

CITY OF SEBASTOPOL CITY COUNCIL
AGENDA ITEM REPORT FOR MEETING OF: July 2, 2024

=====

To: Honorable Mayor and City Councilmembers
From: David Woltering, Interim Planning Director
Subject: Consider an Ordinance Approving a Development Agreement for Hotel Sebastopol

=====

RECOMMENDATIONS:

Staff Recommends Approval of Introduction and First Reading of the Ordinance Approving a Development Agreement for Hotel Sebastopol

EXECUTIVE SUMMARY:

The “Hotel Sebastopol” development, a proposed 66-room boutique hotel with many amenities, at 6828 Depot Street, with a parking area across Brown Street at 6826 Depot Street, was approved in 2017. The owners have proceeded with multiple entitlements since that time, including receiving a building permit which is currently active. The owners are requesting a Development Agreement with the City to extend the life of the building permit (which vests the planning entitlements) for two years from the effective date of the subject Ordinance, although City staff is recommending three years, which the developer supports, given the project applicants are pursuing federal funding, a USDA construction loan through the Small Business Administration (SBA), and a related archeological review to procure this financing which is yet to be secured. By extending the permit and entitlements, preventing their expiration, the developer will not have to start over again and repay approximately \$500,000 in permit fees paid to date.

The Development Agreement requires review and recommendation by the Planning Commission which occurred in April and May of this year, and approval by the City Council. The project has been delayed because of the COVID pandemic, which had a particularly devastating impact on the hospitality sector, and high interest rates at this time. The project offers the City of Sebastopol beneficial activity in its downtown area and significant ongoing revenue, including transient occupancy tax (TOT), sales taxes, and property taxes.

BACKGROUND AND DISCUSSION:

This Ordinance with Development Agreement for the Hotel Sebastopol project was presented to the Planning Commission at its April 16, 2024, meeting. Commissioners reviewed the draft Development Agreement, received public comments, and indicated to staff general support for moving forward with the Agreement and asked staff to bring the Agreement back for its formal consideration to make a recommendation to the City Council as required by law. Accordingly, staff brought the proposed Ordinance with Development Agreement back to the Planning Commission at its May 28, 2024, at which it recommended the Ordinance with Development Agreement be approved by the City Council.

A Development Agreement is a legal agreement between a developer and municipality for the development of the property that provide certainty to both the City and the Developer for development projects that the project can proceed as approved, in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

Development Agreements are governed by State Law, as well as the Sebastopol Municipal Code Section 17.440.

City staff and legal counsel have drafted a Development Agreement which would do the following:

- Provides for the extension of the Project approvals for three years from the effective date of the subject Ordinance;
- Incorporates the previously approved Fee Reduction/Fee Deferral Agreement which the City Council approved in 2018;
- Incorporates requirements that the Developer maintain the site in good order while vacant and, if construction commences and the project does not get completed, returns the site to its natural state; and,
- Incorporates the requirements of Sebastopol's Code and State Law related to Development Agreements, including that the Agreement be reviewed on a yearly basis.

The Project approvals are proposed to remain as is, with no amendments requested to the actual Use Permits, Design Review, or other entitlements.

Project Description/Details:

The "Hotel Sebastopol" development, which includes a 66-room boutique hotel, bar, restaurant, retail space, and wellness areas, at 6828 Depot Street, with a parking area across Brown Street at 6826 Depot Street, was approved in 2017. The project has been delayed due to various circumstances and events, including COVID, which had a substantial devastating impact throughout the hospitality sector, which is only now recovering, and the subsequent rise in inflation and interest rates. The owner has moved forward with various components to ready the project for construction, including submittal of Caltrans encroachment permit applications for improvements along Petaluma Avenue, application to PGE for electrical service (and subsequent required lot merger required by PGE, approved December 12th, 2023, by the City). The applicant has also rebid the project and selected a General Contractor and applied for financing through the Federal Small Business Administration. The latter requires Federal archeology review which is a lengthy process but underway.

Given the delays to the project, and the current high interest rates, the applicant is requesting a Development Agreement with the City to ensure the building permit and entitlements do not expire. The applicant has requested a two-year time frame for the agreement for the start of construction. Staff is recommending three years from the effective date of the Development Agreement to help ensure adequate time to execute the requirements to realize the project. The suggested additional time by staff involves the need to secure a viable financing package to assure this project can commence, particularly given higher interest rates continuing at this time and the possible need to seek financing options, including securing equity partners.

The applicant has expended substantial funds to date for project development, including the architectural and engineering costs for development of the subsequent approvals and building permit documents, and outside agency applications. This development is anticipated to bring significant transit occupancy tax (TOT) to the City, direct sales tax and property tax benefits, as well as ancillary economic development and revenue benefits from visitor traffic at shops, restaurants, etc.

If the Development Agreement is not approved, the developer could still move forward under the building permit with appropriate levels of progress on the building permit and the discretion of the Building Official. This is an uncertain process for all parties involved. City staff recommends a Development Agreement be pursued to clarify both the Developer needs and the City's expectations and to better assure the overall project benefits for all parties involved. As part of this, staff is recommending a three-year period for the agreement to facilitate realizing the project, with particular focus on securing the needed financing package. The developer will be required to update the City annually.

STAFF ANALYSIS:

Required Findings:

SMC Section 17.440- governs Development Agreements. For approval, a Development Agreement must be in conformance with State Law, the City’s General Plan, and Zoning Ordinance.

General Plan Consistency:

Approval of the Development Agreement requires it to be consistent with the General Plan.

Zoning Ordinance Consistency:

Zoning Ordinance criteria for approval of a Development Agreement include consistency with the SMC Section 17.440, which requires review by the Planning Commission and approval by City Council by Ordinance.

Staff Determination: The Project itself was found to be consistent with the General Plan when approved, with no significant changes in General Plan policy that would reverse this determination. The approval of a Development Agreement allows for the project approvals to remain in place, subject to the original findings and conditions of approval, for a period of three years from the effective date of the approval. The attached agreement is consistent with the Municipal Code Section 17.440 as well as State law.

Environmental Review:

The project was originally approved subject to a Mitigated Negative Declaration in accordance with the requirements of the California Environmental Quality Act (CEQA). This approval is still valid.

Staff Recommendation:

Staff believes the proposed Ordinance with Development Agreement to extend the time of the project approvals meets the requirements for approval, and acknowledges approval of the request subject to provisions in the Ordinance, including the following:

- Three-year extension, with annual reports to the City;
- Continuation of the Fee Agreement previously approved in 2018; and,
- Requirements for site maintenance.

COMMUNITY OUTREACH:

This item has been noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to schedule meeting date.

As prescribed by Section 17.460 of the Zoning Ordinance, the Planning Department completed the following: (1) Provided written notice to all property owners within 600 feet of the external boundaries of the subject property; (2) provided a written notice that was published in the Press Democrat; and (3) posted three written notices publicly on and within vicinity of the subject property.

No public comments have been received as of the writing of this staff report.

FISCAL IMPACT:

The 2018 agreement between the City of Sebastopol and the Hotel Sebastopol project included a Fee Reduction/Fee Deferral Agreement, which remains in effect with the approval of the Ordinance and is detailed within the attached Development Agreement. This agreement provided significant fee reductions, including a \$40,410 reduction in Building Plan Check fees (already completed), as well as reductions in Water and Sewer

Connection fees by \$15,226 and \$13,678 respectively, in recognition of the project's commitment to sustainability as a LEED and CalGreen certified project with a 35% reduction in base water usage.

Additionally, the agreement allows for the deferral of impact fees related to Traffic, Parks, and Housing Linkage until either the average occupancy exceeds 75% for three months or one year after occupancy, whichever comes first. These fees can then be paid in monthly installments over five years. It's important to note, however, that all Planning Entitlements and Building Permit Fees, which exceed \$500,000, have been paid as the project progressed and are not included in the fee deferral. Should the permits and entitlements expire, any new applicant would need to restart the process and repay these fees.

The Hotel Sebastopol project is anticipated to generate significant direct revenue for the City of Sebastopol, estimated at approximately \$1.5 million annually from transient occupancy tax (TOT), sales tax, and property tax. Additionally, indirect revenue is expected from hotel guests spending in the local community. This project presents a substantial opportunity for long-term fiscal benefits to the city.

OPTIONS:

- Approve the Ordinance.
- Direct Modifications to the Ordinance.
- Deny the Ordinance.

ATTACHMENTS:

1. Applicant Materials
2. Planning Commission April 16, 2024 Action Minutes
3. Planning Commission May 28, 2024 Action Minutes
4. Ordinance with Development Agreement as Exhibit A

APPROVALS:

Department Head Approval:	Approval Date: June 25, 2024
CEQA Determination (Planning):	Approval Date: June 25, 2024

CEQA Determination: Approval of the Development Agreement would not change any of the project impacts analyzed in the original CEQA documentation and approval, as no changes are proposed as part of the agreement other than the length of project approval and building permit approval. The Development Agreement is, therefore, exempt from further review under CEQA Guidelines Section 15162, which states that no subsequent CEQA review required as the Agreement meets the criteria of Section 15162.

Administrative Services (Financial) Approval Date: 6/25/24

Costs authorized in City Approved Budget: Yes No N/A

Account Code (f applicable) _____

City Attorney Approval: Approval Date: June 25, 2024

City Manager Approval: Approval Date: June 25, 2024

PIAZZA

HOSPITALITY

Paolo Petrone
Piazza Hospitality
February 22, 2024

Kari Svanstrom
Planning Director
City of Sebastopol

Re: Hotel Sebastopol

Dear Kari,

As a part of our endeavor to enter into a Development Agreement with the City for our Hotel Sebastopol project, I'd like to provide you with an update on our project, its anticipated timeline, and reasons for needing such an agreement.

As you know, our project has faced numerous unprecedented obstacles as we moved from securing our entitlements back in 2017 towards securing a building permit and breaking ground. These included:

1. The fires of 2017, 2018, and 2019, which contributed to hesitation and in some cases a freeze in lending from many local hospitality lenders.
2. The floods of 2019 necessitating a switch from an in-house plan check process to that of a third-party plan checker as the in-house team at the Building Department was busy with applications from affected businesses. Switching plan checkers partially through the permitting process necessitated substantial additional work, time, and money from the design team as the 3rd party checkers were not familiar with the project and therefore submitted numerous comments had already been addressed by the City's in-house plan check.
3. The global pandemic of 2020-2022 further upending lending markets, cratering the hospitality industry, and halting construction projects around the country.
4. Our current uncertain economic climate and its associated very high lending rates.

Current lending climate notwithstanding, we have a signed term sheet and have completed the due diligence phase of closing on our construction loan. It is a loan package that includes funding through a USDA program intended to support sustainable development in rural areas. As a result of



414 HEALDSBURG AVENUE
HEALDSBURG, CA 95448
PIAZZAHOSPITALITY.COM

this federal funding, the program requires federal environmental approval for the project, which is a step above the CEQA related analyses and approvals completed as a part of our entitlement process. The most time-consuming portion of this process has been getting federal sign off on our archeological recovery plan.

Unfortunately, the relevant federal agencies and their consultant team are very backlogged, and our final approvals keep getting pushed back. We are hoping they can provide us with a reliable timeline for environmental clearance and loan approval sometime soon. **It is our best guess that it will likely be nine months, at the earliest, before the loan package will close.**

Even so, we have made good, if slow, progress thus far and have draft agreements in place as it relates to archeology. Once these agreements are finalized and executed, we will be able to close on our loan and move towards preconstruction site activities, including a required archeological evaluation.

While we've been thrown many curveballs as we've moved through the development process, we remain committed to the project, as evidenced by our investment to date and continued work. We have progressed with our applications with PG&E and Caltrans, both of which are time-consuming and expensive endeavors, and will be good to get completed before the lion's share of the construction work begins. We have also continued to refine the indoor spaces of the hotel, and programmatic offerings.

As a reminder, we pulled our building permit on September 29th of 2022, which means it was considered active and valid until the same date in 2023. On September 25th, 2023 we completed some minor trenching work and called for an inspection, which extended the permit's validity by six months to March 29th, 2024. We plan to conduct similar work next month (March 2024) to further extend the permit's timeframe, giving us enough time to negotiate a Development Agreement and (hopefully) for the City Council to approve it. Given the extreme uncertainty regarding the timing of our loan closure, we kindly request a 1-to-2-year extension of our building permit's validity via Development Agreement. Doing so will allow us the time to fully secure all financing for the project and ultimately break ground on what we humbly but full-heartedly believe to be an important, community-supported development. We just have to navigate the best way to arrive at groundbreaking.

Please don't hesitate to reach out with any questions or if you need any further information from our end.

Sincerely,



Paolo Petrone (CEO, Piazza Hospitality)

OPERATING AGREEMENT
OF
MV HOTEL SEBASTOPOL, LLC
a California Limited Liability Company

Dated as of September 1, 2016

**OPERATING AGREEMENT OF
MV HOTEL SEBASTOPOL, LLC**

This Operating Agreement is entered into as of September 1, 2016 (the “Effective Date”) by MV Broadway, LLC, a California limited liability company (referred to individually as Member) as the sole member of MV Hotel Sebastopol, LLC (the “Company”) in order to specify the business of the Company. The Articles of Organization were filed with the state of California on August 30, 2016 and the Company received a California state identification number of 201625110275.

A. The Member desires to form a limited liability company (the “Company”) under the California Revised Limited Liability Company Act.

B. The Member desires to enter into this Operating Agreement in order to form and provide for the governance of the Company and the conduct of its business and to specify their relative rights and obligations.

NOW THEREFORE, the Member hereby agrees as follows:

ARTICLE I: DEFINITIONS

The following capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in California Corporations Code section 17701.2.

1.1. “Act” means the California Revised Limited Liability Company Act (California Corporations Code sections 17701.01-17713.13), including amendments from time to time.

1.2. “Agreement” means this operating agreement, as originally executed and as amended from time to time.

1.3. “Articles of Organization” is defined in California Corporations Code section 17701.02(b) as applied to this Company.

1.4. “Assignee” means a person who has acquired a Member’s Economic Interest in the Company, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Member.

1.5. “Assigning Member” means a Member who by means of a Transfer has transferred an Economic Interest in the Company to an Assignee.

1.6. “Capital Account” means, as to any Member, a separate account maintained and adjusted in accordance with Article III, Section 3.3.

1.7. “Capital Contribution” means, with respect to any Member, the amount of the money and the Fair Market Value of any property (other than money) contributed to the

Company (net of liabilities secured by such contributed property that the Company is considered to assume or take “subject to” under IRC section 752) in consideration of a Percentage Interest held by such Member. A Capital Contribution shall not be deemed a loan.

1.8. “Capital Event” means a sale or disposition of any of the Company’s capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to Company property or assets.

1.9. “Code” or “IRC” means the Internal Revenue Code of 1986, as amended, and any successor provision.

1.10 “Company” means the company named in Article II, Section 2.2.

1.11 “Economic Interest” means a Person’s right to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Company, but does not include any other rights of a Member, including the right to vote or to participate in management.

1.12. “Encumber” means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.13. “Encumbrance” means, with respect to any Membership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

1.14. “Fair Market Value” means, with respect to any item of property of the Company, the item’s adjusted basis for federal income tax purposes, except as follows:

(a) The Fair Market Value of any property contributed by a Member to the Company shall be the value of such property, as mutually agreed by the contributing Member and the Company;

(b) The Fair Market Value of any item of Company property distributed to any Member shall be the value of such item of property on the date of distribution, as mutually agreed by the recipient Member and the Company; and

1.15. “Initial Member” or “Initial Members” means those Persons whose names are set forth in the first sentence of this Agreement. A reference to an “Initial Member” means any of the Initial Members.

1.16. “Involuntary Transfer” means, with respect to any Membership Interest, or any element thereof, any Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

1.17. “Losses.” See “Profits and Losses.”

1.18. “Majority in Interest” means a Member or Members whose Percentage Interests represent more than 50 percent of the Percentage Interests of all the Members. The Company may only have one member and then such Member’s Vote shall be the Majority in Interest of the Members.

1.19. “Meeting” is defined in Article V, Section 5.3.

1.20. “Member” means an Initial Member or a Person who otherwise acquires a Membership Interest, as permitted under this Agreement, and who remains a Member. The Company may only have one Member.

1.21. “Membership Interest(s)” means a Member’s Percentage Interest in the Company.

1.22. “Notice” means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage and fees prepaid, in the United States mails; when delivered to Federal Express, United Parcel Service, DHL WorldWide Express, or Airborne Express, for overnight delivery, charges prepaid or charged to the sender’s account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.

1.23. “Percentage Interest” means a Member’s rights in the Company, including any right to vote or participate in management, as expressed as a percentage of the total membership interests in the Company, the numerator of which is the total of Member’s Membership Interest and the denominator of which is the total of all issued and outstanding Membership Interest of all of the Members of the Company. Irrespective of the above a Member’s Membership Interest shall be set out in Exhibit A. Provided that there is only one Member such Member shall own One Hundred percent (100%) of the Percentage Interests of the Company.

1.24. “Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

1.25. “Profits and Losses” means, for each fiscal year or other period specified in this Agreement, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with IRC section 703(a).

1.26. “Proxy” has the meaning set forth in section 178 of the California General Corporation Law (the “Law”), Division 1, Title 1, and pursuant to section 17704.07 of the Act, shall be governed by the Law. A Proxy may not be transmitted orally.

1.27. “Regulations” (“Reg”) means the income tax regulations promulgated by the

United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.28. “Successor in Interest” means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.

1.29. “Transfer” means, with respect to a Membership Interest, or any element of a Membership Interest, any sale, assignment, gift, Involuntary Transfer, or other disposition of a Membership Interest or any element of such a Membership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.30. “Vote” means a written consent or approval, a ballot cast at a Meeting, or a voice vote. Except as explicitly set forth in this Agreement, so long as there is only one Member all actions may be accomplished without a Vote. Irrespective of the above where a Vote is necessitated by this Agreement or the Code it may be accomplished by a written consent or approval.

1.31. “Voting Interest” means, with respect to a Member, the right to Vote or participate in management and any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provisions of this Agreement. A Member’s Voting Interest shall be directly proportional to that Member’s Percentage Interest.

1.32. “Manager” means, the person or entity designated as such in Article 5 and the initial Manager is set out in Section 2.7.

ARTICLE II: ARTICLES OF ORGANIZATION

2.1. The Members approve the Articles of Organization, attached to this Agreement as Exhibit A, which have been filed with the California Secretary of State. California State File Number is 201625110275.

2.2. The name of the Company is MV Hotel Sebastopol, LLC.

2.3. The principal executive office of the Company shall be at 580 Second Street, Suite 260, Oakland, California 94607 or such other place or places as may be determined by the Member from time to time.

2.4. The initial agent for service of process on the Company shall be Lina Conocono. The Member may from time to time change the Company’s agent for service of process.

2.5. The Company was formed for the purposes of engaging in the business of owning acquiring, developing, constructing and operating a hotel, restaurant spaces and spa in Sebastopol, California on the following properties: 6824 Depot Street, Sebastopol California, 6826 Depot Street, Sebastopol, California, and 6828 Depot Street, Sebastopol, California

(collectively “Property 1”) and 215 Brown Street, Sebastopol, California and 225 Brown Sebastopol, California (collectively “Property 2”) which are legally described on Exhibit C attached hereto and incorporated herein by reference (Property 1 and Property 2 are collectively referred to as the “Property”). Initially the Company intends to develop, build, operate and own the Property and a hotel, restaurant spaces and spa on the Property (collectively, including the ownership of the Property, the “Project”). Notwithstanding the foregoing, The Company may purchase the Property to hold for investment purposes only and not develop the Property. The Company may enter into agreements with respect to the Property and the Project. The Company shall have complete control of the development of the Property and the Project. In addition, the Company shall have such other purposes as may be necessary, incidental or convenient to carry on the Company’s primary purpose and may engage in any other business activities permitted under the Act.

2.6. The term of existence of the Company shall commence on the effective date of filing of Articles of Organization with the California Secretary of State, and shall continue until terminated by the provisions of this Agreement or as provided by law.

2.7. The initial Manager of the Company shall be Metrovation, LLC, a California limited liability company (the “Manager”). Metrovation, LLC shall also be in charge of tax matters pursuant to the California Code.

ARTICLE III: CAPITALIZATION

3.1. The name of the Initial Member or Member is MV Broadway, LLC a California limited liability company. The Member shall contribute to the capital of the Company as the Member’s Capital Contribution the money and property specified in Exhibit B to this Agreement. The Fair Market Value of each item of contributed property as agreed between the Company and the Member contributing such property is set forth in Exhibit B. Unless otherwise agreed in writing by all Members, no Member shall be required to make additional Capital Contributions. The member may also make Contribution Loans to the company as stated in Exhibit B as may be later amended.

The Company shall purchase Property 1 for approximately \$2,400,000.00 and shall purchase Property 2 for approximately \$375,000.00. This shall be accomplished by the capital contribution by the Initial Member MV Broadway, LLC. The Initial Member shall also contribute an additional \$400,000.00 for initial operating and development expenses.

The Company anticipates that it will also raise additional capital for the construction, development and operating of the Property and anticipates that it will borrow money from an institutional lender secured by a first deed of trust on the Property (the “Initial Loan”) for construction, development and operation of the Property. The Initial Loan may be set out on Exhibit B.

The Capital Contribution set forth on Exhibit B shall represent the amounts necessary for the initial operation of the Company and purchase of the Property.

The Company through its Managers may make distributions to the Members

based upon their Percentage Interest prior to the dissolution of the Company, final sale of the Property, bankruptcy or other winding up of the Company.

3.2. Additional and Contribution Loans. The Company may obligate itself pursuant to additional loans for development, remodeling, operation of the Property and the Company or for any other reason that the Manager determines to be necessary. The Company may also borrow additional funds for the benefit of the Company that is separate from any debt that shall encumber the Property pursuant to a first Deed of Trust or any additional deed of trust ("Additional Loans"). The Manager of the Company may also encumber the Property with commercial debt that are Additional Loans. The Member shall have the authority to lend the Company money from time to time for operation and development of the Property as additional Contribution Loans. The Contribution Loans shall be used for development costs, operating costs and other expenses determined to be necessary by the Manager in their sole and absolute discretion. In the event the Manager determines in their reasonable business judgment that further loans are required to enable the Company to carry out the purposes of this Agreement, such loans shall be offered to the Members in proportion to their Percentage Interests. All Contribution Loans of the Members shall bear interest at 6% per annum or such other rate as agreed by a Majority in Interest of the Members. All Contribution Loans made pursuant to this paragraph shall be evidenced by a promissory note and set out in Exhibit B (as amended for each additional Contribution Loan). In no event shall any distribution be made to any Member until payment has been made of all principal and interest on Contribution Loans. So long as there is only one Member such Member may loan money to the Company pursuant to the above.

3.3 An individual Capital Account shall be maintained for each Member consisting of that Member's Capital Contribution (1) increased by that Member's share of Profits, (2) decreased by that Member's share of Losses, and (3) adjusted as required in accordance with applicable provisions of the Code and Regulations.

3.4. Except as otherwise set forth in this Agreement or the Management Agreement, no interest shall be paid on funds or property contributed to the capital of the Company or on the balance of a Member's Capital Account.

3.5. A Member shall not be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Company except as otherwise provided in the Act or in this Agreement.

ARTICLE IV: ALLOCATIONS AND DISTRIBUTIONS

4.1. The Profits and Losses of the Company and all items of Company income, gain, loss, deduction, or credit shall be allocated, for Company book purposes and for tax purposes, to the Member.

4.2. If the Member unexpectedly receives any adjustment, allocation, or distribution described in Reg sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company gross income and gain shall be specially allocated to that Member in an amount and manner sufficient to eliminate any deficit balance in the Member's Capital Account created by such adjustment, allocation, or distribution as quickly as possible.

Any special allocation under this Section 4.2 shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Reg sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

4.3. Any unrealized appreciation or unrealized depreciation in the values of Company property distributed in kind to the Member shall be deemed to be Profits or Losses realized by the Company immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Members' Capital Account. Any property so distributed shall be treated as a distribution to the Members to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3, "unrealized appreciation" or "unrealized depreciation" shall mean the difference between the Fair Market Value of such property and the Company's basis for such property.

4.4. In the case of a Transfer of an Economic Interest during any fiscal year, the Assigning Member and Assignee shall each be allocated the Economic Interest's share of Profits or Losses based on the number of days each held the Economic Interest during that fiscal year.

4.5. All cash resulting from the normal business operations of the Company and from a Capital Event shall be distributed to the Member at such times as the Manager deems appropriate.

4.6. If the proceeds from a sale or other disposition of a Company asset consist of property other than cash, the value of such property shall be as determined by the Manager. Such non-cash proceeds shall then be allocated to the Member. If such non-cash proceeds are subsequently reduced to cash, such cash shall be distributed to the Member in accordance with Section 4.5.

4.7. Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Company, or when the Member's interest is liquidated, all items of income and loss first shall be allocated to the Members' Capital Account under this Article IV, and other credits and deductions to the Members' Capital Accounts shall be made before the final distribution is made.

ARTICLE V: MANAGEMENT AND MEMBERS DUTIES

5.1. Rights and Duties of the Manager.

The business of the Company shall be managed by Metrovation, LLC a California limited liability company (the "Manager"). The ordinary and usual decisions concerning the business affairs of the Company shall be made by the Manager.

5.1.1 Manager(s). The ordinary and usual decisions concerning the business affairs of the Company shall be made by the Manager(s). The Manager shall manage the Company pursuant to the terms and conditions set forth in an agreement by and between the Manager and the Company (the "Management Agreement"). The Management Agreement shall be executed on behalf of the Company by the Member. Except as otherwise stated in this Agreement the Management Agreement the Manager shall also have all rights and powers to the greatest extent allowed by law. Except as otherwise set forth in the Management Agreement, Metrovation, LLC shall remain the Manager of the Company until (i) their resignation, (ii) their removal by the Member if there is only one Member, or (ii) their removal by a Vote of not less than seventy-five percent (75%) of the outstanding Membership Interests if there is more than one Member.

5.1.2 Term of Manager. Except as otherwise stated in this Operating Agreement, no Manager shall have any contractual right to such position. The Manager shall serve until the earliest of:

- (1) The Resignation of such Manager;
- (2) Removal of the Manager (other than the initial Manager Metrovation, LLC) by a Majority in Interest of the Members. or
- (3) In the case of the initial Manager Metrovation, LLC the removal of such Manager pursuant to Section 5.1.1

5.1.3 Authority of Members to Bind the Company. Only the Manager and agents of the Company authorized by the Manager shall have the authority to bind the Company. No Member who is not either a Manager or otherwise authorized as an agent shall take any action to bind the Company, and each Member shall indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member. Subject to this Agreement, each Manager has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company.

5.1.4 Actions of the Manager(s). The Manager has the power to bind the Company as provided in this Article V. If there is more than one Manager then any difference arising as to any matter within the authority of the Managers shall be decided by a majority of the Managers. If the majority of the Managers cannot resolve any disagreement then any unresolved disagreements between the Managers shall be settled by a vote of a Majority in Interest of the Members. No act of a Manager in contravention of such determination shall bind the Company to Persons having knowledge of such determination. Notwithstanding such determination, the act of a Manager for the purpose of apparently carrying on the usual business or affairs of the Company, including the exercise of the authority indicated in this Article V, shall bind the Company, and no person dealing with the Company shall have any obligation to inquire into the power or authority of the Manager acting on behalf of the Company. If there is only one Manager such Manager shall have the sole authority to bind the Company.

5.1.5 Compensation of Manager. As the Manager shall be managing the Property and the Company for the benefit of the Membership the Manager shall be compensated pursuant to the terms and conditions set forth in the Management Agreement and shall be reimbursed all reasonable expenses incurred in managing the Company.

5.1.6 Managers' Duty of Care. The duty of care in the discharge of a Manager's duties to the Company and the other Members is limited to refraining from engaging in intentional misconduct or a knowing violation of law. In discharging its duties, a Manager shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements by any of its other Members, or agents, or by any other person, as to matters a Manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid. The Company and its Members shall indemnify, defend and hold harmless the Manager from any claim against the Manager for carrying out their lawful duties on behalf of the Company.

5.1.7 Time Devoted to Company; Other Ventures. The Manager shall devote so much time to the business of the Company as in their judgment the conduct of the Company's business reasonably requires. The Managers, provided the following activities do not materially interfere with the performance of their duties, may engage in business ventures and activities of any nature and description independently or with others, whether or not in competition with the business of the Company and neither the Company nor any of the Members shall have any rights in and to such independent ventures and activities or the income or profits derived therefrom by reason of their acquisition of interests in the Company.

5.1.8 Indemnification. The Company and the Members shall indemnify and hold each Manager, Mark Seiler and Paolo Petrone harmless from any loss or damage (including without limitation environmental indemnification and any other third party or Member claims), including attorneys' fees actually and reasonably incurred by it, by reason of any act performed by it on behalf of the Company or in furtherance of the Company's interests.

5.2. As set forth above the Manager shall be entitled to such compensation for service as set forth in the Management Agreement.

5.3. Provided that there is only one Member, the Members shall not be required to hold any Meetings and all actions by the Members shall enacted in writing and signed by the Member. The following provisions of this Section 5.3 shall apply if there is more than one Member:

The Members are not required to hold formal meetings. Decisions requiring concurrence of a Majority in Interest of the Members, may be reached through one or more informal consultations followed by written confirmation signed by Members having a Majority in Interest, provided that all Members are consulted (although all Members need not be present during a particular consultation). In the event that Members wish to hold a formal meeting (a "Meeting") for any reason, the following procedures shall apply:

(a) A Manager or fifty (50) percent of the Membership Interests of the Company may call a Meeting of the Members by giving Notice of the time and place of the Meeting at least 30 days prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Company.

(b) A Majority in Interest of the Members shall constitute a quorum for the transaction of business at any Meeting of the Members.

(c) The transactions of the Members at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present and if, either before or after the Meeting, each Member not present signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

(d) Any action required or permitted to be taken by the Members under this Agreement may be taken without a Meeting if Members having a Majority in Interest consent in writing to such action.

(e) Members may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Members participating in the Meeting can hear one another.

(f) The Manager shall keep or cause to be kept with the books and records of the Company full and accurate minutes of all Meetings, Notices, and Waivers of Notices of Meetings, and all written consents in lieu of Meetings.

5.4. All assets of the Company, whether real or personal, shall be held in the name of the Company.

5.5. All funds of the Company shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Company, at such locations as shall be determined by the Manager. Withdrawal from such accounts shall require the signature of the Manager or such other person or persons as the Member may designate.

ARTICLE VI: ACCOUNTS AND RECORDS

6.1. Complete books of account of the Company's business, in which each Company transaction shall be fully and accurately entered, shall be kept at the Company's principal executive office.

6.2. Financial books and records of the Company shall be kept on the method of accounting determined by the Manager, which shall be the method of accounting followed by the Company for federal income tax purposes. A balance sheet and income statement of the Company shall be prepared promptly following the close of each fiscal year in a manner appropriate to and adequate for the Company's business and for carrying out the provisions of

this Agreement. The fiscal year of the Company shall be January 1 through December 31.

6.3. At all times during the term of existence of the Company, and beyond that term if the Manager deems it necessary, the Manager shall keep or cause to be kept the books of account referred to in Section 6.2, and the following:

(a) A current list of the full name and last known business or residence address of each Member, together with the Capital Contribution, the Percentage Interest and the share in Profits and Losses of each Member;

(b) A copy of the Articles of Organization, as amended;

(c) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

(d) Executed counterparts of this Agreement, as amended;

(e) Any powers of attorney under which the Articles of Organization or any amendments thereto were executed;

(f) Financial statements of the Company for the six most recent fiscal years; and

(g) The Books and Records of the Company as they relate to the Company's internal affairs for the current and past four fiscal years.

If the Member deems that any of the foregoing items shall be kept beyond the term of existence of the Company, the repository of said items shall be as designated by the Member.

6.4. Within 90 days after the end of each taxable year of the Company the Company shall send to the Member all information necessary for the Member to complete his federal and state income tax or information returns, and a copy of the Company's federal, state, and local income tax or information returns for such year.

6.5 As long as there is only one Member and the Manager is the same person as the Member, no reports need to be provided to the Member. Such reports include without limitation financial statements, books, contracts and other records of the Company

ARTICLE VII: MEMBERS AND VOTING

7.1. The initial Member may transfer any part of the Member's Membership Interest, however if additional Members are authorized by the Member then the Members shall not transfer any part of the Member's Membership Interest in the Company without written consent of a Majority in Interest of the Members. Notwithstanding any other provision of this Agreement to the contrary, a Member who is a natural person may transfer all or any portion of

his Membership Interest to any revocable trust created for the benefit of the Member, or any combination between or among the Member, the Member's spouse, and the member's issue; provided that the Member retains a beneficial interest in the trust and all of the Voting interest included in such Membership Interest. A transfer of a Members entire beneficial interest in such trust or failure to retain such Voting Interest shall be deemed a Transfer of a Membership Interest.

7.2 Notwithstanding any other provision of the Agreement, at any time there is only one Member of the Company, all or a portion of that Member's interest may be disposed of in any manner provided by law, and, upon such disposition, the transferee shall become a Member without further action on the part of the transferee, the Company or the Member.

ARTICLE VIII: DISSOLUTION AND WINDING UP

8.1. The Company shall be dissolved on the first to occur of the following events:

- (a) The decision of the Member or a Majority in Interest of the Members if there is more than one Member, to dissolve the Company.
- (b) The sale or other disposition of substantially all of the Company assets.
- (c) Entry of a decree of judicial dissolution pursuant to California Corporations Code section 17707.03.

8.2. On the dissolution of the Company, the Company shall engage in no further business other than that necessary to wind up the business and affairs of the Company. The Member shall wind up the affairs of the Company and shall give written Notice of the commencement of winding up by mail to all known creditors and claimants against the Company whose addresses appear in the records of the Company. After paying or adequately providing for the payment of all known debts of the Company (except debts owing to Member) the remaining assets of the Company shall be distributed or applied in the following order of priority:

- (a) To pay the expenses of liquidation.
- (b) To repay outstanding loans to Member.
- (c) To the Member.

ARTICLE IX: ARBITRATION

Any action to enforce or interpret this Agreement or to resolve disputes between the Members or Manager or by or against any Member or Manager shall be settled by arbitration in accordance with the Comprehensive Arbitration Rules and Procedures of, and shall be administered by, JAMS/Endispute. Arbitration shall be the exclusive dispute resolution process. Any party may

commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. Arbitration shall be conducted in San Francisco County, State of California. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of reasonable attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE X: GENERAL PROVISIONS

10.1. This Agreement constitutes the whole and entire agreement with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by the Initial Member and other Members (if any).

10.2. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.3. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

10.4. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

10.5. Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

10.6. Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Member in the carrying on of his own respective businesses or activities.

10.7. The article, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

10.8. This Agreement may be altered, amended, or repealed only by a writing signed the Initial Member and other Members (if any).

10.9. Time is of the essence of every provision of this Agreement that specifies a time for performance.

10.10. This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

10.11 The Member intends the Company to be a limited liability company under the Act. No member shall take any action inconsistent with the express intent of the parties to this agreement.

IN WITNESS WHEREOF, the Member has executed or caused to be executed this Agreement on the Effective Date first written above.

MEMBER:

MV BROADWAY, LLC
A California limited liability company

By: Metrovation, LLC its Manager



Mark Seiler, its Manager


MANAGER:

METROVATION, LLC
A California limited liability company



Mark Seiler, its Manager

EXHIBIT A
ARTICLES OF ORGANIZATION

	Secretary of State Articles of Organization Limited Liability Company (LLC)	LLC-1
-----------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------	-------

201625110275

FILED *PS1*
 Secretary of State
 State of California
 AUG 30 2016 *6*

IMPORTANT — Read Instructions before completing this form.

Filing Fee - \$70.00

Copy Fees - First plain copy free; Additional copies: First page \$1.00 & .50 for each attachment page; Certification Fee - \$5.00

Important! LLCs may have to pay an annual minimum \$800 tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

IPC This Space For Office Use Only

1. **Limited Liability Company Name** (See Instructions – Must contain an LLC ending such as LLC or L.L.C. "LLC" will be added, if not included.)

MV HOTEL SEBASTOPOL, LLC

2. Business Addresses

a. Initial Street Address of Designated Office in California - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
580 Second Street, Suite 260	Oakland	CA	94607
b. Initial Mailing Address of LLC, if different than Item 2a	City (no abbreviations)	State	Zip Code
580 Second Street, Suite 260	Oakland	CA	94607

3. Agent for Service of Process

Item 3a and 3b: If naming an individual, the agent must reside in California and Item 3a and 3b must be completed with the agent's name and complete California street address.
 Item 3c: If naming a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 3c must be completed (leave Item 3a-3b blank).

a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
Lina		Conocono	
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
580 Second Street, Suite 260	Oakland	CA	94607
c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete Item 3a or 3b			

4. Management (Select only one box)

The LLC will be managed by:

One Manager More than One Manager All LLC Member(s)

5. Purpose Statement (Do not alter Purpose Statement)

The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

6. The Information contained herein, including in any attachments, is true and correct.


 Organizer sign here

Steven D. Seiler
 Print your name here

EXHIBIT B

MEMBERS, PERCENTAGE INTEREST AND CAPITAL CONTRIBUTION

Name	Date of Purchase	Percentage Interest	Initial Contribution	
			Type	Value
MV Broadway, LLC	September 1, 2016	100%	Cash	\$3,175,000.00
			Total	\$3,175,000.00

INITIAL LOAN (if any)

LENDER

Amount

\$

CONTRIBUTION LOANS (if any)

Individual or Company

Amount

\$

EXHIBIT C
PROPERTY DESCRIPTION



First American Title Insurance Company
National Commercial Services
1850 Mt. Diablo Blvd., Suite 530
Walnut Creek, CA 94596

Melissa Gray
Melvin Mark Capital Group, LLC
111 Sw Columbia St Ste 1310
Portland, OR 97201-5845
Phone: (503)546-4778

Customer Reference: Hotel Sebastopol

Escrow Officer: Nikki Hernandez
Phone: (925)927-2174
Email: NiHernandez@firstam.com

Borrower: MV Hotel Sebastopol, LLC

Property: 6824, 6826, 6828 Depot Street, and 215-225 Brown Street,
Sebastopol, CA

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of September 07, 2022 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

ALTA Extended Loan Policy

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

MV Hotel Sebastopol, LLC, a California limited liability company

The estate or interest in the land hereinafter described or referred to covered by this Report is:

Fee as to Parcel One and Two, an Easement as to Parcels Three and Four

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2022-2023, a lien not yet due or payable.
2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
3. EASEMENT FOR ANY EXISTING UTILITIES WITHIN THAT PORTION OF THE HEREIN DESCRIBED PROPERTY LYING WITHIN "CHINA AVENUE" AS SHOWN ON THE MAP OF BIRDIE MILLER CNOPIUS PROPERTY, ABANDONED.

(Affects PARCEL ONE)

4. An easement for STREET AND PUBLIC UTILITY and incidental purposes, recorded APRIL 10, 1943 as BOOK 576, PAGE 330 of Official Records.
In Favor of: W. J. BARLOW
Affects: AS DESCRIBED THEREIN

(Affects PARCEL TWO)

5. The effect of a map purporting to show the land and other property, filed APRIL 11, 1980 IN BOOK 303, PAGE 26 of Record of Surveys.

(Affects PARCEL TWO)

First American Title Insurance Company

6. The fact that the land lies within the boundaries of the SEBASTOPOL COMMUNITY Redevelopment Project Area, as disclosed by the document recorded JULY 29, 1983 as INSTRUMENT NO. 1983-050090 of Official Records.

(Affects ALL PARCELS)

7. A Deed of Trust to secure an original indebtedness of \$70,000,000.00 recorded APRIL 18, 1988 as INSTRUMENT NO. 88-029882 of Official Records.

Dated: APRIL 13, 1988
Trustor: DIAMOND LUMBER, INC. A DELAWARE CORPORATION
Trustee: CONTINENTAL LAND TITLE COMPANY
Beneficiary: THE CIT GROUP/BUSINESS CREDIT, INC., A NEW YORK CORPORATION

(Affects PARCEL ONE)

8. An easement for PUBLIC UTILITIES, INGRESS, EGRESS and incidental purposes, recorded MAY 31, 1991 as INSTRUMENT NO. 1991-051117 of Official Records.

In Favor of:
Affects: as described therein

(Affects PARCEL TWO)

9. An easement for SIDEWALK and incidental purposes, recorded APRIL 13, 1994 as INSTRUMENT NO. 1994-0049154 of Official Records.

In Favor of: THE CITY OF SEBASTOPOL, A MUNICIPAL CORPORATION
Affects: AS DESCRIBED THEREIN

(Affects PARCEL ONE)

10. An easement for PUBLIC UTILITY and incidental purposes, recorded DECEMBER 31, 1996 as INSTRUMENT NO. 1996-0116074 of Official Records.

In Favor of: PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION
Affects: AS DESCRIBED THEREIN

(Affects PARCEL ONE)

11. A Deed of Trust to secure an original indebtedness of \$1,500,000.00 recorded AUGUST 4, 2017 as INSTRUMENT NO. 2017-060486 of Official Records.

Dated: AUGUST 1, 2017
Trustor: MV HOTEL SEBASTOPOL LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
Trustee: ALTO SERVICE CORPORATION
Beneficiary: SUMMIT STATE BANK

The above deed of trust states that it secures a line of credit. Before the close of escrow, we require evidence satisfactory to us that (a) all checks, credit cards or other means of drawing upon the line of credit have been surrendered to escrow, (b) the borrower has not drawn upon the line of credit

since the last transaction reflected in the lender's payoff demand, and (c) the borrower has in writing instructed the beneficiary to terminate the line of credit using such forms and following such procedures as may be required by the beneficiary.

The effect of a document entitled "SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE", recorded MARCH 24, 2022 as INSTRUMENT NO. 2022-021372 of Official Records.

Note: The Company will require satisfactory proof of full payment of the debt secured by said mortgage or deed of trust prior to removing this exception or insuring the contemplated transaction.

(Affects PARCELS ONE AND TWO)

12. The effect of a map purporting to show the land and other property, filed MARCH 2, 2018 IN BOOK 793, PAGE 14 of Record of Surveys.

(Affects PARCELS ONE AND TWO)

13. Rights of the public in and to that portion of the Land lying within PETALUMA AVENUE.

(Affects PARCEL ONE)

14. Water rights, claims or title to water, whether or not shown by the Public Records.
15. Rights of parties in possession.

INFORMATIONAL NOTES

ALERT - CA Senate Bill 2 imposes an additional fee of \$75 up to \$225 at the time of recording on certain transactions effective January 1, 2018. Please contact your First American Title representative for more information on how this may affect your closing.

1. Taxes for proration purposes only for the fiscal year 2021-2022.

First Installment: \$11,895.44, PAID
Second Installment: \$11,895.44, PAID
Tax Rate Area: 005-014
APN: 004-052-001-000

(Affects Parcel One)

2. Taxes for proration purposes only for the fiscal year 2021-2022.

First Installment: \$5,502.45, PAID
Second Installment: \$5,502.45, PAID
Tax Rate Area: 005-014
APN: 004-061-019-000

(Affects Parcel Two)

3. The property covered by this report is vacant land.
4. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

None

5. If this preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only, it is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.

6. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:

A. WITH RESPECT TO A CORPORATION:

1. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
2. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
3. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
4. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:

1. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2) to be recorded in the public records;
 2. A full copy of the partnership agreement and any amendments;
 3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
 4. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
 5. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
- C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:
1. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
 2. A full copy of the partnership agreement and any amendment;
 3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
 4. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
 5. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
- D. WITH RESPECT TO A GENERAL PARTNERSHIP:
1. A certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporation Code (form GP-I), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the public records;
 2. A full copy of the partnership agreement and any amendments;
 3. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.
- E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:
1. A copy of its operating agreement and any amendments thereto;
 2. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
 3. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
 4. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:
 - (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
 - (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
 5. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
 6. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
- F. WITH RESPECT TO A TRUST:

1. A certification pursuant to Section 18100.5 of the California Probate Code in a form satisfactory to the Company.
 2. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.
 3. Other requirements which the Company may impose following its review of the material require herein and other information which the Company may require.
- G. WITH RESPECT TO INDIVIDUALS:
1. A statement of information.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

LEGAL DESCRIPTION

Real property in the City of Sebastopol, County of Sonoma, State of California, described as follows:

PARCEL ONE:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF DEPOT STREET WITH THE WESTERLY LINE OF BROWN STREET, AS SHOWN ON THE MAP OF THE PROPERTY OF BIRDIE MILLER CNOPIUS, FILED IN THE OFFICE OF THE SONOMA COUNTY RECORDER ON AUGUST 28, 1918 IN BOOK 35 OF MAPS, AT PAGES 21, 22 AND 23; THENCE NORTH 7° 21' WEST ALONG BROWN STREET, A DISTANCE OF 287.6 FEET TO MCKINLEY STREET; THENCE SOUTH 84° 09' WEST ALONG MCKINLEY STREET 217.6 FEET TO THE EASTERLY LINE OF PETALUMA AVENUE AS CONVEYED TO THE CITY OF SEBASTOPOL BY DEED RECORDED JULY 7, 1927 IN BOOK 173 AT PAGE 440, SONOMA COUNTY RECORDS; THENCE SOUTH 24° 49' EAST ALONG PETALUMA AVENUE, A DISTANCE 345.05 FEET TO DEPOT STREET; THENCE NORTH 65° 11' EAST ALONG DEPOT STREET, 119.85 TO THE PLACE OF BEGINNING.

PARCEL TWO:

BEING THE LANDS SHOWN AND DESCRIBED AS "VOLUNTARY MERGER RESULTANT PARCEL" IN THAT CERTAIN GRANT DEED RECORDED JUNE 28, 2019 AS INSTRUMENT NO. 2019-043882 OFFICIAL RECORDS OF SONOMA COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY LYING WITHIN THE CITY OF SEBASTOPOL, COUNTY OF SONOMA, STATE OF CALIFORNIA, AND BEING THE LANDS OF MV HOTEL SEBASTOPOL, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, DESCRIBED AS TRACT 2-PARCEL 2 BY DEED RECORDED OCTOBER 26, 2016 UNDER DOCUMENT NUMBER 2016-099082, SONOMA COUNTY RECORDS, AND DESCRIBED AS PARCEL 1 AND PARCEL 2 BY DEED RECORDED NOVEMBER 10, 2016 UNDER DOCUMENT NUMBER 2016-104482, SONOMA COUNTY RECORDS, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY, FILED MARCH 2, 2018 IN BOOK 793 OF MAPS AT PAGE 14, SONOMA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST COMER OF SAID LANDS AS SHOWN ON SAID RECORD OF SURVEY, BEING A POINT AT THE INTERSECTION OF THE NORTHERLY LINE OF DEPOT STREET WITH THE EASTERLY LINE OF BROWN AVENUE; THENCE ALONG SAID EASTERLY LINE AND ALONG THE WESTERLY LINE OF SAID TRACT 2-PARCEL 2 AND THE WESTERLY LINE OF SAID PARCEL 1 AND PARCEL 2, NORTH 7°21'00" WEST, 206.30 FEET TO THE NORTHWEST COMER OF SAID LANDS; THENCE LEAVING SAID EASTERLY LINE, ALONG THE NORTHERLY LINE OF SAID PARCEL 2, NORTH 80°16'00" EAST, 95.33 FEET TO THE NORTHEAST COMER OF SAID LANDS; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 1 AND PARCEL 2, SOUTH 12°44'37" EAST, 91.80 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 1, BEING A POINT ON THE NORTHERLY LINE OF SAID TRACT 2- PARCEL 2; THENCE ALONG SAID NORTHERLY LINE, NORTH 76°41'00"EAST, 6.00 FEET TO THE NORTHEAST COMER OF SAID TRACT 2- PARCEL 2; THENCE ALONG THE EASTERLY LINE OF SAID TRACT 2-PARCEL 2, SOUTH 12°45'00" EAST, 108.00 FEET TO SAID NORTHERLY LINE OF DEPOT STREET; THENCE ALONG SAID NORTHERLY LINE, BEING THE SOUTHERLY LINE OF SAID LANDS, SOUTH 76°57'00" WEST, 120.60 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

A RIGHT OF WAY 20 FEET IN WIDTH BEING 10 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE;

COMMENCING AT THE WESTERLY COMMON CORNER OF LOTS 9 AND 10 IN SAID BLOCK 4; AND
RUNNING THENCE NORTH 80° 16' EAST 114.14 FEET TO A POINT.

PARCEL FOUR:

A RIGHT OF WAY 18.8 FEET IN WIDTH, BEING 9.4 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTER LINE:

COMMENCING AT A POINT ON THE LINE BETWEEN LOTS 9 AND 10 IN BLOCK 4, DISTANT NORTH 80°
16' EAST 104.74 FEET FROM THE WESTERLY COMMON CORNER THEREOF; THENCE SOUTH 12° 45'
EAST 49.65 FEET TO A POINT.

APN: 004-052-001(Affects Parcel One), 004-061-019(Affects Parcel Two)

NOTICE

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

Privacy Policy

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - (a) building;
 - (b) zoning;
 - (c) land use;
 - (d) improvements on the Land;
 - (e) land division; and
 - (f) environmental protection.This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - (a) that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - (b) that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - (c) that result in no loss to You; or
 - (d) that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - (a) to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - (b) in streets, alleys, or waterways that touch the Land.This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows: For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16: 1% of Policy Amount or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 18: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21: 1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

**ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 - (a) and use
 - (b) improvements on the land
 - (c) and division
 - (d) environmental protectionThis exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
 - (a) a notice of exercising the right appears in the public records on the Policy Date
 - (b) the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:

First American Title Insurance Company

- (a) that are created, allowed, or agreed to by you
 - (b) that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
 - (c) that result in no loss to you
 - (d) that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
 5. Lack of a right:
 - (a) to any land outside the area specifically described and referred to in Item 3 of Schedule A OR
 - (b) in streets, alleys, or waterways that touch your land
- This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**2006 ALTA LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement erected on the Land;
 - iii. the subdivision of land; or
 - iv. environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - a. a fraudulent conveyance or fraudulent transfer, or
 - b. a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an

- accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
 6. Any lien or right to a lien for services, labor or material not shown by the public records.

2006 ALTA OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement erected on the Land;
 - iii. the subdivision of land; or
 - iv. environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - a. a fraudulent conveyance or fraudulent transfer; or
 - b. a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)
EXCLUSIONS FROM COVERAGE

First American Title Insurance Company

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement erected on the Land;
 - iii. the subdivision of land; or
 - iv. environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
 - e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - a. a fraudulent conveyance or fraudulent transfer, or
 - b. a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.



City of Sebastopol
Incorporated 1902
Planning Department
7120 Bodega Avenue
Sebastopol, CA 95472
707-823-6167
707-823-1135 (Fax)
www.ci.sebastopol.ca.us

APPROVED ACTION MINUTES

PLANNING COMMISSION
CITY OF SEBASTOPOL
MINUTES OF APRIL 16, 2024

PLANNING COMMISSION:

The notice of the meeting was posted on April 11th, 2024.

1. CALL TO ORDER: Chair Fritz called the meeting to order at 3:30 p.m.

2. ROLL CALL:

Present: Chair Fritz,
Vice-Chair Hanley,
Commissioner Oetinger
Commissioner Burnes
Commissioner Fernandez

Absent: NONE

Staff: Kari Svanstrom, Planning Director
John Jay, Associate Planner
Nzuzi Mahungu, Planning Technician

3. APPROVAL OF MINUTES:

Commissioner Oetinger made a motion to approve the minutes of **August 22, 2023**, as submitted.

Commissioner Fernandez seconded the motion.

VOTE: motion passed; 3-0-2-0

Ayes: Chair Fritz, Commissioner Oetinger, Commissioner Fernandez

Noes:

Abstain: Commissioner Burnes, Vice-Chair Hanley

Absent:

Commissioner Oetinger made a motion to approve the minutes of **March 12th, 2024**, as submitted.

Commissioner Fernandez seconded the motion.

VOTE: motion passed; 4-0-1-0

Ayes: Vice-Chair Hanley, Chair Fritz, Commissioner Oetinger, Commissioner Fernandez

Noes:

Abstain: Commissioner Burnes

Absent:

Commissioner Oetinger made a motion to approve the minutes of **March 26th, 2024** as submitted.

Commissioner Fernandez seconded the motion.

VOTE: motion passed; 4-0-1-0

Ayes: Vice-Chair Hanley, Chair Fritz, Commissioner Oetinger, Commissioner Fernandez

Noes:

Abstain: Commissioner Burnes

Absent:

4. COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THE AGENDA

5. STATEMENTS OF CONFLICT OF INTEREST:

Chair Fritz recused for Agenda Item 6A

Vice-Chair Hanley recused for Agenda Items 6B and 6C

6. REGULAR AGENDA:

A. 6700 Mckinley Street – The Trade at The Barlow (Temporary Use Permit)

Commissioner Oetinger made a motion to approve based on analysis and findings set forth in the Staff Report.

Commissioner Burnes seconded the motion.

VOTE: motion passed; 4-0-1-0

Ayes: Vice-Chair Hanley, Commissioner Oetinger, Commissioner Fernandez, Commissioner Burnes

Noes:

Abstain: Chair Fritz

Absent:

B. 7300 Mary’s Lane – Donovan Brockway, Owner (Use Permit)

Commissioner Fernandez made a motion to approve as amended - striking conditions, Items 1A, 1B, and 1C.

Commissioner Oetinger seconded the motion.

VOTE: motion passed; 4-0-1-0

Ayes: Chair Fritz, Commissioner Oetinger, Commissioner Burnes, Commissioner Fernandez

Noes:

Abstain: Vice-Chair Hanley
Absent:

C. 7365 Healdsburg Avenue – Derek Belanger (Alcohol Use Permit)

Commissioner Fernandez made a motion to approve as per the modifications and clarifications that were made.
Commissioner Burnes seconded the motion.

VOTE: motion passed; 4-0-1-0

Ayes: Chair Fritz, Commissioner Oetinger, Commissioner Burnes, Commissioner Fernandez

Noes:

Abstain: Vice-Chair Hanley

Absent:

D. 6828 Depot Street - Hotel Sebastopol (Development Agreement)

Commissioner Oetinger made a motion to direct staff to move forward.
Vice-Chair Hanley seconded the motion.

VOTE: motion passed; 5-0

Ayes: Chair Fritz, Vice-Chair Hanley, Commissioner Oetinger, Commissioner Fernandez,
Commissioner Burnes

Noes:

Abstain:

Absent:

7. PLANNING DEPARTMENT REPORT was given by staff.

8. ADJOURNMENT: Chair Fritz adjourned the meeting of the Sebastopol Planning Commission at 5:38 p.m. The next regular Planning Commission meeting will be held on May 14th, 2024, at 06:00 p.m.

Respectfully submitted:

X 

David Woltering
Interim Planning Director



City of Sebastopol
Incorporated 1902
Planning Department
7120 Bodega Avenue
Sebastopol, CA 95472
707-823-6167
707-823-1135 (Fax)
www.ci.sebastopol.ca.us

APPROVED ACTION MINUTES

PLANNING COMMISSION
CITY OF SEBASTOPOL
MINUTES OF MAY 28, 2024

PLANNING COMMISSION:

The notice of the meeting was posted on May 23rd, 2024.

1. CALL TO ORDER: Chair Fritz called the meeting to order at 6:42 p.m.

2. ROLL CALL:

- Present:** Chair Fritz,
Vice-Chair Hanley,
Commissioner Oetinger
Commissioner Fernandez
- Absent:** Commissioner Burnes
- Staff:** David Woltering, Planning Director;
John Jay ; Associate Planner
Nzuzi Mahungu, Planning Technician

3. APPROVAL OF MINUTES: May 14th, 2024

Commissioner Oetinger made a motion to approve the minutes of May 14, 2024, as submitted.

Vice-Chair Hanley seconded the motion.

VOTE: motion passed; 4-0-0-1

Ayes: Commissioner Oetinger, Commissioner Fernandez, Vice-Chair Hanley, Chair Fritz

Noes:

Abstain:

Absent: Commissioner Burnes

4. COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THE AGENDA:

5. STATEMENTS OF CONFLICT OF INTEREST: None.

6. REGULAR AGENDA:

A. 6828 Depot Street - Hotel Sebastopol (Development Agreement and Ordinance)

Commissioner Fernandez made a motion to approve with conditions.
Commissioner Oetinger seconded the motion.

VOTE: motion passed; 4-0-0-1

Ayes: Commissioner Oetinger, Commissioner Fernandez, Vice-Chair Hanley, Chair Fritz

Noes: None

Abstain: None

Absent: Commissioner Burnes

7. PLANNING DEPARTMENT REPORT was given by staff.

8. ADJOURNMENT: Chair Fritz adjourned the meeting of the Sebastopol Planning Commission at 7:22 p.m. The next regular Planning Commission meeting will be held on June 11, 2024, at 06:00 p.m.

Respectfully submitted:

X 

David Woltering
Interim Planning Director

City of Sebastopol
Ordinance No. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL
ADOPTING A DEVELOPMENT AGREEMENT WITH MV HOTEL SEBASTOPOL LLC

1. Whereas, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 et seq. (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and,
2. Whereas, MV HOTEL SEBASTOPOL LLC ("Developer") applied to the City for approvals necessary for a small, design-oriented boutique hotel with 66-rooms. The Hotel Project (the "Project") was proposed to operate 24 hours a day, 7 days a week, year-round and include a lobby and reception area, retail, artist/maker studios, restaurant, bar, lounge, wellness center, public courtyard, private gardens, outdoor rooftop decks, meeting rooms, and other hotel amenities; and
3. Whereas, the Project has been the subject of several previous approvals by the City including:
 - a. On September 27, 2016, the City adopted a Mitigated Negative Declaration ("MND") under the California Environmental Quality Act ("CEQA") for the Project. (File 2016-057)
 - b. On September 27, 2016, the City also approved a Use Permit, Alcohol Use Permit, and Variance for the Project, subject to certain conditions of approval. (File 2016-057)
 - c. On January 17, 2017, the City approved Design Review for the Project. (File 2016-057)
 - d. On February 7, 2017, the City adopted Ordinance 1098, approving a Zoning Ordinance Amendment to increase the height limit in the Downtown Core Zoning District, which was requested by the Developer and required for the Project. Ordinance 1098 went into effect on March 9, 2017. (File 2016-057)

- e. On October 3, 2018, the City approved the Public Art proposal for the Project to meet the Public Art Ordinance. (File 2016-103)
 - f. On November 11, 2018, the City and Developer entered into a Fee Reduction/Fee Deferral Agreement. Through the Fee Reduction/Fee Deferral Agreement, the City agreed to reduce certain development impacts fees payable by the Project and to defer collection of certain fees until the date of final inspection of the Project.
 - g. On December 17, 2018, the City approved a Lot Merger for the parking lot parcels for the Project. (File 2018-094)
 - h. On April 3, 2019, the City approved amendments to the Project's Design Review approval. (File 2019-016)
 - i. On September 24, 2019, the City approved an extension to the Project's Use Permits. (File 2019-076)
 - j. On September 29, 2022, the City issued a Building Permit for the Project. The Building Permit is still valid.
 - k. On December 12, 2023, the City approved an additional Lot Merger for the Project. (File 2023-059); and
4. Whereas, the City prepared an Initial Study for the Project, which indicated that an MND would be the appropriate document for the Project under CEQA and approved the Initial Study/MND on September 27, 2016; and
 5. Whereas, the Town's Planning Staff recommended the proposed Development Agreement as the proper mechanism to facilitate construction of the Project; and
 6. Sections 17.440.070 – 17.440.090 of the Sebastopol Municipal Code requires the City Council to approve development agreements, after the Planning Commission makes a recommendation on the development agreement; and
 7. Whereas, on April 16, 2024, and on May 28, 2024, the Planning Commission held duly noticed public hearings pursuant to Government Code § 65867 at which the Planning Commission considered all testimony, both oral and written, regarding the proposed Development Agreement; and

8. WHEREAS, after closing the public hearing and discussing the Development Agreement on May 28, 2024, the Planning Commission voted to recommend that the City Council approve the Development Agreement; and
9. Whereas, on July 2, 2024, the City Council conducted a duly noticed public hearing, considered all testimony, both oral and written, regarding the proposed Development Agreement, deliberated, and reviewed the Development Agreement.
10. Whereas, on July 16, 2024, the City Council approved the Development Agreement.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SEBASTOPOL DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Sebastopol. Said findings are incorporated by this reference.

Section 2. Development Agreement Findings.

The City Council hereby finds and determines as follows:

- a. In accordance with Sections 17.440.070 and 17.440.090 of the Sebastopol Municipal Code, the Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan.
- b. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the district in which the real property is located.
- c. The Development Agreement conforms to public convenience, general welfare and good land use practices.
- d. The Development Agreement will not be detrimental to the health, safety and general welfare.
- e. The Development Agreement will not adversely affect the orderly development of property.
- f. The Development Agreement will provide sufficient benefit to the City to justify entering into the agreement.

Section 3. Based on the findings set forth in this Ordinance, and the evidence in the Planning Commission recommendations, the Staff Report and accompanying documents, the City Council approves the Development Agreement attached hereto as Exhibit A and incorporated herein fully, subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

Section 4. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance for any reason shall be held to be invalid or unconstitutional, the decision shall not affect the remaining portions of this ordinance. The City Council of the City hereby declares that it would have passed this ordinance and each article, section, subsection, paragraph, sentence, clause or phrase which is a part thereof,

irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

Section 5. Effective Date. This ordinance shall become effective thirty (30) days after its adoption.

Approved for First Reading and Introduction on this 2nd day of July 2024.

Scheduled for Second Reading and Approval on the 16th day of July 2024.

VOTE:

Ayes:

Noes:

Abstain:

Absent:

APPROVED: _____

Mayor Diana Gardener Rich

ATTEST: _____

Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____

City Attorney

EXHIBIT A

DEVELOPMENT AGREEMENT

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Sebastopol
7120 Bodega Ave.
Sebastopol, CA 95473
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SEBASTOPOL

AND

PIAZZA HOSPITALITY GROUP

2523066.1 15107.003

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into between the **CITY OF SEBASTOPOL**, a municipal corporation ("City"), and **MV HOTEL SEBASTOPOL LLC**, a California Limited Liability Corporation ("Developer"). City and Developer are hereinafter collectively referred to as the "Parties" and singularly as "Party."

RECITALS

A. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code section 65864 et seq. (the "Development Agreement Statute"), which authorizes the City and any person having a legal or equitable interest in the real property to enter into a development agreement, establishing certain development rights in the Property, which is the subject of the development project application.

B. **The Project.** Developer applied to the City for approvals necessary for a small, design-oriented boutique hotel with 66-rooms. The Hotel Project (the "Project") was proposed to operate 24 hours a day, 7 days a week, year-round and include a lobby and reception area, retail, artist/maker studios, restaurant, bar, lounge, wellness center, public courtyard, private gardens, outdoor rooftop decks, meeting rooms, and other hotel amenities.

C. **Previous approvals.** The Project has been the subject of several previous approvals by the City including:

1. On September 27, 2016, the City adopted a Mitigated Negative Declaration ("MND") under the California Environmental Quality Act ("CEQA") for the Project. (File 2016-057)
2. On September 27, 2016, the City also approved a Use Permit, Alcohol Use Permit, and Variance for the Project, subject to certain conditions of approval. (File 2016-057)
3. On January 17, 2017, the City approved Design Review for the Project. (File 2016-057)
4. On February 7, 2017, the City adopted Ordinance 1098, approving a Zoning Ordinance Amendment to increase the height limit in the Downtown Core Zoning District, which was requested by the Developer and required for the Project. Ordinance 1098 went into effect on March 9, 2017. (File 2016-057)
5. On October 3, 2018, the City approved the Public Art proposal for the Project to meet the Public Art Ordinance. (File 2016-103)
6. On November 6, 2018, the City and Developer entered into a Fee Reduction/Fee Deferral Agreement. Through the Fee Reduction/Fee Deferral Agreement, the City agreed to reduce certain development impacts fees payable by the Project and to defer collection of certain fees until the date of final inspection of the Project.
7. On December 17, 2018, the City approved a Lot Merger for the parking lot parcels for the Project. (File 2018-094)

8. On April 3, 2019, the City approved amendments to the Project's Design Review approval. (File 2019-016)

9. On September 24, 2019, the City approved an extension to the Project's Use Permits. (File 2019-076)

10. On September 29, 2022, the City issued a Building Permit for the Project. The Building Permit is still valid.

11. On December 12, 2023, the City approved an additional Lot Merger for the Project. (File 2023-059).

D. **Environmental Review.** The City prepared an Initial Study for the Project, which indicated that an MND would be the appropriate document for the Project under CEQA. The City approved the Initial Study/MND on September 27, 2016.

E. **Public Benefits.** Development of the Project will result in significant public benefits, as more fully described hereinafter, including, without limitation:

- 1. The provision of opportunities for employment; and
- 2. The furtherance of the economic development goals and objectives of the

City.

F. **Developer Assurances.** In exchange for the benefits to the City in the preceding Recitals, together with the other public benefits that will result from the development of the Property, Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with the items set forth herein.

G. **Consistency with General Plan.** Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City found that this Agreement satisfies the Government Code section 65867.5 requirement of General Plan consistency.

NOW, THEREFORE, in consideration of the above Recitals and mutual promises, conditions and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

DEFINITIONS

1. **Definitions.** In this Agreement, unless the context otherwise requires, terms have the following meaning. Capitalized terms within the Exhibits not defined below have the meaning set out in the Exhibits.

1.1 "Adopting Ordinance" means Ordinance No _____, adopted by the City Council on _____, 2024, which approves this Development Agreement as required by the Development Agreement Law.

1.2 "Agreement" means this Development Agreement, inclusive of all Exhibits attached hereto.

1.3 "Alcohol Use Permit" means the Alcohol Use Permit approved by the City September 27, 2016 and extended by the City on September 24, 2019.

1.4 "Building Permit" means the Building Permit approved by the City for the Project on September 29, 2022.

1.5 "CEQA" means the California Environmental Quality Act, as set forth at California Public Resources Code, Division 13, commencing at Section 21000 and the CEQA Guidelines as set forth in Title 14 of the California Code of Regulations commencing at Section 15000.

1.6 "City" means the City of Sebastopol, including its agents, officers, employees, representatives and elected and appointed officials.

1.7 "City Manager" means the City Manager of the City of Sebastopol, or his or her designee.

1.8 "Collective Standards" means: (i) the provisions of this Agreement; (ii) the Project Approvals; (iii) land use entitlement and approvals to the Project and the Property that may be granted following the Effective Date; and (iv) the Land Use Regulations.

1.9 "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract, or otherwise.

1.10 "Design Review Approval" shall mean the Design Review approval for the Project by the City on January 17, 2017 and amendments approved by the City on

1.11 "Development Agreement Law" means Government Code section 65864 et seq.

1.12 "Developer" means MV Hotel Sebastopol LLC, a California limited liability corporation, together with any Successor duly approved by the City in accordance with the terms of this Agreement.

1.13 "Effective Date" means that day on which the Adopting Ordinance shall be effective. The Adopting Ordinance shall be effective thirty (30) days after its adoption by the City Council, unless the Adopting Ordinance becomes subject to a qualified referendum, in which case, the Effective Date shall be the day after the referendum election, if the Adopting Ordinance is approved by a majority of the voters. Litigation filed to challenge the Adopting Ordinance or this Agreement shall not affect the Effective Date, absent a court order or judgment overturning or setting aside the Adopting Ordinance, or staying the Effective Date, or remanding the Adopting Ordinance to the City. Notwithstanding the foregoing, this Agreement shall not become effective until fully executed.

1.14 "Facility" means the physical improvements to the Property used by Developer for the conduct of its operations.

1.15 "Fees" means all charges, expenses, costs, monetary exactions and any other monetary obligations imposed on Developer by the City, other than assessments or regular or special taxes and shall not be limited to fees paid pursuant to this Agreement.

1.16 "Fee Reduction/Fee Deferral Agreement" means the Fee Reduction/Fee Deferral Agreement entered into by the City and Developer on November 11, 2018 and attached hereto as **Exhibit A**.

1.17 "General Plan" means the General Plan of the City including the text and maps, plus any other General Plan amendments approved by the City on or before the Effective Date.

1.20 "Land Use Regulations" means the ordinances, resolutions and regulations applicable to the Project, to the extent they govern the permitted uses of land, and the density and intensity of land use, as set forth in the following plans and ordinances as they exist on the Effective Date, or as they may be later amended:

1.20.1 The General Plan; and

1.20.2 The City of Sebastopol Zoning Code.

1.21 "Law" means the case law, ordinances, statutes, rules, regulations, or any order, decree or directive of any court or any local, regional, state or federal government agency, unless the context suggests a different meaning.

1.22 "Municipal Code" means the Municipal Code of the City of Sebastopol.

1.23 "Planning Commission" means the City of Sebastopol Planning Commission.

1.24 "Project" means the physical improvement of the Property with building(s) and use of the Property as approved by the City through the Project Approvals.

1.25 "Project Approvals" means the entitlements that are the subject of this Agreement and incorporated herein by reference, consisting of the following approvals:

1.25.1 The Alcohol Use Permit;

1.25.2 The Use Permit;

1.25.3 The Design Review Approval;

1.25.4 The Variance;

1.25.5 The Fee Reduction/Fee Deferral Agreement;

1.25.6 The Building Permit; and

1.25.7 This Development Agreement, as adopted on _____, 2024, by City Ordinance No. _____ (the "Adopting Ordinance").

1.26 "Property" that certain real property within the City as more particularly described in **Exhibit B**.

1.27 "Safe Condition" means free from any natural or man-made hazards to persons or property and free from any conditions giving rise to a public or private nuisance. Conditions considered unsafe include, but are not limited to: exposed trenches or excavation pits, exposed

electrical wiring or pipes, unfinished buildings, unsecure buildings, attractive nuisances, trash, graffiti, vandalism, etc.

1.28 "Successor" or "Successor in Interest" means any subsequent entity or individual that acquires all or any portion of Developer's interest in the Property; provided, however, that no Successor shall acquire any rights pursuant to this Agreement unless and until that Successor is approved by the City and complies with all applicable requirements of Section 15.1 of this Agreement.

1.29 "Use Permit" means the Use Permit for the Project approved by the City on September 27, 2016 and extended by the City on September 24, 2019.

1.30 "Varlance" means the Varlance approved by the City for the Project on September 27, 2016.

AGREEMENT

1. **Incorporation of Recitals.** The Recitals and all defined terms set forth above are hereby incorporated into this Agreement as if set forth herein in full.

2. **Description of the Project.** The Project consists of the construction and operation of the Project as more fully described in the Project Approvals. Developer shall ensure that the Facility is operated in accordance with the conditions set forth in the Project Approvals as well as all applicable local, state, and federal laws.

3. **Description of Property.** The Property, which is the subject of this Agreement, is defined in Section 1.26.

4. **Relationship of City and Developer.** This Agreement is a contract that has been negotiated and voluntarily entered into by City and Developer. It is agreed among the parties that the Project is a private development and that the relationship of the City and Developer is and at all times shall remain solely that of the City as a regulatory body and the Developer as the owner of the Property. The City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

5. **Representations, Warranties and Acknowledgments.**

5.1 **Interest in Property.** Developer represents and warrants that as of the Effective Date, [REDACTED], is the owner of the Property and as such holds fee title interest in and to the Property.

5.2 **Authority.** The Parties represent and warrant that the persons signing this Agreement are duly authorized to enter into and execute this Agreement on behalf of their respective principals.

5.3 **Brokers.** The Parties agree that the City has had no dealings with any real estate broker or agent in connection with the negotiation of this Agreement, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Agreement. In the event any real estate broker or agent shall come forward and claim the right to

a commission or other form of compensation in connection with this Agreement, Developer shall indemnify, defend and hold harmless the City in accordance with Section 14.1.

5.4 **Procedures and Requirements.** The Parties acknowledge that this Agreement is subject to the procedures for approval, amendment and administration set forth in the Development Agreement Law.

6. **Effective Date and Term.**

6.1 **Effective Date.** The effective date of this Agreement means the date defined at Section 1.13 of this Agreement.

6.2 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue in force until the first to occur of the following events: 1) this Agreement is terminated in accordance with terms set forth herein; 2) Developer no longer has a legal interest in the Property and has ceased all operations on the Property; or 3) three (3) years from the Effective Date of this Agreement.

6.3 **Termination by Mutual Consent.** This Agreement may be terminated in whole or in part by the mutual written consent of all the Parties.

6.4 **Termination Resulting from Governmental Action.** In the event legal action is initiated or threatened by any governmental jurisdiction, other than the City, on the grounds that approval or implementation of this Agreement (or any part) constitutes a violation of state or federal law, and the parties are unable to reach agreement between themselves and the governmental jurisdiction on amendments to this Agreement that will resolve the dispute and still preserve the material terms of this Agreement, then either party may terminate this Agreement without compliance with the Default Procedures set forth in Section 13. If this Agreement is terminated pursuant to this section, Developer shall immediately cease operations at the Facility, the Conditional Use Permit shall be automatically terminated, and the Parties shall have no further rights or obligations under this Agreement (other than the rights under Sections 10 and 14, which survive termination.)

6.5 **Termination Upon Surrender or Revocation of Use Permit.** If the Developer voluntarily surrenders the Use Permit, or if the Use Permit is revoked by the City, then Developer shall immediately cease operations at the Property and this Agreement shall terminate automatically, without further action required by either party. In such an event, Developer waives the default procedures set forth in Section 13 of this Agreement, including the notice and cure rights contained therein, and the Parties shall have no further rights or obligations under this Agreement (other than the rights under Sections 10 and 14, which survive termination).

6.6 **Effect of Termination.** This Agreement was entered into by the Parties for the limited purpose of setting forth certain terms and conditions concerning the proposed development and operation of the Project in a manner that is consistent with the Project Approvals and the Collective Standards. Accordingly, nothing contained herein is intended or shall be construed to grant to Developer any rights in connection with the future development or operations of the Property, except for those rights set forth in the Collective Standards and in this Agreement.

7. Development of the Project.

7.1 Development Rights. This Agreement was entered into by the Parties for the limited purpose of setting forth certain terms concerning the development and use of the Property by Developer. Accordingly:

7.1.2 Nothing contained herein is intended or shall be construed to grant to Developer any rights in connection with the future development or use of the Property, and the Parties agree that development and use of the Property shall be governed by the land use and other regulations in effect at the time of development and operation. Development and use shall be subject to the terms set forth in any subsequent approvals needed for development.

7.1.3 The permitted uses of the Property, the density and intensity of use, the maximum height and size of buildings, or the reservation or dedication of land for public purposes and other terms and conditions of development applicable to the Property shall be governed by the Project Approvals, this Agreement, the Collective Standards and all other entitlements and ordinances now existing or which may be amended or enacted in the future.

7.1.4 The City expressly reserves the right to adopt and apply regulations to protect the City and its citizens from immediate risks to health and safety.

7.2 Referendum. Developer acknowledges that the Adopting Ordinance, which is a legislative land use approval, is potentially subject to referendum. Notwithstanding anything in this Agreement to the contrary, Developer shall not acquire any rights through this Agreement: (1) while such approval is still potentially subject to referendum; or (2) in the event that such approval is reversed by referendum.

7.3 Mitigation of Impacts. Developer shall timely satisfy and comply with all Mitigation Measures and other conditions of the Project Approvals. Any failure to comply with the Mitigation Measures and/or other conditions of the Project Approvals required herein shall be a violation of this Agreement, entitling the City to terminate this Agreement.

8. Applicable Rules, Regulations, Fees and Official Policies.

8.1 Rules Regarding Design and Construction. Unless otherwise expressly provided in this Agreement, all other ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications, applicable to the Project and to public improvements to be constructed by the Developer shall be those in force and effect at the time the applicable permit approvals are granted.

8.2 Design Review and Building Standards. Developer shall comply with the design, development and construction standards in effect at the time building permits for development of the Property are issued (e.g., City standard specifications, building and fire codes, regulations related to provision of water and sewer service. etc.).

8.3 Uniform Codes Applicable. Unless otherwise expressly provided in this Agreement, any improvements to the Property undertaken by Developer shall comply with the California Building Standards Codes, Title 24 of the California Code of Regulations, as adopted and amended by the City, as the same shall be in effect as of the time of approval of the permit in question. Such improvements shall also comply with the provisions of the California Mechanical, Plumbing, Electrical and Fire Codes, and City standard construction specifications,

in effect at the time of approval of the appropriate permits for the improvements. This provision shall not apply to any changes in the State Building Code that are imposed on the City. If no permit is required for a given improvement, such improvement will be constructed in accordance with said Codes in effect in the City as of the commencement of construction of such improvement.

8.4 Fees, Dedications, Assessments and Taxes.

8.5.1 Payment of Development Impact and Other City Fees, Taxes, and Assessments. Developer shall pay all impact and other City fees, taxes and assessments when due pursuant to the Fee Reduction/Fee Deferral Agreement.

8.5.2 Other Public Agencies. Nothing in this Agreement is intended to govern the authority of other public agencies to impose fees.

9. Public and Private Improvements.

9.1 Public Works and Community Development. Any public improvements and work performed by Developer in connection with the Project shall be to the satisfaction of the City Engineer.

10. Public Safety and Security. In the event that this Agreement is terminated prior to the completion of construction of the Project, Developer, at its sole costs and expense, shall be required to render the Property and any improvements to the Property to a Safe Condition. Determination of whether the Property has been rendered to a Safe Condition shall be to the satisfaction of the City Engineer. This provision shall survive the termination of this Agreement as provided for in Section 13 of this Agreement.

11. Amendment. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto and in accordance with the procedures required by the Development Agreement Law.

12. Annual Review of Agreement.

12.1 Review Date. The annual review date of this Agreement (the "Review Date") as required by Development Agreement Law shall be approximately twelve (12) months from the Effective Date and every twelve (12) months thereafter.

12.2 Procedures. The procedures for annual review shall be as set forth in the Development Agreement Law.

12.3 Fee for Annual Review. The reasonable cost for the City's annual review of this Agreement shall be paid by Developer, shall be actual costs incurred by the City in connection with the review, plus 20 percent (20%) of the actual cost to cover administrative overhead.

13. Default.

13.1 Default. The failure of either party to perform any obligation or duty under this Agreement within the time required by this Agreement shall constitute an event of default. (For purposes of this Agreement, a Party asserting that the other Party is in default shall be referred to as the "Complaining Party" and the other Party shall be referred to as the "Defaulting Party.")

13.2 **Notice.** The Complaining Party may not place the Defaulting Party in default unless it has first given written notice to the Defaulting Party, specifying the nature of the default and the manner in which the default may be cured, if known to the Complaining Party. Any failure or delay by the Complaining Party in giving such notice shall not waive such default or waive any of the Complaining Party's remedies.

13.3 **Cure.** The Defaulting Party shall have thirty (30) days from the receipt of notice to cure the default. In the case of monetary defaults, any default must be cured completely within the thirty (30) day period. In the case of non-monetary defaults, if the default cannot be reasonably cured within such time, the default shall be deemed cured if: (1) the cure is commenced at the earliest practicable date following receipt of notice; (2) the cure is diligently prosecuted to completion at all times thereafter; (3) at the earliest practicable date (but in no event later than thirty (30) days after receiving the notice of default), the Defaulting Party provides written notice to the Complaining Party that the cure cannot be reasonably completed within such thirty (30) day period; and (4) the default is cured at the earliest practicable date, but in no event later than one hundred twenty (120) days after receipt of the first notice of default.

13.4 **Remedies.** If the Defaulting Party fails to cure a default in accordance with the foregoing, the Complaining Party shall have the right to terminate this Agreement upon notice to the Defaulting Party and the Complaining Party may pursue all remedies available by law or in equity, including specific performance and injunctive relief.

13.5 **Waiver of Damages.** Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that the City would not have entered into this Agreement had it been exposed to liability for damages from Developer, and that therefore, Developer hereby waives all claims for damages against the City for breach of this Agreement. Developer further acknowledges that under the Development Agreement Law, land use approvals (including development agreements) must be approved by the City Council and that under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waives all claims for damages against the City in the event that this Agreement or any Project Approval is: (1) not approved by the City Council; or (2) is approved by the City Council, but with new changes, amendments, conditions or deletions to which Developer is opposed. Developer further acknowledges that as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against the City in this regard.

13.6 **Effect of Termination of Agreement on Conditional Use Permit.** Developer agrees that termination of this Agreement in accordance with this Section 13 shall also result in the automatic termination of the Project Approvals.

14. **Insurance and Indemnity.**

14.1 **Indemnification, Defense and Hold Harmless.** Developer shall indemnify, defend, and hold harmless to the fullest extent permitted by law, the City and its officer, officials, consultants and employees ("Indemnitees") from and against any and all claims, liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with the Project, the Project Approvals or the Property (including any challenge to the validity of any provision of this Agreement or the Project Approvals, or Developer's failure to comply with any of its obligations in this Agreement, or Developer's failure

to comply with any current or prospective Law); provided, however, that Developer shall have no obligations under this section for such loss or damage which was caused by the sole negligence or willful misconduct of the City. This indemnification obligation shall survive this Agreement and shall not be limited by any insurance policy, whether required by this Agreement or otherwise.

14.2 Insurance.

14.2.1 Public Liability and Property Damage Insurance. At all times that Developer is constructing any improvements to the Property, Developer shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of five million dollars (\$5,000,000) and a deductible of not more than fifty thousand dollars (\$50,000) per claim. The policy so maintained by Developer shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

14.2.2 Workers' Compensation Insurance. At all times that Developer is constructing any improvements, Developer shall maintain workers' compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide workers' compensation insurance for its respective employees. Developer agrees to indemnify the City for any damage resulting from Developer's failure to maintain any such insurance.

14.2.3 Evidence of Insurance. Within sixty (60) days of the Effective Date of this Agreement, Developer shall furnish City satisfactory evidence of the insurance required by this Sections 14.2 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Developer performing work on the Project.

15. Assignment and Transfers of Rights and Interest.

15.1 Assignment of Rights Under Agreement. Developer may not transfer or assign its interests under this Agreement, in whole or in part, for any reason without the express written consent of the City. Any assignment or transfer of interests under this Agreement or the Project Approvals without the City's express written consent shall constitute an event of default, subject to immediate termination, including any transfer as a matter of law due to foreclosure or some other event.

15.2 Non-transferability of Project Approvals to Other Location. The Project Approvals issued for the Property shall not be transferable to any other location.

15.3 Runs with the Land. Except as otherwise provided in this Agreement, and for so long as this Agreement remains in effect, all of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, sub-lessees, and all other persons acquiring the Developer's interest in the Property, whether by operation of law or in any manner whatsoever; provided that no successor or assignee of Developer may obtain the benefits hereunder unless the City has consented to assignment of those rights as set forth in Section 15.1. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1466 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any leasehold interest in the Property: (a) is for

the benefit of such properties and is a burden upon such properties; (b) runs with such properties; and (c) is binding upon each Party and each successive owner during its ownership of such leasehold interest in the Property or any portion thereof, and shall be a benefit to and a burden upon each Party and its property hereunder and each other person succeeding to an interest in such properties.

16. **Miscellaneous.**

16.1 **Estoppel Certificate.** Either Party may at any time request the other Party to certify in writing that: (1) this Agreement is in full force and effect; (2) this Agreement has not been amended except as identified by the other Party; and (3) to the best knowledge of the other Party, the requesting Party is not in default, or, if in default, the other Party shall describe the nature and any amount of any such default. The other Party shall use its best efforts to execute and return the estoppel certificate to the requesting Party within thirty (30) days of the request. The City Manager shall have authority to execute such certificates on behalf of the City.

16.2 **Recordation.** This Agreement shall not be operative until recorded with the Sonoma County Recorder's office. Developer shall record this Agreement against the Property at its expense with the County Recorder's office within ten (10) days of the Effective Date, and shall cause any amendment to this Agreement or any instrument affecting the term of this Agreement to be recorded within ten (10) days from date on which the same become effective. Any amendment to this Agreement or any instrument affecting the term of this Agreement which affect less than all of the Property shall contain a legal description of the portion thereof that is the subject of such amendment or instrument.

16.3 **Notices.** All notices required by this Agreement or the Development Agreement Law shall be in writing and personally delivered or sent by certified mail, postage prepaid, return receipt requested.

Notice required to be given to the City shall be addressed as follows:

City of Sebastopol
7120 Bodega Ave.
Sebastopol, CA 95473
ATTN: City Manager

with copies to:

City of Sebastopol
7120 Bodega Ave.
Sebastopol, CA 95473
ATTN: City Attorney

Notice required to be given to the Developer shall be addressed as follows:

Piazza Hospitality Group
 414 Healdsburg Avenue
 Healdsburg, CA 95448
 Attn: Paolo Petrone

Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address. All notices shall be deemed received on the earlier of the date that personal delivery is effected or the date shown on the return receipt.

16.4 **References to Municipal Code.** This Agreement may contain references to articles and sections of the City's Municipal Code. If, after the Effective Date, the City amends or renumbers its Municipal Code, then the references in this Agreement shall be understood to apply to the amended or renumbered Municipal Code.

16.5 **Construction of Agreement.** The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the parties hereunder. The captions preceding the text of each Article, Section, and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders and vice versa.

16.6 **Third Party Beneficiaries.** This Agreement is entered into for the sole benefit of the Parties and any Successors. No other party shall have any cause of action or the standing to assert any rights under this Agreement.

16.7 **Attorneys' Fees and Costs in Legal Actions by Parties to the Agreement.** Should any legal action be brought by either Party for breach of this Agreement or to enforce any provisions herein, each Party shall bear its own costs (including attorneys' fees) and neither Party shall be entitled to recover such costs from the other Party.

16.8 **Liability of City Officials.** No City official or employee shall be personally liable under this Agreement.

16.9 **Delegation.** Any reference to any City body, official or employee in this Agreement shall include the designee of that body, official or employee, except where delegation is prohibited by law.

16.10 **Severability.** Should any provision of this Agreement be found invalid or unenforceable by a court of law, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

16.11 **Integration.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes any previous oral or written agreement. This Agreement may be modified or amended only by a subsequent written instrument executed by all of the Parties.

16.12 **Counterparts**. This Agreement may be signed in one (1) or more counterparts and will be effective when the Parties have affixed their signatures to counterparts, at which time the counterparts together shall be deemed one (1) original document; provided, however, that all executed counterparts are provided to the City Clerk.

16.13 **Interpretation**. The Parties acknowledge that this Agreement has been negotiated by both Parties and their legal counsel and agree that this Agreement shall be interpreted as if drafted by both Parties.

16.14 **Inconsistency**. In the event of any conflict or inconsistency between the provisions of this Agreement and the Project Approvals or Exhibits, this Agreement shall prevail.

16.15 **Incorporation**. The Recitals, Exhibits, and all defined terms in this Agreement are part of this Agreement.

16.16 **Applicable Law and Venue**. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. In the event of litigation arising under this Agreement, venue shall reside exclusively in the Superior Court of the County of Sonoma or, in the event of federal litigation, the Northern District of California.

16.17 **Time of the Essence**. Time is of the essence of this Agreement.

(Signatures on Next Page)

IN WITNESS WHEREOF, the Parties hereto are executing this Agreement on the dates set forth below, to be effective as of the Effective Date.

"CITY"

"DEVELOPER"

CITY OF SEBASTOPOL,
a municipal corporation

PIAZZA HOSPITALITY GROUP
a California limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: City Manager

Title: _____

Dated: _____, 2024

Dated: _____, 2024

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

List of Exhibits:

Exhibit A: Fee Reduction/Fee Deferral Agreement

Exhibit B: Legal Description of the Property

Exhibit A

Fee Reduction/Fee Deferral Agreement

FEE REDUCTION/FEE DEFERRAL AGREEMENT

THIS FEE DEFERRAL AGREEMENT ("Agreement") is made and entered into by and between CITY OF SEBASTOPOL, 7120 Bodega Avenue, Sebastopol, CA 95472, a California municipal corporation and General Law City ("City"), and PIAZZA HOSPITALTY, 414 Healdsburg Avenue, Healdsburg, CA 95448 (Owner/Developer), (collectively, the "Parties") with reference to the following facts:

Owner/Developer is the owner of that certain real property in the City of Sebastopol, County of Sonoma, State of California, more particularly described on the attached Exhibit "A" (the "Property").

Owner/Developer seeks to develop Hotel Sebastopol, a small, design-oriented boutique hotel with 66 rooms. The hotel will operate 24 hours a day, 7 days a week, year-round. The Hotel Project (the "Project") will also include a lobby and reception area, retail, artist/maker studios, restaurant, bar, lounge, wellness center, public courtyard, private gardens, outdoor rooftop decks, meeting rooms, and other hotel amenities. There will be a total of 122 parking spaces for the project, including 34 on-street and 88 located on an adjacent parcel across Brown Street.

Owner/Developer is pursuing its redevelopment plans through various stages of City and other governmental approvals.

Upon the issuance of the Building Permits, certain Development Fees are due and payable and are more particularly described on Exhibit "B" attached.

Hotel Sebastopol will provide significant economic development benefits to the City of Sebastopol in terms of both job creation and new tax revenue, including new property tax revenue, transient occupancy tax revenue, and sales tax revenue. Piazza Hospitality has requested financial assistance as listed below in order to create economic feasibility of the project.

The City Council of the City of Sebastopol discussed the developer's request at their meeting of August 7, 2018 and directed staff to negotiate an agreement with the Developer which would allow for a fee deferral for Hotel Sebastopol and further approved and authorized a reduction of fees as set forth on Exhibit "B". The total of the aforesaid fee reduction is 35% of the water and sewer connection fees, or \$28,903.70, and 50% of the Building Plan Check fee, or \$40,410.23.

The City Council further directed that the Traffic Impact Fee shall not be reduced and is payable in full to the City of Sebastopol.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. All Development Fees shall be paid to the City no later than at the time of final inspection, issuance except as may be hereinafter amended below. City user fees, school impact fees, and other fees not within the jurisdiction of the City shall be paid at the time of building permit or when otherwise due.
2. Developer agrees to payment of the Development Fees set forth on "Exhibit B, Column B" to the City of Sebastopol, payable on a deferred basis as hereinafter set forth. The art in-lieu fee of \$250,000 may be reduced through approved on-site art public art installations as specified in Sebastopol Municipal Code (SMC) Section 17.360. The cost of any required public art not

installed by time of certificate of occupancy shall require a bond for any uncompleted work per SMC 17.360.030(H), or shall be added to the repayment of Development Fees in accordance with the below provisions.

3. The City may place a lien on the property for the amount(s) then owing, at the time of its choosing, but not sooner than the issuance of the first building permit. The City may amend the lien from time to time as fees are paid or actual fees exceed or are less than the estimated fee amount.
4. Developer agrees to the repayment /deferral of hereinabove referenced fees as follows:
 - a. The deferral of payment until one year after opening or three consecutive months with over 75% occupancy of the hotel rooms, whichever comes first.
 - b. Fees shall be paid in equal monthly installments after the above date and over the course of five years. Payment shall be due on the 1st of each month.
 - c. No interest shall be accumulated or charged on these fees.
 - d. Funds may be repaid in full at any time at the Developer's discretion.
 - e. If payment is not received for three consecutive months at any time during the repayment period, the Owner/Developer shall be considered in default of this agreement. The City may pursue full repayment at such time using any method it sees fit, including, but not limited to, enforcement of its lien.
5. Based on the current estimated fees of \$329,431.69 in Deferred Fees ("Exhibit B, Column B"), the monthly payment amount would be \$5,490.53 for five years (60 months), not including any Public Art in-lieu fees that may be due and payable at the time of certificate of occupancy. Any remaining art in-lieu fees shall be added to the deferral payments based on the remaining monetary value of art not installed.
6. The aforementioned fee reductions are contingent on the development of a Project that receives the following certifications:
 - a. LEED Certification for all three structures from the U.S. Green Building Council; and
 - b. Net Zero Energy Verification by a third-party, monitoring-based commissioning agent, approved by the City, for the hotel-specific building spaces (excluding the restaurant building, retail, and wellness center), who will monitor the building energy usage and solar pv energy production for not less than one year; and
 - c. 35% water reduction over base water use set by CalGreen, and certified by a Cal Green Inspector.
7. The City reserves the right to withhold the issuance of any building or occupancy permits, or Temporary Event or other discretionary City permits once the repayment period commences, should the Developer fail to make the required payment.
8. City Staff Fees listed in "Exhibit B, Column C" will be due at time of submission of applications and issuance of permits, as appropriate, and are not authorized for deferral of fees. These fees include application, plan check, and permit fees for Planning; Building; Engineering; and, Fire.

- 9. The fees listed in Exhibit B are based on a construction valuation of \$25,000,000. Should the project change significantly in scope, the City reserves the right to adjust the fees to reflect the change in scope. The City Staff fees listed in "Exhibit B, Column A" are subject to annual fee schedule update on November 1, 2018. The fees assessed to the project shall be paid based on the fee schedule in effect at the time the fee is due.

- 10. All costs associated with attaining the above certifications, including CalGreen and LEED inspectors, shall be the sole responsibility of the Owner/Developer. If the Project does not attain the certifications listed above within one year after Occupancy is granted, the fee reductions shall be rescinded, and the fee reductions outlined above in the amount of \$69,313.93 shall be due and payable to the City.

- 11. This Agreement is contingent on Owner/Developer meeting the following milestones, unless otherwise approved in writing by the City Manager:
 - a. Receiving all Design Review and Tree Permit (Planning) approvals by January 17, 2019;
 - b. Submittal of a complete set of Construction Drawings, including all required soil engineering and geotechnical letters and Floodplain Development Permit items, by December 31, 2018;
 - c. Issuance of Improvement and Grading Permits on or before April 2019;
 - d. Issuance of Building Permits for all three structures on the hotel site (APN 004-052-001) on or before June 2019;
 - e. Approval of the Floodplain Development Permit for the parking site (APNs 004-061-007, -008, -009, and -010) by July 2019;
 - f. Approval of all required public art within six months of issuance of building permits;
 - g. Completion of construction and receipt of Certificate of Occupancy for the main hotel building by June 2021; and
 - h. Submittal of LEED and Net Zero Energy Verification by December 2022.

- 12. If the said milestones are not achieved, the fee reductions shall be rescinded, and the fees shall be due and payable to the City.

The person signing on behalf of Owner certifies that s/he can legally bind Owner and agrees to hold City harmless if it is later determined that such authority does not exist.

This Agreement shall be effective upon the date it is executed by the City Manager.

IN WITNESS WHEREOF, this Agreement is executed by THE CITY OF SEBASTOPOL, acting by and through the approval of the City Council, authorizing such execution, and by Owner.

Piazza Hospitality

BY: Paolo Petrone

Dated: November 6, 2018

City of Sebastopol

BY: 

Dated: 11-6-18

ORDER NO. : 0227015145

EXHIBIT A

The land referred to is situated in the County of Sonoma, City of Sebastopol, State of California, and is described as follows:

Tract 1 - Parcel 1

Beginning at the intersection of the Northerly line of Depot Street with the Westerly line of Brown Street, as shown on the map of the property of Birdie Miller Cnopius, filed in the Office of the Sonoma County Recorder on August 28, 1918 in Book 35 of Maps, at Pages 21, 22 and 23; thence North 7° 21' West along Brown Street, a distance of 287.6 feet to McKinley Street; thence South 84° 09' West along McKinley Street 217.6 feet to the Easterly line of Petaluma Avenue as conveyed to the City of Sebastopol by Deed recorded July 7, 1927 in Book 173 at Page 440, Sonoma County Records; thence South 24° 49' East along Petaluma Avenue, a distance 345.05 feet to Depot Street; thence North 65° 11' East along Depot Street, 119.85 to the place of beginning.

APN: 004-052-001

Tract 2 - Parcel 2**PARCEL ONE**

Commencing at a point formed by the intersection of the Northerly line of Depot Street with the Easterly line of Brown Avenue; thence running Easterly along the Northerly line of said Depot Street 81 feet 3 inches; thence at right angles Northerly 83 feet; thence at right angles Westerly 75 feet 4 inches to the Easterly line of Brown Avenue; thence Southerly along the Easterly line of said Brown Avenue 83 feet to the point of beginning.

PARCEL TWO

Being a portion of Lot 6 in Block 4, of the property of Birdie Miller Cnopius as shown on the map of said property recorded in Book 35 at Pages 21, 22 and 23, Sonoma County Records, and more particularly described as follows:

Beginning at the Southeast corner of Lot 6; thence North 11° 45' West, 108.00 feet; thence South 76° 41' West 38.95 feet; thence South 7° 21' East 31.0 feet to the Southeast corner of Lot 8; thence North 76° 41' East 4.84 feet to the Northeast corner of Lot 7; thence South 10° 51' East 77.0 feet to the Southwest corner of Lot 6; thence North 76° 57' East 39.72 feet to the point of beginning.

PARCEL THREE

Being a portion of Lot 8 in Block 4, of the property Birdie Miller Cnopius as shown on the map of said property recorded in Book 35 at Pages 21, 22 and 23, Sonoma County Records, and more particularly described as follows:

Beginning at the Southwest corner of Lot 8; thence North $76^{\circ} 41'$ East, 71.5 feet to the Southeast corner of Lot 8; thence North $7^{\circ} 21'$ West 31.0; thence South $76^{\circ} 41'$ West 71.5 feet to a 3/4" pipe; thence South $7^{\circ} 21'$ East 31.0 feet to the point of beginning.

Excepting that portion lying within Depot Street.

APN: 004-061-007
004-061-008

EXHIBIT B

	Original Fees	Column A: City Staff Fees (Due at time of Application or issuance of permits)	Column B: Development Fees	Column C: Fee Reductions Authorized by City Council
BUILDING FEES:				
Building Permit Fees	\$124,339.20	\$124,339.20		
Electrical Permit Fees:	\$24,942.84	\$24,942.84		
Mechanical Permit Fees:	\$18,725.88	\$18,725.88		
Plumbing Permit Fees:	\$24,942.84	\$24,942.84		
Building Plan Check 65% of permit fee	\$80,820.47	\$40,410.24		\$40,410.24
Fire (Comm) 25 % Permit Fee	\$31,084.80	\$31,084.80		
Outside Plan Check (Structural review)		<i>To be paid directly to outside plan check firm</i>		
Incremental Fee	\$25,000.00	\$25,000.00		
Tech System Fee	\$25,000.00	\$25,000.00		
SMIF - Commercial	\$7,000.00	\$7,000.00		
Green Building Fee	\$1,000.00	\$1,000.00		
SUB-TOTAL	\$362,856.03	\$322,445.80	\$0.00	\$40,410.24
FIRE FEES				
Fire Sprinkler Fees(Res or Comm)	\$450.00	\$450.00		
Fire Alarm	\$300.00	\$300.00		
Fire Suppression:	\$ (TBD at time of permit)	\$ (TBD at time of permit)		
SUB-TOTAL	\$750.00	\$750.00	\$0.00	\$0.00
PLANNING FEES*				
Design Review Fee and Deposit:	\$250.00	\$250.00		
Tree Removal Fee and Deposit:	\$1,315.00	\$1,315.00		
Tree Protection Plan Fee:	\$385.00	\$385.00		
Lot Merger Fee and Deposit:	\$1,965.00	\$1,965.00		
Public Art Review Fee and Deposit:	\$1,450.00	\$1,450.00		
Traffic Impact:	\$61,775.31		\$61,775.31	
Park In Lieu:	\$171,600.00		\$171,600.00	
General Plan Update:	\$75,000.00	\$75,000.00		
Planning Plan Check:	\$155.00	\$155.00		
Housing Linkage Fee:	\$96,056.38		\$96,056.38	
Art in Lieu (1% of construction cost):***	\$250,000, unless fulfilled on-site		\$250,000, unless fulfilled on-site	
SUB-TOTAL (not including Art Fee)	\$409,951.69	\$75,540.00	\$329,431.69	\$0.00
SUB-TOTAL (including Art Fee)	<i>(\$648,815.02 if art not provided on-site)</i>	\$151,080.00	<i>(\$566,940.02 if art not provided on-site)</i>	\$0.00
ENGINEERING FEES*				
Plan Check Deposit – Major Commercial:	\$7,500.00	\$7,500.00		
Grading Permit:	\$900.00	\$900.00		
Grading Permit Inspection Deposit:	\$3,400.00	\$3,400.00		
Encroachment Permit:	\$500.00	\$500.00		
Additional contractors:	\$275/each	\$275/each		
Encroachment Permit Deposit:	\$2,000.00	\$2,000.00		
Water Connection Fee:**	\$43,503.00	\$28,276.95		\$15,226.05
Water Meter:	\$1,845.00	\$1,845.00		
Sewer Connection Fee:	\$39,079.00	\$25,401.35		\$13,677.65
SUB-TOTAL	\$98,727.00	\$69,823.30	\$0.00	\$28,903.70
TOTAL***	\$872,284.72	\$468,559.10	\$329,431.69	\$69,313.94

Fees listed are current fees in effect until Nov 1, 2018. Fees are subject to annual fee schedule update on December 1, 2018.

* Deposits are subject to the refund/billing policy of the City. Note fees are as of 11/1/2018. Fees do not include any Tenant Improvement Permits for restaurant, other uses. Fire deferred submittal TBD

** Water/Sewer Connection fees to be confirmed.

*** Art in-lieu fee of \$250,000 not included in Totals. On-site art installation has been approved by the Public Art Committee. Contract showing total amount of art installation is due prior to issuance of bid permit. Any balance of art fee not fulfilled through installed art by time of final inspection shall be added to the Deferred Impact Fee payment or subject to bond per SMC 17.360.030(H).

Exhibit B

Legal Description of the Property

LEGAL DESCRIPTION

Real property in the City of Sebastopol, County of Sonoma, State of California, described as follows:

PARCEL ONE:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF DEPOT STREET WITH THE WESTERLY LINE OF BROWN STREET, AS SHOWN ON THE MAP OF THE PROPERTY OF BIRDIE MILLER CNOPIUS, FILED IN THE OFFICE OF THE SONOMA COUNTY RECORDER ON AUGUST 28, 1918 IN BOOK 35 OF MAPS, AT PAGES 21, 22 AND 23; THENCE NORTH 7° 21' WEST ALONG BROWN STREET, A DISTANCE OF 287.6 FEET TO MCKINLEY STREET; THENCE SOUTH 84° 09' WEST ALONG MCKINLEY STREET 217.6 FEET TO THE EASTERLY LINE OF PETALUMA AVENUE AS CONVEYED TO THE CITY OF SEBASTOPOL BY DEED RECORDED JULY 7, 1927 IN BOOK 173 AT PAGE 440, SONOMA COUNTY RECORDS; THENCE SOUTH 24° 49' EAST ALONG PETALUMA AVENUE, A DISTANCE 345.05 FEET TO DEPOT STREET; THENCE NORTH 65° 11' EAST ALONG DEPOT STREET, 119.85 TO THE PLACE OF BEGINNING.

PARCEL TWO:

BEING THE LANDS SHOWN AND DESCRIBED AS "VOLUNTARY MERGER RESULTANT PARCEL" IN THAT CERTAIN GRANT DEED RECORDED JUNE 28, 2019 AS INSTRUMENT NO. 2019-043882 OFFICIAL RECORDS OF SONOMA COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY LYING WITHIN THE CITY OF SEBASTOPOL, COUNTY OF SONOMA, STATE OF CALIFORNIA, AND BEING THE LANDS OF MV HOTEL SEBASTOPOL, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, DESCRIBED AS TRACT 2-PARCEL 2 BY DEED RECORDED OCTOBER 26, 2016 UNDER DOCUMENT NUMBER 2016-099082, SONOMA COUNTY RECORDS, AND DESCRIBED AS PARCEL 1 AND PARCEL 2 BY DEED RECORDED NOVEMBER 10, 2016 UNDER DOCUMENT NUMBER 2016-104482, SONOMA COUNTY RECORDS, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY, FILED MARCH 2, 2018 IN BOOK 793 OF MAPS AT PAGE 14, SONOMA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST COMER OF SAID LANDS AS SHOWN ON SAID RECORD OF SURVEY, BEING A POINT AT THE INTERSECTION OF THE NORTHERLY LINE OF DEPOT STREET WITH THE EASTERLY LINE OF BROWN AVENUE; THENCE ALONG SAID EASTERLY LINE AND ALONG THE WESTERLY LINE OF SAID TRACT 2-PARCEL 2 AND THE WESTERLY LINE OF SAID PARCEL 1 AND PARCEL 2, NORTH 7°21'00" WEST, 206.30 FEET TO THE NORTHWEST COMER OF SAID LANDS; THENCE LEAVING SAID EASTERLY LINE, ALONG THE NORTHERLY LINE OF SAID PARCEL 2, NORTH 80°16'00" EAST, 95.33 FEET TO THE NORTHEAST COMER OF SAID LANDS; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 1 AND PARCEL 2, SOUTH 12°44'37" EAST, 91.80 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 1, BEING A POINT ON THE NORTHERLY LINE OF SAID TRACT 2- PARCEL 2; THENCE ALONG SAID NORTHERLY LINE, NORTH 76°41'00"EAST, 6.00 FEET TO THE NORTHEAST COMER OF SAID TRACT 2- PARCEL 2; THENCE ALONG THE EASTERLY LINE OF SAID TRACT 2-PARCEL 2, SOUTH 12°45'00" EAST, 108.00 FEET TO SAID NORTHERLY LINE OF DEPOT STREET; THENCE ALONG SAID NORTHERLY LINE, BEING THE SOUTHERLY LINE OF SAID LANDS, SOUTH 76°57'00" WEST, 120.60 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

A RIGHT OF WAY 20 FEET IN WIDTH BEING 10 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE;

First American Title Insurance Company

COMMENCING AT THE WESTERLY COMMON CORNER OF LOTS 9 AND 10 IN SAID BLOCK 4; AND
RUNNING THENCE NORTH 80° 16' EAST 114.14 FEET TO A POINT.

PARCEL FOUR:

A RIGHT OF WAY 18.8 FEET IN WIDTH, BEING 9.4 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTER LINE:

COMMENCING AT A POINT ON THE LINE BETWEEN LOTS 9 AND 10 IN BLOCK 4, DISTANT NORTH 80°
16' EAST 104.74 FEET FROM THE WESTERLY COMMON CORNER THEREOF; THENCE SOUTH 12° 45'
EAST 49.65 FEET TO A POINT.

APN: 004-052-001(Affects Parcel One), 004-061-019(Affects Parcel Two)

RECORDATION OF THIS CERTIFICATE IS THE RESPONSIBILITY OF THE REQUESTING PARTY.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Acknowledgment

State of California }
County of Solano }

On _____, before _____ me,
_____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

_____, Notary Public