

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this 20th day of November, 2012, by and between CITY OF MARICOPA, a municipal corporation, ("Landlord") and Tye Southwest, LLC, an Arizona limited liability company ("Tenant").

The parties, in consideration of the matters hereinafter set forth, agree as follows:

1. **Lease of Premises.** Landlord leases to Tenant and Tenant leases from Landlord 3,800 square feet of real property including a portion of the building footprint, parking lot, and septic tank which is more particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference, together with all improvements and appurtenances thereto (the "Premises") for Tenant's exclusive use.

2. **Term.** The term of this Lease shall be for a period of five years, commencing on December 1, 2012 and ending November 30, 2017, provided the Lease has not been earlier terminated as hereinafter provided.

3. **Rent.** Tenant shall pay to Landlord the annual rent ("Rent") of One Hundred Eighty Nine and 60/100 Dollars (\$189.60) payable in monthly installments of Fifteen and 80/100 Dollars (\$15.80) beginning on December 1, 2012, and on or before the 10th day of each month thereafter during the term of this Lease.

4. **Use of Premises.**

A. The Premises are to be used by Tenant solely for commercial purposes. Tenant shall not use the Premises for any other purpose without the prior written consent of Landlord.

B. Tenant agrees that all services provided by Tenant will meet all Federal requirements regarding nondiscrimination as required by Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and any regulations or rules promulgated with respect thereto.

C. Tenant shall not allow any waste or nuisance on the Premises, or use or allow the Premises to be used for unlawful purposes. Tenant agrees to comply with all applicable laws, ordinances and regulations regarding the use of the Premises.

D. Tenant shall promptly pay when due all charges for water, materials, and services which may be furnished to or be used by Tenant on the Premises, and shall keep the Premises free and clear of any liens or encumbrances of any kind whatsoever created by Tenant's acts or omissions.

5. **Early Termination.** Each party to this Lease, without prejudice to any other rights or remedies, may terminate this Lease, with or without cause, at any time upon providing the other party no less than one hundred eighty (180) days written notice of its intent to terminate. The Landlord, however, has the right to terminate this Lease upon providing Tenant no less than ten (10) days written notice of its intent to terminate if the Landlord determines that waste, nuisance or unlawful activity is occurring on the Premises. The Landlord also has the right to terminate this Lease immediately, without notice, if the Landlord determines there is a public health, safety or welfare matter at issue.

6. **Utilities and Taxes.** Landlord shall pay all ad valorem taxes assessed against the Premises. Tenant will be solely responsible for securing and paying for all other utilities servicing the Premises, including water, electric, and gas. In the event Tenant fails to promptly pay any utility service charges when billed, the Landlord may terminate this Lease upon providing Tenant with ten (10) days written notice and opportunity to cure. Tenant shall also pay any and all taxes, assessments or other public charges levied, assessed or imposed by reason of the operation of Tenant's business on the Premises, including, but not limited to, sales tax, income tax, or privilege tax accruing during the Lease Term. Tenant shall defend, indemnify and hold Landlord harmless for, from and against each and every claim associated with or arising out of Tenant's obligations in this Section.

7. **Septic Tank.** Tenant agrees to be solely responsible for the septic system which is part of the Premises including, but not limited to, maintenance, inspection, repairs and any Environmental Condition created thereby. The term "Environmental Condition" means any adverse physical condition affecting the Premises, including without limitation the presence, threatened or actual, of Hazardous Materials on, in, under, above or originating from the Premises. The term "Hazardous Materials" means all or any of the following: asbestos; polychlorinated biphenyls; radioactive materials; petroleum or any constituent thereof; "pollutants," "contaminants," or "solid wastes"; "hazardous" or "toxic" "wastes," "substances," "materials," or "chemicals"; all as may be defined or referred to in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq.*, as amended, the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*, or any other applicable federal, state or local laws, rules or regulations, or any order issued thereunder (collectively, "Laws"). Notwithstanding anything in this Lease to the contrary, Landlord reserves all statutory and common law rights regarding Environmental Conditions on the Premises, including without limitation the right to assert any defenses to liability under the Laws.

8. Repairs, Maintenance and Improvements.

A. Tenant shall keep in good order, condition and repair the Premises and every part thereof.

B. Damage to the Premises resulting from age and/or natural deterioration shall be the responsibility of the Landlord to repair. Tenant shall notify Landlord in writing of any such necessary repairs within thirty (30) days of discovery. Landlord may elect, in its sole discretion, to declare the cost of the needed repairs to be too expensive and terminate this Lease as a result thereof.

C. Tenant shall not, without first obtaining the written consent of the Landlord, make any alteration, additions or improvements in, to or about the Premises.

9. Entry and Inspection. Landlord reserves the right to enter on the Premises at reasonable times and upon reasonable notice to Tenant to inspect the Premises, conduct surveys, perform engineering work and development plans, and for any other lawful purpose, so long as such entry does not unreasonably interfere with the Tenant's business operations. Unless necessary for public health, safety or welfare purposes, the Landlord's right to entry and inspection shall not include the right to enter the building, a portion of which is located on the Premises, or the right to disturb the septic system serving such building.

10. Insurance and Indemnity.

A. Tenant shall procure and maintain in force at its expense during the term of this Lease and any extension thereof, for the joint benefit of Tenant and Landlord, a broad form comprehensive coverage policy of public liability insurance by the terms of which Landlord and Tenant are named as insured and are indemnified against liability for damage or injury to the property or person (including death) of any Tenant or invitee of Tenant or any other person entering upon or using the Premises, or any structure thereon, or any part thereof, and arising from the use and occupancy hereof. Such insurance policy or policies shall be maintained on the minimum basis of \$50,000 for damage to property and \$1,000,000 for bodily injury or death to any one accident.

B. No less than fifteen (15) days after execution of this Lease and preceding the annual renewal date for any policy, Tenant shall furnish to Landlord (i) certificates of insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect, and (ii) copies of the underlying insurance policies. Such certificates shall identify this Lease and shall provide that not

less than thirty (30) days advance notice of cancellation, termination, or material alteration of the applicable insurance policy shall be sent directly to Landlord.

C. The Landlord shall not be liable for liability or damage claims for injury to persons or property from any cause relating to Tenant's use of the Premises or for those arising out of damages or losses occurring on other areas immediately adjacent to the Premises that may be used by Tenant during the term of this Lease or any extension thereof. Tenant shall defend, indemnify and hold Landlord harmless for and against all liabilities, causes of action, claims, damages, demands, costs, penalties and expenses (including reasonable attorney's fees and expenses incurred in the defense thereof) resulting from any injury to person or property or from loss of life sustained in or about the Premises, unless such damage or injury results from the intentional misconduct or gross negligence of Landlord and Tenant agrees to hold Landlord harmless from, and indemnify Landlord against, any and all injury, loss or damage of whatever nature, to any person or property caused by, or resulting from any act, omission, or negligence of Tenant or any employee or agent of Tenant. In addition, Tenant hereby releases Landlord from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties, unless such fire or other casualty shall be brought about by the intentional misconduct or gross negligence of Landlord.

11. **Assignment.** Landlord acknowledges that Tenant currently leases the property located at 44302 W. Maricopa Casa Grande Highway, Maricopa, Arizona to A-1 Health + Wellness, PLLC, an Arizona professional limited liability company, and agrees that A-1 Health and Wellness, PLLC will be allowed to use the Premises consistent with the terms and conditions set forth herein. Tenant shall not otherwise assign or sublease the Premises, or any right or privilege connected therewith, or allow any other person except agents and employees of Tenant to occupy the Premises or any part thereof without first obtaining written consent from the Landlord. Landlord shall not unreasonably withhold consent to an assignment of this Lease to a credit worthy successor of Tenant. Consent by the Landlord shall not be consent to a subsequent assignment, sublease, or occupation by other persons. An unauthorized assignment, sublease, or license to occupy by Tenant shall be void. The interest of Tenant in this Lease is not assignable by operation of law without the written consent of the Landlord.

12. **Breach by Tenant.** The appointment of a receiver to take possession of the assets of Tenant, a general assignment for the benefit of the creditors of Tenant, action taken or allowed to be taken by Tenant for protection under any bankruptcy act, or the failure of Tenant to comply with each and every term and condition of this Lease shall constitute a breach of the Lease. Except as otherwise set forth herein, Tenant shall have ten (10) days after receipt of written notice from the Landlord of any breach to correct the conditions specified in the notice, or if the corrections cannot reasonably be made within

the ten (10) day period, Tenant shall have a reasonable time to correct the default if action is commenced and thereafter diligently pursued by Tenant within ten (10) days after receipt of the notice. In the event Tenant does not timely correct the default as set forth above, Landlord may, at its option and without demand or notice, re-enter and take possession of the Premises.

13. **Attorney Fees.** If the Landlord or Tenant file an action to enforce any covenant, promise or provision contained in this Lease, or for breach of any covenant or condition hereof, the prevailing party shall be awarded its reasonable attorneys' fees for the services of the prevailing party's attorney in the action, in an amount to be fixed by the court or agreed upon by the parties.

14. **Time of Performance.** Time is of the essence of this Lease and each and every covenant, term, condition and provision hereof.

15. **Quiet Enjoyment.** Landlord covenants that Tenant, upon paying the rent set forth in Section 3 herein and upon the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be kept and performed, shall have, hold and enjoy the Premises free from eviction or disturbance by Landlord, or by any other person or persons lawfully claiming the same, and that Landlord has good right to make this Lease for the full term granted, including renewal periods.

16. **Surrender and Holding Over.** Tenant shall surrender the Premises and remove all of Tenant's personal property from the Premises on termination of this Lease. Any holding over by Tenant without the express authorization of Landlord shall be treated as a tenancy from month-to-month, at a rental rate equal to the monthly rent last in effect, payable on the first day of each month, and Landlord shall retain all remedies under this Lease and rights under the law for removal of Tenant from the Premises.

17. **Eminent Domain or Condemnation Sale.** In the event that all or any portion of the Premises is appropriated or taken by way of eminent domain or condemnation proceedings, this Lease, as to the part appropriated, taken or sole, may at the option of Landlord, be canceled or terminated upon written notice ninety (90) days in advance of termination. Landlord shall notify Tenant at once of any pending or proposed eminent domain or condemnation sale proceedings of which it has knowledge and keep Tenant informed during negotiation of such action. It is understood and agreed that Landlord shall be entitled to all of the proceeds paid as a result of said appropriation, taking or sale and that Tenant shall have no right what so ever to all or any portion of said proceeds.

18. **No Warranties.** Tenant acknowledges that Landlord has not made any representations or warranties regarding the Premises, and Tenant accepts the Premises “as is”.

19. **Waiver.** The failure of Landlord or Tenant to insist in any one or more instances on performance of any of the terms or conditions of this Lease or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

20. **Arbitration.** In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute first by mediation and then by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Landlord and Tenant. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the Landlord and Tenant shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the Landlord and Tenant. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

21. **Governing Law; Venue.** The terms and conditions of this Lease shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Lease shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.

22. **Entire Agreement.** This Lease represents the entire agreement between Landlord and Tenant and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Lease shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of this Lease, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

23. **Illegality.** If any part, term or provision of this Lease shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

24. **Conflict.** The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Lease.

25. **Notice.** Whenever either party needs to deal with the other or give written notice to the other, said notices shall be delivered to the parties as follows:

To Landlord:

City of Maricopa
Attn: City Manager
P.O. Box 610
Maricopa, AZ 85139

To Tenant:

Tyee Southwest, LLC
Attn: Kirk Shroyer
21073 Tyee Road
Mount Vernon, WA 98274

26. **Heirs, Assigns, Successors.** This Lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first written above.

CITY OF MARICOPA

Tyee Southwest, LLC

By: _____
Mayor

By: _____
Kirk Shroyer, Manager

ATTEST:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT A

