

ATTACHMENT 1

RECORDING REQUESTED BY
CITY OF NAPA
Exempt from Recording Fees
Government Code 27383

WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF NAPA
P.O. Box 660
Napa, CA 94558

SPACE ABOVE THIS LINE FOR RECORDER'S USE _____
APN: 003-152-013

“MILLS ACT” HISTORICAL PROPERTY PRESERVATION AGREEMENT
(Government Code Sections 50280 et seq.)

Thomas Earl House (1221 Seminary Street)

THIS AGREEMENT, dated _____, 2020, is by and between Marc Porat (“Owner”), and the City of Napa, a California charter city (“City”), and provides as follows:

RECITALS

WHEREAS, Owner owns certain real property, together with associated historic structures and improvements thereon, located at 1221 Seminary Street, in the City of Napa, Napa County (“the Property”), more particularly described in Exhibit “A”, attached hereto and made a part hereof; and

WHEREAS, the Property is a “qualified historical property” as defined in California Government Code Section 50280.1; and

WHEREAS, both Owner and City desire to protect and preserve the Property so as to retain its characteristics of historical significance;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, declarations, covenants and agreements of the parties set forth herein, and the substantial public benefit derived therefrom, the parties agree as follows:

1. Authority. This Agreement is made under authority of Government Code Sections 50280 et seq. (“Historical Property Contracts”).
2. Term of Agreement. This Agreement shall be effective commencing on the date it is signed by the City Clerk below, attesting to full execution of the Agreement by both parties (“Effective Date”), and shall remain in effect for a minimum period of ten years therefrom. Each year on the anniversary of the Effective Date, the term will automatically be extended by a year as provided in Paragraph 5 of this Agreement.
3. Limitations on Land Use. During the term of this Agreement, the Property shall be subject to the following provisions, requirements, and restrictions:

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(a) Owner shall preserve and maintain the Property, as a qualified historic property, in no less than equal to the condition of the Property as of the date hereof.

(i.) A Site Plan of the location of all buildings on the Property is detailed in Exhibit "B" attached hereto and incorporated herein by reference. Any proposed work to be performed on the Property, including any restoration, rehabilitation or preservation, must be reviewed and processed by the City in compliance with Napa Municipal Code Chapter 15.52, "Historic Preservation."

(ii.) Owner shall, when necessary, restore and rehabilitate the Property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation and the State Historical Building Code as articulated in the Attached *Ten Year Rehabilitation Plan* (Exhibit "C") or as confirmed through a Certificate of Appropriateness approved by the City in accordance with Napa Municipal Code Chapter 15.52. Additionally, Owner shall provide whatever information shall be required by City to determine the Property's continuing eligibility as a qualified historic property.

(b) All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

(i.) Dilapidated, deteriorating, or unrepaired structures and components, such as fences, roof, doors, walls and windows;

(ii.) Scrap lumber, junk, trash or debris;

(iii.) Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, can containers, or similar items;

(iv.) Stagnant water or excavations, including in pools or spas; and

(v.) Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

(c) Owner shall provide for the periodic examinations of the interior and exterior of the premises by the Office of the Napa County Assessor, the Department of Parks and Recreation, the State Board of Equalization, and the City, as may be necessary to determine the Owner's compliance with this Agreement.

4. Successors in interest. The Owner hereby voluntarily subjects the Property to the covenants, conditions and restrictions set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, conditions and restrictions as set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of, all successors and assigns in title or interest of the Owner. A successor in interest shall have the same rights and obligations under this Agreement as the original Owner who entered into this Agreement.

Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, conditions and restrictions expressed in this Agreement whether or not such covenant, conditions and restrictions are set forth in such contract, deed or other instrument.

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5. Renewal.

(a) Each year on the anniversary of the Effective Date of this Agreement one year shall automatically be added to the term of this Agreement, unless notice of non-renewal is given as provided in this paragraph. After five years, and every five years thereafter, the Owner shall arrange with the City to inspect the interior and exterior of the Property to determine the Owner's continued compliance with this Agreement. If Owner or City desire in any year not to renew this Agreement, that party shall serve written notice of non-renewal of this Agreement on the other party in advance of the annual renewal date of this Agreement. Unless the notice is served by the Owner at least 90 days prior to the renewal date, or by the City at least 60 days prior to the renewal date, one year shall automatically be added to the term of this Agreement.

(b) Upon receipt by the Owner of a notice from City of non-renewal, the Owner may make a written protest of the notice of non-renewal. City may, at any time prior to the renewal date, withdraw the notice of non-renewal.

(c) If City or Owner serve a notice of intent in any year not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution or the last renewal of this Agreement, as the case may be.

6. Cancellation for Breach. Following a noticed public hearing as required by Government Code Section 50285, City may cancel this Agreement if it determines that Owner has breached any of the conditions of this Agreement, or has allowed the Property to deteriorate to the point that it no longer meets the standard for a qualified historic property. City may also cancel this Agreement if it determines that Owner has failed to restore or rehabilitate the Property in the manner specified in this Agreement. If the City determines that performance of this Agreement has become infeasible due to damage to the Property caused by force majeure (such as flood, tornado, lightening, or earthquake), this Agreement may be cancelled upon the Owner's application without payment of the cancellation fee, to the extent that non-payment is permitted by law.

7. Cancellation Fee. If this Agreement is cancelled pursuant to paragraph 6 above, Owner shall pay a cancellation fee equal to 12 ½ % of the current fair market value of the Property, as determined by the Office of the Napa County Assessor as though the Property were free of the restrictions set forth in this Agreement. The cancellation fee shall be paid to the Office of the Napa County Auditor ("County Auditor"), at the time and in the manner that the County Auditor shall prescribe, and shall be allocated by the County Auditor to each jurisdiction in the tax rate area in which the Property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.

8. Notice and Recordation.

(a) All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

To: City of Napa
Attn: Community Development Director
City of Napa
P.O. Box 660
Napa, CA 94559

To: Owner,
Marc Porat
2866 Pine Street
San Francisco, CA 94115

(b) No later than 20 days after City enters into this Agreement with Owner, the City Clerk shall record a copy of this Agreement with the Office of the Napa County Recorder, which shall describe the Property. From and after the time of the recordation, this Agreement shall impart a notice thereof to all persons as is afforded by the recording laws of the State of California.

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(c) Owner shall provide written notice of this Agreement to the Office of Historic Preservation within six months of entering into this Agreement and attention to:

Julianne Polanco, State Historic Preservation Officer
State of California Office of Historic Preservation
1725-23rd Street, Suite 100
Sacramento, CA 95816

9. Prevailing Party. The prevailing party in any action to interpret or enforce this Agreement shall be entitled to recover its reasonable attorney's fees.

10. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

11. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this Agreement on behalf of the respective legal entities of the Owner and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12. Indemnification. To the full extent permitted by law, Owner will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "Liability") of any nature, arising out of, pertaining to, or relating to Owner's acts or omissions under this Agreement. Consistent with Civil Code Section 2782, Owner will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. Owner's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by Owner, including, but not limited to, workers' compensation insurance.

13. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

14. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.

15. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

16. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter hereof. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

ATTACHMENT 1

CITY OF NAPA:

Steve Potter, City Manager

ATTEST:

(Signature)
Tiffany Carranza, City Clerk

(Type name and title)

COUNTERSIGNED:

(Signature)
Joy Riesenberg, City Auditor

(Type name and title)

OWNER:

Marc Porat

By: _____
(Signature)

(Print name and title)

By: _____
(Signature)

(Print name and title)

Address: 2866 Pine Street
San Francisco, CA 94115

APPROVED AS TO FORM:

(Signature)
Michael W. Barrett, City Attorney

(Type name and title)

BUDGET CODE: _____

*Corporation, partnership, limited liability corporation, sole proprietorship, etc. Unless corporate resolution delegates an individual to sign contracts, an agreement with a corporation shall be signed by the President or Vice President **and** the Secretary or Treasurer of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.

SIGNATURES MUST BE NOTARIZED



EXHIBIT A

ORDER NO: T0019309-006

EXHIBIT A

LEGAL DESCRIPTION

The land referred to in this report is situated in the City of Napa, County of Napa, State of California, and is described as follows:

PARCEL ONE:

Commencing at a point on the Western line of Seminary Street, distant thereon sixty (60) feet Northerly from the point of intersection thereof with the Northerly line of Polk Street; thence Northerly along said Western line of Seminary Street; One Hundred and twenty (120) feet; thence at right angles Westerly one hundred and thirty (130) feet; thence at right angles Southerly Sixty (60) feet; thence Westerly three (3) feet; thence Southerly fourteen (14) feet; thence Easterly thirteen (13) feet; thence Southerly forty-six (46) feet; thence Easterly one hundred and twenty (120) feet to the point of commencement.

Being the same property conveyed to James B. Gardner by Susan E. Wilkins, Clara E. Lanagan and Thomas M. Earl, by deed dated November 6, 1923, and recorded in the office of the County Recorder of the County of Napa, State of California.

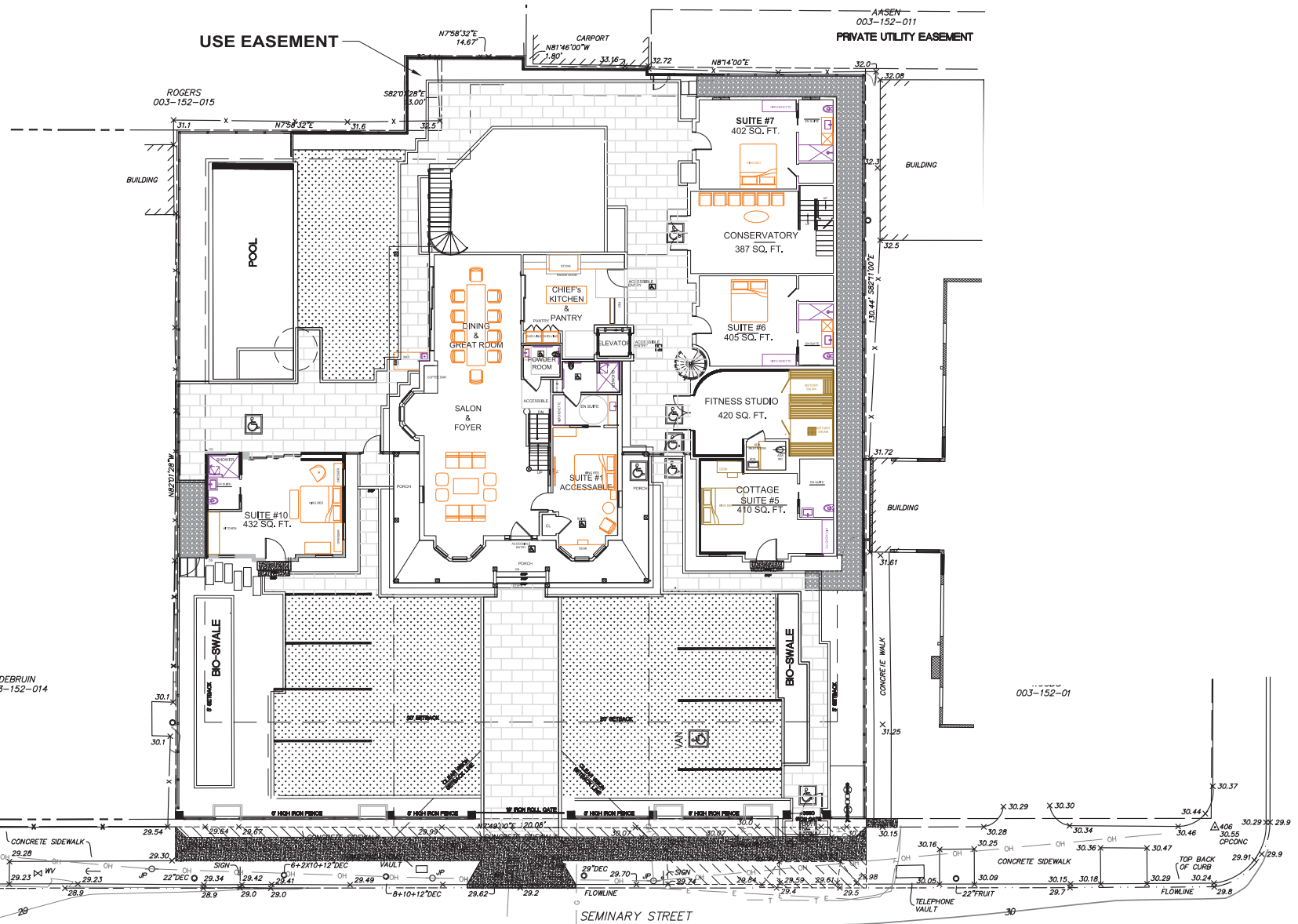
APN: 003-152-013

PARCEL TWO:

A sanitary sewer easement as described in the deed recorded August 8, 2017 as Series Number [2017-0017723](#) of Official Records.

PARCEL THREE:

An easement for recreation, landscaping and related uses as described in the deed recorded September 21, 2017 as Series Number [2017-0021328](#) of Official Records.



REHABILITATION of the THOMAS EARL HOUSE ARCHITECTURAL SITE PLAN

1221 Seminary Street - Napa, California 94559 - APN: 003-152-013-000

EXHIBIT C

| YEAR | PROPOSED PROJECT | TOTAL | HARD CONSTRUCTION CAPEX | SOFT COST CAPITALIZED | REPAIRS MAINTENANCE OPEX |
|---|--|-----------|-------------------------------|--------------------------|--------------------------------|
| 2017 ACQUISITION ENTITLEMENT | Acquisition of the property EMERGENCY REPAIR. Shoring, bracing, cribbing towers. Demolition and removal of pre-Portland cement concrete rubble, the only structure in the house. Demo of red-tagged structure. Architectural, engineering and planning consultant fees Planning Division Fees & Building Department fees G&A, property tax, insurance, utilities | 891,606 | 700,000 77,103 | 24,578 69,509 509 | 19,907 |
| 2018 ACQUISITION ENTITLEMENT | EMERGENCY REPAIR. Shoring, bracing, cribbing towers. Demolition and removal of pre-Portland cement concrete rubble, the only structure in the house. Demo of red-tagged structure. Architectural, engineering and planning consultant fees Planning Division Fees & Building Department fees G&A, property tax, insurance, utilities | 245,506 | 28,683 | 162,206 | 11,106 43,511 |
| 2019 ACQUISITION ENTITLEMENT | Acquisition of the property EMERGENCY REPAIR. Shoring, bracing, cribbing towers. Demolition and removal of pre-Portland cement concrete rubble, the only structure in the house. Demo of red-tagged structure. Architectural, engineering and planning consultant fees Planning Division Fees & Building Department fees G&A, property tax, insurance, utilities | 216,457 | 13,904 | 144,908 12,691 | 44,954 |
| 2020 (YTD+projected) ENTITLEMENT REHABILITATION & PRINCIPAL CONSTRUCTION | Architectural, engineering and planning consultant fees. Planning Division & Building Department Fees Rehabilitation per the "Course of Action" described by Architect and Reviewed by Architectural Historian and CHC. Repair the historic siding, windows, cornice etc. Rebuild the historic balcony and porch from surviving and salvaged elements. Site clearance, debris, abandoned materials. Tree removal. Grading. Excavation of basement and new foundation under the Villa. Trenching and undergrounding of new utilities – electric, gas, water, communication, and sewer. Operations Manual specifying CAPEX & OPEX requirements | 896,683 | 750,000 | 120,000 26,683 | |
| 2021 PRINCIPAL REHABILITATION PRINCIPAL CONSTRUCTION OCCUPANCY 4Q2021 | Architectural, engineering and planning consultant fees. Building Department Permit Fees Rehabilitation of historic elements. Reinstall salvaged elements. Rebuild balcony from original baluster forms. Build the frame for the interior walls, floors, ceilings, rehab'd and new windows and doors. Install floors and ceilings. Install equipment and fixtures including new plumbing, electrical and HVAC & HEPA filters & HEPA filters, fire, and final interior finishings. Install bioswales per Napa requirements, drivable lawn (or DG) with ADA parking. Complete fences, curbs and gutters, hardscape and landscape. Complete offsite work, road and sidewalk repair associated with new utility and stormwater drain installs. | 2,739,000 | 2,600,000 | 80,000 35,000 | 24,000 |
| 2022 1ST FULL YEAR OF OPERATION | Capital expense (CAPEX) + arch/eng + bldg dept fee to cover repair and upgrade of fixtures, and equipment. Upgrade Tech. Inspection of historic elements. Scheduled quarterly and annually. Ongoing Operating Expense (OPEX) budget to cover all the Repairs & Maintenance associated with operating a 4-star B&B, i.e. carpentry, plumbing, electrical, HVAC & HEPA filters & HEPA filters, utilities and grounds. Budget for combination of daily, weekly, monthly and quarterly in detailed budget, and as-needed. | 160,000 | 60,000 | 4,000 | 96,000 |
| 2023 NORMAL R&M | Capital expense (CAPEX) + arch/eng + bldg dept fee to cover repair and upgrade of fixtures, and equipment. Upgrade Tech. Inspection of historic elements. Scheduled quarterly and annually. Installation of passive solar hot water heating. Includes arch, engineering & permits fees. Operating expense (OPEX) budget to cover all the Repairs & Maintenance associated with operating a 4-star B&B, i.e. carpentry, plumbing, electrical, HVAC & HEPA filters & HEPA filters, utilities and grounds. Scheduled daily, weekly, monthly. | 190,000 | 60,000 30,000 - | 4,000 - - | 96,000 |
| 2024 SCHEDULED 3RD-YEAR- REPAIR & REMODEL. SHUT DOWN 1-2 WEEKS | Capital expense (CAPEX) + arch/eng + bldg dept fee to cover repair and upgrade of fixtures, and equipment. Upgrade Tech. Inspection of historic elements. Scheduled quarterly and annually. Major upgrade to include HVAC & HEPA filters & HEPA filters, hydronics, kitchen equipment, window and door weatherstripping, floor refinishing and carpeting. Exterior repairs. Special attention to historic elements. Includes arch, engineering & permits fees. Operating expense (OPEX) budget to cover all the Repairs & Maintenance associated with operating a 4-star B&B, i.e. carpentry, plumbing, electrical, HVAC & HEPA filters & HEPA filters, utilities and grounds. Scheduled daily, weekly, monthly. | 216,000 | 60,000 50,000 | 10,000 | 96,000 |
| 2025 NORMAL R&M | CAPEX OPEX | 160,000 | 60,000 | 4,000 | 96,000 |
| 2026 MAJOR RENOVATION. SHUT DOWN 2-4 WEEKS SCHEDULED 5TH-YEAR | CAPEX OPEX | 216,000 | 60,000 50,000 | 10,000 | 96,000 |
| 2027 NORMAL R&M | CAPEX OPEX | 160,000 | 60,000 | 4,000 | 96,000 |
| 2028 SCHEDULED 7TH-YEAR -- REPAIR & REMODEL | CAPEX OPEX | 216,000 | 60,000 50,000 | 10,000 | 96,000 |
| 2029 NORMAL R&M | CAPEX OPEX | 160,000 | 60,000 | 4,000 | 96,000 |
| 13-year Total, including Acquisition & Emergency Repair, Mach 2017-Dec 2019 | | 6,467,252 | 4,829,690 | 726,084 | 911,478 |
| 10-year Total, 2020-2030) (after City Council approval in June 2020) | | 5,113,683 | 4,010,000 | 311,683 | 792,000 |

| | |
|-------|---|
| CAPEX | Capital expense (CAPEX) + arch/eng + bldg dept fee to cover repair and upgrade of fixtures, and equipment. Upgrade Tech. Inspection of historic elements. Life/safety inspections and upgrades. Scheduled quarterly and annually. |
| OPEX | Operating expense (OPEX) budget to cover all the Repairs & Maintenance associated with operating a 4-star B&B, i.e. carpentry, plumbing, electrical, HVAC & HEPA filters & HEPA filters, utilities and grounds. Scheduled daily, weekly, monthly. |