

**INDEMNIFICATION AGREEMENT FOR
MEDICINAL CANNABIS DISPENSARY PERMIT
AND ASSOCIATED LAND USE PERMITS**

THIS AGREEMENT is made and entered into on the ____ day of _____, 20____, by (“Applicant”) and the City of Solvang, California, a California charter city, referred to herein as “City of Solvang” or the “City.”

WHEREAS, Applicant has requested that City of Solvang process its application for a Medicinal Cannabis Dispensary Permit and/or Land Use Permit (collectively “Permit”) submitted by Applicant which, when both permits are issued by the City, will allow Applicant to operate a Medicinal Cannabis Business as described in Applicant’s submittal documents.

WHEREAS, City is not legally mandated to grant Applicant’s application for the Permit, such Permit being wholly discretionary, and due to the supremacy of federal law, there are unresolved questions regarding City’s authority to grant the Permit.

WHEREAS, Applicant desires to defend and indemnify City from liability or loss City might suffer in connection 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 of Solvang, the City of Solvang Planning Commission, the City of Solvang Board of Architectural Review, the City Council, City Manager, City Attorney and/or any City of Solvang 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 or owners of the property or properties upon which the Medicinal 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 attempting to attack, set aside, void or annul the Permit, including any contention the Permit or its approval is defective because a City ordinance, resolution, policy, standard or plan is not in compliance with local, California or federal law. 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 Medicinal Cannabis Business that is the subject of the Permit, including but not limited to City’s processing and/or determination of environmental review for 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 Medicinal 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 Medicinal 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. The defense and indemnification of City set forth herein shall remain in full force and effect throughout all stages of litigation including appeals of any lower court judgments rendered in the proceeding. The obligations of the Applicant under this Agreement shall apply regardless of whether a Permit is actually issued.

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. In any legal action or special proceeding in which the City is a party, the Applicant shall not settle such action or proceeding without the consent of the City, which consent shall not be unreasonably withheld. In the event of a disagreement between City and the Applicant over litigation issues, City shall have the authority to control the litigation and make litigation decisions, including, but not limited to, the manner in which the defense is conducted. If City reasonably determines that having common counsel would present such counsel with a conflict of interest, or if the Applicant fails to promptly assume the defense of the claim or to promptly employ counsel reasonably satisfactory to City, then City may employ separate counsel to represent or defend City and the Applicant shall pay the reasonable attorneys' fees and costs of such separate counsel.

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 to mutually determine the proper course of action; and
2. In the event Applicant determines to challenge such initiative measure, Applicant shall do so at its sole cost and expense. In the event City and Applicant jointly determine to challenge such initiative measure, the parties shall jointly determine the allocation of costs for such challenge, and in the absence of an agreement regarding such allocation, each party shall bear its own costs and expenses incurred in such challenge.
3. In the event that a court other legal determination has the effect of preventing, delaying or modifying the Permit, City and Applicant shall meet and confer to determine if there are alternative means of achieving the mutual goals and objectives of this Agreement.

4. No Duty of City

Applicant acknowledges and agrees that the Medicinal 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. Nothing in this Agreement shall be construed to limit, direct, impede or influence the City's review and consideration of Applicant's application to the City for the Permit. The parties agree that this Agreement shall constitute a separate agreement from any Permit approval, and that if the Permit, in part or in whole, is invalidated, rendered null or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Agreement, which shall survive such invalidation, nullification or setting aside. The Applicant is solely responsible for compliance with all local, California, and federal laws and for obtaining necessary

authorizations, approvals, and/or permits from other local, California, and federal agencies. Any failure of the Applicant to comply with applicable laws or to obtain necessary authorizations, approvals, and/or permits shall not invalidate this Agreement or excuse the obligations of the Applicant under this Agreement except where such indemnification is prohibited by law.

5. 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.

6. 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 Solvang
Attention: City Manager
1644 Oak Street
Solvang, CA 93463

With a Copy to:
David Fleishman, City Attorney
Hanley & Fleishman, LLP
8930 Morro Road
Atascadero, CA 93422

Applicant:

Name: _____
Address: _____

Notice personally delivered is effective when delivered. 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.

7. 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 performance shall not be considered to be a waiver of any preceding breach of the Agreement by the other party. The undersigned Applicant expressly warrants his/her/its authority to enter into this Agreement.

8. Enforcement Action

If any action, proceeding, or arbitration arising out of or relating to this Agreement is commenced by either party, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration by the prevailing party. For any breach of this Agreement the City may rescind its approval of the Permit. This Agreement shall

be binding upon the parties and upon their heirs, administrators, representatives, executors, successors and assigns.

9. Severability

Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

10. 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 Santa Barbara.

11. No Third Party Beneficiaries Intended

The parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

12. Entire Agreement

This Agreement sets forth the entire agreement between the parties hereto, and supersedes any and all prior agreements or understandings, written or oral, between the parties hereto pertaining to the subject matter of this Agreement. The terms of this Agreement may not be modified, except by a writing signed by all parties. The paragraph headings used in this Agreement are intended solely for convenience of reference and shall not be used in any manner to amplify, limit, modify or otherwise be used in the interpretation of any provisions in this Agreement.

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

City of Solvang

By:
City Manager

Date:

Applicant

By:

_____ (print name)

Date: