



Retail Cannabis Business Permit Defense and Indemnity Agreement

Must be Executed by the Entity or Person to be Issued the Measure Q

Retail Storefront or Non-storefront Permit

Permittee Signatures Must be Notarized

THIS RETAIL CANNABIS BUSINESS PERMIT DEFENSE AND INDEMNITY AGREEMENT to defend and indemnify the City of Costa Mesa ("Agreement") is made and entered into this __ day of _____, 20__ ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City") and _____, a [state] [type of entity] ("Permittee"). City and Permittee are each a "Party" and collectively the "Parties" to this Agreement.

A. Permittee has applied for a Commercial Cannabis Business Permit ("Permit") to engage in retail sales (storefront and/or non-storefront) of cannabis pursuant to the provisions of Chapter VI of Title 9 of the Costa Mesa Municipal Code; and

B. The City's ordinances and regulations set forth various requirements for the issuance of retail Commercial Cannabis Business permits, including but not limited to defense and indemnity of the City and maintenance of specified insurance amounts; and

C. The Parties desire to set forth herein the various obligations and requirements related thereto.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the Parties hereby agree as follows:

1. Defense, Indemnification and Hold Harmless. Permittee shall defend, with attorneys of City's choosing, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers, agents, employees and/or volunteers from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and/or expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the Permittee or the Permittee's activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the Applicant, Permittee, City and/or the parties initiating or bringing such proceeding, and shall not be limited by the types and/or amounts of insurance required herein.

2. Insurance. Permittee shall obtain, maintain and keep in full force and effect at all times during the term of its Permit comprehensive general liability insurance and comprehensive automotive liability insurance protecting the Permittee in an amount of not less than two million dollars (\$2,000,000.00) per occurrence, combined single limit, including bodily injury and property damage and not less than two million dollars (\$2,000,000.00) aggregate for each personal injury liability, products/completed operations and each accident, issued by an insurance provider rated at least A-:VIII in A.M. Best and Company's Insurance Guide and either admitted and authorized to do business in California or is listed on the California Department of Insurance's List of Approved Surplus Line Insurers. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions: (a) Additional insureds: "The City of Costa Mesa, its City Council, boards, commissions, officers, agents, employees and/or volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Permittee; products and completed operations of the

Permittee; premises owned, occupied or used by the Permittee; automobiles owned, leased, hired, or borrowed by the Permittee"; (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."

2.5. Approval. City agrees that Permittee's entering into this Agreement shall satisfy the requirement for an agreement to defend and indemnify the City pursuant to Chapter VI of Title 9 of the Costa Mesa Municipal Code.

3. Attorneys' Fees. In the event that litigation is brought by any Party in connection with this Agreement, the prevailing Party shall be entitled to recover from the opposing Party all costs and expenses, including reasonable attorneys' fees incurred by the prevailing Party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

4. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the Parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

5. Assignment. Permittee shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Permittee's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Permittee of Permittee's obligation to perform all other obligations to be performed by Permittee hereunder for the term of this Agreement.

6. Binding Effect. This Agreement binds and benefits the Parties and their respective permitted successors and assigns.

7. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Permittee and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

8. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

9. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment.. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

10. Amendments. Only a writing executed by the Parties hereto or their respective successors and assigns may amend this Agreement.

11. Waiver. The delay or failure of either Party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of

this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

12. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any Party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both Parties agree to substitute such provision(s) through good faith negotiations.

13. Corporate Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so the Parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

PERMITTEE

Signature

Date: _____

[Name and Title]

Signature

Date: _____

[Name and Title]

[CITY'S SIGNATURES ON FOLLOWING PAGE]

CITY OF COSTA MESA

Jennifer Le
Director of Economic and Development
Services

Date: _____

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

[PERMITTEE NOTARIZATIONS FOLLOW]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____)

Permittee's Signature(s) Must be Notarized

On _____ before me, _____ (insert here the name and title of officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature: _____

Place Notary Seal Above

On _____ before me, _____ (insert here the name and title of officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(s) acted, executed the instrument.

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