

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release (the "Agreement") is made and entered into this _____ day of March, 2021 by MME Florida, LLC, a Florida limited liability company ("Plaintiff"), and the City of Miami Beach, a Florida municipal corporation, hereinafter referred to as ("City"). Plaintiff and the City may also be referred to, collectively, as the "Parties". The Parties agree and stipulate to the following:

RECITALS

1. The purpose this Agreement is to facilitate the settlement, dismissal (with prejudice), and release of any and all claims which were asserted, or which could have been asserted, with respect to the facts giving rise to *MME Florida, LLC v. City of Miami Beach*, Case No. 2019-008157-CA-27, a lawsuit currently pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the "Lawsuit").
2. On September 25, 2017, the Mayor and the City Commission of the City of Miami Beach (the "City Commission") enacted Ordinance No. 2017-4133 (the "2017 Dispensary Ordinance"), which established specific regulations for medical cannabis treatment centers (dispensaries) and pharmacy stores set forth in Sections 142-1500 through 142-1505 of the City of Miami Beach Code of Laws and Ordinances (the "City Code").
3. On August 22, 2018, in reliance on the City's 2017 Dispensary Ordinance, Plaintiff executed a ten (10) year lease contract with the current owner of the structure located at 1428 Alton Road (the "Premises"), with the intent to utilize it as a medical marijuana dispensary.
4. On December 18, 2018, the City's Planning Board proposed and favorably recommended the enactment of a new ordinance, under file No. PB 18-0249 (the "Proposed Ordinance") that would prohibit the development and operation of pharmacies and dispensaries within three hundred (300) feet of another pharmacy or dispensary.
5. The Planning Board's favorable recommendation of the Proposed Ordinance created a moratorium under Section 118-168 of the City Code, precluding Plaintiff with moving forward with its incomplete application for a building permit for its medical marijuana dispensary.
6. The City's Building Department notified Plaintiff that its final building permit would not be granted because the City had already approved another dispensary's building permit for a location less than three-hundred (300) feet of the Premises.

7. The City Commission adopted the Proposed Ordinance (Ordinance No. 2019-4247) on February 13, 2019. The Proposed Ordinance became effective on February 23, 2019.
8. Plaintiff served the City with a four-count Complaint (the "Complaint") on March 27, 2019, alleging equitable estoppel, and seeking declaratory or injunctive relief based on alleged violations of Sections 166.041 and 381.986 of the Florida Statutes.
9. Specifically, Plaintiff attempted to challenge the statutory validity of Ordinance No. 2019-4247 (hereinafter referred to as the "2019 Dispensary Ordinance"), which created a distance separation requirement of 1,200 feet between individual medical cannabis dispensaries, as well as seek equitable relief.
10. Plaintiff sought to challenge the 2019 Dispensary Ordinance by alleging that (1) it was improperly enacted under §166.041 of the Florida Statutes due to a motion to increase the distance separation requirement to 1,200 feet on the second and final public reading; and (2) the 1,200 feet separation requirement between the dispensaries within the City violates §381.986 of the Florida Statutes, which prohibits municipalities from placing specific limits on the number of dispensing facilities that may be located within the municipality.
11. Plaintiff also sought to assert a claim of equitable estoppel, alleging that it relied on the City's actions and existing ordinances in good faith; that the 2019 Dispensary Ordinance unlawfully deprived Plaintiff of its vested rights; and that Plaintiff incurred substantial expenditures in developing its future dispensary prior to the enactment of the Ordinance.
12. The City denies all the allegations of the Lawsuit and specifically denies that it has any liability based on the allegations set forth in the Lawsuit, and Plaintiff has any vested right in the Premises.
13. The Parties have reached an agreement as to the Lawsuit and desire to fully and finally resolve any and all claims and/or disputes against each other and their respective agents, employees, officers, independent contractors, servants, and representatives concerning, relating to, or in any way arising out of the Lawsuit.
14. The Parties desire to enter into this Agreement to provide, among other things, for consideration in full settlement and discharge of all claims and actions of Plaintiff for damages that allegedly arose out of, or due to, the facts and circumstances giving rise to the Lawsuit, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, based on the above and in consideration of mutual covenants and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following:

1. **Recitals:** the foregoing recitals are true and correct and are incorporated herein.
2. **Settlement:** The Parties hereby settle and compromise all claims of any kind or nature (including any claims for attorney's fees and costs), relating to, arising out of and/or in connection with or enactment of the Ordinance No. 2017-4133 and Ordinance No. 2019-4247.
3. **Settlement Terms:** In consideration for the releases executed herein, the Parties agree as follows:
 - a. The Plaintiff has executed a ten (10) year Lease Agreement on the Premises, expended substantial financial resources toward the site development in detrimental reliance upon the City's existing zoning regulations, in conjunction with other unique, factual, and procedural circumstances surrounding this matter. Recognizing the existence and application of those legal principles in Florida's equitable estoppel law in regards to the City's enforcement of the medical marijuana dispensary distance separation requirement mandated by Ordinance 2019-4247, the Parties affirmatively acknowledge that Plaintiff's use of the Premises will be permitted as a legal nonconforming use.
 - b. Plaintiff affirmatively promises that upon approval of this Settlement Agreement, Plaintiff will submit its building permit application and renovations of the medical marijuana dispensary at 1428 Alton Road, Miami Beach Florida, 33139, within thirty (30) to forty-five (45) days of the execution of this Agreement. Plaintiff further affirmatively promises that it will open and be operational within twelve (12) months after the issuance of a building permit for interior build out and medical marijuana dispensary use, subject to any delays caused by the City in completing the inspections necessary to finalize the building permit and issue a Certificate of Occupancy/Completion for the renovations and change of use. In the event Plaintiff is unable to commence business operations within the twelve (12) month period, Plaintiff may seek to extend the compliance period set forth herein upon written request to the City, establishing that Plaintiff used diligent and commercially reasonable efforts to move forward with commencing business operations. The City agrees that it shall use all reasonable efforts to expedite the review and approval of Plaintiff's designs and plans required for issuance of any and all permit(s) in order for Plaintiff to commence construction and use of the Premises. The City further agrees that it will extend the compliance period set forth herein upon Plaintiff showing, in writing, that it took all commercially reasonable efforts to commence business operations within twelve (12) months, and any resulting delay was outside of its control.
 - c. Plaintiff will undertake commercially reasonable efforts to not allow, permit, condone, excuse, ignore, disregard, overlook, authorize, or tolerate crowds

queuing outside the Property and blocking pedestrian traffic or neighboring businesses. Plaintiff shall implement measures to shorten waiting lines outside the marijuana dispensary such as virtual check-ins/queues and/or accepting orders and payment via telephone or Internet to limit the number of patrons in store.

- d. Plaintiff shall utilize no more than 62% of the total available square footage inside the Premises for sale of medical cannabis and any other products related to it.
- e. Plaintiff shall not authorize or permit any type of consumption of any cannabis products on the Premises.
- f. Plaintiff shall not sell any devices, apparatuses, or material used for consumption or inhaling of cannabis, except marijuana delivery devices permitted to be sold from marijuana dispensing facilities pursuant to Florida Department of Health regulations and/or Florida Statute.
- g. The final transaction of purchase of cannabis products must be accomplished inside the Premises without exceptions. Any sales made for delivery to an eligible patient from the Premises as permitted pursuant to Florida law shall be deemed to have been accomplished inside the Premises.
- h. Plaintiff shall ensure adequate parking in accordance with Section 142-1503 of the City Code and any other applicable City regulations.
- i. Plaintiff shall not be permitted to offer curb side pick-ups or drive-thru services for any cannabis products in accordance with Section 142-1503 of the City Code and any other applicable City regulations.
- j. Plaintiff shall take immediate and necessary measure to ensure and prevent any armed security from being visible and identifiable outside the Premises to maintain non-threatening posture of the business.
- k. Plaintiff shall ensure that signage visible from public rights-of-way and adjacent establishments and parcels shall be limited to the name of the establishment and signs necessary to comply with the requirements of the State of Florida, Miami-Dade County, and the City of Miami Beach and will not contain any symbol or outline of a cannabis leaf, or any other cannabis related products or symbols.
- l. Under no circumstances shall activities related to sales of cannabis, cannabis derivatives, cannabis delivery devices, cannabis-infused products and pharmaceutical products be visible from the exterior of the business in

accordance with Section 142-1503 of the City Code and any other applicable City regulations.

- m. Depictions of cannabis, cannabis products and pharmaceutical products shall not be visible from public rights-of-way and adjacent establishments and parcels in accordance with Section 142-1503 of the City Code and any other applicable City regulations.
 - n. Plaintiff affirmatively acknowledges that the City, by and through Code Enforcement or Police Department will be permitted to conduct appropriate and necessary inspections of the Premises to confirm compliance with the terms of this Settlement Agreement.
 - o. Except as set forth herein, Plaintiff affirmatively recognizes and acknowledges that it must comply with all other applicable provisions of City's Medical Marijuana Ordinance and any other applicable requirements set forth in the City Code and Land Development Regulations.
 - p. In the event Section 142-1503 of the City Code and/or any other applicable City regulations related to the restrictions set forth herein are modified so that they are no longer requirements or restrictions for medical cannabis treatment centers or providers of adult use cannabis (if legally permitted in the future) in the City of Miami Beach, then such requirements or restrictions in this Settlement Agreement shall cease to be in force and effect.
4. **Releases.** In further consideration of the execution of this Agreement, the Parties for themselves and their respective parent companies, subsidiaries, divisions, affiliates, unit owners, insurers, officers, directors, agents, employees, subcontractors, representatives, successors and assigns (the "City Releasers" or "Plaintiff Releasers" as the case may be), hereby execute, subject to the conditions and exclusions set forth in this Agreement, the following Releases:
- a. **Release by the Plaintiff.** Upon execution of this Settlement, Plaintiff Releasers hereby remise, release, acquit, satisfy and forever discharge the City Releasers, which throughout this Agreement includes, but is not limited to, the City, its affiliates, Commissioners, insurers, sureties, directors, officers, employees, contractors, consultants, agents and attorneys, together with its heirs, executors, administrators, associates, representatives, successors and assigns, of and from any and all manner of past, present and future claims, actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, obligations, damages, judgments, costs, expenses, causes of action, executions, claims, liabilities, and demands whatsoever, in law or in equity, whether for compensatory, punitive, or other damages (collectively referred to in this Paragraph as the "Claims"), which the Plaintiff Releasers have held

or now hold, ever had, now have, or which the Plaintiff Releasors, hereinafter can, shall or may have against the City Releasors, for any and all Claims, whether known or unknown, arising from, pertaining to and/or in any way relating to the underlying matter.

- b. **Release by the City.** The City Releasors hereby remise, release, acquit, satisfy and forever discharge the Plaintiff Releasors, which throughout this Agreement includes, but is not limited to, the Plaintiff, its parents, partners, shareholders, principals, contractors, affiliates, insurers, sureties, directors, officers, employees, agents and attorneys, together with its heirs, executors, administrators, associates, representatives, successors and assigns, of and from any and all manner of past, present and future claims, actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, obligations, damages, judgments, costs, expenses, causes of action, executions, claims and liabilities, and demands whatsoever, in law or in equity, whether for compensatory, punitive, or other damages (collectively referred to in this Paragraph as the "Claims"), which the City Releasors have held or now hold, ever had, now have, or which the City Releasors, hereinafter can, shall or may have against the Plaintiff Releasors, for any and all Claims, whether known or unknown, arising from, pertaining to and/or in any way relating to this matter, and more specifically, the claims raised in the Complaint.
5. **Covenant Not to Sue.** The Parties agree to not instigate, raise, or pursue any complaint or action concerning any other Party or their past, present, and future shareholders, directors, officers, employees, principals, agents, servants, independent contractors, representatives, parent corporations, subsidiary corporations, predecessors, successors, assigns, attorneys, and insurers, within any Florida State Jurisdiction or governmental agency which may maintain jurisdiction of these disputed issues.
6. **Dismissal of the Lawsuit.** The Parties agree that within thirty (30) days after the full execution of this Settlement Agreement, the Plaintiff shall file the appropriate pleading(s) that result in the dismissal with prejudice surrounding all claims, allegations or challenges set forth in the Plaintiff's Lawsuit, *MME Florida, LLC v. City of Miami Beach*, Case No.2019-008157-CA-27, and without recovery of attorney's fees or costs, inclusive of all claims asserted.
7. **Noncompliance.** Should the Plaintiff, in the opinion of the City, fail to comply with those provisions set forth within Paragraph 3 herein ("Settlement Terms"), the City will be entitled to pursue or initiate a legal action for a temporary or permanent injunction against Plaintiff to enforce those terms. The Plaintiff hereby expressly acknowledges and affirms that they are voluntarily waiving any defense to the enforceability of Paragraph 3. The Plaintiff expressly acknowledge that the City

will seek injunctive relief through a proceeding before the Circuit Court of the Eleventh Judicial Circuit of Florida.

8. **Predecessors, Successors, and Assigns.** The Parties hereby release, acquit, and forever discharge each other and their past, present, and future shareholders, directors, officers, employees, principals, agents, servants, independent contractors, representatives, parent corporations, subsidiaries, affiliates, predecessors, successors, assigns, attorneys, and insurers from any and all actions, causes of action, claims, counterclaims, demands, damages, fines, penalties, assessments, costs, loss of services, expenses, interest, attorneys' fees and compensation whatsoever, in any way relating to, or arising out of the Lawsuit, and all other matters defined and/or described herein, whether known or unknown, accrued or unaccrued, asserted or unasserted.
9. **Legal Fees and Costs.** Other than as may be set forth in this Agreement, each party shall bear their own attorneys' fees and other costs, if any, incurred in connection with the Lawsuit and this Agreement.
10. **No Admission of Liability.** It is understood and agreed that the claims which are the subject of this Agreement are disputed claims and that the execution of this Agreement by the Parties, and the exclusions set forth in this Agreement, are not intended to, and shall not in any way, constitute or be deemed an express or implied admission or acceptance of any negligence, misconduct, responsibility or liability by the Parties or an admission against interest by the Parties, and that the Parties expressly and specifically deny all such claims. Such consideration is being given to reduce the expense, uncertainties and hazards of litigation and to mitigate damages to each of the Parties. There shall not be any implication by any trier of fact or law of any admission or acceptance of liability or admission against interest by the Parties and it shall not be used against the City Releasors or the Releasors in any attempt to prove any future liability claims. The Parties understand and agree that no Party admits liability of any sort by reason of the above incidents, acts, casualties, events, representations, omissions, conduct, or interpretation. The Parties also understand and agree that this Agreement constitutes the good faith compromise of the dispute, and is made in good faith to terminate any further controversy respecting all claims for damages, causes of action, or potential liability which could have been ascertained by reasonable diligence which either Party to this Agreement may have asserted now, or may assert in the future because of any damages, incidents, acts, casualties, or events, described or alluded to in this Agreement.
11. **Representation and Warranties.** The Parties warrant and represent that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement. The Parties declare and represent that they were not induced to enter into this Agreement by any representations respecting the nature and extent of any

damages, legal liability, or financial responsibility made by any Party or their representatives.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. A copy of this Agreement transmitted by electronic means or telefacsimile shall be deemed an original.
13. **Entire Settlement Agreement.** The Parties acknowledge that this Agreement constitutes the entire agreement. They further acknowledge that they have read it and understand it; that the terms and conditions of this Agreement were arrived at in arm's-length negotiations between the Parties with all Parties provided the opportunity to seek the advice of legal counsel; that each Party's legal counsel did or could have reviewed this Agreement; and that each Party has given due and full consideration to the legal position of the other in regard to the provisions contained herein.
14. **Binding Agreement.** This Settlement Agreement is binding on the Parties hereto and the Parties agree to execute any and all documents necessary and consistent with applicable law, to ratify, confirm, and perform the terms and provisions of this Settlement Agreement. The terms of this Settlement Agreement shall be binding on and inure to the benefit of the Parties, their legal representatives, members, constituents, successors, assigns, subsidiaries and affiliates, and shall supersede all prior discussions, negotiations and agreements among the Parties, concerning settlement.
15. **Amendments.** This Settlement Agreement may not be orally modified. This Settlement Agreement may only be modified in a writing signed by all the Parties.
16. **Waiver and Modification.** No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is sought.
17. **Jurisdiction and Choice of Law.** This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of Florida. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if crafted jointly by each of the Parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of the Agreement. The Parties jointly conclude that should this Agreement be challenged by any of the Parties, that venue for bring such challenges shall take place in the County of Miami-Dade, Florida.
18. **Severability.** In the event any provision, term or condition of this Agreement, on behalf of either party, thereto shall be inapplicable, invalid, illegal or unenforceable in any respect, the remainder of this Agreement and application of such provisions,

terms or conditions shall not be effected thereby, and shall be enforced to the fullest extent permitted by law.

19. **City's Sovereign Immunity.** It is hereby acknowledged by the Parties that nothing contained in this Agreement was intended to serve as a waiver of sovereign immunity, as set forth and codified in Section 768.28 of the Florida Statutes, by the City of Miami Beach to which sovereign immunity is applicable in the recovery of damages in tort for money damages against the state or its agencies or subdivision or injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment.
20. **No Third-Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to directly or substantially benefit a third party by this Agreement. The Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of this Agreement, or other obligations, whether known or unknown to the Parties.

WHEREFORE, the Parties approve the above terms and enter into this Settlement Agreement of this Dispute between them as provided above and as of the date first entered above.

INTENTIONALLY BLANK, SIGNATURE PAGE WILL FOLLOW

IN WITNESS WHEREOF, the Parties have set their hands and seals on the day and date first written above:

MME FLORIDA, LLC, a Florida limited liability company

By: _____

Title: _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of March, 2021, by _____, President of MME, FLORIDA, LLC, who is personally known to me or who has produced _____ (type of identification).

Name: _____
(Print Name) _____

Notary Public – State of Florida
My Commission Expires: _____

**THE CITY OF MIAMI BEACH,
FLORIDA**, a political sub-division of the
State of Florida

By: _____
Name: Dan Gelber
Title: Mayor _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of March, 2021, by Dan Gelber as Mayor of CITY OF MIAMI BEACH, FLORIDA, a political sub-division of the State of Florida, who is personally known to me or who has produced _____ (type of identification).

Name: _____
(Print
Name) _____

Notary Public – State of Florida
My Commission Expires: _____

ATTEST:

City Clerk

Date

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney *EP*

3/8/21
Date