

THE ATRIUM GROUP LLC

December 10, 2019

The Honorable Terry Tornek, Mayor of
Pasadena
City of Pasadena, City Hall
100 N. Garfield Avenue, Room S228
Pasadena, CA 91101

Mr. Tyron Hampton, Vice Mayor of Pasadena &
City Councilmember District 1
City of Pasadena, City Hall
100 N. Garfield Avenue, Room S228
Pasadena, CA 91101

Ms. Margaret McAustin, City Councilmember
District 2
City of Pasadena, City Hall
100 N. Garfield Avenue, Room S228
Pasadena, CA 91101

Mr. John J. Kennedy, City Councilmember
District 3
City of Pasadena, City Hall
100 N. Garfield Avenue, Room S228
Pasadena, CA 91101

Mr. Gene Masuda, City Councilmember
District 4
City of Pasadena, City Hall
100 N. Garfield Avenue, Room S228
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Mr. Victor M. Gordo, City Councilmember
District 5
City of Pasadena, City Hall
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Mr. Steve Madison, City Councilmember
District 6
City of Pasadena, City Hall
100 N. Garfield Avenue, Room S228
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Mr. Andy Wilson, City Councilmember
District 7
City of Pasadena, City Hall
100 N. Garfield Avenue, Room S228
Pasadena, CA 91101

Dear Honorable Mayor and Members of the Pasadena City Council:

Over the past several months, we have sent numerous letters to the Planning Department, City Attorney's office, and the City Council detailing the many errors we believe City staff have made in advancing both Harvest's initial screening application and its CUP application in District 3. I don't expect that most of you have yet reviewed that correspondence. Therefore, I would like to take this opportunity to summarize all the issues that we have raised, and the responses we have received from City staff. It is my profound hope that this will help you understand why we feel so strongly that the City has erred in its decision, and why we have decided to appeal the Planning Department's decision to approve Harvest for a Conditional Use Permit in District 3.

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On June 5th of this year, I learned that The Atrium Group had been selected as one of the six top-scoring applicants in Pasadena's highly competitive licensing process for cannabis retailers. This was a great honor, and a deserved reward for all the hard work that my team and I devoted to this endeavor. Although we were ecstatic to have earned the 3rd highest score out of 122 applicants, with the CUP phase looming just 1 week later, we did not allow ourselves to celebrate.

On June 10th, we hired Craig Fry & Associates to help us with our CUP preparation and submission. In addition to knowing that they were a local, Pasadena-based land use consulting firm with vast experience in expediting permits and obtaining land-use entitlements, we quickly learned that Mr. Fry's company was also a partner in a company called The Brick & Rose that had applied for a cannabis retail permit in Pasadena and had come in seventh place, narrowly missing the Top 6 cutoff by just a single point. Although this was a crushing blow for them, they quickly moved on from their disappointment and agreed to take us on as a client. We have been fortunate to have a company with such intricate knowledge of both the Pasadena cannabis ordinance and local market regulations working on our behalf.

On the morning of June 12th, in front of representatives of each of the Top 6 applicants, the City released its application for a cannabis conditional use permit. The CUP application form itself was fairly standard, with one notable exception – a requirement that the sensitive use radius map be prepared by a licensed land surveyor.

We spent the entire day of June 12th feverishly working on our CUP application, eventually submitting at 10:56 p.m. that evening. We then amended and resubmitted our CUP application the next day at 4:49 p.m.

On the following morning, Guille Nunez reached out to us to ask us what had changed from our previous submission. I immediately replied to her that "the only change we made was to have our radius map created and stamped by a licensed land surveyor per the Pasadena CUP requirements."

This was a calculated decision to resubmit. When we realized that neither SweetFlower Pasadena ("SweetFlower") nor Harvest of Pasadena, the two groups that had submitted their CUP application before us, had amended their application, we felt extremely confident that we would eventually be bumped up into the first position in District 3. In our unanimous opinion, there was simply no way that either of those groups, without prior knowledge of the requirement, could have had a licensed surveyor perform the required work in time to submit the CUP on the same day. And, indeed, we later learned, upon review of their CUP applications, that neither of them had fulfilled that requirement.

With our initial CUP submission efforts now completed, we all turned our attention to a review of the initial screening applications for the Top 6 scoring applicants that the City had previously made public a day earlier, on June 11th. Upon review, we quickly identified numerous serious deficiencies with Harvest's initial screening application.

ISSUES WITH HARVEST'S SCREENING APPLICATION ARE REVEALED

On June 17th, Mr. Craig Fry, President of Craig Fry & Associates and a partner in The Brick & Rose, sent a letter addressed to City Manager Steve Mermell and City Attorney Michele Bagneris¹ (see Attachment 1. Letter from The Brick & Rose, LLC dated June 17th, 2019). In that letter, Mr. Fry expresses his incredulity that Harvest's screening application was allowed to move forward despite the fact that Harvest failed to provide the required disclosures on the City's Applicant/Owner Information Form² (see Attachment 2. Applicant & Owner Information Form for Harvest of Pasadena, LLC).

“during our review we were mystified at how one of the top six license candidates – *Harvest of Pasadena, LLC* (“Harvest”) – managed to earn the right to apply for a coveted cannabis license when the company did not comply with one of the most basic aspects of the screening process – it failed to provide the required disclosures for its owner and a third party having a significant financial interest in the business. Unlike the other top applicants, Harvest ignored nearly all of the compulsory disclosures that were required in the City's Applicant/Owner Information Form. As you know, all license candidates were obliged to complete and include this document as part of their screening application. However, whether by negligence or design, Harvest did not make even a minimal effort to provide the proper disclosures about itself (as a prospective cannabis licensee), its owner, Steve White (owner of 100% of Harvest's equity), and Harvest Health & Recreation, Inc. (“HHR-Arizona”), the real beneficiary of any cannabis license that may be issued in by the City. **Any one of these failures should have been enough to disqualify the Harvest screening application from further consideration.**”

In his letter, Mr. Fry proceeded to detail a series of errors, omissions and misrepresentations made by Harvest. Although, many of these issues are technical in nature, a clear picture emerges of Harvest's efforts to blur the lines between Harvest of Pasadena, a single-manager limited liability company according to the Articles of Organization filed with the California Secretary of State, and its shadow owner, Harvest Health & Recreation, Inc (“Harvest-Arizona”), a large corporate entity headquartered in Arizona, that is publicly traded on the Canadian Stock Exchange.

¹ A copy of the *Letter from The Brick & Rose, LLC dated June 17th, 2019* is included as Attachment 1.

² A copy of the *Applicant & Owner Information Form for Harvest of Pasadena, LLC* is included as Attachment 2.

It seems that even HdL (the City's contractor who reviewed and scored the applications) was confused as to the ownership structure³, commenting in the scoring results section for Qualification of Owners/Operators, "Applicant is a sole proprietorship 100% owned by Steve White."

Of course, we clearly know that Harvest Health & Recreation was always intended to be the financial beneficiary of any license awarded to Harvest of Pasadena. In the immediate aftermath of the Pasadena scoring results being revealed, Harvest Health & Recreation excitedly disseminated a press release⁴ (see *Attachment 3. Harvest Health & Recreation Continues California Growth with Pasadena Dispensary License Win*):

"Harvest Health & Recreation, Inc...a vertically integrated cannabis company with one of the largest and deepest footprints in the U.S., **was awarded a dispensary license to operate in Pasadena...**" *[Emphasis added]*

In the footnotes of that press release, Harvest-Arizona portrayed Mr. White's ownership of the Pasadena business as merely custodial:

"Steve White, CEO of Harvest Health & Recreation, Inc., holds 100% ownership of the winning license entity, Harvest of Pasadena, LLC, **for the benefit of Harvest Health & Recreation, Inc.**" *[Emphasis added]*

Pasadena required all applicants to complete the Applicant/Owner Information Form (the "Information Form") in order to ensure the transparency of the licensing process. By failing to properly complete the Information Form as the owner of Harvest, Mr. White did not respond to the many important disclosure requirements that were strictly adhered to by every other individual owner of the top scoring applicants.

Harvest's baffling failure to provide required disclosures about its owner was matched only by the company's brazen indifference to the reporting requirements for non-owners having a financial interest in the business. By failing to report Harvest-Arizona's economic interest in Harvest of Pasadena, the non-disclosed financial interest holders in the Pasadena license were similarly able to avoid answering a series of questions designed to ensure that only the most qualified and reputable individuals would be eligible to receive a license. These omissions are serious and constitute a

³ See HdL comments in the scoring results for Harvest of Pasadena, LLC, Section 1: Qualification of Owners/Operators, Page 2

⁴ A copy of Harvest's Press Release: *Harvest Health & Recreation Continues California Growth with Pasadena Dispensary License Win* is included as Attachment 3.

significant breach of the City’s filing rules, which clearly require a disclosure for each owner of a cannabis business.^{5 6}

Had Harvest properly completed the Information Form as required under the rules, they would have had to furnish the City with several important disclosures, including:

- 1) Has Harvest or its owners ever been denied a permit or state license to engage in commercial cannabis activity?
- 2) Whether Harvest or its owners have ever had a permit or state license suspended or revoked by a cannabis licensing authority?
- 3) Has Harvest or its owners ever failed to pay federal, state or local taxes when notified by the proper agencies?
- 4) Has Harvest or its owners ever been convicted of a crime?

We do not think anyone can fairly argue that these unanswered questions are simply “minor” or “technical” oversights. After all, Mr. White is an astute veteran of the cannabis trade and an experienced attorney whose legal practice has included “business litigation and business / administrative / regulatory law for several national law firms.”

Mr. White’s background as an accomplished attorney makes these fraudulent statements and material omissions even more inexcusable given that they were made *under penalty of perjury*. Section E of the Applicant/Owner Information Form, where Mr. White affixed his signature, requires the applicant to make the following affirmation:

“Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. **I understand that misrepresentation of fact is cause for rejection of this screening application, denial of a license, or revocation of a license issued.**” *[Emphasis added]*

⁵ See Commercial Cannabis Permit Screening Application Information Packet, December 14, 2018, Page 3: “Each screening application shall complete the Applicant/Owner Information Forms (Required Submittal Item 1). These forms include basic information on the applicant, owners, and non-owners with a financial interest in the business.

⁶ The instructions at the top of the Information Form direct the applicant to: “Complete the pertinent sections for each owner, applicant, entity owner and non-owner with a financial interest in the business.”

Minor errors are known to occur in competitive entitlement proceedings but that is not the record before us. At best, the number and nature of these misstatements and omissions is grossly negligent, and at worst, they are calculated and deceitful.

Given the totality of the information that we have subsequently discovered, Harvest's failure to properly complete the Information Form cannot be interpreted as anything other than an intentional effort to conceal the true nature of its ownership holding.

Irrespective of the reasons that Mr. White furnished the City with an information form that was both incomplete and inaccurate, this is a clear violation of the rules and should have been fatal to Harvest's license prospects.

THE CITY RESPONDS

On June 20th, City Manager Mermell formally responded to Mr. Fry's letter⁷ (see Attachment 4. Letter from City Manager Steve Mermell in response to The Brick & Rose, LLC dated June 20, 2019):

"The City of Pasadena is in receipt of your letter dated June 17, 2019, which you and Mr. Larry Mondragon presented to me and other staff on that same date, as well as additional information you submitted on this same date. Therein you argue that the City should disqualify fourth ranked Harvest of Pasadena LLC ("Harvest") from the City's commercial cannabis permit application process for alleged misrepresentations made in their application. We have reviewed your claim that Harvest completed the required Applicant/Owner Information Form ("A/O Form") inaccurately, and respectfully disagree at this time. Harvest provided the required information necessary to evaluate their application at this early stage. The City will further evaluate all of the applications as they move forward at later stages in the process and before issuing any cannabis permit. It may be that Harvest (or other applicants) is disqualified or withdraws at a later date."

It was particularly disheartening to hear that the complaint was being dismissed because, in Mr. Mermell's words: "*Harvest provided the required information necessary to evaluate their application at this early stage.*" [Emphasis added]

The Brick & Rose and The Atrium Group strongly disagreed with the position taken by City Manager in this regard. Indeed, it seemed to us that the City was changing the rules to favor a single applicant. By rejecting our concerns about the conduct of Harvest, the City was essentially changing the rules of a competitive proceeding *after the fact*.

⁷ A copy of the *Letter from City Manager Steve Mermell in response to The Brick & Rose, LLC dated June 20, 2019* is included as Attachment 4.

The Commercial Cannabis Permit Screening Application Information Packet made it clear that there would be no chance given to make amendments to the information following submission⁸:

“Applications must be complete when being submitted; there will be no opportunity to resubmit missing information.” *[Emphasis in original]*

Furthermore, Section 5.78.080(D) of the Pasadena Municipal Code takes it one step further, clearly stating “the city shall also **disqualify any application that contains any false or misleading information.**”⁹ *[Emphasis added]*

NEW INFORMATION EMERGES

On June 23, Mr. Mondragon sent a follow up letter to Mr. Mermell¹⁰ (see Attachment 5. Letter from The Brick & Rose, LLC dated June 23, 2019). This time he also copied Mayor Tornek, all seven members of the Pasadena City Council, and members of the Planning Department and City Attorney’s office.

In addition to voicing his strenuous opposition to Mr. Mermell’s refusal to disqualify Harvest, and the reasons given for that decision, Mr. Mondragon also for the first time revealed new information related to Harvest’s CUP application, its ownership, and their business practices in other states.

THE TAXPAYER PROTECTION ACT

Pasadena’s Taxpayer Protection Act requires each permit applicant to disclose “all joint owners, trustees, directors, partners, officers and those with more than a 10% equity, participation or revenue interest” in their business. On June 12, 2019, Harvest provided the City with the required TPA disclosure¹¹ (see Attachment 6. Harvest’s TPA Disclosure). However, in this disclosure, Harvest failed to list two senior company officers who were originally identified in its screening application: its President, Steve Gutterman, and Chief Operating Officer, John Cochran¹² (see Attachment 7. Harvest’s Executive Team).

Just as with the earlier Information Form, Mr. White again falsely attested to the truthfulness of a false and misleading statement as he signed the form under the printed words: “*I hereby certify that I am the owner or designated agent and that the statements and answers contained herein, and the*

⁸ Commercial Cannabis Permit Screening Application Information Packet, Page 4, December 14, 2018

⁹ See Pasadena Municipal Code Section 5.78.080(D).

¹⁰ A copy of the *Letter from The Brick & Rose, LLC dated June 23, 2019* is included as Attachment 5.

¹¹ A copy of *Harvest’s TPA Disclosure* is included as Attachment 6.

¹² A copy of *Harvest’s Executive Team* is included as Attachment 7

information attached, are in all respects true, accurate and complete to the best of my knowledge and belief."

THE INTRODUCTION OF JASON VEDADI

Besides omitting mention of two senior officers, Harvest also revealed for the first time in the TPA disclosure that an Arizona resident named Jason Vedadi (a/k/a "Touraj J. Vedadi") would have an interest in its Pasadena cannabis business. Far from being a bit player, Mr. Vedadi currently serves as the Executive Chairman of Harvest Health & Recreation, Inc., the company who will be the true owner of any license awarded to Harvest of Pasadena.

In public documents filed with securities regulators, Mr. Vedadi is named as the company's single largest shareholder, controlling 35.4% of the company's voting shares, while Mr. White is listed as the second largest shareholder with 32.6%. Mr. Vedadi's affiliation with Harvest was not disclosed in the Applicant/Owner Information Form that Mr. White had previously signed and submitted under penalty of perjury. Nor is Mr. Vedadi named anywhere in the body of the screening application as a company officer or in any other capacity. No reason has been provided as to why Mr. Vedadi's interest was not previously divulged by Mr. White. However, given the publicly available information about Mr. Vedadi, it's not difficult to understand why Mr. White would choose to omit this information.

JASON VEDADI'S COMPLIANCE WITH THE LAW

On November 11, 2011, Vince Sanchez, a Special Agent for the Drug Enforcement Agency, submitted an affidavit¹³ in a federal drug trafficking case in support of the government's seizure of money and assets belonging to the target of their investigation, Jason Washington (Case No. 9:11-mj-00060-JCL). On September 16, 2011, U.S. District Judge Donald W. Molloy authorized the interception of Mr. Washington's wire and electronic communications. Pursuant to this wiretap order, on October 6, 2011, a call was received from Mr. Vedadi that was transcribed in court documents as follows:

"On October 6, 2011, a telephone call was intercepted between VEDADI and WASHINGTON. VEDADI asked WASHINGTON "What's it worth if it's in Kalispell?" WASHINGTON responded, "To me it's not worth anything it's worth 23 to me" (\$2300/lb.). VEDADI responded that "It's just too good of sh*t for that." WASHINGTON responded "F**k 35 (\$3500/lb.) sh*t whatever, I'm just not, in the game like that right now." "Cause I can ya know get that other stuff when our stuff's not ready.....23 all day and that's what I pay." (see Attachment No. 8. Affidavit of Vince Sanchez, Special Agent, Drug Enforcement Administration, pages 7-8 and 16).

¹³ A copy of the *Affidavit of Vince Sanchez, Special Agent, Drug Enforcement Administration* is included as Attachment 8

In his sworn affidavit, DEA Special Agent Sanchez testified that he believed Mr. Vedadi was attempting to illegally sell marijuana to Mr. Washington, but his offer was declined because Mr. Washington believed he could obtain the product from another party at a lower cost.

According to the DEA affidavit, the illegal drug ring was operated out of a Montana State-licensed medical marijuana growing operation that was managed by Jason Washington, Jason Vedadi, and a third individual. According to the affidavit, the DEA was informed that Vedadi allegedly invested \$500,000 to establish the medical marijuana business.¹⁴

Although a federal criminal complaint was filed against Mr. Washington, no federal charges were brought against Mr. Vedadi.

Notwithstanding whether any criminal charges were filed, the City has both a right and duty to inquire as to whether Mr. Vedadi has ever grown, transported or sold marijuana in violation of state or federal laws, or whether he has ever conspired to do so.

This may be what motivated Mr. White to conceal Mr. Vedadi's involvement in the company as he failed to name him in the original Applicant/Owner Disclosure Form that Harvest provided to the City in January. If we are to believe officials in Ohio, where Harvest's affiliate, Harvest Grows Ohio, LLC, is being sued by the State of Ohio¹⁵, this is precisely why Mr. White chose not to identify Mr. Vedadi as an owner of the business:

"Upon information and belief, the ownership of Harvest Grows was misrepresented specifically for the purpose of avoiding having to submit a criminal background check of Jason Vedadi, who is identified in the news release quoted above as the President of Harvest, Inc.¹⁶" (see Attachment 9. State of Ohio vs Harvest Grows, LLC, pages 57-58)

JASON VEDADI'S FAILURE TO PAY TAXES

Section 5.78.100 of the Municipal Code specifies five separate situations where the City must prohibit a person from receiving a commercial cannabis permit. One of these is where evidence is provided: "that the applicant failed to pay federal, state, or local taxes and/or fees when notified by the appropriate agencies."¹⁷

¹⁴ See Attachment 9. State of Ohio vs Harvest Grows, LLC, page 58

¹⁵ A copy of State of Ohio vs Harvest Grows, LLC is included as Attachment 9

¹⁶ See Attachment 9. State of Ohio vs Harvest Grows, LLC, pages 57-58

¹⁷ See Pasadena Municipal Code, 5.78.100(D)

On September 21, 2017, the Internal Revenue Service recorded a tax lien in Maricopa County Arizona against Mr. Vedadi and his wife for unpaid taxes in the amount of \$42,817.89¹⁸ (see Attachment 10. Notice of Federal Tax Lien for Touraj J & Shayna Vedadi).

If Harvest had followed the rules and named Mr. Vedadi as an owner in the Applicant/Owner Disclosure Form, the company would have been compelled to answer a pointed question as to whether Mr. Vedadi had ever failed to pay his taxes. With Mr. White being a licensed attorney, we can only assume that Harvest knew well that such a disclosure would have resulted in the company being judged ineligible to receive a cannabis permit.

Since the federal tax lien was recorded months before Harvest filed its screening application, the omission of Mr. Vedadi is yet another reason why the Applicant/Owner Information Form it furnished to the City was false and misleading.

As a reminder, pursuant to Municipal Code Section 5.78.080(D): “The city shall...**disqualify any application that contains any false or misleading information.**” *[Emphasis added]*

ISSUES WITH HARVEST IN OTHER STATES

At the conclusion of Mr. Mondragon’s letter, the City also learned for the first time about the different methods that Mr. White uses in other jurisdictions to blur the lines between Harvest Health & Recreation (Harvest-Arizona) and its affiliates when applying for local cannabis permits.

In Pasadena, Harvest appears to be continuing a deliberate and calculated pattern of conduct which has been previously called into question in other states — using a carefully engineered corporate structure to mask the identity of the true ownership of each licensed entity. A simple Google search will uncover a wealth of information about Harvest, its affiliates and executive team.

PROBLEMS IN OHIO

The State of Ohio has accused Harvest of essentially stealing three cannabis retail licenses that were intended for an “economically disadvantaged” group by fraudulently claiming that 51 percent of its Ohio operations were owned by an African-American woman named Ariane Kirkpatrick. After investigating the matter, the Ohio Board of Pharmacy (the administrative agency charged with overseeing Ohio’s cannabis licensing program) found that Harvest-Ohio did not qualify as “economically disadvantaged.” The Board of Pharmacy bluntly concluded that Harvest-Ohio had:

¹⁸ A copy of *Notice of Federal Tax Lien for Touraj J & Shayna Vedadi* is included as Attachment 10

“committed fraud, misrepresentation, or deception in furnishing information on its application for a cannabis license.”

This allegation is particularly revolting because the State legislature had decided that a certain number of cannabis licenses should be set aside for groups who have been severely impacted by our country’s decades-long *War on Drugs*. Indeed, the ownership and disclosure rules in Ohio were designed to avoid precisely the sort of conduct that Harvest-Ohio is now accused of— creatively structuring its ownership in a manner that would allow its Arizona parent to wrongfully gain control over a cannabis license that was intended to be granted in furtherance of the State’s social equity goals.

Here is a sample of some of the other allegations from the state of Ohio:

“Upon information and belief, Harvest Grows violated Administrative Rules and made material misrepresentations on its application...”¹⁹

“Upon information and belief, Harvest Grows misrepresented itself as being an entity ‘owned and controlled’ by a member of an economically disadvantaged group in order to obtain favorable consideration from the Department to which it was not entitled.”²⁰

“Upon information and belief, the above-described material misrepresentations, among others, contributed to the Department’s decision to award Harvest Grows a Cultivator Provisional License despite the fact that Harvest Grows scored significantly lower in the application review process than did a number of other applicants that did not represent themselves as being owned and controlled by members of an economically disadvantaged group and whose applications were rejected.”²¹

And in an allegation that is strikingly similar to Harvest’s actions in Pasadena, the State of Ohio further claims:

“Upon information and belief, the ownership of Harvest Grows was misrepresented for the purpose of concealing the identities of individuals who also have a management role in Harvest Grows and/or an ownership interest in Harvest Grows, through their interest in Harvest Inc., for the purposes of avoiding the requirement of one or more of those

¹⁹ See *Attachment 9. State of Ohio vs Harvest Grows, LLC*, page 48

²⁰ See *Attachment 9. State of Ohio vs Harvest Grows, LLC*, page 49

²¹ See *Attachment 9. State of Ohio vs Harvest Grows, LLC*, page 51

individuals to submit a criminal background check in conjunction with the Ohio application.”²²

As the Ohio investigation has unfolded, Harvest-Ohio has displayed a tenacious desire to keep its corporate structure in the shadows and a willingness to take any measures necessary to prevent the disclosure of its relationship with its Arizona parent.

According to court records, a third party requested a copy of the formal notices that the Ohio Board of Pharmacy sent to Harvest-Ohio in anticipation of a revocation hearing under the State’s public information laws. In response, Harvest- Ohio filed a lawsuit against the State to prevent disclosure of these documents, arguing *inter alia* that the materials contained trade secrets about its corporate framework, which it characterized as: “...highly sensitive information regarding the unique organizational structure of [Harvest-Ohio’s limited liability company].” Harvest-Ohio’s complaint further claimed that: “...disclosure regarding how Petitioners structured their LLCs would reveal specialized organizational information of high economic value.”

PROBLEMS IN PENNSYLVANIA

In Pennsylvania, Harvest is accused of falsely promising to use minority-owned businesses in the construction of their facilities. An investigative report by journalist Sam Wood of *The Philadelphia Inquirer* looked into disclosure issues within the State of Pennsylvania, where the State’s Department of Health had been investigating whether Harvest-Arizona’s local affiliate (“Harvest-Pennsylvania”) had defrauded the State by renegeing on a promise to utilize “disadvantaged business entities” in the buildout of their dispensaries²³ (see *Attachment 11. Marijuana company under investigation in Pennsylvania faces probe in Ohio for 'fraud, deception'*).

The State’s scoring process had given substantial weight to each applicant’s commitment to use local businesses, which the State was hoping would bring badly-needed jobs and investment into the communities where operators like Harvest wanted to operate. As one of the top-ranked applicants, Harvest had committed to utilize the services of local minority-owned and woman-owned contractors. However, when the time came for Harvest-Pennsylvania to build out its facilities, the company is alleged to have instead awarded those contracts, valued at hundreds of thousands of dollars, to a business from New Mexico.

In addition to these charges, Harvest-Pennsylvania is also defending itself against accusations that it acquired control of more than five cannabis retail permits in the State, which is the maximum

²² See *Attachment 9. State of Ohio vs Harvest Grows, LLC*, page 57

²³ A copy of *Marijuana company under investigation in Pennsylvania faces probe in Ohio for 'fraud, deception'* is included as Attachment 11

allowed by law. Each of these retail permits authorizes the holder to operate up to three cannabis retail stores. In the face of this restriction, and in a brazen move that was strikingly similar to the press release Harvest-Arizona issued after Pasadena selected Harvest as one of its top six applicants, Harvest-Arizona publicly announced that it had obtained control of seven retail permits in Pennsylvania - more than the law allows.

On April 10, 2019, in the aftermath of this public confession, the **Pennsylvania Department of Health** demanded by letter that Steve White respond to the Harvest-Arizona press release that blustered about the company's ownership of cannabis permits within the state²⁴ (see *Attachment 12. Letter from Pennsylvania Department of Health to Steve White*):

“The [press release] further represents that, in Pennsylvania, ‘Harvest currently has seven state licenses allowing up to 21 retail stores throughout the state.’ This is a blatant misrepresentation of Harvest Health & Recreation’s status in Pennsylvania. Harvest Health & Recreation, Inc. did not apply for, or receive, **any** permits in Pennsylvania.” [*Emphasis in original*]

Harvest eventually reached a settlement with the Department of Health whereby it agreed to forfeit two licenses, refrain from entering into any “management services agreements” for at least two years and agreed to pay \$400,000 towards a fund set up to provide discounts to eligible patients²⁵ (see *Attachment 13: Harvest’s deal with Pa. cannabis regulators wasn’t just about dispensary licenses, documents show*).

In Ohio, Harvest-Arizona is alleged to have masked its true ownership to acquire a social equity license for its own benefit at the expense of a deserving minority applicant for whom the preference program was intended. In Pennsylvania, Harvest’s local affiliate appears to have been concealing the Company’s ownership structure in order to circumvent state limits on the number of cannabis licenses that any one entity can control.

Harvest’s Chief Executive Officer proudly claims that his company uses its complicated corporate structures and the inexperience of local government as a weapon against its competitors. In an interview with the publication *Proactive Investors Canada* that was released a few of days after Harvest was selected as a one of the top six Pasadena applicants, Steve White bragged about how his training as a lawyer has helped him discover loopholes in the rules that benefit his company:

²⁴ A copy of *Letter from Pennsylvania Department of Health to Steve White* is included as Attachment 12

²⁵ A copy of *Harvest’s deal with Pa. cannabis regulators wasn’t just about dispensary licenses, documents show* is included as Attachment 13

“Your biggest obstacles are regulatory in nature, and as a result the ability to navigate regulatory hurdles – laws, in other words – is really helpful, because you can interpret things in a creative way to give you advantages over competitors...”²⁶ (see Attachment 14. Steve White interview with Proactive Investors UK)

In Pasadena, Mr. White’s “creative interpretation” of the rules was likely a conscious strategy that was intended to mask negative information about its parent’s Executive Chairman and largest shareholder, Jason Vedadi, and neutralize what the City had intended to be a rigorous and competitive selection process. As things stand today, it’s hard to argue that Mr. White has been unsuccessful.

We fully understand that facts underlying these State actions in Ohio and Pennsylvania are not the same as we have today in Pasadena. However, we are providing you with news of these events to demonstrate that Harvest’s failure to properly make the required disclosures in its Pasadena application was not an honest mistake, but instead, an intentional effort to conceal the extent of its ties to its corporate parent, just as its siblings have done in the States of Ohio and Pennsylvania.

CITY MANAGER MERMELL SEEKS MORE INFORMATION FROM HARVEST

After receiving the letters from The Brick & Rose, it appeared that the City was finally taking the allegations seriously.

On June 25, 2019 City Manager Steve Mermell related the concerns to Harvest and gave the company 30 days to respond to the allegations against it²⁷ (see Attachment 15. Letter from City Manager Steve Mermell in response to Harvest of Pasadena dated June 25, 2019):

“The City is in receipt of multiple letters inquiring as to Harvest of Pasadena, LLC’s (“Harvest”) cannabis permit screening application and the accuracy of the information provided therein....If Harvest wishes to respond, please do so within the next 30 days...The City will address the inquiries and any response by Harvest at the appropriate time in the City’s cannabis permitting process.”

Harvest’s official response to the City came on July 10, 2019²⁸ (see Attachment 16. Letter from Harvest of Pasadena dated July 10, 2019). In his letter, Chief Executive Officer Steve White simply

²⁶ A copy of *Steve White interview with Proactive Investors UK* is included as Attachment 14

²⁷ A copy of *Letter from City Manager Steve Mermell in response to Harvest of Pasadena dated June 25, 2019* is included as Attachment 15

²⁸ A copy of *Letter from Harvest of Pasadena dated July 10, 2019* is included as Attachment 16

refused to address any of the serious allegations of errors and misconduct that were raised by The Brick & Rose, The Atrium Group, and others.

“At this time, we are solely focused on moving forward with the processing of our application, and subsequently opening for business in the great City of Pasadena... Accordingly, we will not respond to these negative attacks by our competitors who were unsuccessful in the screening.”

Mr. White then expresses his disappointment that Harvest’s application was made public:

“We were confident that our correspondence with the City would be the only relevant information that would be made public. We assumed the City would see any requests made by others, demanding that the City make any single C.U.P. Application available to the public, as a material event... Accordingly, any release of our submitted application reveals non-public, proprietary, private financial details, and trade secrets.”

Unfortunately, any hope we had that the City was truly concerned about these allegations and wanted to receive additional information from Harvest before deciding whether to deny Harvest’s application for filing was dashed when the City apparently deemed Mr. White’s response to be sufficient.

To date, we are still waiting for any explanation from Harvest. Similarly, we are waiting for the City to let us know when, in Mr. Mermell’s words, the appropriate time in the City’s cannabis permitting process will be to address the inquiries and the response, or lack thereof, from Harvest.

NUMEROUS ISSUES WITH HARVEST’S CUP APPLICATION

While the City was digesting the letters from The Brick & Rose, The Atrium Group was also doing its own analysis of Harvest’s CUP application. In letters to the City dated July 8, 2019²⁹ and July 12, 2019³⁰ (see *Attachment 17. Letter from Christopher Sutton dated July 8, 2019* and *Attachment 18. Letter from Christopher Sutton dated July 12, 2019*) our attorney Christopher Sutton detailed more than thirty (30) individual deficiencies with Harvest’s CUP application. These included items such:

- Lack of Taxpayer Disclosure Act submissions for key officers and executives
- Lack of Ownership Consent Form from the property owner
- No Live Scan Authorizations were provided for anyone other than Steve White

²⁹ A copy of *Letter from Christopher Sutton dated July 8, 2019* is included as Attachment 17

³⁰ A copy of *Letter from Christopher Sutton dated July 12, 2019* is included as Attachment 18

- Incomplete Site Plan
- Incomplete Floor Plan
- Failure to respond to 14 of the 16 mandatory sections required in the Pasadena Municipal Code related to compliance
- Lack of a Master Lease included with Harvest's Lease Agreement
- Concealment of Harvest's Parent Entity
- Location too close to a sensitive use
- Lack of a proper state-licensed surveyor certification

In a "race to the window" scenario such as the one that the City devised for accepting CUP submissions, any shortcuts taken by Harvest, if allowed to stand, would unjustly provide them with an unfair advantage relative to other applicants. However, in the interest of brevity, I will only highlight the two most glaring issues.

THE RUDOLF STEINER LIBRARY ISSUE

We believe the City committed a serious error by selecting an applicant who plans to operate a cannabis retail business at a location that is clearly in breach of the Pasadena Municipal Code. In case there is any doubt, let me supplement the information already in the City's possession about the "Rudolph Steiner Library."

- The Rudolph Steiner Library is located at 110 Martin Alley in Pasadena's historic district. The library is operated by the Anthroposophical Society in America, a nonsectarian, nonpolitical organization that is open to everyone regardless of religion, race, nationality, social standing, scientific or artistic conviction.
- The library has a long history and has served Pasadena's Old Town community for 28 years. The Steiner Library was originally founded in 1943 and moved to its current location on Martin Alley in 1991³¹. (See *Attachment 19. Rudolf Steiner Library Photos*).
- Staffed solely by volunteers, the Steiner Library is open on Saturday from 1:00 to 5:00 pm, as well as before and after branch events. Events are held nearly every week (usually on Saturdays but also on Fridays and Sundays). Additionally, study groups are held at the library every Tuesday and the first Monday of every month.

³¹ A copy of *Rudolf Steiner Library Photos* is Included as Attachment 19

- The library contains an extensive collection of books by Rudolf Steiner in English and German, as well as books on anthroposophical subjects by other authors. Donations are welcome to help cover the cost of new acquisitions.
- A library drop box is available for book returns 24 hours a day, 7 days a week,
- Books can be perused in the library’s reading area or checked out if desired. Check-out privileges require a library membership, which is available to the public upon making a deposit of \$25 that is refunded upon termination of the library membership.
- Like any other library there are limits on the number of books that can be checked out at time. Checked-out books are due back in a specific time, with borrowers facing fines for returning books late.
- Libraries are not specially regulated by the Pasadena Municipal Code, and the Steiner Library appears to meet all applicable zoning requirements for its location.
- The Steiner Library holds a business license from the City of Pasadena which designates the organization as a “non-profit library³².” (See Attachment 20. Rudolf Steiner Library - Pasadena Business License).

Pursuant to Pasadena Municipal Code Section 17.050.066(D)(5)(e): “No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of *any* park, *library*, or K-12 school.” *[Emphasis added]*

As this was the identical phrasing contained in the City’s original ordinance that was ratified by Pasadena voters in 2018 as part of cannabis Measure CC, there can be no question that any library in the City of Pasadena is deserving of the protections afforded a “sensitive use.”

Along with our letter, we provided a map demonstrating to the City that the Rudolf Steiner Library is located only 470 feet away from the location where Harvest proposes to operate its commercial cannabis business³³ (see Attachment 21. Distance from Rudolf Steiner Library to 169 W. Colorado). Based on these facts, Harvest’s application should never have been accepted by the City for a filing appointment.

³² A copy of *Rudolf Steiner Library - Pasadena Business License* is included as Attachment 20

³³ A copy of *Distance from Rudolf Steiner Library to 169 W. Colorado* is included as Attachment 21

On July 2nd, we received a response from Assistant City Manager Julie Gutierrez denying our assertion that the Rudolf Steiner Library should have been deemed a sensitive use³⁴ (see [Attachment 22. Letter from Assistant City Manager Julie Gutierrez in Response to The Atrium Group July 2, 2019](#)). In that letter, Ms. Gutierrez made the following claim:

“the intent of the distance separation requirements for the purposes of the code is to ensure that dispensaries are located over 600 feet from a Public Library, and not meant to include other businesses or institutions that include a library component as part of their business.”

Ms. Gutierrez then attempts to creatively rewrite the City’s Municipal Code with the following:

“Chapter 17.80 of the Zoning Code includes a glossary of specialized items and land use types. Section 17.80.010 (Purpose of Chapter) specifically states ‘...If a word is not defined in this Chapter, or in other provisions of the Municipal Code, the Zoning Administrator shall determine the correct definition.’ In the instant situation, the term ‘Library’ is not defined in the Zoning Code, but is defined elsewhere in the City’s Municipal Code. Specifically, Library is defined in Title 4, Section 4.109.120 of the Municipal Code. There, the term “Library” shall also apply to the provisions of Title 17.

Pursuant to Section 17.80.010 of the Zoning Code and Section 4.109.120 of the Municipal Code, “Library” means:

The Pasadena library system and each of the branches thereof as the same may exist from time to time, together with any additions or betterments thereto, or improvements, extensions or expansions thereof.”

Finally, Ms. Gutierrez closes with this:

“Accordingly, the 600-foot separation requirement shall only apply to public libraries as defined in Section 4.109.120 of the Municipal Code, and shall not apply to bookstores or private businesses or Anthroposophical Societies that operate ‘libraries’ as a component of their overall operations.

We strongly dispute Ms. Gutierrez’s interpretation of the City’s Municipal Code and question under whose legal authority such a finding was issued. In her letter, Ms. Gutierrez draws a number of incorrect conclusions about the intended meaning of the phrase “any library” in the City’s cannabis ordinance, each of which will be explained below.

³⁴ A copy of *Letter from Assistant City Manager Julie Gutierrez in Response to The Atrium Group July 2, 2019* is included as Attachment 22

MEASURE CC

When the Pasadena City Council adopted Resolution No. 9635 on February 26, 2018, it approved the submission of a draft ordinance containing the following wording:

“No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels of ***any park, library, or K-12 school...***” *[Emphasis added]*

The same wording was put before Pasadena voters at a Special Municipal Election held on June 5, 2018:

“Shall an ordinance be adopted to allow a limited number of commercial cannabis businesses to operate in Pasadena, subject to business, health and land use regulations, and to repeal the City of Pasadena’s current ban on commercial cannabis businesses, provided that: (1) the ordinance shall not take effect unless voters approve a Cannabis Business Tax, and (2) the City Council retains authority to amend existing ordinances and adopt future ordinances regarding commercial cannabis business activities?

[YES / NO]

This measure would allow a limited numbers of commercial cannabis businesses to operate within the City of Pasadena. A maximum of 6 retailers, 4 cultivators, and 4 testing laboratories would be allowed to operate in the City at one time. All three types would only be allowed to operate within specific zoning districts. In addition to the respective zoning regulations, retailers could not be located within 1000 feet of any other cannabis retailer or cultivation site, within 500 feet of any testing laboratory, or within 600 feet of any residential zone, *or within 600 feet of any park, k-12 school, church, childcare center, substance abuse center, or library.*” *[Emphasis added]*.

Notably, in Measure CC, the City Council retained the authority to amend the existing ordinance and adopt future ordinances with respect to commercial cannabis activities. The record shows that the specific wording at issue in Section 17.050.066(D)(e) was never amended to expressly state what Ms. Gutierrez now argues should be implied – that the sensitive use category of “libraries” be construed to mean substantially less than what the plain meaning of the phrase “any library” would otherwise convey. The word “any” cannot be written out of the code section.

Because the City chose not to narrowly define the term “library” when drafting the ordinance, and then subsequently failed to amend the ordinance at any time thereafter, it may not alter the rules of

a competitive permitting process by doing so now. Because the wording of the cannabis ordinance has been ratified by the voters, it reflects the will of the residents of Pasadena to protect libraries of all kinds - both public and private – using the common, everyday meaning of the phrase “any library.” A City employee cannot override what the voters adopted into law.

Furthermore, Ms. Gutierrez’ July 2nd letter attempts an awkward sleight of hand by incorporating an obscure reference to a definition contained in the Code’s Revenue and Finance Title that was adopted as part of an ordinance levying a special tax to help underwrite the considerable expenses intended solely for financing a high-quality public library system. That tax revenue could not be used for any other purpose, so the use of this financial definition of library is not honest or appropriate.

It is therefore not surprising that the definition of “library” contained in Section 4.109.120 only makes reference to the City’s own network or libraries. This is hardly a credible showing that the framers of the City’s cannabis ordinance intended to limit the plain meaning of the phrase “any library” to only include “public libraries.”

Ironically, it appears that the City simply plagiarized their interpretation of the Code from an email submitted by attorney Erin K. Phalon from law firm Cox, Castle & Nicholson LLP³⁵ (see Attachment 23. Library Definition Sensitive Use siting issue).

Ms. Phalon declines to identify the cannabis retailer for whom she is working, but at this point in the process there are only a couple of companies who it could have been. Regardless, the idea of a cannabis attorney spoon-feeding the City a creative interpretation of the Zoning Code which benefits their client, and the City then adopting that interpretation, is highly suspicious.

PRACTICE IN OTHER JURISDICTIONS

We take notice that when other California cities have sought to limit a cannabis sensitive use to only include *public* libraries, they have done so using plain language in their cannabis laws to accomplish this result. For example, Section 105.01 of the Los Angeles Municipal Code contains a specific definition of the term “Public Library.” “Any library” is not the same as “Public Library.”

SECTION 17.80.010

It is not lost on us that in Ms. Gutierrez’ letter of July 2, 2019, she selectively quotes a passage from Section 17.80.010 that she suggests will deliver a relevant and contextually-appropriate meaning for the term “library.” However, had Ms. Gutierrez fairly reproduced the entire text of Section

³⁵ A copy of *Library Definition Sensitive Use siting issue* is included as Attachment 23

17.80.010, it would have been abundantly clear that the *ad hoc* method of interpreting words that she champions is not appropriate for simple words that enjoy a clearly-understood and universal meaning:

“This chapter provides definitions of terms and phrases used in this Zoning Code that are technical or specialized or that may not reflect common usage.”

The Section goes on to provide a series of highly-specialized definitions, such as “Architectural Projection,” “Encroachment Plane,” and “Pedestrian Orientation.” With the benefit of this context, the term “library” is not a technical term that, when coupled with the adjective “any,” is unmistakable in its intent and meaning and embraces libraries big and small, specialized and general, and for our purpose, both public and private.

BURDEN OF PROOF

As the City recently drafted the cannabis ordinance, it had every opportunity to shape the wording of the law to deny any private library the protections afforded their public kin. Moreover, the customary rule of interpreting an ambiguity is to prefer common usage over unusual or specialized meanings, especially if the interpretation goes against the party who was responsible for drafting the original phrasing.

THE CANNABIS APPLICATION RULES

The City has never drawn a distinction between public and private libraries. In the Commercial Cannabis Application Workshop held on November 13, 2018, prospective applicants were told that any retail location must be “600 ft. from sensitive uses, including K-12 schools, libraries, parks, substance abuse centers, etc.” No one from the City has ever suggested that this definition did not apply to private libraries. Indeed, as the existence of the Rudolf Steiner Library was likely well-known to both City staff and cannabis experts alike, it would have been inexcusable for the City to stand by while applicants who were struggling to accommodate the City’s severe zoning restrictions passed over eligible retail properties in the mistaken belief that the nearby presence of the Rudolf Steiner Library would have been disqualifying.

HARVEST ACKNOWLEDGED THE STEINER LIBRARY AS A SENSITIVE USE

The surveyor retained by Harvest identified the Rudolf Steiner Library as a Sensitive Use that was within 600 feet of the proposed 169 W. Colorado Boulevard location of Harvest. This was noted on the Location Map that was included with Harvest’s CUP Application. The Rudolf Steiner Library was also acknowledged as a Sensitive Use lying within a radius of 600 feet in the Location Affidavit that

was certified by Harvest's surveyor. Based on the foregoing, it appears that in the opinion of Harvest's surveyor, its proposed business location would likely violate the 600 foot minimum setback prescribed in Code Section 17.050.066(D)(5)(e).

Speaking of surveyors...

HARVEST DID NOT SUBMIT A PROPER STATE-LICENSED SURVEYOR CERTIFICATION

Most of the final six applicants had begun to prepare their CUP applications well before the City's cannabis permitting workshop was held on June 12, 2019. It was clear that location maps from each applicant would be required which identified nearby sensitive uses near a proposed cannabis retail location. Most applicants had already commissioned contractors to perform this work. However, during the June 12th workshop, the City added an unexpected new requirement. Nearly every applicant was caught off-guard when informed about this new rule requiring that a **State-licensed surveyor** must identify the presence of any sensitive land uses described in Sections 17.50.066(D)(3)(b) and Section 17.050.066(D)(5) of the Zoning Code and also certify their distance from the proposed cannabis retail location.

Therefore, any sensitive use studies that had been prepared in advance by someone other than a licensed surveyor could not be accepted by the City. Not surprisingly, this new requirement set off a frenetic scramble among the applicants to find licensed surveyors who could quickly do this work. Each applicant was aware that a time stamp would be given to their CUP Application at the moment it was transferred to the City's shared drive that would have extraordinary consequences. The matter of a few minutes could well make the difference between being awarded or denied a cannabis retail permit in Pasadena.

Candidates like Atrium made the hard choice to expend valuable time to seek out and engage licensed surveyors who could properly get the job done according to the strict requirements that City put forth. On the other hand, it appears that Harvest succumbed to the overwhelming temptation to take a shortcut. The instructions in the Submittal Checklist required each applicant to have a licensed surveyor identify the applicable distance requirements in accordance with Section 17.50.066(D). The city further explained the duties of the surveyor in a sample of the certification statement that must accompany all CUP applications:

"[Name of Surveyor] has conducted an investigation and review to identify all sensitive receptors that surround the property located at [Property Address]. This review has been conducted to the best of our ability and is reflected in the 600' and 1000' Land Use Map provided, using the following method..." *[Emphasis added]*

On its face, the certification provided to the City by Harvest’s surveyor, Mr. Michael J. Knapton, immediately reveals a glaring omission – instead of performing his own work, Mr. Knapton apparently **relied on a prior study** that was conducted by a Harvest contractor – Mr. Gary Perkins – who is not a surveyor licensed by the State of California. In fact, Mr. Knapton did not provide any work product other than a one-page certification letter bearing his official license seal. He **did not personally prepare the radius map** of sensitive land uses **nor did he personally conduct a field inspection** to confirm whether the prior Sensitive Use Study that was prepared by Mr. Perkins was accurate and reliable.

Moreover, a closer look at Mr. Knapton’s Certification Statement betrays a subtle but significant departure from the certification language from the City. In lieu of the sample wording that the surveyor had “conducted an investigation and review to identify all sensitive receptors that surround the property,” Mr. Knapton’s Certification Statement instead says something much different³⁶ (see *Attachment 24. Map Certification Statement from Michael J. Knapton*):

“The surveyor listed below has performed measurements of the subject site in relation to sensitive uses in accordance with land use information provided in the enclosed Sensitive Use prepared by [Gary Perkins], dated June 11, 2019. With respect to business licenses and sensitive land use determination, **we defer to said study.** [Emphasis added]

In contrast, Atrium’s CUP Application contains a vastly different Certification Statement³⁷ (see *Attachment 25. Radius Map Certification Statement for Atrium*) provided by Mr. Ethan Remington, a California-licensed surveyor in compliance with the City language. In his Certification Statement, Mr. Remington stated that he had “conducted a research investigation and review to identify all of the sensitive uses that surround the property located at 70 W. Union St., Pasadena, CA” Mr. Remington went on to add that:

“This review has been conducted to the best of our ability and is reflected in the 600’ and 1000’ Land Use Map provided, utilizing the following methods:

- A physical inspection of each parcel of land within a 600-foot radius of the site to identify the specific land uses
- Internet research using various databases, such as Google Earth

Therefore, Mr. Remington performed for Atrium everything required by the City for a state-licensed surveyor:

³⁶ A copy of *Map Certification Statement from Michael J. Knapton* is included as Attachment 24

³⁷ A copy of *Radius Map Certification Statement for Atrium* is included as Attachment 25

- a) he identified the presence or absence of the sensitive land uses enumerated in Code Section 17.050.066 (D) – both by computer and by getting out and personally walking the neighborhoods adjacent to Atrium’s proposed location, and
- b) he personally confirmed that no sensitive uses lie within the measured radii of 600 feet and 1,000 feet, respectively.

Page 6 of the City’s Submittal Checklist set forth the responsibility of the state-licensed surveyor – to provide a written Certification Statement. Atrium’s surveyor, Mr. Remington, furnished a certification based upon his own findings and it reflects his best judgment in the diligent application of his professional skills. This approach was much different than the deficient certification delivered by the Harvest surveyor, who conceded that he did not personally investigate the presence of any sensitive uses, instead choosing to defer to the work of an unlicensed party in making the sensitive land use determinations that are required in the CUP application.

According to the City’s instructions, the surveyor’s Certification Statement must contain an “enumeration of the sensitive receptors that were included in the mapping.” However, the Harvest surveyor failed to include any such list in his Certification Statement. Instead, he simply attached his brief statement to the work product that had previously been prepared by the unlicensed map maker, and not by him.

Although Harvest’s surveyor did measure and certify the distance of the various radius rings, there is no evidence that he personally conducted a physical inspection of the area surrounding Harvest’s proposed store location, consulted online databases that might identify any sensitive uses nearby, or employed any other methods to validate the sensitive use list that was previously prepared by Mr. Perkins. It is telling that the City’s certification template is labeled: “Mapping Certification Statement.”

Using a similar title, Atrium’s surveyor provided a certification under the heading “Radius Map Certification Statement.” In contrast, Harvest’s surveyor offered a document that bore a title that confirms Mr. Knapton’s declaration was intended to be much more limited in scope: “Distance Certification Letter.”

Remarkably, none of this is obscured or concealed in the Harvest application. Had the City staff bothered to read only the first two sentences of Harvest’s Certification Letter, it was abundantly clear that **Harvest’s surveyor had not met the requirements** for the CUP Application to be deemed complete. Perhaps if Harvest had given its surveyor sufficient time to conduct a proper field investigation and independently validate nearby sensitive uses, there would have been no questions surrounding the sufficiency of its Certification Letter. But again, had it done so, Harvest may not

have been able to file its application on the date and time that the City now relies upon in awarding Harvest the superior filing position in the City Council District No. 3. Harvest's facially defective application cannot be deemed "complete."

The requirements to have the identification of sensitive uses conducted and prepared by a licensed surveyor was clear and unambiguous. But in case there is any doubt, all one needs to do is review the Planning Department's own interpretation of SweetFlower's 2nd attempted CUP application submission. In a July 1 letter to SweetFlower CEO Tim Dodd, Guille Nunez writes the following³⁸ (see Attachment 26. Status Letter for SweetFlower LLC July 1, 2019):

"On June 27, 2019 at 2:52 p.m., your *Conditional Use Permit: Cannabis Retailer* application to allow the retail sales of Cannabis at the above referenced address was received for processing. Based upon the application and plans received, the application is deemed **incomplete**. The following is a list of required information not included in your application [Emphasis in original]:

1. *LOCATION MAP – **Identification of the applicable distance requirements** as outlined in Section 17.50.066 D (5) "Location Requirements" of the Pasadena Municipal Code **prepared by a licensed surveyor** as indicated in the Cannabis Retailer application. [Emphasis in original]*

The core issue with this submission in the eyes of the Planning Department staff was apparently that the sensitive use map was "reviewed by" rather than "prepared by" a licensed surveyor.

In the Planning Department's Staff Report³⁹ (see Attachment 27. Staff Report for October 7, 2019 Appeal Hearing) for the October 7th hearing before the City Council concerning SweetFlower's appeal of the Board of Zoning Appeal's decision that their CUP application was incomplete, Staff writes:

"The requirement for the location map to be prepared by a licensed surveyor is imperative to the determination as to whether an application can be processed because only an appropriately licensed surveyor can LEGALLY verify with that the proposed location complies with the required distance separations from sensitive uses, as outlined in Section 17.50.066 D of the Zoning Code⁴⁰... in determining whether the required location map was prepared by a licensed surveyor, the City has uniformly required that the location maps are signed and stamped by a licensed surveyor and also include a general statement affirming, at minimum, that the 600' and 1000' radii have been prepared by the undersigned licensed surveyor...

³⁸ A copy of *Status Letter for SweetFlower LLC July 1, 2019* is included as Attachment 26

³⁹ A copy of *Staff Report for October 7, 2019 Appeal Hearing* is included as Attachment 27

⁴⁰ See *Attachment 27. Staff Report for October 7, 2019 Appeal Hearing*, page 3

...Pursuant to the Business and Professions Code Section 8764.5, the required statement may also indicate that the map was '*prepared under the direction of*' the undersigning land surveyor. **However, "prepared under the direction of" is distinct from "reviewed by," as the latter is wholly a passive act that does not comply with the Land Surveyors Act, Section 8726 (c).**⁴¹ [Emphasis added]

Planning Department staff rejected SweetFlower's 2nd CUP application submission because the sensitive use map was reviewed by, rather than prepared by, a licensed surveyor. Yet, Planning Department staff approved Harvest's CUP application with a sensitive use map that suffers from the exact same deficiency.

The language in Mr. Knapton's certification statement makes it obvious that he merely **reviewed** the sensitive land use determinations rather than making them himself. His words bear repeating:

"The surveyor listed below has performed measurements of the subject line in relation to sensitive uses **in accordance with land use information provided in the enclosed Sensitive Use Study prepared by Radius Maps**, JN 19184, dated June 11, 2019. **With respect to business licenses and sensitive land use determination, we defer to said study.**" [Emphasis added]

It's plainly obvious that the extent of Mr. Knapton's involvement was simply to validate the measurements of distances from sensitive uses that Mr. Perkins identified and not to identify any sensitive uses himself.

Furthermore, there is no indication that Mr. Gary Perkins of the Radius Maps company – the non-licensed surveyor that performed the sensitive land use determinations – was acting "under the direction" of Mr. Knapton. In fact, there is ample evidence that he was not. The sensitive use map was prepared on June 11th – exactly one day before any of the applicants knew that the maps would need to be prepared by a licensed surveyor – while the certification letter was prepared on June 12th.

DENIAL OF DUE PROCESS

Early on in this process, we submitted mountains of evidence to support our basis for why Harvest's application should never have been deemed "complete or compliant". When we didn't get a response that made sense from the Staff we escalated it to City Council. A simple review of the materials we sent should have elicited some response from the Council, but I also understand the Council's reluctance to get involved in the process at that early stage. When we didn't get a

⁴¹ See Attachment 27. Staff Report for October 7, 2019 Appeal Hearing, page 11

response from the Council, we attempted to appeal Staff's determination of the completeness of Harvest's application. In numerous letters, we painstakingly detailed the numerous serious issues with Harvest's application. However, our efforts were once again rebuffed by the City, this time by City Attorney Michele Bagneris. In her July 12th letter to Atrium,⁴² Ms. Bagneris writes:

"The City is in receipt of your Request for Appeal of the complete letter issued by the City to Harvest of Pasadena, LLC ("Harvest"), as well as your letter dated Monday, July 8, 2019 in support thereof. Your request to appeal will not be processed because there is no right to appeal this matter. Pasadena Municipal Code ("PMC") Chapter 17.72 addresses the appeal of all zoning related matters. While Section 17.72.040.A(2) specifically provides a right to appeal a determination that a permit application or information submitted therewith is incomplete, that Section does not provide a right to appeal a determination that an application is complete." (See *Attachment 28. Letter to The Atrium Group LLC in Response to Appeal Request Pertaining to Harvest of Pasadena July 12, 2019*)

And with that, all options for Atrium to resolve the matter short of litigation were removed.

The decision to sue the City was an incredibly difficult one for us, and one that we did not make lightly. In 43 years on this Earth, having built and sold two companies, through business deals gone bad, through several failed investments, I have never once sued any person, or any entity, for any reason. This is not, as some members of the Council choose to believe, just a natural result of a competitive process for a highly lucrative license. This is not, as some have said in the press, simply a byproduct of the litigious society that we live in. This is much more than that.

For reasons still unknown, the City has decided to favor a single applicant in a flagrant violation of its own regulations, and to ignore fundamental principles of fair play by denying applicants who have been aggrieved by the Director's decisions a right of appeal and the constitutional protections of due process. By deeming Harvest's CUP Application as "complete," the City has become an unwitting partner in Harvest's plan to conceal vital information about its identity, corporate structure and parental ownership from the City and its residents.

On December 16th, the City has a final chance to correct its mistake. I sincerely hope that it does. I greatly appreciate your consideration in this matter, and I look forward to addressing all of this in person next week.

⁴² A copy of *Letter to The Atrium Group LLC in Response to Appeal Request Pertaining to Harvest of Pasadena July 12, 2019* is included as Attachment 28

Sincerely,

Chris Berman
Chief Operating Officer
The Atrium Group, LLC

cc: Mr. Dean Bornstein, Chief Executive Officer, The Atrium Group, LLC
Mr. Steven Mermell, City Manager
Ms. Michele Beal Bagneris, City Attorney
Mr. Nicholas G. Rodriguez, Assist. City Manager
Mr. David Reyes, Director of Pasadena Department of Planning & Development
Mr. Christopher Sutton, Esq.
Mr. Jonathan Freund, Esq.



June 17, 2019

Mr. Steven Mermell
City Manager
City of Pasadena
100 N. Garfield Avenue
Room S-228
Pasadena, California 91101

Ms. Michele Beal Bagneris, Esq.
Office of the City Attorney
City of Pasadena
100 N. Garfield Avenue
Room N-210
Pasadena, California 91109

Dear Mr. Mermell and Ms. Bagneris,

I am one of the principals of *The Brick & Rose*. By way of introduction, we are one of 122 applicants who recently submitted applications to the City of Pasadena for a commercial cannabis retail license. *The Brick & Rose* is owned by two small businesses. One of these is *Craig Fry & Associates*, my land-use consulting firm that has been located on Arroyo Parkway since 2013 and currently employs 17 persons.

But our size does not belie our spirit. Looking back at all of the late nights, empty coffee cups, and crumpled-up sheets of paper it took to prepare our screening application, it was with a heavy heart that we learned we had finished in seventh place, narrowly missing the sixth position by a single point. Admittedly, this loss was a crushing blow. But after a few days of grieving, our team managed to turn aside their disappointment and move on with their professional lives.

That is, until June 11, 2019, when the City released the screening applications for the top-scoring candidates. I must concede that we initially wanted to view the published applications solely out of curiosity. However, during our review we were mystified at how one of the top six license candidates—*Harvest of Pasadena, LLC* ("Harvest")— managed to earn the right to apply for a coveted cannabis license when the company did not comply with one the most basic aspects of the screening process— it failed to provide the required disclosures for its owner and a third party having a significant financial interest in the business.

Unlike the other top applicants, Harvest ignored nearly all of the compulsory disclosures that were required in the City's Applicant/Owner Information Form (hereinafter, the "Information Form").¹ As you know, all license candidates were obliged to complete and include this document as part of their screening application. However, whether by negligence or design, Harvest did not make even a minimal effort to provide the proper disclosures about itself (as a prospective cannabis licensee), its owner, Steve White (owner of 100% of Harvest's equity), and Harvest Health & Recreation, Inc. ("HHR-Arizona), the real beneficiary of any cannabis license that may be issued by the City.²

Any one of these failures should have been enough to disqualify the Harvest screening application from further consideration. Despite these deficiencies, Harvest is now poised to richly profit from its flagrant evasion of the rules. If all the winning applicants had played fairly and in accordance with the rules, we would have willingly accepted this loss and cast our eyes to the future. As a local business, we are heavily invested in Pasadena. We are also a level-headed bunch that is not given to outbursts of dramatic outrage, nor do we routinely seek redress at every perceived slight. But this situation is different than anything else I have encountered in my 39-year professional career. *The Brick & Rose* has been grievously harmed, and under the present circumstances, we cannot let this go.

To better explain our concerns, we have outlined below the specific reasons why Harvest's screening application should have been summarily rejected by the City and not scored. We also offer a way for the City to reverse this wrong.

PART A – ERRORS, OMISSIONS AND MISREPRESENTATIONS

The Owner-Entity Disclosure.

The City's Information Form required each applicant to make up to four types of disclosures. Three of these were applicable to Harvest— one for Harvest itself, one for its owner Steve White, and finally, one for the non-owner having a financial interest the business. However, Harvest selected the only type of disclosure that didn't apply—that of an "Entity Owner." In completing the Information Form, Mr. White wrongly named Harvest as the Entity Owner. But of course, Harvest is clearly not an Entity Owner, but the Applicant itself, and there is no other entity holding any ownership interest in Harvest.

In the cover letter accompanying the Harvest application, Chief Executive Officer Steve White represents himself to be the owner of Harvest.³ A closer examination of the Harvest

¹ A copy of the Applicant/Owner Information Form that was submitted by Harvest with its screening application is set forth at Exhibit A.

² *Ibid.*

³ See Cover Letter from Steve White to Pasadena Selection Committee, January 31, 2019. The letter begins: "As the owner of Harvest of Pasadena, LLC, I am applying for a Retail Commercial Cannabis Business Permit from the City of Pasadena."

screening application does not reveal the existence of any other owner other than Mr. White. Since Mr. White directly holds his interest in Harvest as a natural person and not through any legal entity, he blundered by filing out the Information Form as an "Entity Owner." As a result, the Entity Owner disclosure contained in the Information Form was both unnecessary and irrelevant.

The Owner Disclosure.

Harvest also failed to complete and submit an Information Form disclosure for its owner, Steve White. The Articles of Organization filed with the California Secretary of State reveal that Harvest was established as a single-manager limited liability company.⁴ Additionally, in scoring the Harvest screening application, HdL (the City's contractor who reviewed and scored the applications) commented that: "Applicant is a sole proprietorship 100% owned by Steve White."⁵ However, the record does not show that an Information Form was ever filed for Mr. White as part of the screening application. This omission is serious and constitutes a significant breach of the City's filing rules, which clearly require a disclosure for each owner of a cannabis business.^{6,7}

The Applicant Disclosure.

Compounding these serious errors, Harvest further failed to submit an Information Form for itself. The instructions unambiguously require that each applicant must complete a Disclosure for itself and include it in the screening application package.⁸ No such document was provided to the City as part of Harvest submitted its screening application.

The Disclosure of a Non-Owner with a Financial Interest.

Finally, and perhaps most egregiously, Harvest failed to submit an Information Form for its shadow owner—HHR-Arizona. In his cover letter to the City, its sole proprietor Steve White revealed that if Harvest receives a Pasadena retail cannabis license, he intended to hand over the responsibility for managing the business to HHR-Arizona, an enormous corporate entity headquartered in Tempe, Arizona that is publicly traded on the Canadian Stock

⁴ See Exhibit B, Articles of Organization, Harvest of Pasadena, LLC, filed with the California Secretary of State on January 22, 2019.

⁵ See HdL comments in the scoring results for Harvest of Pasadena, LLC, Section 1: Qualification of Owners/Operators, Page 2.

⁶ See Commercial Cannabis Permit Screening Application Information Packet, December 14, 2018, Page 3: "Each screening application shall complete the Applicant/Owner Information Forms (Required Submittal Item 1). These forms include basic information on the applicant, owners, and non-owners with a financial interest in the business."

⁷ The instructions at the top of the Information Form direct the applicant to: "Complete the pertinent sections for each owner, applicant, entity owner and non-owner with a financial interest in the business." See Exhibit A.

⁸ The instructions on Section B of the Information Form clearly state: "All business owners must be listed, including the Applicant." See Exhibit A.

Exchange and in the United States via off-exchange trading.⁹

Besides being the owner of Harvest, Mr. White also serves as Chief Executive Officer of HHR-Arizona. Additionally, Mr. White is classified as a "control person" under Canadian securities laws because he controls 32.6% of the voting equities of HHR-Arizona.¹⁰ For the record, HHR-Arizona is a giant in the cannabis industry with more than 1,580 employees. The May, 2019 issue of Marijuana Venture published an article about the company's pending \$850 million acquisition of Verano Holdings, calling it "the largest single acquisition in cannabis history and the next step in [HHR-Arizona's] vision of becoming the most valuable cannabis company in the world."¹¹ In a June 12, 2019 press communication celebrating the Pasadena licensing results, HHR-Arizona gushed that the company "has excelled past competitors to hold licenses for the right to operate more than 200 retail and processing facilities in 17 states and territories across the U.S."¹² However, these brash pronouncements are in sharp contrast to the deafening silence of Harvest's screening application, which inexplicably fails to disclose the financial interest of HHR-Arizona in Section B of the Information Form. But there is much more.

Despite Mr. White's assertion to the City that he is the sole owner of Harvest, it was surprising that HHR-Arizona and not Mr. White publicly boasted of having been awarded a Pasadena cannabis license:

"Harvest Health & Recreation, Inc.....a vertically integrated cannabis company with one of the largest and deepest footprints in the U.S., was awarded a dispensary license to operate in Pasadena, (subject to the local Conditional Use Permit process and state regulatory requirements), marking the seventh California license for the fast-growing company. Harvest was among the top-scoring applicants from a pool of 128 applications to obtain licenses in the city receiving top recognition for its high-level of sophistication, best-in-class experience, and world-renowned team of experts in operating quality-driven retail stores with a focus on bettering the community."¹³
[Emphasis added].

Reading this, one could be forgiven for believing that it was HHR-Arizona, and not Harvest, who was before the City requesting a cannabis license. But even if HHR-Arizona stands to

⁹ The company's Canadian Stock Exchange symbol is "HARV," while its OTC symbol is "HRVSF."

¹⁰ Harvest Notice of meeting and Management Information Circular, May 24, 2019, Page 23.

¹¹ The Biggest Deal in Cannabis History (for now), Marijuana Venture, May 2019.

¹² See Exhibit C ("Harvest Press Release, June 12, 2019"). In the company's own words: "Harvest Health & Recreation, Inc. is a multi-state cannabis operator (MSO) and vertically-integrated cannabis company. Subject to completion of announced acquisitions, Harvest will have the largest footprint in the U.S., with rights to more than 210 facilities, of which approximately 140 are retail locations, and more than 1,580 employees across 17 states. Since 2011, the company has been committed to aggressively expanding its Harvest House of Cannabis retail and wholesale presence throughout the U.S."

¹³ *Ibid.*

financially benefit from a Pasadena cannabis license, the public company's unqualified claim of an ownership interest in the Pasadena license is both striking and demonstrably false.¹⁴ Mr. White himself further blurs the lines between HHR-Arizona and Harvest in a second press release issued on June 13, 2019, as he states that: "This is a big win for [HHR-Arizona] as we continue to grow our business in California...".¹⁵ Mr. White has repeatedly demonstrated a lack of respect for the boundaries between his Arizona cannabis conglomerate and the fledgling entity he owns that is seeking a cannabis license from the City of Pasadena.

Notwithstanding Mr. White's apparent confusion about the two companies he serves, even if HHR-Arizona does not directly own any equity in Harvest, the City's rules governing the submission of screening applications still required him to identify HHR-Arizona as a party with a financial interest in his Pasadena cannabis business and provide the City with the requisite disclosure in the Information Form:

"INSTRUCTIONS: Complete the pertinent sections for each owner, applicant, entity owner and non-owner with financial interest in the business."¹⁶ *[Emphasis added]*.

In a recent securities-compliance document, shareholders of HHR-Arizona were told their company has a significant interest in a pending retail license in Pasadena. While the lengthy document said that HHR-Arizona would not own any equity in the business, it would nevertheless exploit the license by entering into "a commercial arrangement with Mr. White for the operation and management of the licensed facility..."¹⁷ As the Chief Executive Officer of both Harvest and HHR-Arizona, Mr. White knew well that HHR-Arizona would have a massive economic interest in the Pasadena license, yet he utterly failed to comply with the disclosure requirements that all 122 retail applicants were bound to follow.

It may be that Mr. White's failure to properly complete the Information Form was an intentional effort to conceal the true nature of his ownership holding. While it may be technically true that Mr. White is the sole owner of Harvest, his stake in the company seems to have been an elaborately engineered ruse to hide the real truth— that HHR-Arizona will be the actual owner of any cannabis license that may be issued by Pasadena. In a footnote to a press release that was excitedly disseminated after the Pasadena scoring results were known, HHR-Arizona portrayed Mr. White's ownership of the Pasadena business as merely

¹⁴ Although beyond the scope of our immediate concerns, we note that if any cannabis retail license is granted, it will be awarded to Harvest of Pasadena, LLC, which is a separate and distinct entity from Harvest Health & Recreation Inc., although they are each connected by and through Mr. White. Consequently, the public pronouncement that HHR-Arizona has been "awarded a dispensary license to operate in Pasadena" is an untrue and misleading statement of material fact and may well constitute a violation of United States and Canadian securities laws.

¹⁵ See Exhibit D ("Harvest Press Release, June 13, 2019").

¹⁶ See Exhibit A.

¹⁷ Harvest Notice of Meeting and Management Information Circular, May 24, 2019, Pages F-28 and F-29.

custodial:

"Steve White, CEO of Harvest, Health & Recreation, Inc., holds 100% ownership of the winning license entity, Harvest of Pasadena, LLC, for the benefit of Harvest, Health & Recreation, Inc."¹⁸ [Emphasis added].

With overwhelming evidence confirming HHR-Arizona's expected financial windfall from the Pasadena license, it was a material and disqualifying omission for Harvest to fail to report the economic interest of HHR-Arizona. Without supplying this compulsory disclosure in Section B of the Information Form,¹⁹ Harvest's screening application was rendered incomplete, untrue and misleading.

PART B – ANALYSIS

Pasadena required all applicants to complete the Information Form in order to ensure the transparency of the licensing process. Presumably, these disclosures were used by the City to identify unsuitable candidates early in the review process.²⁰ By failing to properly complete the Information Form as the owner of Harvest, Mr. White did not respond to the many important questions that were contained in Sections B, C and D of the Information Form— questions that were responded to by every other individual owner of the top-scoring applicants. If Mr. White had properly completed the Information Form as required under the rules, he would have furnished the City with the disclosures set forth in Section C, including the following:

- (1) Mr. White's ownership or financial interest in another licensed cannabis business,²¹
- (2) Whether Mr. White had ever been denied a permit or state license to engage in commercial cannabis activity,²²
- (3) Whether Mr. White had ever had a permit or state license suspended or revoked by a cannabis licensing authority,²³

¹⁸ See Exhibit C ("Harvest Press Release, June 12, 2019"), Footnote 1.

¹⁹ If Harvest had properly reported the financial interest of HHR-Arizona, the City would have been able to make further inquiries about its many other licenses and compliance history.

²⁰ Under Pasadena Municipal Code Section 5.78.100, a person is prohibited from holding a commercial cannabis permit in the City of Pasadena if he/she has been denied a permit or state license to engage in commercial cannabis activity, or has had a cannabis permit or state license suspended and not reinstated, or revoked, by any cannabis licensing authority, or has failed to pay federal, state, or local taxes and/or fees when notified by the appropriate governmental agency.

²¹ See Exhibit A, Section C, Page 2.

²² *Ibid.*

²³ *Ibid.*

(4) Whether Mr. White had ever been convicted of a crime,²⁴ or

(5) Whether Mr. White had ever failed to pay federal, state or local taxes when notified by the proper agencies.²⁵

It further appears that Mr. White did not submit a copy of a government-issued identification with his screening application, as required under Section D of the Information Form. More importantly, he also failed to complete Section C-1, where Mr. White was obliged to divulge the extent of any ownership or financial interest he holds in other cannabis businesses. Although Mr. White is named by the California Bureau of Cannabis Control as an owner of a retail cannabis license in Napa, California, he did not disclose this interest on the Information Form he provided to the City.²⁶

We do not think anyone can fairly argue that these unanswered questions are “minor” or “technical” oversights. Rather, the missing information goes to the consequential question of whether Mr. White is fit to receive the extraordinary privilege of owning a Pasadena cannabis license. The City and the general public have a right to know that any persons who would be trusted to operate a cannabis business in Pasadena are of sound character with an unblemished record of compliance.

It could well be that Mr. White has an exemplary personal background, and if he had properly prepared his Information Form, he would have demonstrated his bona fides as a prospective license owner. However, this would require substantial revisions to the Harvest screening Application. No Applicant was given an opportunity to make corrections to their screening application, and no such forbearance ought to be extended to Mr. White. Indeed, the rules of the screening application process expressly forbid this.²⁷

Harvest’s baffling failure to properly provide disclosures about its owner is only matched by the company’s brazen indifference to the reporting requirement for non-owners having a financial interest in the business. By failing to report HHR-Arizona’s economic interest in Harvest, Mr. White is essentially telling the City that, as the 100% owner of Harvest, he is the sole decision-maker and only person who stands to benefit from the considerable profits that will generated by the Pasadena cannabis franchise. However, HHR-Arizona has betrayed Mr. White by revealing he is an owner in name only, as his ownership in Harvest is merely that of a fiduciary for the benefit of HHR-Arizona and its shareholders.²⁸ Given the

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ The fact that Harvest’s screening application included a copy of the Napa retail license does not excuse the failure of Mr. White to disclose that he is an owner of this business.

²⁷ See Commercial Cannabis Permit Screening Application Information Packet, December 14, 2018, Page 4: “Applications must be complete when being submitted; there will be no opportunity to resubmit missing information.” [*Emphasis in original*]

²⁸ See Note 17, *infra*.

heavy civil and criminal penalties that can result from a publicly-traded company making untrue statements of material fact to its stockholders, we can fairly presume that HHR-Arizona's public statements about Mr. White and the Pasadena license have been vetted by counsel, are fully accurate and beyond reproach.²⁹

The relationship between Mr. White and HHR-Arizona may not in itself violate the City's cannabis Code or the instructions governing the submission of screening applications. However, Mr. White's failure to submit a truthful Information Form that discloses the shadowy interest held by HHR-Arizona—the party who clearly holding the dominating financial interest in Applicant's business—is yet another serious violation of the submission rules. The City of Pasadena, as well as the general public, have a right to know that Mr. White intends to exploit any cannabis rights it may receive from the City for the sole benefit of an out-of-state corporation and its shareholders. Moreover, since HHR-Arizona has publicly proclaimed a possessory interest in the Pasadena cannabis license, the City and the residents of Pasadena deserve to know the extent of the true financial interest this company has in Harvest's business.³⁰

In isolation, one might be tempted to forgive a minor typographical error or other modest mistake in a cannabis screening application. After all, these applications are lengthy, difficult to prepare, and the pressure of meeting a looming submission deadline can sometimes cause less capable candidates to cut corners. However, Mr. White is an astute veteran of the cannabis trade. He comes to Pasadena from his Arizona home as the Chief Executive Officer of an enormous marijuana business that boasts of holding rights to more than 210 licensed cannabis facilities, of which 140 are retail locations.³¹ Consequently, these repeated lapses are not what one could dismiss as a "rookie mistake." Moreover, Harvest's screening application places great emphasis on Mr. White's background, as he is portrayed as a savvy and knowledgeable industry insider.

The screening application also describes Mr. White as an experienced attorney whose legal practice has included "business litigation and business/administrative/regulatory law for several national law firms."³² Having founded HHR-Arizona in 2011, Mr. White's background statement credits the amazing growth of HHR-Arizona into one of the country's foremost cannabis enterprises to his stalwart leadership.³³ Furthermore, his personal involvement is cited as a major reason why the company has successfully navigated more than 65 regulatory audits over the years.³⁴ In short, Mr. White does not appear to be the type of person who would file a cannabis business application without reviewing it to ensure that it

²⁹ Or can we safely make this assumption? See Note 14, *supra*.

³⁰ See Note 13, *supra*.

³¹ See Exhibit C, Page 1.

³² See Cover Letter from Steve White to Pasadena Selection Committee, January 31, 2019.

³³ *Ibid.*

³⁴ *Ibid.*

fully complies with the submission requirements.

There is only one person's signature appearing in the Harvest application— Mr. White's. One of the places it appears is in Section E of the Information Form, where each Applicant is required to make the simple affirmation reprinted below:

"Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that misrepresentation of fact is cause for rejection of this screening application, denial of a license, or revocation of a license issued."³⁵

At this point in the document, Mr. White— the seasoned attorney, the sophisticated cannabis entrepreneur, the Chief Executive Officer of HHR-Arizona, and the sole owner of the Pasadena Applicant— placed his signature on the Information Form. Having personally signed many documents containing similar affirmations, I never cease to freeze for a moment, my heart skipping a beat, before solemnly affixing my signature to any statement that is made "*under penalty of perjury.*"

On December 14, 2018, the City made the Commercial Cannabis Permit Screening Application Information Packet available to all prospective applicants. This document contained critical information and instructions about the screening application process. Applicants were advised of the importance of meticulously going over every sentence in their filings, since there would be no chance given to make amendments following submission:

Applications must be complete when being submitted; there will be no opportunity to resubmit missing information.³⁶ [*Emphasis in original*].

And if the heavy price of making a misrepresentation were not clear enough from the City's filing instructions and express wording in Section E of the Information Form, the Pasadena Municipal Code provides a clarion warning to all applicants of the dire consequences of making a false or misleading statement. Prior to scoring the screening applications, Code Section 5.78.080(D) required the City Manager (or a designee) to review each application for compliance with the Pasadena Municipal Code and other applicable laws. Section 5.78.080(D) goes even further, stating that: "The city shall also disqualify any application that contains any false or misleading information."³⁷

While minor errors are not unknown in competitive entitlement proceedings, that is not the record before us. Instead of receiving carefully considered and truthful set of answers on

³⁵ See Exhibit A.

³⁶ Commercial Cannabis Permit Screening Application Information Packet, Page 4, December 14, 2018.

³⁷ See Pasadena Municipal Code Section 5.78.080(D).

the Information Form, the City instead received a nearly vacant document, devoid of any useful information about the fitness of Harvest and its owner to hold a cannabis license. At best, the number and the nature of these misstatements and omissions is grossly negligent, and at worst, they are calculated and deceitful. But without regard to the actual reasons why Mr. White furnished the City with an Information Form that was both incomplete and inaccurate, this is a clear violation of the rules and is fatal to Harvest's license prospects.

By not providing the information clearly required in the screening application and the accompanying rules, Harvest has submitted a false and misleading application. We note that Section 5.78.080(D) of the Code is strictly worded and does not allow the City any discretion to excuse a submission containing false or misleading information. Neither does this provision offer licensing applicants the opportunity to cure deficiencies in their filing after submission to the City. This result is understandable, as it would be manifestly unfair to all other applicants if Harvest were to be granted a mulligan under these circumstances.

PART C – CONCLUSION AND REMEDIES

In summary, we contend that the following facts are indisputable:

- (1) Harvest was responsible for ensuring the accuracy and truthfulness of every aspect of its screening application.
- (2) Harvest's Chief Executive Officer Steve White was responsible for ensuring the accuracy and truthfulness of each of the disclosures contained in the Information Form, a document he personally affirmed to be "complete, true and accurate" under the penalty of perjury.
- (3) In signing the Information Form, Mr. White did acknowledge that any "misrepresentation of fact is cause for rejection of this screening application, denial of a license, or revocation of a licensed issued."
- (4) Harvest did make multiple errors and omissions in the required Information Form that rendered the document false and misleading.
- (5) These errors and omissions were material and substantive.
- (6) Pursuant to Pasadena Code Section 5.78.080(D), the City is obliged to disqualify Harvest and invalidate the scoring of the company's screening application.

Six of the top seven scoring license candidates, *Integral Associates Dena, LLC, Varda/Tony Fong, Atrium Pasadena LLC, SweetFlower Pasadena LLC, MME Pasadena Retail Inc.* and *The Brick & Rose*.— all meticulously adhered to the City's instructions and provided all of the required disclosures in the Information Form. Only Harvest failed to follow the rules.

It is no understatement to say that Harvest's breach of the rules has come at our expense. At the very instant Harvest submitted its screening application to the City, the company forfeited its right to be considered any further as a candidate for a Pasadena cannabis license. The actions of Harvest have harmed no one more directly and seriously than *The Brick & Rose*. We feel this harm very personally. To remedy our injury, we respectfully ask the City Manager to promptly take two actions: (a) first, disqualify Harvest in the exercise of your powers under Code Section 5.78.080(D), and (b) second, elevate *The Brick & Rose* to the sixth position in the license scoring.

At this point, there are a dizzying array of alternatives available to *The Brick & Rose* and the City of Pasadena. Some of these are cooperative in nature, and others are plainly adversarial. However, given our deep roots in the Pasadena community, we want to give the City an opportunity to resolve this problem on its own. But we cannot wait much longer. Day-by-day, minute-by-minute, we are suffering irreparable harm. Very soon our injury will have no adequate remedy, either legal or equitable. As I write this letter, we are well-aware that the top six applicants are busy securing their retail locations and preparing conditional use permit applications for approval by the City's Planning Commission. In contrast, we have been relegated to the sidelines solely by reason of Harvest occupying a position that is rightfully ours.

It is axiomatic that City government rarely moves very fast. Yet, this matter requires the City to make a rare exception to the general rule. Accordingly, we will not take any action until 5:00pm on Wednesday, June 19, 2019. Beyond this mark, we reserve the right to pursue all legal and equitable remedies at our disposal. Until this time, we welcome the opportunity to discuss the resolution of our concerns with you and your staff. But we cannot wait a minute longer.

Thank you for your understanding.

Most sincerely,



Craig Fry
President,
Craig Fry & Associates, LLC



www.cityofpasadena.net/marijuana-regulations

Applicant/Owner Information Form*

Commercial Cannabis Screening Application

**Portions of the information disclosed in this application is public information pursuant to the California Public Records Act.*

INSTRUCTIONS: Complete the pertinent sections for each owner, applicant, entity owner and non-owner with financial interest in the business. A separate form is required for each individual.

- Type
- Entity Owner (Complete Sections A and E)
 - Owner (Complete Sections B, C, D and E)
 - Applicant (Complete Sections B, C, D and E)
 - Non owner with financial interest (Complete Sections B and E)

SECTION A: ENTITY OWNERSHIP INFORMATION

An entity is anything other than an individual. If an entity is an owner of the commercial cannabis business pursuant to Business and Professions Code section 26001(a), you will need to complete the following information. Attach additional pages if needed.

Name of Entity: Harvest of Pasadena, LLC Phone Number: 602-615-2083

Ownership %: 100% Organizational Structure: Steve White: Owner/Manager Email: steve@harvestinc.com

Authorized Agent: Steve White Title: Owner/Manager

List entity members below (attach additional sheets if necessary):

Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____

SECTION B: OWNER/NON-OWNER/APPLICANT INFORMATION

Pursuant to 16 CCR § 50223, an owner is defined as a person with an aggregate ownership interest of 20% or more, chief executive officer member of the board of directors of a nonprofit, or an individual participating in the direction, control, or management of the applicant. All business owners must be listed, including the applicant.

Full Name: _____ Date of birth: _____

Last First MI

Mailing Address: _____

Street Address Account/Unit #

City State ZIP Code

Phone: _____ Email: _____

Ownership % _____ Title: _____
 Social Security No _____ Current Employer: _____

SECTION C: DECLARATIONS

1. Do you have an ownership or financial interest (as defined in Title 16 CCR 5003 and 5004) in a licensed cannabis business? If "yes", complete section C-1. YES NO
2. Have you ever been denied a permit or state license to engage in commercial cannabis activity, or had a permit or state license to engage in commercial cannabis activity suspended and not reinstated, or revoked, by any city, county, city and county, or any other state cannabis licensing authority? If "yes", complete section C-2. (PMC §5.78.100) YES NO
3. Have you ever been convicted of a crime? If "yes", complete section C-3. (HSG BPC §26057) YES NO
4. Have you owned or operated any cannabis-related business(es) in the City of Pasadena on or after December 14, 2017? If "yes", complete section C-4. (PMC §5.78.100) YES NO
5. Have you ever been notified that you were conducting commercial cannabis activity in non-compliance with City of Pasadena ordinances, codes, and requirements and failed to discontinue operating in a timely manner? (PMC §5.78.100) YES NO
6. Have you ever failed to pay federal, state, or local taxes and/or fees when notified by the appropriate agencies? (PMC §5.78.100) YES NO

Section C-1: Other Licensed Cannabis Businesses

Use additional sheets if necessary.

Agency _____ License No. _____ Date Issued: _____
 Description of business: _____

Agency _____ License No. _____ Date Issued: _____
 Description of business: _____

Agency _____ License No. _____ Date Issued: _____
 Description of business: _____

Section C-2: Cannabis License(s) Suspended, Revoked or Denied

Use additional sheets if necessary.

License Authority	License Type	Suspension or Revocation Date
_____	_____	_____

Details: _____

License Authority	License Type	Suspension or Revocation Date
_____	_____	_____

Details: _____

License Authority	License Type	Suspension or Revocation Date
_____	_____	_____

Details: _____

Section C-3: Criminal Violation(s)

Use additional sheets if necessary.

Date of Conviction: _____ Code Section: _____ Felony or Misdemeanor? _____
Date of incarceration: _____ Date of Probation: _____ Date of Parole: _____

Details:

Date of Conviction: _____ Code Section: _____ Felony or Misdemeanor? _____
Date of incarceration: _____ Date of Probation: _____ Date of Parole: _____

Details:

Date of Conviction: _____ Code Section: _____ Felony or Misdemeanor? _____
Date of incarceration: _____ Date of Probation: _____ Date of Parole: _____

Details:

Section C-4: Commercial Cannabis Operations in the City of Pasadena

Use additional sheets if necessary.

Business Name: _____ Business Address: _____
Dates of Operation: _____ Title: _____

Business Name: _____ Business Address: _____
Dates of Operation: _____ Title: _____

Business Name: _____ Business Address: _____
Dates of Operation: _____ Title: _____

SECTION D: REQUIRED DOCUMENTS

Copy of a currently valid government-issued identification

SECTION E: AFFIRMATION & CONSENT

Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that misrepresentation of fact is cause for rejection of this screening application, denial of a license, or revocation of a license issued.

Signature:  _____ Date: January 29, 2019

Printed Name: Steve White _____

Harvest Health & Recreation Continues California Growth with Pasadena Dispensary License Win

- *Pasadena marks seventh license in California showcasing aggressive growth in state and expanding national footprint of retail and wholesale licenses across US*
- *Harvest among top scoring applicants in highly regulated district noted for quality-driven retail operations and commitment to improving the local community*

PHOENIX -- **Harvest Health & Recreation, Inc.** (CSE: HARV, OTCQX: HRVSF) ("Harvest"), a vertically integrated cannabis company with one of the largest and deepest footprints in the U.S., was awarded a dispensary license to operate in Pasadena¹, (subject to the local Conditional Use Permit process and state regulatory requirements), marking the seventh California license for the fast-growing company. Harvest was among the top-scoring applicants from a pool of 128 applications to obtain licenses in the city, receiving top recognition for its high-level of sophistication, best-in-class experience, and world-renowned team of experts in operating quality-driven retail stores with a focus on bettering the community.

"Pasadena's affluent community and close proximity to the world's largest cannabis market of Los Angeles, makes it an ideal destination for Harvest's growing retail operations that focus on high-quality and safe cannabis experiences and education," said Steve White, Harvest's CEO. "Pasadena's extensive application process and rigorous requirements show the city's commitment to only allowing operations that appeal to the community's prestigious standards. This is a big win for Harvest as we continue to grow our presence in California and drive premiere retail environments that are safe for consumers introducing the people of Pasadena to our leading products, award-winning storefronts and knowledgeable staff."

Harvest's dedication to building, acquiring and expanding brands and distribution across its national footprint, provides greater cannabis accessibility for consumers seeking high-quality and trusted experiences. With California as the largest cannabis market in the world, the company's continued growth in the state sets leading industry standards across operations and vertical integration. Additionally, in California, Harvest recently opened a dispensary in Napa, which is the city's first medical cannabis location to open its doors to patients, announced retail licenses for one of two dispensary locations in Santa Monica, are soon to open a new location in

¹ Steve White, CEO of Harvest, Health & Recreation, Inc., holds 100% ownership of the winning license entity, Harvest of Pasadena, LLC, for the benefit of Harvest, Health & Recreation, Inc.

Venice and are finalizing the acquisition of Falcon International Corp.—the state’s leading operator in logistics serving more than 80 percent of dispensaries. With disciplined business practices, Harvest has excelled past competitors to hold licenses for the right to operate more than 200 retail and processing facilities in 17 states and territories across the U.S.

About Harvest Health & Recreation, Inc.

Headquartered in Tempe, Arizona, Harvest Health & Recreation, Inc. is a multi-state cannabis operator (MSO) and vertically-integrated cannabis company. Subject to completion of announced acquisitions, Harvest will have the largest footprint in the U.S., with rights to more than 210 facilities, of which approximately 140 are retail locations, and more than 1,580 employees across 17 states. Since 2011, the company has been committed to aggressively expanding its Harvest House of Cannabis retail and wholesale presence throughout the U.S., acquiring, creating and growing leading brands for patients and consumers nationally and continuing on a path of profitable growth. Harvest’s mission is to improve lives through the goodness of cannabis and is focused on its vision to become the most valuable cannabis company in the world. We hope you’ll join us on our journey: <https://harvestinc.com>.

Facebook: [@HarvestHOC](#)

Instagram: [@HarvestHOC](#)

Twitter: [@HarvestHOC](#)

Forward-looking Statements

This press release contains statements which constitute "forward-looking information" within the meaning of applicable securities laws, including statements regarding the plans, intentions, beliefs and current expectations of Harvest with respect to future business activities. Forward-looking information is often identified by the words "may," "would," "could," "should," "will," "intend," "plan," "anticipate," "believe," "estimate," "expect" or similar expressions and include information regarding: (i) expectations regarding the size of the U.S. cannabis market, (ii) the ability of the Company to successfully achieve its business objectives, (iii) plans for expansion of Harvest, and (iv) expectations for other economic, business, and/or competitive factors.

Investors are cautioned that forward-looking information is not based on historical facts but instead reflects Harvest management's expectations, estimates or projections concerning future results or events based on the opinions, assumptions and estimates of management considered reasonable at the date the statements are made. Although Harvest believes that the expectations reflected in such forward-looking information are reasonable, such information involves risks and uncertainties, and undue reliance should not be placed on such information, as unknown or unpredictable factors could have material adverse effects on future results, performance or achievements of the combined Company. Among the key factors that could cause actual results to differ materially from those projected in the forward-looking information are the following: the potential impact of an announcement of a going public transaction on relationships, including with regulatory bodies, employees, suppliers, customers and competitors; changes in general economic, business and political conditions, including changes in the financial markets; and in particular in the ability of the Company to raise debt and equity capital in the amounts and at the costs that it expects; adverse changes in the public perception of cannabis; decreases in the prevailing prices for cannabis and cannabis products in the markets that the Company operates in; adverse changes in applicable laws; or adverse

changes in the application or enforcement of current laws, including those related to taxation; the inability to locate and acquire suitable companies, properties and assets necessary to execute on the Company's business plans; and increasing costs of compliance with extensive government regulation. This forward-looking information may be affected by risks and uncertainties in the business of Harvest and market conditions.

Should one or more of these risks or uncertainties materialize, or should assumptions underlying the forward-looking information prove incorrect, actual results may vary materially from those described herein as intended, planned, anticipated, believed, estimated or expected. Although Harvest has attempted to identify important risks, uncertainties and factors which could cause actual results to differ materially, there may be others that cause results not to be as anticipated, estimated or intended. Harvest does not intend, and does not assume any obligation, to update this forward-looking information except as otherwise required by applicable law.

Media Contacts:

Alex Howe, Head of Corporate Communications
(202) 271-7997
ahowe@harvestinc.com



OFFICE OF THE CITY MANAGER

June 20, 2019

Mr. Craig Fry
President, Craig Fry & Associates, LLC
1010 S. Arroyo Parkway, #6
Pasadena, CA 91005

RE: "The Brick and Rose" Cannabis Application

Dear Mr. Fry:

Congratulations on your placement on the City's commercial cannabis permit screening application list. While you may not be among the top six applicants, you are well placed on the list, and recall that the list is good for one year.

The City of Pasadena is in receipt of your letter dated June 17, 2019, which you and Mr. Larry Mondragon presented to me and other staff on that same date, as well as additional information you submitted on this same date. Therein you argue that the City should disqualify fourth ranked Harvest of Pasadena LLC ("Harvest") from the City's commercial cannabis permit application process for alleged misrepresentations made in their application. We have reviewed your claim that Harvest completed the required Applicant/Owner Information Form ("A/O Form") inaccurately, and respectfully disagree at this time. Harvest provided the required information necessary to evaluate their application at this early stage. The City will further evaluate all of the applications as they move forward at later stages in the process and before issuing any cannabis permit.

It may be that Harvest (or other applicants) is disqualified or withdraws at a later date. However, the City has no intention to give notice pursuant to Pasadena Municipal Code Section 5.78.080.F to anyone else on the list at this time. Accordingly, the current process is that the applicants moving forward will be the only ones until there are no more available sites or until they withdraw or are disqualified at the appropriate time.

Thank you for your participation in this process.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Mermell".

Steve Mermell
City Manager

City Hall
100 N. Garfield Avenue, Room S228
Mailing Address: P.O. Box 7115 • Pasadena 91109-7215
(626) 744-6936 • Fax (626) 744-4774
smermell@cityofpasadena.net

Nunez, Guille

From: Larry Mondragon <dragon@craigfryandassociates.com>
Sent: Sunday, June 23, 2019 7:24 PM
To: Mermell, Steve
Cc: Tornek, Terry; Hampton, Tyron; McAustin, Margaret; Kennedy, John; Masuda, Gene; Gordo, Victor; Madison, Steve; Wilson, Andy; Nunez, Guille; Paige, Jennifer; Reyes, David; Del Toro, Israel; Bagneris, Michele; Rodriguez, Nicholas
Subject: * * * URGENT CORRESPONDENCE * * * Pasadena Cannabis Retail Permit Program
Attachments: Letter to the City of Pasadena (06-23-19).pdf; Attachment No. 1.pdf; Attachment No. 2.pdf; Attachment No. 3.pdf; Attachment No. 4.pdf; Attachment No. 5.pdf; Attachment No. 6.pdf; Attachment No. 7.pdf; Attachment No. 8.pdf; Attachment No. 9.pdf; Attachment No. 10.pdf; Attachment No. 11.pdf

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Dear Mr. Mermell,

To avoid delay, I am sending you this urgent correspondence and supporting materials via email.

We look forward to hearing back from you at your earliest convenience.

Sincerely,

Larry Mondragon
The Brick & Rose, LLC



June 23, 2019

Mr. Steven Mermell
City Manager
City of Pasadena
100 N. Garfield Avenue
Room S-228
Pasadena, California 91101

Dear Mr. Mermell,

We are in receipt of your letter of June 20, 2019, denying our claims against Harvest of Pasadena, LLC ("Harvest"). Sadly, upon reading your correspondence, I lost confidence that the City will act in good faith to resolve our concerns. I was especially disheartened to hear that you are dismissing our complaint because, in your words: "Harvest provided the required information necessary to evaluate their application at this early stage." (See Attachment No. 1)

With all the respect due your office as City Manager, the position you have taken violates both the spirit and the letter of the rules that the City established. This was intended to be a competitive process that would bring forth the most deserving applicants. Thus, we believe the City is wrong for three separate reasons. First, the City is changing the rules to benefit a single applicant. Second, your contention that Harvest provided the required information is provably wrong. Third, there is a great deal of disturbing information about Harvest's management team and its Arizona "parent" company that is freely available. We can only surmise that the City was either unaware of this information or chose to ignore it.

PART A – THE CITY IS CHANGING THE RULES TO FAVOR A SINGLE APPLICANT

The City established rules that required all applicants to submit a written disclosure about their ownership group and other persons having a financial interest. This information was deemed to be of such importance that the City's rules required that the disclosure be made under penalty of perjury. However, it is undeniable that Harvest did not make even a minimal effort to provide the proper disclosures about itself (as a prospective cannabis permit holder), its owner, Steve White (owner of 100% of Harvest's equity), and Harvest Health & Recreation, Inc., who appears to be the real beneficiary of any cannabis license that may be awarded by the City. By rejecting our concerns about the conduct of Harvest, the City is essentially changing the rules of a competitive proceeding *after the fact*. The City's own rules made it clear that no applicant could make changes to their screening

application after it was filed. Why then, does the City take the position that it can waive the rules to favor the interests of a particular candidate? We believe the City's action is wrong, both legally and ethically.

As City Manager, you had a duty under Section 5.78.080(D) of the Pasadena Municipal Code to: "disqualify any application that contains false or misleading information." It is unquestionable that Harvest's Applicant/Owner Form contained false and misleading information and was signed by its CEO, Steve White. (See Attachment No. 2). I understand how difficult and embarrassing it will be for the City to disqualify Harvest at this late date. However, I submit it would be far more difficult for you to explain why the City has selected a company to apply for a cannabis retail permit who has demonstrated a willingness to provide false and misleading statements under the penalty of perjury. The appearance this to my colleagues at *The Brick & Rose*, to the other 121 applicants who have played by the rules, and most of all, to the residents of Pasadena, is unavoidable— in order to make this inconvenient problem quietly go away, the City is prepared to place their thumb on the scale in order to favor the interests of Harvest.

PART B – HARVEST DID NOT PROVIDE THE REQUIRED INFORMATION

Your statement that: "Harvest provided the required information" is simply untrue, and demonstrably so. Nowhere in the Harvest's screening application are the answers to the following questions found:

1. Has Harvest or its owners ever been denied a permit or state license to engage in commercial cannabis activity?
2. Has Harvest or its owners ever had a permit or state license suspended or revoked by a cannabis licensing authority?
3. Has Harvest or its owners ever failed to pay federal, state or local taxes when notified by the proper agencies?
4. Has Harvest or its owners ever been convicted of a crime?

Furthermore, although images of several cannabis permits are included in the Harvest screening application, nowhere does it reveal the extent to which its owner has a financial stake in any of these licensed businesses. This failure is in stark contrast to the applications of the other top applicants, wherein each owner fully disclosed their interest in other cannabis businesses. Only Steve White of Harvest failed to provide a full accounting to the City. All other applicants provided copies of government-issued identification cards for their owners, as the rules required. It does not appear that Mr. White bothered to do so.

Despite knowing his representations were made under the penalty of perjury, Mr. White did not accurately, completely and truthfully make the same disclosures that everyone else provided to the City. These omissions were not technical mistakes, but material to the City's determination of the fitness of Harvest to receive a cannabis business permit. We would like to know where in Harvest's 95-page screening application did the City find that "Harvest provided the required information necessary to evaluate their application..."? This information was clearly not furnished by the applicant in violation of the rules, and the City had no right to favor Harvest by "filling in the blanks" to cure an otherwise deficient and misleading application.

PART C – THE CITY FAILED TO CONSIDER OTHER AVAILABLE INFORMATION

1. The Taxpayer Protection Act.

Pasadena's Taxpayer Protection Act requires each permit applicant to disclose "all joint owners, trustees, directors, partners, officers and those with more than a 10% equity, participation or revenue interest" in their business. On June 12, 2019, Harvest provided the City with the required TPA disclosure. (See Attachment No. 3). However, in this disclosure, Harvest failed to list two senior company officers who were originally identified in its screening application: its President, Steve Gutterman, and Chief Operating Officer, John Cochran. (See Attachment No. 4)

Just as with the earlier Applicant/Owner Information Form, Mr. White again falsely attested to the truthfulness of a false and misleading statement as he signed the form under the printed words: *"I hereby certify that I am the owner or designated agent and that the statements and answers contained herein, and the information attached, are in all respects true, accurate and complete to the best of my knowledge and belief."* As explained in our letter of June 17, 2019, Mr. White is an licensed attorney with years of experience, the Chief Executive Officer of a company who claims it will soon be the largest cannabis enterprise in the United States, and by any measure, a sophisticated and seasoned business executive. This is hardly the sort of error that can be excused as a novice mistake.

We question how the City could possibly have found that Mr. White had submitted a complete and truthful Applicant/Owner Information Form when the City has in its possession a new disclosure document from Harvest that suffers from an identical disregard for the truth. Mr. White's failure to name senior company officials who were previously touted in its screening application is a serious omission. It clearly demonstrates either a conscious pattern of negligence or deceit, either of which should disqualify Harvest and affirm our contention that this company is unfit to hold a cannabis permit from the City of Pasadena.

(2) The Introduction of Jason Vedadi.

Besides omitting mention of two senior officers, Harvest also revealed for the first time in the TPA disclosure that an Arizona resident named Jason Vedadi (a/k/a "Touraj J. Vedadi") would have an interest in its Pasadena cannabis business. Mr. Vedadi currently serves as the Executive Chairman of Harvest Health & Recreation, Inc., a publicly-traded Canadian company with its principal offices in Arizona. (See Attachment 5). Harvest Health & Recreation, Inc. is one of the largest cannabis enterprises in the United States. In public documents filed with securities regulators, Mr. Vedadi is named as the company's single largest shareholder, controlling 35.4% of the company's voting shares, while Mr. White is listed as the second largest shareholder with 32.6%. Indeed, this is the very same Arizona company who proudly proclaimed on June 12, 2019, that it (and not Harvest of Pasadena, LLC) owned a Pasadena cannabis retail permit, although no such rights have yet been awarded by the City. (See Attachment No. 6). Mr. Vedadi's affiliation with Harvest was not disclosed in the Applicant/Owner Information Form that Mr. White had previously signed and submitted under penalty of perjury. Nor is Mr. Vedadi named anywhere in the body of the screening application as a company officer or in any other capacity. No reason has been provided as to why Mr. Vedadi's interest was not previously divulged by Mr. White.

In light of this new disclosure, the City was wrong to deny our claim when it had possession of a document that contradicted the original Applicant/Owner Information Form that Mr. White provided to the City in January. Without good cause, one of these Harvest disclosures is surely "false and misleading" by any standard.

(3) Jason Vedadi's Compliance with the Law.

On November 11, 2011, Vince Sanchez, a Special Agent for the Drug Enforcement Agency, submitted an affidavit in a federal drug trafficking case in support of the government's seizure of money and assets belonging to the target of their investigation, Jason Washington (Case No. 9:11-mj-00060-JCL). On September 16, 2011, U.S. District Judge Donald W. Molloy authorized the interception of Mr. Washington's wire and electronic communications. Pursuant to this wiretap order, on October 6, 2011, a call was received from Mr. Vedadi that was transcribed in court documents as follows:

"On October 6, 2011, a telephone call was intercepted between VEDADI and WASHINGTON. VEDADI asked WASHINGTON "What's it worth if it's in Kalispell?" WASHINGTON responded "To me it's not worth anything it's worth 23 to me" (\$2300/lb.). VEDADI responded that "It's just too good of sh*t for that." WASHINGTON responded "F**k 35 (\$3500/lb.) sh*t whatever, I'm just not, in the game like that right now" "Cause I can ya know get that other stuff when our stuff's not ready.....23 all day and that's what I pay." (See Attachment No. 7, Pages 7-8 and 16).

In his sworn affidavit, DEA Special Agent Sanchez testified that he believed Mr. Vedadi was attempting to illegally sell marijuana to Mr. Washington, but his offer was declined because Mr. Washington believed he could obtain the product from another party at a lower cost.

Although a federal criminal complaint was filed against Mr. Washington, no federal charges were brought against Mr. Vedadi. Notwithstanding whether any criminal charges were filed, the City has both a right and duty to inquire as to whether Mr. Vedadi has ever grown, transported or sold marijuana in violation of state or federal laws, or whether he has ever conspired to do so. The residents of Pasadena are counting on the thoroughness of the City in vetting the integrity of each applicant, as well as those persons in a position to influence its actions. This may be in part what motivated Mr. White to conceal Mr. Vedadi's involvement in the company as he failed to name him in the original Applicant/Owner Disclosure Form that Harvest provided to the City in January.

(4) Jason Vedadi's Failure to Pay Taxes.

Section 5.78.100 of the Municipal Code specifies five separate situations where the City must prohibit a person from receiving a commercial cannabis permit. One of these is where evidence is provided: "that the applicant failed to pay federal, state, or local taxes and/or fees when notified by the appropriate agencies..." (Section 5.78.100(D)).

On September 21, 2017, the Internal Revenue Service recorded a tax lien in Maricopa County Arizona against Mr. Vedadi and his wife for unpaid taxes in the amount of \$42,817.89. (See Attachment 8). If Harvest had followed the rules and named Mr. Vedadi as an owner in the Applicant/Owner Disclosure Form, the company would have been compelled to answer a pointed question as to whether Mr. Vedadi had ever failed to pay his taxes.

With Mr. White being a licensed attorney, we can only assume that Harvest knew well that such a disclosure would have resulted in the company being judged ineligible to receive a cannabis permit. While we may never know the reason Mr. White failed to disclose the involvement of Mr. Vedadi in the business, what is clear is that Harvest is poised to reap substantial benefits now that the City has concluded that the company and its management are fully qualified and fit to receive a commercial cannabis permit from Pasadena.

Since the federal tax lien was recorded months before Harvest filed its screening application, the omission of Mr. Vedadi is yet another reason why the Applicant/Owner Information Form it furnished to the City was false and misleading. Pursuant to Municipal Code Section 5.78.080(D): "The city shall...disqualify any application that contains any false or misleading information." Because of this astonishing series of lapses by the City, our complaint is no longer focused solely on the actions of Harvest. By not holding Harvest to the rules of this competitive screening process, the City has broken faith with the intent of its cannabis

permitting program. In so doing, the City has failed both its citizens and all other applicants who have abided by the rules of the screening program.

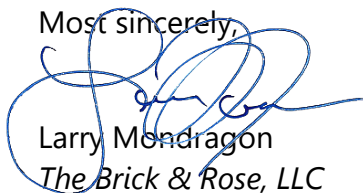
PART D – SUMMARY

Harvest appears to be continuing a deliberate and calculated pattern of conduct which has been previously called into question in the states of Ohio, Pennsylvania and Arizona— using a carefully-engineered corporate structure to mask the identity of the true ownership of each licensed entity. (See Attachment No. 9, Pages 48-58, and Attachment Nos. 10 and 11). In the past, this practice may have helped the company circumvent limitations as to how many state licenses a single party can own. Such a complex corporate structure may have provided the additional benefit of concealing the involvement of persons with a checkered past. Moreover, it clearly is an effective way to engage local government, who may not have the time, resources, or experience to conduct an exhaustive forensic investigation of the background of each applicant.

Although this tactic may have served Harvest well in other jurisdictions, it is the duty of Pasadena to conduct a fair and transparent permitting process, wherein each applicant is required to follow both the letter and spirit of the rules. Thus far, City government has failed in discharging the great responsibility that its citizens have entrusted to it. We urge you to re-review the record and reconsider our claims. We do not believe the facts before you can support the denial of our claim, any more than they can affirm the qualifications of Harvest to receive a cannabis retail permit from the City.

My company has been seriously harmed by the actions of Harvest, and this wound has been made worse by the City's decision to reject our complaint. However, I fear that this may only be the beginning. Very soon your hesitancy to disqualify Harvest may cause serious financial injury to the other top applicants who have played fair and abided by the rules. At this point, the damage inflicted by your failure to act may not have a remedy. We urge the City to reconsider its position and decisively act on our concerns before it is too late.

Most sincerely,



Larry Mondragon
The Brick & Rose, LLC

cc: Ms. Michele Beal Bagneris, Esq., City Attorney
The Honorable Members of the Pasadena City Council

**Disclosure Pursuant to the
City of Pasadena Taxpayer Protection Act
Pasadena City Charter, Article XVII**

I. Does the value of this application/project *have the potential* to exceed \$25,000? Yes No (Applicant *must* mark one)

II. Is the application being made on behalf of a government entity? Yes No

III. Is the application being made on behalf of a non-profit 501(c) organization? Yes No

If yes, please indicate the type of 501(c) organization: 501(c)(3) 501(c)(4) 501(c)(6)

Applicant's name: Harvest of Pasadena, LLC Date of Application: 6/12/19

Owner's name: Steve White Contact phone number: 602-615-2083
(for questions regarding this form)

Project Address: 169 W. Colorado Boulevard Pasadena CA 91105

Project Description: Adult and Medical Use Commercial Cannabis Retailer with Delivery

III. Applicant and Property Owner must disclose all joint owners, trustees, directors, partners, officers and those with more than a 10% equity, participation or revenue interest in owner and/or project. If any of these are an organization/entity, include the name of the organization/entity and the first and last names of all parties of interest of that organization/entity. (List all parties below and use additional sheets as necessary, or provide all parties on an attachment) Please print legibly. Have any additional sheets or an attachment been provided? Yes No

Names of Owner(s), Trustees, Directors, Partners, Officers of Owner/Project	Names of Owner(s), Trustees, Directors, Partners, Officers of Owner/Project (continued)	Those with more than a 10% equity, participation or revenue interest in Owner and/or Project
Steve White		Steve White
Jason Vedadi		
Leo Jaschke		

I hereby certify that I am the owner or designated agent and that the statements and answers contained herein, and the information attached, are in all respects true, accurate and complete to the best of my knowledge and belief.

Signature of Owner or Designated Agent:  Date: 6/12/19

For Office Use Only

Type of Application: Variance (all types) Adjustment Permit Sign Exception Temporary Use Permit Expressive Use Permit
 Conditional Use Permit (excluding Master Plan) Master Plan Amendment Planned Development Other

Assigned Planner: _____ PLN#: _____

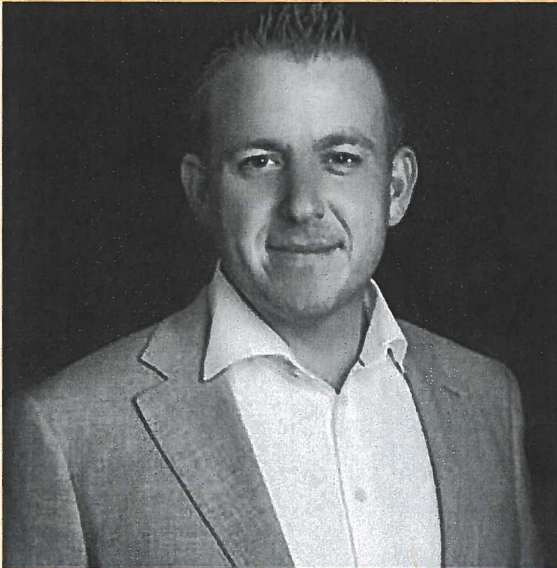
Attached Address: _____ No Attached Address

Appealed: Yes No Appeal PLN# _____ Application Withdrawn

Final Decision: Approved Denied Decision Date: _____ Decision Maker: _____
(Name and Title, or Name of Commission/Committee)

Votes in favor (please print):

Executive Team

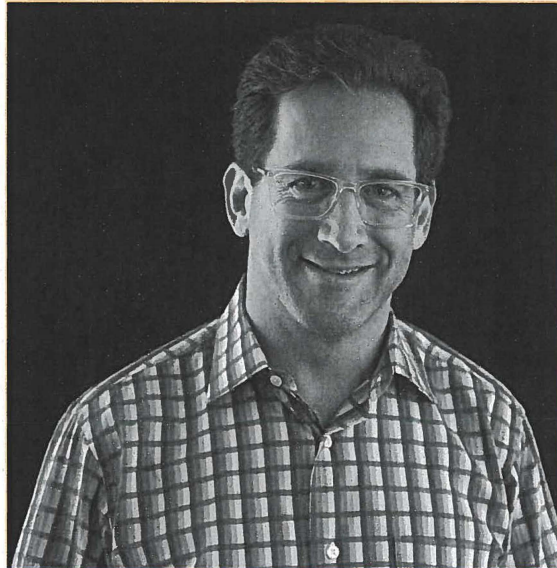


Executive Chairman

Jason Vedadi

Jason Vedadi leads Harvest's strategic development and expansion, including key revenue initiatives, M&A and strategic partnerships. He is a tireless and innovative entrepreneur who has achieved success in every business he has founded and operated.

In 2004, at the age of 25, he created a successful residential and commercial mortgage company. In 2006, he founded a construction and development company, where he developed thousands of units across the United States. He graduated from the University of Montana in 2001 with a degree in business.

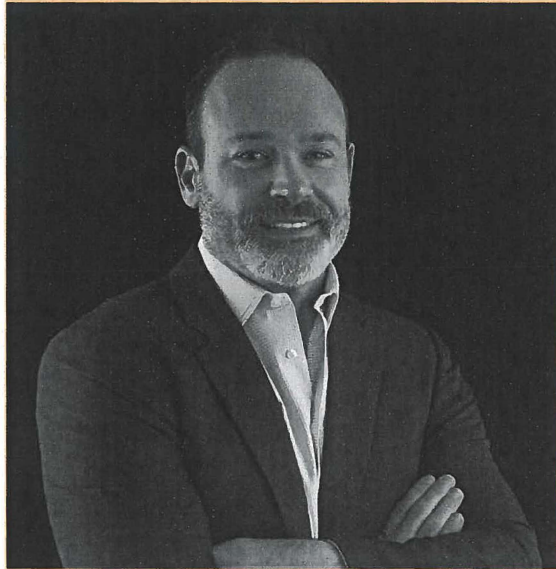


President

Steve Gutterman

Steve Gutterman has built and led high growth businesses in highly regulated industries for the last 20 years. The businesses he has led have increased in annual revenue by over \$500 million and in market capitalization by over \$2 billion. He also has extensive M&A experience, having led the diligence and integration of over 40 acquisitions.

Steve was previously the CEO of Mobile Accord and EVP and COO of E*Trade Bank, a \$35B federally regulated thrift. He holds a JD/MBA from Columbia University and a Bachelor of Arts from Tufts University.



CEO

Steve White

Before launching Harvest in 2011, Steve graduated summa cum laude from Arizona State's Honors College in 1995 and then from the Washington & Lee University School of Law in 1999. After working for two national law firms, he founded his own boutique firm in 2005. After opening Harvest's first dispensary in 2013, Steve worked there for several months fulfilling orders, performing reception duties and consulting with patients. Steve founded and now serves on the board of directors for Harvesting Hope, a non-profit organization that supports young children suffering from seizure disorders.

Steve serves as the President of the Arizona Dispensary Association and is a founding board member of the Policy Center for Public Health and Safety. In addition, he has done hundreds of interviews, speaking engagements and provided expert testimony on a multitude of marijuana-related topics.

and support group meetings). Under Steve's direction, Harvest has also engaged in a variety of community involvement and outreach activities, including the donation of over [REDACTED] to local charitable organizations (e.g., Arizona and Nevada Epilepsy Foundations, Climb to Conquer Cancer, Justa Center, Ryan House), veterans, seniors, and customers in need.

Finally, Steve also serves on the board of directors for Harvesting Hope, a 501(c)(3) non-profit organization dedicated to improving quality of life for young children suffering from seizure disorders. In 2014, two parents approached Steve to discuss their son, who was suffering from seizures. The son's physician had recommended cannabis, and the parents were looking for a consistent supply of cannabis high in cannabidiol and for additional support and educational services.

Inspired by this family, and after learning of many more families like them, Steve helped create Harvesting Hope, which to date has raised and distributed nearly [REDACTED] and provided services for over 100 families and their children. These services include monthly support group meetings; guest speakers, including neurologists, nutritionists, therapists, and legal advisors; free medical advice and consultation provided by Dr. Troutt, who serves as the organization's executive director; and financial assistance to help families bear the cost of cannabis treatment.

Steve Gutterman, Harvest's President

Steve has spent the past 20 years managing high-growth businesses in highly-regulated industries. He began his career as a corporate lawyer, ultimately becoming the Executive Vice President of Banking at E*TRADE, which he helped lead from [REDACTED] in assets. In this role, he worked closely with regulators at the Office of Thrift Supervision and the Securities Exchange Commission, collaborating with regulators to create a national plan to comply with the Community Reinvestment Act. After E*TRADE, Steve joined MBH Enterprises, a private equity firm. MBH's portfolio companies, operating in the highly regulated financial services industry, grew by [REDACTED] in annual revenue during his tenure. Finally, he joined Mobile Accord in 2013 as CEO. While operating this global company, he guided country-specific compliance with privacy laws, telecom regulations, and banking and taxation treaties, ultimately adding 400 million telecom subscribers in 45 countries.

Steve is passionate about serving customers. At E*TRADE, his business lines won numerous awards for product innovation and service. At Mobile Accord, he led a company whose work was featured by the United Nations in its 2020 Vision and the Centers for Disease Control in its response to the Ebola crisis. Additionally, during this time he also acted as advisor to the Ministry of Information for the Government of the Republic of Tanzania.

Throughout his career, Steve has worked to create equal opportunities for all members of his community. He was an organizer and board member of Solara National Bank, the first nationally chartered bank to cater to Hispanic banking customers. He is also a past member of the Columbia Law School Board of Visitors and a former chair and board member for the Institute for the Study of Israel in the Middle East. Additionally, he has advised numerous political candidates as member and chair of their finance committees.

Steve loved being a part of the development of the e-commerce industry. His passion for working with thought leaders, regulators, customers, and even competitors to define and lead a nascent industry brought him to the cannabis industry and to Harvest. He is also gratified through his work with a medicine that can bring so much relief. Steve's grandmother suffered from extremely painful arthritis, and he expresses regret that the selective use of cannabis was not available to her to ease her suffering.

Steve has spent his career leading teams and turning companies into market leaders. As President of Harvest, Steve's role is to coordinate operations and finance, work closely with Steve White on company strategy and direction, and to be ultimately responsible for company growth, profit, and loss.

Leo White, Harvest's Chief Financial Officer

Leo has decades of experience managing finance and accounting departments for public and private start-ups and multi-national businesses, with responsibilities including financial reporting, system

implementation, creation and development of accounting and finance teams, audit management, capitalization, mergers and acquisitions, initial public offerings, and private equity. He began his career as the Vice President of Finance at Einstein Noah Restaurant Group, Inc., a former NASDAQ-listed quick casual restaurant chain with over 750 locations and [REDACTED] in annual revenue. During this time, he successfully navigated the separation of the company from its majority owner, and in the process, established and developed new accounting departments to ensure the self-sufficiency of the operation (e.g., accounts payable, asset management, corporate accounting, corporate finance, payroll, accounting IT systems, and treasury). He was also instrumental in raising capital after the departure of the former majority owner, actively participating in the capitalization of both private equity and public bond debt.

After Noah Restaurant Group, Inc., Leo served as the Director of Finance, Treasury, and Risk Management at Ultimate Electronics, where he was tasked with navigating a severe company-wide financial crisis. In doing so, he created cash management and forecasting tools for short-, medium-, and long-term growth and re-established banking credibility, providing the company the time necessary to pursue a controlled restructuring to enhance financial stability.

Leo next transitioned to MBHE Holdings, LLC as their Chief Financial Officer. There, he oversaw consolidated financial statement audits, managed tax preparation for 70 entities, and completed the acquisition or divestiture of over 20 companies. As the primary lender contact, Leo led the financing, renewal, and expansion of over [REDACTED] in senior debt facilities, resulting in over [REDACTED] in accelerated investor returns, and raised over [REDACTED] in equity over multiple private offerings. Wanting to continue his work in new and cutting-edge companies, Leo next joined an entrepreneurial growth company in the water-based consumer beverage market, driving a 170% gross margin improvement and 35% revenue growth in one year.

Leo's dedication to supporting entrepreneurs led him to Harvest, where he was recently hired as the Chief Financial Officer. Leo's ability to guide corporate financing, planning, forecasting, and analysis; manage financial reporting and compliance; establish best practices in accounting standards and financial controls; and manage capital and treasury processes to ensure adequate cash flow for growth is integral to Harvest's financial stability. With his guidance, Harvest of Pasadena, LLC will be poised to provide quality products, resources, and services to patients and qualifying community members.

John Fuchs, Harvest's Chief Operating Officer

John has decades of experience leading and driving revenue, profitability, and value at large and well-known multinational brands, including Hollandia Produce, the leading hydroponic farmer, producer, and seller of living greens in North America; Ole Smoky Distillery, the number one un-aged whiskey brand in the United States; Pabst Blue Ribbon, the largest American-owned beer company in the U.S.; and Fiji Water Company, the fastest growing and number two-ranked premium bottled water in the world. He also spent six years with the parent company of Fiji Water, Roll International, owner of juice company POM Wonderful; worked in South Asia as president of General Electric Lighting where he led and directed the efforts of over 1,800 employees across 10 countries; and was a Captain in the United States Air Force where he was awarded two Air Force Commendation Medals for Superior Performance.

Most recently, John served as CEO of the Los Angeles-based, multistate cannabis company Loudpack Inc., one of the leading producers of cannabis products in California. There, he was responsible for all daily operating activities of the business. In 2018 alone, John opened new cultivation and production facilities, built an operating team of 300+ employees, and launched eight brands and product lines to satisfy the rapidly emerging demand of California consumers.

John has vision, passion, and a proven track record for dynamic and profitable business growth and inspired brand development, acquisition, and management. At GE Lighting, he grew sales 18% to [REDACTED] and [REDACTED] over 6% ongoing variable cost productivity; and delivered more than 15% profitable growth through the introduction of new products, service offerings, and improved distribution relationships. At Fiji Water, he re-launched the brand, overseeing new packaging design, directing promotional execution

and external communication campaigns, and completing more than [REDACTED] in capital improvements, tripling capacity and ultimately increasing volume from 46% to 88%.

As COO, John is tasked with the day-to-day operations of Harvest. In this capacity, he applies his experience to creating and refining the best team, processes, and products in the industry, and he oversees the implementation of policies and procedures developed in consultation with industry regulations, guidelines, and standards.

Kevin George, Harvest's Chief Marketing Officer

Kevin is a 30-year veteran of the Consumer Packaged Goods industry with a unique combination of global marketing, general management, and agency operations experience. Most recently, Kevin served as Chief Marketing Officer of Acosta and President of the company's marketing services division, Mosaic, one of the 25 largest marketing agencies in the U.S. Specializing in retail and experiential work, Mosaic counts Google, Samsung, ABI, Bacardi, Nestle, Sephora, and Amazon among its clients. As President, he was responsible for profit and loss, strategy, and client development and for directing a team of 1,400 employees.

Prior to Mosaic, Kevin served for six years as global Chief Marketing Officer at Beam Suntory, the third largest spirits company in the world and the second largest in the United States. During his tenure, Beam became the fastest growing spirits company in the world with brands that include Jim Beam, Maker's Mark, and Knob Creek. Kevin oversaw brand investment of over [REDACTED] and led the development of Jim Beam's first global campaign, featuring Mila Kunis. During his tenure, Beam Suntory was also named one of Ad Age's top 10 marketers in the U.S. and one of the world's most innovative companies by Forbes. Kevin was also part of the executive leadership team that successfully took Beam public in 2011 and subsequently sold to Suntory Holdings in 2014.

Before to joining Beam Suntory, Kevin spent 13 years at Unilever, an international manufacturer of food, home, and personal care products, where he held several senior management and brand development positions, including vice president and general manager of Unilever's [REDACTED] United States deodorants and hair care business unit. As Director of Marketing for deodorants, he led the team responsible for delivering the award-winning marketing plans for Axe, Degree, and Dove deodorant brands, including the launch of Axe Body Spray in North America.

Prior to Unilever, Kevin worked for seven years in the spirits industry at Seagram Americas, where he held key sales and marketing positions for a number of premium spirits brands. Kevin serves on the boards of New Belgium Brewing (the fourth largest craft brewer in the U.S.) and Brightline (a leading advertising technology firm) and is an advisory board member at the Miami University College of Arts and Science.

Kevin recently joined Harvest, where he is responsible for steering the vision and execution of Harvest's marketing and advertising initiatives. Primarily, he ensures regulatory compliance, maintains brand integrity, integrates marketing with customer education programs, develops innovative new strategies and campaigns, and evaluates initiative success to measure return on investment and inform future strategies.

Siobahn Carragher, Harvest's Director of Human Resources

Siobahn holds two master's degrees, one in Education from Arizona State University and another in Social Work from the University of Phoenix. She has extensive experience in the highly-regulated healthcare industry, having served as HR Manager at Hamilton Prosthetic and Orthotic Centers and for Pongratz Orthotics and Prosthetics, in addition to employment law experience while employed at Hamilton, Pongratz, and BLACOH Fluid Control.

Siobahn's experience with regulatory bodies and government agencies includes over 15 years of experience with HIPAA, employment law compliance, the Affordable Care Act, the Family Medical Leave Act, Equal Employment Opportunity (EEO) reporting, the Employee Retirement Income Security Act, the Americans with Disabilities Act, COBRA, the National Labor Relations Board, and the Department of Labor. As an HR professional, she has maintained compliance within these industries

**AFFIDAVIT OF VINCE SANCHEZ,
SPECIAL AGENT, DRUG ENFORCEMENT ADMINISTRATION**

AFFIDAVIT IN SUPPORT OF SEIZURE WARRANT

I, Vincent Sanchez, a Special Agent with the Drug Enforcement Administration,
(hereinafter referred to as "your affiant") being duly sworn, states as follows:

This Affidavit is submitted in support of an application for a seizure warrant for the
following subject property:

First Security Bank

All monies and/or assets held in the name of, or for the direct or indirect benefit of Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742, or Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703, or Big Sky Health, LLC, or 406 Motoring, LLC, including but not limited to the accounts numbers: 9109360 and 9111401 and all contents of any Safe Deposit Box(es) held in the name of, or for the direct or indirect benefit of, or rented by or for, Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742, or Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703, or Big Sky Health, LLC, or 406 Motoring, LLC, at First Security Bank, Montana, (the "Subject Accounts"), and all documents pertaining thereto.

First Montana Bank

All monies and/or assets held in the name of, or for the direct or indirect benefit of Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742 or Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703, including but not limited to the account number: 102305984, and all contents of any Safe Deposit Box(es) including but not limited to Safe Deposit Box number: 7016, held in the name of, or for the direct or indirect benefit of, or rented by or for, Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742 or Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703, at First Montana Bank, Montana, (the "Subject Accounts"), and all documents pertaining thereto.

West One Bank

All monies and/or assets held in the name of, or for the direct or indirect benefit of the following individuals or business names including but not limited to the accounts numbers listed below, and all contents of any Safe Deposit Box(es) held in the name of, or for the direct or indirect benefit of, or rented by or for the following individuals or business names listed below at West One Bank, Montana:

Darin MOWER, DOB: 12-14-1971, SSN: XXX-XX-9057

Melissa MOWER, DOB: 07-19-1973, SSN: XXX-XX-3524
Account Numbers: 1604865, 1604775, 1604589, 1605194, 1605097
Cramer Creek, LLC
Kind Medicine, LLC
Glass Haus, LLC
Big Sky Health, LLC,(the "Subject Accounts"), and all documents pertaining thereto.

Farmers State Bank

All monies and/or assets held in the name of, or for the direct or indirect benefit of the following individuals or business names including but not limited to the accounts numbers listed below, and all contents of any Safe Deposit Box(es) held in the name of, or for the direct or indirect benefit of, or rented by or for the following individuals or business names listed below at Farmers State Bank, Montana:

Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742
Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703
Account Numbers: 1604865, 1700973, 1700965, 1702135, 1701693, 1702119
406 Motoring, LLC
Washington Enterprise, LLC
Dalla Terra, LLC
WE Properties, LLC
Giovane Denaro, LLC
(the "Subject Accounts"), and all documents pertaining thereto.

GENERAL BACKGROUND

1. Your affiant is employed as a Special Agent with the Drug Enforcement Administration ("DEA"), and has been so employed by DEA since April 1991. Your affiant is currently assigned to the Denver Field Division in Denver, Colorado. Your affiant has completed Basic Agent Training at the Federal Bureau of Investigation Training Academy in Quantico, Virginia, which included the identification and investigation of controlled substances and removal of assets related to drug trafficking. Your affiant has further participated in numerous investigations involving offenses for distribution of, possession with intent to distribute, and conspiracy to distribute controlled substances. These investigations have ranged from simple possession of a controlled substance to complex

conspiracy investigations involving the importation and distribution of controlled substances.

2. Based upon my experience and training in narcotics investigations, your affiant is familiar with controlled substances and the related materials used to import, manufacture, package and distribute controlled substances. In that same capacity, your affiant has become familiar with the documents and records commonly maintained by persons who import, manufacture, package, and distribute controlled substances. Your affiant has participated in the execution of search and seizure warrants where assets, documents, records, and controlled substances have been located and seized. Your affiant has also had experience in debriefing defendants, participant witnesses, informants, and other persons who have personal knowledge of the amassing, spending, converting, transporting, distributing, laundering, and concealing of proceeds of narcotics trafficking.
3. Based upon your affiant's experience and training, and further based upon discussions with fellow law enforcement agents with years of personal experience in the area of narcotics law enforcement, your affiant is aware it is common for narcotics traffickers to:
 - a. keep large amounts of U.S. Currency in order to maintain and finance their ongoing narcotics business;
 - b. attempt to disguise, conceal, or hide drug proceeds by placing drug proceeds under a nominee name(s)
 - c. amass proceeds from the sale of drugs; and
 - d. attempt to legitimize these profits through foreign and domestic banks and their attendant services, securities, cashier's checks, money drafts, letters of credit, brokerage houses, real estate, shell corporations, and business fronts.

4. Your affiant has knowledge of the following information and facts through information related to him by other law enforcement officers:
5. In 2010, agents from the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Internal Revenue Service (IRS), Missoula High Intensity Drug Trafficking Area Task Force (HIDTA) and various other federal and local law enforcement agencies initiated an investigation into the illegal drug trafficking and money laundering activities of the Jason WASHINGTON Drug Trafficking Organization in the Missoula, Montana area.
6. Based on information collected by other law enforcement officers, the WASHINGTON Drug Trafficking Organization has been identified as a primary manufacturer/distributor of marijuana in Missoula, Montana. It is also believed that the WASHINGTON Drug Trafficking Organization has sources of supply in other states including but not limited to Montana, California, and Washington. This investigation has also revealed that members of the WASHINGTON Drug Trafficking Organization utilize telephones to communicate with local distribution networks as well as those individuals believed to be sources of supply in other states. In the illegal marijuana business WASHINGTON works with and is assisted by Darin MOWER, Gregory ZUCKERT, Edward DOCTER, Lisa FLEMING, and other co-conspirators.
7. The WASHINGTON Drug Trafficking Organization has various business fronts. These businesses do not have very much business activity associated with them. This is all indicative of money laundering activities to disguise the ownership and nature of any illegal proceeds generated from the sale of narcotics. This investigation has revealed that Jason WASHINGTON, Charlene WASHINGTON (Jason's mother), Darin MOWER,

and Melissa MOWER (Darin's wife) are the owners or registered agents or managers of the following businesses and/or accounts that are suspected of being utilized by the WASHINGTON Drug Trafficking Organization to launder illegal drug proceeds.

Detailed below is a list of financial institutions identified as being used by the WASHINGTON Drug Trafficking Organization:

<u>Financial Institution</u>	<u>Account Number</u>	<u>Account Holder</u>	<u>Notes</u>
First Security Bank	9109360	Big Sky Health, LLC	Per Montana Secretary of State, Registered Owner: Zach Hertlein, and Manager: Darin Mower
First Security Bank	9111401	406 Motoring, LLC	Per Montana Secretary of State, Registered Owner: Jason Washington
First Montana Bank	102305984	Jason and Charlene Washington	
First Montana Bank	Safe Deposit Box #7016	Jason and Charlene Washington	
West One Bank	1604775	Cramer Creek, LLC	Per Montana Secretary of State, Registered Owner: Zach Hertlein, and Manager: Darin Mower
West One Bank	1604589	Kind Medicine, LLC	Per Montana Secretary of State, Registered Owner: Darin Mower
West One Bank	1605194	Glass Haus, LLC	Per Montana Secretary of State, Registered Owner: Zach Hertlein, and Manager: Darin Mower
West One Bank	1605097	Big Sky Health, LLC	Per Montana Secretary of State, Registered Owner: Zach Hertlein, and Manager: Darin Mower
West One Bank	1604865	Darin or Melissa Mower	
Farmers State Bank	1700973	406 Motoring , LLC	Per Montana Secretary of State, Registered Owner: Jason Washington
Farmers State Bank	1700965	Washington Enterprises, LLC	Per Montana Secretary of State, Registered Owner: Jason Washington
Farmers State Bank	1702135	Dalla Terra, LLC	Per Montana Secretary of State, Registered Owner: Jason Washington
Farmers State Bank	1701693	WE Properties, LLC	Per Montana Secretary of State, Registered Owner: Jason Washington
Farmers State Bank	1702119	Giovane Denaro, LLC	Per Montana Secretary of State, Registered Owner: Jason Washington

- The above subject bank accounts were identified through various investigative tools including financial data base checks, Grand Jury Subpoenas and/or Title III wiretap evidence.

10. Your affiant knows that marijuana traffickers, such as individuals of the WASHINGTON Drug Trafficking Organization, commonly utilize banking institutions to conceal, disguise, and to attempt to legitimize their drug proceeds.
11. Law enforcement has learned that the WASHINGTON Drug Trafficking Organization is responsible for growing, harvesting, and shipping marijuana to distributors located in Montana. Drug proceeds are then transported through vehicle or through air transportation back to sources of supply, or are laundered through numerous businesses or limited liability companies (LLC's), such as the businesses list above.
12. The investigation developed various confidential sources with knowledge of the Jason WASHINGTON Drug Trafficking Organization. The Confidential Sources (hereafter CS1, CS2, CS3, and CS4) have never provided any information that has proven false and have always cooperated with law enforcement when asked to meet and provide information about the Jason WASHINGTON Drug Trafficking Organization.
13. During the course of this investigation, law enforcement identified Jason WASHINGTON as being a principle owner of a large marijuana growing and distribution operation providing marijuana for Big Sky Health located in Missoula, Montana. In August 2010, the Missoula County Attorney's Office issued a letter to Missoula's largest marijuana caregivers clarifying that caregiver to caregiver transfer of marijuana was illegal under Montana State Law. Missoula HIDTA contacted Big Sky Health to request a tour of their facilities to ensure their plants/production coincided with the correct amount of "patients" the company had. WASHINGTON responded with a letter refusing to allow a tour of his marijuana growing operations. Instead WASHINGTON provided five photographs of marijuana plants at varying stages of growth that were taken at his

facility. In May 2010, Big Sky Health and its primary caregivers, WASHINGTON, Brent RUSSOM, and Touraj VEDADI (as listed by the State of Montana) had approximately 338 "patients" among them; allowing Big Sky Health to have approximately 2,028 marijuana plants under Montana law.

14. In December 2010, law enforcement initiated an undercover investigation into WASHINGTON for the purpose of purchasing marijuana from WASHINGTON.
15. In December 2010, law enforcement officers of the Missoula HIDTA conducted a controlled purchase of high grade marijuana while utilizing CS2. At the direction of law enforcement officers, CS2 purchased approximately one pound of high grade marijuana from WASHINGTON for \$2,700 at WASHINGTON's place of business, 406 Motoring, located at 1541 South 3rd Street West, Missoula, Montana.
16. In March 2011, law enforcement officers of the Missoula HIDTA conducted a controlled purchase of high grade marijuana while utilizing CS2. At the direction of law enforcement officers, CS2 purchased approximately one-half pound of high grade marijuana from WASHINGTON for \$1,400 at WASHINGTON's place of business, 406 Motoring, located at 1541 South 3rd Street West, Missoula, Montana.
17. In March 2011, the DEA executed a federal search warrant at Montana Cannabis located in Missoula, Montana. As part of the investigation, CS1 was interviewed by law enforcement officers. CS1 expressed surprise that Montana Cannabis was the subject of a search warrant, when CS1 believed Big Sky Health (owned by WASHINGTON) was operating a more questionable business. CS1 stated he/she was a former employee at Big Sky Health. CS1 stated that he/she had overheard conversations of WASHINGTON in which he had stated that Touraj VEDADI (one of WASHINGTON's co-conspirators) had

invested \$500,000 in Big Sky Health to get the business started. CS1 stated that

WASHINGTON spoke of marijuana being transported from the state of Washington to Montana. CS1 also stated that in 2011, he/she had observed WASHINGTON with \$30,000 in U.S. currency.

18. In May 2011, at the direction of law enforcement officers, CS2 met with WASHINGTON at WASHINGTON's place of business, 406 Motoring, located at 1541 South 3rd Street West, Missoula, Montana, to discuss the purchase of a ½ pound of marijuana. The meeting was being monitored and observed by law enforcement officers of the Missoula HIDTA. During the meeting, WASHINGTON observed a law enforcement vehicle. WASHINGTON pointed out the vehicle to CS2, and told CS2 that the vehicle was the "drug task force" and refused to complete the transaction with CS2. Since that time, WASHINGTON has not responded to text messaging or phone calls from CS2.
19. On August 23, 2011, U.S. Magistrate Judge Jeremiah Lynch issued a search warrant for stored electronic communications (text messaging) for WASHINGTON's cellular telephone number 406-544-2323, case MCR-11-9-M-DWM. After a review of WASHINGTON's stored electronic communications (text messaging) from his cellular telephone, law enforcements officers believe that WASHINGTON conducted numerous illegal marijuana drug transactions. An excerpt of WASHINGTON's text messaging is as follows:
20. On August 17, 2011, there was a series of text messages between WASHINGTON's telephone and telephone number 406-253-4032, a number subscribed to by Darin MOWER. An outgoing text message from WASHINGTON's telephone to 406-253-

4032 states, "D here it is. G-13 ½, hero ½, blue dream ½, BBC ½, jack ½, lambs ½." An incoming text message from 406-253-4032 states "Cool. Will tonight or tomorrow morning be best?" An outgoing text message to 406-253-4032 from WASHINGTON's telephone stated "Tonight would be awesome cuz I doubt I'll make it to tomorrow." Your affiant is aware that G-13, Blue Dream, BBC, Jack, and Lambs are street names for strains of marijuana. Your affiant believes WASHINGTON is ordering ½ pound strains of marijuana from "D" (Darin MOWER) because WASHINGTON is running low on marijuana at Big Sky Health.

21. On August 18, 2011, there was a series of text messages between WASHINGTON's telephone and telephone number 406-253-4032, a number subscribed to by Darin MOWER. An outgoing text message from WASHINGTON's telephone to 406-253-4032 states, "BBC ½, G-13 ½, Blueberry ¼, THC 1, lambs ½, pine ex ½." An incoming text message from 406-253-4032 to WASHINGTON's telephone states "Probably have to be after 3-4." An outgoing text message from WASHINGTON's telephone to 406-253-4032 stated "Ok cool bro. I have to go to butte but if u can make it to the store by 7, Jenny will be there and have everything." Your affiant believes WASHINGTON is adjusting his marijuana order and indicating that "Jenny" a store employee will have the money to pay for the marijuana upon arrival at Big Sky Health. A short time later there was an incoming text message from 406-253-4032 to WASHINGTON's telephone that stated "Who would have thought less patients and more volume."

22. On August 21, 2011, there was a series of text messages between WASHINGTON's telephone and telephone number 406-253-4032, a number subscribed to by Darin MOWER. An outgoing text message from WASHINGTON's telephone to 406-253-4032

states "Hey bro. Lambs $\frac{3}{4}$, hero 1, bbc $\frac{1}{2}$, pine express $\frac{1}{2}$, thc 2 $\frac{1}{2}$. That's total everything." A second outgoing text message from WASHINGTON's telephone to 406-253-4032 states, "Can u do it all for an even 12?" An incoming text message from 406-253-4032 to WASHINGTON's telephone states "Sorry bro. I will do 13 even though. Gonna cost me more to replace." An outgoing text message from WASHINGTON's telephone to 406-253-4032 states "I'll just do an order 5lbs." Your affiant believes WASHINGTON ordered five pounds of marijuana for \$13,000 from Darin MOWER. An incoming text messages from 406-253-4032 to WASHINGTON's telephone stated "You got it. Will you be at the store" and "Should be there about 1." An outgoing text message from WASHINGTON's telephone to 406-253-4032 stated, "Ok no rush. Hit me when ur 20 out." An incoming text message from 406-253-4032 to WASHINGTON's telephone stated "Will do. Thanks." Your affiant believes Darin MOWER and WASHINGTON are coordinating the delivery of the 5 pounds of marijuana. At approximately 12:40 pm, an incoming text message from 406-253-4032 to WASHINGTON's telephone stated "20 out." An outgoing text message from WASHINGTON's telephone to 406-253-4032 stated "Come by the house D" and "Pull in the back ally." An incoming text message from 406-253-4032 to WASHINGTON's telephone stated "K." At 12:58 pm a phone call is made to the Target Telephone from 406-253-4032. Your affiant believes Darin MOWER has arrived at WASHINGTON'S residence at approximately 1:00 pm to deliver the 5 pounds of marijuana and is calling WASHINGTON to let him know he has arrived.

23. On September 14, 2011, FBI agents and IRS agents met with CS4. CS4 stated that he/she had seen invoices of hours billed by two attorneys to an individual by the name of

Expanded

Steven SANN for "Researching Federal Seizure Issues." CS4 stated that he/she has been contacted by an employee of SANN who asked if CS4 was aware of a federal investigation of SANN by the FBI or other law enforcement agencies. CS4 stated that SANN is as an investor in the medical marijuana business and believes there is a marijuana grow operation at 8410 HWY 10 West ("The Wye"). Your affiant knows that the WASHINGTON Drug Trafficking Organization operates a marijuana grow in Missoula, Montana, located at an area commonly known as the "Wye". CS4 stated that WASHINGTON is involved with SANN in this marijuana grow. CS4 stated that a few months earlier there was a box in SANN'S office that contained \$50,000 in U.S. currency. CS4 was informed by a SANN employee that cash was from either WASHINGTON or VEDADI. CS4 stated that there was a second box of U.S currency in SANN'S office a few weeks later that contained a slightly lesser amount and was again from either WASHINGTON or VEDADI.

24. A reviewed of tolls from the WASHINGTON'S cellular telephone indicated a high volume of calls to Steven SANN from approximately January 2011 to August 2011. Law enforcement had observed WASHINGTON'S vehicle parked at SANN'S business office in Lolo, Montana on multiple occasions in early 2011. Financial records for SANN were obtained through Missoula County District Court and Grand Jury subpoenas. Financial records indicated that SANN is an investor in a medical marijuana dispensary/company called Green Keeper LLC. The address for the LLC is listed as 2120 S. Reserve PMB #249, Missoula, Montana. Between September 2010 and April 2011, SANN deposited approximately \$357,587 into the Green Keeper LLC account at First Security Bank in Hamilton, Montana.

25. On September 16, 2011, U.S. District Judge Donald W. Molloy authorized the interception of wire and electronic communications of WASHINGTON's cellular telephone, case MCR-11-9-M-DWM. On September 26, 2011, wire and electronic communications were initiated and intercepted. On October 24, 2011, U.S. District Judge Donald W. Molloy authorized a thirty day extension of the interception of wire and electronic communications of WASHINGTON's cellular telephone, MCR-11-9-M-DWM. On the same date, wire and electronic communications were initiated and intercepted. The two Title III intercepts and the search warrant for stored electronic communications (text messaging), in conjunction with surveillance has produced evidence of illegal drug trafficking activity, as well as, the relationships between known members of the Jason WASHINGTON Drug Trafficking Organization.

26. On September 27, 2011, a telephone call was intercepted between WASHINGTON and Lisa FLEMING. FLEMING has been identified as being involved in money laundering and her residence may be used as a stash house for bulk currency for the WASHINGTON Drug Trafficking Organization. During the telephone call, WASHINGTON and FLEMING discussed how to structure \$20,000 in rental payments to WASHINGTON. FLEMING talked about WASHINGTON'S business, "406 Motoring", paying \$2500/month, but WASHINGTON disagreed and told FLEMING to "create a person." WASHINGTON said he "don't want 406's name on there." WASHINGTON said "You can use any name, I don't care. Use your mom's name, doesn't matter."

27. Also, on September 27, 2011, a telephone call was intercepted between WASHINGTON and Chris CRONSHAW. CRONSHAW asked if WASHINGTON had picked up any marijuana (at the Wye marijuana grow facility). WASHINGTON said he picked up 5 lbs.

BARI
of

instead of his normal 3 lbs. WASHINGTON said he goes through 3 lbs. every other day (averages 45 lbs.per month)

28. On October 4, 2011, a series of text messages were sent back and forth from WASHINGTON's telephone and telephone number 406-253-4032, subscribed to MOWER.
- a. Incoming to WASHINGTON's telephone: "Got pineapple express, blue dream, sputnik. Can do 1 of each I think." (3 lbs. of marijuana).
 - b. Incoming to WASHINGTON's telephone: "Just got some more flavors. Any change we can do a double batch in one trip?" (6 lbs. of marijuana).
 - c. Outgoing from WASHINGTON's telephone to telephone 406-253-4032: "What are they?"
 - d. Incoming to WASHINGTON's telephone: "Deadhead, chem dog, island diesel, killer skunk."
 - e. Outgoing from WASHINGTON's telephone to telephone 406-253-4032: "Bring what u can D. I'm doing 3 for sure but maybe will be able to do more." (3 lbs.)
29. On October 5, 2011, a telephone call was intercepted between MOWER and WASHINGTON. MOWER told WASHINGTON he would be at 406 Motoring in a minute. Surveillance was established at 406 Motoring. Surveillance observed a vehicle registered to Darin MOWER of Somers, Montana, arrive at 406 Motoring. WASHINGTON later opened the door to MOWER'S vehicle and took out a large Rubbermaid type bin. WASHINGTON then emptied the contents of the bin into the trunk of WASHINGTON's vehicle. Approximately 20 minutes *earlier* a telephone call was intercepted between WASHINGTON and FLEMING. WASHINGTON asked FLEMING

if she had that "cash" with her. FLEMING responded "Yes." In a subsequent call (upon MOWER'S arrival) to FLEMING, WASHINGTON instructed her to come to 406 Motoring. Surveillance observed FLEMING arrive at 406 Motoring a short time later. Surveillance also observed MOWER leave 406 Motoring a short time later. Your affiant believes FLEMING is keeping bulk cash for WASHINGTON.

30. On the same date, a "wall off" traffic stop was later conducted by a Montana Highway Patrol Trooper near Arlee, Montana. Based on probable cause developed by wire and electronic communications and surveillance, MOWER'S vehicle was searched and \$9,370 in U.S. Currency was seized from the vehicle. The Trooper also seized a plastic bin which contained marijuana residue, and four West One Bank checking deposit slips totaling \$15,961.54. MOWER was not arrested.
31. On October 4, 2011, a series of text messages were sent back and forth from WASHINGTON's telephone and telephone 406-253-4032, Subscribed to by MOWER.
 - a. Outgoing to telephone 406-253-4032: "D u ready for me?"
 - b. Incoming to Target Telephone: "Yep."
 - c. Outgoing to telephone 406-253-4032: "Send me the inventory."
 - d. Outgoing call from Target Telephone to telephone 406-253-4032. MOWER stated he "doesn't trust" his phone (thinks it is being intercepted). MOWER said he "don't like to talk about anything at all." WASHINGTON said "I hear you" and asked if Zach was "able to talk to the buddies down at the other store?" MOWER said Zach had, but hadn't found anything out yet. WASHINGTON said he figured MOWER "got me handled" and that he "needed a couple Alpines." WASHINGTON wanted to "kill two birds with one stone." Your affiant believes that WASHINGTON was driving to

Kalispell, Montana, to obtain growing supplies and bulk marijuana.

- e. Outgoing call from Target Telephone to telephone 406-253-4032. WASHINGTON told MOWER he will probably come up to Somers / Kalispell, Montana, tomorrow morning, "unless it's an emergency at the store" (out of marijuana).
 - f. Outgoing to telephone 406-253-4032: "D I'm comin up to see ya tonight. Leave here at 7:30" (p.m.).
 - g. Incoming to Target Telephone: Can you bring me some paperwork for patients? Really need some" Your affiant is aware that WASHINGTON brings marijuana patient cards with him to explain multiple pound quantities of marijuana in case WASHINGTON is stopped by law enforcement.
 - h. Outgoing to telephone 406-253-4032: "Can u do the same as last time?" (quantity of marijuana).
 - j. Incoming to Target Telephone: "I can't. Just the usual." Your affiant believes the usual is 3 lbs.
32. Also on October 5, 2011, a telephone call was intercepted between WASHINGTON and an individual by the name of Gregory ZUCKERT. ZUCKERT talks to WASHINGTON about the possibility of starting an additional marijuana grow operation in Victor, Montana. ZUCKERT stated that a marijuana grow in Victor, Montana, would produce 24 lbs. of marijuana a month. ZUCKERT stated the profit would be \$55,200 per month. ZUCKERT stated the Wye marijuana grow profits \$69,000 per month. ZUCKERT stated he gets 20% profit from the Wye marijuana grow. WASHINGTON stated that if he got involved in a marijuana grow operation in Victor, Montana, he would be a "silent" partner.

33. On October 6, 2011, a telephone call was intercepted between VEDADI and WASHINGTON. VEDADI asked WASHINGTON "What's it worth if it's in Kalispell?" WASHINGTON responded "To me it's not worth anything it's worth 23 to me" (\$2300 / lb.). VEDADI responded that "It's just too good of shit for that." WASHINGTON responded "Fuck 35 (\$3500 / lb.) shit whatever, I'm just not, in the game like that right now" "Cause I can ya know get that other stuff when our stuff's not ready.....23 all day and that's what I pay." Your affiant believes VEDADI was offering to provide marijuana to WASHINGTON but WASHINGTON is able to obtain it from MOWER at a lower price.

34. On October 8, 2011, a series of text messages were sent back and forth from WASHINGTON's telephone and telephone number 406-240-1849, subscribed to by FLEMING.

- a. Outgoing from WASHINGTON's telephone to telephone 406-240-1849: "L I need to know what banks in town have safety deposit boxes".
- b. Incoming to WASHINGTON's telephone from telephone 406-240-1849: "I dont have any idea...all of them? do u need me to call some monday and find out? "
- c. Outgoing from WASHINGTON's telephone to telephone 406-240-1849: "Yeah or ask"
- d. Incoming to WASHINGTON's telephone from telephone 406-240-1849: "Ok... u want to know several banks or just one?"
- e. Outgoing from WASHINGTON's telephone to telephone 406-240-1849: "Several"
- f. Incoming to WASHINGTON's telephone from telephone 406-240-1849: "Alright i will find out and let u know"

- h. Incoming to WASHINGTON's telephone from telephone 406-240-1849: "I might be able to find out online but i am at work now so i will look tomm"
- i. Outgoing from WASHINGTON's telephone to telephone 406-240-1849: "Thx L"
- j. Incoming to WASHINGTON's telephone from telephone 406-240-1849: "Ur welcome"

35. Your affiant believes that the aforementioned text messages were between Jason WASHINGTON and Lisa FLEMING. Your affiant also believes that WASHINGTON was asking FLEMING to find "Several" banks that offered safe deposit box services, so that he could store, hide, or conceal his drug proceeds from law enforcement.
36. On October 9, 2011, a telephone call was intercepted between WASHINGTON and ZUCKERT. WASHINGTON talked to ZUCKERT about putting new marijuana cardholders under a different provider name so that WASHINGTON and ZUCKERT could start a second marijuana grow operation. ZUCKERT agreed because they are "10-15 lbs. short" of marijuana every month (supply does not meet demand). WASHINGTON talked about wanting to open another dispensary by the University of Montana so that they can start "getting the university patients." ZUCKERT is concerned about exposure and talked about an LLC where their names would not be on it and that the assets could go to whatever bank account the LLC holds. ZUCKERT wanted to name the second dispensary something other than Big Sky Health to "tone it down" and keep WASHINGTON'S exposure down.
37. On October 11, 2011, a telephone call was intercepted between WASHINGTON and ZUCKERT. WASHINGTON said he had talked to the owner of "Sweetwater" (marijuana dispensary) who had decided to close his store and go to a "straight delivery

system” and was going to get “ghetto rich on these fools” (marijuana cardholders) and is going to start “boxing up money and putting it away.”

38. During the same intercepted telephone call between ZUCKERT and WASHINGTON, ZUCKERT stated that they needed to “grease the fucking wheels of the politicians” (bribe) if they wanted the state marijuana laws changed and that it “would take backroom quiet non ego getting it fucking done people.” WASHINGTON asked if “Kate” (Cholewa) knows who “makes the calls to the feds” (regarding a potential raid) WASHINGTON asked if “Gunther”, later identified as detective John Gunter with Missoula County Sheriff’s Office, would “take the grease” (bribe) or “or is he such a little fagot that he’s going to turn around and try to get ya for trying to grease him?” ZUCKERT said the way the “grease” is done now is you “get money pumped into their pet shit.” ZUCKERT is going to get with Cholewa and identify all the “avenues” like “Senator Lewis” (Montana State Senator) who wanted an elderly program. ZUCKERT said that after they showed Senator Lewis a template he liked the “5 million in revenue” (from the medical marijuana industry). ZUCKERT said you “have to show them (politicians) here’s what we can do for you.” “Here is some money for your political action committee” “Are you running for governor Attorney General Bullock?” ZUCKERT said “that is one guy we’ve got to give to right off the bat.” WASHINGTON responded with “Who is the local whistle blower?” “The mother fucker that says hey it’s coming down.” WASHINGTON wants someone who can give him a “two day fucking leeway that the raids are coming on Friday.” “Who’s that guy?” ZUCKERT says “there are several guys I think we could get to that will know ahead of time.” ZUCKERT is going to work with Cholewa to identify every “local councilman, anybody in the

Sheriff's Department" and "certainly fucking Bullock." WASHINGTON mentions bribing Detective Gunter stating: "throw a guy like (detective) Gunter a couple bones?" ZUCKERT said he would need to "feel Gunther out." ZUCKERT suggest they get with Gunter to discuss rewriting the (marijuana) rules and see where Gunter stands.

WASHINGTON again states that he wants to find out "who to fucking grease and grease him"(bribe). ZUCKERT said WASHINGTON would have to be careful.

39. Your affiant believes, after an analysis of the preceding telephone conversation, that WASHINGTON and ZUCKERT will use the proceeds of illegal marijuana sales to bribe public officials. Your affiant also believes that WASHINGTON wants a "two day fucking leeway that the raids are coming on Friday", because he wants time to retrieve and conceal his drug proceeds before law enforcements officials seize his drug proceeds.
40. On October 12, 2011, a telephone call was intercepted between WASHINGTON and ZUCKERT. WASHINGTON told ZUCKERT he is coming to Kalispell, Montana because "I'm out" (of marijuana). "We are back to this shit now." ZUCKERT and WASHINGTON talk about marijuana at "The Wye" but ZUCKERT said that "what you need is far beyond...always, you need so much." WASHINGTON asked ZUCKERT if he "could look on your end (find more marijuana) "that would help out."
41. On October 31, 2011, a telephone call was intercepted between WASHINGTON and Eric MUNSON. WASHINGTON called MUNSON and talked about purchasing the marijuana grow in Victor, Montana for \$200,000.
42. As set forth below, the WASHINGTON Drug Trafficking Organization could have generated significant income from these illegal marijuana activities. As stated above in paragraph number 27, WASHINGTON stated, in an intercepted telephone call, that he

“goes through 3 lbs. every other day” at the Wye grow facility. Which would average 45 pounds of marijuana every month. Your affiant knows that the WASHINGTON Drug Trafficking Organization sells ounce quantities of marijuana for approximately \$300 per ounce, and multiple pound quantities of marijuana for approximately \$2,700 per pound (as evidenced by the undercover purchases of marijuana from WASHINGTON). Using WASHINGTON’s own statement, that he “goes through 3 lbs. every other day” (45 pounds of marijuana per month). Therefore, the WASHINGTON Drug Trafficking Organization would generate approximately \$121,500 ($\$2,700 \times 45$) per month from this one marijuana grow location only (the Wye marijuana grow facility). Furthermore, your affiant knows that the marijuana sold by WASHINGTON during the undercover operation was a wholesale price. Your affiant knows that the profits from the “street value” of marijuana (approximately \$300 per ounce) is much higher than the wholesale value of marijuana, thus the profits for the WASHINGTON Drug Trafficking Organization would be much greater when sold at the street value. In addition, the money yielded by this continuous style of growing operations, which WASHINGTON states, he “goes through 3 lbs. every other day” (45 pounds of marijuana per month) would have been much greater than \$121,500 in one 12 month time period.

43. This affidavit references vast amounts of money in conjunction with the WASHINGTON Drug Trafficking Organization, who have no legal reasons to accumulate such. The WASHINGTON Drug Trafficking Organization has amassed illegal drug proceeds from their marijuana operations as outlined above. Yet despite having no legitimate occupation and income, members of the WASHINGTON Drug Trafficking Organization have

amassed substantial assets from the sale of marijuana, as evidenced by the significant amounts of monies mentioned in this affidavit.

44. A check with the Montana Department of Labor, state wage inquiry, shows that Jason WASHINGTON has no reported income. A check with the Montana Department of Labor, state wage inquiry, shows that Darin MOWER has no reported income. A check with the Montana Department of Labor, state wage inquiry, shows that Gregory ZUCKERT has no reported income. A check with the Montana Department of Labor, state wage inquiry, shows that Edward DOCTER has no reported income. A check with the Montana Department of Labor, state wage inquiry, shows that Mellissa MOWER has no reported income. A check with the Montana and California Departments of Labor, state wage inquiry, shows that Charlene WASHINGTON has a reported earned income of \$35,233.81 for 2010, and \$21,782.76 for 2011 (YTD). A check with the Montana Department of Labor, state wage inquire, shows that Lisa FLEMING has a reported earned income of \$53,605.84 for 2010, and \$50,952.92 for 2011 (YTD).
45. The facts set forth above are not all of the facts known to the investigation, but are sufficient to establish probable cause to believe that that the subject bank accounts and safe deposit boxes, if held are subject to forfeiture pursuant to Title 21 U.S.C. §881(a)(6).

CONCLUSION

47. Based upon the facts and circumstances described above, there is probable cause to believe that Jason WASHINGTON, Darin MOWER, Gregory ZUCKERT, and/or Lisa FLEMING and others named herein are involved in violations of Title 21 USC 846, Title 21 USC 841, and Title 18 USC 1956, that the subject bank accounts and safe deposit boxes, if held, described above represent and contain proceeds traceable to these

violations, and the property is thus subject to forfeiture pursuant to Title 21 USC

881(a)(6). Accordingly, your affiant seeks a seizure warrant pursuant to Title 21 USC

881(b) and 18 U.S.C. 981(a)(1)(B) for the following property:

First Security Bank

All monies and/or assets held in the name of, or for the direct or indirect benefit of Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742, or Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703, or Big Sky Health, LLC, or 406 Motoring, LLC, including but not limited to the accounts numbers: 9109360 and 9111401 and all contents of any Safe Deposit Box(es) held in the name of, or for the direct or indirect benefit of, or rented by or for, Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742, or Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703, or Big Sky Health, LLC, or 406 Motoring, LLC, at First Security Bank, Montana, (the "Subject Accounts"), and all documents pertaining thereto.

First Montana Bank

All monies and/or assets held in the name of, or for the direct or indirect benefit of Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742 or Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703, including but not limited to the account number: 102305984, and all contents of any Safe Deposit Box(es) including but not limited to Safe Deposit Box number: 7016, held in the name of, or for the direct or indirect benefit of, or rented by or for, Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742 or Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703, at First Montana Bank, Montana, (the "Subject Accounts"), and all documents pertaining thereto.

West One Bank

All monies and/or assets held in the name of, or for the direct or indirect benefit of the following individuals or business names including but not limited to the accounts numbers listed below, and all contents of any Safe Deposit Box(es) held in the name of, or for the direct or indirect benefit of, or rented by or for the following individuals or business names listed below at West One Bank, Montana:

Darin MOWER, DOB: 12-14-1971, SSN: XXX-XX-9057

Melissa MOWER, DOB: 07-19-1973, SSN: XXX-XX-3524

Account Numbers: 1604865, 1604775, 1604589, 1605194, 1605097

Cramer Creek, LLC

Kind Medicine, LLC

Glass Haus, LLC

Big Sky Health, LLC,(the "Subject Accounts"), and all documents pertaining thereto.

Farmers State Bank

All monies and/or assets held in the name of, or for the direct or indirect benefit of the following individuals or business names including but not limited to the accounts numbers listed below, and all contents of any Safe Deposit Box(es) held in the name of, or for the direct or indirect benefit of, or rented by or for the following individuals or business names listed below at Farmers State Bank, Montana:

Jason WASHINGTON, DOB: 08-16-1983, SSN: XXX-XX-8742

Charlene WASHINGTON, DOB: 12-24-1949, SSN: XXX-XX-5703

Account Numbers: 1604865, 1700973, 1700965, 1702135, 1701693, 1702119

406 Motoring, LLC

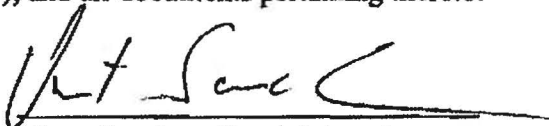
Washington Enterprise, LLC

Dalla Terra, LLC

WE Properties, LLC

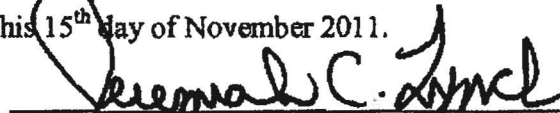
Giovane Denaro, LLC

(the "Subject Accounts"), and all documents pertaining thereto.



Vince Sanchez, Special Agent
Drug Enforcement Administration

Subscribed and sworn to before me this 15th day of November 2011.



JEROME C. LYNCH
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO *EX REL.* :
:
CANNASCEND OHIO, LLC, :
Individually and on behalf of the State of Ohio :
For violations of the Ohio Public Records Act :
c/o Statuent, Inc. :
450 W. Wilson Bridge Road, Suite 340 :
Worthington, OH 43085, :

Case No. _____

And :

APPALACHIAN PHARM PRODUCTS, LLC, :
Individually and on behalf of the State of Ohio :
For violations of the Ohio Public Records Act :
16064 Beaver Pike, :
Jackson Ohio 45640 :

And :

CANNAMED THERAPEUTICS, LLC, :
Individually and on behalf of the State of Ohio :
For violations of the Ohio Public Records Act :
c/o Statuent, Inc. :
450 W. Wilson Bridge Road, Suite 340 :
Worthington, Ohio 43085, :

And :

PALLIATECH OHIO, LLC, :
Individually and on behalf of the State of Ohio :
For violations of the Ohio Public Records Act :
2692 Madison Road, Suite 235 :
Cincinnati, OH 45208 :

TRILLIUM HOLDINGS, INC. :
Individually and on behalf of the State of Ohio :
For violations of the Ohio Public Records Act :
c/o Ted Wensink :
4411 Wood Rd. :
Monroeville, OH 44847 :

SCHOTTENSTEIN APHRIA, LLC :
Individually and on behalf of the State of Ohio :

For violations of the Ohio Public Records Act
c/o Tod H. Friedman
4300 East Fifth Avenue
Columbus, OH 43219

Plaintiffs,

vs.

JACQUELINE T. WILLIAMS
DIRECTOR
OHIO DEPARTMENT OF COMMERCE
77 S. High Street, 23rd Floor
Columbus, OH 43215,
In her official capacity

And

TERRADIOL OHIO, LLC
c/o CT Corporation System, Statutory Agent
4400 Easton Commons Way, STE 125
Columbus, OH 43219,

And

CRESCO LABS OHIO, LLC
c/o ACFB Incorporated, Statutory Agent
200 Public Square, Suite 2300
Cleveland, OH 44114,

And

HARVEST GROWS, LLC
c/o Registered Agent Solutions, Inc.
4578 Mayfield Road, Suite 204
Cleveland, OH 44121

And

PARMA WELLNESS CENTER, LLC
c/o National Registered Agents, Inc.
4400 Easton Commons Way, Suite 125
Columbus, OH 43219,

And

purchase and sub-divide Village-owned property, prior to submitting the application for our cultivation license,” and that “Customary local review and approval processes were completed.”

125. Yet, as seen in the figure below, the final parcel as sub-divided is entirely different than the alleged sub-divided parcel Cresco represented on its Form 1F, further compounding Cresco’s material misrepresentations both in its application and its subsequent statements to the press, as well as the Department’s failure to properly vet the application or adhere to its process.



2. Harvest Grows Ohio, LLC

126. Defendant Harvest Grows is one of the applicants that was awarded a Level I Cultivator Provisional License by the Department. Upon information and belief, Harvest Grows violated Administrative Rules and made material misrepresentations on its application, in violation of the Rule 3796:2-1-03(A)(7).

127. Harvest Grows submitted two applications for Level I Cultivator Provisional Licenses – one for a site in Cuyahoga County and the other for a site in Lawrence County. Upon information and belief, Harvest Grows misrepresented itself as being an entity “owned and controlled” by a member of an economically disadvantaged group in order to obtain favorable consideration from the Department to which it was not entitled.

128. R.C. 3796.09(C) also requires the Department to award a certain percentage of licenses to entities owned and controlled by members of groups defined as “economically disadvantaged,” provided that such applicants meet all other requirements. Specifically, R.C. 3796.09(C) directs that the Department “shall issue not less than fifteen per cent of cultivator, processor, or laboratory licenses to entities that are owned and controlled by United States citizens who are residents of this state and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.” Applicants must meet all the conditions set forth in R.C. 3796.09(B), including R.C. 3796.09(B)(6), which requires applicants to “meet[] all other licensure eligibility conditions established” by the Department in the Administrative Rules.

129. For purposes of determining whether an applicant entity is “owned and controlled” by a member, or members, of an economically disadvantaged group, R.C. 3796.09(C) defines “owned and controlled” as meaning “that at least fifty-one per cent of the business, including corporate stock if a corporation, is owned by persons who belong to one or more of the groups set forth in this division, and that those owners have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership.” (Emphasis added).

130. Harvest Grows, in both of its applications, represented that it is a limited liability company and that “Ariane Kirkpatrick (member of a disadvantaged group)” is the owner of a 51 percent interest in the company. On her profile that appears on the networking Web site LinkedIn, Ariane Kirkpatrick (“Kirkpatrick) identifies herself as President and CEO of The AKA Team, a Cleveland-area business, and represents that “[t]he AKA Team is a professional female and minority business enterprise union labor shop specializing in maintenance of site, post construction cleaning, and providing union site labor.”

131. Under R.C. 3796.09(C), a 51 percent interest is the minimum required to apply the definition of “owned and controlled” by a member, or members, of a disadvantaged group. Upon information and belief, the representation on Harvest Grows’ applications that Kirkpatrick is the owner of a 51 percent interest in Harvest Grows is false, and that Kirkpatrick does not own “at least fifty-one per cent of the business” or “have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to” a 51 percent ownership, within the meaning of R.C. 3796.09(C).

132. Additionally, Harvest Grows certified on both of its applications for Level I Cultivator Provisional Licenses that it has the minimum of \$500,000 in unencumbered liquid assets. Rule 3796:2-1-02(B)(6)(c) requires that an applicant submit a “financial plan” containing “[d]ocumentation acceptable to the department that the individual or entity filing the application has at least five hundred thousand dollars in liquid assets for a level I cultivator provisional license ... which are unencumbered and can be converted within thirty days after a request to liquidate such assets.”

133. Upon information and belief, per R.C. 3796.09(C) Harvest Grows further certified that Kirkpatrick as its economically disadvantaged member would be providing 51 percent of the capital as delineated in the “financial plan” under Rule 3796:2-1-02(B)(6)(c).

134. Upon information and belief, neither Ariane Kirkpatrick nor Erika Waltz – who is listed as the “owner” of the remaining 49 percent interest in the company – have \$500,000 in unencumbered liquid assets that are placed at the company’s disposal. This certification was not signed by either of the “owners” – Kirkpatrick or Waltz – or by a CPA acting for them. Rather, the certification was made by Steve White, who is identified in the applications as the CEO of Harvest Grows, and confusingly as an “owner” with “0%” equity interest on the Form II, which indicates that the liquid assets are being provided by another entity, not the putative “owners.”

135. Upon information and belief, the above-described material misrepresentations, among others, contributed to the Department’s decision to award Harvest Grows a Cultivator Provisional License despite the fact that Harvest Grows scored significantly lower in the application review process than did a number of applicants that did not represent themselves as being as being owned and controlled by members of an economically disadvantaged group and whose applications were rejected. In short, Harvest Grows qualified for a license based on its representation that it is owned and controlled by a member of an economically disadvantaged group.

136. Upon information and belief, Harvest Grows is owned and controlled by Harvest Inc., a company based in Tempe, Arizona, that has a number of affiliated entities involved in the medical marijuana business in Arizona and other states. Harvest Inc. confirmed that fact in an announcement post on the company’s Web site on November 20, 2007, which states as follows:

Ohio names grower locations for medical marijuana program

Arizona-based Harvest Inc. has medical marijuana licenses in five states and was granted a license for the Cleveland site. CEO Steve White said the company is investing millions of dollars to build the facility, which will create hundreds of jobs.

“Take marijuana out of the equation completely and imagine a facility that provides an ingredient to medical products. That is what you would see,” he said, describing the facility as a factory.

He said research shows the facilities reduce crime and that his company has never had a security issue. White said the facility will be highly secured and closed to the public.

“This is not a facility that houses cash or other items that are easy to transfer on a black market,” he said.

This announcement is available at: <http://harvestinc.com/ohio-names-grower-locations-for-medical-marijuana-program/> (last checked January 11, 2018).

137. Harvest Inc. also posted a news release headlined: “Harvest Wins Approval to Cultivate Medical Marijuana in Ohio,” which identifies Harvest Grows LLC as simply a subsidiary or alter ego of Harvest Inc. The text of the release reads:

TEMPE – Arizona-based Harvest, Inc., operating as Harvest Grows, LLC, was recently awarded a Level 1 provisional cultivation license in Ohio. The license permits Harvest to initially operate up to 25,000 square feet of medical marijuana cultivation space. Harvest is one of 12 companies recently chosen from an applicant pool of 109, and was the only company with two winning applications.

“Harvest was founded with one mission: to improve people’s lives. We accomplish this mission by empowering patients to take control of their health and well-being, and one way we facilitate that process is by growing high-quality, standardized medicine,” said Steve White, Harvest CEO. “Being awarded the provisional license in Ohio further validates our model and approach that we’ve been relentlessly bringing to markets since 2013 and making medical cannabis more accessible to patients who need it.”

Founded in 2013, Harvest currently has medical cannabis interests in six states: Arizona, Nevada, Illinois, Maryland, Pennsylvania, and now Ohio. Cumulatively, these facilities have been operating successfully for nearly 13 years and have produced over 50,000

pounds of medical marijuana, providing pain and symptoms relief for tens of thousands of patients.

“Harvest navigates our business lines purposefully and with excellence,” said Jason Vedadi, Harvest’s President. “Winning in Ohio further invigorates our team to continue to strategically shape the future of cannabis in the United States.”

This news release is available at: <https://www.harvestofaz.com/harvest-wins-approval-cultivate-medical-marijuana-ohio-press-release/> (last checked January 17, 2018).

138. Harvest Inc.’s Web site, www.harvestinc.com, represents that “[w]e presently hold 31 medical cannabis licenses in six states and participate in a variety of ways for each facility, from full ownership to design-build expertise and operational consultation. Our aggressive expansion efforts include seeking licenses in other states and exploring opportunities abroad.” Listed among those presently held medical cannabis licenses is the Level I Cultivator Provisional License awarded to Harvest Grows Ohio, LLC.

139. Form 1M of the Cultivator Provisional License application requires applicants to submit copies of licenses from marijuana businesses in other jurisdictions. Per Rule 3796:2-1-02(B)(2)(j), applicants are required to document “any instance in which an applicant or any person associated with the applicant is currently or was previously licensed or authorized in another state or jurisdiction to cultivate, produce, test, dispense, or otherwise deal in the distribution of marijuana in any form.” Harvest Grows submitted copies of licenses from four entities: for Byers Dispensary, located in Springerville, Arizona; Verde Dispensary, Inc., which is listed at the same address in Tempe, Arizona, given for Harvest Grows and Harvest Inc.; NuMed Urbana, located in Urbana, Illinois; and NuMed East Peoria, located in East Peoria, Illinois. Upon information and belief, these four entities are affiliated with Harvest Inc. and/or individuals associated with Harvest Inc. who are also associated with Harvest Grows. Upon information and belief, Harvest Grows

has violated Rule 3796:2-1-02(B)(2)(j) in that it failed to disclose licensing information on other licenses, such as the other “31 medical cannabis licenses in six states” that Harvest Inc. states on its Web site that it holds.

140. The control by Harvest Inc. over Harvest Grows is also indicated by corporate filings. Articles of Incorporation for Harvest Inc. were filed on October 2, 2017, with the Wyoming Secretary of State by Steve White, who is listed on the Wyoming filings as the incorporator and manager of Harvest Inc.

141. As noted above, Harvest Grows represented on the Cultivator Provisional License applications that it filed with the Department that Steve White is its CEO. The application represents that White has a “0 percent” interest in Harvest Grows, however.

142. Corporate filings made by Harvest Grows with the Ohio Secretary of State, on June 16, 2017, identify Steve White, or Steven M. White, as the incorporator and as a “member, manager, or other representative” of the company.

143. Steve White represents himself on his LinkedIn profile as CEO of Harvest Inc., located in Tempe, Arizona, from August 2012 to the present, and as a practicing attorney with White Berberian PLC, a law firm located in Tempe. The Web site of his law firm, www.wbazlaw.com, lists White and a partner and represents that the firm’s practice areas include “assist[ing] businesses and individuals who wish to enter and succeed in opportunities created by Arizona’s new medical marijuana laws.”

144. Although Harvest Inc. represents itself on its Web site, www.harvestinc.com, as having had had a corporate existence before the October 2, 2017, filing in Wyoming, it provides no specific information about the company’s existence or where it was (or is) incorporated. Upon information and belief, Harvest Inc., was never incorporated in Arizona. An electronic search of

corporate filings records kept by the Arizona Corporation Commission yielded no filing for “Harvest Inc.”

145. Harvest Inc.’s filings with the Wyoming Secretary of State list its mailing address and principal place of business as 627 S. 48th St., Suite 100, Tempe, Arizona. That is the same business address listed on filings made by Harvest Grows with the Ohio Secretary of State and on the Cultivator Provisional License applications that Harvest Grows filed with the Department. Both the Wyoming filings and the Harvest Grows license application list Steve White’s e-mail address as “steve@harvestinc.com.”

146. Harvest Grows represented on both of its cultivator applications submitted to the Department of Commerce that an “Erika Waltz” is the owner of the remaining 49 percent interest in the company, although the information that would further identify this individual is redacted from copies of the application made the publicly available. Upon information and belief, “Erika Waltz” is a resident of Maricopa County, Arizona (where Tempe is located), and the spouse of Matthew Waltz, a principal, member, and/or manager of Harvest Inc., and/or related entities engaged in various aspects of the medical marijuana business.

147. Upon information and belief, neither Erika Waltz nor Ariane Kirkpatrick “have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to” their represented percentages of ownership, within the meaning of R.C. 3796.09(C). Erika Waltz is not identified as either an officer or a manager of the Harvest Grows on its Form II or the accompanying organizational chart. Kirkpatrick is identified on both as the “President,” but in a telling omission, she and Waltz are shown on the organizational chart as having no reporting lines of authority or

responsibility over the officers and managers shown on the chart. Instead, CEO Steve White is shown at the top of the organizational pyramid.

148. Upon information and belief, the day-to-day management of Harvest Grows is actually controlled by Steve White, in association with nine other individuals who are identified on the provisional cultivator license applications as officers of Harvest Grows and who, upon information and belief, are also associated with Harvest Inc. and/or other affiliates of Harvest Inc.:

- a. John Terry, who is identified on Form 1I and the accompanying organizational chart as CFO. Terry identifies himself on his LinkedIn profile as being employed by Harvest Inc. since November 2016.
- b. Julian Salazar, who is identified on Form 1I and the accompanying organizational chart as COO.
- c. Siobhan Carragher, who is identified on Form 1I and the accompanying organizational chart as Director of HR. Carragher identifies herself on her LinkedIn profile as Director of Human Resources for Harvest Inc.
- d. Paul Nowak, who is identified on Form 1I and the accompanying organizational chart as Director of New Development. Nowak identifies himself on his LinkedIn profile as Founding Partner and Executive Director of Cultivation at Harvest Inc., from September 2012 to the present.
- e. Timothy Buskirk, who is identified on Form 1I and the accompanying organizational chart as Safety and Security Compliance Director.
- f. Matthew Curran, who is identified on Form 1I and the accompanying organizational chart as Cultivation Director.

- g. Daniel Whisenand, who is identified on Form II and the accompanying organizational chart as Greenhouse Specialist.
- h. Matthew DiDonato, who is identified on Form II and the accompanying organizational chart as Director of Research and Evaluation. DiDonato identifies himself on his LinkedIn profile as Director of Research and Evaluation for Harvest Inc. since September 2015.
- i. Egan O'Keefe, who is identified on Form II and the accompanying organizational chart as Cultivation Manager.

149. Administrative Rule 3796.2-1-02(B)(6)(a) requires applicants to disclose “[t]he identity and ownership interest of every person, association, partnership, other entity, or corporation having a financial interest, direct or indirect, in the cultivator with respect to which licensure is sought.” Upon information and belief, the ownership of Harvest Grows was misrepresented for the purpose of concealing the identities of individuals who also have a management role in Harvest Grows and/or an ownership interest in Harvest Grows, through their interests in Harvest Inc., for the purposes of avoiding the requirement of one or more of those individuals to submit a criminal background check in conjunction with the Ohio application.

150. Upon information and belief, the ownership of Harvest Grows was misrepresented specifically for the purpose of avoiding having to submit a criminal background check of Jason Vedadi, who is identified in the news release quoted above as the President of Harvest Inc. A criminal background check likely would have uncovered evidence filed in the U.S. District Court for the District of Montana in 2011 by the U.S. Drug Enforcement Agency (“DEA”) identifying Jason Vedadi (a/k/a Touraj J. Vedadi) as a suspected co-conspirator in an illegal drug-trafficking ring the DEA referred to as the “Jason Washington Drug Trafficking Organization.” Specifically,

DEA Special Agent Vincent Sanchez submitted an affidavit in support of an application for a seizure warrant for property owned by Jason Washington and others involved in the alleged conspiracy.

151. In a section of the affidavit reciting evidence obtained by means of a court-authorized interception of wire and electronic communications, the DEA Special Agent reported the following:

On October 6, 2011, a telephone call was intercepted between VEDADI and WASHINGTON. VEDADI asked WASHINGTON "What's it worth if it's in Kalispell?" WASHINGTON responded "To me it's not worth anything it's worth 23 to me" (\$2300/lb.). VEDADI responded that "It's just too good of shit for that." WASHINGTON responded "Fuck (\$3500 / lb.) shit whatever, I'm just not, in the game like that right now" "Cause I can ya know get that other stuff when our stuff's not ready ... 23 all day and that's what I pay." [The affiant] believes VEDADI was offering to provide marijuana to WASHINGTON but WASHINGTON is able to obtain it from [another individual] at a lower price.

152. According to the DEA affidavit, the illegal drug ring was operated out of a Montana State-licensed medical marijuana-growing operation that was managed by Jason Washington, Jason Vedadi, and a third individual. According to the affidavit, the DEA was informed that Vedadi allegedly invested \$500,000 to establish the medical marijuana business. Upon information and belief, Harvest Grows misrepresented its ownership in order to avoid inquiry by the State of Ohio into Vedadi's criminal history, as well as to falsely represent itself as being fifty-one percent "owned and controlled" by a member of an economically disadvantaged group in order to obtain preferential consideration.

153. The Department failed to adequately review and vet Section 1 of the Harvest Grows application to discover the information contained in this Complaint, which the Plaintiffs discovered with simple internet searches.

Area: **SMALL BUSINESS/SELF EMPLOYED AREA #6**
 Lien Unit Phone: (800) 829-3903
 Serial Number: **280070017**

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer **TOURAJ J & SHAYNA VEDADI**

Residence **7521 E WHISTLING WIND WAY
 SCOTTSDALE, AZ 85255-4721**

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 ADRIAN FONTES
 20170729059 10/02/2017 02:10
 PAPER RECORDING
 0891471-1-136-47
 castilloe

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2015	XXX-XX-0233	12/12/2016	01/11/2027	42817.89

Place of Filing **COUNTY RECORDER
 MARICOPA COUNTY
 PHOENIX, AZ 85003** Total \$ **42817.89**

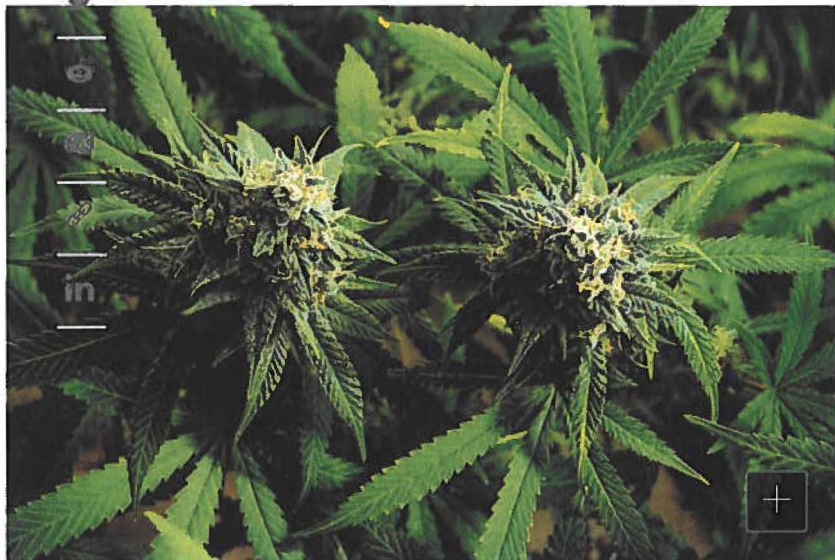
This notice was prepared and signed at **SEATTLE, WA**, on this, the **21st** day of **September**, **2017**.

Signature *G. J. Carter-Louis*
 for **G.J. CARTER-LOUIS**
 Title **ACS SBSE**
(800) 829-3903
26-00-0008

ADVERTISEMENT

Marijuana company under investigation in Pennsylvania faces probe in Ohio for 'fraud, deception'

by Sam Wood, Updated: July 12, 2019



DREAMSTIME / MCT

The marijuana company [under regulatory scrutiny in Pennsylvania](#) for allegedly misrepresenting itself to win more permits than allowed is facing an investigation in Ohio.

Harvest Health and Recreation, a multi-state operator, claimed on applications that 51 percent of its Ohio operations were owned by an "economically disadvantaged" group, the [Cincinnati Enquirer](#) reported on Thursday.

RELATED STORIES

- **‘Flagrant disregard’: Pa. medical marijuana grower blasted for security lapses, missing plants**
- **Big marijuana firms are ‘rolling up’ local dispensaries and growers, skirting Pennsylvania’s laws**
- **City Council moves to ban new medical marijuana dispensaries in one Philadelphia neighborhood**

Making that claim gave the Arizona-based cannabis company an advantage over other applicants. Harvest won licenses in Ohio to operate three dispensaries and one of 12 large-scale cultivation facilities. Ohio’s marijuana law required 15 percent of all licenses to be given to companies with “minority-majority” ownership.

In a letter obtained by the Enquirer, the Ohio Board of Pharmacy, which regulates cannabis businesses in the Buckeye State, said Harvest of Ohio LLC did not meet the state’s definition of an “economically disadvantaged group,” and wrote that the company “committed fraud, misrepresentation, or deception in furnishing information” on its application.

ADVERTISEMENT

Multi-state operators like Harvest — often referred to as Big Marijuana by critics who fear a marketplace controlled by a handful of large companies — have been using legal loopholes to gain dominance in states that have recently legalized marijuana for recreational or medical use.

Pennsylvania is probing Harvest’s strategy to dominate an emerging market. The state’s two-year-old medical marijuana program counts some 137,000 Pennsylvanians as registered patients, and saw \$180 million in 2018 sales.

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And the Department of Health is investigating whether Harvest defrauded the state after it apparently reneged on a promise to use diverse or “disadvantaged business entities” — in contracts worth hundreds of thousands of dollars — to build Pennsylvania dispensaries, according to documents obtained by The Inquirer under the state’s Right-to-Know law.

Harvest won more than the maximum number of permits allowed by statute by submitting applications under slightly different names and incorporating as separate business entities. Pennsylvania caps the number of dispensary permits a company can control at a maximum of five. Each permit allows its owner to open three retail stores in the state,

In an April release to investors, however, the parent corporation, Harvest Inc., bragged it controlled seven Pennsylvania permits — two more than the maximum allowed. The state took notice and ordered Harvest to prove its permit winners are, in fact, separate companies.

The company’s troubles in Pennsylvania didn’t end there.

In May, the state additionally rebuked Harvest for failing to make good on a promise to use a Pennsylvania-based minority-owned contractor and women-owned flooring business to build at least eight of its retail dispensaries. Pennsylvania’s application scoring process gave heavy weight to a company’s commitment to diversity. Instead, Harvest hired a company from New Mexico.


In a critical Order to Show Cause that threatened to revoke its permits, Pennsylvania accused Harvest of changing contractors without notice and failing to seek approval from the Department of Health to change its diversity plan.

The state ordered the individual Harvest entities to explain themselves within 30 days of the notice. It is unclear if Harvest met the deadline.



Posted: July 12, 2019 - 1:26 PM

Sam Wood | [@samwoodiii](#) | swood@inquirer.com

 [View 1 Comment](#)



**SENT VIA EMAIL, CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND
FIRST CLASS MAIL, POSTAGE PRE-PAID**

DATE OF MAILING: April 10, 2019

Steve White
627 S. 48th St., Suite 100
Tempe, AZ 85281

RE: SMPB Retail, Inc. dba Harvest of Reading
Harvest of Southeast PA, LLC
Harvest of Northeast PA, LLC
Harvest of South Central PA, LLC
Harvest of North Central PA, LLC
Harvest of Southwest PA, LLC
Harvest of Northwest PA, LLC

Dear Mr. White:

The Pennsylvania Department of Health, Office of Medical Marijuana (Department) is solely contacting you, the primary contact, regarding the Medical Marijuana Dispensaries referenced above.

The Department is aware of an article published yesterday on www.businesswire.com entitled "Harvest Health & Recreation Extends Breadth & Depth of Dominant U.S. Footprint with Acquisitions in Four East Cost States."¹ The article represents that Harvest Health & Recreation, Inc., identified simply as "Harvest," intends to acquire CannaPharmacy, Inc. and that the acquisition includes "[o]ne 46,800 square foot cultivation facility" located in "a former Pepsi bottling plant employing local Pennsylvanians." The current permittee of the identified cultivation facility is Franklin Labs, LLC. As you are aware, permits are nontransferable under Section 603(b) of the Medical Marijuana Act, 35 P.S. § 10231.603(b). Accordingly, even after completion of the acquisition, Franklin Labs, LLC will retain ownership of the permit and Harvest Health & Recreation, Inc. may not represent that it owns the permit issued to Franklin Labs, LLC.

The article further represents that, in Pennsylvania, "Harvest currently has seven state licenses allowing up to 21 retail stores throughout the state." This is a blatant misrepresentation of Harvest Health and Recreation's status in Pennsylvania. Harvest Health & Recreation, Inc. did not apply for, or receive, *any* permits in Pennsylvania. Rather, in Phase 1, SMPB Retail, Inc. dba Harvest of Reading applied for, and was issued, a dispensary permit. In Phase 2, the following entities applied for, and were issued, dispensary permits: Harvest of Southeast PA, LLC, Harvest of Northeast PA, LLC, Harvest of South Central PA, LLC, Harvest of North Central PA, LLC, Harvest of Southwest PA, LLC, and Harvest of Northwest PA, LLC.

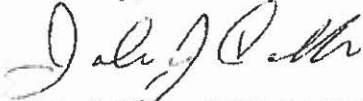
¹ This article was additionally referenced and quoted in an article entitled: "Big Marijuana: Arizona company set to become Pennsylvania's largest cannabis chain after new deal" published on www.philly.com on the same date.

Mr. White

pg. 2

Because each business is recognized as a separate legal entity under law,² the Department expects each to operate as independent entities as represented in the permit applications. Any continued misrepresentation that these entities are one in the same will be construed as a falsification of the permit applications and will result in the Office taking action against each entity, including possible revocation of permits, under 28 Pa. Code § 1141.47.

Sincerely,



John J. Collins, MBA, R.T.(R)(N), CNMT
Director

cc: ahowe@harvestinc.com

² Pursuant to the Act, “[t]he department may not issue more than five individual dispensary permits to one person.” 35 P.S. § 10231.616(3). The Statutory Construction Act of 1972 defines “person” as follows: “Includes a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S.A. § 1991.

113

Harvest's deal with Pa. cannabis regulators wasn't just about dispensary licenses, documents show



Ed Oswald Follow
Aug 16 · 2 min read

While it lost two licenses, it is also barred from any new "management services agreements" and must fund \$400,000 to a new cannabis discount program



The headlines surrounding Friday's deal with Arizona-based cannabis retailer Harvest centered around the loss of two dispensary permits. However, documents obtained late Friday by *Pennsylvania Cannabis Report* indicate the agreement is far-reaching and in the Department of Health's favor.

Perhaps of most importance to Pennsylvania patients is an agreement to set up a new product discount program. The remaining five entities must contribute \$40,000 yearly to a "restricted account" for the next two years. The funds would be used to offer discounts to eligible patients, and Harvest would be required to exhaust all funds and provide quarterly reports to the DOH.

Under the agreement, patients participating in SNAP, WIC, CHIP, Medicaid, PACE, and PACENET would be eligible. Harvest was ordered to start the program by March 1, 2020, the settlement read.

Harvest also cannot pursue any new "management services agreements," a strategy it used to take control of AgriMed and Franklin Labs earlier this year, for two years.

The Arizona company was also ordered to either continue with its current MSA with AgriMed, or establish one with Franklin Labs, but it could not hold both.

Harvest has also agreed to supply any documentation initially requested in April as part of the DOH's investigation. The company had earlier argued that the state had no right to request the information under Pa. law.

Not all was bad news for Harvest. The DOH agreed to refund Harvest the application fees totaling \$60,000 for the two relinquished permits. Its permit renewal for the initial dispensary license it held would be renewed, which had been held up by the DOH action.

The DOH will also schedule inspections for four Harvest locations across the state by September 4. Those locations weren't specified in the settlement agreement. However, a statement from the company indicates this refers to the second Reading location on Lancaster Avenue, as well as dispensaries in Scranton, Johnstown, and Harrisburg.

Planned dispensaries in New Castle and Shamokin would no longer open due to the loss of the permits in the North Central and Northwest regions of the state.

PCR did not reach out to Harvest nor the DOH as the settlement agreement specifically stated that both sides were barred from commenting on the settlement to the media.

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Harvest Health & Recreation Inc.

17:09 24 Jun 2019

Harvest Health & Recreation turns modest investment into largest cannabis footprint in US

It isn't often that one looks at a company and it's as though they have thought of everything, with no obvious gaps to fill, no apparent weaknesses. That's the impression one gets speaking with Steve White, Chief Executive Officer of Harvest Health & Recreation (CSE:HARV). A lawyer before making the leap into running a cannabis company some eight years ago, White is adept at navigating challenging regulatory environments, and communicates with the tone of a professional who knows he's at the top of his game.

A commitment from a single investor last month to fund the company with up to US\$500 million is just the latest sign that Harvest has not only a great track record, but also the vision and ability to execute that separates winners from also-rans in any industry. Public Entrepreneur spoke with White recently about his philosophy on building a successful business in the cannabis sector, and a recent acquisition that will give Harvest the largest presence in the United States cannabis industry.

We'll get into your recently announced acquisition of Verano Holdings with our second question, but so we have some context, tell us how Harvest got started and some of the key milestones in your development to date. And where do you stand now in the industry vis-à-vis other companies with similar business models?

We started in Arizona in 2011, so we were really early in the cannabis industry compared to many others in the space today. In terms of key milestones, in 2012 we won two licenses in Arizona. Those were vertically integrated licenses. What's important here is Arizona became a helpful training ground for us. We had to get good at cultivating, manufacturing and retailing cannabis - seed to sale. It was completely by happenstance that it was a teaching moment for the future of our growth and ability to master the various aspects of the industry.

Some of the bigger milestones have to do with expansion, and there have been so many that it is hard to isolate any. But one to note is on July 1 of 2017, we merged with a company called Modern Flower, led by a gentleman named Jason Vedadi. That was a moment that really helped to accelerate our growth as an organization.

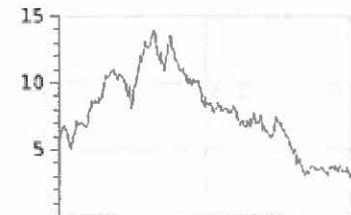
From there I would have to say the next big milestone was the announcement of our agreement to acquire Verano Holdings, headquartered out of Illinois. That acquisition made us the largest cannabis company in the United States by ability to open revenue-generating facilities, subject to regulatory approval. We'll have more licenses and licenses to open more facilities than any other cannabis company in the country.

That helps to answer your second question, which is what makes us different relative to our peers. Beyond the ability to win licenses organically and make strategic and accretive acquisitions, I would say the second thing is we have been consistently profitable as a company for many years. The only other multistate operator I knew of that was also consistently profitable happened to be Verano.

Price: 3.24

Market Cap: \$941.77 m

1 Year Share Price Graph



December 2018 June 2019 December 20

Share Information

Code: HARV

Listing: CSE

52 week	High	Low
	14.5	2.7

Sector: Cannabis

Website: www.harvestinc.com

Company Synopsis:

Harvest Health and Recreation Inc. (CSE:HARV), is a consistently profitable, vertically integrated cannabis company with one of the largest footprints in the world.

action@proactiveinvestors.com

The Verano transaction brings two very successful companies together to make you the biggest multistate operator in the US. Why is Verano such a good strategic fit for Harvest's existing assets?

It was a perfect fit on three fronts. First, the Verano leadership team and their employees are people who are very easy to integrate into Harvest's culture because they are a lot like us. And I think most importantly, we like them and vice versa. They are just great human beings with mindsets and focuses that are very similar to ours. So, the human capital in that acquisition was really important.

Second, the assets that we acquired pair perfectly with what we were hoping to put together in the near future. The acquisition has brought us into Illinois, Nevada and New Jersey in a very meaningful way. That represented our list of markets that we really wanted to enter in the near term.

And lastly, they have some great brands that do not overlap with some of the brands we are already producing. For example, in Illinois they represent about a quarter of the wholesale business, and their emphasis is in areas that we don't have a big emphasis in yet, like edibles.

There is a "landgrab" taking place in the US cannabis industry, playing out partly in a large number of acquisitions. Harvest is growing both organically and through acquisitions. What is your competitive edge versus other well-funded companies in the space?

First, I would say that we can acquire market access organically, meaning we can win licenses when states issue them. Second, we have found that people we look to acquire are believers in Harvest's stock. With a lot of these acquisitions, the sellers have to decide whose stock they want to hold, and we have a reputation in the industry that allows us, in some instances, to acquire people for less than what they would charge other potential acquirers. And we have seen that in a couple of instances, so that is very helpful for us.

It is difficult to say when federal legalization might take place in the US, but what is Harvest's industry outlook? You must have some vision of the industry of the future as you formulate corporate strategy.

Long term, you are going to see a shift away from cultivation. Phase 2 will be about retail, and Phase 3 will be about brand development. We are planning in everything we do to take advantage of, and create, the infrastructure necessary to capitalize on that evolution of the market.

It's really interesting in that each individual market evolves separately. So, while you might have a very mature market like California that is, in our minds, almost purely a brand game, there will be other states that just recently came online, and new states where you can see tremendous returns in cultivation. But those new states will eventually become mature states, and so we gear our business to take advantage of cultivation opportunities when we are early and one of few. But generally speaking, our emphasis is on developing a large wholesale and retail footprint.

Harvest recently announced completion of the first tranche of a US\$500 million convertible debenture financing. Can you talk about two things: first, the use of proceeds, and second, what convinced the investor to back Harvest to the magnitude, potentially, of half a billion dollars?

First, that half a billion dollars is solely dedicated to growth. That is acquisition capital and rocket fuel. It allows us, in conversations with acquisition targets, to use more cash. In times when we don't think our stock is trading appropriately, we can add more cash, so we can keep more of the stock if we think it's too cheap.

The reason that financier was interested in Harvest was because they are a believer in the long-term outlook of the company. They saw that as an easy transaction for them, and one where they did it on terms that they haven't done for other people previously.

On a personal level, you are one of the more experienced executives in the industry, and as Harvest's leader you are pushing the company to grow faster than everyone else. Talk a bit about your background and how that has positioned you to drive the company's success.

It's been helpful to be a lawyer in my previous life. The way you plan a case in the law is you evaluate the facts available to you early on, and then you plan a strategy, or a path, to victory. In this case with cannabis, what we were doing is we were evaluating an ever-changing landscape and we were developing a path toward long-term significant profitability.

Your biggest obstacles are regulatory in nature, and as a result the ability to navigate regulatory hurdles - laws, in other words - is really helpful, because you can interpret things in a creative way to give you advantages over competitors, when appropriate, and you are looking toward the end goal, which is long-term, sustainable, and significant profitability.

Any student of markets will know that inefficiency is often a good place to search for opportunity. Given how the federal laws in the US differ with those of the states, and then from state to state, does this fragmented regulatory environment present opportunity?

It presents obstacles, and with any obstacle there is opportunity. It presents obstacles to people who are not well-capitalized and who don't have the experience to overcome those obstacles. But for those who are determined and well-capitalized, it presents opportunities to reap benefits that are sometimes better than a normal market would yield, particularly in limited-license markets.

Is it fair to assume that being one of the more high-profile companies in the cannabis industry, opportunities often find their way to you?

Unfortunately, we are constantly scanning for them. The great opportunities don't find you; you have to find the great opportunities. The opportunities that find you are the opportunities that find everybody, and we pride ourselves on finding opportunities that others don't. And that requires just good old-fashioned hard work and thinking outside the box.

Is there anything we have missed - any important points to get across that we have not touched on?

One of the things that's most significant about Harvest is that at the time we went public we had very little access to capital. We developed one of the largest footprints in the country by deploying less than \$18 million in total invested capital. So, at that time we were a \$1.5 billion company with that small of an investment. We have a history of doing a lot with less, and the lessons we have learned that have allowed us to do that are things we deploy each and every day.

A big part of that is a demonstrated ability to execute. Whether that is winning a license or creating a profitable business with very little capital, we have demonstrated time and time again that we are able to do that, and there are not a lot of people who can say the same thing.

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Nunez, Guille

From: Nunez, Guille
Sent: Tuesday, June 25, 2019 12:30 PM
To: bfranklin@harvestinc.com; mgiles@dlrgroup.com
Cc: Mermell, Steve
Subject: Letter to Harvest of Pasadena, LLC
Attachments: Letter to Harvest of Pasadena 6.25.19.pdf

Mr. Franklin and M. Giles,

Please see the attached letter from City Manager Steve Mermell. The attachments referenced in the letter are hyperlinked below:

1. [Letter from The Brick & Rose, LLC dated June 17th, 2019](#)
2. [Position Statement from WOW Health & Wellness, LLC](#)
3. [Letter from the Atrium Group, LLC dated June 19, 2019](#)
4. [Letter from The Brick & Rose, LLC dated June 23rd, 2019](#)
5. [Letter from City Manager Steve Mermell in reply to The Brick & Rose, LLC dated June 20, 2019](#)
6. [Letter from City Manager Steve Mermell in reply to WOW Health & Wellness, LLC dated June 20, 2019](#)

Regards,

Guille Nuñez | Management Analyst IV (Concierge)
Hale Building, 175 N. Garfield Avenue | Pasadena, CA 91101
gnunez@cityofpasadena.net | [O] 626-744-7634





OFFICE OF THE CITY MANAGER

June 25, 2019

By email only: Bfranklin@harvestinc.com;
mgiles@dlrgroup.com

Mr. Brad Franklin
Harvest of Pasadena, LLC
169 W. Colorado Boulevard
Pasadena, CA 91105

Re: Inquiries Regarding Ownership of Harvest

Dear Sir/Madam:

The City is in receipt of multiple letters inquiring as to Harvest of Pasadena, LLC's ("Harvest") cannabis permit screening application and the accuracy of the information provided therein. Copies of those letters and any attachments are emailed herewith, along with the City's responses to date.

If Harvest wishes to respond, please do so within the next 30 days. Please email any response and related materials to gnunez@cityofpasadena.net. The City will address the inquiries and any response by Harvest at the appropriate time in the City's cannabis permitting process.

Please note that, in the interest of full transparency, the City will post all materials transmitted herewith, as well as any further correspondence on any cannabis permit-related matters on the City's website.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Mermell".

Steve Mermell
City Manager

cc (by email only): The Brick and Rose, LLC; Larry Mondragon
(dragon@craigfryandassociates.com)
The Atrium Group, LLC; Jim Townsend
(jtproducer34@gmail.com)

0000156361C031

City Hall
100 N. Garfield Avenue, Room 5228
Mailing Address: P.O. Box 7115 • Pasadena 91109-7215
(626) 744-6936 • Fax (626) 744-4774
smermell@cityofpasadena.net

HARVEST

July 10, 2019

By email only: smermell@cityofpasadena.net

Mr. Steve Mermell, City Manager
City of Pasadena
100 North Garfield Avenue, Room S228
Pasadena, CA 91109

Re: Inquiries Regarding Harvest and the City's Release of Material Non-Public Information

Mr. Mermell,

Thank you for your letter dated June 25, 2019, identifying a few letters that the City has received during the cannabis permit screening process, and copies of the City's responses. To date, we have been appreciative of the professionalism and impartiality the City has exhibited during this competitive screening process.

At this time, we are solely focused on moving forward with the processing of our application, and subsequently opening for business in the great City of Pasadena. It is unnecessary and inappropriate to engage in mud-slinging against competitors. Accordingly, we will not respond to these negative attacks by our competitors who were unsuccessful in the screening.

We were confident that our correspondence with the City would be the only relevant information that would be made public. We assumed the City would see any requests made by others, demanding that the City make any single C.U.P. Application available to the public, as a material event.

We are proud to have a very talented team that worked very hard to collectively complete and submit our application. Accordingly, any release of our submitted application reveals non-public, proprietary, private financial details, and trade secrets.

Sincerely,



Steve White
CEO

cc: Brad Franklin, Harvest
Nicole Stanton, Harvest
Ben Kimbro, Harvest
Michael Gonzales, Gonzales Law Group
Patrick Perry, Allen Matkins
Geoffrey Etnire, Esq., Venable

LAW OFFICE OF
CHRISTOPHER SUTTON
586 LA LOMA ROAD
PASADENA, CALIFORNIA 91105-2443
TELEPHONE (626) 683-2500 ... FACSIMILE (626) 405-9843
email: christophersutton.law@gmail.com

Monday, July 8, 2019
Hand Delivered and sent by Email

Ms. Michele Beal Bagneris
City Attorney, City of Pasadena, City Hall
100 N. Garfield Avenue, Room N210
Pasadena, California 91101

Re: Commercial Cannabis Permit Applications and CUP's - Completeness and Review

Dear Ms. Bagneris,

I represent The Atrium Group ("Atrium") in matters related to their pursuit of a *Conditional Use Permit: Cannabis Retailer* ("CUP Application") from the City of Pasadena. On July 2, 2019, my client received a letter from the Assistant City Manager, Julie A. Gutierrez, concerning previous correspondence that Atrium had sent the City on June 28 and July 1, respectively. It is unclear under what legal authority, if any, Ms. Gutierrez is acting to issue "interpretations" of the zoning code. The Pasadena Zoning Code only allows for the Zoning Administrator to render such interpretations of the Zoning Code. Nevertheless, as Ms. Gutierrez's conclusions are based on incorrect assertions of fact and contain misstatements of law, I would like to respond to the salient points of her letter. Her "findings" should be withdrawn and replaced with a finding from the proper legal authority (Zoning Administrator) which, if unfavorable, will be appealed.

In addition, I would also like to share our assessment of the City's determination that the CUP Application submitted by Harvest of Pasadena, LLC ("Harvest") for review on June 12, 2019 is "complete." The City has so far refused my client's repeated written requests to produce a hard copy of Harvest's CUP application under the California Public Records Act and Article One Section 3(b) of the California Constitution. Therefore, this letter is based on a 30 minute visual inspection of that application on July 3, 2019, at the Permit Center under the watchful eyes of Guille Nunez. Even this cursory review shows that the Harvest application is not complete and should have been rejected by City staff. In any event, Harvest's CUP application must now fail at the processing level and be set aside because the application contains at least 30 deficiencies under the Code, as set forth below,

PART A – RULE VII AND THE PRIORITY OF CANNABIS PERMIT APPLICATIONS

Section 17.50.066(D) of the Pasadena Zoning Code contains a number of provisions that restrict where a cannabis retail business may be located. However, this Section contemplated only two circumstances where the City would be forced to prioritize the interests of one applicant over another. Section 17.50.066(D)(3)(b) provides that only one cannabis retail business may operate in a City Council District at any time. In addition, Section 17.50.066(D)(5)(a) proscribes any cannabis retailer being located within 1,000 feet, measured from the nearest property lines of each of the affected parcels, of any other cannabis retailer. Therefore, it is understandable that the City saw a need to clearly establish rules that would allow each permit candidate a fair and

ATTACHMENT #1

1-1

Ms. Michele Beal Bagneris
City Attorney, City of Pasadena, City Hall

Monday, July 8, 2019
page 2 of 11

equal opportunity to establish a priority position in the event that a rival applicant were to seek out a location that is either within the same Council District or within a radius of 1,000 feet.

Accordingly, on June 12, 2019, the Department of Planning unveiled its process for receiving CUP Applications for review. As you may know, a shared computer drive was set up for every applicant, and the time was recorded upon the submission of each CUP Application. The time stamp would be changed to reflect any subsequent revisions that a candidate might provide the City at a later time. This method allowed the City to establish an initial ordering of applicants in circumstances where two or more might be in the same Council District or within 1,000 feet of one another. However, this process alone was insufficient.

First, some permit candidates may have submitted an application package that did not contain all of the required elements. It would have been manifestly unfair if the rules allowed some applicants to obtain an earlier filing time stamp by virtue of taking shortcuts in the preparation of their CUP Application, such as by not including a Written Consent from the property owner, or by not demonstrating how the proposed use would comply with the Code's requirements for commercial cannabis businesses. Second, it would also be unfair for an applicant to be told that their CUP Application is relegated to second or third position in a Council District if the CUP Application that is given priority does not fully comply with the Municipal Code, because, for example, it is too near a school or a substance abuse center.

Addressing these potential problems, on June 28, 2019, the City Manager established several new regulations governing the issuance and denial of commercial cannabis permits in the exercise of his considerable powers under Section 5.78.190 of the Pasadena Municipal Code. As part of this rulemaking, Regulation No. VII set the standard that the City will use in reviewing all CUP applications:

"VII. For purposes of establishing compliance with Section 17.050.066(D) [sic], the City shall consider the locations identified in all complete and code compliant applications in the order received."

We were happy to see this new rule, as it assured all applicants that the City would fairly evaluate their permit applications. Given the exceptional effort and expense that Atrium and other applicants have undertaken in order to participate in Pasadena's permitting process, it was good to receive confirmation that the City will only allow an applicant who is the first to file a complete and code-compliant application to have priority over other applicants who seek to reside in the same Council District or within a radius of 1,000 feet.

While this new rule was commendable, and an important part of the application process, it appears that the City is not following this new regulation. In the City's June 27, 2019 letter, Atrium was told that its CUP Application in Council District No. 3 would not be processed because the City had determined that Harvest had established a senior priority based on the rules. For the reasons set forth below, we do not agree.

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City Attorney, City of Pasadena, City Hall

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PART B – THE CITY ERRED IN FINDING THE HARVEST APPLICATION TO BE COMPLETE

The submittal requirements for the CUP Application were summarized in an 8-page document that the City Planning and Development Department distributed to all six applicants during the June 12, 2019 workshop meeting (the "Submittal Checklist"). The Submittal Checklist was subsequently revised to include a sample radius map. The rules required that the Submittal Checklist be included with the CUP Application.

On June 20, 2019, the City Manager published six new regulations on the City's cannabis website. These regulations included Rule III, which provided in Subpart A that City staff would review each application for completeness by determining whether all of the items listed in the Submittal Checklist have been provided. Subpart B of Rule III further provided that City staff would only conduct an extrinsic review of each application, and not conduct a substantive review of the merits of the materials that were submitted. Therefore, while it is possible that an application could be "deemed complete" while containing numerous inaccuracies and material errors, the City could nevertheless be expected to withhold its approval if a high-level examination finds the application to be missing one or more of the required items from the Submittal Checklist.

Turning to Harvest's CUP Application, a cursory review has revealed that the following items are missing from the Harvest CUP Application or are facially incomplete:

1. Taxpayer Protection Act Disclosure Form

The Submittal Checklist requires each CUP Application to include a Taxpayer Protection Act Disclosure Form that must include all company officers. The information needed to determine whether this requirement had been met was readily discernable by City staff without analysis or understanding of the law. Despite the City's clear directions to include company officers in its Taxpayer Protection Act Disclosure Form, Harvest failed to name persons holding management responsibilities that were previously included in its screening application.

Far from low-level personnel, Harvest failed to disclose President Steve Gutterman, Chief Operating Officer John Cochran, and Chief Marketing Officer Kevin George. The TPA does not disclose Board of Director members Mark Neal Barnard, Elroy Sailor or Frank Bedu-Addo. The TPA also fails to disclose the revenue interest claimed by Harvest, Health & Recreation, Inc. which we have repeatedly advised the city of. In addition, Harvest's lease agreement for its retail premises was executed by an individual named "Joe Sai." Mr. Sai held himself out publicly as a "manager" of Harvest with the authority to sign a lease agreement worth approximately \$100M over a term of ten years. Despite the apparent authority he is allowed to wield, Mr. Sai was not named in the company's Taxpayer Protection Act Disclosure Form. Based on any one of these omissions, Harvest's application should have been found by the City to be incomplete.

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2. Ownership Consent

The Submittal Checklist requires each applicant to provide an Owner Consent authorizing a representative to act in their stead in signing a property lease. Clarifying this requirement, on June 12, 2019, the City Manager's designee, Guille Nuñez, told all applicants that an Owner Consent would only be required if the lease agreement was signed by a property owner's representative and not directly by the landowner. This Code obligation and the accompanying instructions were neither confusing nor mired in ambiguity. Since Harvest's lease was not signed by the landowner, but by a representative, an Owner Consent was clearly required. The form that was submitted appears to falsely present a lessor as the property owner. No owner consent appears to be present in the application. The information needed to determine whether this requirement had been met was readily discernable by City staff without analysis or any understanding of the law. Based solely on this omission, Harvest's application should have been found to be incomplete.

3. Live Scan Authorization

The Submittal Checklist obliges each applicant to submit a Live Scan Authorization for each person listed as an owner, manager, supervisor, employee, or volunteer. On June 13, 2019, Ms. Nuñez explained that only the form needed to be filled out and included with the CUP Application; fingerprints were not necessary at this time. These instructions are clearly written, and all applicants had ample opportunity to ask further questions if they had any questions as to this requirement. The information needed to determine whether this requirement had been met was readily discernable by City staff without analysis or understanding of the law.

A review of the Harvest CUP Application shows that only a single Live Scan Authorization was provided to the City— and this was for the company's sole owner and manager, Steve White. However, Harvest was required to provide Live Scan Authorizations for Jason Vedadi (a/k/a "Touraj J. Vedadi") and Leo Jaschke, both of whom were named in Harvest's Taxpayer Protection Act Disclosure Form. Either one of these omissions should have resulted in Harvest's application being found to be incomplete.

Moreover, Harvest should have submitted additional Live Scan Authorizations for each member of its management team. At a minimum, this should have included President Steve Gutterman, Chief Operating Officer John Cochran, Chief Marketing Officer Kevin George, and manager Joe Sai. Any one of these omissions should have been sufficient grounds for the City to conclude that Harvest's application was incomplete.

4. Site Plan

The Submittal Checklist requires each applicant to provide a fully dimensioned Site Plan for their project. The Submittal Checklist calls out specific elements that every Site Plan must contain. The information needed to determine whether this requirement had been met was readily discernable by City staff without analysis or understanding of the law. Despite the clear language

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of the Submittal Checklist, Harvest failed to ensure that its Site Plan contained: (a) Harvest's name, (b) Harvest's its business address, (c) Harvest's phone number, and (d) the location of abutting properties and their uses. Any one of these omissions should have been sufficient for the City to find that Harvest's application was incomplete.

5. Floor Plan

In addition to the Floor Plan, the Submittal Checklist requires applicants to include in their CUP Application a fully dimensioned Floor Plan showing the interior space of their project. The Submittal Checklist calls out specific elements that each Floor Plan must contain. The information needed to determine whether this requirement had been met is readily discernable by City staff without analysis or understanding of the law. Despite the clear language of the Submittal Checklist, Harvest failed to ensure that its Floor Plan included the square footage of separate rooms. Since this requirement was incontrovertibly a requirement of the Floor Plan, this omission alone should have been sufficient for the City to find that Harvest's application was incomplete.

6. Demonstrated Code Compliance

The Submittal Checklist incorporated a mandatory supplement where every CUP Application must demonstrate how the applicant would comply with specific requirements set forth in Sections 5.78, 8.10 and 17.50.066 of the Pasadena Municipal Code. Incorporated by reference, these Sections contain detailed and specific regulations uniquely tailored to commercial cannabis businesses. In determining whether a CUP Application satisfied this requirement, City staff did not need to analyze textual content or even have an understanding of the law. Instead, City staff only had to determine whether a minimal attempt had been made to satisfy the requirement by looking for key words and section headings, such as "Track & Trace," "Waste Management," "Employee Education," and "Record Keeping."

In its application, Harvest chose only to respond to 2 out of 16 Sections of the Municipal Code that were required. While Harvest did address Section 5.78.160 (Security) and Section 8.11.060 (Odor Management), the company did not make any effort to demonstrate how it would comply with the following provisions of the Pasadena Municipal Code:

- (a) Section 5.78.150: Records and Record keeping.
- (b) Section 5.78.170: Consumption; Cannabis out of sight; Reporting and Tracking of Sales; State Licensed Facilities; Emergency Contact; Signage and Notices; Minors; Display Licenses; Background Check; Loitering.
- (c) Section 5.78.210: Inspection and Enforcement.
- (d) Section 8.11.040: Retail Cannabis Facilities Licensing; Health Protection Operating Criteria; Permanently constructed structure; State permitted items; Must be packaged and labeled; Alcohol and Tobacco Prohibited; Permanent Food Facility; Giveaways Prohibited; On-Site Consumption Prohibited; Temperature Requirements;

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Cannabis Sourcing Requirements.

- (e) Section 8.11.050: Required In-Store Safety Information.
- (f) Section 8.11.070: Waste Management Plan.
- (g) Section 8.11.080: Record Keeping.
- (h) Section 8.11.090: Track & Trace.
- (i) Section 8.11.100: Employee Health.
- (j) Section 8.11.110: Cannabis Facility Training Program.
- (k) Section 8.11.120: Responsible Cannabis Retailing Education Required.
- (l) Section 8.11.130: Inspection.
- (m) Section 8.11.140: Cannabis and Cannabis Product Quality Assurance.
- (n) Section 17.50.066(D): Commercial Cannabis Permit Required; Use Permit Required; Limitation on Number of Retailers; Maximum Square Feet; Location Requirements; Operating Requirements; Hours of Operation; Delivery Services; Conditions of Approval; Discontinuance of Use.

The requirement to demonstrate compliance with these Code Sections goes to the heart of an applicant's fitness to receive a cannabis business permit from Pasadena. This provision was clearly written and did not require City staff to delve into the merits of Harvest's CUP Application, but only to decide whether the company made an honest effort, however slight, to demonstrate how it would comply with these City cannabis regulations. Harvest's failure to demonstrate how it will dispose of cannabis waste, comply with California Track & Trace requirements or properly educate employees about their responsibilities when interacting with customers or handling cannabis products should have precluded a finding that their CUP Application is complete. In reviewing a CUP Application that ignores 87.5% of the Municipal Code Requirements that the instructions advised that each applicant "*must demonstrate*," the City had no choice but to find Harvest's application to be incomplete.

**PART C -- THE CITY ERRED IN FINDING THE HARVEST APPLICATION
TO COMPLY WITH THE CODE**

In addition to requiring a finding that a CUP Application is complete, Regulation No. VII also calls for the City to decide if a CUP Application is code compliant before considering whether to grant a commercial cannabis permit. As a corollary of this regulation, a later-filed CUP Application must be given priority over an earlier-filed one that does not comply with the Pasadena Municipal Code. As you are aware from our letter and email sent to the City on June 28 and July 1, respectively, we believe that the 169 W. Colorado Boulevard location selected by Harvest is does not comply

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with the Municipal Code, as the site is within 600 feet of the Rudolph Steiner Library.

In the City's reply letter of July 2, 2019 Assistant City Manager, Julie A. Gutierrez (whose legal authority to issue such a finding is not explained), attempts to creatively rewrite the City's Municipal Code. While the Rudolf Steiner Library is closely affiliated with the Anthroposophical Society in America and has been at the location for 26 years, the organization established a separate non-profit corporation with a separate board of directors to directly oversee the operation of the library. We have previously provided you with a detailed record establishing the authenticity of the library and its lending program.

In her July 2nd letter, Ms. Gutierrez wrote that the 600-foot separation requirement does not apply to "bookstores or private businesses or Anthroposophical Societies that operate 'libraries' as a component of their overall operations." I'm not certain you are aware that the Central branch of the Pasadena public library regularly conducts book sales on the East Patio to raise funds for its continued operations.¹ The fact that books may be sold at the library does not diminish its the stature the slightest, nor should such sales similarly affect the standing of the Rudolf Steiner Library. Beyond this attempt to denigrate the Rudolf Steiner Library, Ms. Gutierrez' letter also draws a number of incorrect conclusions about the intended meaning of the phrase "any library" in the City's cannabis ordinance, each of which will be explained below.

1. Measure CC

When the Pasadena City Council adopted Resolution No. 9635 on February 26, 2018, it approved the submission of a draft ordinance containing the following wording:

"No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of **any park, library, or K-12 school...**" [Emphasis added].

This same wording was put before Pasadena voters at a Special Municipal Election held on June 5, 2018:

"Shall an ordinance be adopted to allow a limited number of commercial cannabis businesses to operate in Pasadena, subject to business, health and land use regulations, and to repeal the City of Pasadena's current ban on commercial cannabis businesses, provided that: (1) the ordinance shall not take effect unless voters approve a Cannabis Business Tax, and (2) the City Council retains authority to amend existing ordinances and adopt future ordinances regarding commercial cannabis business activities?
[YES / NO]

This measure would allow a limited number of commercial cannabis businesses to operate within the City of Pasadena. A maximum of 6 retailers, 4 cultivators, and 4 testing laboratories would be allowed to operate in the City at one time. All three types would only

¹ See <https://www.friendsppl.org/monthly-book-sale/>

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be allowed to operate within specific zoning districts. In addition to the respective zoning regulations, retailers could not be located within 1000 feet of any other cannabis retailer or cultivation site, within 500 feet of any testing laboratory, or within 600 feet of any residential zone, *or within 600 feet of any park, K-12 school, church, childcare center, substance abuse center, or library.* [Emphasis added].

Notably, in Measure CC, the City Council retained the authority to amend the existing ordinance and adopt future ordinances with respect to commercial cannabis activities. The record shows that the specific wording at issue in Section 17.050.066(D)(e) was never amended to expressly state what Ms. Gutierrez now argues should be implied— that the sensitive use category of “libraries” be construed to mean substantially less than what the plain meaning of the phrase “any library” would otherwise convey. The word “any” cannot be written out of the code section.

Because the City chose not to narrowly define the term “library” when drafting the ordinance, and then subsequently failed to amend to ordinance at any time thereafter, it may not alter the rules of a competitive permitting process by doing so now. Because the wording of the cannabis ordinance has been ratified by the voters, it reflects the will of the residents of Pasadena to protect libraries of all kinds—both public and private—using the common, everyday meaning of the phrase “any library.” A City employee cannot override what the voters adopted into law.

2. Practice in Other Jurisdictions

We take notice that when other California cities have sought to limit a cannabis sensitive use to only include *public* libraries, they have done so using plain language in their cannabis laws to accomplish this result. For example, Section 105.01 of the Los Angeles Municipal Code contains a specific definition of the term “Public Library.” “Any library” is not the same as “Public Library.”

3. Section 17.80.010

It is not lost on us that in Ms. Gutierrez’ letter of July 2, 2019, she selectively quotes a passage from Section 17.80.010 that she suggests will deliver a relevant and contextually-appropriate meaning for the term “library.” However, had Ms. Gutierrez fairly reproduced the entire text of Section 17.80.010, it would have been abundantly clear that the *ad hoc* method of interpreting words that she champions is not appropriate for simple words that enjoy a clearly-understood and universal meaning:

“This Chapter provides definitions of terms and phrases used in this Zoning Code that are technical or specialized or that may not reflect common usage.”

The Section goes on to provide a series of highly-specialized definitions, such as “Architectural Projection,” “Encroachment Plane,” and “Pedestrian Orientation.” With the benefit of this context, the term “library” is not a technical term nor is it specialized. Rather, the word “library” is a commonly understood term that, when coupled with the adjective “any,” is unmistakable in its intent and meaning and embraces libraries big and small, specialized and general, and for our

purpose, both public and private. Ms. Gutierrez fails to discuss the meaning of "any" in the Code.

4. Burden of Proof

As the City recently drafted the cannabis ordinance, it had every opportunity to shape the wording of the law to deny any private library the protections afforded their public kin. Moreover, the customary rule of interpreting an ambiguity is to prefer common usage over unusual or specialized meanings, especially if the interpretation goes against the party who was responsible for drafting the original phrasing.

5. The Cannabis Application Rules

The City has never drawn a distinction between public and private libraries. In the Commercial Cannabis Application Workshop held on November 13, 2018, prospective applicants were told that any retail location must be "600 ft. from sensitive uses, including K-12 schools, libraries, parks, substance abuse centers, etc." No one from the City has ever suggested that this definition did not apply to private libraries. Indeed, as the existence of the Rudolf Steiner Library was likely well-known to both City staff and cannabis permit applicants alike, it would have been inexcusable for the City to stand by while applicants who were struggling to accommodate the City's severe zoning restrictions passed over eligible retail properties in the mistaken belief that the nearby presence of the Rudolf Steiner library would have been disqualifying.

6. Harvest Acknowledged the Steiner Library as a Sensitive Use

The licensed surveyor retained by Harvest identified the Rudolf Steiner Library as a Sensitive Use that was within 600 feet of the proposed 169 W. Colorado Boulevard location of Harvest. This was noted this on the Location Map that was included with Harvest's CUP Application. The Rudolf Steiner Library was also acknowledged as a Sensitive Use lying within a radius of 600 feet in the Location Affidavit that was certified by Harvest's licensed surveyor. Based on the foregoing, it appears that Harvest itself was fully aware of the presence of the Rudolf Steiner Library and that, in the opinion of its licensed surveyor, its proposed business location would likely violate the 600 foot minimum setback prescribed in Code Section 17.050.066(D)(5)(e).

PART D – CONCLUSION

The record shows that Harvest submitted a CUP Application that objectively, on its face, is lacking specific elements that were required by the Pasadena Municipal Code of all applicants and that were plainly stated in the rules. Without regard to the sufficiency of any content provided by Harvest in its application, City staff were both qualified and capable of determining that the Harvest submittal was missing substantial information in violation of the filing instructions.

To summarize, we count: 4 missing disclosures in Harvest's Taxpayer Protection Act Disclosure Form, 1 missing Ownership Consent, 6 missing Live Scan Authorizations, 4 missing elements that were required in the Site Plan, 1 missing element in the Floor Plan, and 14 omissions in

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demonstrating how Harvest would comply with specific City Code requirements — a total of 30 deficiencies in meeting the compulsory elements of the CUP Application — any one of which should compel a finding that the Harvest application was incomplete. Taken together, we cannot fathom how the City could have possibly found that the Harvest application is complete and ready to file, given obvious nature of these many oversights, coupled with their sheer number.

In addition to not being complete, we also believe that the City erred in placing Harvest's CUP Application in a superior position to Atrium's when it does not comply with the library separation requirement arising under Pasadena Municipal Code Section 17.050.066(D)(5)(e). Ms. Gutierrez' July 2nd letter attempts an awkward sleight of hand by incorporating an obscure reference to a definition contained in the Code's Revenue and Finance Title that was adopted as part of an ordinance levying a special tax to help underwrite the considerable expenses intended solely for financing a high-quality public library system. That tax revenue could not be used for another purpose, so the use of this financial definition of library funding is not honest or appropriate.

It is therefore not surprising that the definition of "library" contained in Section 4.109.120 only makes reference to the City's own network of libraries. This is hardly a credible showing that the framers of the City's cannabis ordinance intended to limit the plain meaning of the phrase "any library" to only "public libraries." Nowhere do we find any support for this view in the enabling ordinance and/or Resolution No. 9635, or in the accompanying City Council minutes and staff reports, or in the rules and regulations that were provided to prospective cannabis retail applicants, or in Measure CC that was put before Pasadena residents on June 5, 2018. Moreover, "any library" this is the same understanding that all of the retail cannabis applicants had, including Harvest, and Harvest's own licensed surveyor.

Despite authoring the cannabis ordinance and having the ability to amend the law and exercise the extraordinary powers granted the City Manager under Pasadena Municipal Code Section 5.78.190 to make changes, at no time did the City ever take any action to narrow the definition of the phrase "any library" in any manner other than how the term is commonly understood and accepted. As a result, we believe the City is wrong in its proposed makeover of the term "library" by neglecting and omitting the modifying word "any." Because the front door to the Rudolf Steiner Library is only 470 feet from the site where Harvest proposes to operate its cannabis business, its CUP Application cannot be found by the City to be in compliance with the Municipal Code.

The wording of Regulation VII is crystal clear that the order of applications is to be determined not merely by "completeness," but also by "compliance." Sadly, the City has committed multiple errors that have resulted in Atrium not being scheduled for an appointment to formally submit its CUP Application. The City appears to be willing to look past at least thirty (30) missing elements in a Harvest application that it deems to be "complete."

The City further strayed from the very rules it authored when it found Harvest's application to be compliant with the location requirements of the Municipal Code. As it is about to reap a windfall from these legion of City errors, Harvest has been richly rewarded by being selected as the sole cannabis retailer having the right to operate in the most famous and commercially attractive

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district in Pasadena. Harvest is in its current position only because it quickly filed a defective CUP application that should have been rejected as incomplete.

Despite the City's previous errors, Harvest's CUP application must now fail and be rejected at the detail processing level.

As participants, it appears increasingly likely to us that Harvest has received special treatment in the form of *ex parte* site approval (in violation of the rules) and continues to receive special preferential treatment by City staff. Therefore, ask you to investigate the possibility that City staff decisions regarding Harvest have become corrupted by outside influences.

After considering our many concerns, we ask the City to acknowledge the many mistakes and lapses we have identified and promptly take corrective actions. At a minimum, this means placing Atrium into its rightful place as the sole applicant in Council District No. 3 who has filed a CUP Application that is both complete and fully compliant with the strictures of the Pasadena Municipal Code.

Sincerely,

Christopher Sutton
Legal Counsel, The Atrium Group, LLC

cc: Mr. Dean Bornstein, Chief Executive Officer, The Atrium Group, LLC
Ms. Julie A. Gutierrez, Assistant City Manager
Mr. Steven Mermell, City Manager
Ms. Guille Nuñez, Management Analyst IV
Mr. David Reyes, Director of Planning & Community Development

Sincerely,



Christopher Sutton

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Friday, July 12, 2019
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Re: Commercial Cannabis Permit Applications
CUP's - Completeness and Review

Dear Ms. Bagneris, Mr. Reyes, Ms. Nunez, and Mr. Rodriguez:

I would like to supplement my prior letter to City staff and attorneys involved in the process of Commercial Cannabis licensing dated July 8, 2019 (attachment #1 hereto). This letter and my July 8th letter should be included as part of all pending and future zoning appeals filed by this office on behalf of my client, The Atrium Group, LLC. This letter is to address additional concerns about the City of Pasadena's determination that the *Conditional Use Permit: Cannabis Retailer* ("CUP Application") submitted for review by Harvest of Pasadena, LLC ("Harvest") is "complete" and ready for a Zoning Code CUP application filing.

1. The Lack of a Harvest Lease Agreement.

The City itemized all submission requirements for cannabis CUP Applications in an 8-page document that was provided to all six applicants during the June 12, 2019 workshop meeting (the "Submittal Checklist"). Among other things, the Submittal Checklist instructed each applicant to provide a **signed copy of a property lease** for the proposed location of their cannabis retail business. As it has done many times before, Harvest did not comply. As part of Harvest's CUP Application, Harvest furnished the City with **some, but not all**, of the required lease terms and conditions that will govern its proposed occupancy of 169 West Colorado Boulevard. One can come to this conclusion without reading the lease itself. It is immediately evident when reading the first paragraph of the accompanying one-page Harvest document entitled Summary of Basic Lease Information:

ORIGINAL

“ . . .this Lease is a sublease that is subject to the terms of Landlord's lease with the fee owner of the Property.”

Nowhere in the four corners of Harvest's CUP Application does any Master Lease appear. Such a master lease is required. As you know, many leases do not permit subleasing of any kind. Other property leases prohibit certain business activities, such as the sale of cannabis products, even if conducted lawfully. Without receiving a copy of the Master Lease, the City could not know whether there are terms in the Master Lease that conflict with Harvest's proposed use of the property for cannabis sales. Moreover, it is nearly unheard of for a lease agreement to allow a tenant to lease the premises to a subtenant who has not been vetted and approved by the fee owner of the property.

While it was not necessary for City staff to read the lease in order to discover this deficiency, a quick reading of Article 21 of the purported "lease" would have removed any doubt:

Section 21.1 : Lease Subordinate to Master Lease. Landlord and Tenant agree that this Lease shall at all times be subject and subordinate to the Master Lease. . . .”

Section 21.2 : Master Lease Provisions Binding on Tenant. Tenant hereby agrees for the benefit of Landlord and Master Landlord to assume, perform and be personally bound by all of the terms and conditions of the Master Lease respecting the Premises on the part of the Landlord to be performed, except to the extent the same are otherwise modified as to Tenant pursuant to this Lease. . . .”

Harvest's failure to fully disclose the terms of its lease agreement is a separate and distinct failure from its failure to include a proper Owner Consent. It's reasonable to expect that City staff can read the name of the property owner in the grant deed and compare it with the name of the party ostensibly granting the lease. Since it was evident that the grant deed identifies the property owner as "Pesche Realty Associates, LLC" while the sublease is only between Harvest and a separate entity known as "Prime Pasadena Holdings, Inc.," it should have been impossible for City staff to conclude that Harvest had complied with the lease disclosure requirement. There is no Owner's Consent in Harvest's application.

Also, an Owner Consent was necessary since Harvest was required to show that its occupancy was approved by the property owner. However, Harvest only provided a document entitled "Authorization Form" that was signed by Prime Pasadena Holding, Inc., as a tenant which gave its consent to a person named Mr. Nathan Kadisha to act as its agent. There are at least three problems with this Form. First, by its terms, the Authorization Form that was provided by Harvest is expressly limited to an agent to "apply for a construction permit" on behalf of the property owner, but it was not signed by the owner. This instrument does not grant powers broad enough to empower a designee to sign a real property lease.

Second, even if the plain wording of the Authorization Form was broad enough to create an agency for the purpose of executing a property lease, it appears that Mr. Kadisha signed an Authorization Form that empowered him to act on behalf of Prime Pasadena Holdings, LLC, (a tenant), but that did not give him right to represent the property owner. Indeed, this would violate the settled rule of law that no person may be self-appointed to act as an agent for a third-party principal.

Finally, Mr. Kadisha signed the property Lease on behalf of Prime Pasadena Holdings, LLC and **not the property owner**, Pesche Realty Associates, LLC. Since the purpose of the Owner Consent was simply to allow the fee owner the convenience of designating a third-party agent to execute the lease on their behalf, a sublease that does not place the tenant in direct privity with the landowner would not satisfy the rules established by the City for retail cannabis applications. Harvest failed to provide the owner's consent.

The City's requirements on the lease was not confusing or ambiguous. Harvest's failed to comply with the requirement, and this was readily discernable by City staff by a quick glance at the grant deed and first paragraph of the lease summary. It was not necessary to either read through the terms of the lease or apply any principals of law.

If the City had fairly and consistently applied its own rules, either: (a) Harvest's failure to provide the City with all of the lease terms, or (b) Harvest's failure to provide the property owner's approval of the transaction, should have been more than sufficient for the City staff to conclude that Harvest's CUP Application was incomplete.

2. Concealment of Harvest's Parent Entity.

As a domestic limited liability company, Harvest had 90 days¹ after filing its Article of Organization to furnish the California Secretary of State with a Statement of Information ("SOI") that would reveal the name of its sole Manager. Since the company's Articles of Organization were filed on January 22, 2019, Harvest had until April 22, 2019 to make this SOI filing. However, Harvest failed to meet its obligation under California law.

At the time Harvest filed its CUP Application, Steve White continued to hold himself out as the company's sole Manager, a position he first claimed in the Applicant/Owner Information Form that Harvest submitted with its screening application.² This was false. On July 9, 2018, Harvest belatedly filed its SOI with the California Secretary of State (attachment #2 hereto). In the SOI, **it was not Steve White**, but an Arizona-based entity, "Harvest Enterprises, Inc.," that was named the company's sole Manager.³ Harvest had concealed its true

¹ Harvest's Articles of Organization, filed on January 22, 2019, stated that the company would be managed by a single Manager.

² In the Applicant/Owner Information Form that Harvest submitted with its screening application, Mr. White credited himself as the Company's "Owner/Manager."

³ See Exhibit A, Harvest of Pasadena, LLC Statement of Information.

management.

The City's Submittal Checklist required each CUP Application to furnish a Taxpayer Protection Act Disclosure Form. The instructions accompanying the Taxpayer Protection Act Disclosure Form commanded all applicants to disclose the following:

"...all joint owners, trustees, directors, partners, officers and those with more than a 10% equity, participation or revenue interest in owner and/or project. If any of these are an organization/entity, include the name of the organization/entity and the first and last names of all parties of interest of that organization/entity."

Despite this mandate, the only parties named on Harvest's Taxpayer Protection Act Disclosure Form were Steve White, Jason Vedadi and Leo Jaschke. No disclosure was made of any affiliate entity. Contradicting this, Steve White made it clear in the cover letter that accompanied Harvest's screening application that if any cannabis permit is awarded to Harvest, the operations of the business would be outsourced to an out-of-state entity that appears to be Harvest's parent— Harvest Health and Recreation, Inc. ("Harvest-Arizona"). Although Mr. White has publicly held himself out as the sole owner of Harvest, it was Harvest-Arizona and not Mr. White who openly claimed that it had been awarded a license to sell cannabis products in the City of Pasadena (Harvest's press release, attachment #3):

"Harvest Health & Recreation, Inc. . . . a vertically integrated cannabis company with one of the largest and deepest footprints in the U.S., **was awarded a dispensary license to operate in Pasadena**, (subject to the local Conditional Use Permit process and state regulatory requirements), marking the seventh California license for the fast-growing company. . ." ⁴ *[Emphasis added]*.

Moreover, in a footnote to the Harvest press release, Harvest-Arizona essentially concedes that Mr. White's claim of owning 100% of the Pasadena applicant entity was a cleverly structured ruse:

"Steve White, CEO of Harvest, Health & Recreation, Inc., holds 100% ownership of the winning license entity, Harvest of Pasadena, LLC, **for the benefit of Harvest, Health & Recreation, Inc.**" ⁵ *[Emphasis added]*.

As pointed out in previous letters to the City by Atrium and others, it appears that when applying for local cannabis permits, Harvest-Arizona is quite adept at concealing its involvement from local regulators. For example, on April 10, 2019, the **Pennsylvania Department of Health** demanded by letter (attachment #4 hereto) that Steve White respond to a Harvest-Arizona press release that blustered about the company's ownership of

⁴ See Attachment #3 hereto ("Harvest Press Release, June 13, 2019").

⁵ *Ibid*, See Footnote 1 to Harvest Press Release. .

cannabis permits within the state (copy attached):

"The [press release] further represents that, in Pennsylvania, 'Harvest currently has seven state licenses allowing up to 21 retail stores throughout the state.' This is a blatant misrepresentation of Harvest Health and Recreation's status in Pennsylvania. Harvest Health & Recreation, Inc. did not apply for, or receive, *any* permits in Pennsylvania." [*Emphasis in original*] ⁶

While Atrium has previously provided the City with information demonstrating that Harvest's Taxpayer Protection Act Disclosure Form was false and misleading, the content and timing of this most recent revelation provides yet another reason why the City staff must have found that Harvest's Application to be incomplete. Instead, the City staff ignored the rules.

3. Harvest did not Submit a Proper State-Licensed Surveyor Certification.

Most of the final six applicants had begun to prepare their CUP Applications well before the City's cannabis permitting workshop was held on June 12, 2019. It was clear that location maps from each applicant would be required which identified nearby sensitive uses near a proposed cannabis retail location. Most applicants had already commissioned contractors to perform this work. However, during the June 12th workshop, the City added an unexpected new requirement. Nearly every applicant was caught off-guard when informed about this new rule requiring that a **State-licensed surveyor** must identify the presence of any sensitive land uses described in Sections 17.50.066(D)(3)(b) and Section 17.50.066(D)(5) of the Zoning Code and also certify their distance from the proposed cannabis retail location.

Therefore, any sensitive use studies that had been prepared in advance by someone other than a licensed surveyor could not be accepted by the City. ⁷ Not surprisingly, this new requirement set off a frenetic scramble among the applicants to find licensed surveyors who could quickly do this work. Each applicant was aware that a time stamp would be given to their CUP Application the moment it was transferred to the City's shared drive that would have extraordinary consequences. The matter of a few minutes could well make the difference between being awarded or denied a cannabis retail permit in Pasadena.

Candidates like Atrium made the hard choice to expend valuable time to seek out and engage licensed surveyors who could properly get the job done. On the other hand, it appears that Harvest succumbed to the overwhelming temptation to take a shortcut. The instructions in the Submittal Checklist required each applicant to have a licensed surveyor identify the applicable distance requirements in accordance with Section 17.50.066(D). The City further explained the duties of the surveyor in a sample of the

⁶ See Attachment #4, Letter from the Pennsylvania Department of Health to Steve White, dated April 10, 2019.

⁷ Other applications lacking a sensitive use study that was properly prepared and certified by a licensed surveyor were summarily rejected by the City on June 12, 2019 and June 27, 2019, respectively.

certification statement that must accompany all CUP Applications:

"[Name of Surveyor] has conducted an investigation and review to identify all sensitive receptors that surround the property located at [Property Address]. This review has been conducted to the best of our ability and is reflected in the 600' and 1000' Land Use Map provided, using the following method: . . ." *[Emphasis added]*.

On its face, the certification provided to the City by Harvest's surveyor, Mr. Michael J. Knapton, immediately reveals a glaring omission — instead of doing his own work, Mr. Knapton apparently **relied on a prior study** that was conducted by a Harvest contractor — Mr. Gary Perkins — who does not claim to be a surveyor licensed by the State of California. In fact, Mr. Knapton did not provide any work product other than a one-page certification letter bearing his official license seal. He **did not personally prepare the radius map** of sensitive land uses **nor did he personally conduct a field inspection** to confirm whether the prior Sensitive Use Study that was prepared by Mr. Perkins was accurate and reliable.

Moreover, a closer look at Mr. Knapton's Certification Statement betrays a subtle but significant departure from the certification language from the City. In lieu of the sample wording that the surveyor had "conducted an investigation and review to identify all sensitive receptors that surround the property," Mr. Knapton's Certification Statement instead says something much different:

"The surveyor listed below has performed measurements of the subject site in relation to sensitive uses in accordance with land use information provided in the enclosed Sensitive Use Study prepared by [Gary Perkins], dated June 11, 2019. With respect to business licenses and sensitive land use determination, we defer to said study . ." *[Emphasis added]*.

In contrast, **Atrium's CUP Application** contains a vastly different Certification Statement provided by Mr. Ethan Remington, a California-licensed surveyor in compliance with the City language. In his Certification Statement, Mr. Remington stated that he had "conducted a research investigation and review to identify all of the sensitive uses that surround the property located at 70 W. Union St., Pasadena, CA." Mr. Remington went on to add that:

"This review has been conducted to the best of our ability and is reflected in the 600' & 1000' Land Use Map provided, utilizing the following methods:

- A physical inspection of each parcel of land within a 600-foot radius of the site to identify the specific land uses
- Internet research using various databases, such as Google Earth"

Therefore, Mr. Remington performed for Atrium everything required by the City for a state-

licensed surveyor:

(a) he identified the presence or absence of the sensitive land uses enumerated in Code Section 17.50.066(D)—both by computer and by getting out and personally walking the neighborhoods adjacent to Atrium's proposed location, and

(b) he personally confirmed that no sensitive uses lie within the measured radii of 600 feet and 1,000 feet, respectively.

Page 6 of the City's Submittal Checklist set forth the final responsibility of the state-licensed surveyor — to provide a written Certification Statement. Atrium's surveyor, Mr. Remington, furnished a certification based upon his own findings and it reflects his best judgement in the diligent application of his professional skills. This approach was much different than the deficient certification delivered by the Harvest surveyor, who conceded that he did not personally investigate the presence of any sensitive uses, instead choosing to defer to the work of an unlicensed party in making the sensitive land use determinations that are required in the CUP Application.

According to the City's instructions, the surveyor's Certification Statement must contain an "enumeration of the sensitive receptors that were included in the mapping." However, the Harvest surveyor failed to include any such list in his Certification Statement. Instead, he simply attached his brief statement to the work product that had previously been prepared by the unlicensed map maker, and not by him.

Although Harvest's surveyor did measure and certify the distance of the various radius rings, there is no evidence that he personally conducted a physical inspection of the area surrounding Harvest's proposed store location, consulted online databases that might identify any sensitive uses nearby, or employed any other methods to validate the sensitive use list that was previously prepared by Mr. Perkins. It is telling that the City's certification template is labeled: "Mapping Certification Statement."

Using a similar title, Atrium's surveyor provided a certification under the heading "Radius Map Certification Statement." In contrast, Harvest's surveyor offered a document that bore a title that confirms Mr. Knapton's declaration was intended to be much more limited in scope: "Distance Certification Letter."

Remarkably, none of this is obscured or concealed in the Harvest application. Had the City staff bothered to read only the first two sentences of Harvest's Certification Letter, it was abundantly clear that **Harvest's surveyor had not met the requirements** for the CUP Application to be deemed complete. Perhaps if Harvest had given its surveyor sufficient time to conduct a proper field investigation and independently validate nearby sensitive uses, there would have been no questions surrounding the sufficiency of its Certification Letter. But again, had it done so, Harvest may not have been able to file its application on the date and time that the City now relies upon in awarding Harvest the superior filing position in City

Council District No. 3. Harvest's facially defective application cannot be deemed "complete."

4. Summary.

On behalf of Atrium, we ask you to consider all the concerns we have described in this letter and in my July 8th letter: The profuse number of errors by Harvest. Collectively, both the volume and nature of Harvest's failures is alarming. At best, it suggests that the City staff is unable to perform their most basic responsibilities during this application review process. At worst, it is hard to ignore the unmistakable pattern of repeated errors and lapses in judgment favoring one applicant. These blunders appear to be so flagrant and pervasive that one could be forgiven for asking whether these errors might not be influenced by corrupt intent.

Before Pasadena invests any further resources to justify the actions which we are calling into question, the City should first ask itself whether it is defending positions that are principled, ethical and lawful. The City should also ask whether it has succumbed to the burdens of administering this first-of-a-kind cannabis program by blindly fighting all criticism of its staff actions — without first carefully considering whether such criticism is justified.

Based on the growing number of issues we have identified in Harvest's application, we believe a fair-minded person can only reach one conclusion — that the CUP Application that was submitted by Harvest was misleading, deficient, defective, and not compliant with the City's rules and codes. It should never have been "deemed complete" by City staff. We renew our demand that the City revoke its determination that the Harvest CUP application is "complete," and require Harvest to correct all of the many deficiencies before resubmitting in accordance with the City's rules and codes.

Sincerely,



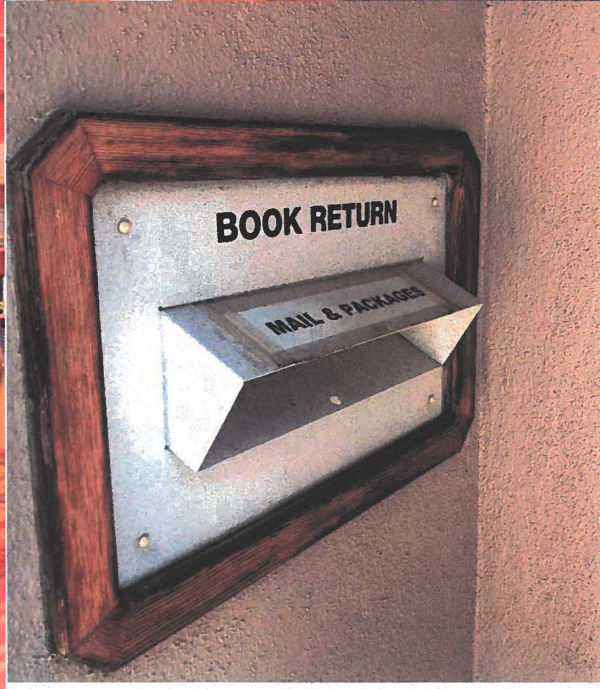
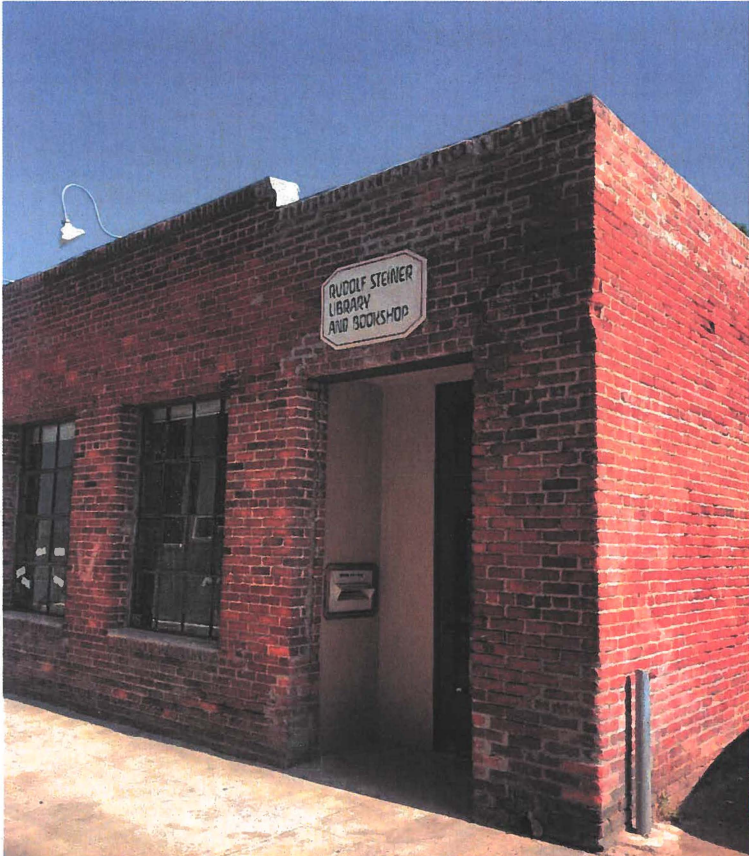
**Christopher Sutton
Counsel for The Atrium Group, LLC**

cc: Mr. Dean Bornstein, Chief Executive Officer, The Atrium Group, LLC
Ms. Julie A. Gutierrez, Assistant City Manager
Mr. Steven Mermell, City Manager

Attachments:

1. Sutton letter of July 8, 2019 (11 pages)
2. Harvest California Statement of Information ("SOI") filed July 9, 2019 (1 page)
3. Harvest Press Release of June 10, 2019 (3 pages)
4. Pennsylvania Department of Health letter to Harvest of April 10, 2019 (2 pages)

Rudolph Steiner Library Photos



Rudolph Steiner Library – Pasadena Business License



City of Pasadena

BUSINESS LICENSE SECTION
100 N Garfield Ave #N106 • P.O. Box 7115 • Pasadena California

BUSINESS LICENSE INQUIRY

We are pleased to provide you with the following information you request

Business Information

Firm	RUDOLF STEINER LIBRARY IN LOS ANGELES		
Street Address	110 MARTIN ALLEY	License Type	Business
City, State, Zip	PASADENA, CA 91105	Bus. Phone	(626) 571
Business Class	0116- GENERAL EXEMPT		
Business Description	NON PROFIT LIBRARY		
Business Start Date	04/27/1993	Business Close Date	
License Issued		License Expires	08/31
Location	Inside City	License Status	Active

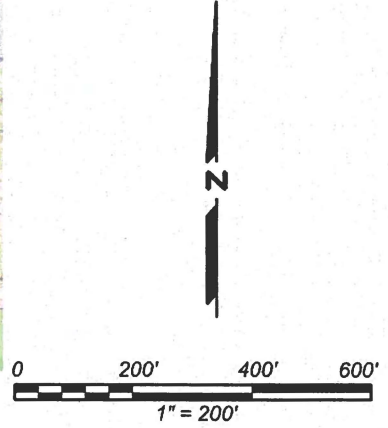
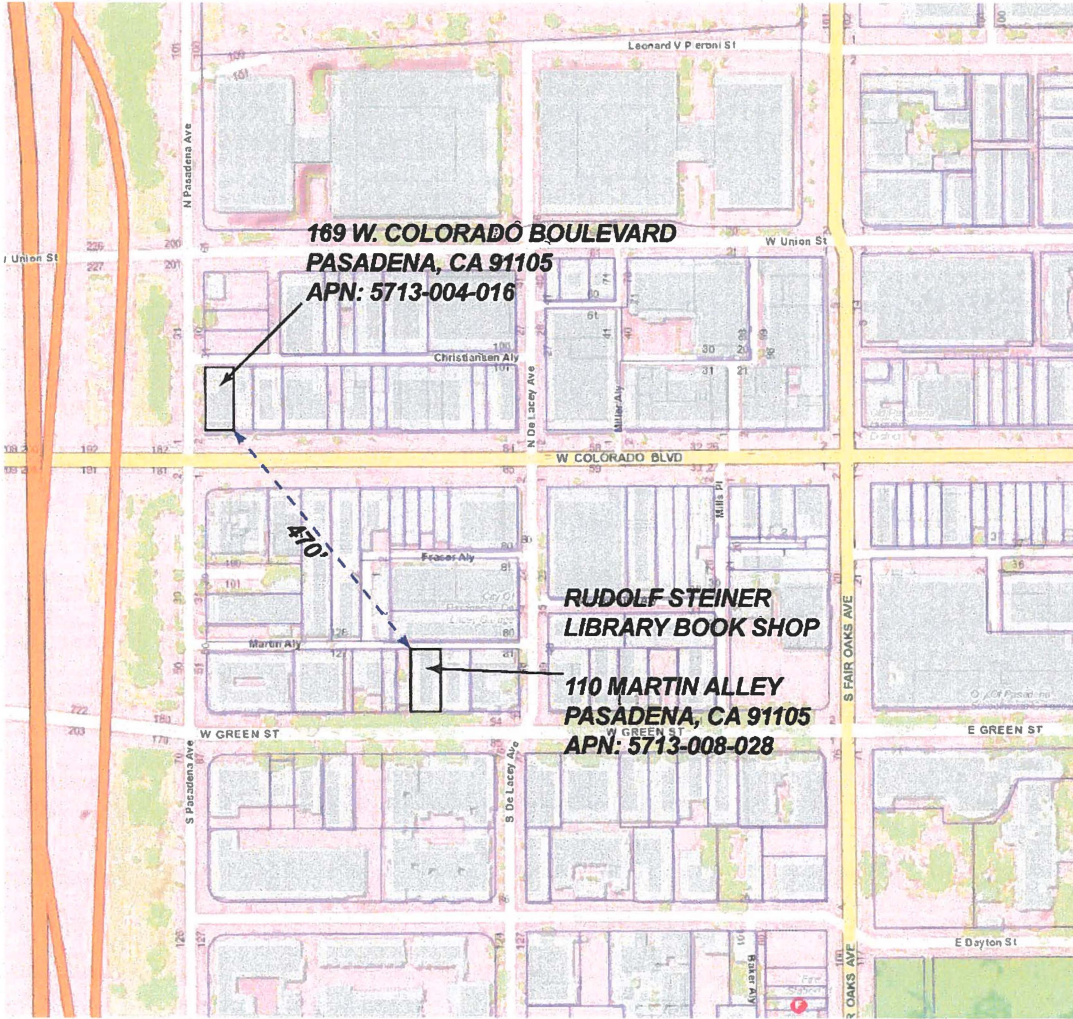
Health Permit Information

Health Class
Class Description

Owner Information

Ownership Type
Owner Name(s):
RUDOLF STEINER LIBRARY IN LA

Distance to 169 W.Colorado





OFFICE OF THE CITY MANAGER

July 2, 2019

Mr. Larry Mondragon
Representative
The Atrium Group, LLC

Via Email Only

Dear Mr. Mondragon,

This letter is in response to correspondence from you to the City on June 28 and July 1, 2019 wherein you assert that Anthroposophical Society in America, Los Angeles Branch, located at 110 Martin Alley is a "Library" within the meaning of the term as the word is used in Pasadena Municipal Code Section 17.050.066 (D).

As you are aware, the Code requires dispensaries to be located a certain distance away from sensitive uses. The Pasadena Code expanded the State's sensitive uses, which include schools, day care centers and youth facilities to include libraries, religious institutions, and residential zoned properties.

The intent of the distance separation requirements for the purposes of the code is to ensure that dispensaries are located over 600 feet from a Public Library, and not meant to include other businesses or institutions that include a library component as part of their business. A business license is not a land use permit and does not authorize or convey zoning compliance or planning approval. The fact that the subject business was issued a business license identifying it is a non-profit library does not convey any use status for the purposes of the Municipal Code.

Chapter 17.80 of the Zoning Code includes a glossary of specialized terms and land use types. Section 17.80.010 (Purpose of Chapter) specifically states "...If a word is not defined in this Chapter, ***or in other provisions of the Municipal Code***, the Zoning Administrator shall determine the correct definition." [emphasis added]. In the instant situation, the term "Library" is not defined in the Zoning Code, but ***is*** defined elsewhere

Mr. Larry Mondragon
July 2, 2019
Page 2


in the City's Municipal Code. Specifically, in Library is defined in Title 4, Section 4.109.120 of the Municipal Code Therefore, the term "Library" shall also apply to the provisions of Title 17.

Pursuant to Section 17.80.010 of the Zoning Code and Section 4.109.120 of the Municipal Code, "Library" means:

The Pasadena library system and each of the branches thereof as the same may exist from time to time, together with any additions or betterments thereto, or improvements, extensions or expansions thereof.

Accordingly, the 600-foot separation requirement shall only apply to public libraries as defined in Section 4.109.120 of the Municipal Code, and shall not apply to bookstores or private businesses or Anthroposophical Societies that operate "libraries" as a component of their overall operations.

Sincerely,



JULIE A. GUTIERREZ
Assistant City Manager

c: David M. Reyes, Director of Planning & Community Development



direct: 310.284.2186

EPhalon@coxcastle.com | [vcard](#) | [bio](#) | [website](#)

From: Phalon, Erin K.
Sent: Thursday, June 20, 2019 3:28 PM
To: 'marijuanaregulations@cityofpasadena.net'
Subject: Library Definition - Sensitive Use siting issue

Hi Guille,

Jennifer Driver suggested that I contact you regarding a question about a retail cannabis location.

I am working for a cannabis retailer who is seeking to open a retail location in Pasadena.

I was able to establish that the proposed location is not within 600 feet of any public libraries, as required by Section D. 5.e of the Pasadena Cannabis Ordinance, which can be found at this link. <https://ww5.cityofpasadena.net/planning/wp-content/uploads/sites/56/2017/08/Chapter-17.50-Land-Use-Regulations.pdf>

However, the proposed location is within 600 feet of the Rudolf Steiner Library, which is private, costs \$25 to join and is open four hours per week. It lends and sells books.

Please confirm that the Rudolph Steiner Library is not considered a library for purposes of the cannabis ordinance, and that cannabis retailers may be located within 600 yards of the Steiner Library.

Although the term "library" is not defined in the Pasadena Cannabis Ordinance, the only definition of "library" in the Pasadena municipal code (PMC) relates to public libraries, and therefore the Steiner library does not appear to be a "library" for sensitive use purposes.

The cannabis ordinance at Section 17.50.066.C states that the technical terms used in the Cannabis Ordinance are defined in Pasadena Municipal Code (PMC) Section 5.78.050. However, there is no definition of library in Section 5.78.050. The only definition of library in the PMC does not include private libraries such as the Steiner Library. PMC Section 4.109.120.B, which is in the "city of Pasadena library special tax ordinance" section of the PMC, defines library as "the Pasadena library system and each of the branches thereof as the same may exist from time to time, together with any additions or betterments thereto, or improvements, extensions or expansions thereof."

Please confirm that the City of Pasadena does not consider the Steiner Library to be a library under the Pasadena Cannabis Ordinance. Thank you, and feel free to call me if you would like to discuss this issue or if you would like additional information.

Erin K. Phalon



Cox, Castle & Nicholson LLP

2029 Century Park East | Suite 2100 | Los Angeles, CA 90067

direct: 310.284.2186

main: 310.284.2200 | fax: 310.284.2100

Nunez, Guille

From: marijuanaregulations
Sent: Tuesday, June 25, 2019 10:28 AM
To: Phalon, Erin K.; marijuanaregulations
Subject: RE: Library Definition - Sensitive Use siting issue

Good morning Mr. Phalon,

The distance separation requirement pertaining to commercial cannabis uses does not apply to Rudolph Steiner Library & Bookstore.



From: Phalon, Erin K. [mailto:EPhalon@coxcastle.com]
Sent: Monday, June 24, 2019 10:44 AM
To: marijuanaregulations <marijuanaregulations@cityofpasadena.net>
Subject: RE: Library Definition - Sensitive Use siting issue

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Good morning Guille,

Please respond to my email regarding whether the Steiner Library is considered a library for purposes of cannabis retail siting. Thanks.

Erin K. Phalon



direct: 310.284.2186

EPhalon@coxcastle.com | [vcard](#) | [bio](#) | [website](#)

From: Phalon, Erin K.
Sent: Friday, June 21, 2019 3:04 PM
To: 'marijuanaregulations@cityofpasadena.net'
Subject: RE: Library Definition - Sensitive Use siting issue

Good afternoon,

Please respond to my email below at your earliest convenience. Thank you.

Erin K. Phalon

RADIUS MAP CERTIFICATION STATEMENT
CITY OF PASADENA

EZR Surveying LLC has conducted a research investigation and review to identify all the sensitive receptors that surround the property located at 70 W UNION ST, PASADENA, CA.

This review has been conducted to the best of our ability and is reflected in the 600' & 1000' Land Use Map provided, utilizing the following methods:


- A physical inspection of each parcel of land within a 600 foot radius of the site to identify the specific land uses
- Internet research using various databases, such as Google Earth

Cannabis retailers shall be permitted in only the CO, CL, CG, CD and IG zoning districts and shall be subject to the following requirements:

- A. No retailer shall be established or located within 1,000 feet, measured from the nearest property lines of each of the affected parcels, of any other cannabis retailer or cultivation site, or within 500 feet of any testing laboratory; **NONE WERE EVIDENT**
- B. No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any existing residential zone; **NONE WERE EVIDENT**
- C. No retailer shall be established or located within a mixed-use development project containing a residential use component; **NONE WERE EVIDENT**
- D. No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any childcare center, in-home (family of day care home), youth-oriented facility, church or faith congregation, or substance abuse center; **NONE WERE EVIDENT**
- E. No retailer shall be established or located within 600 feet, measured from the nearest property lines of each of the affected parcels, of any park, library, or K-12 school; **NONE WERE EVIDENT**
- F. Retailers shall be required to comply with all zoning, land use and development regulations applicable to the underlying zoning district in which they are permitted to establish and operate as set forth in the Pasadena Municipal Code. **NONE WERE EVIDENT**

We hereby certify that the above information and Land Use Map being provided for this investigation is correct and true to the best of our knowledge and ability

6/13/2019
Date


Ethan Z. Remington, P.L.S.



Kimley»Horn

June 12, 2019

Attn: City of Pasadena, Licensing

City of Pasadena
100 North Garfield Avenue
Pasadena, CA 91101

■
Suite 2050
660 South Figueroa
Los Angeles, California
90017

Re: Distance Certification Letter for proposed cannabis site located at 169 W. Colorado Blvd., Pasadena, CA 91105. APN 5713-004-016

The surveyor listed below has performed measurements of the subject site in relation to sensitive uses in accordance with land use information provided in the enclosed Sensitive Use Study prepared by Radius Maps, JN 19184, dated June 11, 2019. With respect to business licenses and sensitive land use determination, we defer to said study.

Utilizing scaled, high-resolution ortho-imagery, we have measured the radius rings (500', 600' & 1,000') from all corners of the subject parcel. We have reviewed the location of structures and the land use areas identified and concur with the results of the Sensitive Use Study.

We hereby certify that the distances as represented in the Sensitive Use Study are accurate both in radius and identification. We further certify that the distances to the nearest cannabis facilities, from addresses stated within the Sensitive Use Study, are accurate.



Michael J. Knapton, PLS No. 8012
Registered California Professional Land Surveyor



Attachments: Sensitive Use Study



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

July 1, 2019

Tim Dodd
10000 Culver Boulevard
Culver City, CA 90232

(Sent via email only: tim@sweetflower.com)

Re: Conditional Use Permit: Cannabis Retailer for SweetFlower Pasadena, LLC
827 East Colorado Boulevard
Council District 3

Dear Mr. Dodd:

On June 27, 2019 at 2:52 p.m., your *Conditional Use Permit: Cannabis Retailer* application to allow the retail sales of Cannabis at the above referenced address was received for processing. Based upon the application and plans received, the application is deemed **incomplete**. The following is a list of required information not included in your application:

1. LOCATION MAP – **Identification of the applicable distance requirements** as outlined in Section 17.50.066 D (5) “Location Requirements” of the Pasadena Municipal Code **prepared by a licensed surveyor** as indicated in the Cannabis Retailer application.

As stated in the Rules and Regulations for *Conditional Use Permit: Cannabis Retailer* applications:

I. Conditional Use Permit Application Acceptance.

- A. Only the first COMPLETE application submitted within a council district will be processed.
 - i. Subsequent additional complete applications received within the same council district will be held in the order received; an application is not considered received until it is complete.

VII. For purposes of establishing compliance with Section 17.050.066 D, the City shall consider the locations identified in all complete and code compliant applications in the order received.

If you wish to pursue a *Conditional Use Permit: Cannabis Retailer* you are required to provide the incomplete information and re-submit the items via the same on-line share folder used for your initial submittal. Further evaluation of this application will not occur at this time.

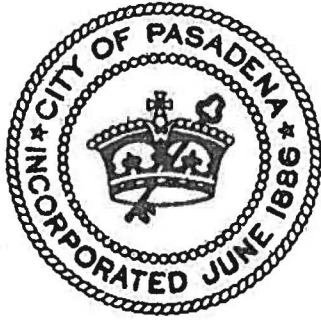
Your standing on the City's list of complete applications will be determined by the date/time stamp of any new submittal.

If you have any questions, please contact Guille Nunez at (626) 744-7634 or gnunez@cityofpasadena.net.

Sincerely,



Guille Nunez,
Management Analyst IV



Agenda Report

October 7, 2019

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

SUBJECT: APPEAL OF BOARD OF ZONING APPEAL'S DECISION ON DIRECTOR DECISION THAT THE "CONDITIONAL USE PERMIT: CANNABIS RETAIL" APPLICATION FOR 827 EAST COLORADO BOULEVARD SUBMITTED BY SWEETFLOWER PASADENA, LLC IS INCOMPLETE (PLN2019-00386)

RECOMMENDATION:

It is recommended that the City Council:

1. Adopt a determination that the proposed action is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the State CEQA Guidelines. This exemption applies where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and,
2. Uphold the Board of Zoning Appeal's decision that SweetFlower Pasadena, LLC's "Conditional Use Permit: Cannabis Retailer" application is incomplete because it did not provide required information of which it had notice, specifically a location map prepared by a licensed surveyor.

EXECUTIVE SUMMARY:

On June 5, 2018, Pasadena voters approved Ballot Measures CC and DD, which allow a limited number of cannabis (marijuana) businesses to operate within the City and levy a business license tax on commercial cannabis activity, respectively. The regulations allow for three types of commercial cannabis uses; retail, cultivation and testing laboratories. The regulations permit up to six commercial cannabis retailers, four cultivators and four testing laboratories.

Immediately after the regulations were approved by Voters, staff began to work on the implementation framework for the new Commercial Cannabis Program. With the purpose of implementing a transparent and fair process which is insulated from

economic and political influence, the City established a designated selection committee comprised of expert staff at a neutral, third-party consultant group with particular expertise in the field, Hinderliter, de Llamas & Associates Companies (HdL) to review, score and rank all initial applications.

The 31-day application filing period opened on January 1, 2019 and closed on January 31, 2020. At the completion of the filing period, a total of 128 applications were received, of which 122 were for the retailer category, three for the cultivation category, and three for testing laboratories. Review and scoring of the applications was completed by HdL in May 2019 at which time the six top-scoring applicants for the retailer category were identified and invited to interviews by members of City staff to confirm the contents of their applications, and to emphasize the importance to the City of the community benefits plan, site security and other issues. These interviews were monitored by the City's Internal Audit group; applicant scores and rankings were not affected by the City's interviews.

Following completion of the interviews, those same six top-scoring applicants for the retailer category were publicly announced on June 5, 2019 and the appellant (Sweetflower Pasadena, LLC) was among the selected applicants. A workshop was held with representatives for those six top applicants on June 12, 2019 where the *Conditional Use Permit: Cannabis Retailer (CUP)* application (Attachment A) was distributed and the processing of the CUP applications was explained. Staff spent approximately two-hours with the applicants' representatives and reviewed each and every section of the application and answered questions. The City's Internal Audit Group was also present at this workshop.

As it was explained to the applicant representatives, this *Conditional Use Permit: Cannabis Retailer* application is a new application for a new land use. This application is specifically for cannabis retailers and includes several requirements for supplemental documentation that are specific to retail cannabis use. Among other things, this new application requires demonstration of site control for a property that meets all of the City's distance separation requirements and compliance with other applicable regulations set forth in Section 17.50.066 D of the Zoning Code. Neither the application itself nor any of its requirements was shared with any applicant or applicant representative prior to the June 12th application workshop.

Also at the application workshop, applicant representatives were advised that each CUP application would be reviewed for completeness in the order received. Due to location requirements specified in the commercial cannabis zoning regulations limiting one cannabis retailer permit per Council District, staff specified that only the first complete application with a compliant location in each Council District would be processed. City staff also informed applicant representatives that responses to general questions regarding the application process would be provided via email to those in attendance at the workshop. Accordingly, in the days following the workshop, staff provided several

emails with questions asked by individuals that had attended the workshop and the staff response to the question.

On June 12, 2019, the same day that the CUP application was distributed to the six selected top applicants, SweetFlower Pasadena LLC was the first to submit its application. Two additional applications were received that same evening, and all three applications, including the application submitted by the appellant, were for proposed locations in Council District 3.

	Applicant	Date of Submission	Time Submitted	Proposed Location	Council District
1.	SweetFlower Pasadena, LLC	June 12, 2019	5:34 p.m.	827 E Colorado Blvd	3
2.	Harvest of Pasadena, LLC	June 12, 2019	10:20 p.m.	169 W Colorado Blvd	3
3.	The Atrium Group, LLC	June 12, 2019	10:56 p.m.	0 W Union	3

On June 13th, the City issued an email (Attachment B) advising the representatives of all top six applicants that a question had been asked by an applicant representative regarding the CUP application requirement for a land surveyor. The City responded: "As indicated on the Conditional Use Permit submittal checklist (page 1, Location Map), the radius map must be prepared by a licensed surveyor..."

The requirement for the location map to be prepared by a licensed surveyor is imperative to the determination as to whether an application can be processed because only an appropriately licensed surveyor can LEGALLY verify with that the proposed location complies with the required distance separations from sensitive uses, as outlined in Section 17.50.066 D of the Zoning Code. Following the City's June 13, 2019 email, applicant 3, The Atrium Group, resubmitted its CUP application to include a location map prepared by a licensed surveyor.

Also subsequent to the City's June 13th email, SweetFlower submitted a letter on June 19, 2019 (Attachment C) asking that the City apply a "complete, in good faith standard" in reviewing their CUP application. The appellant included a statement explaining that their request is in response to "clarifying emails provided by the City to applicants, including a sample location map, which contained information that further elaborated on the instructions received earlier during the Wednesday meeting."

On June 27, 2019, upon completion of the review of the submitted CUP applications, the City issued a letter to the appellant (Attachment D) indicating that its CUP application was not complete and would not be processed because the submitted location map was not prepared by a licensed surveyor (Attachment E). Also on June 27, 2019, the City issued a letter to applicant 2, Harvest of Pasadena, LLC, accepting their application as complete. As such, no other CUP applications will be processed for proposed locations in Council District 3. Applicant 3, The Atrium Group LLC, also submitted a complete application, but their application is on hold and will not be processed by virtue of this. Unless their application is withdrawn, The Atrium Group, LLC is currently second in line for Council District 3. If Harvest of Pasadena, LLC fails to obtain a CUP and/or any other required permit or approval, The Atrium Group would move to a first position and therefore have its CUP application processed.

Since the City's June 27, 2019 incomplete letter, the appellant has submitted three additional applications in attempts to file a complete application for the same location at 827 East Colorado Boulevard. The appellant's third and fourth submittal were accepted as complete, but there are other complete applications in Council District 3 that were submitted prior to the appellant's third application. And, as specified in the application workshop, only the first complete and code compliant application will be processed per Council District.

On July 3, 2019, the appellant submitted a *Request for Appeal* application (Attachment F) of the June 27, 2019 decision of the Director of Planning that SweetFlower's CUP application was incomplete. On August 7, 2019, the Board of Zoning Appeals conducted a public hearing on this item and voted (4-1) to adopt the environmental determination and uphold the Director's decision (Attachment G).

On August 19, 2019, the appellant submitted an appeal application to the City Council. Staff recommends that the City Council uphold the Board of Zoning Appeals' August 7, 2019 decision upholding the Director's decision that the June 12, 2019 *Conditional Use Permit: Cannabis Retailer* application submitted by SweetFlower was incomplete.

If the Board of Zoning Appeal's determination is overturned, this will invalidate the Director's determination to process two other CUP applications which were accepted as complete. The affected applications would be the ones submitted by Harvest of Pasadena, LLC and Integral Associates Dena, LLC. Those two applications would not be processed further as those two applications would lose their status as in conformance with distance separation requirements and/or exceeding the maximum number of retail establishments per district limitation.

BACKGROUND:

Requirement for Preparation of Location Map by a Licensed Surveyor

It is unlawful for anyone to do land surveying unless he or she is licensed by the State

of California to do so. The regulations pertaining to commercial cannabis include strict location requirements requiring precise measurements which can only be verified with certainty by a licensed surveyor. Pursuant to California Business and Professions Code Sections 8700-8705 (The Land Surveyors Act), the requirement for a Licensed Land Surveyor is a matter of public welfare. Section 8708 of the Land Surveyor's Act states in part, that "In order to safeguard property and public welfare, no person shall practice land surveying unless appropriately licensed..." Section 8726 defines what land surveying is, and importantly, indicates that Land Surveying includes locating property lines and boundaries of any parcel of land. Section 8726 (c) defines land surveying as work performed by an individual that: "Locates, relocates, establishes, or retraces any property line or boundary of any parcel of land..." State law further specifies that anyone practicing Land Surveying MUST be licensed. Section 8725 of the Land Surveyors Act states, "Any person practicing, or offering to practice, land surveying in this state shall submit evidence that he or she is qualified to practice and shall be licensed under this chapter." [Emphasis added]

The City's Cannabis regulations allow for a maximum of six dispensary permits and further restricts the number to one per Council District. The regulations also require, in part, that the property lines of dispensaries be located 600 feet away from various specific sensitive receptors including residentially zoned properties, properties with faith congregations, schools, libraries, etc., and no closer than 1,000 feet from another dispensary (location requirements are established in PMC 17.50.066 D 5). Based on staff's initial evaluation of these requirements, a Draft Map was prepared and shared with the public in December 2018 with various caveats including a statement that the Map was *draft* and any proposed location would need to demonstrate compliance with established rules (Attachment H). Although the ordinance allows the City to issue up to six cannabis CUPs, the Draft Map identified fewer than six potentially compliant locations. It is possible that more compliant locations exist, but this is not probable.

In order to demonstrate compliance with the established rules, the CUP application requires the submittal of a location map which identifies the required distance separation radii of 600' and 1,000' from the boundaries of the proposed location and the identification of zones and uses within the properties located within the 600 foot radius. The location map must be prepared by a licensed surveyor. There are *bona fide* business reasons for this requirement. First, it is a matter of state law. The work involved in identifying parcel boundaries must be done by a licensed land surveyor. Secondly, GIS maps are not survey-level mapping data to be reliably used to determine precise distance separation measurements between property lines or zoning boundaries. Therefore, the City's Draft Map could not be reliably used for the purpose of verifying the qualification of a site for cannabis use and was never represented as such. Precise measurements are required to ensure that the locations proposed meet the requirements as outlined in Section 17.50.066 D 5 of the Zoning Code. The most precise work is reliably prepared only by a licensed surveyor and state law mandates that anyone practicing land surveying MUST be licensed.

Six Applicants Vying for Fewer Than Six Spots

Staff has recognized that it is unlikely that existing rules will allow all six top applicants to find a code-compliant location and obtain a cannabis permit. Applicants are also aware that there are a limited number of locations. Since the City's June 27, 2019 determination that the appellant's application was incomplete, representatives for the appellant – and representatives for another applicant whose CUP application is also not being processed – have continuously made claims and criticisms about the City's handling of the CUP application process, about staff interactions with other applicant representatives, about interpretation of code requirements or definitions of terms, and about the applicants whose CUP applications are currently being processed. Hundreds of hours have been spent by staff and outside counsel in reviewing records and responding to cannabis-related requests submitted pursuant to the California Public Records Act (CPRA) by these appellant representatives. Given the highly lucrative nature of this evolving industry and the limited site availability, it is expected that every step of the City's cannabis CUP application process will continue to be highly scrutinized.

Board of Zoning Appeal's Public Hearing

On July 3, 2019, Artin N. Shaverdian, attorney for appellant, submitted an appeal application to the Board of Zoning Appeals for an appeal of the Director's decision that SweetFlower's CUP application was incomplete. On August 7, 2019, the Board of Zoning Appeals conducted a public hearing on this item. A response to the appellant's claims was provided to the Board of Zoning appeals as a component of the August 7, 2019 Board of Zoning Appeals staff report (Attachment I). Staff presented the project and recommended that the Board of Zoning Appeals adopt the environmental determination and uphold the Director's decision. At the hearing, the appellant spoke in favor of overturning the Director's decision.

The meeting was attended by representatives for several of the other top-scoring applicants. During public testimony, some of the representatives for the other top-scoring applicants spoke in support of the appellant's request, and others spoke in support of upholding the Director's decision. However, each applicant that spoke uniformly noted that the requirement for a map prepared by a licensed surveyor was clearly indicated to the group as of June 12, 2019 meeting. At the conclusion of the meeting, and after considering public testimony, the Board of Zoning Appeals voted (4-1) to adopt the environmental determination and uphold the Director's decision.

APPEAL OF BOARD OF ZONING APPEALS DECISION:

On August 19, 2019, the appellant submitted an application to the City Clerk's Office for an appeal of the Board of Zoning Appeals' August 7, 2019 decision. The appellant has cited the following reasons for the appeal of the Board of Zoning Appeals' decision:

1. The appellant's CUP application was compliant with requirements of the Pasadena Municipal Code (P.M.C.); and,
2. The Director has no authority to promulgate cannabis regulations; and,
3. The standards for determination of completeness were changed a number of times; and,
4. No consistency or fairness in determining the completeness of CUP applications.

Responses to the Appeal:

1. *The appellant's CUP application was compliant with requirements of the Pasadena Municipal Code (P.M.C.)*

CLAIM: The SweetFlower cannabis retailer conditional use permit application was compliant in all respects with the requirements of the Pasadena Municipal Code and regulations lawfully promulgated thereunder.

RESPONSE: The appellant reasons their CUP application was 'complete' because it complies with the requirements identified in the Pasadena Municipal Code (P.M.C.). However, the application submittal requirements are not identified within the P.M.C. and the matter at hand is not whether the appellant's application is compliant with the Municipal Code, but whether the appellant submitted all of the required information and documentation required in the *Conditional Use Permit: Cannabis Retailer* application. And, as stated in the July 12, 2019 Director's letter to the appellant regarding the appeal application submission (Attachment J) and in the August 7, 2019 staff report to the Board of Zoning Appeals, there is no requirement in State Law or the Pasadena Municipal Code stating that the contents of any permit application be outlined in the Municipal Code. Thus, the submittal requirements for any of the City's land use permit applications cannot be found within the P.M.C. Each city may require different submittals in land use applications, and those requirements can be set forth in each individual application.

The appellant's legal counsel has also made statements questioning the Director's authority to create this CUP application and to establish specific additional submittal materials which are not identified in the ordinance. The Director's authority to both create this application and to identify additional submittal requirements are specified in Section 17.60.040 D (*Application Preparation and Filing*) of the Pasadena Municipal Code. This section states:

*The Director shall establish in writing the submittal requirements for permit applications required by this Zoning Code. All applications shall include the following submittal materials, **as well as any additional materials identified by the Director [emphasis added]**.*

The Zoning Code clearly articulates that the Director is not only authorized to create

application materials, but is *mandated* to do so. The Code dictates that, "The Director ***shall*** establish in writing the submittal requirements for permit applications required by the Zoning Code."

This use permit for cannabis retailers is required pursuant to Section 17.50.066 D2 of the Zoning Code and, as such, the Director is authorized to create this *Conditional Use Permit: Cannabis Retailer* application. The cannabis regulations require that a proposed dispensary location be located on a parcel that is 600 feet from sensitive uses and 1,000 feet from another dispensary. Since only licensed surveyors are legally certified to locate parcel boundaries, the subject CUP application has a requirement that the map identifying the subject parcel and its distance to sensitive uses be prepared by a licensed surveyor. The application under appeal was submitted without a licensed survey map and was deemed incomplete.

2. The Director has no authority to promulgate cannabis regulations

CLAIM: The Department of Planning and Community Development Director ("Director of Planning") has no authority to promulgate cannabis retailer conditional use permit regulations. Such authority is vested solely in the City Manager. Nevertheless, the Director of Planning has promulgated such regulations which have been applied in a manner detrimental to SweetFlower.

RESPONSE: The narrow issue before the City Council this evening is whether or not the SweetFlower application was complete. PMC 17.60.040 (d), discussed above, provides authority and requires the Director to establish written submittal requirements needed to process each application. The application requirements, including the licensed survey requirements were established by the Director as authorized by the Municipal Code.

3. The standards for determination of completeness were changed a number of times

CLAIM: The Department of Planning and Community Development violated the due process rights of SweetFlower by changing the standards for determining completeness of cannabis retailer conditional use permit applications a number of times following the opening of the application process and has not published clear, definitive requirements for such determinations.

RESPONSE: The standard for determining completeness of any zoning application is stipulated in Section 17.60.040 F which states:

Filing date. The filing date of an application shall be the date on which the Department receives the last submission, map, plan, or other material required as a part of that application by Subsection A., in compliance with

Section 17.60.060 (Initial Application Review) and deemed complete by the Director.

Pursuant to the aforementioned code, all vital materials required by the application must be submitted in order for an application to be considered 'complete'. For this *Conditional Use Permit: Cannabis Retailer* application, a 'complete application' entails submission of all documentation and information required in pages 1 through 3 of the application. Included on page 1 is the requirement for a location map prepared by a licensed surveyor, and such requirement was repeatedly communicated to all top applicants on various occasions, both in writing and in person. It was indicated verbally at the application workshop of June 12, 2019, in writing via the CUP application, and again in writing via email correspondence from the City to all top applicants, including the appellant, on June 13, 2019.

The City has remained fair and consistent in determining whether any CUP application is or is not complete. Specifically in regards to the determination as to whether the required location map was prepared by a licensed surveyor, the City has uniformly required that the location maps are signed and stamped by a licensed surveyor and also include a general statement affirming, at minimum, that the 600' and 1000' radii have been prepared by the undersigned licensed surveyor. Variations in the surveyor's statements have been accepted to the extent that the methodology used by the surveyor to map the location of the radii is included within the location map documentation and consistent with best practices. Pursuant to the Business and Professions Code Section 8764.5, the required statement may also indicate that the map was *'prepared under the direction of'* the undersigning surveyor. And, as specified at the June 12, 2019 application workshop, the accuracy of the map, including the radii, the methodology used to create the radii and the land use/zoning information, is subject to review and verification by the City during the CUP review process for those applications that have been determined to be 'complete'. If a map or its contents are found to be inaccurate or incomplete upon completion of a peer review by the City's land surveyor, the applicant will need to submit a new CUP application. The new application may not be processed if other complete and code compliant applications have been previously submitted by other applicants for proposed locations within the same Council District.

Also, at the August 7, 2019 Board of Zoning Appeals hearing, the appellant's legal counsel made several references to an email from City staff which he claimed was in support of the applicability of a *'complete in good faith standard'* in the City's determination of application completeness. The appellant's counsel verbally referenced one sentence from an email from staff dated June 12, 2019 in which staff communicated to the top applicants' representatives that *"we [the City] expect all applicants to submit their best application..."* The appellant did not provide a copy of this email to the Board of Zoning Appeals nor the context of the email, but asserted that this email supports their claim that the 'complete in good faith standard' would be applied

and that applicants would be given the opportunity to rectify application deficiencies before a determination is made by the City regarding their CUP submission. However, the email was taken out of context because the sentences specifically preceding the quoted statement specify that incomplete applications will not be processed. The June 12, 2019 email from staff (Attachment K) states:

"...Do not make any changes to the file after it is uploaded as this will void your application and you will be required to resubmit. Submission of an incomplete application will not 'hold your place' in line. If your application is incomplete, an appointment will not be issued and your application will be taken out of the queue. As indicated in today's meeting, we expect all applicants to submit their

best application at the time that the appointment is requested with the full body of information you want included for the CUP".

Staff's statements in the June 12, 2019 email were in response to various questions asked by applicant representatives at the application workshop held earlier that day. Numerous questions were asked for clarification on the City's standards in reviewing the applications and determining application completeness. Some of the questions asked included varying scenarios where a minimally detailed application is submitted and whether the City will accept such applications or allow the applicant to revise their application once it is accepted as 'complete'. To discourage these incomplete filings and significant revisions, the City clearly explained that applications that do not contain the required submittal materials will not be considered complete and that revisions will be processed based upon the date and time of the last document submitted.

4. No consistency or fairness in determining the completeness of CUP applications

CLAIM: The Department of Planning and Community Development violated the due process rights of SweetFlower by failing consistently to fairly apply the requirements of the Pasadena Municipal Code (and ultra vires regulations) for determinations of completeness of cannabis retailer conditional use permits.

RESPONSE: The City has remained fair and consistent in determining whether any CUP application is or is not complete. Similar to any other land use permit, verification of compliance with City codes is a distinct process which is secondary from the determination as to whether an application submission is complete.

And, as indicated in the response to the appellant's claim #3, in determining whether the required location map was prepared by a licensed surveyor, the City has uniformly required that the location maps are signed and stamped by a licensed surveyor and also include a general statement affirming, at minimum, that the 600' and 1000' radii have been prepared by the undersigned licensed surveyor. Variations in the surveyor's statements have been accepted to the extent that the methodology used by the surveyor to map the location of the radii is included within the location map

documentation. Pursuant to the Business and Professions Code Section 8764.5, the required statement may also indicate that the map was '*prepared under the direction of*' the undersigning land surveyor. However, "prepared under the direction of" is distinct from "reviewed by," as the latter is wholly a passive act that does not comply with the Land Surveyors Act, Section 8726 (c)'s definition that land surveying work is performed by an individual that: "Locates, relocates, establishes, or retraces any property line or boundary of any parcel of land..." And, as specified at the June 12, 2019 application workshop, the accuracy of the map, including the radii, the methodology used to create

the radii and the land use/zoning information, is subject to review and verification by the City during the CUP review process for those applications that have been determined to be 'complete'.

ENVIRONMENTAL ANALYSIS:

This action has been determined to be exempt from CEQA pursuant to State CEQA Guideline Section 15061(b)(3); the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. As the action under consideration concerns a determination based on the intent of the Zoning Code, no specific physical construction is contemplated.

CONCLUSION:

The appellant was well informed in advance of submission of its application as to the City's requirements for a complete application. All other CUP applications received for Commercial Cannabis Retailers have complied with the requirement to include a location map prepared by a licensed surveyor. Further, the applications have been reviewed fairly and consistently in the manner consistent with how other land use applications are processed wherein the determination of application completeness does not involve a substantive review and evaluation of the materials submitted. And, there is no requirement in state law or in the Pasadena Municipal Code that the contents of a complete application be set forth in the P.M.C. Pursuant to Section 17.60.040 D (*Application Contents and Fees*) the City can determine which additional application materials are required based on the specific land use application being prepared.

FISCAL IMPACT:

There is no fiscal impact as a result of this action and will not have any indirect or support cost requirements.

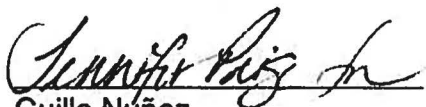
Respectfully submitted,



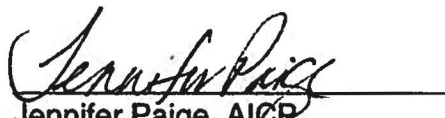
DAVID M. REYES
Director of Planning & Community
Development

Prepared by:

Reviewed by:



Guille Nuñez
Management Analyst IV



Jennifer Paige, AICP
Deputy Director

Approved by:



STEVE MERMELL
City Manager

Attachments: (11)

- Attachment A – Conditional Use Permit: Cannabis Retailer Application
- Attachment B – Email from City to Top Applicants dated June 13, 2019
- Attachment C – Email from SweetFlower Pasadena LLC to City dated June 19, 2019
- Attachment D – Status Letter dated June 27, 2019
- Attachment E – SweetFlower's Location Map submitted on June 12, 2019
- Attachment F – Request for Appeal Application submitted on July 3, 2019
- Attachment G – Decision Letter for Board of Zoning Appeals Hearing dated August 8
- Attachment H – Draft Cannabis Map
- Attachment I – Staff Report for August 7, 2019 Board of Zoning Appeals Hearing
- Attachment J – Letter from City dated July 12, 2019
- Attachment K – Email from City to Top Applicants dated June 12, 2019



OFFICE OF THE CITY ATTORNEY / CITY PROSECUTOR
CIVIL DIVISION

July 12, 2019
by US Mail and email

Mr. Christopher Sutton, Esq.
32123 Lindero Canyon Road
Suite 210
Westlake Village, CA 91361

Re: The Atrium Group LLC's Request for Appeal of Cannabis CUP Complete Letter
to Harvest of Pasadena, LLC

Dear Mr. Sutton:

The City is in receipt of your Request for Appeal of the complete letter issued by the City to Harvest of Pasadena, LLC ("Harvest"), as well as your letter dated Monday, July 8, 2019 in support thereof (attached).

Your request for appeal will not be processed because there is no right to appeal this matter. Pasadena Municipal Code ("PMC") Chapter 17.72 addresses the appeal of all zoning related matters. While Section 17.72.040.A(2) specifically provides a right to appeal a determination that a permit application or information submitted therewith is incomplete, that Section does not provide a right to appeal a determination that an application is complete.

In your request for appeal and your July 8 letter, you argue that Harvest's application is not code compliant, as you allege that Harvest's proposed location is within 600 feet of a library. Attached please find a letter from the City Manager's Office dated July 2, 2019, which addresses this issue pursuant to the authority provided to the City Manager or his designee as set forth in Chapter 5.78, and makes clear that "library" only applies to the Pasadena library system.

Accordingly, for the reasons stated above, your request for appeal will not be processed.

Sincerely,


Michele Beal Bagneris
City Attorney

Attachments
0000156643C031