

INDEMNIFICATION AGREEMENT FOR COMMERCIAL CANNABIS PERMIT AND USE PERMITS

THIS AGREEMENT is made and entered into on the ____ day of _____ (MONTH), 20____, by _____ ("Applicant") and the City of Grover Beach, a California municipal corporation ("City").

R E C I T A L S

WHEREAS, Applicant has requested that City process its application for a Commercial Cannabis Permit and/or Use Permit submitted by Applicant which, when both permits are issued by the City, will allow Applicant to operate a Commercial Cannabis Business as described in Applicant's submittal documents, identified as Development Application _____, (collectively "Permit"); and

WHEREAS, the process for issuance of the Permit requires Applicant to defend and indemnify City from liability or loss connected with the approval of the Permit; and

WHEREAS, Applicant desires to defend and indemnify City from liability or loss connected with the approval of the Permit and environmental clearances, if any, as provided in this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED between City and Applicant as follows:

1. Parties

For the purposes of this Agreement, the term City shall include the City's Planning Commission, City Council, City Manager, City Attorney and/or any City agencies, departments, commissions, agents, officers, and/or employees. For the purposes of this Agreement, the term Applicant shall include all parties applying for approval on the Permit, including but not limited to the owner(s) and/or operator(s) of the property(ies) upon which the Commercial Cannabis Business will be sited and the Applicant's successor(s)-in-interest, if any.

2. Indemnification and Defense by Applicant

Applicant shall defend (with legal counsel chosen by City), indemnify, and hold harmless the City from and against any and all claims, damages, demands, suits and/or proceedings of any kind brought by anyone challenging the validity and/or legality of the Permit and/or the process followed. Applicant shall further defend, indemnify, and hold harmless the City from and against any and all claims, damages, demands, suits, and/or proceedings of any kind brought by anyone challenging the validity and/or legality of the Applicant's Commercial Cannabis Business that is the subject of the Permit.

Applicant shall defend (with legal counsel chosen by City), indemnify, and hold harmless the City from and against any and all liability whatsoever that relates in any way to the Commercial Cannabis Business that is the subject of the Permit and/or arising out of the acts or omissions of Applicant in the operation of the Commercial Cannabis Business that is the subject of the Permit.

Applicant shall pay all costs of defense, including but not limited to, attorneys' fees and costs, City Staff time, and City Attorney time.

3. Cooperation in the Event of Initiative or Legal Challenge

a. Legal Challenge

If any legal action or special proceeding related to the Permit is commenced by anyone for any reason, the City and Applicant agree to cooperate with each other in good faith to defend the City. The Applicant shall not settle any lawsuit on grounds which include, but are not limited to, non-monetary relief, without the consent of the City.

b. Initiative

Should a non-City initiative measure or measures be enacted which could affect the Permit:

1. Applicant and City shall meet and confer in good faith to mutually determine the proper course of action; and
2. In the event City and Applicant jointly determine to challenge such initiative measure, Applicant shall provide for any challenge to such initiative measure at its sole cost and expense.
3. In the event that a court determination has the effect of preventing, delaying or modifying the development of the Permit as set forth above, City and Applicant shall meet and confer in good faith to determine if there are alternative means of achieving the mutual goals and objectives of this Agreement, in light of such court action.

4. No Duty of City

Applicant acknowledges and agrees that the Commercial Cannabis Business that is the subject of the Permit is a private development and City has no interest in, responsibility for, or duty to anyone concerning the Permit and/or the business operated by the Applicant pursuant to the Permit.

5. Release

Applicant acknowledges and waives its rights under California Civil Code Section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." _____ (Applicant's Initials)

6. Termination

The City may without cause terminate this Agreement by giving written notice as provided below. Applicant may not terminate this Agreement for any reason.

7. Notices

Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

City: City of Grover Beach
Attention: City Manager
154 South 8th Street
Grover Beach, CA 93433
805-473-4567 - Office
805-489-9657 - Fax

With a Copy to:

Robert Lomeli, City Attorney
Lozano Smith
733 Marsh Street, Suite 200
San Luis Obispo, CA 93401

Property Owner:

Applicant:

Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

8. Issuance of Building Permits

In the event the Applicant submits an application for an early building permit wherein the City issues the building permit for the purpose of construction or refurbishing a property for the purposes of operating a Commercial Cannabis Business and the building permit is issued prior to the City's issuance of the Commercial Cannabis Permit, Applicant waives any vested rights under the building permit or right to operate the facility as a Commercial Cannabis Business

until such time as the Commercial Cannabis Permit is issued. Applicant waives any vested rights otherwise obtained consistent with Common Law or California Decisional Case law.

9. Entire Agreement

This Agreement represents the complete understanding between the parties with respect to matters set forth herein.

10. Enforcement Action

In the event it becomes necessary for City to take any action against the Applicant to enforce or interpret the terms of this Agreement, City shall be entitled to its reasonable attorneys' fees and costs, including all costs of investigation, and all pre-litigation costs.

11. Severability

If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

12. Governing Law

The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of the State of California and venue shall be in the County of San Luis Obispo.

13. No Third Party Beneficiaries Intended

Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

14. Waiver

The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

The undersigned Applicant expressly warrant his/her authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

APPROVED AS TO FORM:

By: _____ Date: _____
City of Grover Beach – City Attorney

CITY AUTHORIZATION

By: _____ Date: _____
City Manager

APPLICANT

[If the APPLICANT is an individual, use the following signature line:]

By: _____ Date: _____

[If the Applicant is a corporation, use the following signature lines:]

Note: Pursuant to Corporations Code Section 313 a contract with a corporation must be signed by one person from the following corporate officers; chairperson of the board, the president or any vice-president and must also be signed by a second person from the following corporate officers: the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer unless the contract is accompanied by a certified copy of the Board of Directors resolution authorizing the execution of the contract by a single designated officer or person.

By: _____ Date: _____
Board Chairperson, President or Vice President

By: _____ Date: _____
Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer

[If the Applicant is an LLC, use the following signature lines:]

Note: "Corporations Code Section 17703.01 requires that contracts with an LLC be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager."

By: _____ Date: _____
Manager's Name

By: _____ Date: _____
Manager's Name