

RESOLUTION NO. 18-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE

APPROVING A DEVELOPMENT/OPERATING AGREEMENT BETWEEN THE CITY OF SEASIDE AND HIGHER LEVEL OF CARE, LLC. TO GOVERN OPERATIONS AND COMMUNITY BENEFITS FOR A CANNABIS DISPENSARY

WHEREAS, the City of Seaside has taken steps to establish regulated cannabis activities in the City subject to an application process that includes a lengthy selection process; and

WHEREAS, at the December 28, 2017 meeting, the City Council approved the issuance of a total of 6 permits for Medical Cannabis Dispensaries and 6 permits for Adult Cannabis Dispensaries; and

WHEREAS, the City Council directed staff to issue a use permit the operations of the Higher Level of Care LLC., at 310 Amador Ave; and

WHEREAS, the ordinance governing Cannabis Related Uses requires that all operators of dispensaries must enter into a Development/Operating Agreement with the City of Seaside which governs the operations and community benefit requirements associated with the approval of the dispensary.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Seaside authorizes the City Manager to execute the attached Development/Operating Agreement, including any non-substantive changes that may be required.

PASSED AND ADOPTED at a meeting of the City Council of the City of Seaside held on March 15, 2018 by the following vote:

AYES:	5	Council Members: Alexander, Campbell, Jones, Pacheco, Rubio
NOES:	0	Council Members: None
ABSENT:	0	Council Members: None
ABSTAIN:	0	Council Members: None


Ralph Rubio, Mayor

ATTEST:

APPROVED AS TO FORM:


Lesley Milton-Rerig, City Clerk

**DEVELOPMENT/OPERATING AGREEMENT
BY AND BETWEEN
THE CITY OF SEASIDE
AND
HIGHER LEVEL OF CARE LLC.**

ARTICLE 1. PARTIES AND DATE.

This Development/Operating Agreement ("Agreement") is dated March 15, 2018, for execution purposes only and is entered into between (i) the City of Seaside ("City"), a California municipal corporation, and Higher Level of Care LLC. ("Owner"), a California Limited Liability Company. This Agreement shall become effective on the Effective date defined in section 3.1.6.

ARTICLE 2. RECITALS.

2.1 WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property; and

2.2 WHEREAS, this Agreement and the Project are consistent with the City's General Plan and Zoning Code and applicable provisions of the City's Zoning Map as of the Effective Date; and

2.3 WHEREAS, all actions taken and approvals given by the City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

2.4 WHEREAS, Owner intends to develop a Cannabis Dispensary or Facility, with Commercial Cannabis Activities at the Dispensary or Facility, to the extent contemplated by the Seaside Municipal Code Chapter 19 and all applicable state laws, rules, and regulations.

2.5 WHEREAS, this Agreement, in the future, shall be read consistent with any statewide regulation passed by voter initiative or the state legislature, which decriminalizes or legalizes marijuana for medical or recreational use, also known as Adult Cannabis. This Agreement shall govern the conduct of this business to cultivate and distribute marijuana under such statewide regulation, consistent with any City regulations not preempted by any such statewide regulations.

2.6 WHEREAS, The Owner and City agree for mutual consideration

this agreement.

ARTICLE 3. GENERAL TERMS.

3.1 Definitions and Exhibits. The following terms when used in this Agreement shall be defined as follows:

3.1.1 "Agreement" means this Development/Operating Agreement. [This is not a development agreement as defined in Government Code Section 65864 et seq.]

3.1.2 "City" means the City of Seaside, a California municipal corporation.

3.1.3 "Days" mean calendar days unless otherwise specified.

3.1.4 "Development" includes the right to maintain, repair or reconstruct any private building, structure, improvement or facility after the construction and completion thereof; provided, however, that such maintenance, repair, or reconstruction take place within the term of this Agreement on parcels subject to it.

3.1.5 "SMC" means the City of Seaside Municipal Code.

3.1.6 "Effective Date" means the date on which all of the following are true: (i) the City Council adopted a resolution adopting and approving the Development/Operating Agreement and (ii) all Exhibits to this Agreement are finalized, executed by all affected parties (if applicable) and attached hereto; provided, however, that if these conditions have not been fully satisfied by the Owner the Effective Date may not thereafter occur and this Agreement may not thereafter become effective.

3.1.7 "Existing Land Use Regulations" means all Land Use Regulations in effect on the date of execution. Existing Land Use Regulations include all provisions in the SMC Chapter 17, Zoning, and other regulations that are a matter of public record on the date of execution as they may be modified from time to time. Notwithstanding by the Existing Development Approvals. Notwithstanding the foregoing, Existing Land Use Regulations include the regulations set forth in AB 266 and AB 243.

3.1.8 "Owner" means the Business or Dispensary Owner (s).

3.1.9 "Processing Fees" means the normal and customary application, filing, plan check, permit fees for Cannabis activity approvals, design review, building permits, demolition permits, grading permits, and other

similar permits and entitlements, and inspection fees, which fees are charged to reimburse the City's expenses attributable to such applications, processing, permitting, review and inspection and which are in force and effect on a general basis at such time as said approvals, permits, review, inspection or entitlements are granted or conducted by the City.

3.1.10 "Project" means the Commercial Cannabis Activity as set forth in SMC Chapter 19, located on Assessor Parcel Number (APN) _____ that will be state licensed and issued a Dispensary Permit in full accordance with SMC Chapter 19.02.010 as may be amended, as well as in full compliance with all state laws, including but not limited to the Medical Marijuana Regulation and Safety Act adopted by the State of California (also known as AB 266 and AB 243). This Project shall include the cultivation, manufacturing, testing, and distribution, of Cannabis as approved by state and local law. The Project will include construction and development of a [type of facility] Dispensary that will be issued a Dispensary Permit in full accordance with SMC Chapter 19.02.010 as amended as well as in full compliance with all state laws, including but not limited to the Medical Marijuana Regulation and Safety Act and the Adult Use of Marijuana Act.

3.1.11 "Property" means the real property where the Cannabis Dispensary or Facility is to be located as described on Exhibit A and shown on Exhibit B, as set forth in 3.2 below, both attached hereto and incorporated herein by this reference.

3.2 Exhibits. The following documents are attached to and, by this reference, made part of this Agreement:

Exhibit A – Map showing Property and its location.

Exhibit B—Resolution of City Granting a Dispensary Permit With Conditions at [location].

Exhibit C--Owner Commitment to Community Benefit Program.

3.3 Binding Effect of Agreement. The Property and Project are hereby made subject to this Agreement. Subject to the Owner's receipt of all Development/Operating Approvals relative thereto, the Development of the Property is hereby authorized and shall, except as otherwise provided in this Agreement, be carried out only in accordance with the terms of this Agreement, the Development/Operating Plan, and the Dispensary Permit. In the event of conflict or uncertainty between this Agreement, the Dispensary Permit, and the Development Plan, the provisions of the Development/Operating Plan shall control.

3.4 Notices.

3.4.1 Notice Defined. As used in this Agreement, notice includes,

without limitation, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

3.4.2 Written Notice and Delivery. All notices shall be in writing and shall be considered given:

- (i) when delivered in person to the recipient named below; or
- (ii) three days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or
- (iii) on the date of delivery shown in the records of the delivery company after delivery to the recipient named below; or
- (iv) on the date of delivery by facsimile transmission to the recipient named below if a hard copy of the notice is deposited in the United States mail, postage prepaid, addressed to the recipient named below. All notices shall be addressed as follows:

If to the City:

City Manager
440 Harcourt Avenue
Seaside, CA 93955

If to the Owner:

Higher Level of Care
310 Amador Avenue
Seaside, CA 93955

With Copies to:

City Attorney
440 Harcourt Avenue
Seaside, CA 93955

3.4.3 Address Changes. Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3.5 Validity of this Agreement. The Owner and the City each acknowledge that neither party has made any representations to the other

concerning the enforceability or validity of any one or more provisions of this Agreement, and that this Agreement has been drafted jointly and not by one party alone.

ARTICLE 4. PUBLIC BENEFITS

4.1 Intent. The parties acknowledge and agree that development of the Project on the Property will result in substantial public needs which will not be fully met by the Development/Operating Plan and further acknowledge and agree that this Agreement confers substantial private benefits on Owner which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project

4.2 Developer Fee. Applicant agrees to pay all established fees, charges, City costs, taxes, or other similar forms of expenses applicable to all Commercial Cannabis establishments and Dispensary Permits.

4.3 Jobs and Wage Creation.

4.3.1 Local Hiring. Owner agrees to use its reasonable efforts to hire qualified City residents for jobs at the Project. Owner shall abide by all local hiring commitments provided in the Owner Commitment to Community Benefit Program in Exhibit C

4.3.2 Mandatory Payment of Wage. Owner agrees to pay all employees wages in accordance with the wage rate provided in the Owner's Community Benefit Plan and the Owner Commitment to Community Benefit Program in Exhibit D.

4.5 Payment of Marijuana Business Operation Tax.

4.5.1 Amount of Tax. Pursuant to Chapter SMC Chapter 5.04.320, Owner shall pay City the annual business operations tax based on a percentage of gross receipts as set by the City Council by Ordinance in accordance with prior voter approval of up to ten percent (10%) annually. Such taxes shall be remitted in accordance with regulations adopted by City.

4.5.2 All other taxes established by Ordinance shall be paid in accordance with the SMC and State law, as both may be amended from time to time.

ARTICLE 5. REVIEW FOR COMPLIANCE.

5.1 Periodic Review. The City Manager or designee may review

this Agreement annually, on or before each anniversary of the Effective Date or upon receipt of a request by Owner to extend the term, in order to ascertain Owner's good faith compliance with this Agreement including the Dispensary Permit. During the periodic review Owner shall be required to demonstrate good faith compliance with the terms of the Agreement, through submitting an annual monitoring report, records, or equivalent written materials to the City Manager or designee. The City may elect to extend the permits without review. Owner shall be entitled to a review hearing pursuant to 6.3 below in the event the City Manager or designee determines Owner is not in compliance with this Agreement, Use Permit or Dispensary Permit.

5.2 Special Review. The City Council may order a special review of compliance with this Agreement at any time. The City Manager or his or her designee shall conduct such special review. During a special review, the Owner shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on the Owner.

5.3 Review Hearing. At the time and place set for the review hearing, the Owner shall be given an opportunity to be heard. If the City Manager finds, based upon substantial evidence, that the Owner has not complied in good faith with the terms or conditions of this Agreement, the City Manager may recommend that the City Council terminate this Agreement notwithstanding any other provision of this Agreement to the contrary, or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Code of Civil Procedure Section 1094.5.

5.4 Failure to Conduct Review. The City's failure to conduct a periodic review of this Agreement shall not constitute a breach of this Agreement or a waiver of future periodic reviews.

5.5 Cost of Review. The costs incurred by City in connection with the periodic reviews shall be borne by Owner.

ARTICLE 6. ANNEXATION INTO DISTRICTS

6.1 Owner agrees to the Subject Property being annexed into any current or future Community Facilities District, Community Services District, or any other tax district which would pertain to the Property.

ARTICLE 7. DEFAULTS AND REMEDIES.

7.1 Remedies in General. It is acknowledged by the parties that the City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof, except as hereinafter expressly provided. Subject to extensions of time by mutual consent in writing, failure or delay by either party to

perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured during any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings. Notwithstanding the foregoing to the contrary, if the alleged default is of such a nature that it cannot be cured within thirty (30) days, the alleged defaulting party shall not be deemed in default as long as such party commences to cure such default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

7.2 After notice and expiration of the thirty (30) day period, the other party to this Agreement, at its option, may institute legal proceedings pursuant to this Agreement.

7.3 In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the City shall not be liable in monetary damages, unless expressly provided for in this Agreement, to the Owner or to any successors in interest of the Owner, or to any other person, and the Owner covenants on behalf of itself and all successors in interest to the Property or any portion thereof, not to sue for damages or claim any damages:

(i) For any breach of this Agreement or for any cause of action which arises out of this Agreement: or

(ii) For the impairment or restriction of any right or interest conveyed or provided under, with, or pursuant to this Agreement, including, without limitation, any impairment or restriction which the Owner characterizes as a regulatory taking or inverse condemnation; or

(iii) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

7.4 Nothing contained herein shall modify or abridge the Owner's rights or remedies (including its rights for damages, if any) resulting from the exercise by the City of its power of eminent domain. Nothing contained herein shall modify or abridge the Owner's rights or remedies (including its rights for damages, if any) resulting from the grossly negligent or malicious acts of the City and its officials, officers, agents and employees. Nothing herein shall modify or abridge any defenses or immunities available to the City and its employees pursuant to the Government Claims Act and all other applicable statutes and decisional law.

7.5 Release. Except for those remedies set forth in Sections 8.1 and 8.4, the Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, based or asserted, pursuant to Article 1, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

The Owner acknowledges that it may have suffered, or may suffer, damages and other injuries that are unknown to it, or unknowable to it, at the time of execution of this Agreement. Such fact notwithstanding, the Owner agrees that the release provided in this Section 7.2 shall apply to such unknown or unknowable claims or damages. Without limiting the generality of the foregoing, the owner acknowledges the provisions of California Civil Code Section 1542, which provide:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.”

The owner hereby waves, to the maximum legal extent, the provisions of California Civil Code Section 1542 and all other statutes and judicial decisions of similar effect.

Initial _____

7.6 Attorneys' Fees and Costs. In any action or proceeding between the City and the Owner brought to interpret or enforce this Agreement, or which in any way arises out of the existence of this Agreement or is based upon any term or provision contained herein, the “prevailing party” in such action or proceeding shall be entitled to recover from the non-prevailing party, in addition to all other relief to which the prevailing party may be entitled pursuant to this Agreement, the prevailing party's reasonable attorneys' fees and litigation costs, in an amount to be determined by the court. The prevailing party shall be determined by the court in accordance with California Code of Civil Procedure Section 1032. Fees and costs recoverable pursuant to this Section 8.5 include those incurred during any appeal from an underlying judgment and in the enforcement of any judgment rendered in any such action or proceeding. The

parties agree that each contributed to the drafting of this Agreement, and that neither party is responsible for its drafting in determining whether any ambiguities exist as a result of drafting. Ambiguities shall not automatically be ruled against either party.

ARTICLE 8. THIRD PARTY LITIGATION.

8.1 General Plan Litigation. The City has determined that this Agreement is consistent with its General Plan. The Owner has reviewed the General Plan and concurs with the City's determination.

8.1 Hold Harmless Agreement. Owner hereby agrees to, and shall hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Owner or Owner's contractors, subcontractors, agents, or employees operations under this Agreement, whether such operations be by Owner, or by any of Owner's contractors, subcontractors, agents, or employees operations under this Agreement, whether such operations be by Owner, or by any of Owner's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Owner or any of Owner's contractors or subcontractors. Owner agrees to and shall defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid operations.

8.2 Indemnification. Owner shall defend, indemnify and hold harmless City and its agents, officers and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to the legality, validity or adequacy of any of the following: (i) this Agreement and the concurrent and subsequent permits, licenses and entitlements approved for the Project or Property; (ii) the environmental impact report, mitigated negative declaration or negative declaration, as the case may be, prepared in connection with the development of the Property; and (iii) the proceedings undertaken in connection with the adoption or approval of any of the above. In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement or any portion thereof as set forth herein, the parties shall mutually cooperate with each other in defense of said action or proceeding. Notwithstanding the above, the City, at its sole option, may tender the complete defense of any third party challenge as described herein. In the event the City elects to contract with special counsel to provide for such a defense, the City

shall meet and confer with Owner regarding the selection of counsel, and Owner shall pay all costs related to retention of such counsel.

8.3 **Accept Reasonable Good Faith Settlement.** With respect to Article 10, the City shall not reject any reasonable good faith settlement. If the City does reject a reasonable, good faith settlement that is acceptable to the Owner, the Owner may enter into a settlement of the action, as it relates to the Owner, and the City shall thereafter defend such action (including appeals) at its own cost and be solely responsible for any judgments rendered in connection with such action. This Section 9.3 applies exclusively to settlements pertaining to monetary damages or damages which are remedial by the payment of monetary compensation. The Owner and the City expressly agree that this Section 10.6 does not apply to any settlement that requires an exercise of the City's police powers, limits the City's exercise of its police powers, or affects the conduct of the City's municipal operations.

ARTICLE 9. MISCELLANEOUS PROVISIONS.

9.1 **Entire Agreement.** This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement, provided, however, City at its option may rely on statements by Owner's agents at the public hearings leading to the City's approval of the project or on written documents by Owner or Owner's agents that are a part of the public record.

9.2 **Severability.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. The foregoing notwithstanding, the provision of the public benefits set forth in Article 4, including the payment of the fees set forth therein, are essential elements of this Agreement and the City would not have entered into this Agreement but for such provisions, and therefore in the event that any portion of such provisions are determined to be invalid, void or unenforceable, at the City's option this entire Agreement shall terminate and from that point on be null and void and of no force and effect whatsoever.

9.3 **Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives

and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

9.4 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

9.5 Singular and Plural; Gender, and Person. Except where the context requires otherwise, the singular of any word shall include the plural and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and neuter, and vice versa, and a reference to "person" shall include, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.

9.6 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.7 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9.8 No Third Party Beneficiaries. The only parties to this Agreement are Owner and the City. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

9.9 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

9.10 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes.

The burdens of the Agreement shall be binding upon, and the benefits of the Agreement shall inure to all successors in interest to the parties to this Agreement.

9.11 Counterparts. This Agreement may be executed by the

parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

9.12 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and prosecuted in the Superior Court of the County of Monterey, State of California, and the parties hereto waive all provisions of federal or state law or judicial decision providing for the filing, removal or change of venue to any other state or federal court, including, without limitation, Code of Civil Procedure Section 394.

9.13 Agent for Service of Process. In the event the Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer, resident of the State of California, or if it is a foreign corporation, then the Owner shall file, upon its execution of this Agreement, with the City Manager the name of a natural person acting as the agent of owner residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon the Owner. If for any reason service of such process upon such agent is not feasible, then in such event the Owner may be personally served with such process out of this County and such service shall constitute valid service upon the Owner. The Owner is amenable to the process so described, submits to the jurisdiction of the Court so obtained, and waives any and all objections and protests thereto.

9.14 Authority to Execute. The person or persons executing this Agreement on behalf of the Owner warrants and represents that he/she/they have the authority to execute this Agreement on behalf of his/her/their corporation, partnership or business entity and warrants and represents that he/she/they has/have the authority to bind the Owner to the performance of its obligations hereunder.

Each individual executing this Agreement on behalf of his or her respective company or entity shall represent and warrant that:

9.14.1 The individual is authorized to execute and deliver this Agreement on behalf of that company or entity in accordance with a duly adopted resolution of the company's board of directors or appropriate governing body and in accordance with that company's or entity's articles of incorporation or charter and bylaws or applicable formation documents; and

9.14.2 This Agreement is binding on that company or entity in

accordance with its terms; and

9.14.3 The company or entity is a duly organized and legally existing company or entity in good standing; and

9.14.4 The execution and delivery of this Agreement by that company or entity shall not result in any breach of or constitute a default under any mortgage, deed of trust, loan agreement, credit agreement, partnership agreement, or other contract or instrument to which that company or entity is party or by which that company or entity may be bound.

9.15 Nexus/Reasonable Relationship Challenges. Owner consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, payment of any kind of fee whatsoever, policies or programs set forth in this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

9.16 Owner Compliance with Laws. Owner hereby agrees to comply with all applicable state, federal and local laws, regulations, rules and policies.

9.17 No Damages Relief Against City. The parties acknowledge that the City would not have entered into this Agreement had it been exposed to damage claims from Owner, or Owners successors in interest, assigns, partners, or anyone acting on behalf of the Owner for any breach thereof. As such, the parties agree that in no event shall Owner, or Owners successors in interest, assigns, partners, or anyone acting on behalf of the Owner be entitled to recover damages against City for breach of this Agreement.

9.18 Laws. Owner agrees to comply with all applicable state, regional, and local laws, regulations, polices and rules.

9.19 Compliance with Conditions of Approval. Owner agrees to comply with and fulfill all conditions of approval for any and all entitlement, permits, and/or licenses it receives form the City. All conditions of approval for all entitlements, permits and/or licenses are hereto incorporated.

9.20 Owner agrees to comply with all applicable provisions of any current or future applicable federal, state, or local marijuana/Cannabis laws, including AB 266 and AB 243, as duly adopted, including any and all development standards, license and revocation procedures, and the like. Should there be anything in federal or state law, including but not limited to AB 266 or AB 243 which contradicts any provision in this Agreement.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates written above.

CITY OF SEASIDE

OWNER

By: 

Ralph Rubio, Mayor



ATTEST:

By: 

Leslie E. Milton-Rerig, City Clerk

APPROVED AS TO FORM:

By: 

Don Freeman, City Attorney

Section E

Community Benefits

The project site is an ideal location for development of the proposed uses as there is adequate infrastructure to serve the property, an existing building to serve the use and the surrounding uses are compatible. Minimal improvements to the project site will be required, which will minimize construction noise and construction related dust and emissions.

The facility will encourage use of alternative means of transportation. The facility design includes bicycle parking and accessible public transportation is located on Canyon Del Rey Boulevard directly in front of the facilities, with a bus stop near the corner of Canyon Del Rey Boulevard and Del Monte Boulevard. Accessible alternative transportation will encourage fewer vehicle trips, thereby reducing the potential for greenhouse gas emissions.

Higher Level of Care will work with the CalVet Meds program, which supplies free medical Cannabis to veterans. Their website is www.CalVetMeds.org.

Local Enterprise

Higher Level of Care will provide new job opportunities within the City of Seaside. All principal employees are either residents of the City of Seaside or have residency within one (1) mile of the proposed Facility, in adjacent Monterey. Management will choose employees best suited for the positions in question, and will, to the extent of the law, give preference in hiring to residents of the City of Seaside. Higher Level of Care intends to hire a minimum of twenty (20) employees for the proposed Facility and has identified six (6) individuals that are residents of the City of Seaside to fill a portion of those roles should permits be awarded:

Cassidy Keister

████████████████████

Dominic Armstrong

████████████████████

Adam Shepherd

████████████████████

Tyler Michaels

████████████████████

Julius Robinson

████████████████████

Kelly Lyon

████████████████████

Higher Level of Care is committed to providing all of its employees a fair living wage, Paid Sick Leave, Paid Vacation and offer Medical and Dental Benefits to all fulltime staff.

Philanthropy

Higher Level of Care prides itself on donating to worthy causes and giving back to the communities it serves. To name a few, Higher Level of Care has made recent donations to:

- Retired & Disabled Police of America
- International Association of Retired Firefighters
- Community Foundation for Monterey County
- Marina Police Activities League
- North County Recreation & Park District
- North Monterey County Middle School Parent/Teacher Group
- Central Coast Quality of Life Programs
- Monterey County Free Libraries
- Breast Cancer Assistance Group of Monterey County
- Alzheimer's Association of Northern California
- Greenfield Memorial Hall
- Greenfield High School Sober Graduation
- Greenfield City Partnership
- Realm of Caring Foundation

As such, should Higher Level of Care be awarded permits for a dispensary in the City of Seaside, the following donations are committed to be made to local, Seaside charities/foundations on an annual basis:

- The Village Project - \$2,500
- Boys & Girls Clubs of Monterey County (Seaside Clubhouse) - \$2,500
- RotaCare Seaside Family Health Center - \$2,500
- The Salvation Army; Monterey Peninsula Corps (Seaside) - \$2,500
- Seaside Police Activities League - \$2,500
- Sun Street Centers (Seaside) - \$2,500

In addition to monetary donations, Higher Level of Care's principal employees and staff are committed to volunteering their time to the aforementioned foundations and events such as SeaStars Community Cleanup.

Customer Service & Product Quality

Perhaps the most important Community Benefits that an entity can provide are the products and services that the business offers to the public. Given the community will have at most three (3) options within the City of Seaside to patronize for their Cannabis needs, the City has an obligation to its constituents to select those operators that have a track record of providing the best products available by way of knowledgeable staff that is hyper-focused on providing top-quality customer service. Higher Level of Care employs staff positions with the sole duty of researching and procuring the newest, highest quality and best valued products available. In addition, all staff undergoes extensive and ongoing customer service training including, but not limited to, communication, product education, conflict resolution and general awareness.

Higher Level of Care prides itself on its current operation (Castroville, CA) providing customers the best products, prices and customer service in Monterey County and beyond. This can be seen by exploring its ratings on popular online review sites:

- WeedMaps.com – 5.0 (out of 5.0) rating; 4,410 Reviews (as of 11/8/17)
- Yelp.com – 4.6 (out of 5.0) rating; 11 Reviews (as of 11/8/17)
- Google.com – 4.7 (out of 5.0) rating; 83 Reviews (as of 11/8/17)
- Facebook.com – 5.0 (out of 5.0) rating; 37 Reviews (as of 11/8/17)
- iHeartJane.com – 5.0 (out of 5.0) rating; 734 Reviews (as of 11/8/17)

Higher Level of Care (Castroville, CA) currently has 582 active customers that are residents of the City of Seaside.

Community Outreach

Salvatore Palma and Higher Level of Care will spearhead the formation of an association of Cannabis permittees operating within the City of Seaside. As a cohesive group, operators will be able to host job fairs, Cannabis focused educational seminars, fundraisers and collectively volunteer their time and resources for the betterment of the City of Seaside and its residents.

Utilization/Patronization of Local Trades & Businesses

Higher Level of Care is committed to the utilization/patronization of businesses located in the City of Seaside for its initial build out, startup and ongoing operations. These local businesses include:

- Runnoe Construction – 689 Francis Ave., Seaside
- Monterey Signs – 555 Broadway Ave., Seaside

- American Lock & Key – 1573 Del Monte Blvd., Seaside
- Graniterock – 1755 Del Monte Blvd., Seaside
- Potter’s Electronics – 1612 Fremont Blvd., Seaside
- A Strouse & Son Glass, Inc. – 1333 Fremont Blvd., Seaside
- Ferguson Bath, Kitchen & Lighting Gallery – 1144 Fremont Blvd., Seaside
- Norman Naylor’s Kitchen & Cabinet – 815 Broadway Ave., Seaside
- Del Rey Fine Plumbing & Hardware – 575 Charles Ave., Seaside
- The Tile Studio – 1100 Canyon Del Rey Blvd., Seaside
- Monterey County Weekly – 668 Williams Ave., Seaside
- Embassy Suites – 1441 Canyon Del Rey Blvd., Seaside
- Chili’s Grill & Bar – 1349 Canyon Del Rey Blvd., Seaside
- The Home Depot – 1590 Canyon Del Rey Blvd., Seaside
- Staples – 1550 Canyon Del Rey Blvd., Seaside
- Smart & Final – 1560 Canyon Del Rey Blvd., Seaside

Tax Payments

Higher Level of Care will pay a business operations tax equal to six (6) percent of its quarterly gross receipts. Higher Level of Care will pay an initial tax for the first quarterly payment based upon six (6) percent of \$2,000 of annual sales per square foot of the dispensary’s floor area. Payments will be paid quarterly on July 1, October 1, January 1, and April 1 of each year per section 5.04.401 of the SMC. Based upon its projections, Higher Level of Care will generate more than \$2.8 Million in tax revenue to be paid to the City of Seaside in its first five (5) years of operations.

Higher Level of Care acknowledges that the City Council may, at any time, increase (up to ten [10] percent) or decrease the tax rate on Cannabis businesses. The City Council may make other minor technical changes to the ordinance to respond to changes in applicable state law.

Community Liaison

Salvatore Palma will be the designated community liaison to whom the City can provide notice or refer members of the public who may have any concerns or complaints regarding the operations of the Facility. The community liaison will provide his name, address and e-mail to all businesses and residences located within a 250-foot radius of the facility.