public accountant to conduct the certification as to the proper amount of Tenant's proportionate share of Landlord's insurance costs, or other Additional Rent collected by Landlord pursuant to this Lease for the period in question. Such certification shall be final and conclusive as to all parties. If the certification reflects that Tenant has overpaid or underpaid, the procedures stated in the prior paragraph will apply. Tenant and Landlord agree to split the cost of such certification and the investigation with respect thereto.

**Triple Net Lease.** This is a triple net lease. In addition to payment of all rents, taxes, assessments and governmental impositions, as herein provided, Tenant shall pay all operating costs and expenses, it being the intent of this Lease that Landlord is to receive the Rent above specified as net and

clear of all costs and charges arising from or relating to the Premises and Tenant is to pay all charges and expenses of every nature that may be imposed or incurred through the operation of the Premises and its appurtenances in any manner during the Term of this Lease, subject to any carveouts as detailed herein.

4. **USE OF PREMISES.** The Premises shall be used by Tenant for the Permitted Use as described above in Section 1(d), and for no other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall not do or permit to be done in or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any state or local law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated, or which is prohibited by any restrictions or covenants of record restricting the use of the Premises, or in any standard form of fire insurance policy or will in any way increase the existing rate of or affect any fire or other insurance upon the Premises or any of its contents, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of its contents. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose (as reasonably determined by Landlord), and Landlord agrees that it has not and will not, at any time during the Term of the Lease, determine that the Permitted Use constitutes such an improper, immoral, unlawful or objectionable purpose; nor shall Tenant cause, maintain, or permit any nuisance (as reasonably determined by Landlord or by law) in or about the Premises or commit or suffer to be committed any waste in, on, or about the Premises. Landlord acknowledges that the Permitted Use is currently illegal under federal law, but agrees not to prevent Tenant from using the Premises for the Permitted Use.

Without limiting the generality of this Section 4, Tenant specifically acknowledges and agrees to conform to all laws, statutes, orders, rules, regulations and ordinances promulgated by the State of West Virginia regarding the use of the Premises as a marijuana dispensary in all material respects during the Term. Tenant shall at all times comply with all laws, rules, and regulations promulgated by the WVDPH related to the operation of a marijuana dispensary, as well as other state and local laws that apply to the Property, except to the extent that the failure would reasonably be expected to have a material adverse effect on Tenant's business or its ability to comply with its obligations under this Lease. Without limiting the generality of the foregoing, each party shall at all times, at its own expense, obtain and maintain all licenses, certifications, credentials, authorizations, and permits necessary to conduct that portion of its business relating to the exercise of its rights and the performance of its obligations under this Lease.

Tenant shall use commercially reasonable efforts to complete Tenant's Work and open for business to the public for the Permitted Use not later than the Rent Commencement Date. Thereafter, Tenant covenants and agrees to operate its business on the Premises diligently and continuously throughout the Term at all commercially reasonable times and days that Tenant customarily is open for business in the State of West Virginia. Tenant will operate its business on the Premises in a first class and reputable manner. Tenant shall keep the Premises well lighted and in a safe, neat, and clean condition throughout the Term. Tenant agrees to take such actions as may be commercially reasonably necessary or as Landlord may commercially reasonably require for the prevention or remedy of any nuisance to or impact on the improvements related to the Permitted Use.

5. **ASSIGNMENT AND SUBLETTING.** Tenant may not assign the right of occupancy under this Lease, or any other interest therein, or sublet of the Premises, or any portion thereof without the express prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Tenant shall have the right to sublet or assign its interests under this Lease to a Permitted Transferee (as defined below) without obtaining the consent of Landlord. Any sale or change of all of the assets of Tenant, or the beneficial or record ownership of and/or power to vote the majority of the outstanding capital stock/equity interests of Tenant in, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, shall be deemed to be an assignment which shall require the prior written consent of Landlord. Tenant absolutely shall have no right of assignment or subletting if it is then in default of this Lease beyond the expiration of applicable cure periods.



In the event Tenant subleases or assigns any of its rights or interests under this Lease to any party, including any Permitted Transferee, such sub-tenant or assignee must agree in writing to assume and perform all of Tenant's obligations under this Lease. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments or sublettings.

In the event of the transfer and assignment by Landlord of its interest in this Lease and/or sale of the Premises containing the Premises, either of which it may do at its sole option, Landlord shall thereby be released from any further obligations hereunder and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. The provisions of Section 29 hereafter dealing with "Notices" shall be amended to provide the correct names and addresses of the assignee or sublessee.

Notwithstanding anything to the contrary contained herein, and provided Tenant is not then in default hereof beyond the expiration of any applicable cure periods, Tenant shall have the right to assign this Lease, or sublease the Premises, or any part thereof, without charge and without Landlord's consent being required, to (i) any entity which is a wholly-owned subsidiary of Tenant or any of Tenant's principals, so long as such entity shall remain a wholly-owned subsidiary of Tenant or any of Tenant's principals; or (ii) the purchaser of all or substantially all of the assets or stock or membership interests of Tenant; (iii) the new or surviving corporation in the event of the merger or consolidation of Tenant; (iv) any entity succeeding to the business operated by Tenant at the Premises; (v) an entity which is an affiliate of Tenant or any entity wholly-owned or controlled by any of the principals of Tenant; or (vi) the entity to which the entire Verano concept and substantially all of the related Verano facilities are sold (collectively, the "**Permitted Transferees**"); provided, however, in connection with such an assignment to any Permitted Transferee, i. the Permitted Transferee has, either alone or combined with such Permitted Transferee's parent or new guarantor, a Net Worth in excess of Two Million Dollars (\$2,000,000.00) ii. the Permitted Transferee expressly assumes all the obligations of Tenant under the Lease; and iii. Landlord is given thirty (30) days' prior written notice of Tenant's intent to assign the Lease to a Permitted Transferee under this subparagraph along with any supporting documentation detailing the Permitted Transferee qualifies as a Permitted Transferee and that the Permitted Transferee has agreed to assume all the obligations of Tenant. "**Net Worth**" for a person or entity shall mean the difference between (i) the consolidated total assets of such person or entity (excluding goodwill and intangibles), and (ii) the consolidated total liabilities of such person or entity, in each case as reflected on such person's or entity's consolidated balance sheet prepared according to generally accepted accounting principles in the United States of America as in effect from time to time or prepared according to other commercially reasonable accounting principles accepted around the World such as International Financial Reporting Standards (IFRS).

6. **TRANSFER BY LANDLORD.** If Landlord assigns, sells or conveys its interest in the Lease or Premises, Landlord shall be released from any future liability upon any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, and Tenant agrees to look solely to the successor in interest of Landlord. This Lease shall not be affected by such sale and Tenant agrees to attorn to the purchaser or assignee.

7. **ACCESS TO PREMISES.** Tenant shall have access to the Premises twenty-four (24) hours a day, seven (7) days per week. Landlord or its authorized agent or agents shall have the right to enter upon the Premises upon two (2) days written notice to Tenant at all reasonable times (subject to West Virginia cannabis law restrictions) for the purposes of inspecting the same, preventing waste, making such repairs as Landlord may consider necessary (but without any obligation to do so), and showing the Premises to prospective tenants (to prospective tenants only in the last six (6) months of the Term), mortgagees and/or purchasers. Notwithstanding anything to the contrary in the foregoing, if in Landlord's reasonable discretion there is an emergency situation in the Premises, Landlord may enter the Premises upon no notice or shorter notice than two (2) days as the emergency situation may require.



Anything to the contrary contained herein notwithstanding, and in view of the governmental restrictions on the control of Tenant's inventory, Landlord agrees that it will not access the Premises at any time during the Term of this Lease without permitting Tenant's representative to accompany Landlord for the duration of all such access, subject to an emergency situation; provided, however, if approval from the State or any other Governmental Authorities (as hereinafter defined) is necessary in order for Landlord or any other Landlord's representative to access or inspect the Premises, Tenant shall use commercially reasonable efforts to obtain such approval for such visit, appraisal, assessment or inspection.

8. Intentionally Deleted.

9. **REPAIRS AND MAINTENANCE.** Subject to provisions in this Lease relating to damage, destruction or condemnation of the Premises, Tenant shall, at Tenant's sole cost and expense, other than specific carveouts below, be responsible for all repairs, replacements and maintenance of the Premises, including without limitation, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, interior walls, the interior and exterior finish surface of exterior walls, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Tenant, in keeping the Premises in good order, condition, and repair, shall exercise and perform good maintenance practices. Tenant'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. Tenant shall, during the Term of this Lease, keep the exterior appearance of the Premises in the same condition as on the Rent Commencement Date (consistent with the exterior appearance of other similar facilities of comparable age, size and materials in the vicinity), including, when necessary, the exterior repair of the Premises. Tenant is responsible for removal of snow and ice, if any, from the sidewalks adjacent to the Premises. Tenant shall, at Tenant's sole cost and expense, obtain quarterly maintenance agreements for the heating, ventilation, and air conditioning ("HVAC") for, and with a contractor specializing and experienced in the inspection, maintenance, and service of the HVAC and, upon Landlord's written request, will provide a copy of same to Landlord. If Tenant should fail to make timely repairs, replacements or maintenance, Landlord may elect to do so upon thirty (30) days' written notice to Tenant (or if such repair, replacement, or maintenance cannot be reasonably cured within such thirty (30) days written notice, then within sixty (60) days after such written notice, provided that Tenant has promptly commenced such cure and diligently pursues same to completion) or immediately in the event of an emergency. In the event Landlord performs such duties on behalf of Tenant, any sums so paid by Landlord shall be deemed to be Additional Rent owing by Tenant to Landlord and due and payable within thirty (30) days of written notice from Landlord to Tenant as Additional Rent.

Tenant will not injure the Premises, but will maintain the Premises in a clean, attractive condition and in good and lawful repair and condition. Upon termination of this Lease, Tenant will surrender and deliver the Premises to Landlord in substantially the same condition in which they existed at the Rent Commencement Date, excepting only ordinary wear and tear damage arising from any cause not required to be repaired by Tenant, and alterations arising out of construction activities approved by the Landlord pursuant to Section 11 below. All damage caused by Tenant, reasonable wear and tear excepted, shall be repaired and the Premises restored such that on or before the last day of the Lease, the Premises shall be delivered up broom swept free of Tenant's product, furniture, and equipment in good and rentable condition with all restoration work completed, and any excess materials and construction equipment used in the restoration process removed from the Premises. Tenant's obligation hereunder shall survive the expiration or sooner termination of the Lease. This Section 9 shall not apply in the case of damage or destruction by fire or other casualty which is covered by insurance (as to which Section 13 hereof shall apply) or damage resulting from an Eminent Domain taking (as to which Section 14 hereof shall apply).

Notwithstanding anything to the contrary in the foregoing, Landlord shall be responsible at its sole cost and expense, without a right of reimbursement from Tenant, for all repairs and replacements to the foundation, exterior structural walls, and roof (and roof membrane) of the Premises. If Landlord fails to



perform Landlord's obligations under this Section 9, Tenant may choose, after ten (10) days' prior written notice to Landlord (except in the case of an emergency, in which case no such notice shall be required), to perform such obligations on Landlord's behalf, and put the Premises in good order, condition, and repair at Landlord's expense. If Tenant performs Landlord's obligations, Landlord shall reimburse Tenant within thirty (30) days of written notice for the cost thereof, by either, at Tenant's option, sending a check to Tenant, or crediting Tenant towards future Rent.

Tenant shall have a duty to keep in good condition and maintain the HVAC with a quarterly maintenance contract, at Tenant's sole cost and expense, procure and maintain a contract, with copies to Landlord, in customary form and substance, for and with a contractor specializing and experienced in the inspection, maintenance, and service of the HVAC for the Premises. However, Landlord reserves the right, upon notice to Tenant, to procure and maintain the contract for the HVAC systems, and if Landlord so elects, Tenant shall reimburse Landlord upon thirty (30) days' written notice to Tenant for the cost thereof as Additional Rent. Notwithstanding anything in this Lease to the contrary, Landlord shall be responsible for the replacement of any portion of the HVAC system which requires replacement within the first five (5) years of Tenant's occupancy of the Premises, at Landlord's sole cost and expense with no right of reimbursement from Tenant.

Except as provided above, it is intended by the Parties hereto that Landlord has no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of Tenant. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease. Landlord shall use commercially reasonable efforts to cause any necessary repairs to be made promptly; provided, however, that Landlord shall have no liability whatsoever for any delays in causing such repairs to be made, including, without limitation, any liability for injury to or loss of Tenant's business, nor shall any delays entitle Tenant to any abatement of Rent or damages, or be deemed an eviction of Tenant in whole or in part.

10. **RECIPROCAL EASEMENT AND LICENSE AGREEMENT.** Tenant acknowledges, understands and agrees that the Property is subject to that certain "Shopping Center Reciprocal Easement and License Agreement", dated August 19, 1993, and of record in the Office of the County Clerk of Fayette County, West Virginia in Deed Book 505, page 802, a copy of which, along with all its amendments, is attached hereto as Exhibit "E" (as further amended by two amendments, the "**Easement Agreement**"). The Property is part of the Developer Parcel (as defined and described in the Easement Agreement).

Tenant further acknowledges, understands and agrees that – for the purposes of the Easement Agreement – it shall reimburse Landlord, as Additional Rent, for Tenant's pro rata share of any costs incurred by Landlord as an "Owner" (as such term is defined in the Easement Agreement) under the Easement Agreement, but only to the extent (i) of the proportionate share of the Premises in relation to the usable area of the Property and to the Developer Parcel, and (ii) such terms may actually apply to the Premises and to Landlord as the "Responsible Owner" as set out in the Easement Agreement. For the avoidance of doubt and to ensure clarity, as of the Effective Date, Tenant's pro rata share is estimated to be 18.75%, being its share of the usable area of all subdivided parcels located within the Property, which, as of the Effective Date, is estimated to consist of a total of 3.84 acres, inclusive of the Premises (0.72 acres / 3.84 acres), as depicted on Exhibit B-1 hereto. Additionally, to ensure clarity, Tenant, its employees and patrons shall have access to the Premises via the private road called Mall Road and shall be able to use it pursuant to the Easement Agreement as well as Landlord has to maintain Mall Road pursuant to the Easement Agreement, which maintenance costs Landlord can charge Tenant via Additional Rent pursuant to the foregoing percentages.

11. **UTILITIES.** Tenant shall maintain in its name, where possible, separate utility accounts with the applicable providers and shall pay for, all water, gas, heat, light, power, telephone, telecommunications, and other utilities and services supplied to the Premises and be solely responsible for all costs and expenses related thereto. Tenant shall promptly pay all charges for electricity, water,



gas, telephone service, sewerage service, trash/refuse collection, cable, and any other utilities furnished to the Premises and shall promptly pay any deposits and maintenance charges therefor. If any utility services are not separately metered to Tenant, Tenant shall pay a commercially reasonable proportion of all charges jointly metered based upon percentage of square footage of the Premises. Additionally, if Landlord would like to submeter any utilities at the Premises, such submeter cost shall be at Landlord's sole cost and expense without a right of reimbursement from Tenant.

12. **DELIVERY DATE; CONSTRUCTION; TENANT IMPROVEMENTS.**

(a) The date Landlord delivers possession of the Premises to Tenant is referred to herein as the "**Delivery Date**".

(b) Tenant's taking possession of the Premises on the Delivery Date shall be conclusive evidence of Tenant's acceptance thereof and that Tenant has accepted the Premises "AS IS," and that the Premises are in good order and satisfactory condition. Tenant acknowledges that: (a) neither Landlord nor Landlord's agents or employees have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose; (b) except as expressly provided herein this Lease and Exhibit D, neither Landlord nor its agents or employees have agreed to undertake any alterations or construct any improvements to the Premises; (c) Tenant has been advised that it should inspect the condition of the Premises, including without limitation HVAC, electrical and fire sprinkler systems and any structural or environmental matters and the present and future suitability of the Premises for Tenant's intended use; and (d) Tenant has been advised, excepting anything relating to Landlord's Work, to satisfy itself regarding the Premises' compliance with the Americans with Disabilities Act and all other applicable requirements, including all municipal, county, state and federal laws, ordinances, rules and regulations, orders, permits and zoning, the requirements of any applicable fire insurance underwriter or rating bureau, and any covenants, restrictions or other matters of record relating to the Tenant, the Premises or the use thereof (collectively, "**Laws**"). Tenant further acknowledges, by taking possession of the Premises, that as of the Delivery Date: (e) Tenant has been given access to the Premises and has made such investigation as it deems necessary with reference to the matters set forth in this Section, is satisfied with reference thereto, and assumes all responsibility therefor as the same relate to Tenant's occupancy of the Premises and/or the terms of this Lease; and (f) neither Landlord nor any of its agents or employees has made any oral or written representations or warranties regarding said matters or the condition of the Premises other than as expressly set forth in this Lease. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, IT IS UNDERSTOOD AND AGREED THAT THE PREMISES ARE BEING LEASED "AS IS", WITHOUT ANY REPRESENTATION OR IMPLIED WARRANTY OF LANDLORD. LANDLORD HAS NOT MADE ANY REPRESENTATIONS OR IMPLIED WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER WITH RESPECT TO THE PREMISES, ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR IMPLIED WARRANTY REGARDING SUITABILITY, HABITABILITY, QUALITY OF CONSTRUCTION, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ENVIRONMENTAL CONDITION OR COMPLIANCE WITH ENVIRONMENTAL OR OTHER APPLICABLE LAWS, INCOME TO BE DERIVED THEREFROM OR EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ITS OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME UNLESS THE SAME ARE CONTAINED HEREIN OR MADE A PART HEREOF.

(c) The Delivery Date shall be five (5) business days after Tenant confirms in writing that "**Landlord's Work**", as detailed on Exhibit D attached hereto, is completed to its commercially reasonable satisfaction. Within sixty (60) days after the Effective Date, Landlord shall provide Tenant with plans and specifications (inclusive of a colored elevation plan) for Landlord's Work ("**Landlord's Plans**"). Tenant shall have ten (10) days thereafter receipt of Landlord's Plans to review, and approve or deny Landlord's Plans. If Tenant reasonably denies Landlord's Plans, Landlord shall have ten (10) days thereafter such denial to revise Landlord's Plans to comply with Tenant's comments and resubmit to Tenant for approval. This process shall continue until Tenant reasonably approves Landlord's Plans. After Tenant has reasonably approved Landlord's Plans, Landlord shall endeavor to begin Landlord's



Work, and complete Landlord's Work as soon as commercially reasonably possible thereafter Tenant's approval of Landlord's Plans.

(i) If Landlord does not complete Landlord's Work within Two Hundred Seventy (270) days after Tenant's approval of Landlord's Plans, Tenant, at its option, shall have the ongoing option to terminate this Lease upon written notice to Landlord anytime after Two Hundred Seventy (270) days and before Landlord sends the Completion Notice (as defined below).

(ii) If at anytime within Two Hundred Seventy (270) days after Tenant's approval of Landlord's Plans, Landlord, or Landlord's contractor, encounters conditions on or in the Property that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Landlord's Plans, or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Landlord Plans, Landlord shall promptly provide written notice to Tenant of such conditions. Within ten (10) business days upon Tenant's receipt of such written notice from Landlord, Tenant shall then have the option to, at its expense and at no cost to Landlord, pay for any increase in costs resulting from those conditions as provided herein. In the event Tenant either does not exercise its option hereunder, or does not otherwise provide written notice to Landlord of its option within ten (10) business days, Landlord shall have the option to terminate this Lease upon written notice to Tenant.

If Tenant or Landlord exercises its option to terminate this Lease pursuant to Section 12(c)(i) or (ii), neither party shall owe any further duty to the other under this Lease, except Landlord shall refund any monies paid from Tenant to Landlord.

Once Landlord believes that Landlord's Work is complete pursuant to Landlord's Plans, Landlord shall notice Tenant in writing of its completion (the "**Completion Notice**") and Tenant shall then be given a reasonable amount of time thereafter receipt of the Completion Notice to walk the Premises and determine if Landlord's Work has been constructed pursuant to Landlord's Plans. After receipt of the Completion Notice, Tenant and its agents shall have the right to enter and inspect the Premises to ensure that it is in good condition and satisfies Landlord's Plans. If after receipt of the Completion Notice and inspection of the Premises, Tenant is not reasonably satisfied Landlord's Work meets Landlord's Plans, Tenant may, at its option, request Landlord to correct whatever it reasonably deems necessary to correct, or choose to take possession and correct Landlord's Work itself at Landlord's cost, which cost shall be reimbursed to Tenant within thirty (30) days of submission of an invoice to Landlord. Once Tenant confirms in writing that Landlord's Work is completed to its commercially reasonable satisfaction, Landlord shall deliver the Premises to Tenant on the Delivery Date.

(d) Tenant shall cause its architect and/or engineer to prepare "**Tenant's Plans**" for the initial improvements to be constructed on the Premises by Tenant for Landlord's review and commercially reasonable approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Tenant's Plans are not approved or rejected within ten (10) business days of delivery, Tenant's Plans shall be deemed approved. Landlord's review of Tenant's plans and specifications are solely for Landlord's convenience, and Landlord's approval of such plans and specifications shall not constitute evidence of compliance of such plans with any applicable local or state governmental code or regulation governing the same or the adequacy thereof for Tenant's proposed use of the Premises. Once the Tenant's Plans are approved ("**Tenant's Approved Plans**"), the improvements to be constructed in accordance therewith are referred to herein as the "**Initial Improvements**". Following the preparation and approval of Tenant's Approved Plans, Tenant, at its sole cost and expense, subject to the Allowance (defined below), shall construct the Initial Improvements and all finish work including installation of trade fixtures and furnishings, security equipment and décor, required from time to time to make the Premises suitable for Tenant's occupancy and operation of its business therein, in a good and workmanlike manner substantially in accordance with Tenant's Approved Plans ("**Tenant's Work**"). Notwithstanding anything to the contrary in this Section 12, Tenant shall be responsible at Tenant's sole cost and expense for all work, construction and installation in the Premises (including but not limited to all Tenant's Work and all fixtures, furniture, equipment and other office installations), subject to the Allowance.



(e) Landlord shall provide Tenant with an allowance of \$50,000.00 (the "**Allowance**"). The Allowance may be used for the Initial Improvements, which may include hard and soft costs associated with the Initial Improvements to the Premises, and may include furniture, fixtures, equipment and any audio-visual needed in the Premises. Tenant shall be paid the Allowance upon completion of the Initial Improvements and the provision to Landlord of such commercially reasonable documentation as Landlord shall commercially reasonably request as evidence that Tenant has paid its contractors in full and such contractors have waived their rights to any lien on the Premises in connection therewith. Landlord shall pay the Allowance to Tenant within ten (10) business days after its receipt of the requested supporting documentation.

(f) Except for non-structural improvements and alterations in the aggregate amount of \$50,000.00 or less, Tenant shall not make any other installations, alterations or additions in or to the Premises ("**Other Improvements**") without securing the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Any Other Improvements shall be made at Tenant's sole cost and expense. At the time Landlord's consent to any Other Improvements is requested, Tenant shall submit to Landlord plans and specifications for such Other Improvements. In preparation of plans for any Other Improvements, Tenant shall utilize the services of a licensed architect or general contractor reasonably acceptable to Landlord. Tenant shall provide Landlord with copies of all of Tenant's plans for construction of the Other Improvements. None of Tenant's work shall be commenced unless and until such items have been submitted to and approved by Landlord. Additionally, Landlord may condition its approval of any such Other Improvements upon Tenant providing satisfactory evidence or assurance of Tenant's ability to pay for such Other Improvements (including, without limitation, a payment or performance bond). Landlord's consent to or approval of any Other Improvements (or the plans therefor) shall not constitute a representation or warranty by Landlord, nor Landlord's acceptance, that the same comply with sound architectural and engineering practices or with all applicable Laws (as defined herein), and Tenant shall be solely responsible for ensuring all such compliance. It shall be Tenant's sole responsibility to obtain any zoning changes or variances, use permits, building permits, and any other authorizations or approvals necessary for any Other Improvements Tenant is permitted hereunder to make to the Premises. Notwithstanding the foregoing, Landlord shall, subject to the terms hereof and otherwise at no cost or expense to Landlord, reasonably and timely cooperate with Tenant in the process of obtaining necessary and requisite permits and approvals to facilitate timely completion of any Other Improvements. Tenant shall apply for such building permit and other permits, authorizations, and approvals as promptly as practicable after the Rent Commencement Date and shall thereafter diligently pursue the issuance thereof.

(g) All construction work, alterations, and improvements performed by Tenant shall be done in a workmanlike manner with first-class materials and workmanship, and in compliance with all laws and with the provisions of this Lease. In the event any work, alterations, or improvements constructed by Tenant do not so comply, Tenant shall, at Tenant's sole cost and expense, make such changes as are necessary for compliance. No construction work, alterations, or improvements shall be commenced until Tenant has obtained all required permits and authorizations. Before performing the Tenant's Work, Tenant shall deposit with Landlord certificates of insurance as required by this Lease, and comply with other commercially reasonable requirements which may be set forth herein or commercially reasonably imposed by Landlord. Tenant shall undertake all of Tenant's Work in a good and workmanlike manner and shall keep the Property, Building and Premises free and clear of any statutory materialman's liens or mechanic's liens. During the term of any construction, the insurance required by this Lease shall be endorsed, at Tenant's expense, to insure against the hazards of construction (including, if applicable, occupation during construction) pursuant to a "builder's risk" clause satisfactory to Landlord in its sole discretion. All entries on the Premises and all work done by or on behalf of Tenant shall be at Tenant's sole risk. Upon completion of any such work, alterations, or improvements Tenant shall deliver to Landlord final lien waivers from all contractors who performed such work, alterations, or improvements.

13. **INDEMNITY.** Tenant shall indemnify, protect, defend, and hold harmless the Premises, Landlord and Mortgagee, and their respective members, managers, employees, agents, contractors, partners, from and against any and all claims, actions, demands, suits, proceedings, orders, losses

(including loss of rents), damages, liens, judgments, penalties, reasonable out-of-pocket attorneys' and consultants' fees, expenses, and/or liabilities (collectively, "**Claims**") arising out of, involving, or in connection with: (a) the use and/or occupancy of the Premises by Tenant; (b) the conduct of Tenant's business on the Premises; (c) any act, omission, fault, or neglect on or about the Premises of Tenant, its agents, employees, contractors, subtenants, licensees, visitors, or invitees; or (d) any breach or default under, or violation of, any terms hereof by Tenant, except to the extent such Claim is the result of Landlord's gross negligence or willful misconduct. If any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant shall upon notice defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall reasonably cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be defended or indemnified. This Section shall survive the expiration or sooner termination of this Lease. Notwithstanding anything to the contrary in the foregoing, Landlord and Mortgagee, and their respective members, managers, employees, agents, contractors, partners, acknowledge that Tenant's Permitted Use is federally illegal and that Tenant will not be required to indemnify any Claims relating solely to the federal illegality of Tenant's Permitted Use, Landlord's only recourse being to terminate this Lease.

Except as expressly provided to the contrary in this Lease, Landlord and Landlord's agents and employees shall not be liable for, and Tenant waives all claims for, damage to property sustained by Tenant, employees, agents, or contractors, or any other person claiming by, through, or under Tenant, resulting from any accident in or upon the Premises, including, but not limited to, claims for damage resulting from: (a) any equipment or appurtenances becoming out of repair; (b) injury done or occasioned by wind, water, or other act of God; (c) any defect in, or failure of, plumbing, heating or air-conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings, or walks; (d) broken glass; (e) the backing-up of any sewer pipe or downspout; (f) the bursting, leaking, or running of any tank, tub, sink, sprinkler system, water closet, water pipe, drain, or any other pipe or tank in, upon, or about the Premises; (g) the escape of steam or hot water; (h) water, snow, or ice being upon, or coming through the roof, skylights, doors, stairs, walks, or any other place upon, or near the Premises, or otherwise; (i) the falling of any fixtures, plaster, or stucco; (j) fire or other casualty; (k) any act, omission, or negligence of other tenants of adjoining or contiguous buildings, or of adjacent or contiguous property. Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any tenant or other occupant of the Premises, or by any owner or occupant of adjoining or contiguous property. Landlord shall not be liable for any injury or damage to person or property resulting in whole or in part from the criminal activities of others. To the extent not covered by normal fire and extended coverage insurance, Tenant agrees to pay for all damage to the Premises caused by Tenant, or any of its employees, agents, or contractors.

Notwithstanding anything to the contrary in the foregoing, Tenant shall not be liable for, and Landlord will indemnify, defend and save Tenant harmless of and from, all fines, suits, damages, claims, demands, losses and actions (including attorney's fees) for any injury to person or damage to or loss of property on or about the Premises caused by the negligence or misconduct or breach of this Lease by Landlord, its employees, subtenants, licensees, invitees or by any other person entering the Premises under express or implied invitation of Landlord.

**14. DAMAGE BY FIRE OR THE ELEMENTS.** In the event that fifty percent (50.0%) or more of the Premises should be destroyed by fire or other casualty or in the event that the Premises should be so damaged that rebuilding or repairs cannot be completed within one hundred eighty (180) days after the date of such damage, Tenant may, to the extent it is not responsible for such destruction or damage, at its option, by written notice to the Tenant given not more than thirty (30) days after the date of such fire or other casualty, terminate this Lease. In such event, the Rent shall be abated during the unexpired portion of this Lease effective with the date of such fire or other casualty.

In the event the Premises should be damaged by fire, tornado, wind, hail or other casualty covered by Tenant's Insurance (as defined in Section 30 below), but only to such extent that rebuilding or repairs can be completed within one hundred eighty (180) days after the date of such damage, or if the damage should be more serious but Tenant elects not to terminate this Lease in accordance with the preceding paragraph, then Tenant shall, within the later of: (i) one hundred eighty



(180) days after the date of such damage; or (ii) one hundred eighty (180) days after such election, commence to rebuild or repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition in which the Premises were immediately prior to the happening of the casualty. Notwithstanding the foregoing, if such rebuilding or repairs are not completed within one hundred eighty (180) days after the date of such damage despite Tenant proceeding with reasonable diligence to restore the Premises to substantially the same condition in which the Premises were immediately prior to the happening of the casualty, Tenant may, at its option, by written notice to Landlord given not more than thirty (30) days after the date which is one hundred eighty (180) days after the date of such fire or other casualty, terminate this Lease, in which event Tenant shall assign to Landlord, as applicable, any and all insurance proceeds as a condition to any such termination. Notwithstanding anything to the contrary in the foregoing, in the event any mortgagee, or the holder of any deed of trust, security agreement or mortgage on the Premises, should require that the insurance proceeds be used to retire the mortgage debt, Tenant shall have no obligation to rebuild, and this Lease shall terminate upon notice to Tenant. To ensure clarity and for the avoidance of doubt, Tenant shall not have to rebuild the Premises if it does not have access to insurance proceeds for the entire cost of the reconstruction of the Premises.

15. **EMINENT DOMAIN.** If the whole or a material portion of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or private purchase in lieu thereof, then at Landlord's option, but not otherwise, the term hereby demised, and all rights of Tenant hereunder shall immediately cease and terminate, and the Rent shall be adjusted as of the date of such termination. Tenant shall be entitled to no part of the award made for such condemnation (or other taking) or the purchase price thereof. Nevertheless, anything to the contrary notwithstanding, likewise at Landlord's option, but not otherwise, if the Premises are unaffected by such condemnation (or other taking), then this Lease and each and every one of its provisions shall continue in full force and effect. If this Lease should be terminated under the provisions of this paragraph, Rent shall be payable up to the date that possession is taken by the taking authority, and Landlord shall refund to Tenant any prepaid unaccrued Rent less any sum or amount then owed by Tenant to Landlord.

Notwithstanding the foregoing, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss which Tenant might incur in suffering an early termination of this Lease and having to relocate and remove Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment or having its personal property taken.

If there shall be a partial taking, and Landlord and Tenant mutually agree the remainder of the Premises is suffice for Tenant's Permitted Use, this Lease shall remain in full force and effect, but the Rent shall be prorated on a square footage basis and Landlord shall pay to demise the Premises to ensure it is enclosed with four (4) walls.

16. **DEFAULT.** Landlord, at its election, may exercise any one of the options referred to below upon the happening, or at any time after the happening, of any one or more of the following events which shall be deemed to be a default by Tenant hereunder, to wit:

Tenant's failure to pay any Rent, Base Rent, Additional Rent, or any other sums payable hereunder when due for a period of five (5) business days after written notice from Landlord. If, however, Landlord gives such a written notice of failure to pay Rent, Base Rent, Additional Rent or other amount due hereunder three (3) times in any twelve (12) month period, any additional failure to pay any Rent, Base Rent, Additional Rent or other amount due hereunder when due within that twelve (12) month period shall be considered a Default, without the requirement of any written notice by Landlord;

Tenant's failure to observe, keep or perform any one of the other non-monetary terms, covenants, agreements or conditions of this Lease for a period of thirty (30) days after written notice from Landlord (or if such performance of non-monetary terms,



covenants, agreements or conditions cannot be reasonably cured within thirty (30) days, then within ninety (90) days after such notice, provided that Tenant has promptly commenced such cure and diligently pursues same to completion);

The bankruptcy of Tenant;

Tenant making an assignment for the benefit of creditors;

A receiver or trustee being appointed for Tenant with regard to a substantial portion of Tenant's assets;

Tenant's voluntary petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, arrangement or insolvency law;

Tenant's interest under this Lease being modified or altered by any unauthorized assignment or subletting or by operation of law; or

Any of the goods or chattels of Tenant used in, or incident to, the operation of Tenant's business in the Premises being seized, sequestered, or impounded by virtue of, or under authority of, any legal proceeding.

In the event of any of the foregoing happenings, Landlord, at its election, may exercise any one or more of the following options, the exercise of any of which shall not be deemed to preclude the exercise of any others herein listed or otherwise provided by statute or general law at the same time or in subsequent times or actions:

Terminate Tenant's right to possession under the Lease and re-enter and retake possession of the Premises and relet or attempt to relet the Premises on behalf of Tenant at such rent and under such terms and conditions as Landlord may deem best under the circumstances for the purpose of reducing Tenant's liability. Landlord shall not be deemed to have thereby accepted a surrender of the Premises, and Tenant shall remain liable for all Rent, Additional Rent, or other sums due under this Lease and for all damages suffered by Landlord because of Tenant's breach of any of the covenants of the Lease.

Declare this Lease to be terminated, ended and null and void, and re-enter upon and take possession of the Premises whereupon all right, title and interest of Tenant in the Premises shall end.

Accelerate and declare the entire remaining unpaid Rent and Additional Rent for the balance of this Lease to be immediately due and payable forthwith, and the present value of same for the balance of the Term of the Lease, net of amounts actually collected by Landlord, shall become immediately due thereupon and be paid to Landlord. Such present value shall be determined utilizing a discount rate of six percent (6%); and Landlord may, at once, take legal action to recover and collect the same.

No re-entry or retaking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention be given to Tenant, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent or Additional Rent or other monies due to Landlord hereunder or of any damages accruing to Landlord by reason of the violations of any of the terms, provisions and covenants herein contained. Landlord's acceptance of Rent or Additional Rent or other monies following any event of default hereunder shall not be construed as a Landlord's waiver of such event of default. No forbearance by Landlord of action upon any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions, and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or



construed to constitute a waiver of any other violation or default. Legal actions to recover for loss or damage that Landlord may suffer by reason of termination of this Lease or the deficiency from any reletting as provided for above shall include the deficiency from any reletting as provided for above shall include the expense of repossession or reletting and any repairs or remodeling undertaken by Landlord following repossession.

The parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

The parties hereto agree that any and all suits for any and every breach of this Lease shall be instituted and maintained only in those courts of competent jurisdiction in the county or municipality in which the Premises is located. In the event it shall become necessary for either party at any time to institute an action related to this Lease, or any of the provisions hereof, or any of its statutory or common law rights, then the prevailing party shall be entitled to reimbursement of all reasonable out-of-pocket court costs and attorney's fees it has incurred.

In the event Tenant fails to pay to Landlord within five (5) days after the same is due any installment of rental or other sum to be paid to Landlord which may become due hereunder, Landlord will incur additional expenses in an amount not readily ascertainable and which has not been elsewhere provided for between Landlord and Tenant. If Tenant should fail to pay to Landlord within five (5) days after the same is due any installment of rental or other sum to be paid hereunder, Tenant will pay Landlord on demand a late charge of five percent (5%) of the total monthly payment thereof. Further, any sums not paid when due will bear interest at the lesser of (i) eight percent (8%) annually or (ii) the highest rate allowed by law. Failure to pay such late charge upon demand therefor shall be an event of default hereunder. Provision for such late charge shall be in addition to all other rights and remedies available to Landlord hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Landlord's remedies in any manner.

Time is of the essence of this Lease, and in case Tenant shall fail to perform the covenants on its part to be performed at the time fixed for the performance of such respective covenants by the provisions of this Lease, Landlord may declare Tenant to be in default of such Lease.

Notwithstanding anything to the contrary in the foregoing or this Lease, Landlord acknowledges and agrees that it shall in no event be entitled to any Landlord's lien under this Lease, whether statutory or otherwise, or any other lien rights or similar interest in or to, any of the Tenant's personal property containing cannabis or any derivative of or from cannabis, including, without limitation, any equipment, inventory, good or other item. Landlord further acknowledges and agrees that the Lease shall contain an express waiver by Landlord of any such right, interest or lien in and to such personal property of Tenant. Similarly, Landlord expressly acknowledges and agrees that no license or permit obtained by Tenant may serve as security for any obligation of Tenant to Landlord, that Landlord shall in no event assert or claim an interest in any license or permit of Tenant, and no such license or permit may be encumbered, seized or realized upon by Landlord or otherwise available as a remedy for any default, breach or other failure to perform under this Lease.

17. **SUBORDINATION; TENANT ATTORNMENT.** In consideration of the execution of this Lease by Landlord, Tenant accepts this Lease subject to any deeds of conveyance and any deeds of trust, master leases, security interest or mortgages and all renewals, modifications, extensions, consolidations and replacements of the foregoing which might now or hereafter constitute a lien upon the Premises or improvements therein or thereon or upon the Premises and to zoning ordinances and other Premises and fire ordinances and governmental regulations relating to the use of the property. Although no instrument or act on the part of Tenant shall be necessary to effectuate such subordination, Tenant shall, nevertheless, for the purpose of confirmation at any time hereafter, within fifteen (15) business days after request in a commercially reasonable form(s) prescribed by Landlord, either reasonably negotiate and comment, or execute, any instruments, estoppel certificates, release or other documents that may be

commercially reasonably requested or required by any purchaser or any holder of any superior interest for the purposes of subjecting and subordinating this Lease to such deed of conveyance or to the lien of any such deed of trust, master lease, security interest, mortgage, or superior interest.

Notwithstanding the foregoing, (a) at all times when Tenant is not in default under this Lease beyond the expiration of any applicable cure periods, Tenant's possession of the Premises shall not be disturbed as a result of any foreclosure or deed in lieu of foreclosure; and (b) Landlord shall use commercially reasonable efforts, at Landlord's cost, to secure, within forty five (45) days after the Rent Commencement Date of this Lease, or after the date of any subsequent refinancing by Landlord of the Premises during the Term of this Lease, from each mortgagee and/or ground or underlying lessor under any mortgage or ground or underlying lease, currently encumbering title to the property upon which the Premises are located, or hereafter executed by Landlord, a non-disturbance agreement reasonably satisfactory to Tenant which non-disturbance agreement at a minimum must provide that notwithstanding such subordination, Tenant's possession of the Premises shall not be disturbed so long as Tenant shall not be in default, after expiration of all applicable cure periods, in the payment of any sum or in the performance of any duty or obligation on Tenant's part to be paid or performed under this Lease.

If any Mortgagee or any successor or assignee thereof or any purchaser at a foreclosure sale or by deed in lieu of foreclosure succeeds to the rights of Landlord under this Lease, then upon their request, Tenant shall attorn to such Mortgagee, successor, assignee, or purchaser as Tenant's landlord under this Lease. Tenant shall, within thirty (30) days following request by such Mortgagee, successor, or assignee, either sign or commercially reasonably negotiate, acknowledge, and deliver any instrument that such Mortgagee, successor, assignee, or purchaser commercially reasonably requests to evidence the attornment. If any Mortgagee requires any modifications of this Lease, then, provided such modifications do not materially adversely affect Tenant, Tenant shall, within thirty (30) days following Tenant's receipt of a request, either sign or commercially reasonably negotiate, acknowledge, and deliver to Landlord a lease amendment prepared by Landlord that shall make the required modifications.

18. **QUIET ENJOYMENT.** Provided Tenant has performed all of the terms, covenants, agreements and conditions of this Lease, including the payment of Rent and all other sums due hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term as may be extended.

19. **CONSTRUCTION LIENS.** Tenant is prohibited from making, and agrees not to make, alterations in the Premises except as approved by Landlord pursuant to Section 11 above, and Tenant will not permit any construction lien or liens to be placed upon the Premises or improvements thereon during the term hereof caused by or resulting from any work performed, materials furnished or obligation incurred by or at the request of Tenant, and in the case of the filing of any such lien, Tenant will promptly pay same. If default in payment thereof shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, Landlord shall have the right and privilege, at Landlord's option, of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including reasonable out-of-pocket expenses, interest, and attorney fees, shall be so much additional indebtedness hereunder due from Tenant to Landlord and shall be repaid to Landlord within thirty (30) days of receiving a bill therefor, together with interest at the lesser of i. eight percent (8%) annually or ii. the highest rate allowed by law until repaid, and if not so paid within thirty (30) days of the rendition of such bill shall constitute default under Section 15 hereof. Nothing in this Lease shall be deemed to be, or construed in any way as constituting, the consent or request of Landlord, expressed or implied, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, alteration or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials which might in any way give rise to the right to file any lien against Landlord's interest in the Premises. Tenant shall notify any contractor making improvements to the Premises of the provisions regarding liens contained in this Lease.

20. **ENVIRONMENTAL WARRANTY AND INDEMNIFICATION AGREEMENT.**



This Section of the Lease shall govern any and all issues regarding Hazardous Materials.

(a) Definitions:

The terms Hazardous Substance, Release and Transportation shall have the same meanings and definitions as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. §6901 et seq., and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, provided, however that as used herein the term Hazardous Substance shall also include: (a) any Pollutant or Contaminant as those terms are defined by CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or as otherwise identified by, the Resource Conservation and Recovery Act as Amended, 42 U.S.C. §6901 et seq., or regulations promulgated thereunder (collectively "RCRA") and any other applicable state or local law or regulation; (c) crude oil, petroleum, and fractions or distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; (e) any infectious waste or medical waste as defined by any applicable federal or state laws or regulations; and (f) any fungal or other biologic material which may present a health risk. The terms Treatment and Disposal shall have the same meanings and definitions as set forth in RCRA.

"Environmental Laws" means all applicable federal, state, and local laws, regulations, and ordinances relating to public health and safety and protection of the environment, including but not limited to those statutes, laws, regulation and ordinances identified in this Section 19 all as amended and modified from time to time.

"Contamination" means the presence of Hazardous Substance in concentrations which require remediation under applicable Environmental Laws.

(b) Representations, Warranties and Covenants.

(i) Tenant represents, warrants and covenants to Landlord that during Tenant's possession of the Premises:

Tenant will obtain and comply with all governmental permits required by the Environmental Laws relating to the Permitted Use at the Premises.

Tenant will not permit to occur any release or disposal of Hazardous Substances, on, in, under, or from the Premises. Tenant, however, will be permitted to generate, manufacture, store, treat and transport, in compliance with all Environmental Laws, those Hazardous Substances necessary in Tenant's business. Tenant agrees to provide Landlord with Material Safety and Data Sheets for all Hazardous Substances used in Tenant's business.

Tenant will notify Landlord in writing of all written complaints, claims, citations, demands, inquiries, reports, notices or spills or releases of Hazardous Substances relating to compliance with Environmental Laws within five (5) business days of Tenant's receipt thereof. To the extent possible, Tenant will promptly cure and resolve any such actions and proceedings that result from any Contamination caused in whole or in part by any of the Tenant Parties. Tenant will keep the Premises free of any lien imposed pursuant to any Environmental Law for any Contamination caused in whole or in part by any of the Tenant Parties.

If Tenant fails to undertake to cure a violation of any of the foregoing warranties, representations, and covenants within a reasonable time, Landlord may cause the removal of any Contamination from the Premises in accordance with Environmental Laws. As to Contamination caused in whole or in part by any of the Tenant Parties, the reasonable costs of any remediation of said Contamination required by Environmental Laws will be Additional Rent under this Lease, and such reasonable costs will become due and payable on demand by Landlord, but only if Tenant fails to undertake to comply with this paragraph within a reasonable time.



Tenant agrees to indemnify, defend, and hold Landlord, its affiliates, and their respective shareholders, directors, officers, directors, employees, and agents free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including reasonable out-of-pocket attorneys' fees and investigation costs, whether defending or prosecuting any litigation, claim or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against the foregoing in connection with or arising from or out of:

- (A) any Contamination which has been caused by Tenant, in, or under or affecting all or any portions of the Premises after the Effective Date;
- (B) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Section of the Lease by Tenant;
- (C) any violation or claim of violation by Tenant of any Environmental Law that Tenant does not diligently undertake to resolve within a commercially reasonable time.

Tenant's indemnification obligations shall survive the expiration or termination of this Lease for a period one (1) year.

(ii) As of the Effective Date Landlord represents, warrants and covenants to Tenant that:

- (A) to the best of its knowledge, without the benefit of inspection and analysis, there is no Contamination on the Premises;
- (B) to the best of its knowledge, without the benefit of inspection and analysis, there is no existence of an amount of Hazardous Substance on the Premises that Landlord thinks could reasonably, after the Effective Date, lead to a Contamination on the Premises;
- (C) Landlord has not permitted and will not permit to occur any release or disposal of Hazardous Substances, on, in, under, or from the Premises during the Term;
- (D) Landlord will notify Tenant in writing of all written complaints, claims, citations, demands, inquiries, reports, notices or spills or releases of Hazardous Substances relating to compliance with Environmental Laws within five (5) business days of Landlord's receipt thereof; and
- (E) Landlord agrees to remove or cause the removal of, at its sole cost and expense without a right of reimbursement from Tenant, Hazardous Substances or Contamination not generated by Tenant on the Premises, or not allowed upon the Premises by Tenant, including, but not limited to, anything existing before the Effective Date or anything brought to the Premises after the Effective Date so long as Tenant did not cause it, and agrees to indemnify, defend, and hold Tenant, its affiliates, and its respective shareholders, directors, officers, directors, employees, and agents free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' fees and investigation costs, whether defending or prosecuting any litigation, claim or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Tenant in connection with or arising from the existence of such Hazardous Substances or Contamination on the Premises, or out of a breach of any of the foregoing representations, warrants and covenants.

Landlord's indemnification obligations stated above shall survive the expiration or earlier termination of this Lease.



21. **FORCE MAJEURE.** Neither party shall be required to perform any covenant or obligation in this Lease, nor be liable in damages to the other party, so long as the performance or nonperformance of the covenant or obligation is delayed, caused, or prevented by an act of God, or any conditions or circumstances outside such party's reasonable control (collectively, "**Force Majeure**"); provided however, that the foregoing shall not apply to or excuse the payment of Rent or any other sum of money owing or to be paid pursuant to this Lease. Circumstances beyond a party's control may include: strikes; lockouts; sit-downs; unanticipated governmental actions; civil commotions; unusual transportation delays; the unanticipated or unusual inability to obtain services, labor, or materials or reasonable substitutes therefor; riots; floods; pandemics or epidemics; washouts; explosions; earthquakes; fire; storms; extreme weather (including wet grounds or inclement weather which prevents construction); acts of the public enemy; wars; insurrections; and/or any other unanticipated cause not reasonably within the control of Landlord or Tenant, as the case may be, or which by the exercise of due diligence Landlord or Tenant, as the case may be, is unable, wholly, or in part, to prevent or overcome. Notwithstanding anything to the contrary contained in this Lease, if this Lease specifies a period of time for performance of an obligation of either party, that time period shall be extended by the period of any delay, prevention, or stoppage in such party's performance caused by a Force Majeure.

22. **SEVERABILITY.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease, then and in the event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby.

23. **OPTION TO RENEW.** Provided no default under this Lease has occurred and is continuing beyond any applicable notice and/or cure period at the time notice is given or at the expiration of the Term, as the same may be extended, Tenant shall have the right and option, exercisable by giving written notice thereof to Landlord at least seven (7) months but not more than ten (10) months prior to the expiration of the Term, as the same may be extended, to extend the Lease Term for two (2) renewal periods of five (5) years each (each a "**Renewal Term**"); provided, however, in the event Tenant fails to provide Landlord timely notice of its exercise of any Renewal Term, Landlord agrees to provide to Tenant written notice of such failure to extend at least six (6) months prior to the expiration of the Term, after which Tenant shall have an additional five (5) business days to elect to extend the Lease Term pursuant to a Renewal Term (for the avoidance of doubt and to ensure clarity, if Landlord gives notice before seven (7) months prior to the expiration of the Term, Tenant shall always have until seven (7) months prior to decide, but after seven (7) months prior, Tenant will have five (5) business days after Landlord's notice if Landlord's notice comes after seven (7) months prior). If Tenant fails to notify Landlord in writing of its intent to extend the Term within such five (5) business day period, said option to extend the Lease Term pursuant to a Renewal Term shall lapse and be of no further force or effect. The Rent of each Renewal Term shall be governed by Section 1(g).

24. **HOLDING OVER.** The failure of Tenant to surrender the Premises on the date provided herein for the expiration of the Term of this Lease (or at the time the Lease may be terminated otherwise by Landlord), and the subsequent holding over by Tenant, with or without the consent of Landlord, shall result in the creation of a tenancy at will at 125% of the Rent payable at the time of the date provided herein for the expiration of this Lease or at the time the Lease may be terminated otherwise by Landlord (which Landlord and Tenant agree is a fair and reasonable sum under such circumstances and is not a penalty). This provision does not give Tenant any right to hold over at the expiration of the Term of this Lease, and shall not be deemed, the parties agree, to be a renewal of the Lease term, either by operation of law or otherwise.

25. **RENT A SEPARATE COVENANT.** Tenant shall not for any reason withhold or reduce Tenant's required payments of Rent and other charges provided in this Lease, it being expressly understood and agreed by the parties that the payment of Rent and Additional Rent is a covenant by Tenant that is independent of the other covenants of the parties hereunder.

26. **JOINT AND SEVERAL LIABILITY.** If two or more individuals, corporations, partnerships, or other business associations (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other business

association to pay Rent and perform all other obligations hereunder shall be deemed to be joint and several. In like manner, if Tenant named in this Lease shall be a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several.

27. **ENTITY TENANCY.** The undersigned officer of Tenant hereby warrants and certifies to Landlord that Tenant is a limited liability company in good standing and is authorized to do business in the State of West Virginia. The undersigned officer of Tenant hereby further warrants and certifies to Landlord that he or she, as such officer, is authorized and empowered to bind Tenant to the terms of this Lease by his or her signature thereto. Landlord, before it accepts and delivers this Lease, may require Tenant to supply it with a certified copy of the authorizing resolution authorizing the execution and performance of this Lease by Tenant.

28. **BROKERAGE COMMISSION.** Tenant represents and warrants to Landlord that neither it nor its officers nor agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiations or making of this Lease, and Tenant agrees to indemnify and hold harmless Landlord from any and all claims, liabilities, costs and expenses (including attorneys' fee) incurred as a result of any inaccuracy in the foregoing representation and warranty. Landlord represents and warrants to Tenant that neither it nor its officers nor agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiation or making of this Lease, and Landlord agrees to indemnify and hold harmless Tenant from any and all claims, liabilities, costs and expenses (including attorneys' fees) incurred as a result of any inaccuracy in the foregoing representation and warranty. No commission shall be due to any broker or finder in relation to this Lease.

29. **AMENDMENTS.** This Lease contains the entire agreement between the parties hereto and may not be altered, changed or amended, except by written instrument signed by both parties hereto. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord and addressed to Tenant, nor shall any custom or practice which may grow up between the parties in the administration of the provisions hereof be construed to waive or lessen the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof. The terms, provisions, covenants, and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest, assigns, and legal representatives, except as otherwise herein expressly provided.

30. **NOTICES.** Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered or given when (a) actually received if in person, (b) signed for or "refused" as indicated on the postal service return receipt, or (c) confirmation of receipt of electronic mail either over the phone or via a response electronic mail. Delivery may be by personal delivery or by United States mail, postage prepaid, certified or registered mail, or by receipted overnight mail addressed to the parties hereto at the respective addresses set out opposite their names below, or by electronic mail to the electronic mail address set out below, or at such other address as they may hereafter specify by written notice delivered in accordance herewith:

Landlord	NEW RIVER GORGE DEVELOPMENT COMPANY, LLC
Address:	1016 Wal Street Summersville, West Virginia 26651 Email: casey@bowlinginsurancewv.com Phone: (304) 677-1678
With a copy to:	Charles R. Hughes, Esq. BOWLES RICE LLP 600 Quarrier Street Charleston, West Virginia 25301 Email: chughes@bowlesrice.com Phone: (304) 347-1100



Tenant: VERANO WV, LLC  
Address: c/o Verano Holdings Corp.  
415 North Dearborn Street, 4th Floor  
Chicago, Illinois 60654  
Email: Chris@verano.com  
Phone: 312.819.4859

Guarantor: VERANO HOLDINGS CORP.  
Address: 415 North Dearborn Street, 4th Floor  
Chicago, Illinois 60654  
Email: Chris.Fotopoulos@verano.com  
Phone: 312.819.4859

31. **INSURANCE.**

Tenant shall carry and maintain in force during the Term of the Lease after the completion of Tenant's Initial Improvements (during Tenant's Initial Improvements, Tenant shall carry and maintain "Builder's Risk" insurance pursuant to Section 12), at its expense, the following insurance on forms and through underwriters acceptable to Landlord in its commercially reasonable discretion:

(a) Commercial General Liability Insurance on an "occurrence" basis for the benefit of Tenant and Landlord as additional insured against claims for "bodily injury" liability including without limitation bodily injury, death or property damage liability with combined single limits of not less than Five Million Dollars (\$5,000,000.00) aggregate, such insurance may be furnished under a "primary" policy and/or an "umbrella" policy, provided that it is primary insurance and not excess over or contributory with any insurance in force for Landlord. Such insurance on the Premises shall name Landlord as an additional insured; and

(b) Commercial property insurance covering all causes of loss insurable under a "Causes of Loss - Special Form" policy insuring the entire Premises, including Tenant's Work and, trade fixtures and signs, located at the Premises whether owned by Landlord or Tenant in amounts and coverages not less than those reasonably required by Landlord's Mortgagee from time to time or, if there is no Mortgagee, then for 100% replacement cost value without Tenant being deemed a co-insurer under the terms of the applicable policy, and against such additional periods and for such other commercially reasonable amounts as may from time to time be required by Landlord without deduction for physical depreciation thereof; and

(c) Business interruption or force rent insurance on a Special Form basis in an amount not less than the sum of (i) the base rent then payable under this Lease for a period of one year, (ii) an amount equal to all Real Estate Taxes and Insurance payable under this Lease for a like period, and (iii) an amount equal to all sales taxes payable under this Lease for a like period. Such insurance on the Premises shall name Landlord as loss payee (or upon Landlord's request, Landlord's mortgagee); and

(d) Workers' Compensation insurance in the amount required by law and employer's liability coverage of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and covering all persons employed by Tenant on the Premises; and

(e) If the Premises are located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, flood insurance which shall be in an amount equal to the maximum insurable value of the Premises (excluding Tenant's improvements and property within the Premises) under the federal flood insurance program; provided, however, that flood insurance will not be required on any portion of the Premises that is not located in a special flood hazard area. Such insurance on the Premises shall name Landlord as loss payee (or upon Landlord's request, Landlord's mortgagee). For the

avoidance of doubt and to ensure clarity, as of the Effective Date, the entire Premises is not in a special flood hazard area as it is in Zone X; and

- (f) Such other insurance as may be reasonably required by Landlord or its lenders in connection with the Premises or Tenant's activities in the Premises because such other insurance is standard for similar properties in the market where the Premises is located, provided that such other insurance can be obtained by Tenant in the marketplace at commercially reasonable rates.

Tenant shall deliver policies of such Tenant Insurance or certificates evidencing, to Landlord's reasonable satisfaction, present insurance in the forms identified above, to Landlord on or before the date that is five (5) days prior to the Delivery Date, and thereafter promptly upon Landlord's request; and, in the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates timely, Landlord may, at its option and after five (5) days' written notice to Tenant, procure same for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Rent within thirty (30) days after delivery to Tenant of bills therefor. Such policies or certificates shall provide that Tenant Insurance shall not terminate, expire or be altered in any way except upon thirty (30) days prior written notice to Landlord from the insurer. Nothing contained in this Section shall in any way limit the extent of Tenant's liability under any of the other provisions of this Lease.

All insurance policies shall be written with insurance companies having a policyholder rating of at least "A-" and a financial size category of at least "Class XI" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies, and authorized to engage in the business of insurance in the State in which the Premises are located. The hazard and property insurance policy and the commercial general liability insurance policy shall each name Landlord, Landlord's directors, officers, partners, agents, employees, and managing agent, and Landlord's lender as additional insureds and loss payees to the extent reasonably insurable and identified in writing to Tenant, and shall provide that it may not be terminated or modified in a way that would materially diminish coverages afforded Landlord under this Lease without thirty (30) days' advance notice to Landlord. The minimum limits of insurance specified in this Section 30 shall in no way limit or diminish Tenant's liability under this Lease.

If Tenant should fail to pay any Tenant Insurance when due, required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects pay such Tenant Insurance. In the event Landlord pays any such Tenant Insurance on behalf of Tenant, any sums so paid by Landlord shall be deemed to be so much Additional Rent owing by Tenant to Landlord and due and payable upon demand as Additional Rent plus interest at the lesser of i. eight percent (8%) annually or ii. the highest rate allowed by law, from the date of payment by Landlord until repaid by Tenant. In the event Landlord is required to so pay for any such Tenant Insurance on behalf of Tenant, Tenant acknowledges and agrees that Landlord shall not have any personal liability to Tenant of any kind of nature with respect to the Tenant Insurance or any matters covered thereby, including, without limitation, with respect to (i) the amounts of any such coverages or endorsements issued or available for issuance in connection therewith, and/or (ii) any of Tenant's fixtures or property of any kind within the Premises or otherwise.

The insurance policies required pursuant to this Section 31 are referred to collectively as the "**Tenant Insurance**". Tenant shall be solely responsible for any deductibles payable under the Tenant Insurance in the event of any insured loss covered by such Tenant Insurance.

32. **MUTUAL WAIVER OF SUBROGATION.** Landlord and Tenant, up to the amounts collected under their respective insurance policies, each waive any and all rights that either party may have against the other, and release each other from all liability or responsibility to the other or to anyone claiming through or under them (by way of subrogation or otherwise), for any loss or damage to the premises, any alterations or fixtures, or any trade fixtures, inventory or other personal property of any kind or nature whatsoever, which loss or damage is caused by or results from a risk insured against under any insurance policy, in force at the time, carried by the party suffering the loss or damage, notwithstanding that such loss or damage was caused by the fault or negligence of such other party, its agents, servants,



employees, representatives, contractors, licensees, invitees, or guests. Both Landlord and Tenant shall obtain a waiver of subrogation from their respective insurance company. Any increased premium cost incurred by Landlord or Tenant by reason of such waiver shall be paid by Tenant.

33. **TAXES.** Tenant shall be liable for and pay all sales tax on rent, taxes levied against personal property and trade fixtures placed by Tenant in the Premises, and all real estate taxes levied against the Premises.

(a) **Real Estate Tax Payments.** During each year of the Term of this Lease, so long as Landlord timely provides Tenant with the real estate tax bills for the Premises, Tenant shall pay directly to the taxing authority, and provide Landlord with written evidence of the same promptly upon Landlord's written request therefor, all taxes, assessments and special assessments, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind or nature whatsoever, including without limitation, municipal, school, county, open space taxes and business improvement and special improvement district assessments, levied, assessed or imposed at any time by any Authority (collectively, the "**Real Estate Taxes**") upon or against the Premises and/or any part thereof, and any rights or interests appurtenant thereto (hereinafter collectively referred to as the "**Taxable Property**") which will be due and payable for that particular year.

(b) Should any alteration or improvement performed by or for Tenant during the Term cause an increase in one or more Real Estate Taxes, Tenant shall pay to Landlord the full cost of all Real Estate Taxes resulting from such increase in assessment. If, due to a future change in the method of taxation or in the taxing authority, a franchise, license, income, transit, profit or other tax, fee, or governmental imposition, however designated, shall be levied, assessed, or imposed against Landlord, the Taxable Property (or any part thereof) or the rent or profit therefrom in lieu of, in addition to, or as a substitute for, all or any part of the Real Estate Taxes, then such franchise, license, income, transit, profit, or other tax, fee, or governmental imposition shall be deemed to be included within the definition of Real Estate Taxes for the purposes hereof. Real Estate Taxes shall be determined without reference to any abatement or exemption from or credit against Real Estate Taxes applicable to all or part of the Taxable Property. Notwithstanding the foregoing, Real Estate Taxes shall not include any general income tax, franchise tax, estate, or gift tax that is of general application rather than imposed solely on owners of real property, or any mortgage, recording, stamp, or transfer taxes payable in connection with the mortgaging, encumbering, transfer, sale or lease of all or part of the Taxable Property or of any beneficial interest in Landlord, or any portion thereof or interest therein.

(c) **Tenant's Right to Contest Tax.** Tenant shall have the right to contest the amount or validity, in whole or in part, of any Real Estate Taxes by appropriate proceedings diligently conducted in good faith, but only after payment of such Real Estate Taxes, unless such payment would operate as a bar to such contest or other provisions of law specifically permit Tenant to initiate and pursue such contest without making such payment, in which event, notwithstanding the provisions of this Section 33, payment of such Real Estate Taxes shall be postponed, if and only as long as:

(i) neither the Premises nor any part thereof, would, by reason of such postponement or deferment, be, in the sole judgment of Landlord, in danger of being forfeited or lost;

(ii) such contest shall not subject Landlord or any mortgagee to the risk of any civil or criminal liability; and

(iii) such contest shall not cause Landlord to be in default under any mortgage.

Additionally, Tenant shall have the right to seek a reduction in the assessed valuation of the Premises for real property tax purposes and to prosecute any action or proceeding in connection therewith.

(d) If Tenant should fail to pay any Real Estate Taxes when due, required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects pay such Real Estate Taxes. In the event Landlord pays any such Real Estate Taxes on behalf of Tenant, any sums so paid by Landlord shall be deemed to be so much Additional Rent owing by Tenant to Landlord and due and payable upon demand as Additional Rent plus interest at the lesser of i. eight percent (8%) annually or ii. the highest rate allowed by law, from the date of payment by Landlord until repaid by Tenant.

Any payment to be made pursuant to this Section with respect to the real estate tax year in which this Lease commences or terminates shall bear the same ratio to the payment which would be required to be made for the full tax year as that part of such tax year covered by the Term of this Lease bears to a full tax year.

34. **SIGNAGE.** Tenant shall be permitted to install a logo and color signage on the building facade or grounds and/or a pylon sign provided, however, that any such signs shall be compliant with all applicable laws, regulations, codes, restrictions, covenants and permits. Any such signs shall be installed at Tenant's sole expense, and Tenant shall indemnify, defend and hold harmless Landlord from and against any damages, claims, or injuries occurring in connection with or relating to such signs. Tenant shall be solely responsible for all costs associated with the manufacture, installation and maintenance of the signs. At the expiration of this Lease, Tenant shall remove all signs, at its sole expense, and shall repair any damage resulting from the installation or removal of the signs, reasonable wear and tear excepted.

35. **PARENT GUARANTY.** In consideration of the benefits inuring to Guarantor, Guarantor hereby unconditionally guarantees the punctual performance of all of Tenant's obligations and covenants under this Lease, including without limitation, the payment of all Rent, Additional Rent, indemnification payment or any other sum(s) required to be paid. This guaranty shall remain in full force throughout the initial Term of this Lease. The provisions of this Section shall be binding upon Guarantor and Guarantor's successors and assigns and shall inure to the benefit of Landlord and its successors and assigns; provided that, the obligations of Guarantor under this Section may not be assigned by Guarantor without the written consent of Landlord, which consent may not be unreasonably conditioned, delayed or withheld.

This guaranty is a guaranty of payment and performance and not of collection. Guarantor hereby waives notice of acceptance of this guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to it of Default by Tenant under this Lease and hereby waives diligence, presentment, protest, demand and suit on the part of Landlord in the enforcement of any liability, obligation or duty guaranteed hereby. Guarantor further agrees that Landlord shall not be first or concurrently required to enforce against Tenant or any other person, any liability, obligation or duty guaranteed hereby before seeking enforcement thereof against Guarantor. The liability of Guarantor under this Section shall not be affected by the insolvency, bankruptcy (voluntary or involuntary), or reorganization of Tenant, nor by the voluntary or involuntary liquidation, sale, or other disposition of all or substantially all of the assets of Tenant.

Landlord shall be entitled to bring any suit, action or proceeding directly against Guarantor for the enforcement of any provision of this Section, and it shall not be necessary in any such suit, action or proceeding to make Tenant a party thereto. This Guaranty may not be modified or amended without the prior written consent of Landlord, Tenant and Guarantor and any attempted modification or amendment without such consent shall be void.

Guarantor represents and warrants to Landlord that (a) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this guaranty; (b) Guarantor has full power, right and authority to enter into this guaranty of Lease; and (c) the provisions of this Section do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or



order applicable to Guarantor and no consent of any party, which consent has not been obtained, is required by Guarantor to enter into and deliver this guaranty.

36. **MISCELLANEOUS.**

(a) Waiver of Jury Trial. Landlord and Tenant hereby knowingly, voluntarily, and intentionally WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN THE EVENT OF ANY PROCEEDINGS based hereon, arising out of, under or in connection with this Lease or any documents contemplated to be executed in connection herewith or any course of conduct, course of dealings, statements (whether oral or written) or actions of either party arising out of or related in any manner with the Premises (including without limitation to rescind or cancel this Lease or any claims or defenses asserting that this Lease was fraudulently induced or is otherwise void or voidable). This waiver is a material inducement for Landlord to enter into and accept this Lease.

(b) This Lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this Lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

(c) The laws of the State of West Virginia shall govern the interpretation, validity, performance and enforcement of this Lease. If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby. All legal actions relating to this Lease shall be adjudicated in the courts of the State of West Virginia having jurisdiction in the county in which the Premises is located. Landlord and Tenant irrevocably consent to the personal and subject matter jurisdiction of those courts in any legal action relating to this Lease or any guaranty of Tenant's obligations under this Lease, and neither party shall assert, by way of motion, as a defense or otherwise, any objection to any such court being the venue of such legal action or claim that such venue is an inconvenient forum for either party or any principal of either party.

(e) The terms, provisions and covenants contained in this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest, permitted assigns and legal representatives except as otherwise herein expressly provided.

(f) Landlord and Tenant agree that they will from time to time, but no more than twice a year other than for prospective lenders or purchasers of the Premises or Tenant, upon written request by the other party, either review and comment, or execute, and deliver to the requesting party within fifteen (15) business days after demand therefor an Estoppel Certificate in Landlord's or Tenant's commercially reasonable form, as the case may be, certifying (a) that this Lease is in full force and effect and has not been modified (or, if modified, setting forth all modifications); (b) stating the date to which the Rent has been paid; (c) stating whether or not, to its actual knowledge, the other party is in default of its obligations under this Lease and if so, describing the default, including any event that has occurred which, with the serving of notice or the passage of time, or both, would give rise to a default; and (d) stating to its actual knowledge, any other factual matters reasonably requested by the other party or any person designated by the other party. Any certification delivered under this Section may be relied on by the third party for whom the certification is requested but shall not, as between Landlord and Tenant, affect their respective rights.

(g) Except as otherwise expressly provided herein, time shall be of the essence with respect to the performance of each of the parties' obligations hereunder. As used herein, the term "business" or "business days" shall mean any day that national banks in the county that the Premises are in are open for business, excluding Saturdays and Sundays.

(h) Notwithstanding any provision of this Lease, or any laws to the contrary, or the execution of this Lease by Tenant, this Lease shall not bind or benefit Landlord or Tenant, unless and until this Lease is signed and delivered by both Landlord and Tenant.

(i) No act or omission of Landlord or Tenant, or their respective employees, agents, or contractors, including the delivery or acceptance of keys, shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless it is in a writing signed by Landlord.

(j) The mutual obligations of Landlord and Tenant as provided herein are the sole consideration for this Lease and no representations, promises or inducements have been made by Landlord or Tenant other than as appear in this Lease.

(k) The captions in this Lease are for reference and convenience only and do not define the scope of this Lease or the intent, meaning or interpretation of any term. All Section references in this Lease shall, unless the context otherwise specifically requires, be deemed references to the Sections of this Lease.

(l) There shall be no presumption against the drafter of this Lease as both parties were represented by separate, independent counsel of its choosing.

(m) Wherever appropriate in this Lease, words of any gender used in this Lease shall be construed to include any other gender, and words in the singular shall include the plural, and vice versa, unless the context otherwise requires.

(n) Each party agrees to keep the terms of this Lease confidential and shall not disclose same to any other person not a party hereto without the prior written consent of the other, provided that either party may disclose the terms hereof to such accountants, attorneys, managing employees, and others in privity with any such party to the extent reasonably necessary for either party's business purposes.

(o) Should the government of the United States of America or any agency, authority or instrumentality thereof, or any quasi-governmental agency (i) request that Landlord or Tenant cancel the Lease or terminate the operation of the Premises for the Permitted Use or take any action to terminate, materially interfere, or materially disrupt Tenant's use of the Premises, (ii) fine, penalize, sanction, prosecute, or convict Landlord and/or Tenant, or threaten to fine, penalize, sanction, prosecute or convict Landlord and/or Tenant, (iii) seize or threaten to seize all or any portion of the Premises, any other property or assets of Landlord, and/or any property or assets of Tenant or its affiliates, or (iv) inform, notice, commence or threaten to commence any civil action against Tenant as a result of or in connection with Tenant's operation or proposed operation of its business at the Premises for the Permitted Use, Tenant shall be entitled to terminate the Lease by providing to Landlord a written termination notice (the "**Governmental Termination Notice**"). In the event Tenant delivers a Governmental Termination Notice to Landlord, the Lease shall terminate as of the date (the "**Governmental Termination Date**") set forth in the Governmental Termination Notice, provided that the Governmental Termination Date shall not be less than thirty (30) days after the date of the Governmental Termination Notice. Upon the Governmental Termination Date, Landlord and Tenant shall no longer owe the other any duty whatsoever under this Lease other than any surviving representations and warranties specifically stated hereunder.

(p) This Lease may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts put together shall constitute but one and the same Lease. Signatures sent by PDF or DocuSign, or similar electronic means, shall be effective and binding on the parties hereto.

37. **Exhibits** The following exhibits and attachments attached hereto are incorporated herein by this reference:

Exhibit A:	West Virginia GIS Map
Exhibit B:	Preliminary Subdivision Exhibit for New River Gorge Development



Exhibit C: Rent Commencement Letter  
Exhibit D: Landlord's Work  
Exhibit D-1: Building Rendering  
Exhibit D-2: Schematic Drawing  
Exhibit E: "Shopping Center Reciprocal Easement and License Agreement", dated August 19, 1993

38. **LANDLORD'S LENDER.** Landlord agrees that as of the Rent Commencement Date, Tenant's Permitted Use of the Premises has been approved by Landlord's lender or mortgagee, if any and to the extent so required. In the event either Landlord or Landlord's lender or mortgagee, at any time during the Term of this Lease, requires Tenant to (i) alter the Premises, or (ii) alter or cease its operations, because Tenant's Permitted Use is at that time unacceptable to Landlord's lender or mortgagee, Landlord shall reimburse Tenant for the total unamortized amount of the aggregate of all costs of all of Tenant's Work. This Section shall survive the termination of this Lease.

39. **RIGHT OF FIRST REFUSAL.** Tenant will have a right of first refusal to purchase the Premises on the terms and conditions of this Section 39. If Landlord desires to sell the Premises and accept a definitive, arms-length purchase contract for the Premises (the "**Contract**"), Landlord will thereafter provide to Tenant a copy of such Contract and Tenant will have a period of fifteen (15) business days within which to notify Landlord in writing whether or not it desires to purchase the Premises on the terms set forth in the Contract. If Tenant indicates that it is interested in purchasing the Premises, then Tenant will purchase the Premises on the terms set forth in the Contract. If Tenant fails to notify Landlord in writing within such fifteen (15) business day period or if Tenant notifies Landlord it does not desire to purchase the Premises pursuant to the Contract then Tenant shall forego its right of first refusal for that Contract only, and its right of first refusal shall remain intact for any subsequent sale that may occur due to the Contract being terminated and not fulfilled, or the new Landlord entering into a subsequent sale at a later date. Additionally, if after Tenant chooses not to exercise its rights to purchase the Premises pursuant to the Contract, the purchase price in the Contract is reduced by more than five percent (5%), or if there are material changes to the Contract, Landlord shall have to re-notice Tenant the new terms of the Contract and Tenant shall again have another fifteen (15) business day period to review and respond to whether or not it wants to purchase the Premises pursuant to the new Contract.


40. **ATTORNEYS' FEES.** If either party brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, then the Prevailing Party (as hereafter defined) shall be entitled to reasonable out-of-pocket attorneys' fees in any such proceeding, action, or appeal thereon. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The reasonable out-of-pocket attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be in such amount as to fully reimburse all reasonable out-of-pocket attorneys' fees incurred in relation to the action or proceeding.

*[Remainder of this page intentionally left blank; signatures follow.]*

IN WITNESS WHEREOF, the undersigned authorities have hereunto executed this Lease as of the Effective Date.


**TENANT:**

**VERANO WV, LLC**, a West Virginia limited liability company

By:   
Name: George Archos  
Its: Authorized Signatory


**GUARANTOR:**

**VERANO HOLDINGS CORP.**, a British Columbia corporation

By:   
Name: George Archos  
Its: CEO

**LANDLORD:**

**NEW RIVER GORGE DEVELOPMENT COMPANY, LLC**, a West Virginia limited liability company

By:   
Name: CASEY BROWN  
Its: MEMBER

# EXHIBIT B

----- Forwarded message -----

From: **Rocky Afo** <[rocky.afo@verano.com](mailto:rocky.afo@verano.com)>

Date: Wed, Jun 29, 2022 at 2:58 PM

Subject: Oak Hill strategy

To: Casey Bowling <[casey@bowlinginsurancewv.com](mailto:casey@bowlinginsurancewv.com)>

Casey,

Hope all is well with you and the family. Apologies for the slow response with our construction team and your architect but unfortunately the reason for the delay is because there's been a shift in our West Virginia strategy to only open four stores at this time. My hope was to continue to move forward with this location as it's a ground up and the likelihood of us being fully operational is likely a year from now. This would give us ample time to see how our four new locations perform. Ownership wouldn't budge so we're left with no choice but to terminate our lease agreement.

I wanted you to be aware of this prior to getting lawyers involved with hopes of you and I attempting to resolve the lease termination. Appreciate your time and feel free to reach out to me on my cell at 847-502-2394 if needed.

Best,

Rocky

**Rocky Afo**

Vice President, Real Estate Acquisitions

[rocky.afo@verano.com](mailto:rocky.afo@verano.com)    [847-502-2394](tel:847-502-2394)

[verano.com](http://verano.com)

415 N Dearborn St., 4<sup>th</sup> Floor

Chicago, IL 60654

**VERANO.**

# EXHIBIT C



# Case Docket Entries

CC-10-2022-C-104

Court: **Circuit** County: **10 - Fayette** Created Date: **9/1/2022** Security Level: **Public**  
 Judge: **Paul M. Blake, Jr.** Case Type: **Civil** Case Sub-Type: **Contract** Status: **Open**  
 Related Cases:  
 Style: **New River Gorge Development Company, LLC, a West Virginia limited liability comp v. Verano WV, LLC, a West Virginia limited liability company**

	<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
1	9/1/2022 1:35:37 PM	E-Filed		Complaint
	1-1 9/1/2022	Civil Case Information Statement		
	1-2 9/1/2022	Complaint - Complaint with Exhibit A and Exhibit B		
	1-3 9/1/2022	Transmittal		
	1-4 9/1/2022	Summons		
2	9/1/2022 1:35:37 PM	Judge Assigned	J-10004	Thomas H. Ewing
3	9/1/2022 1:35:37 PM	Party Added	P-001	New River Gorge Development Company, LLC, a West Virginia limited liability comp
4	9/1/2022 1:35:37 PM	Party Added	D-001	Verano WV, LLC, a West Virginia limited liability company
5	9/1/2022 1:35:37 PM	Party Added	D-002	Verano Holdings Corp., a British Columbia corporation
6	9/1/2022 1:35:37 PM	Attorney Listed	P-001	A-9167 - Charles Ray Hughes, Jr.
7	9/1/2022 1:35:37 PM	Service Requested	D-001	Filer - Secretary of State
8	9/1/2022 1:35:37 PM	Service Requested	D-002	Filer - Secretary of State
9	9/1/2022 3:03:56 PM	Judge Assigned	J-10001	Paul M. Blake, Jr.
10	9/1/2022 3:04:02 PM	E-Filed		Notice of Judge Reassignment
	10-1 9/1/2022	Transmittal		
11	9/19/2022 3:03:53 PM	E-Filed		Supporting Documents - Acceptance of Service and Stipulation of Response Extension
	11-1 9/19/2022	Supporting Document - Acceptance of Service and Stipulation of Response Extension		
	11-2 9/19/2022	Transmittal		
12	9/19/2022 3:03:53 PM	Attorney Listed	D-001	A-10020 - Russell David Jessee
13	9/19/2022 3:03:53 PM	Attorney Listed	D-002	A-10020 - Russell David Jessee
14	11/18/2022 1:45:28 PM	E-Filed		Motion - Motion to Dismiss
	14-1 11/18/2022	Motion - Defendants' Motion to Dismiss and Memorandum of Law in Support of Defendants' Motion to Dismiss		
	14-2 11/18/2022	Supporting Document - Exhibits		
	14-3 11/18/2022	Supporting Document - Trial Court Rule 6.04 cases		
	14-4 11/18/2022	Transmittal		
15	11/23/2022 10:17:56 AM	E-Filed		Notice of Appearance - Notice of Appearance (S. Andrew Stonestreet for Plaintiff New River Gorge Development Company, LLC
	15-1 11/23/2022	Notice of Appearance - Notice of Appearance (S. Andrew Stonestreet for Plaintiff New River Gorge Development Company, LLC		
	15-2 11/23/2022	Transmittal		
16	11/23/2022 10:17:56 AM	Attorney Listed	P-001	A-11966 - Steven Andrew Stonestreet