

RESOLUTION NO. 2023-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING THE MODIFICATIONS TO AN APPROVED USE PERMIT AND GRANT AN EXTENSION FOR COMPLETION OF THE SITE IMPROVEMENTS IN CITY COUNCIL RESOLUTION 2020-65 TO JANUARY 3, 2024, FOR THE COMBINED MEDICAL/ADULT CANNABIS DISPENSARY USE AT 3100 DEL MONTE BOULEVARD (APN 032-192-018-000).

WHEREAS, on June 10, 2020, the City Council adopted Resolution No. 2020-65 approving a Cannabis Conditional Use Permit (CUP) to allow a combined Medical/Adult Cannabis Dispensary Use at 3100 Del Monte Blvd. The applicant, Pacific Roots Marina, LLC (Pacific Roots or applicant) has until January 3, 2023, to complete all Conditions of Approval (COA). To be in compliance with COA #10 *Permit Expiration*, which gives the applicant one year to complete all conditions after the date of occupancy, the following three (3) COAs below need to be completed:

1. *Substantial Compliance* – The project shall be constructed in substantial compliance with the plans submitted to the Planning Office on January 7, 2020, except as conditioned herein,
6. *Public Improvements* – In accordance with Marina Municipal Code Chapter 15.36, public improvements shall be designed and installed by the applicant or property owner to the satisfaction of the City Engineer and may include, but are not limited to, curb, gutter, sidewalk, park strip, street trees and light poles. The installation of improvements may be deferred by the City Engineer until the City Council approval of the design for Del Monte Boulevard and then completed within a time to be determined in accordance with the design and
7. *Parking* – Subject to approval by the Director of Community Development-Planning, final plans shall indicate either site modifications that allow for one parking space per 275 square feet of tenant floor space, or alternate means of compliance, such as an agreement with neighboring property owners;

WHEREAS, on August 17, 2021, the City Council granted a 120-day extension to complete the improvements, in addition to the previous 90-day extension granted by the City Manager. This extended the tenant improvements building permit deadline to January 6, 2022;

WHEREAS, on January 3, 2022, Pacific Roots finalized their tenant improvements building permit including security and safety measures and minor exterior improvements such as signs and wheelchair access. The Pacific Roots group partnered with a management company and opened as Catalyst Cannabis Dispensary (Catalyst);

WHEREAS, on September 1, 2022, the applicant applied to amend COA #1 by removing the façade changes and to request an extension of COA #6 and #7 for one additional year until January 3, 2024;

WHEREAS, on October 13, 2022, the Planning Commission made the following recommendation:

The Planning Commission recommends to the City Council that it DENY modifications to remove the required façade improvements and not grant an extension of the site improvements in City Council Resolution 2020-65.

WHEREAS, on November 7, 2022, applicant updated its request for the extension of the public improvements from one (1) year to three (3) months;

WHEREAS, on December 6, 2022, the City Council passed the following motion:

“The applicant and the city will agree to a sixty (60) day tolling agreement to work out the following issues: a cost estimate for the Carmel Avenue improvements per COA #6, façade improvements, a publicly approved mural, and Del Monte Avenue improvements pursuant to condition of approval (COA #6). City Staff will bring back this agreement to the City Council by no later than February 7, 2023.”

WHEREAS, on December 20, 2023, City Staff met with Pacific Roots and began the process of working out the issues as instructed by the City Council;

WHEREAS, on January 12, 2023, City Staff met with Pacific Roots and agreed on the estimated costs of the improvements including the façade improvements for their suite, a publicly approved mural, and Del Monte Avenue improvements. The applicant agreed to send a letter that includes the mutually agreed upon cost estimates;

WHEREAS, on January 31, 2023, City Staff received a letter from the applicant; and

WHEREAS, the proposed project is exempt from the California Environmental Quality Act (CEQA) under Class 1, Section 15301 (Existing Facilities) of the State CEQA Guidelines. Staff has determined that the exemption applies in this case because the modifications to the CUP under consideration would be minor alterations to an existing structure or facility and would involve negligible or no expansion of use.

NOW, THEREFORE, THE City Council of the City of Marina DOES HEREBY RESOLVE AS FOLLOWS:

1. The Recitals set forth above are true and correct and are incorporated into this Resolution by reference.
2. Based upon the findings of approval, the City Council hereby approves the modifications to the required façade improvements and grants an extension of time for completion of the site improvements in City Council Resolution 2020-65 to April 3, 2023, as conditioned herein for the combined Medical/Adult Cannabis Dispensary Use at 3100 Del Monte Boulevard (APN 032-192-018-000).
3. The City Council finds the project as described and conditioned exempt from environmental review per Section 15301 of the CEQA Guidelines.
4. The mural proposed in the alternative façade improvement proposal is not applicable to the performance milestones contained in the Development/Operating Agreement. The mural concepts shall be submitted to staff in a timely manner for processing and recommendation for approval by the City Council.

5. The Cannabis Conditional Use Permit is hereby extended for Pacific Roots, dba Catalyst until December 31, 2023.

FINDINGS FOR APPROVAL

The City Council finds that the proposed amendments are in compliance with the General Plan:

General Plan Compliance

1) General Plan Policy 2.37

“The intent of the General Plan’s commercial land use policies is as follows: (1) to provide for the shopping and service needs of local residents, businesses, and persons employed within the City; (2) to attract commercial development that will strengthen the City’s fiscal base; and (3) to enhance employment and other economic opportunities for local residents. The General Plan establishes four commercial categories: Retail and Personal Services; Visitor-Serving Retail and Services; Multiple-Use Commercial; and Office and Research and Development.”

Evidence: The modifications to the approved Conditions of Approval to remove the façade changes and the one-year extension on the site improvements to Carmel Avenue will allow this business to continue to employ union employees and improve their commercial space, add site improvements along Carmel Avenue, and make minor improvements to building overall.

2) General Plan Policy 2.38

“The land use policies of this section serve to promote the development and location of retail and other commercial personal services which adhere to the General Plan’s principal goals. This entails providing locations for retail and service uses that will permit capture of a significant share of locally and regionally generated sales. It also entails providing locations that make access to such uses by foot and public transit viable and attractive as an alternative to access by private automobile, especially in the case of multi-purpose trips.”

Evidence: The project amendments will permit the retail establishment to continue to operate in a central location with walkable access from the neighborhoods, easy access from the freeway, several bus stops, and the future Bus Rapid Transit SURF! line will be located across Del Monte Boulevard. This ensures that this location will be able to capture a significant share of locally and regionally generated sales with multiple transit options available.

3) General Plan Policy 2.39

“A “strip” form of commercial development shall be avoided, and future retail, personal-service, and business-service uses shall be concentrated to infill the Del Monte Boulevard and Reservation Road core retail areas and create more pedestrian-oriented complexes. Wherever possible, commercial development outside of these areas shall be planned more to complement rather than directly compete with commercial activity in the Del Monte Boulevard and Reservation Road areas. Marina’s core retail area is defined as those areas designated for “Commercial Retail/Personal Services” uses along the east side of Del Monte Boulevard from Carmel Avenue to Reservation Road [...].”

Evidence: The adult cannabis use and site improvements will both support the core area on Del Monte Boulevard and Carmel Avenue and integrate into Del Monte Boulevard with the future street and pedestrian improvements. Further, the changes to the parking lot to add sidewalks and integrate with the new Del Monte Boulevard improvements means that it will transition from a strip mall with nonconforming parking and no sidewalks to an improved site with shared parking with the Motel and safer pedestrian access. Therefore, the project and the improvements will integrate with the proposed commercial core of the Downtown as the transition happens over time.

Zoning Compliance

4) Compliance with Section 17.58.040.B

“The appropriate authority may designate such conditions in connection with the use permit as it deems necessary to secure the purposes of this title. Such conditions may include, but are not limited to, architectural and site approval, time limitations, street dedication, and street and drainage improvements. The appropriate authority may also require such bonds and guarantees as it deems appropriate to assure the compliance of the conditions.”

Evidence: The project will be in substantial compliance with COA #1 with the removal of the façade changes.

Modification to Condition of Approval (COA) #1

Applicant requests to remove the required façade changes from the approved site improvements.

Evidence: The removal of the façade changes will allow the building to retain a consistent front across all five commercial tenants. Further, the ‘beautifying’ improvements will help the overall site, which includes adding plants on the front along Del Monte Boulevard, re-planting planters on the Carmel Avenue side and some minor repairs such as repainting and repairing broken aspects of the building.

Off Site Improvements

The applicant has requested a ninety (90) day extension of the off-site improvements.

Evidence: The extension will result in off-site improvements along Carmel Avenue including removing the existing nonconforming parking and installing curb, gutter, sidewalk, and on-street parking in conformance with City standards. This will improve pedestrian safety and walkability for the site.

AMENDED CONDITIONS OF APPROVAL

Conditions of Approval

Initial Establishment of Commercial Cannabis Operations

1. Substantial Compliance – The project shall be constructed in substantial compliance with the plans submitted to the Planning Office on January 7, 2020, except as conditioned herein.
2. Lighting – Exterior Lighting Plan – All exterior lighting shall be unobtrusive, down-lit, harmonious with the local area, and constructed or located so that only the intended area is illuminated, and off-site glare is fully controlled. Prior to issuance of a building permit, the Owner/Applicant, shall submit three (3) copies of an exterior lighting plan (including a photo-metric analysis) which shall indicate the location, type, and wattage of all light fixtures and include catalog sheet for each fixture. The lighting shall comply with the requirement of the California Energy Code set forth in California Code of Regulation, Title 24, Part 6. The exterior lighting plan shall be subject to approval by the Director of Community Development-Planning.
3. Occupancy Permit – Prior to obtaining an occupancy permit and commencing commercial operations, the applicant shall schedule an inspection with Community Development Department staff to verify compliance with the conditional use permit conditions of approval. Inspections by additional City departments may be required.
4. Development/Operating Agreement – Per MMC Section 5.76.030, prior to commencing commercial operations, the permittee shall enter into a development/operating agreement with the City setting forth the terms and conditions under which the dispensary will operate, including, but not limited to, payment of fees and taxes as mutually agreed, and other such terms and conditions that will protect and promote public health, safety, and welfare.
5. Permit Modifications – The City may modify this permit at any time as needed to clarify or augment requirements of the permittee, so long as modifications do not conflict with the MMC or State laws, as they may be amended from time to time. Modifications resulting in a new permit must be executed by the City and the permittee. If the City has made modifications to the permit and requested permit execution by the permittee, the prior permit may be deemed null and void and the permittee shall cease commercial operations until completing execution of the new permit.

Public Improvements

6. Public Improvements – In accordance with Marina Municipal Code Chapter 15.36, public improvements shall be designed and installed by the applicant or property owner to the satisfaction of the City Engineer and may include, but are not limited to, curb, gutter, sidewalk, park strip, street trees and light poles. The installation of improvements may be

deferred by the City Engineer until the City Council approval of the design for Del Monte Boulevard and then completed within a time to be determined in accordance with the design.

7. Parking – Subject to approval by the Director of Community Development-Planning, final plans shall indicate either site modifications that allow for one parking space per 275 square feet of tenant floor space, or alternate means of compliance, such as an agreement with neighboring property owners.

Standard Cannabis Dispensary Operating Conditions

8. Right to Operate – Except as modified by required conditions of approval, the permittee shall have the right to operate a medical/adult-use cannabis dispensary, including non-storefront retail (delivery) in accordance with the conditional use permit application submitted on January 7, 2020.
9. Substantial Action Time Limit – If the permittee does not commence commercial cannabis activity in accordance with the terms of this Permit by January 6, 2022, this permit shall be deemed revoked. A one-time 30-day administrative extension may be granted by staff if, by January 6, 2022, the business is ready for final inspections.
10. Permit Expiration – This permit shall have a duration of one year. The one year period shall commence upon the date of occupancy. The Community Development Department may administratively renew the permit as long as the business is operating in compliance with the MCC and the permit's conditions of approval, has paid all taxes and fees in a timely manner, and has maintained possession of a current State license to operate the dispensary. The City may perform an annual inspection of the facility in conjunction with permit renewal to confirm ongoing compliance with conditions of approval.
11. Indemnification – The Owner/Applicant shall agree as a condition of approval of this project to defend, at its sole expense, indemnify and hold harmless from any liability, the City and reimburse the City for any expenses incurred resulting from, or in connection with, the approval of this project, including any appeal, claim, suit or legal proceeding. The City may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the applicant of its obligations under this condition.
12. State License – The permittee must provide a copy of a valid and current State license to operate a cannabis dispensary prior to initiating commercial business operations and must provide an updated copy whenever the license is renewed or amended. If at any time the State license expires or is revoked, the business must cease operations until a valid and current license is obtained.
13. Business License – The permittee shall obtain and maintain a City of Marina business license.
14. Posting of Permits and Licenses – The permittee shall conspicuously display, within the interior of the building near the entrance, a copy of the State License, the conditional use permit, the business license, and any other documentation required as proof of right to operate a cannabis dispensary on the premises.

15. Inspection Access – At any time and without prior notice, the business shall allow entry into the premises by the Marina Police Department, the Marina Fire Department, the Community Development Department, and any other staff, including Monterey County staff, charged with inspecting the business or enforcing the conditions of the conditional use permit. The business shall provide access to all portions of the premises as well as business records, if requested.
16. Compliance with State and Local Requirements – The permittee shall comply with all state and local requirements for operation of a cannabis dispensary, including those not listed on the conditional use permit, and as they may be amended over time.
17. Cannabis Consumption Prohibited on Premises – Cannabis shall not be smoked, ingested, or otherwise consumed on the business premises.
18. Alcoholic Beverages and Tobacco – Alcoholic beverages shall not be sold, dispensed, or consumed on the premises. Sale or consumption of tobacco is prohibited on the premises.
19. Payment of Taxes and Fees – The permittee shall pay any applicable taxes and fees due to the City in a timely manner.
20. Transfer of Permit – This conditional use permit is granted only to the applicant identified in this resolution for the site defined herein. This permit shall not be transferable to any other site or to any other person without the consent of the City.
21. Hours of Operation – The business may be open for customer-serving commercial activities between the hours of 9:00 am and 11:59 pm.

Site Security and Neighborhood Compatibility Conditions

22. Site Maintenance – The permittee shall maintain the premises' parking areas, driveways, accessways and grounds, landscaped areas, artwork, and exterior building surfaces in accordance with applicable City standards in the MMC.
23. Signage – Signage with graphics depicting cannabis is prohibited. Signage is subject to a sign permit.
24. Odor – Cannabis odors shall not be detectable outside of the facility. Prior to opening for business, the permittee shall demonstrate to City staff that odor prevention equipment is in place.
25. Security Guards and Cameras – The permittee shall maintain 24-hour security camera coverage of the premises. The premises shall be staffed by security guards to an extent sufficient to ensure the site safety and deter crime. Security guards shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. Security personnel may not be armed.
26. Marina Police Department Notification – The permittee shall notify the Marina Police Department within 24-hours after discovering any breach of security.

27. Delivery – Employees delivering cannabis shall carry a copy of the following documents when making deliveries: copy of the dispensary’s permits and licenses authorizing delivery service; the employee’s government-issued identification; a copy of the delivery request; and chain of custody records for good being delivered.

Enforcement

28. Permit Revocation – Per MMC Section 19.08.010, the City may revoke this conditional use permit at any time for failure to comply with any state and local requirements, including but not limited to, conditions of approval and requirements regarding timely payment of taxes and fees.

Approved Amendments to the Conditions of Approval

29. Amend COA #1 – Revise the plan set submitted on January 7, 2020, to remove the building’s façade changes on page A4.12 as submitted on September 1, 2022, as shown on “**Exhibit 1**”.
30. Beautifying – Consistent with Development/Operating Agreement included at Attachment No. 2, within forty-five (45) days of the approval of the Conditional Use Permit Amendment by the City Council, the applicant agrees to submit plans to repaint and refurbish the shopping center and paint a mural on the side of the building along Carmel Ave. Within sixty (60) days of receiving approval of the permit for said work, the applicant shall complete the improvements.
31. Planting – Applicant agrees to work with City Staff and the Marina Tree and Garden Club on species of trees and plants for the planter boxes along Carmel Avenue.
32. Building Minor Repairs – Consistent with Development/Operating Agreement included at **Exhibit 2**, within forty-five (45) days of the approval of the Conditional Use Permit Amendment by the City Council, the applicant agrees to submit plans to make minor repairs to the front of the building overall by replacing missing wood, touching up paint and making minor repairs as needed to beautify the building overall. Within sixty (60) days of receiving approval of the permit for said work, the applicant shall complete the improvements.
33. Public Improvements Extension – Extend COA #6 *Public improvements* to the Carmel Avenue frontage and COA #7 *Parking* along Carmel Avenue for six (6) months from the date of the approval. In accordance with the Deferred Public Improvement Agreement included as **Exhibit 3**, the applicant shall submit plans for curb, gutter, sidewalk and landscape improvements within forty-five (45) days of the approval of the Conditional Use Permit Amendment by the City Council. Within sixty (60) days of receiving approval of the permit for said work, the applicant shall commence the work for the improvements.

34. Public Improvements Bond – Within sixty (60) days of the approval of the Conditional Use Permit Amendment by the City Council, the applicant shall provide a bond or other surety acceptable to the City to guarantee that the installment of approximately twenty-five (25) feet of public improvements on Del Monte Blvd and on the corner. In addition, within sixty (60) days of the approval of the Conditional Use Permit Amendment by the City Council, the applicant shall provide a bond or other surety acceptable to the City to guarantee that the installment of approximately one hundred seventy nine (179) feet of public improvements on Carmel Avenue. The amount of the surety shall be a minimum of ten percent of the actual or estimated costs of the installation accepted by the Public Works Department. If or when the public improvements are completed and are signed off by the Public Works Director or their designee, the surety shall be returned to the entity that provided the surety or to another entity upon proof of transfer. If improvements are not installed and the applicant does not take steps to improve the frontage, the City shall have the authority to use the surety for the improvements as described herein. **“Exhibit 3”**
35. Shared Parking with the Motel – Within thirty (30) days of the completion of off-site improvements along Del Monte Boulevard, the applicant shall provide the City with an executed shared parking agreement with the property owner detailing that eleven (11) parking spaces shall be shared. Further, all corresponding signs and striping must be installed within thirty (30) days of the executed shared parking agreement.

This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 22nd day of February 2023, by the following vote:

AYES, COUNCIL MEMBERS: Visscher, McCarthy, Biala, Medina Dirksen, Delgado

NOES, COUNCIL MEMBERS: None

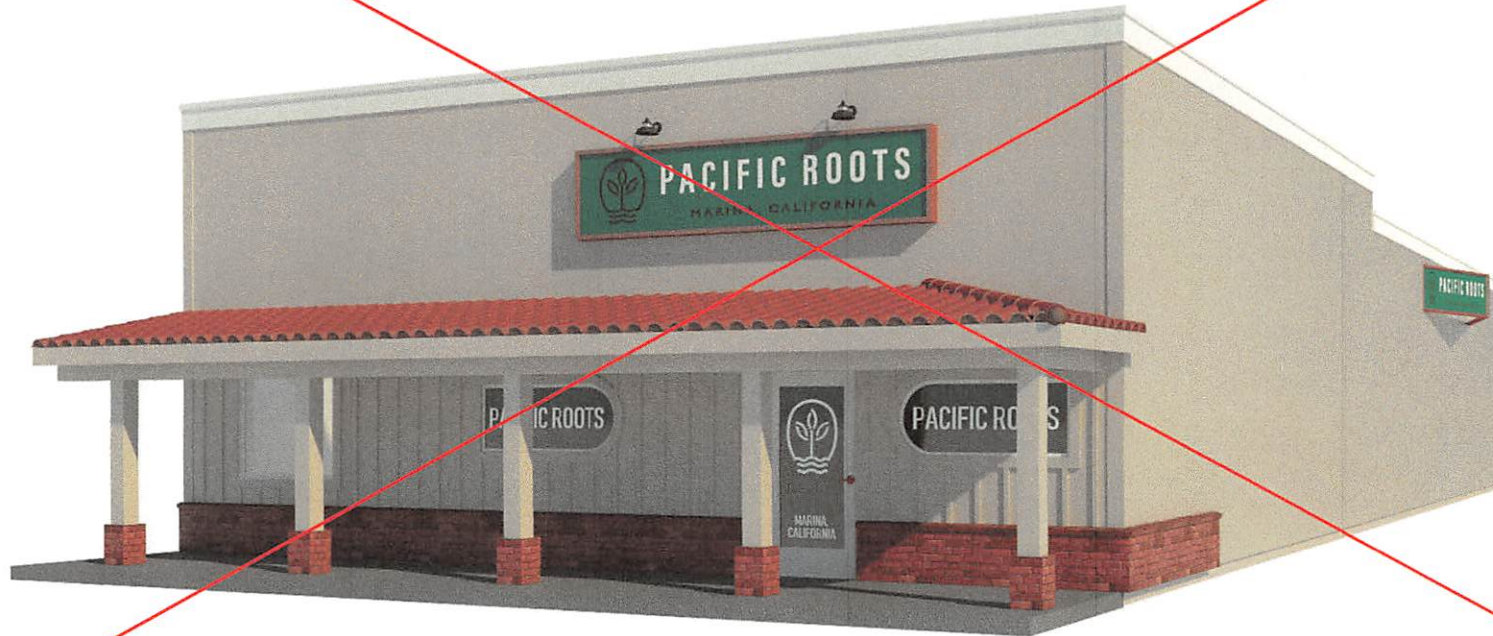
ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk



2 (N) EXTERIOR PERSPECTIVE VIEW
SCALE: 1/2" = 1'-0"



1 (N) EXTERIOR ELEVATIONS - FRONT
SCALE: 1" = 10'-0"

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PROJECT: 20190505

CLIENT:
PACIFIC ROOTS MARINA
(MANAGING PARTNER)
1189 S HILL ST., STE 425
MARINA, CA 93933
TEL: (415) 425-7071
EMAIL: ANDREW@PACIFICROOTSMARINA.COM

DESIGN REVIEW FOR
PACIFIC ROOTS - MARINA
3100 DEL MONTE BOULEVARD
MARINA, CA 93933

TITLE:
ELEVATIONS EXTERIOR

ISSUES:
Public Work Review
Project Review
Project Review
Project Review
Project Review

ARCHITECT'S APPROVAL



THIS PROJECT IS NOT APPROVED FOR CONSTRUCTION
UNLESS THE SEAL AND SIGNATURE OF THE ARCHITECT ARE
PRESENT ON THESE DRAWINGS.

SHEET:

A4.12

SHEET: 02 OF 02

**DEVELOPMENT /OPERATING AGREEMENT
BY AND BETWEEN
THE CITY OF MARINA
AND
PACIFIC ROOTS MARINA, LLC. DBA CATALYST - MARINA
3100 Del Monte Boulevard**

ARTICLE 1. PARTIES AND DATE.

This Development/Operating Agreement (“Agreement”) is dated _____, 2023, for execution purposes only and is entered into between (i) the City of Marina (“City”), a California charter city, and Pacific Roots Marina, LLC. dba Catalyst - Marina (ii) (“Owner”), a California Limited Liability Corporation, and the legal owner of a cannabis business and holder of a Use Permit from the City to operate a cannabis dispensary within the City. This Agreement shall become effective on the Effective date defined in section 3.1.6.

ARTICLE 2. RECITALS.

2.1 WHEREAS, Pursuant to Marina Municipal Code (“MMC”) Chapter 5.76.030, City is authorized to enter into binding Development/Operating Agreements (“Agreement”); and

2.2 WHEREAS, this Agreement and the Project are consistent with the City’s General Plan and, with the issuance of a use permit, the 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 and conduct commercial cannabis activities at the Dispensary, to the extent contemplated by Ordinance 2018-09 “Commercial Cannabis Activities” 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 use. This Agreement shall govern the conduct of the business to dispense cannabis for medical and adult use within the City 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 that in addition to the terms and conditions set forth in Ordinance 2018-09 and the Use Permit issued to Owner on June 10, 2020, this Agreement shall also govern the conditions under which the cannabis dispensary will be developed and will operate.

2.7 WHEREAS, the Owner and City intend that this Agreement satisfy the requirements of Ordinance 2018-09, which require those operating a Cannabis Dispensary pursuant to a duly-issued Use Permit to enter into an annual development/operating agreement with the City setting forth the terms and conditions under which the cannabis facility will operate, including, but not limited to, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety and welfare.

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.
65864 et seq.]

3.1.2 "City" means the City of Marina, a California charter city.

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 "MMC" means the City of Marina 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 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 MMC 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.

3.1.8 “Owner” means the 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, inspection, dispensary permit application, cannabis conditional use permit application, pre-license site visit, background check, live scan annual compliance, regulatory compliance inspections and cannabis tax audits, 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 Ordinance 2018-09, located at 3170 Del Monte Boulevard (Street Address) on Assessor Parcel Number (APN) 032-055-017 that will be state licensed and issued Adult and Medical Dispensary Permits in full accordance with Ordinance 2018-09 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 and the Adult Use of Marijuana Act adopted by the State of California.. This Project shall include the distribution, of cannabis as approved by state and local law. The Project may include construction, remodeling, and other construction activities in furtherance of the development of an Adult and Medical Cannabis Dispensary.

3.1.11 “Property” means the real property where the Cannabis Dispensary is to be located as shown on **Exhibit A**, as set forth in 3.2 below, 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 Use Permit with Conditions at 3170 Del Monte Boulevard.

Exhibit C – Owner’s Commitment to Local Enterprise and Community Benefit Program.

Exhibit D – Public Improvement Agreement for Improvement of Streets, Installation of Sidewalks, Landscaping, Street Lights and other Public Works Facilities.

Exhibit E – Letter committing to Façade and Onsite Improvements including structure repainting, refurbishment of the tenant space store front, installation of planters, painting of murals celebrating unique features of the city.

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 Development/Operating Agreement, the Use Permit and the Dispensary Permits. In the event of conflict or uncertainty between this Agreement, the Dispensary Permits, and the Use Permit, the provisions of the Development Agreement 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
211 Hillcrest Avenue
Marina, CA 93933

If to the Owner:

Alberto Marciano, Manager
401 Pine Ave.,
Long Beach, CA 90802

With Copies to:

City Attorney
City of Marina
211 Hillcrest Avenue
Marina CA 93933

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.

3.6 Relationship of Owner and City. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Owner, and that the Owner is not an agent of the City. The City and Owner hereby renounce the existence of any form of joint venture or partnership between or among them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Owner joint ventures or partners.

3.7 Application of State and Local Regulatory Laws Governing Cannabis. The operation of cannabis facilities is a highly regulated business activity, and is subject to various state and local laws and regulation. This Agreement does not, and the City cannot and does not intend to, give Owner the vested right to continue its operations without complying with applicable state and local laws governing its operation. This Agreement only “vests” those regulations expressly mentioned in, which include rules, regulations, and official policies governing permitted uses of land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to this Agreement, for the term of this Agreement, and shall be subject to full compliance with the provisions of the Agreement. Owner shall be responsible for obtaining all applicable state licenses, permits, approvals and consents, even if the applicable state laws and regulations are altered following the Effective Date. In addition, Owner shall be responsible for continuously maintaining its Use Permit. Nothing in this Agreement shall prevent the City from denying or conditionally approving the renewal of the Use Permit, revoking the Use Permit.

3.8 Conflict with Cannabis Regulation and Safety Act. If there is any

conflict between any provision of this Agreement and any provision of the Cannabis Regulation and Safety Act, formerly known as the Marijuana Regulation and Safety Act, that is comprised of Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 (Bus. & Prof. Code Sections 19300 *et seq.*; H&S Code Section 11362.769-11362.777; and Water Code Section 13276), the provisions of the Cannabis Regulation and Safety Act shall take precedence. Nothing in this Agreement is intended nor shall it be construed or interpreted to allow or require Owner to do anything or take any action related to the performance of this Agreement that is contrary to, prohibited by, or not allowed under the Cannabis Regulation and Safety Act and any regulations issued by the State pursuant thereto. Nor shall this Agreement be construed or interpreted to allow or authorize Owner to not do anything or take any action related to the performance of this Agreement that is required by said Act and regulations.

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 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 Processing Fees and Taxes. Processing Fees and taxes.

4.2.3 Cannabis Business Operating Fees. Owner agrees to pay all cannabis business operating fees including, cannabis live Scan Fee, cannabis zoning verification letter, cannabis background review, pre-license site visit, regulatory compliance inspections, and cannabis tax audits.

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 Local Enterprise and 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 Local Enterprise and Community Benefit Plan and the Owner Commitment to Local Enterprise and Community Benefit Program in **Exhibit C**.

4.4 Payment of Marijuana Business Operation Tax.

4.4.1 Amount of Tax. Pursuant to MMC Chapter 5.80.350,

Owner shall pay City the annual business license tax based on a percentage of gross receipts as set by the City Council by Resolution 2019-34 in accordance with prior voter approval of five percent (5%) annually. Such taxes shall be remitted in accordance with regulations adopted by City. Payments are due quarterly on July 1st, October 1st, January 1st, and April 1st each year.

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

4.5.3 New Taxes. With mutual consent of all parties to this Agreement, any subsequently enacted City-wide taxes shall apply to the Project.

4.6 Assessments. Nothing herein shall be construed to relieve the Project from assessments levied against it by the City pursuant to any statutory procedure for the assessment of property to pay for infrastructure and/or services, which benefit the Project.

ARTICLE 5. PERMITTED USES. The permitted uses of the Property (Exhibit "A") including the density and intensity of use, the maximum height, bulk, size of proposed building, provisions for reservation or dedication of land for public purposes and location and maintenance of on-site and off-site improvements, location of public utilities operated by the City and other terms and conditions of development applicable to the Project are as set forth below:

5.1. Use Permit. Owner agrees to abide to all conditions of approval of the Use Permit at all times, including those requirements set forth in Marina Ordinance 2018-09, which includes complying with the Operation Plan, Security Plan, Business Plan, signage restrictions, neighborhood compatibility requirements, and all operation requirements set forth therein. The city manager or designee can terminate a development/operating agreement at any time with or without reason, including for failure to abide by all conditions of approval of the Permit. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of the Owner permit holder.

5.1 Rules Regarding Permitted Uses. For the term of this Agreement, the City's ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property, governing density and intensity of use of the Property and the maximum height, bulk and size of proposed buildings shall be those in force and effect on the earlier of either the Effective Date or the date the City approves the first discretionary approval of the Project.

5.2 Rules Regarding Design and Construction. Unless otherwise expressly provided herein, the ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications

applicable to the Project shall be those in force and effect on the earlier of either the Effective Date or the date the City approves the first discretionary approval of the Project.

5.3 Public Improvements. The Cannabis Conditional Use Permit issued to the Owner requires certain public improvements to be completed. In accordance with Marina Municipal Code Chapter 15.36, public improvements shall be designed and installed by the applicant or property owner to the satisfaction of the City Engineer and may include, but are not limited to, curb, gutter, sidewalk, park strip, street trees and light poles. Owner hereby agrees to enter into the Public Improvement Agreement for Improvement of Streets, Installation of Sidewalks, Landscaping, Street Lights and other Public Works Facilities provided in **Exhibit D**. All improvements required by the City Engineer to satisfy MMC Chapter 15.36 shall be completed as required in **Exhibit D**. Failure to complete required public improvements shall be grounds for a non-renewal of the annual Cannabis Business Permit.

5.4 Façade Improvements. The Cannabis Conditional Use Permit issued to the Owner requires certain facade and onsite improvements to be completed, in accordance with Conditional of Approval Number 1 of Resolution 2020-65. Such façade and onsite improvements shall include structure repainting, refurbishment of the tenant space store front, installation of planters, painting of murals celebrating unique features of the city as described in **Exhibit E** and equaling a value of approximately fifty-thousand dollars (\$50,000). Owner hereby agrees to submit plans for façade and onsite improvements to the Director of Community Development within forty-five (45) days of execution of this Agreement, and to complete all façade and onsite improvements within sixty (60) days of receiving all necessary permits from the Community Development Department. All Public Works Facilities provided in Exhibit D. All improvements required shall be completed within 5 months of the execution date of this Agreement. Failure to complete required façade and onsite improvements shall be grounds for a non-renewal of the annual Cannabis Business Permit.

ARTICLE 6. TERM AND REVIEW FOR COMPLIANCE.

6.1 Term. The term of this one year from the Effective Date. This Agreement may be extended after the Annual Review. It is understood by the Owner that the city manager or designee can terminate this Agreement at any time with or without reason. The City has the right to deny an extension or negotiate new terms or conditions for extension. Permits are also revocable at any time with or without cause by the city manager or designee pursuant to Section 4 of Ordinance 2018-09.

6.1 Annual Review. The City Manager or designee will 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 with cursory 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.

6.2 Special Review. The City Council may order a special review of compliance with this Agreement at any time. The City Manager or 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.

6.3 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.

6.4 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.

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

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) cure 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 Section 7.4, 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 7.5 shall apply to such unknown or unknowable claims or damages. Without limiting the generality of the forgoing, 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 _____

7.8 **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 attorney's 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 7.8 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 9. THIRD PARTY LITIGATION.

9.1 **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.

9.2 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.

9.3 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) any 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 to Owner 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.

9.4 Accept Reasonable Good Faith Settlement. With respect to Article 9, 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 9.4 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 9.4 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 10. MISCELLANEOUS PROVISIONS.

10.1 Entire Agreement. This Agreement together with the Permits 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.

10.2 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.

10.3 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.

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

10.5 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.

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

10.7 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.

10.8 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.

10.9 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.

10.10 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.

10.11 Counterparts. This Development/Operating Agreement may be signed in counterparts, each of which shall constitute an original, but both of which together shall constitute one and the same instrument. Counterparts may be delivered by facsimile, electronic mail (including pdf. Or any electronic signature complying with the U.S. E-SIGN Act of 2000, California Uniform Electronic Transactions Act (Cal. Civil Code §1633.1 et seq.) or other applicable law) or other transmission method and any counterpart so delivered shall be deemed to have been validly delivered and be valid and effective for all purposes.

10.12 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.

10.13 Agent for Service of Process. Owner shall register the business with the California Secretary of State and be enrolled to do business in California prior to entering into this Agreement. 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 who is a 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.

10.14 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 represents and warrants that:

10.14.1 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

10.14.2 This Agreement is binding on that company or entity in accordance with its terms; and

10.14.3 The company or entity is a duly organized and legally existing company or entity in good standing and is registered to do business in California by the California Secretary of State; and

10.14.4 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.

10.15 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.

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

10.17 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.

10.18 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 from the City. All conditions of approval for all entitlements, permits and/or licenses are hereto incorporated.

10.19 Owner agrees to comply with all applicable provisions of any current or future applicable federal, state, or local marijuana/cannabis laws, as duly adopted, including any and all development standards, license and revocation procedures, and the like.

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

CITY OF MARINA

OWNER

By: _____
Layne Long, City Manager

Date: _____

Date: _____

ATTEST:

By: _____
Anita Shepherd-Sharp, Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Robert Rathie, for the City Attorney

EXHIBITS

Exhibit A – Map showing Property and its location.

Exhibit B—Resolution of City Granting a Conditional Use Permit with Conditions at [location].

Exhibit C—Owner's Commitment to Local Enterprise and Community Benefit Program.

Exhibit D – Public Improvement Agreement for Improvement of Streets, Installation of Sidewalks, Landscaping, Street Lights and other Public Works Facilities.

Exhibit E – Letter committing to Façade and Onsite Improvements including structure repainting, refurbishment of the tenant space store front, installation of planters, painting of murals celebrating unique features of the city.

DEFERRED PUBLIC IMPROVEMENT AGREEMENT
For
3100 DEL MONTE BOULEVARD

THIS DEFERRED PUBLIC IMPROVEMENT AGREEMENT (“Agreement”) is made and entered into on December ____, 2023, by and between Pacific Roots Marina, LLC, dba Catalyst - Marina (ii) (“Owner”), a California Limited Liability Corporation, and the legal owner of a cannabis business and holder of a Use Permit from the City to operate a cannabis dispensary within the City, and the City of Marina, a California charter city (the “City”), to guarantee construction, installation and completion by Pacific Roots of certain public improvements consisting of, but not necessarily limited to, curb gutter, sidewalk, park strip, street trees, and light poles (the “Improvements”) and to secure the completion of performance by Pacific Roots of the Improvements through posting of a performance bond in an agreed amount, being the amount of the City Engineer’s estimate for construction, installation and completion of the Improvements.

Recitals

- A. Pacific Roots is the lessee of a parcel of real property including a 2,744 square foot building located at 3100 Del Monte Boulevard in the City of Marina, Monterey County, California (APN 032-192-018), which is more particularly described and shown in **Exhibit “A”** (the “Property”).
- B. Pacific Roots has developed the Subject Property by converting the building into a cannabis dispensary (the “Project”).
- C. On June 10, 2020, by Resolution No. 2020-65, Pacific Roots received approval, subject to certain Conditions of Approval, from the City Council of a Cannabis Conditional Use Permit to allow operation of a medical/adult use cannabis dispensary at 3100 Del Monte Boulevard.
- D. Condition of Approval No. 6 of Resolution 2020-65 provides as follows:

“6. Public Improvements -In accordance with Marina Municipal Code Chapter 15.36, public improvements shall be designed and installed by the applicant or property owner to the satisfaction of the City Engineer and may include, but are not limited to, curb, gutter, sidewalk, park strip, street trees and light poles. The installation of improvements may be deferred by the City Engineer until the City Council approval of the design for Del Monte Boulevard and then completed within a time to be determined in accordance with the design.”
- E. On _____ the parties entered into certain Development/Operating Agreement by and between the City of Marina and Pacific Roots Marina, LLC.

- E. The parties now desire to provide for deferral of the construction, installation and completion of the Improvements described in Recital D.
- F. The City Engineer has submitted to Pacific Roots an estimate of the cost for construction, installation and completion cost for the Public Improvements in the amounts of:
 - 1. \$160,897 for Carmel Avenue Improvements, including the placement of concrete curb and gutters, installation of an 8-foot concrete sidewalk, installation of a concrete driveway approach, installing traffic signage and relocating light posts and electrical.
 - 2. \$29,278 for Del Monte Road Boulevard Improvements, including the placement of concrete curb and gutters, installation of an 8-foot concrete sidewalk, installation of a concrete corner access ramp, relocation and adjustment of a utility vault.
- G. The has agreed to commence construction on the Carmel Avenue Improvements upon review and approval of the City Engineer.
- H. The City intends to further develop the design for Del Monte Boulevard as a part of its Downtown Vitalization Project, of which the Improvements will form an integral part. Therefore, it is mutually advantageous to both the City and Pacific Roots that the construction of the Del Monte Boulevard Improvements by Pacific Roots be deferred until a later date.
- I. It is the purpose and intent of this Agreement to allow for the guarantee of performance by Pacific Roots and to provide for the deferment of construction, installation and completion of the Improvements until a later date in the manner herein specified.

Terms & Conditions

NOW, THEREFORE, in consideration for the promises in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, Pacific Roots and the City mutually promise and agree as follows:

- 1. **Incorporation.** The Recitals set forth above are true and are hereby incorporated herein by this reference. All applicable Codes, Ordinances, Resolutions, Rules and Regulations and established policies of the City and the laws of the State of California and the United States of America concerning the subject matter of this Agreement are hereby referred to and incorporated herein to the same effect as if they were set out a length herein. Said Codes, Ordinances, Resolutions, Rules and Regulations include, but are not limited to, the following: The Municipal Code of the City of Marina, including the current Zoning Ordinance, and the currently adopted California Building Code.

2. **Plans & Specifications.**

(a) Carmel Avenue Improvements: After receipt from the City of a notice to proceed with design of the Improvements Pacific Roots agrees to complete the plans and specifications for the Carmel Avenue Improvements within forty-five (45) days and submit the plans and specifications to the City Engineer for review and approval.

(b) Del Monte Boulevard Improvements: Pacific Roots will have forty-five (45) days after the City has determined it appropriate to move forward with the Del Monte Boulevard Improvements. The forty-five (45) days will begin upon receipt from the City of a notice to proceed with design of the Improvements. Pacific Roots agrees to complete the plans and specifications for the Carmel Avenue Improvements within forty-five (45) days and submit the plans and specifications to the City Engineer for review and approval.

3. **Notice to Proceed with Construction of Improvements.**

(a) Upon receipt of notice to proceed with the construction and installation of the Improvements Pacific Roots will within sixty (60) days obtain all required permits including a building permit from the City and commence construction of the Improvements required as a condition of the approval of the Project by properly licensed contractors including providing all administration, labor, and materials for their construction. Should the applicant not be able to obtain all required permits and commence construction within sixty (60) days of receiving the notice to proceed, the applicant may request an extension of time equal to the number of days that the City was reviewing plans and specifications submitted by Pacific Roots for the permits specified in Section 4.

(b) Pacific Roots has been alerted to the requirement of California Labor Code Section 1770 et seq. which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Pacific Roots to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Pacific Roots agrees to assume all risk of liability arising from any decision not to pay prevailing wages for the work required by this Agreement.

(c) If in the course of construction and installation of the Improvements it is determined that the public interest requires alteration to the Improvements Pacific Roots shall undertake such design and construction changes as may be reasonably required, to the extent that such alterations are considered "Minor Alterations." For purposes of this Section (3)(c), "Minor Alterations" shall mean changes, modifications, or alterations to the Improvements that results in an increase to the original estimate of the cost for construction of less than ten percent (10%).

(d) All Improvements shall be completed in accordance with all standards established in the applicable Codes, Ordinances, Resolutions, Rules and Regulations, all applicable laws and this Agreement, and in accordance with the plans and specifications approved by the City Engineer.

4. **Improvements.**

(a) The Improvements will include, but are not necessarily limited to: installation of curb, gutter, sidewalk, park strip, street trees and light poles in the areas shown on **Exhibit “B”** attached hereto and made a part hereof. Improvements are to be completed within the time periods set forth in a Schedule of Performance to be mutually agreed and attached hereto when complete as **Exhibit “C.”** The General Stipulations set forth in **Exhibit “D”** shall be followed, adhered to, and completed subject to the approval of the City Engineer.

(b) All the provisions of this Agreement and all work to be done pursuant to the terms of this Agreement are to be completed within the time periods set forth in the Schedule of Performance. Pacific Roots shall maintain such public works facilities and other improvements described in this Agreement at Pacific Root’s sole cost and expense at all times prior to acceptance by City in a manner which will preclude any hazard to life or health or damage to property. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, and maintaining all landscaping in a vigorous and growing condition.

5. **Performance Deposit.**

(a) Pacific Roots Pacific Roots agrees to post an acceptable corporate payment and performance surety bonds or instrument of credit, in a form approved in advance by the City Attorney which total the estimated cost of the work, and which will guarantee the faithful performance of the work and repair by the city of any defects in the Improvements which occur within one year after the work is complete. The acceptable surety shall total amounts including:

- (i) Carmel Avenue Improvements: One hundred sixty thousand eight hundred ninety-seven dollars (\$160,897).
- (ii) Del Monte Boulevard Improvements: Twenty-nine thousand two hundred seventy eight dollars (\$29,278).

(b) The Performance Bonds shall be in full satisfaction of Pacific Root’s obligation to secure the performance of construction, installation and completion of the Improvements by Pacific Roots and repair of any defects in the Improvements which occur within one year after the work is completed.

(c) If Pacific Roots or its contractors or subcontractors fail to pay any of the persons named in California Civil Code Sections 8520, 8530 and 9100, or amounts due under the Unemployment Insurance Code, with respect to work, labor, the rental of equipment or materials furnished by any claimant named in said Civil Code Section, the City may use any and all funds posted under this paragraph to pay such persons legally entitled thereto. Corporate surety bonds are posted with the City such bonds shall contain language binding the surety to pay for labor and materials remaining unpaid. In the even the City prevails in an action upon any bond posted under this paragraph the City shall be entitled to reasonable attorney’s fees to be fixed by the Court.

(e) Provided the Improvements are constructed as provided herein, one year following the City's acceptance of the Improvements the City will disburse, without interest, all funds then on deposit from Pacific Roots to Pacific Roots.

(f) In the event Pacific Roots transfers its interest in all or any of the Property to a purchaser, Pacific Roots may make the establishment of a replacement Performance Deposit, subject to the terms of this Agreement, by said transferee a requirement of the transfer.

6. **Acceptance of Improvements.** Acceptance of the Improvement on behalf of the City shall be made by the City Engineer after final completion and inspection of all Improvements. Such acceptance shall not constitute a waiver of defects by the City.

7. **Encroachment Permit/Right(s) of Entry.** For work performed outside the Property and within the City's public right of way Pacific Roots will first obtain an encroachment permit. For any work performed outside the Property on other private property Pacific Roots will first obtain a right-of-entry agreement from the property owner and provide insurance and indemnity to the City and the property owner as the case may be in accordance with the terms of this Agreement, the encroachment permit or the right-of entry.

8. **Inspections/Fees.** Prior to commencement of the work herein, Pacific Roots shall pay to the City a cash amount for the engineering inspections to be performed by the City for the work and checking and testing of the materials used in connection therewith as set forth in the City's Schedule of Fees and Charges including but not limited to, plan check, design review, engineering, inspection and other service fees.

9. **Temporary Access.** If necessary, on, before or after the commencement date of the construction of the Improvements, Pacific Roots agrees to construct temporary access to the Property and to submit to the City for approval plans to provide, at Pacific Root's expense, temporary access to and from the Subject Property until the Improvements are completed. Upon approval of the plans Pacific Roots will promptly construct temporary access.

10. **Indemnification.** Prior to acceptance of the Improvements by the City, Pacific Roots agrees to indemnify, defend with counsel of City's choice and hold the City and any of its officials, boards and commissions and members thereof, agents and employees, free and harmless from all suits, fees, claims, demands, causes of action, costs, losses, damages, liabilities and expenses (including without limitation attorney's fees) because of or arising or resulting directly or indirectly from (i) any damage done to any utility, public facility or other material or installation of the City on said real estate as a result of Pacific Roots or any contractor or subcontractor of Pacific Roots, or any employee of the foregoing, grading or working upon said real estate; or (ii) any act or omission of Pacific Roots or Pacific Root's contractors, or subcontractors, or any employee of the foregoing in connection with the design, construction or other work performed by them in connection with this Agreement, including without limitation all claims relating to injury or death of any person or damage to any property, except for such claims, demands, causes of action, liability or loss arising out of the sole negligence or intentional

acts of the City or any of its officials, boards or commissions or members thereof, agents or employees. City shall not be responsible for the design or construction of the Improvements pursuant to the plans, regardless of any negligent action or inaction taken by City in approving the plans unless the particular improvement design was specifically required by City over written objection by Pacific Roots submitted to the City Engineer before construction and acceptance of the Improvements, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternate safe and feasible design. Prior to acceptance Pacific Roots shall remain obligated for routine maintenance of the Improvements. After acceptance, City shall be obligated for the routine maintenance of all Improvements but Pacific Roots shall remain obligated to eliminate any defect in design or dangerous condition caused by any design or construction defect. Provisions of this Section shall remain in full force and effect for one year following acceptance by City of the Improvements. Pacific Roots shall reimburse City for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by City in enforcing the provisions of this Section.

11. **Insurance.** Any use by any person of the Improvements or any portion thereof, shall be at the sole and exclusive risk of Pacific Roots prior to the City's acceptance of the Improvements. At all times after receiving the Notice to Proceed with Construction of Improvements and until the Improvements are accepted by the City Pacific Roots shall maintain, at no cost to the City, the following insurance which shall be provided on an occurrence basis:

(a) **Commercial General Liability Insurance.** Pacific Roots shall maintain (primary) commercial general liability insurance, including coverage for bodily injury and property damage on a form acceptable to the City Attorney, including premises and operations liability, blanket contractual liability, broad form property damage, including completed personal and advertising injury liability, and products and completed operations coverage. Policy limits shall be no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. The City shall be added as an additional insured on a form approved by the City Attorney. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any employee or agent of the City and must include a severability of interest (cross liability) provision, that is, it shall act as though a separate policy were written for each insured and additional insured named in the policy.

(b) Before commencing any construction work and during the course of construction, Pacific Roots agrees to obtain, and cause its contractor(s) to be obtain, with a responsible insurance carrier authorized under the laws of the State of California to insure employees against liability for compensation under the Workers Compensation Insurance and Safety Act, compensation insurance covering full liability for compensation under said Act, for any person injured while performing any work or labor incidental to the work of the Improvements. During the course of construction, Pacific Roots shall, at its cost, keep in full force and effect a policy of builder's risk and liability insurance, including installation floater coverage, in a sum equal to the agreed full replacement cost of the Improvements, including the cost to construct the Public Improvements, prior to completion of the Improvements in the amount of sixty thousand dollars (\$60,000). All

risk of loss or damage to the Improvements during the course of construction shall be on Pacific Roots with the proceeds from insurance thereon payable to Pacific Roots. The City and Pacific Root's general contractor shall be additional named insureds on Pacific Root's Builder's risk and liability insurance.

(c) Pacific Roots shall provide thirty (30) days written notice to City prior to termination, cancellation or modification of the insurance specified herein. The insurance specified herein above shall (i) name City as additional insured, (ii) name City as a loss payee, and (iii) provide that City, although an additional insured or loss payee, may recover for any loss suffered by reason of the acts or omissions of Pacific Roots or Pacific Root's contractors or subcontractors and shall be endorsed to waive all rights to recover against City for any loss or damage arising from a cause covered by the insurance required to be carried pursuant to this Agreement, and will cause each insurer to waive all rights of subrogation against City in connection therewith. All policies shall be written on an occurrence basis and not on a claims made basis and shall be issued by insurance companies acceptable to City. Prior to commencing any work pursuant this Agreement, Pacific Roots shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained. Not later than thirty (30) days prior to policy expiration date on the current certificate of insurance, the Pacific Roots shall deliver to the City a new and updated certificate of insurance evidencing all required coverage remains in place.

12. Default.

(a) Default of Pacific Roots shall include, but not be limited to: (1) failure to timely commence construction of the Improvements; (2) failure to complete construction of the Improvements within the time limitations set forth in the Schedule of Performance; (3) failure to timely cure any defect of the Improvements; (4) failure to perform substantial construction work for a period of thirty (30) calendar days after commencement of the work; (5) Pacific Root's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Pacific Roots fails to discharge within thirty (30) days; (6) failure to perform any other obligation under this Agreement. Notwithstanding the foregoing, Pacific Roots shall not be in default under this Agreement if it cures any default within thirty (30) days of City's written notice of such default, or if the default may not reasonably be cured within such time period, if it commences to cure within thirty (30) days and thereafter diligently proceeds to complete the cure.

(b) City reserves to itself all remedies available to it at law or in equity for breach of Pacific Root's obligations under this Agreement. City shall have the right, subject to this Section, to draw upon or utilize the Performance Deposit to mitigate City's damages in the event of default by the Pacific Roots. The right of City to draw upon or utilize the Performance Deposit is additional to, and not in lieu of, any other remedy available to City. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the Improvements and, therefore, City's damages for Pacific Root's default shall not exceed the cost of completing the Improvements. The sums provided by the Performance

Deposit may be used by City for the completion of the Improvements in accordance with the Improvement Plans referenced herein.

(c) In the event of Pacific Root's default under this Agreement, Pacific Roots authorizes City to perform such obligation sixty (60) days after mailing written notice of default to Pacific Roots and agrees to pay the entire cost of such performance by City. City may take over the work and prosecute the same to completion by contract or by any other method City may deem advisable, for the account and at the expense of Pacific Roots, and Pacific Roots shall be liable to the City for any excess cost or damages occasioned City thereby, including but not limited to fees and charges of architects, engineers, attorneys, other professionals and court costs. In such event, City, without liability for doing so, may take possession of, and utilize in completing the work, such materials, appliances, plants and other property belonging to Pacific Roots as may be on the site of the work and necessary for performance of the work.

(d) Failure of City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach by Pacific Roots.

13. **Successors in Interest and Assigns.** This Agreement is binding on the heirs, successors and assigns of the parties hereto. Pacific Roots shall furnish any successors, assigns of transferees of any part or all of the Subject Property with a copy of this Agreement; provided, however, that Pacific Root's failure, or that of any other person, to so furnish such copy will not prejudice the rights of the City to require performance under this Agreement.

14. **Time.** Time is of the essence in the performance of the construction of the Improvements. required herein. This Agreement will expire only after completion of and City acceptance of the Improvements specified herein or upon the mutual written consent of both Pacific Roots and the City.

15. **Notice.**

Notice as given by each party of this Agreement shall be given to the other party at the address given below:

To City:

City Manager
211 Hillcrest Avenue
Marina, CA 93933

If to the Owner:

Alberto Marciano, Manager
6700 Pacific Coast Highway, Suite 201
Long Beach, CA 90803

With Copies to:

City Attorney
City of Marina
211 Hillcrest Avenue
Marina CA 93933

Notice shall be deemed effectively served upon deposit in the United States mail with first class postage affixed thereto.

16. **Attorney's Fees/Venue.** If it becomes necessary for either party to bring a lawsuit to Enforce any of the provisions of this Agreement, the parties agree that a court of competent Jurisdiction may determine and fix a reasonable attorney's fee to be paid to the prevailing party. Any action arising out of this Agreement shall be brought in Monterey County, regardless of where else venue might be proper.
17. **Independent Status.** Pacific Roots is an independent entity from the City. Pacific Roots (and not the City) shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Pacific Roots. Neither Pacific Roots, nor its officers, employees, agents, contractors or subcontractors, shall obtain any rights to retirement or other benefits which accrue to City employees.
18. **Severability** Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.
19. **Construction, References, Captions.** Since the parties or their agents have participated fully in the preparation of this Agreement, the language of the Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.
20. **Amendment or Modification.** This Agreement may only be amended or modified in a writing signed by Pacific Roots and the City.
21. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.
22. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid.

IN WITNESS WHEREOF, Pacific Roots and the City by their duly authorized representatives have executed this Agreement on the dates set forth below.

CITY OF MARINA

Pacific Roots MARINA, LLC

By: _____
Layne Long
City Manager

By: _____
Name: _____
Managing Member

Date: _____

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
For the City Attorney

EXHIBITS TO BE ATTACHED

EXHIBIT "A"

PLAT SHOWING THE PROPERTY

EXHIBIT "B"

LOCATION OF IMPROVEMENTS

EXHIBIT 'C'

SCHEDULE OF PERFORMANCE
(To be added)

EXHIBIT D

GENERAL STIPULATIONS

DRAFT

EXHIBIT D

General Stipulations

1. Locate and properly dispose of any wells, septic tanks and underground fuel storage facilities.
2. Schedule the construction of improvements along existing public roads so that the work affecting vehicular traffic is complete with a minimum interruption of traffic.
3. All work within the public right-of-way shall be subject to the approval of the Public Works Director or his or her designee.
4. All construction work shall be coordinated so that the existing residents and/or businesses have access to their properties.
5. All improvements shall be installed per the approved Improvement Plans.
6. Pacific Roots shall provide to the City of Marina electronic copy of the "as built" and Improvement Plans as an AutoCAD drawing file (DWG format, latest AutoCAD edition).
7. Any reimbursements due Pacific Roots, unless specified otherwise in writing in this Agreement, will expire ten (10) years after the date of execution of this Agreement.
8. Until the roads on the Property are open to the public, Pacific Roots shall give good and adequate warning to the public of each and every dangerous condition on the existing public roads, and will take all reasonable actions to protect the public from such dangerous condition.
9. Prior to the acceptance of any dedications or Improvements by City, Pacific Roots shall certify and warrant that neither the property to be dedicated nor Pacific Roots is in violation of any environmental law and neither the property to be dedicated nor the Pacific Roots is subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with environmental law. Neither Pacific Roots nor any third party will use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any hazardous substance except in compliance with all applicable environmental laws. Pacific Roots has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. Pacific Root'S prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated. Pacific Roots shall give prompt written notice to City at the address set forth herein of: (i) Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated; (ii) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and, (iii) Pacific Root'S discovery of any occurrence or condition on any property adjoining in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

10. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other developers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the City ordinances providing therefore, nor shall anything in this Agreement commit City to any such apportionment.

DRAFT

PACIFIC ROOTS MARINA, LLC
2400 E. Katella Avenue, Ste. 370, Anaheim, CA
92806
Phone: (714) 478-3600 | Email: avim@me.com

January 31, 2023

City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Phone: (831) 884-1238

RE: Letter Summarizing Public Improvements to the City of Marina

Dear City Council:

By way of introduction, my name is Brandon Gesicki, the Community Liason for Pacific Roots Marina, LLC ("**Pacific Roots**"), which operates a dispensary in the City of Marina (the "**City**") at 3100 Del Monte Blvd., Marina, CA 93933 ("**310 Del Monte**").

On December 6, 2022, the City of Marina held a public hearing to consider modifications to remove the required façade improvements and grant an extension of the site improvements required under Pacific Root's Conditional Use Permit ("**CUP**"). There, City Council found it necessary to continue the hearing to February to allow us time to work with City Staff to determine what improvements, if any, would satisfy the requirements of the CUP, and what amount of time is required to install the improvements.

Language of CUP Requirements.

Among the "conditions of approval" for our CUP included Paragraph 6, titled "Public Improvements, which states:

"In accordance with Marina Municipal Code Chapter 15.36, public improvements shall be designed and installed by the applicant or property owner to the satisfaction of the City Engineer and may include, but are not limited to, curb, gutter, sidewalk, park strip, street trees and light poles. The installation of improvements may be deferred by the City Engineer until the City Council approval of the design for Del Monte Boulevard and then completed within a time to be determined in accordance with the design."

It's important to note that Paragraph 6 does not specify what improvements were to be installed by Pacific Roots. Instead, Paragraph 6 requires that the "public improvements shall be designed and installed by the applicant or property owner to the satisfaction of the City Engineer ." Although Paragraph 6 affords the City Engineer the opportunity to defer the installation of the improvements pending the City's approval of the design for Del Monte Boulevard - as of the date of this Letter, the City has not approved such a design. It is therefore clear that Paragraph 6 requires Pacific Roots to design and install the public improvements to the satisfaction of the City Engineer.

Proposed Public Improvements.

Pacific Roots has worked closely with City Staff for the better part of a year to determine what public improvements were required to satisfy the improvement requirements of Paragraph 6. After taking all considerations and City recommendations into account, we believe the following public improvements, if installed, would satisfy the requirements of Paragraph 6:

- Carmel Avenue Improvements

Pacific Roots agrees to make substantial improvements to Carmel Avenue directly along the property line adjacent to the shopping center where Pacific Roots operates. These improvements will include the placement of concrete curb & gutters, installing an 8-foot sidewalk, installing a concrete driveway approach, installing traffic signage, and relocating light post and electrical, etc.

We've estimated that the costs of such improvements would be, roughly, **\$160,896.75**.

- Del Monte Road Improvements

Pacific Roots also agrees to make substantial improvements to the southerly 25' portion Del Monte Boulevard (portion directly in front of Pacific Roots). These improvements will include the placement of concrete curb & gutters, installing an 8-foot sidewalk, installing a corner access ramp, and relocation and utility vault adjustment. (see Exhibit A attached herein).

We've estimated that the costs of such improvements would be, roughly, **\$29,277.50**. However, because Del Monte Boulevard is subject to the City's unapproved Downtown Vitalization project, we will agree to post a bond with the City promising to contribute the aforementioned amount toward the construction as soon as construction is approved.

Request for a Modification to the Façade Improvements Attached as Exhibit A to our CUP.

During the December 6th City Council hearing, the City seemed to agree that the façade improvements, as imagined in the CUP, were unnecessary (and perhaps counterproductive) to the City's beautification goals. Many of the Council members seemed to accept our alternative, which was to, among other things, repaint and refurbish parts of the shopping center, install planters, painting a mural commemorating the historic Pacific Roots railroad, and working with local groups on other improvements that would celebrate the unique features of the City. We would work hand-in-hand with the City Staff, local interests, and the community itself to ensure that all improvements worked to beautify the City.

We've estimated that the costs of such improvements would be, roughly, **\$50,000.00**. This amount is in-line with the *original* estimated cost of the exterior improvements provided in Building Permit B22-000868.

Conclusion.

As stated before, we believe that these improvements, coupled with a slight modification to the CUP will allow us the opportunity to satisfy the promises made the City, the employees, and all stakeholders interested in the success of Pacific Roots.

Of course, I continue to be available to all the community's questions and concerns.

Thank you in advance for any time taken in consideration of this appeal.

Respectfully Submitted,

DocuSigned by:

BRANDON GESICKI

030FF4700F3340E...

Brandon Gesicki

Pacific Roots Marina, LLC

ENGINEER'S ESTIMATE - Carmel Ave & Del Monte Blvd Offsite Improvements**Attachment 2**

Marina, CA

These items are for the construction of the Frontage Offsite improvements
as shown on the Conceptual Plans prepared by Monterey Bay Engineers, Inc.
Estimates are **NOT** assumed to be prevailing wage

Carmel Avenue

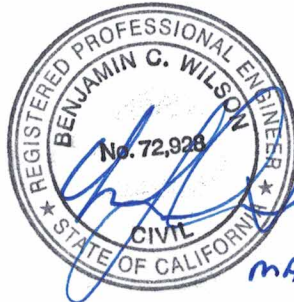
ITEM	QUANTITY	UNITS	UNIT PRICE	EST. COST
Remove (E) Improvement	1	L.S.	\$8,000.00	\$8,000.00
Sawcut (E) AC pavement	180	L.F.	\$10.00	\$1,800.00
Grading Operations	1	L.S.	\$18,000.00	\$18,000.00
Remove Existing AC Pavement	800	S.F.	\$1.60	\$1,280.00
Subtotal, Site Preparation				\$29,080.00
Concrete Curb & Gutter	178.75	L.F.	\$45.00	\$8,043.75
8' Concrete Sidewalk	178.75	L.F.	\$240.00	\$42,900.00
Concrete Driveway Approach	2	Each	\$14,000.00	\$28,000.00
160	25	S.F.	\$30.00	\$750.00
3"AC / 8"AB paving	716	S.F.	\$9.25	\$6,623.00
Subtotal, Asphalt & Concrete				\$86,316.75
Traffic Signage (STOP & street names)	1	Each	\$800.00	\$800.00
Relocate Light Post & Electrical	1	Each	\$1,100.00	\$1,100.00
Pavement Striping	1	L.S.	\$12,000.00	\$12,000.00
Construction Staking & Observation	1	L.S.	\$3,600.00	\$3,600.00
Traffic Control	14	Days	\$2,000.00	\$28,000.00
Subtotal, Misc.				\$45,500.00
Total Estimated Construction Cost, Carmel Avenue frontage				\$160,896.75

Del Monte Blvd, southerly 25'

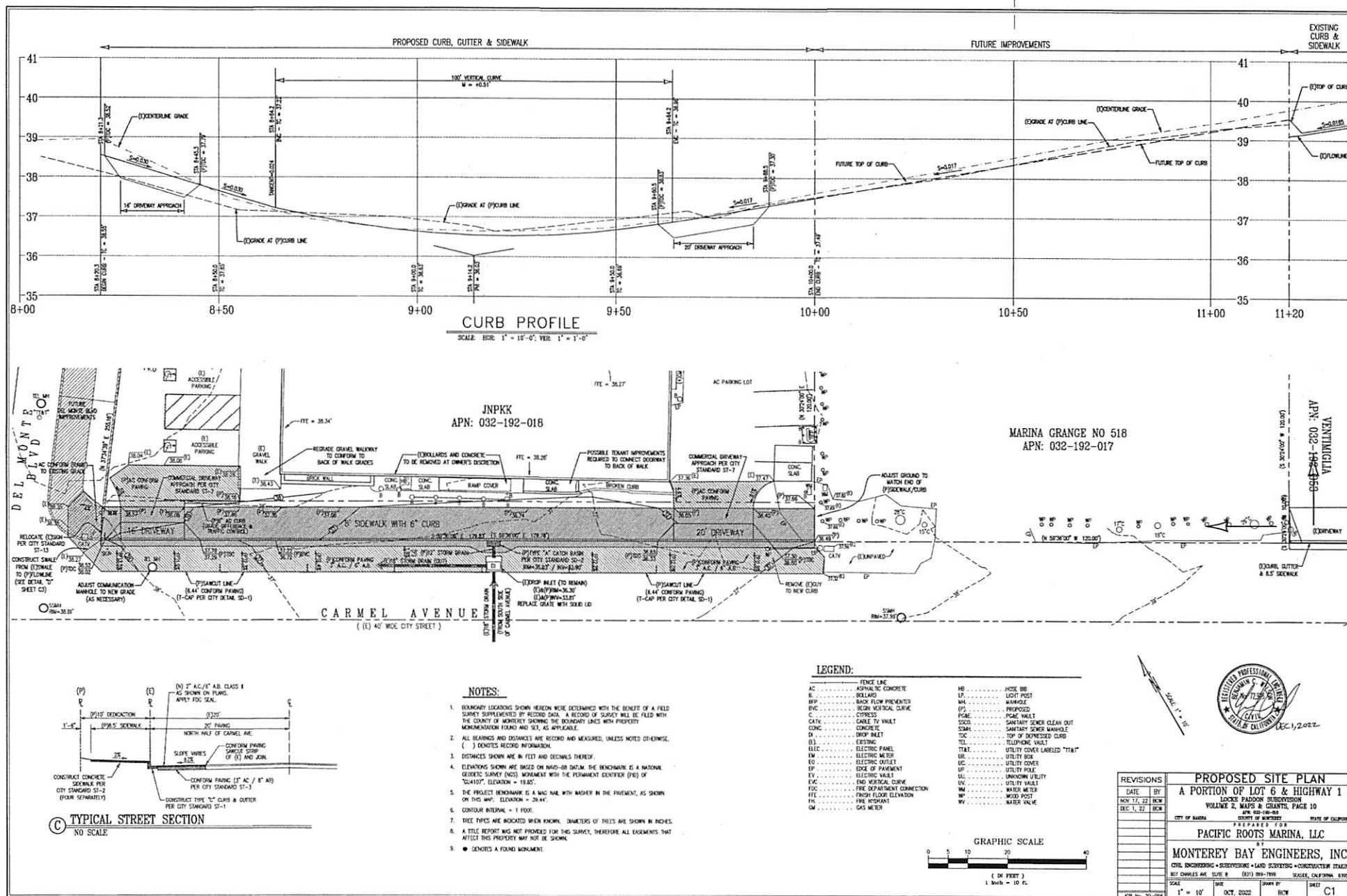
ITEM	QUANTITY	UNITS	UNIT PRICE	EST. COST
Remove (E) Improvement	1	L.S.	\$2,500.00	\$2,500.00
Sawcut (E) AC pavement	30	L.F.	\$10.00	\$300.00
Grading Operations	1	L.S.	\$3,000.00	\$3,000.00
Remove Existing AC Pavement	150	S.F.	\$1.60	\$240.00
Subtotal, Site Preparation				\$6,040.00
Concrete Curb & Gutter	25	L.F.	\$45.00	\$1,125.00
8' Concrete Sidewalk	25	L.F.	\$240.00	\$6,000.00
Corner Access Ramp	1	Each	\$9,500.00	\$9,500.00
3"AC / 8"AB paving	350	S.F.	\$9.25	\$3,237.50
6" Concrete Curb (back of planter)	50	L.F.	\$30.00	\$1,500.00
Subtotal, Asphalt & Concrete				\$21,362.50
Relocation / Adjust Utility Vaults	2	Each	\$600.00	\$1,200.00
Pavement Striping	1	L.S.	\$1,000.00	\$1,000.00
Construction Staking & Observation	1	L.S.	\$1,800.00	\$1,800.00
Traffic Control	10	Days	\$2,000.00	\$20,000.00
Subtotal, Misc.				\$24,000.00
Total Estimated Construction Cost, 25' of Del Monte Blvd frontage				\$29,277.50

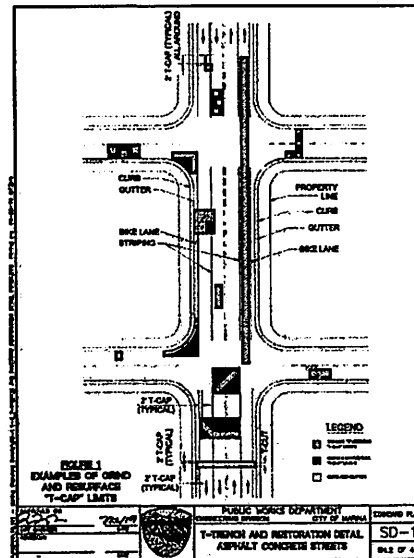
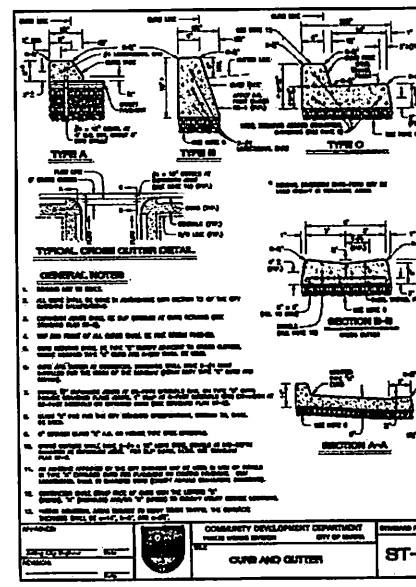
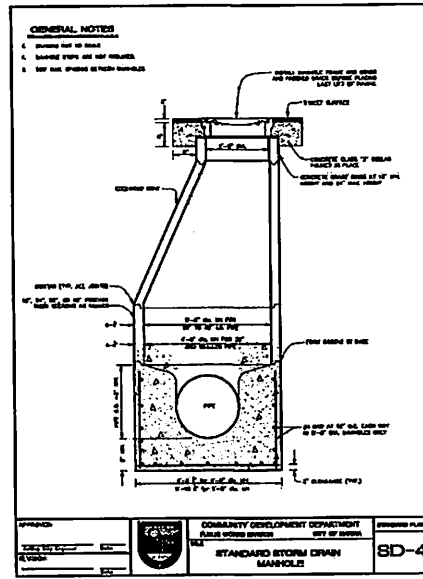
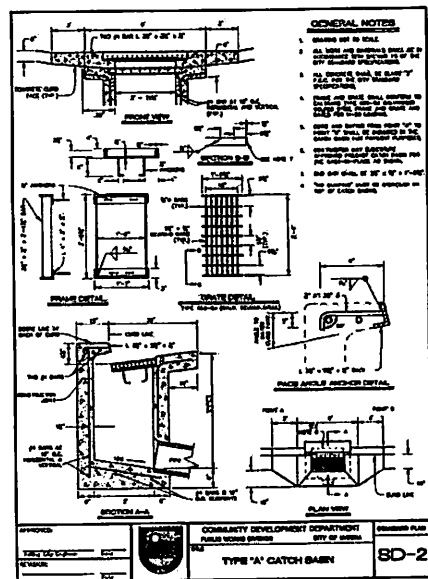
Del Monte Blvd, remaining 220'

ITEM	QUANTITY	UNITS	UNIT PRICE	EST. COST
Remove (E) Improvement	1	L.S.	\$14,000.00	\$14,000.00
Sawcut (E) AC pavement	230	L.F.	\$10.00	\$2,300.00
Grading Operations	1	L.S.	\$30,000.00	\$30,000.00
Remove Existing AC Pavement	1400	S.F.	\$1.60	\$2,240.00
Subtotal, Site Preparation				\$48,540.00
Concrete Curb & Gutter	215	L.F.	\$45.00	\$9,675.00
8' Concrete Sidewalk	189	L.F.	\$240.00	\$45,360.00
4' Conc. Behind Driveway Approaches	104	S.F.	\$30.00	\$3,120.00
Concrete Driveway Approach	1	Each	\$14,000.00	\$14,000.00
3"AC / 8"AB paving	3025	S.F.	\$9.25	\$27,981.25
6" Concrete Curb (back of planter)	167	L.F.	\$30.00	\$5,010.00
Subtotal, Asfalt & Concrete				\$105,146.25
Relocation / Adjust Utility Vaults	4	Each	\$600.00	\$2,400.00
Relocate Light Post & Electrical	1	Each	\$1,100.00	\$1,100.00
Pavement Striping	1	L.S.	\$12,000.00	\$12,000.00
Construction Staking & Observation	1	L.S.	\$3,600.00	\$3,600.00
Traffic Control	30	Days	\$2,000.00	\$60,000.00
Subtotal, Misc.				\$79,100.00
Total Estimated Construction Cost, 220' of Del Monte Blvd frontage				\$232,786.25



MAY 5, 2022



[illegible][illegible]

REVISIONS		PROPOSED SITE PLAN			
DATE	BY	A PORTION OF LOT 8 & HIGHWAY 1			
NOV 17, 21	MCV	GENERAL NOTES			
DEC 1, 22	MCV	VOLUMES & MAPS & GRANTS, PAGE 10			
		DATE OF ISSUING	PROJECT NO.	NAME OF CLIENT	
			PREPARED FOR		
			PACIFIC ROOTS MARINA, LLC		
			MONTEREY BAY ENGINEERS, INC.		
		CITY ENGINEERING & DESIGN	1000 MONTEREY BLVD.	MONTEREY, CALIF. 93940	
		400 MARKET & STATE ST.	(408) 980-3000	WWW.MBE-ENGINEERS.COM	
SHEET	DATE	BY	CHKD BY	DATE	
AS DESIGNED	OCT. 2022	MCV			C2



ORDINANCE NO. 2018-09

Initiative Measure to be Submitted Directly to the Voters

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF MARINA
ALLOW CANNABIS BUSINESS ACTIVITY AND ESTABLISH TAXES AND FEES
FOR SUCH BUSINESSES WITHIN THE CITY OF MARINA, AMENDING TITLE AND
CHAPTER ESTABLISHING CANNABIS BUSINESS ACTIVITIES AS A USE
ALLOWED SUBJECT TO A USE PERMIT IN SPECIFIED ZONES AND
ESTABLISHING USES TO PROTECT PUBLIC HEALTH, SAFETY & WELFARE.**

THE PEOPLE OF THE CITY OF MARINA DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Establish. Chapter 19 of the City of Marina’s Municipal Code is hereby established to read as follows:

19.01.010 Title.

This chapter shall be known as the city of Marina Commercial Cannabis Activities ordinance. The city of Marina hereinafter shall be called “city”. This chapter shall be applicable in the incorporated territory of the City. (Ord.2010-03 &1 (part), 2010)

19.01.020 Operative Date

“Operative date” means the first day of the first calendar quarter commencing more than one hundred days after the adoption of the ordinance codified in this chapter by a majority of the voters of the city voting thereon at the election to be held on November 6, 2018.

19.01.030 Purpose

This chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. Regulate Commercial Cannabis Activity (as defined below) if a majority of the qualified electors voting on the measure voted to approve the imposition of the tax at an election called for that purpose.
- B. To promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the MAUCRSA. The goals of this regulation for Commercial Cannabis Activity include:
 - A. To minimize the size of the illegal market for Cannabis in the City and the surrounding regions.
 - B. To create jobs, tax revenue and economic growth for the City and its residents.
 - C. To enable law enforcement and regulators to have sufficient rights to inspect and audit Commercial Cannabis Activity and take expeditious action against Persons who violate the requirements of this Chapter.
 - D. To minimize social harms which may arise from Cannabis including youth consumption or intoxicated driving.

C. To regulate the operation and location of Commercial Cannabis Activity such that public nuisance is minimized.

19.01.040 Definitions

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

A. "Adult cannabis" or "Adult cannabis product" " means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by adults in California pursuant to the Adult Use of Marijuana Act of 2016 (Proposition 64), found at Section 11362.1 of the Health and Safety Code. For the purposes of this Title, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

B. "Adult Use Cannabis" means the non-medical use of cannabis by adults of age 21 and over as permitted by MAUCRSA and other applicable State and City laws.

C. "A-License" means a State License issued under Division 10, commencing with Section 26000 of the Business and Professions Code, for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations or an interim license issued by the State for the same.

D. "A-Licensee" means any Person holding a State License under Division 10, commencing with Section 26000, of the Business and Professions Code for cannabis or cannabis products that are of age and over and who do not possess physician's recommendations or an interim license issued by the State for the same.

D. "A-Licensee" means any Person holding a State License under Division 10, commencing with Section 26000, of the Business and Professions Code for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations or an interim license issued by the State for the same.

E. "A-Permit" means a City Permit issued under this chapter for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations.

F. "A-Permittee" means any Person holding a City Permit issued under this chapter for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations.

G. "Bureau" means the Bureau of Medical Marijuana Regulation within the California Department of Consumer Affairs.

H. "Business and Professions Code" means the California Business and Professions code, as amended from time to time.

I. "Cannabinoid" or "phytocannabinoid" means a chemical compound that is unique to and derived from cannabis.

J. "Medical cannabis" or "Medical cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical Cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362. 5 of the Health and Safety Code. For the purposes of this Title, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 1 1018.5 of the Health and Safety Code.

K. "Commercial medical cannabis activity" means the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, on-site consumption or sale of medical cannabis or a medical cannabis product.

L. "Cannabis" shall have the same meaning as in Section 26000 of the Business and Professions Code.

M. "Cannabis Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or City Permittee where the Commercial Cannabis Activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one City Permittee.

N. "Cannabis Permit" means a permit issued by a city in the State (as defined below), including the City, and a license issued by the State, in each case, in accordance with, and to the extent required by, applicable State Law, in order to participate in a Commercial Cannabis Activity, such as Cultivation, Manufacturing, Distribution, Transportation, Testing, retail sale, or Delivery.

O. "Cannabis Permittee" means a Person who holds a Cannabis Permit.

P. "Cannabis Product" shall have the same meaning as in Section 11018.1 of the Health and Safety Code.

Q. "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency.

R. "Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.

S. "Certificate of accreditation" means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

T. "City" shall have the meaning assigned to such term in the Preamble of this Ordinance.

U. "City Code" means the City of Marina Municipal Code.

V. "City Council" means the current members of the City Council of the City.

X. "City Manager" means the individual duly appointed by a majority of the City Council to serve in the capacity as executive officer of the City on a permanent or interim basis or such other official as designated by the City to fulfill such duties.

Y. "City Permit" means a permit issued by the City, in accordance with this Chapter and State Law, authorizing participation in a Commercial Cannabis Activity, such as Cultivation, Manufacturing, Distribution, Testing, retail sale, or Delivery.

Z. "City Permittee" means a Person that has been issued a City Permit.

AA. "Commercial Cannabis Activity" includes the Cultivation, possession, Manufacture, Distribution, processing, storing, testing, packaging, labeling, Transportation, Delivery or sale of Cannabis and Cannabis Products as provided for in this chapter and Division 10, commencing with Section 26000, of the Business and Professions Code.

BB. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of medical or Adult cannabis. Within the definition of cultivation, the following specific License Types, corresponding to state cultivator license types set forth in California Business and Professions Code section 19332(g).

BB1. "CUP" means a Conditional Use Permit issued by the City in accordance with City Code.

CC. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.

DD. "Cultivation Permit" means a City Permit for the Cultivation of Cannabis in accordance with the terms and conditions of this Chapter and the conditions of approval for the applicable City Permit issued to the particular Cultivation Permittee. Such Permits shall be associated with State License types 1A, 1B, 1C, 2A, 2B, 3A, 3B, 4, 5A or 5B or such other Cultivation license types created by the State.

EE. "Cultivation Permittee" means an applicant who has applied for and has been issued a Cultivation Permit by the City pursuant to the terms and conditions of this Chapter.

FF. "Deliver" or "Delivery" means the commercial transfer of medical or Adult cannabis, or medical or Adult cannabis products from a Permittee, up to an amount allowed by the Bureau, to a primary caregiver, customer, qualified patient or adult as defined in Section 11362.7 of the California Health and Safety Code, or a testing laboratory.

GG. "Dispensary" means a facility where medical Cannabis, medical cannabis products. Adult cannabis. Adult cannabis products or devices for the use of medical or Adult cannabis or medical or Adult cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical Cannabis and medical Cannabis products as part of a retail sale.

HH. "Distribution" means the procurement, sale, and transport of Cannabis and Cannabis Products between State Licensees, including any City Permittees who are State Licensees.

II. "Distribution Permit" means a City Permit for Distribution in accordance with the terms and conditions of this Chapter and the conditions of approval for the applicable City Permit issued to such Distribution Permittee. Such Permits shall be associated with State License Type 11 or such other Distribution license types created by the State.

JJ. "Distribution Permittee" means a Person that has been issued a Distribution Permit by the City pursuant to the terms and conditions of this Chapter.

KK. "Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum. An edible Cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

LL. "Fully Enclosed and Secure Structure" means (i) a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is reasonably secure against unauthorized entry and provides complete visual screening or is behind fencing or other features providing complete visual screening, and which is accessible only through one or more lockable doors and is inaccessible to minors

MM. "Greenhouse" means a fully enclosed permanent structure with climate control, such as heating and ventilation capabilities and supplemental artificial lighting, and that uses a combination of natural and supplemental artificial lighting for cultivation.

NN. "Gross Receipts" means the total amount of the sales of a City Permittee, valued in money, whether paid in money or otherwise, without any deduction for the cost of materials used, any costs of transportation of the City Permittee, or any other expenses.

OO. "Health and Safety Code" means the California Health and Safety Code, as amended from time to time.

PP. "Identification card" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

QQ. "Indoor Cultivation" means a Cultivation using exclusively artificial lighting.

RR. "Licensee" means a person issued a state license under Chapter 3.5 (commencing with Section 19300) of the California Business and Professions Code, to engage in a commercial medical or Adult cannabis activity.

SS. "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of a license for commercial medical or Adult cannabis activities, or the state agency authorized to take disciplinary action against the license.

TT. "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical or Adult cannabis.

UU. "One ownership" and "owner" have the same definition as set forth in Chapter 21.06 of this Title.

WW. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a Cannabis Product from such blends, extractions or infusions.

XX. "Manufactured cannabis" or "cannabis product" means raw Cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

YY. "Manufacturing Permit" means a City Permit to Manufacture in accordance with the terms and conditions of this Chapter and the conditions of approval for the applicable City Permit issued to the applicable Manufacturing Permittee. Such Permits shall be associated with State License types 6 or 7 or such other Manufacturing license types created by the State.

ZZ. "Manufacturing Permittee" means a Person that has been issued a Manufacturing Permit by the City.

AAA. "Manufacturing site" means a location that produces, prepares, propagates, or compounds manufactured medical or Adult cannabis or medical or Adult cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

BBB. "Medicinal Cannabis" or "Medicinal Cannabis Product" means Cannabis or a Cannabis Product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a Medicinal Cannabis patient in California who possesses a physician's recommendation.

CCC. "M-License" means a State License issued for Commercial Cannabis Activity involving Medicinal Cannabis.

DDD. "M-Licensee" means any Person holding a State License under Division 10, commencing with Section 26000, of the Business and Professions Code for Commercial Cannabis Activity involving Medicinal Cannabis or an interim license issued by the State for the same.

EEE. "M-Permit" means a City Permit issued under this chapter for Commercial Cannabis Activity involving Medicinal Cannabis.

FFF. "M-Permittee" means any Person holding a City Permit issued under this chapter for Commercial Cannabis Activity involving Medicinal Cannabis.

GGG. "Mixed Light Cultivation" means a Cultivation facility using a combination of natural and supplemental artificial lighting.

HHH. “Modular Building” means a structure that is transportable in one or more sections and is designed or equipped for the Manufacturing of Cannabis Products, including the compliance with all safety requirements set forth by the City.

III. “Ordinance” shall have the meaning assigned to such term in the Preamble of this Ordinance.

JJJ. “Outdoor Cultivation” means any Cultivation conducted without the use of artificial lighting.

KKK. “Permit Zone” means, with respect to a Person holding a City Permit, the zones or portions of the City where such City Permit type is permitted to operate. Such Permit Zones may be amended from time-to-time by a majority vote of the City Council. To the extent not otherwise specified in this definition, a City Permittee shall be able to operate in any portion of the City which complies with the zoning, radius and other requirements of Section 17.06.

The initial Permit Zones shall be as follows:

- (1) With respect to Retail Permits, Airport District (AP-2/3), Business Park (BP), Business Park Small Lot Combining District (BP/P), Retail Business District (C-1), General Commercial District (C-2), Planned Commercial District (PC) and Transitional Zoning District (T-B-5).
- (2) With respect to Cultivation Permits for Indoor Cultivation, Airport District (AP-2/3), Business Park (BP), Business Park Small Lot Combining District (BP/P) and Transitional Zoning District (T-B-5).
- (3) With respect to Cultivation Permits for Outdoor Cultivation, no zones will permit outdoor cultivation.
- (4) With respect to Cultivation Permits for Mixed Light Cultivation, Airport District (AP-2/3), Business Park (BP), Business Park Small Lot Combining District (BP/P) and Transitional Zoning District (T-B-5).
- (5) With respect to Distribution Permits, Airport District (AP-2/3), Business Park (BP), Business Park Small Lot Combining District (BP/P), Retail Business District (C-1), General Commercial District (C-2), Planned Commercial District (PC) and Transitional Zoning District (T-B-5) or, if such Distribution Permit is held by a Permittee who also holds another City Permit type, the location where the operations of such City Permit type are conducted (e.g. the site of a Cultivation Permit).
- (6) With respect to Manufacturing Permits, Airport District (AP-2/3), Business Park (BP), Business Park Small Lot Combining District (BP/P), Retail Business District (C-1), General Commercial District (C-2), Planned Commercial District (PC) and Transitional Zoning District (T-B-5).
- (7) With respect to Testing Permits, Airport District (AP-2/3), Business Park (BP), Business Park Small Lot Combining District (BP/P), Retail Business District (C-1), General Commercial District (C-2), Planned Commercial District (PC) and Transitional Zoning District (T-B-5).

LLL. "Permittee" means a person issued a commercial cannabis permit under Chapter 7.90.

MMM. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

NNN. “Physician Services” means the consultation by a State-licensed physician of a patient with the possible recommendation by such physician of Medicinal Cannabis for such patient.

OOO. "Primary caregiver" has the same definition as in Section 11362. 7 of the California Health and Safety Code, as it may be amended.

PPP. "Public park" means an area created, established, designated, or maintained by the special district, a County, the State, or the Federal government for public play, recreation, or enjoyment or for the protection of natural resources and features at the site.

QQQ. "Qualified patient" has the same definition as in Section 11362. 7 of the California Health and Safety Code, as it may be amended.

RRR. "Retail Establishment" means a premises where Cannabis or Cannabis Products are offered, either individually or in any combination, for retail sale or Delivery to customers, patients or primary caregivers pursuant to State Law.

SSS. "Retail Permit" means a City Permit to sell and Deliver Cannabis and Cannabis Products to customers, patients and primary caregivers in accordance with the terms and conditions of this Chapter and the conditions of approval for the applicable City Permit issued to the particular Retail Permittee. Such Permits shall be associated with State License type 10 or such other Retail license types created by the State.

TTT. "Retail Permittee" means a Person that has been issued a Retail Permit by the City pursuant to the terms and conditions of this Chapter.

UUU. "State" means the State of California.

VVV. "State license", "license, " or "registration" means a state license issued pursuant to California Business & Professions Code Sections 19300, et seq.

WWW. "State Law" means all laws of the State, including all rules and regulations adopted by State agencies and State regulatory entities.

XXX. "State License" means a State License issued under Division 10, commencing with Section 26000, of the Business and Professions Code, and includes both an A-License and M-Licenses as well as a testing License.

YYY. "State License Deadline" means [the later of (i) the first anniversary of the date on which the Bureau of Cannabis Control posts a notice on its website or otherwise publicly announces that state licensing authorities have commenced issuing State Licenses, or (ii) the applicable date upon which a Person with a City License must obtain a State License to comply with State Law.

ZZZ. "State Licensee" means a Person that has been issued a State License.

AAAA. "Testing" means the testing of the quality, makeup or purity of Cannabis and Cannabis Products as required by applicable State Law.

BBBB. "Testing Permit" means a City Permit for Testing pursuant to the terms and conditions of this Chapter and the conditions of approval for the applicable City Permit issued to the particular Testing Permittee. Such Permits shall be associated with State License 8 or such other Testing license types created by the State

CCCC. "Testing Permittee" means a Person who has been issued a Testing Permit by the City pursuant to the terms and conditions of this Chapter.

DDDD. "Testing laboratory" means a facility, entity, or site in the state that offers or performs test of medical cannabis or medical cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state; and
2. Registered with the California State Department of Public Health.

EEEE. "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial medical Cannabis activity authorized pursuant to the California Business & Professions Code Sections 19300, et seq.

19-02 Cannabis Dispensaries and Operating Standard

19.02.010 Cannabis Dispensaries

Pursuant to Chapter and Section 5.08, it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any dispensary, delivery or delivery only dispensary in or into the City unless there exists a valid business permit in compliance with the provisions of Chapter 15.08 and a permit issued under this Chapter. However, entities authorized under Marina Municipal Section 19.02.010 must abide by the same requirements imposed herein on dispensaries.

This Chapter, and the requirement to obtain a business and/or use permit, does not apply to the individual possession or cultivation of medical or Adult Cannabis for personal use, nor does this Chapter apply to the usage, distribution, cultivation or processing of medical or Adult cannabis by qualified patients or primary caregivers or qualified adults when such group is of three or less individuals, and distributing, cultivating or processing the cannabis from a residential unit or a single non-residential parcel of land. Associations of three or less qualified patients or primary caregivers shall not be required to obtain a permit under Chapter 17.48, but must comply with applicable State law.

The City Manager shall issue no more than three (3) valid permits for the operation of Medical Cannabis dispensaries in the City of Marina at any one time.

The City Manager shall issue no more than three (3) valid permits for the operation of Adult Cannabis dispensaries in the City of Marina at any one time.

No new Cannabis Premise shall be located within 600 feet of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued. All distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the Cannabis Premise is, or will be, located to the nearest property line of those uses describe in this Subsection.

Dispensaries shall not be located within one thousand hundred (1,000) feet of another dispensary, unless the adjacent dispensary is a medical dispensary locating next to an adult dispensary or the opposite.

19.02.020 ELIGIBILITY REQUIREMENT

A. No person may be allowed to have any position with a Dispensary other than that of Member if she or he has been convicted of:

1. Homicide;
2. Within the preceding 10 years, any serious or violent felony listed in Penal Code Section 1192.7(c) or Section 667^(c);
3. Within the preceding 10 years, any violation of Penal Code Sections 243 through 247, except for subdivision (a) of Section 243;

4. Within the preceding 10 years, any offense under subdivisions (d) or (e) of Section 11357 or Section 11361, or Articles 1, 3, 5, 6, or 7 of Chapter 6 of Division 10 of the Health and Safety Code; or

5. Within the preceding 3 years any felony violation of Health and Safety Code Section 11358. Section 11359 or Section 11360.

B. Such other information deemed necessary to conduct any investigation or LiveScan Background check of the applicant, and for the City Manager to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

C. All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process, as specified in the City's Master Fee Schedule.

D. At the time of submission of dispensary permit application, the applicant shall pay a dispensary permit application fee not to exceed \$8,000. The fee amount shall be set by City Council resolution per the City's Master Fee Schedule.

E. Notarized, written authorization from the property owners) that a Commercial Cannabis Business may be operated at the site.

F. The name and address of Managers or responsible agents of the Commercial Cannabis Business, which shall be updated not less frequently than annually.

19.02.030 OPERATION PLAN

All applicants must provide a plan of operations that will describe how the dispensary will operate consistent with State Law and the provisions of this Chapter including but not limited controls to ensure medical or Adult cannabis will be dispensed only to qualified adults, qualified patients and primary caregivers. Dispensaries shall comply with Health and Safety Code Sections 11362. 7 et seq. and any other state laws that may be adopted concerning Medical or Adult Cannabis, California's Medical Marijuana Regulation and Safety Act, the Adult Use of Marijuana Act, the Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, and any other applicable City laws or regulations, and shall pay all applicable state or local taxes. Dispensaries shall also comply with the operating standards set forth in this Section.

19.02.030 MEMBERSHIP.

A. Medical Dispensaries may consist only of Members.

B. Medical Dispensaries may only obtain Medical Cannabis from, and supply Medical Cannabis to, their Members.

C. Dispensaries may not admit any person as a Member without first verifying her or his status as a qualified patient or primary caregiver as defined by state law, and shall immediately cancel the membership of any person who diverts Medical Cannabis for non-medical use or in any minor not permitted by this Chapter or State law.

D. Physicians' recommendations shall be verified prior to granting membership and at least every twelve (12) months thereafter, and a physical or digital record shall be kept of such verification. No Medical Cannabis may be dispensed except to a Member and pursuant to a recommendation that is no more than twelve (12) months old, unless the recommendation expressly states that it has a longer term or does not expire.

E. Adult Dispensaries must comply with all aspects of the Adult Use of Marijuana Act and must receive a license from the State prior to start of operations, and shall maintain license throughout operations.

F. Non-Diversion. Medical dispensaries shall take all practicable steps necessary to prevent and deter diversion of Medical Cannabis to non-Members. Dispensaries must limit access to Medical Cannabis, Medical Cannabis Products and Edibles to authorized personnel only, and must maintain an inventory management system that accounts for all Medical Cannabis, Medical Cannabis Products and Edibles.

19.02.040 DISPENSING.

A. Medical Dispensary may not dispense to any person who is not a Member and may not dispense without first verifying membership.

B. Medical Dispensary may not provide more Medical Cannabis to an Individual than is necessary for that person's personal medical use.

C. Dispensary may not distribute free samples for promotional purposes outside of the Dispensary premises.

D. No dispensary shall dispense Medical Marijuana from more than one (1) location in the City of Marina.

E. No owner of dispensary in the City shall open a second dispensary in the City; except that medical dispensaries and co-located or adjacent Adult dispensaries may have the same ownership.

19.02.050 MEMBERS AND EMPLOYEES.

A. All employees and volunteers must be Members who are at least 21 years of age.

B. Medical Dispensaries may not admit any person under 18 years of age to membership without written authorization of a parent or legal guardian. Any Member under 18 years of age shall be accompanied by a parent or legal guardian at all times that such person is at the Dispensary.

19.02.060 ADULT DISPENSARIES

All Adult Dispensaries must comply with all state law and shall comply with the following conditions:

A. Dispensary may not dispense to any person who is not 21 years of age or older.

B. Dispensary may not distribute free samples for promotional purposes outside of the Dispensary premises.

C. No dispensary shall dispense Adult Marijuana from more than one (1) location in the City of Marina, however, subject to State requirements, may have a co-located or adjacent Medical and Adult location.

D. No owner of dispensary in the City shall open a second dispensary in the City; except that medical dispensaries and co-located or adjacent Adult dispensaries may have the same ownership.

E. All adult dispensaries must hold a valid and current Use Permit from the City of Marina pursuant section 19.08.010 (d) of this chapter.

19.02.070 SECURITY.

A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing medical or Adult Cannabis or medical or Adult cannabis products and theft of medical or Adult cannabis or medical or Adult cannabis products at the dispensary, in accordance with minimum security measures required by State law and the requirements herein. The security plan shall be reviewed and approved by the Police Department and the Office of the City Manager and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).

A. Dispensaries shall provide adequate security and lighting on-site to ensure the safety of persons and protect the premises from theft at all times. Lighting shall be of sufficient intensity to illuminate all areas of the parking lot, if any. Lighting shall comply with Marina Municipal Code 15.34.080.

B. Dispensaries must maintain security guards and camera coverage of their entire grounds to an extent sufficient to ensure the safety of persons and deter crime. Cameras must be maintained in good condition, and use a format approved by the City Manager or his/her designee, which is of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime. The cameras shall be in use 24 hours per day, seven (7) days per week. The areas to be covered by the security cameras include, but are not limited to, dispensing areas, storage areas, cultivation areas, all doors, parking lots, anyplace where new product is delivered and any other area determined by the City Manager or her/his designee. Surveillance footage must be retained for a period of 90 days and made available to the Marina Police Department for purposes of investigation of alleged crimes, promptly upon request without the necessity of a warrant or subpoena.

C. Dispensaries must be equipped with an alarm system that is operated and monitored by a security company licensed by and in good standing with the California Department of Consumer Affairs. Alarms shall be maintained and in good working condition at all times.

D. In order to prevent unauthorized entry during non-business hours, a Dispensary shall either secure all points of entry with bars, retractable, folding or sliding metal gates, or metal rollup or accordion doors, none of which may be visible from the exterior, or provide at least one security guard during those hours.

E. Any security guards employed by Dispensaries shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. Security personnel may not be armed.

F. All Medical or Adult Cannabis, Medical or Adult Cannabis Products and Edibles, except for limited amounts used for display purposes, samples or immediate sale, shall be securely stored at all times, and the entrance to all storage areas shall be locked and under the control of staff.

G. Dispensaries shall make transactions with payment methods other than cash when feasible. All cash received, except that needed for retail customer transactions shall be kept in a secure receptacle such as a drop safe or other type of safe.

H. Dispensaries shall notify the Marina Police Department and the licensing authority within 24 hours after discovering any of the following:

1. Significant discrepancies identified during inventory;
2. Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary;
3. The loss or unauthorized alteration of records related to medical or Adult Cannabis, registered qualifying patients, primary caregivers, or dispensary employees or agents; or
4. Any other breach of security.

19.02.080 SIGNAGE

A. Sign shall be posted at the entrance to any Dispensary that includes the following language. The required text shall be of sufficient size to be easily read from a distance of five feet.

FOR MEDICAL: This Dispensary only provides medical cannabis to Us members, who must have legally recognized California Medical Cannabis Identification Cards or a verifiable, - written recommendation from a physician for medical cannabis.

FOR ADULT:

This Dispensary only provides cannabis to adults who qualify under the Adult Use of Marijuana Act and applicable state law. No person under the age of 21 may enter this facility. Providing cannabis products to those under 21 is illegal and shall be prosecuted to the fullest extent of the law.

B. A sign shall be posted in a conspicuous location inside the structure at the location advising:

FOR MEDICAL: This Dispensary is registered in accordance with the laws of the City of Marina. The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of State law. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.

FOR ADULT: This Dispensary is registered in accordance with the laws of the City of Marina. The sale of marijuana and the diversion of marijuana to persons under the age of 21 are violations of State law. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.

C. No Cannabis products or graphics describing Cannabis shall be visible from the exterior of the property.

D. Signage for a dispensary shall comply with Marina Municipal Code 17.40.

19.02.090 DELIVERY

If the dispensary operations are proposed to include delivery, all employees of a dispensary delivering medical or Adult Cannabis or medical or Adult cannabis products shall carry a copy of the documentation listed below when making deliveries. This information shall be provided upon request to law enforcement officers and to employees of state and local agencies enforcing this Chapter.

- A. A copy of the dispensary's current permits, licenses, and entitlements authorizing them to provide delivery services;
- B. The employee's government-issued identification;
A copy of the delivery request; and
- C. Chain of custody records for all goods being delivered.
- D. All onsite consumption permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Manager subject to Section 19.09.

19.02.100 NEIGHBORHOOD COMPATIBILITY.

- A. Dispensaries shall be operated to ensure neighborhood compatibility, and shall take all steps necessary to ensure that customers do not create neighborhood disturbances.
- B. Dispensaries shall provide the Police Department and all residents and property owners within 100 feet with the current name, phone number, secondary phone number, and e-mail address of an on-site community relations staff person to whom notice of any operating problems associated with the establishment may be reported. This information shall be updated as necessary to keep it current. Dispensaries shall encourage neighbors to call this person to try to solve any operating problems.
- C. All Dispensaries shall have an on-site manager responsible for overall operation at all times they are open, and shall provide the Police Department with contact information for all such persons, including telephone number, street address and e-mail address. Dispensaries shall also provide the Police Department with the current name and phone numbers of at least one 24-hour on-call manager. This information shall be updated as necessary to keep it current.
- D. Dispensaries shall take all reasonable steps to discourage and correct objectionable conditions that constitute a public or private nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties. Such conditions include, but are not limited to: smoking; creating a noise disturbance; drinking; loitering; littering; and graffiti.
- E. Dispensary will be of an architectural and visual quality and character which harmonizes with, and enhances, the surrounding area and that the design will avoid unduly large or obtrusive signs, un-landscaped parking areas, unduly bright or garish lighting, or design features which encourage loitering as determined by the Zoning Administrator.
- F. That adequate litter receptacles will be provided where appropriate:
- G. Where the dispensary or delivery only dispensary is in proximity to residential uses, it will be limited in hours of operation, and designed and operated, so as to avoid disruption of residents' sleep.
- H. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.
- I. Dispensaries shall ensure all graffiti is removed from property and parking lots under their control within 24 hours of its appearance.
- J. Dispensaries shall operate only between the hours of 9:00 a.m. and 11:59 p.m.

19.02.110 CONSUMPTION OF MEDICAL CANNABIS, TOBACCO AND ALCOHOL.

- A. Smoking of Medical Cannabis is prohibited at Dispensaries.
- B. Sale or consumption of tobacco is prohibited at Dispensaries.
- C. Sale, service and consumption of alcoholic beverages at Dispensaries is prohibited, and Dispensaries shall prohibit any person in possession of an alcoholic beverage from entering or remaining on the premises.
- D. This subdivision does not prohibit the testing of Medical or Adult Cannabis Products by staff of a Dispensary or the use of tinctures or topical Medical Cannabis Products that do not have intoxicating effects.

19.02.120 REGULATORY FEES; SELLER'S PERMIT

In addition to any other required conditions and mitigation measures approved by the Appropriate Authority, all of the following conditions shall apply to all permits for a medical or Adult cannabis dispensary:

- A. The Cannabis dispensary shall allow access to dispensary facilities and records if requested by the City, its officers, or agents, and shall pay for an annual inspection and submit to inspections from the City or its officers to verify compliance with all relevant rules, regulations, and conditions.
- B. The applicant, owner, and all permittees agree to submit to, and pay for, inspections of the operations and relevant records or documents necessary to determine compliance with this Chapter from any enforcement officer of the City or their designee.
- C. Any person operating a medical or Adult Cannabis dispensary shall obtain a valid and fully executed commercial medical or Adult cannabis permit pursuant to 19.02 of the Marina Municipal Code prior to commencing operations and must maintain such permit in good standing in order to continue operations.
- D. Upon implementation of state regulations pursuant to California Business and Professions Code Section 19320, a valid license from the State shall be required to operate any commercial medical cannabis activity.
- E. The owner shall post or cause to be posted on site the Use Permit and all required City, County and state permits and licenses required to operate. Such posting shall be in a central location, visible to the patrons, at the operating site, and in all vehicles that deliver or transport marijuana.
- F. The owner shall be responsible for ensuring that all commercial medical cannabis activities at the site operate in good standing with all permits and licenses required by the Marina Municipal Code and State law. Failure to take appropriate action to evict or otherwise remove permittees and persons conducting commercial medical Cannabis activities at the site who do not maintain permits or licenses in good standing with the City or State shall be grounds for the suspension or revocation of a Use Permit pursuant to Section 17.80 of the Marina Municipal Code.
- G. Dispensaries shall comply with all physical accessibility requirements pursuant to American Disability Act.

19.03 COMMERCIAL CANNABIS CULTIVATION AND OPERATING STANDARD

It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge of possession of any legal parcel or premises within any zoning district in the City of Marina to cultivate marijuana except as provided for in this chapter.

No cultivation of Medical or Adult Marijuana at the premises or location shall be visible with the naked eye from any public or other private property, nor shall medical marijuana or any product containing medical marijuana be visible from the exterior of any premises.

No Medical or Adult Marijuana shall be dispensed from a cultivation site and shall not be open to the public.

In no case shall a building intended for residential use be used for the cultivation of cannabis.

The maximum size of any areas of cultivation shall not exceed any restrictions outlined in State law.

Security measures sufficient to restrict access to only those intended and to deter trespass and theft of medical or Adult cannabis or medical or Adult Cannabis products shall be provided and maintained. If on-site security is utilized, Security shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times.

Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife.

Water conservation measures, water capture systems, or grey water systems shall be incorporated in medical Cannabis cultivation operations in order to minimize use of water where feasible.

A. An Administrative Use Permit for medical Cannabis cultivation shall not be granted by the Appropriate Authority unless all of the following findings are made based on substantial evidence:

1. The cultivation, as proposed, will comply with all of the requirements of the State and City, and any additional conditions of license for the cultivation of medical or Adult cannabis.
2. The cultivation, as approved and conditioned, will not result in significant unavoidable impacts on the environment.
3. The cultivation includes adequate measures that minimize use of water for cannabis cultivation at the site.
4. The cultivation includes adequate measures to address the projected energy demand for Cannabis cultivation at the site.
5. The cultivation includes adequate quality control measures to ensure Cannabis cultivated at the site meets industry standards.
6. The cultivation includes adequate measures that address the federal enforcement priorities for Cannabis activities including restricting access to minors, and ensuring that cannabis and cannabis products are not supplied to unlicensed and unpermitted persons within the State and not distributed out of state.
7. The applicant, property owner, and permittees agree to submit to, and pay for, inspections of the operations and relevant records or documents necessary to determine compliance with this Chapter from any enforcement officer of the City of Marina or their designee.

8. Any person cultivating cannabis shall obtain a valid and fully executed commercial Cannabis Permit pursuant to Chapter 5.04 of the Marina Municipal Code prior to commencing operations and must maintain such permit in good standing in order to continue operations.

9. The owner shall be responsible for ensuring that all commercial cannabis activities at the site operate in good standing with all permits and licenses required by State law. Failure to take appropriate action to evict or otherwise remove permittees and persons conducting commercial Cannabis activities at the site who do not maintain permits or licenses in good standing with the City, County or State shall be grounds for the suspension or revocation of a Use Permit pursuant to Section 19.09 of the City Code.

19.04 COMMERCIAL CANNABIS TESTING, and MANUFACTURING, OPERATING STANDARD

It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge of possession of any legal parcel or premises within any zoning district in the City of Marina to test, manufacture Cannabis products, or to engage in research and development of cannabis except as provided for in this chapter.

No cannabis or Cannabis products at the premises or location shall be visible with the naked eye from any public or other private property, nor shall medical marijuana or any product containing medical marijuana be visible from the exterior of any premises.

No Medical or Adult Marijuana shall be dispensed from a testing, or manufacturing site and shall not be open to the public.

Security measures sufficient to restrict access to only those intended and to deter trespass and theft of medical or Adult Cannabis or medical or Adult Cannabis products shall be provided and maintained. If on-site security is utilized, Security shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times.

Hazardous materials shall be properly labeled and stored to avoid contamination through erosion, leakage, or inadvertent damage from rodents, pests, or wildlife.

A Use Permit for testing, and manufacturing of Cannabis and cannabis products shall not be granted by the Appropriate Authority or City unless all of the following findings are made based on substantial evidence:

1. The activity, as proposed, will comply with all of the requirements of the State and City, and any additional conditions of license for the testing, manufacturing, or research and development of Cannabis or cannabis products.

2. The use, as approved and conditioned, will not result in significant unavoidable impacts on the environment.

3. The use includes adequate measures that minimize use of water at the site.

4. The cultivation includes adequate quality control measures to ensure cannabis cultivated at the site meets industry standards.

5. The use shall include adequate measures that address the federal enforcement priorities for cannabis activities including restricting access to minors, and ensuring that Cannabis and cannabis products are not supplied to unlicensed and unpermitted persons within the State and not distributed out of state.

6. The applicant, owner, and permittees agree to submit to, and pay for, inspections of the operations and relevant records or documents necessary to determine compliance with this Chapter from any enforcement officer of the City of Marina or their designee.

7. Any person testing, manufacturing or performing research and development operations using cannabis shall obtain a valid and fully executed commercial cannabis business license pursuant to Chapter 5.04 of the Marina Municipal Code prior to commencing operations and must maintain such permit in good standing in order to continue operations.

8. The owner shall be responsible for ensuring that all commercial cannabis activities at the site operate in good standing with all permits and licenses required by State law.

Failure to take appropriate action to evict or otherwise remove permittees and persons conducting commercial cannabis activities at the site who do not maintain permits or licenses in good standing with the City, County or State shall be grounds for the suspension or revocation of a Use Permit pursuant to Section 19.09 of the City Code.

19.05 CANNABIS DISTRIBUTION

Cannabis distribution facilities shall comply with all of the following requirements.

A. Cannabis distribution facilities shall be located only in zoning districts that specifically provide for this use.

B. Cannabis and cannabis products shall only be transported between permitted and licensed commercial cannabis operations.

C. Prior to transporting cannabis or cannabis products, the transporter shall complete an electronic shipping manifest. The shipping manifest shall include the unique identifier information from the cultivation source.

D. A physical copy of the shipping manifest shall be maintained during transportation and shall be made available upon request to law enforcement or any agents of the State or County charged with enforcement of this Chapter.

E. All cannabis uses that require transport licenses under SB94 but that are not Transport and Distribution Only Businesses shall receive a license for transport.

F. Distribution facilities shall maintain appropriate records of transactions and shipping manifests. An organized and clean method of storing and transporting cannabis and cannabis products shall be provided to maintain a clear chain of custody.

G. Security measures sufficient to restrict access to only those intended and to deter trespass and theft of cannabis or Cannabis products shall be provided and maintained. Security measures at distribution facilities shall include, but are not limited to, the following:

1. Prevent individuals from loitering on the premises of the distribution facility if they are not engaging in activity expressly related to the operations of the distribution facility;

2. Store all cannabis and Cannabis products in a secured and locked safe room, safe, or vault, and in a manner as to prevent diversion, theft, and loss;

3. Install security cameras on site; and

4. Provide for on-site security personnel meeting the requirements and standards contained

within Chapter 19.02.070 of the Marina Municipal Code and approval by the Chief of Police.

H. The owner shall be responsible for ensuring that all commercial cannabis activities at the site operate in good standing with permits and licenses required by the Marina Municipal Code and State law. Failure to take appropriate action to evict or otherwise remove permittees and persons conducting commercial medical cannabis activities at the site who do not maintain permits or licenses in good standing with the City, County or State shall be grounds for the modification or revocation of a Use Permit pursuant to Section 19.09 of The City of Marina Code.

I. The transportation and distribution facilities and activities shall be maintained in accordance with the operating plans approved by the City.

19.06 PUBLIC HEARING

Applications for dispensaries shall be subject to a hearing and must provide Public notice of the hearing in accordance with on the application shall be given as provided in Section 17. 78.020. The City Manager or designee shall be the investigating official referred to in Section 17.78.020 to whom the application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, the City Manager shall give particular consideration to the capacity, capitalization, and complaint history of the applicant and any other factors that in the City Manager's discretion he/she deems necessary to the peace, order and welfare of the public.

19.07 RANKING AND ALLOCATION PROCEDURE AND CRITERIA In the event that multiple applications are submitted for any Cannabis use that is restricted in number, the City Manager or designee shall use the following criteria for recommending to the City Council what applicant shall receive approval to operate.

Businesses seeking a license to operate a dispensary or cultivation operation must submit the following for evaluation:

1. Business Plan: Applicants shall submit a Business Plan to the City that outlines an operational and financial plan. The Business Plan should include the names and resumes of key staff, operations plan, financial plan, sales projections and market study. Applicants are encouraged to provide a specific, written plan for how their operation will benefit the community.

2. Security Plan: All applicants shall submit a Security Plan outlining how the business expects to address security issues at their location.

3. Property Owner Approval: Applicants shall submit proof of approval of the owner of the real property where the proposed dispensary will be located if approved. Applicants are not required to have a signed lease, but a letter from the property owner indicating that:

a. The property owner is aware of and approves the use being proposed.

b. The property owner will lease the property to the cannabis related use upon approval of application.

c. The property owner understands that licenses for cannabis related uses are for one year and can be revoked at the City's sole discretion with or without reason.

4. Live Scan: All principle employees of any cannabis related use must obtain a Live Scan and submit the results with their application.

19.08.010 SELECTION CRITERIA:

A. General Eligibility Review: In the event that an applicant is unable to meet the minimum eligibility criteria, their application shall be denied. Applicants will be evaluated on the following:

1. Live Scan Results: Applicant must not have any criminal convictions that would result in ineligibility as defined in section 19.02.020.

2. Application must be complete to be evaluated. Incomplete applications will be denied and must be resubmitted. Application fees must be paid for resubmittal.

3. Proposed location of business and proof of property owner's approval of use.

4. Indemnification agreement with the City.

B. Initial Ranking - The City shall open an application period of not less than 30 days to allow prospective Permittees to submit applications.

1. Applicants will be evaluated on the following criteria:

a. Business Plan

i. A business plan that demonstrates prior successful business operations (which need not be Cannabis business related) at a similar scale of annual revenue for at least two years and / or capitalization sufficient to insure at least one year of operation will receive five points. A business plan without such demonstration will receive 0 points.

b. Local Enterprise & Community Benefits

i. Community benefits may include commitment to employ persons who are City of Marina residents. Other community benefits could include a commitment to working with Marina-located businesses (including capital), a commitment to sponsoring nonprofits and / or other similar specific commitments within the Marina community. A maximum of eight points will be awarded, with one point for every City of Marina resident that a business commits to employ, and one point for every specified annual substantial commitment to of the applicant's choice to any non-profit or business within the community.

c. Neighborhood Compatibility

i. Applicants which demonstrate neighborhood support with a majority of property owners within 250 feet will receive five points. Applicants who do not demonstrate neighborhood support with a majority of property owners within 250 feet will receive zero points.

d. Safety and Security Plan

i. The Marina Police Department will review the Safety and Security Plan and classify the Plan as inadequate, adequate or exemplary. Plans classified as inadequate will not be permitted to proceed. Plans classified as adequate will receive ten points. Plans classified as exemplary will receive twenty points.

e. From the initial ranking, up to twice as many qualified applicants as there are available licenses will be eligible for final ranking, as determined by the aggregate scores of the initial ranking.

C. Final Ranking

1. The top applicants equal to the number of licenses available will be eligible to apply for a Conditional Use Permit and license to engage in a commercial cannabis business. Qualified applicants from the initial ranking may amend and combine their applications to optimize their scores. If following the opportunity to optimize scores, two or more applicants are tied, both applicants will proceed to the next step.

D. Use Permit:

1. Applicants shall complete phases 1-3 prior to applying for a Conditional Use Permit and license.

2. At the next available Planning Commission meeting, allowing time for Staff review, a public hearing for each top application shall be held.

3. Members of the public, adjacent property owners and other interested parties will be given the opportunity to present concerns or support, and provide additional consideration for potential permit conditions.

4. Planning Commission will make a recommendation to City Council, including any conditions requested for final decision on awarding Use Permits and License.

5. At the next available City Council meeting, Planning Commission and Staff recommendations will be presented to City Council for final decision.

6. If an available license is not filled for any reason and a business that qualified under phases 1- -3 but was not selected to move forward in the process requests consideration for phase 4, consideration shall be granted in order of ranking.

E. Use Permits for Cannabis Uses are for one year and do not run with land. No vesting of any land use rights are conveyed with any use permit for a Cannabis related use. Holders of use permits shall have the opportunity administratively renew as long as the business has complied with all state and local ordinances and with Conditions of Approval, including the timely payment of all fees and taxes.

F. Cannabis Licenses are for one year and may be revoked at any time for failure to comply with all state and local ordinances, or for failure to comply with Conditions of Approval. Licenses shall have the opportunity to automatically renew as long as the business has complied with all state and local ordinances and with Conditions of Approval, including the timely payment of all fees and taxes.

19.09 ENFORCEMENT

Violations of this Chapter shall constitute a public nuisance and may be enforced pursuant to the provisions of Chapter 17.80 of the Municipal Code any other law or ordinances it deems appropriate.

A. It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Chapter. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall be guilty of a misdemeanor. No proof of knowledge, intent, or other mental state is required to establish a violation.

B. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter shall be deemed a public nuisance and shall, at the discretion of City, create a cause of action for penalty pursuant to Chapters 17.80 of this Code, and any other action authorized by law.

C. Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the City of Marina or otherwise authorized by law. Additionally, as a public nuisance, any violation of this Chapter shall be subject to injunctive relief, disgorgement of any payment to the City of Marina of any and all monies unlawfully obtained, costs of abatement, costs of restoration, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The City of Marina may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial medical or Adult cannabis activity or persons related thereto, or associated with, the commercial medical or Adult cannabis activity.

19.10 APPEALS PROCESS

A. If the City Manager or his / her designee determines that grounds for suspension or revocation of the Use Permit exist pursuant to section 19.09, the City Manager or his / her designee shall issue a written Notice of Intention to revoke or suspend the Use Permit, as the case may be. The Notice of Intention shall be served on the property owner, as reported on the latest equalized assessment roll, and shall also be served on permittees on the property, as reported on the commercial medical cannabis permits issued pursuant to Chapter 19.02. The Notice of Intention shall be served by either personal delivery or by certified U.S. Mail, postage prepaid, return receipt requested. The Notice of Intention shall describe the property, the intention to revoke or suspend the Use Permit, the grounds for revocation or suspension, the action necessary to abate the violation, the time limit for compliance, and the right to a hearing. The Notice of Intention shall notify the owner and permittees of the opportunity to request a hearing before a Hearing Officer to present evidence as to why the Use Permit should not be suspended or revoked and shall notify them of the 10-day deadline to submit a written request for a hearing.

B. The owner and permittees shall have ten (10) calendar days from the service of the Notice of Intention to submit a written request for a hearing before the Hearing Officer. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the suspension or revocation of the Use Permit and a failure to exhaust administrative remedies. If the hearing is not timely requested, the City Manager or his / her designee may suspend or revoke the Use Permit in accordance with the Notice of Intention.

C. Upon receipt of a timely written request for a hearing, the City Manager or his / her designee shall appoint a hearing officer and set a date for a hearing to be held within 60 days of receipt of the request, unless an immediate threat to the public health, safety and welfare necessitates an earlier hearing date. Notice of the hearing, including the time, date, and location of the hearing, shall be served on the owner and permittees, such service to be accomplished by either personal delivery or by certified U. S. Mail, postage prepaid, return receipt requested.

D. Hearing by the Hearing Officer:

1. The Hearing Officer is authorized to conduct hearings, issue subpoenas, receive evidence, administer oaths, rule on questions of law and the admissibility of evidence, prepare a record of the proceedings, and render decisions on the suspension or revocation of the Use Permit.

2. In any proceeding before a Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Hearing Officer, his/her clerk, or other designee shall have the power to administer oaths and affirmations and to certify to official acts.

3. All parties to the hearing shall have the opportunity to testify, introduce exhibits, call and examine witnesses, and cross examine opposing witnesses on any matter relevant to the issues.

4. Within thirty (30) calendar days after the close of the hearing, the Hearing Officer shall issue a written decision, including a statement of the basis for the decision. The Hearing Officer's written decision shall constitute the final administrative decision of the City of Marina.

5. In the event a civil action is initiated to obtain enforcement of the decision of the Hearing Officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the City's total costs of enforcement, including reasonable attorney fees.

6. If neither owner nor any permittee nor their authorized representatives appear at the noticed hearing, such failure to appear shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies.

19.11 SEVERABILITY

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Zoning. The following changes shall be made to Chapter 17 of the Marina Municipal Code including sections 17.22.030, 17.24.030, 17.28.020, 17.29.030, 17.31, 17.42.030, 17.06.020, 17.20.30 and 17.06.010.O, 17.06.010.P, and 17.06.010.Q.

1. The following sections of Chapter 17. shall have Cannabis Retailer added as land uses with a requirement of a Conditional Use Permit:

- a. 17.28 Airport District (AP-2/3)
- b. 17.29 Business Park (BP)
- c. 17.31 Business Park Small Lot Combining District (BP/P)
- d. 17.22 Retail Business District (C-1)
- e. 17.24 General Commercial District (C-2)
- f. 17.31 Planned Commercial District (PC)
- g. 17.42 Transitional Zoning District (T-B-5)

2. The following sections of Chapter 17 shall have Cannabis Cultivation added as land uses with a requirement of a Conditional Use Permit:

- a. 17.28 Airport District (AP-2/3)
- b. 17.29 Business Park (BP)
- c. 17.31 Business Park Small Lot Combining District (BP/P)
- d. 17.42 Transitional Zoning District (T-B-5)

3. The following sections of Chapter 17 shall have shall have cannabis manufacturing, cannabis distribution and cannabis testing labs added as land uses with a requirement of a Conditional Use Permit:

- a. 17.28 Airport District (AP-2/3)
- b. 17.29 Business Park (BP)
- c. 17.31 Business Park Small Lot Combining District (BP/P)
- d. 17.22 Retail Business District (C-1)
- e. 17.24 General Commercial District (C-2)
- f. 17.31 Planned Commercial District (PC)
- g. 17.42 Transitional Zoning District (T-B-5)

4. Sections 17.06..010.O and 17.06.010.P - These sections of Marina Municipal Code Chapter 17 the code shall be deleted.

5. Section 17.06.010.Q of will be deleted except for the following:

“A qualified patient, with an identification card, as defined in California Health and Safety Code Section [11362.7](#), may cultivate cannabis for noncommercial, personal purposes as set forth in Health and Safety Code Section [11362.77](#) per each qualified patient with an identification card, upon property she or he rents or owns and inhabits, either inside the dwelling or on land included in such rented or owned property or as permitted by the Adult Use of Marijuana Act, which provides that not more than six living marijuana plants may be planted, cultivated, harvested, dried, or processed by a person over the age of twenty-one inside a private residence, or inside an accessory building to a private residence that is fully enclosed and secure and located upon the grounds of the private residence, as an incidental use to the primary private residential use. Nothing in this chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting marijuana cultivation by its tenants. The cultivation shall be at a location on the property that is secluded so that it cannot be observed by a member of the public who passes by the property. This chapter shall be administratively enforced. (Ord. 2017-07 (Exh. A (part)), 2017; Ord. 2016-01 §§ 3, 4, 2016; Ord. 2007-03 § 2 (Exh. B), 2007; Ord. 2007-02 § 1, 2007; Ord. 2003-01 § 1 (part), 2003; Ord. 2002-03 § 1 (part), 2002; zoning ordinance dated 7/94 (part), 1994)”

6. Section 17.06.020(A and B) Use regulations shall be as follows:

A. No dancehall, nightclub, commercial club, establishment or business where cannabis products or alcoholic beverages are served or sold for off-sale consumption, commercial place of amusement or recreation, including but not limited to an amusement center or arcade, or place where entertainers are provided whether as social companions or otherwise, shall be established in any zoning district in the city unless a use permit is first secured in each case.

B. A finding of public convenience or necessity is required for an establishment or business where cannabis products or alcoholic beverages are served or sold for on- and/or off-sale consumption within an area of undue concentration. Such finding shall require that selling of alcohol for on and/or off-sale consumption at the subject establishment of business:

1. Will not constitute a public nuisance;
2. Will not occur within six hundred feet of a park, youth center, or school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued.
3. Will not contribute to law enforcement problems associated with an undue concentration of on and/or off-sale licenses in the vicinity of the subject business or establishment.

Section 4: Use Permit. Use permits for cannabis and cannabis related uses are for one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Manager or designee subject to Section 19.09 of Marina Municipal Code shall include the following: All Use Permit holders shall also execute a Development/Operating Agreement annually agreeing to abide to all conditions of approval at all times. The City Manager or designee can terminate a Development/Operating Agreement at any time with or without reason.

Section 5: Business License.

1. Section 5.20.020 shall be added to the Marina Municipal Code and state the following:
5.04.401 Cannabis Retailer: All establishments selling Cannabis or Cannabis Related Products for medicinal and adult use shall pay a business operations tax equal to a minimum of 2.5% of annual gross receipts prior to January 1, 2022, and no more than 5% (at the discretion of City Council) beginning January 1, 2022. Payments are due quarterly on July 1, October 1, January 1, and April 1 each year.

2. Section 5.20.030 shall be added to the Marina Municipal Code and state the following:
Non-Retail Cannabis Uses: All establishments manufacturing Cannabis related products or processing Cannabis related products, shall pay a business operations tax equal to a minimum of 2% of annual gross receipts prior to January 1, 2022, and no more than 5% (at the discretion of City Council) beginning January 1, 2022. Payments are due quarterly on July 1, October 1, January 1, and April 1 each year.

Section 6: Development/Operating Agreement. Section 5.04.403 shall be added to the Marina Municipal Code and state the following: Prior to operating in the City and as a condition of issuance of a Use Permit each Cannabis facility shall enter into an annual development/operating agreement with the City setting forth the terms and conditions under which the Cannabis facility will operate that are in addition to the requirements of this chapter, including, but not limited to payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety and welfare.

Section 7: Fees. Section 5.04.403 shall be added to the Marina Municipal Code and state the following:

1. Amend the City Fee Schedule to include "Cannabis Dispensary Application Use Permit Fee" of \$7,000.
2. Amend the City Fee Schedule to include "Non-Dispensary Cannabis Application Use Permit Fee" of \$3,000.

Section 8. Approval by the Voters. This Ordinance shall be submitted to the voters at an election to be held November 6, 2018 and shall not be effective until so approved.

Section 9. Severability.

A. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.

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B. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 10. Certification. Upon the approval by the voters, the Deputy City Clerk shall certify the passage of this Ordinance; and within fifteen days the Deputy City Clerk shall cause it to be posted in the three (3) public places designated by the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Marina duly held on the 3rd day of July 2018 and was passed and adopted by the vote of the people of the City of Marina on November 6, 2018.

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

APPROVED BY THE FOLLOWING VOTE of the people of the City of Marina on November 6, 2018.

YES: 4,351

No: 2,130

**Updated Staff Report of item Continued
from February 7, 2023**

February 2, 2023

Item No. **13a**

Honorable Mayor and Members of the
City Council

City Council Meeting
of February 22, 2023

CITY COUNCIL TO OPEN A PUBLIC HEARING, TAKE TESTIMONY FROM THE PUBLIC, AND TAKE ACTION ON PROPOSED MODIFICATIONS TO AN APPROVED USE PERMIT FOR A COMBINED MEDICAL/ADULT CANNABIS DISPENSARY USE AT 3100 DEL MONTE BOULEVARD (APN 032-192-018-000). THIS ITEM IS CONTINUED FROM THE DECEMBER 6, 2022, CITY COUNCIL MEETING.

RECOMMENDATION:

Staff recommends that the City Council take one of the following actions:

a) **Staff Recommendation (Exhibit A):**

Open a Public Hearing, take testimony from the public and adopt a resolution with the required findings to: 1) extend the Cannabis Use Permit until January 1, 2024; 2) approve the modifications to remove the required façade improvements; and 3) grant an extension for completion of the site improvements in City Council Resolution 2020-65 to July 31, 2023, as conditioned herein in with additional amendments, for the combined Medical/Adult Cannabis Dispensary Use at 3100 Del Monte Boulevard (APN 032-192-018-000) and find the project as described and conditioned exempt from environmental review per Section 15301 of the CEQA Guidelines.

b) **Alternative recommendation (Exhibit B):**

Open a Public Hearing, take testimony from the public and adopt a resolution with the required findings to deny the modifications to remove the required façade improvements and deny an extension for completion of the site improvements in City Council Resolution 2020-65 to July 31, 2023, for the combined Medical/Adult Cannabis Dispensary Use at 3100 Del Monte Boulevard (APN 032-192-018-000) and find the project would be exempt from environmental review under Statutory Exemptions per Section 15270 (Projects which are Disapproved) of the CEQA Guidelines.

BACKGROUND:

On December 6, 2022, the City Council heard the item, took testimony from the public, and passed the following motion:

“The applicant and the City will agree to a sixty (60) day tolling agreement to work out the following issues: a cost estimate for the Carmel Avenue improvements per COA #6, façade improvements, a publicly approved mural, and Del Monte Avenue improvements pursuant to condition of approval (COA #6). City Staff will bring back this agreement to the City Council by no later than February 7, 2023.”

For the previous staff report and the video of the recording, please visit the City of Marina’s Agenda Center: <https://www.cityofmarina.org/AgendaCenter> and review the City Council Meeting held on December 6, 2022.

On December 20, 2023, City Staff met with applicant Pacific Roots and began the process of working out the issues as instructed by the City Council.

On January 12, 2023, City Staff met with Pacific Roots and agreed on the estimated costs of the improvements including the façade improvements for their suite, a publicly approved mural, and Del Monte Avenue improvements. The applicant agreed to send a letter that includes the mutually agreed upon cost estimates.

On January 31, 2023, City Staff received a letter from the applicant (**Attachment 1**).

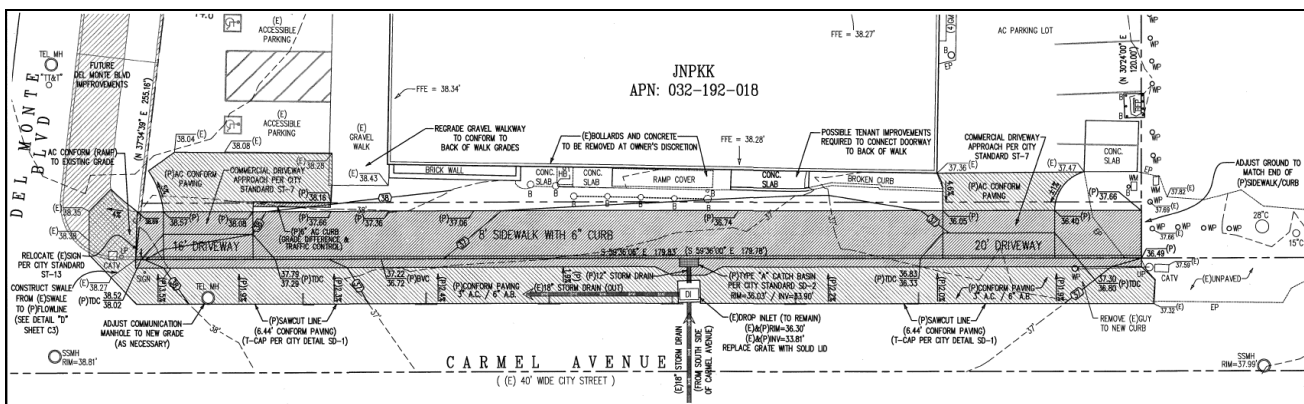
PROJECT ANALYSIS:

The Conditions of Approval contained in Resolution No. 2020-65, require onsite and offsite improvements. The offsite improvements called for new curb, gutter, sidewalk, landscaping along Carmel Avenue and Del Monte. The onsite improvements called for a new stucco finish on the store front, new paint, new roofing materials and removal of previous signs.

Offsite Improvements

Condition of Approval No. 6 in Resolution No. 2020-65, call for public improvements in accordance with Marina Municipal Code Chapter 15.36. This code requires public improvements to be designed and installed by the applicant or property owner to the satisfaction of the City Engineer and may include, but are not limited to, curb, gutter, sidewalk, park strip, street trees and light poles. The improvements were able to be deferred by the City Engineer until the City Council approval of the design for Del Monte Boulevard and then completed within a time to be determined in accordance with the design.

Staff worked with the applicant for approximately 2 years to define the ultimate right-of-way and location of the improvements along Carmel Avenue and Del Monte Boulevard. These improvements ultimately were limited to those that are located directly in front of the store front as they must be proportional to the size and location of the business itself. This means that while the entire frontage of the commercial center is 230 linear feet along Del Monte Boulevard, the store front is much less and when combined with Carmel Avenue improvements the appropriate linear footage of improvements to require along Del Monte is 25 feet. On Carmel Avenue the improvements proposed include 179 feet along Carmel Avenue and consist of installing driveways, sidewalks, curbs, and gutters as shown below (Attachment 3). Due to the fact that the City is not ready to construct all improvements along Del Monte Boulevard, the applicant has agreed to add a surety bond for the corner and 25 feet of improvements along Del Monte Boulevard when the final design for the street is completed by the City at a future date (COA #34).



The applicant has agreed to the improvements described above and in conformance with the original Condition of Approval No. 6. The costs for these improvements are summarized below.

Modifications	Cost	Staff Comments
Carmel Avenue Road Improvements (curb, gutter, and sidewalk)	\$160,896.75	Based on May 2022 estimate (Attachment 2)
25' of Del Monte and Corner	\$29,277.50	Based on May 2022 estimate

A Development/Operating Agreement and Deferred Public Improvement Agreement have been developed to memorialize the required offsite improvements. These documents call for the improvements to meet the following financial commitment and performance milestones:

- Carmel Avenue
 - Submit a performance bond in the amount of \$160,897.
 - Within 45 days of notice to proceed, applicant must submit plans for curb, gutter, sidewalk and landscaping improvements.
 - Commence work within 60 days of receiving permits.
- Del Monte
 - Submit a performance bond in the amount of \$29,278.
 - Submit plans for curb, gutter, sidewalk and landscaping improvements within 45 days of notice to proceed from the City
 - Commence work within 60 days of receiving permits.

Onsite Improvements

The applicant is requesting to amend the onsite improvements from new stucco finish, paint and roofing materials for their store front. The estimate costs for these improvements are \$50,000. Note that no changes to the original façade improvements have been approved by staff to date and the applicant's request to modify the improvements is necessary to be in compliance with the permit requirements.

For reasons outlined in the applicant's letter contained in Attachment No. 1, the applicant is requesting a modification to the original façade improvements. The applicant has proposed to repaint and refurbish parts of the shopping center, install planters, and paint a historically and culturally significant mural. They have agreed to install additional landscaping and planter boxes and will work with the Marina Tree and Garden Club for the types of trees and plants in the planter beds (see COA #31). Further, the applicant has proposed to gain input from the City Council and the community on the subject and design of the mural they will have installed.

The costs for the original vs. the proposed improvements are summarized below.

Modifications	Cost	Staff Comments
Original Façade Improvements	\$50,000	Based on original Façade Improvements Building Permit B22-000868
Proposed: Repaint and refurbish parts of the shopping center, install planters, & mural commemorating the historic Pacific Roots railroad	\$50,000	Estimate by the applicant

Per the negotiated Development/Operating Agreement, Façade Improvements will need to meet the following milestones:

- Submit Plans within 45 days of CUP Mod approval.
- Complete improvements within 60 days of receiving permits.

Permit Duration

If the City Council does not support the proposed amendments, staff notes that the applicant has no vested right to this permit based on the 2018 Cannabis Ordinance under which the permit was approved (Attachment 3). Staff has incorporated the following paragraph into the findings for denial if the City Council chooses to pursue an alternative resolution from the staff recommendation.

“Section 4: Use Permit. Use permits for cannabis and cannabis related uses are for one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Manager [...].”

CORRESPONDENCE

Staff has not received correspondence applicable to this permit as of January 30, 2023.

ENVIRONMENTAL DETERMINATION

The proposed project is exempt from the California Environmental Quality Act (CEQA) under Class 1, Section 15301 (Existing Facilities) of the State CEQA Guidelines. Staff has determined that the exemption applies in this case because the modifications to the CUP under consideration would be minor alterations to an existing structure or facility and would involve negligible or no expansion of use. If the City Council denies the project, then the project would be exempt from environmental review under Statutory Exemptions per Section 15270 (Projects which are Disapproved) of the CEQA Guidelines.

CONCLUSION:

This request is submitted for City Council consideration and action.

Respectfully submitted,

Nicholas McIlroy, Associate Planner
Community Development Department
City of Marina

REVIEWED/CONCUR:

Guido Persicone, AICP
Community Development Director
City of Marina

Lane Long
City Manager
City of Marina

Attachments:

1. January 27, 2023, Letter from Pacific Roots
2. Public Improvements Cost Estimate May 2022
3. Carmel Avenue Improvements
4. 2018 Cannabis Ordinance