

RESOLUTION NO. 2012-XXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA
APPROVING A REIMBURSEMENT AGREEMENT WITH
PALISADES-CALISTOGA RESORT, L.P.**

THE CITY COUNCIL OF THE CITY OF CALISTOGA RESOLVES AS FOLLOWS:

Section 1. Findings. The City Council finds as follows:

A. Palisades-Calistoga Resort, L.P. ("Developer") owns or has legal interest in certain real property located in the City of Calistoga commonly known as the "Solage Calistoga" ("Developer's Property").

B. In 2004, the City approved Developer's application for a minor subdivision and two Conditional Use Permits (CUP U 2003-11 and U 2004-16) pursuant to City Council Resolutions Nos. 2004-108 and 2004-109 in order to develop a resort and affordable housing project (collectively, the "Development") on Developer's Property.

C. The City also approved a development agreement between the City and Developer for the Development dated December 21, 2004 (Recorded as Doc. No. 2005-0004842) pursuant to City Ordinance No. 615 ("Development Agreement").

D. Under Section 66485 of the Subdivision Map Act (Government Code section 66410 and following), Calistoga Municipal Code sections 13.04.300, 13.08.270, and 16.14.100, the City's general police power, and the Development Agreement, the City was authorized to require that improvements installed to serve the Development contain supplemental size, capacity, number, or length for the benefit of property not within the Development, and that such improvements be dedicated to the public.

E. The City's approval of the Development and Development Agreement included conditions that Developer provide excess size, capacity, number, and length for certain storm drain, sewer and water improvements that will primarily serve property not within the Development (collectively, the "Supplemental Capacity Improvements" and individually, as the "Drainage Improvements," "Sewer Improvements" and "Water Improvements").

F. Developer designed and installed all Supplemental Capacity Improvements and the City accepted the Supplemental Capacity Improvements on January 18, 2011, pursuant to City Resolution No. 2011-003.

G. As authorized by Sections 66486 and 66487 of the Subdivision Map Act and Calistoga Municipal Code sections 16.14.100, 13.04.300, and 13.08.270, and as provided in Section 8.3(d) of the Development Agreement, the City and Developer have prepared and desire to enter into a reimbursement agreement ("Reimbursement Agreement") in order to provide a mechanism for Developer to obtain reimbursement from certain properties that may be further developed in the vicinity of Developer's Property, and if so

37 developed will benefit from the Supplemental Capacity Improvements (“Benefited
38 Properties”).

39 H. As set forth in Exhibit F of the proposed Reimbursement Agreement, the City
40 has identified the areas of benefit for the applicable Supplemental Capacity Improvements
41 and the applicable Benefited Properties within such areas, which areas, in accordance with
42 Section 66487 of the Subdivision Map Act, are hereafter referred to as “Local Benefit
43 Districts.”

44 I. As set forth in Exhibit E of the proposed Reimbursement Agreement, the City
45 has also caused to be prepared a report describing the methodology used to allocate a
46 proportionate share of the applicable reimbursement costs for the Supplemental Capacity
47 Improvements (“Reimbursement Costs”) among the Benefited Properties in each Local
48 Benefit District

49 J. Under the Mitigation Fee Act (Government Code section 66000 and
50 following), the City’s imposition of the Reimbursement Costs in connection with approval of
51 a development project for the purpose of defraying all or a portion of the cost of certain
52 public facilities related to the development project may be considered a development
53 impact “fee” and not a “tax” or “special assessment.” As such, the City’s adoption of the
54 proposed Reimbursement Agreement is not subject to the procedures applicable to the
55 adoption of a “tax” or “special assessment” including the procedures of Proposition 218
56 (California Constitution articles XIII C and XIII D) and Proposition 26 (California Constitution
57 articles XIII A and XIII C) . In addition, under Government Code section 66003, because the
58 Reimbursement Costs are being imposed as a condition of approval for certain new
59 development pursuant to the Reimbursement Agreement in order to reimburse Developer
60 for the portion of the cost of the Supplemental Capacity Improvements that exceeded the
61 need for such public facilities attributable to and reasonably related to the Development, the
62 City’s approval of the Reimbursement Agreement and the determination and imposition of
63 the Reimbursements Costs are also not subject to the procedural or substantive
64 requirements of Government Code sections 66001 and 66002.

65 K. In August, 2011, the City sent written notice to the owners of the Benefited
66 Properties regarding the proposed Reimbursement Agreement and the inclusion of their
67 respective property within one or more Local Benefit Districts, as well as the proposed
68 proportionate share of the applicable Reimbursement Costs for each Benefited Property.

69 L. On August 30, 2011, the City held a public information meeting to review the
70 proposed Local Benefit Districts and the Reimbursement Costs with the owners of the
71 Benefited Properties.

72 M. On or about October 26, 2011, the City mailed additional background
73 information regarding the terms of the proposed Reimbursement Agreement, the Local
74 Benefit Districts and the Reimbursement Costs to the owners of the Benefited Properties.

75 N. On January 24, 2012, the City Council held a study session to review the
76 proposed terms of the Reimbursement Agreement, the Local Benefit Districts and the
77 Reimbursement Costs, and to allow for public comment.

78 O. On February 7, 2012, the City Council held a duly noticed public hearing to
79 review the proposed terms of the Reimbursement Agreement, the Local Benefit Districts
80 and the Reimbursement Costs, and provided an opportunity for public comment.

81 P. On March 6, 2012, the City Council held a continued public hearing and
82 considered the proposed Reimbursement Agreement, the Local Benefit Districts and the
83 Reimbursement Costs, and provided a further opportunity for public comment.

84 Q. The City Council, having duly received and considered oral and documentary
85 evidence concerning the proposed Reimbursement Agreement and the Local Benefit
86 Districts and the Reimbursement Costs to be established under such Reimbursement
87 Agreement desires to approve the Reimbursement Agreement, establish the Local Benefit
88 Districts, and impose the Reimbursement Costs as a condition of development on the
89 Benefited Properties in accordance with the terms of the Reimbursement Agreement.

90 R. The adoption of this Resolution is not subject to the California Environmental
91 Quality Act (CEQA) under Public Resources Code Section 21080(b)(9) and Section
92 15378(b)(4) of the State CEQA Guidelines, because it involves a government funding
93 mechanism and does not involve any commitment to any specific project that may result in
94 a potentially significant physical impact on the environment, and therefore the adoption of
95 this Resolution is not a "project" as such term is defined under CEQA.

96 **Section 2.** Approval of the Reimbursement Agreement. The City Council hereby:
97 (a) approves the Reimbursement Agreement attached to this Resolution as Exhibit A; (b)
98 establishes a Local Benefit District for the Drainage Improvements, Sewer Improvements
99 and Water Improvements in the applicable areas described and depicted in the
100 Reimbursement Agreement; and (c) imposes the Reimbursement Costs as a condition of
101 development on the Benefited Properties in the applicable Local Benefit Districts in
102 accordance with the terms of the Reimbursement Agreement.
103

104 **Section 3.** Further Actions. The City Manager is hereby authorized to execute the
105 Reimbursement Agreement, subject to any minor, technical, or clarifying changes that may
106 be approved by the City Attorney, and to cause the Reimbursement Agreement to be
107 recorded in the Office of the County Recorder.
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109 **PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga
110 at a regular meeting held this **6th day of March, 2012**, by the following vote:

111
112 **AYES:**
113 **NOES:**
114 **ABSENT/ABSTAIN:**
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JACK GINGLES, Mayor

118 **ATTEST:**

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AMANDA DAVIS, Deputy City Clerk
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