

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

FOR THE

BARLOW HOTEL

BY AND BETWEEN

THE CITY OF SEBASTOPOL,

HIGHWAY PARTNERS LLC,

SEBASTOPOL INDUSTRIAL PARK, LLC,

AND BARLOW STAR, LLC

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made and entered into between the **CITY OF SEBASTOPOL**, a municipal corporation (“City”), and **HIGHWAY PARTNERS LLC**, a California Limited Liability Company, **SEBASTOPOL INDUSTRIAL PARK, LLC**, a California Limited Liability Company, and **BARLOW STAR, LLC**, a Delaware Limited Liability Company (collectively “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. **General Plan Consistency**. Under State law, a Development Agreement must be consistent with applicable General Plan policies. Since a Development Agreement is adopted through an ordinance, a Development Agreement and the project it authorizes are not required to follow a local jurisdiction’s Zoning Ordinance as long as the uses allowed by the Development Agreement are allowed under the Zoning Ordinance.

C. **The Project**. Developer applied to the City for approvals necessary for a boutique hotel with up to 83 rooms. The Hotel Project (the “Project”) is proposed to operate 24 hours a day, 7 days a week, year-round and include a lobby and reception area, retail space, on-site restaurant, café/bar, lounge, spa, public courtyard, private gardens, an outdoor rooftop deck with pool, outdoor rooftop café/bar with non-amplified outdoor sound, meeting rooms, and other hotel amenities.

D. **Environmental Review**. On _____, the City Council previously adopted [Resolution/Ordinance _____] certifying an environmental impact report for the Sebastopol General Plan (SCH # 2005072125) (the “General Plan EIR”) and adopting a corresponding Mitigation Monitoring and Report Program. The City has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*, hereinafter “**CEQA**”), the required analysis of the environmental effects that would be caused by the Project. On _____, the City Council adopted Resolution _____ determining that the Project is consistent with the Sebastopol General Plan and General Plan EIR, and is therefore subject to limited environmental review pursuant to Public Resources Code section 20183.3 and CEQA Guidelines section 15183.

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;
2. The furtherance of the economic development goals and objectives of the City, and will implement the City’s standard General Plan policies;

3. The City will receive increased sales tax, transient occupancy tax, and property tax revenues, which may be used to support the general welfare of the City;

4. Developer will grant an irrevocable offer of dedication for an easement for public use to a portion of the existing AmeriCorps Trail, thus ensuring permanent access to part of the Laguna de Santa Rose. This is an irrevocable offer of dedication for an easement and does not include trail construction. A true and correct copy of the legal description for this irrevocable offer of dedication is attached hereto as Exhibit 1. City acknowledges that this irrevocable offer of dedication includes part of wetland.

5. The development authorized herein, will expand overnight accommodations for visitors and event venues.

6. The development will enhance the east entrance to the city by providing an architecturally unique and compatible hotel.

7. According to the Developer's 2024 economic report, prepared by RRC Associates, the fully developed, operating, and occupied project is estimated to generate \$31.4 million in hotel guest spending (excluding taxes), of which \$23.4 million would occur within the City of Sebastopol. An estimated \$8 million would occur in nearby unincorporated areas. The development will result in \$9.8 million in labor and approximately 210 jobs. The hotel rooms are estimated to generate \$1.4 million in *annual* Transient Occupancy Tax ("TOT") revenue.

F. In addition to these direct financial benefits, the visitor spending would help support Sebastopol businesses and the local tax income would substantially enhance the City's ability to provide important public services, maintenance, and improvements, maintaining and improving economic vitality and the quality of life in Sebastopol.

G. These benefits are consistent with the goals of the Sebastopol General Plan, including but not limited to:

1. Land Use Element Goal LU 7 and related policies, in that the project will enhance and advance Sebastopol's role as a market and service center by providing for a vibrant downtown through the provision of a hotel near the downtown, bringing visitors, and meeting attendees to the downtown, adding to and enhancing its vitality;

2. Economic Vitality Goal EV 1 and related policies, in that the project will broaden the City's employment base, providing a range of hotel- and jobs as well as supporting the West County agricultural sector, substantially benefit the local economy by direct and indirect revenue generation, and diversify the local economic base;

3. Economic Vitality Goal EV 4 and related policies, in that these policies directly call for hotels, restaurants, and other visitor-serving development and the project will provide a new hotel as well as a restaurant;

4. Economic Vitality Goal EV 5 and related policies, in that the project will add to the ongoing revitalization of a business area (the Barlow, a former warehousing district);

5. Economic Vitality Goal EV 6 and related policies, in that the project will strengthen the City's unique character with an architecturally distinctive building; and Economic Vitality Goal EV 7 and related policies, in that the project, by adding substantial direct and

indirect tax revenue as documented by project studies (described above) will help maintain a stable and self-sustaining fiscal base.

6. Community Design Policy 1-11 and related policies that encourage and support the inclusion of public and quasi-public spaces by offering incentives additional height where feasible and compatible with the surrounding neighborhoods, which this project does by providing the irrevocable offer of dedication for the AmeriCorps Trail and the additional height is compatible because it is adjacent to the Central Core Zoning District.

H. **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.

I. **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.

J. **Consistency with the Zoning Ordinance.** Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City found that this Agreement satisfies the requirement that the authorized uses are allowed under the Zoning Ordinance and made all findings required by the Zoning Ordinance.

K. **Required Notice.** City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Sections 65854 and 65867. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in City's General Plan and Specific Plan.

L. **Adopting Ordinance.** On _____, the City of Sebastopol City Council (the "City Council") adopted Ordinance No. ____ (the "**Approving Ordinance**") approving this Development Agreement and authorizing its execution. The Approving Ordinance will take effect on _____.

AGREEMENT

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

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 _____, 2025, 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 this Agreement.

1.4 “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.

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

1.6 "City Manager" means the City Manager of the City of Sebastopol, or the City Manager’s designee.

1.7 “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 (Subsequent Approvals); and (iv) the Land Use Regulations, which shall be superceded by this Agreement to the extent inconsistent with this Agreement, Project Approvals or Subsequent Approvals.

1.8 “Conditions” means the Conditions of Approval attached hereto as Exhibit 2.

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 “Development Agreement Law” means Government Code section 65864 et seq.

1.11 “Developer” collectively means the owners of the following parcels and their successors in interest:

Name/Description	APN	Project Development Acreage^a	Owner
Hotel Parcel	004-750-030	1.23	Highway Partners, LLC
Former Batch Plant	004-011-017	1.4	Sebastopol Industrial Park, LLC
Former Batch Plant	004-011-020	1.5	Sebastopol Industrial Park, LLC
McKinley Street	004-750-019	0.46	Sebastopol Industrial Park, LLC
Co-op Parcel	004-750-034	0.90	Barlow Star, LLC
Gravenstein Court	004-750-020	0.21	Sebastopol Industrial Park, LLC

1.13 “Effective Date” means that day on which the Adopting Ordinance shall be effective which is _____, 2025.

1.14 "Facility" means 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 “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.

1.17 “Land Use Regulations” means the Sebastopol General Plan, 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 of this Agreement.

1.18 “Law” means the case law, applicable 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.

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

1.20 “Planning Commission” means the City of Sebastopol Planning Commission.

1.21 "Project" means the physical improvement of the Property with a boutique hotel with up to 83 rooms, as well as a lobby and reception area, retail space, on-site restaurant, café/bar, lounge, spa, public courtyard, private gardens, an outdoor rooftop deck with pool, outdoor rooftop café/bar with non-amplified outdoor sound; meeting rooms, and other hotel amenities and additional uses of the Property, as further shown and described in the Project plans and description dated [REDACTED] and on file with the City Clerk, as approved by the City through the Project Approvals.

1.22 "Project Approvals" means the entitlements that are the subject of this Agreement and incorporated herein by reference:

1.22.1 CEQA Compliance under Public Resources Code section 20183.3 and CEQA Guidelines Section 15183, , approved by the City Council on _____, 2025 by Resolution No. _____.

1.22.2 Ordinance No. _____ authorizing this Agreement.

1.22.3 This Development Agreement, as adopted on _____, 2025, by City Ordinance No. _____ (the "Adopting Ordinance") and all exhibits hereto.

1.22.4 All Subsequent Permits and Approvals, as defined in Section 2.21.

1.23 "Property" collectively means that certain real property within the City as more particularly described in Exhibit 5 and includes of the following parcels or portions of parcels:

Name/Description	APN	Project Development Acreage ^a	Owner
Hotel Parcel	004-750-030	1.23	Highway Partners, LLC
Former Batch Plant	004-011-017	1.4	Sebastopol Industrial Park, LLC
Former Batch Plant	004-011-020	1.5	Sebastopol Industrial Park, LLC
McKinley Street	004-750-019	0.46	Sebastopol Industrial Park, LLC
Co-op Parcel	004-750-034	0.90	Barlow Star, LLC
Gravenstein Court	004-750-020	0.21	Sebastopol Industrial Park, LLC

1.24 "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, etc.

1.25 “Subsequent Permits and Approvals” are those additional land use approvals, permits, and use and/or construction approvals other than those listed in Section 1.22 that are necessary to develop and operate every aspect of the Project. At such time as any Subsequent Permits and Approvals applicable to the Property is approved by the City, then such Subsequent Permits and Approvals shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Agreement. The Subsequent Permits and Approvals may include an acoustical study to confirm that amplified music or sound remains below City noise thresholds; ABC approvals as may be required for the café/bar and restaurant uses; a demolition permit, encroachment permit, building permit, improvement plans. The term “ministerial Subsequent Approvals” means ministerial permits, such as building permits.

1.26 “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.

2. **Incorporation of Recitals & Exhibits.** The recitals and exhibits attached hereto are hereby incorporated into this Agreement as if set fully set forth herein.

3. **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.

4. **Representations, Warranties and Acknowledgments.**

4.1 **Interest in Property.** Developer represents and warrants that as of the Effective Date, _____, the entities identified in Paragraph 1.26 herein, are the owners of the Property and as such holds fee title interest in and to the parcels that comprise the Property, as specified in Section 1.23.

4.2 **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.

4.3 **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 13.1.

4.4 **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.

5. **Effective Date and Term.**

5.1 **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 or 2) ten (10) years from the Effective Date of this Agreement. The term of this Agreement shall be automatically extended in the event of a declared disaster by the City of Sebastopol or Sonoma County within the City of Sebastopol or litigation challenging this Agreement. The automatic extension shall be for the same amount of time as the disaster, as declared by a government agency, or until there is compliance with a final judgment in any litigation.

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

5.3 **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.

6. **Development of the Project.**

6.1 **Vested 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, this Agreement creates a vested right to develop every aspect of the Project, subject to the laws, regulations, and policies in effect as of the Effective Date of this Agreement, as is set forth in Government Code section 65866.

6.1.1 **Approved Uses.** This Agreement expressly authorizes the following uses:

A82,275 square-foot (69,934 net square-foot) building for use as a hotel with up to 83 rooms. The hotel is proposed to operate 24 hours a day, 7 days a week, year-round and include a lobby and reception area, meeting rooms, retail space, on-site restaurant, interior/lobby café/bar, rooftop café/bar with acoustical and other non-amplified sound, lounge, spa, public courtyard, private gardens, an outdoor rooftop deck with pool that is open to the public with outdoor acoustical, non-amplified sound, meeting rooms, room service, and other hotel amenities

(a) The hotel may be up to fifty-five (55) feet high, measured from the site's average grade height of +/- 1'-4 5/8" (75.89') with limited architectural features up to sixty-five (65) feet high, measured from the site's average grade height of +/- 1'-4 5/8" (75.89'). Architectural features and elements that may exceed the maximum building height of 55'-0" are limited to two (2) roof deck shade structures with a combined size of no larger than approximately 3,000 square feet of covered roof area and four (4) penthouses (two (2) for the elevators and another two (2) for stairwells), and the front courtyard chimney structure. This Agreement acknowledges that this height exceeds the Zoning Ordinance but is consistent with General Plan Policy CD1-11.

(b) The ability to serve alcohol at the hotel's proposed cafes, meeting rooms, and restaurant (subject to obtaining any required licenses from the Department of Alcoholic Beverage Control).

(c) A 2.9-acre parking lot on the site of the former batch plant site on Sonoma County APNs 004-011-017 and 004-011-017. The Developer may install electric car chargers at the locations of the Developer's choice within the 2.9-acre parking lot. All development of any kind, including electric car charges, is prohibited within the fifty (50) foot setback from the Laguna de Santa Rose as is shown on the Developer's plans dated August 2, 2024. This Agreement acknowledges that this use would require a conditional use permit under the Zoning Ordinance but instead this Agreement hereby grants this authority. All parking spaces shall comply with the City's adopted standards, except that the City Manager may waive compliance with such standards for parking spaces reserved for hotel staff and valet spaces.

(d) The relocation of utilities as shown on the Developer's drawings dated August 2, 2024.

(e) Signage that is consistent with the Barlow Sign Plan and conditions of approval, as this plan was approved on January 2, 2012.

(f) The removal of a *Quercus lobata* (Valley Oak) identified as #1 in the Arborist report, located to directly adjacent to the proposed Project site to the west, and as shown in project plans. This Agreement acknowledges that this removal would require a tree removal permit under the Municipal Code, but instead this Agreement hereby grants this authority.

6.1.2 Subsequent Permits and Approvals. The City Manager, or the City Manager's designee shall approval all Subsequent Approvals for the Project as described herein, except building permits or other permits that require the City's Building Official or City Engineer to approve the permit. A permit for amplified sound on the rooftop café/bar is a "Subsequent Approval" subject to this administrative approval requirement. So long as the Developer submits a complete application, the City shall approve all ministerial Subsequent Approvals within thirty (30) days and sixty (60) days for discretionary Subsequent Approvals. Any Subsequent Permits and Approvals for changes to the Project shall be approved in the manner required by the Municipal Code, except for Minor Changes, which may be approved by the City Manager, or the City Manager's designee. Subsequent Approvals for minor changes do not require but may be acted on through an Operating Memoranda per Section 11.3 below.

6.1.3 Minor Change. “Minor Changes” to this Project, include but are not limited to: up to a ten percent (10%) reduction in the number of hotel rooms, up to a ten percent (10%) increase or decrease in the total square footage of the hotel structure, hours of operation for any proposed use within the hotel structure (as long as such hours do not extend later than midnight), signage consistent with the approved Barlow Sign Program, lighting, utility routing/points of connection changes, changes that effect less than one third of the exterior building materiality or landscaping, or other similar changes that substantially conform with the material terms of this Agreement as determined by the City Manager, shall be approved through an administrative process by the City Manager without an Operating Memoranda.

6.1.4 Public Art. Prior to the issuance of a certificate of occupancy for the Project, Developer shall install public art, or pay an in-lieu fee, as required by Sebastopol Municipal Code Chapter 17.310. Notwithstanding anything in Chapter 17.310 to the contrary, the public art proposed by the Developer shall be considered by the Public Art Committee at a single public meeting, at which meeting the Public Art Committee shall make a recommendation to the City Council, which shall thereafter approve or reject the proposed public art.

6.1.5 Except as is set forth herein, 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 except as set forth herein, and the Parties agree that future 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 that is not authorized by this Agreement and use shall be subject to the terms set forth in any different approvals needed for development.

6.1.6 The permitted uses of the Property, the density and intensity of use, the maximum height and size of buildings, or the irrevocable offer of 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 applicable ordinances as provided in Section 7.

6.2 **Timing of Development.** Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties’ agreement, it is the Parties’ intent to cure that deficiency by acknowledging and providing that, subject to any infrastructure phasing requirements that may be required by the Project Approvals, Developer shall have the right (without obligation) to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. The Developer will submit a construction and parking lot phasing plan for review and approval by the City Manager, which shall not be unreasonably withheld, with the Construction Management Plan during the building permit submission process or with the submission of a grading permit application, whichever occurs first.

6.3 **Mitigation of Impacts.** Developer shall timely satisfy and comply with all Conditions of Project Approvals. Any material failure to comply with the Conditions of the project approval required herein shall be a violation of this Agreement, entitling the City to terminate this Agreement, after notice and due process to Developer pursuant to Section 13 below.

7. **Applicable Rules, Regulations, Fees and Official Policies.**

7.1 **Rules Regarding Design and Construction.** Unless otherwise expressly provided in this Agreement, all other applicable 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 this Agreement is approved except for newly enacted laws and regulations that pertain to the protection of public health and safety or life safety.

7.2 **Design Review and Building Standards.** Developer shall comply with the design, development and construction standards in effect at the time this Agreement is approved. (e.g., City standard specifications, building and fire codes, regulations related to provision of water and sewer service. etc.). The Project Approvals granted by this Agreement and all Subsequent Approvals that do not involve a change that is greater than a Minor Change shall not be subject to any Design Review Board approvals, and shall be approved by the City Manager, or the City's Manager's designee. Any change that is greater than a Minor Change as defined in 6.1.3, shall be subject to the review and approval process established by the Municipal Code.

7.3 **Uniform Codes Applicable.** Unless otherwise expressly provided in this Agreement, any improvements authorized by this Agreement or any Subsequent Approval, 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 at the time this Agreement was approved except for newly enacted laws and regulations that pertain to the protection of public health and safety or life safety. 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 this Agreement was approved. 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 this Agreement.

7.4 **Conditions of Subsequent Approvals.** In connection with any discretionary Subsequent Permits and Approvals, City shall have the right to impose reasonable conditions including, without limitation, normal and customary dedications for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Rules or Project Approvals, nor inconsistent with the development of the Project as contemplated by this Agreement.

7.5 **Fees, Dedications, Assessments and Taxes.**

7.5.1 **Payment of City Permit & Engineering Fees.** The Developer shall be responsible of paying all City permit processing and engineering fees in the amounts shown

in Exhibit 3, attached hereto and incorporated herein, at the time such fees are otherwise due. Beginning on July 1, 2026, and annually thereafter, the permit processing and engineering fees shall increase by the same percentage as the City's adopted fee schedule.

7.5.2 **Payment of Development Impact Fees**. The Developer shall pay the Development Impact Fees identified in Exhibit 3, attached hereto and incorporated herein. Beginning July 1, 2026, and annually thereafter, the development impact fees shall increase by the same percentage as the City's adopted impact fee schedule. The final amount of the development impact fees shall be determined at the time such fees would be due for the Project, absent this Agreement. Developer shall pay the development impact fees to the City in sixty (60) equal payments, without interest or penalty, commencing on the the first day of each month following the earlier of: 1) the issuance of a final certificate of occupancy for the hotel structure portion of the Project, or 2) six (6) months after the issuance of a temporary certificate of occupancy for the hotel structure portion of the Project. If Developer fails to timely make any required payment, and such payment remains outstanding after City has provided Developer with notice and an opportunity to cure, the City may record a lien against the Property for such outstanding amount. Such lien shall bare interest at the maximum rate permitted by law.

7.5.3 Except as otherwise provided herein, Developer agrees to pay when due any required fees, taxes, assessments required by applicable law.

7.5.4 **Irrevocable Offer of Dedication of an Easement for Public Use of Existing Americorps Trail**. Developer shall grant an irrevocable offer of dedication for an easement for a public trail on a portion of the exiting AmeriCorps Trail, thus ensuring permanent access to part of the Laguna de Santa Rose. Developer shall make this irrevocable offer of dedication to the City no more than forty-five (45) days after the longest possible statute of limitations to challenge this Agreement or any accompanying approval lapses and there is no court challenge. If there is a court challenge, Developer shall make this irrevocable offer of dedication no more than forty-five (45) days after a final court order, compliance therewith, and discharged writ of mandate (if applicable) is filed and served on Developer. A true and correct copy of the legal description for this easement is attached hereto as Exhibit 1. City acknowledges that this easement includes part of wetland.

8. **Public and Private Improvements**.

8.1 **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.

9. **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 required to develop the Property to a Safe Condition. Determination of whether the Property and other improvements have been rendered to a Safe Condition shall be to the satisfaction of the Building Official and the City Engineer. This provision shall survive the termination of this Agreement as provided for in Section 13 of this Agreement.

10. **Amendment.**

10.1 **Material Changes.** Material amendments to 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. All material amendments to this Agreement shall be recommended for approval by the Planning Commission and approved by the City Council and, upon such approval, will become part of the Project Approvals.

10.2 **Changes in Law.** In accordance with California Government Code Section 65869.5, in the event that state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet in good faith to determine the feasibility of any modification or suspension of this Development Agreement that may be necessary to comply with such State or Federal Law and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such State or Federal Law. In such an event, this Agreement, together with any required modifications, shall continue in full force and effect. In the event that the State or Federal Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement.

10.3 **Operating Memorandum.** The provisions of this Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the Term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to constitute an amendment to this Agreement. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

11. **Annual Review of Agreement.**

11.1 **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.

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

11.3 **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 10 percent (10%) of the actual cost to cover administrative overhead. However, under no circumstances shall the annual review fee exceed \$10,000.

12. **Default.**

12.1 **Default.** The failure of either party to perform any material 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.") Any delays caused by a government-declared emergency, act of God, disaster or other event beyond the Developer's control shall not constitute a breach of this Agreement.

12.2 **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 defaults or waive any of the Complaining Party's remedies.

12.3 **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. Notwithstanding the foregoing, time to cure shall be automatically extended in the event of a declared disaster by the City of Sebastopol or Sonoma County within Sebastopol or litigation challenging this Agreement or any act necessary to comply with a court order. The automatic extension shall be for the same amount of time as the disaster, as declared by a government agency, or until there is compliance with a final judgment in any litigation.

12.4 **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, or termination of this Agreement.

12.5 **Waiver of Monetary Damages.** Except for compensable takings and inverse condemnation claims, and 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. The Developer expressly understands and agrees that the sole legal remedy available for a breach or violation of this Agreement by the City shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions 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.

12.6 **Effect of Termination of Agreement on Other Project Approvals.** Developer agrees that termination of this Agreement in accordance with this Section 12 shall also result in the automatic termination of the Project Approvals if the Project has not yet been completed. If the Project is completed, the Project Approvals and all related conditions of approval shall survive the termination or expiration of this Agreement, and shall remain in effect and binding on the Developer.

13. **Insurance and Indemnity.**

13.1 **Indemnification, Defense and Hold Harmless.** Developer shall indemnify, defend (with counsel acceptable to City), and hold harmless to the fullest extent permitted by law, the City and its officers, officials, agents 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 any part of 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 the termination or expiration of this Agreement and shall not be limited by any insurance policy, whether required by this Agreement or otherwise.

13.2 **Cooperation in the Event of Legal Challenge.** In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, the Project Approvals for the Project ("**Initial Litigation Challenge**"), Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action, to select its own counsel, and to control its participation and conduct in the litigation in all respects permitted by law. If an Initial Litigation Challenge is filed, upon receipt of the petition, the Parties will have 20 days to meet and confer regarding the merits of such Initial Litigation Challenge and to determine whether to defend against the Initial Litigation Challenge, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines.

Without limiting the application of Section 14.1, if, after meeting and conferring, the Parties mutually agree to defend against the Initial Litigation Challenge, then the following shall apply: (i) the Parties hereby agree to affirmatively cooperate in defending said action and to

execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law; (ii) for the purposes of cost-efficiency and coordination, the Parties shall first consider defending the Initial Litigation Challenge jointly, with counsel and under terms of joint representation mutually acceptable to the City and Developer (each in its sole discretion), at the Developer's sole cost and expense; and (iii) if the Parties cannot reach timely and mutual agreement on a joint counsel, and Developer continues to elect (in its sole discretion) to defend against the Initial Litigation Challenge, then Developer shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice, in which case, City, at its expense, may elect to be separately represented by the outside legal counsel of its choice in any such action or proceeding. The City Manager is authorized to negotiate and enter into a joint defense agreement in a form acceptable to the City Attorney. Such joint defense agreement shall also provide that any proposed settlement of an Initial Litigation Challenge shall be subject to City's and Developer's approval, each in its reasonable discretion.

13.3 **Insurance.**

13.3.1 **Public Liability and Property Damage Insurance.** At all times that Developer is constructing any public 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, its officers, officials, agents and employees as an additional insureds and shall include either a severability of interest clause or cross-liability endorsement.

13.3.2 **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.

13.3.3 **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 14.3 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.

14. **Assignment and Transfers of Rights and Interest.**

14.1 **Assignment of Rights Under Agreement.** Except as set forth in herein, 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, including any transfer as a matter of law due to foreclosure or some other event. City's consent to any assignment shall not be unreasonably withheld and may be conditioned upon

the Developer and transferee executing a written assignment and assumption agreement in a form approved by the City. However, Developer may lease part or all of the hotel structure to operate the uses allowed by this Agreement or any Subsequent Approval without the City's consent and may transfer any interest in the Property to an affiliated entity without the City's advance written consent.

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

14.3 **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 14.1. 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.

15. **Mortgage Protection.** This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any deed of trust or mortgage (the "Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value.

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 the 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 by the Development Agreement Law shall be in writing and personally delivered, sent by certified mail, postage prepaid, return receipt requested, or delivered by nationally recognized overnight courier service.

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:

The Barlow, Inc
6780 Depot Street #110
Sebastopol, CA 95472
Email: barney@aldrridgedevlopment.net

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.

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit.

16.4 **References to Municipal Code.** This Agreement may contain references to articles and sections of the City's 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 **Entire Agreement**. This Agreement, including the Recitals, and all Exhibits attached hereto and incorporated by reference herein, together with the Project Approvals, constitutes the entire understanding and agreement of the Parties and supersedes all negotiations

or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

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, the litigation shall be brought and tried exclusively in the Superior Court of the County of Sonoma or, in the event of federal litigation, the Northern District of California.

16.17 **Waiver.** No delay or omission by either Party in exercising any right or power accruing upon noncompliance or failure to perform by the other Party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

16.18 **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”

CITY OF SEBASTOPOL,
A municipal corporation

By: _____

Name: _____

Title: City Manager

Dated: _____, 2025

“DEVELOPER”

HIGHWAY PARTNERS, LLC
a California Limited Liability Company

By: _____

Name: _____

Title: _____

Dated: _____, 2025

“DEVELOPER”

SEBASTOPOL INDUSTRIAL PARK, LLC
a California Limited Liability Company

By: _____

Name: _____

Title: _____

Dated: _____, 2025

“DEVELOPER”

BARLOW STAR, LLC
a Delaware Limited Liability Company

By: _____

Name: _____

Title: _____

Dated: _____, 2025

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

List of Exhibits:

1. Irrevocable Offer of Dedication and Legal Description
2. Conditions of Approval
3. Fees
4. Hotel Use Description
5. Legal Descriptions of parcels comprising the Property

EXHIBIT 1

**Irrevocable Offer of Dedication for Public Access
to Existing AmeriCorps Trail &
Legal Description**

[to be inserted]

EXHIBIT 2
CONDITIONS OF APPROVAL
[to be inserted]

EXHIBIT 3

FEE SCHEDULE

[Chart of processing fees & impact fees to be inserted]

EXHIBIT 4

Project Description of each Hotel Space:

[to be inserted]

EXHIBIT 5
Legal Descriptions of parcels comprising the Property

[to be inserted]

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 Sonoma }

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