RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Calistoga
1232 Washington Street
Calistoga, CA 94515
Attention: City Clerk

Space Above This Line Reserved for Recorder's Use
Exempt from Recording Fee Per Government Code Section 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF CALISTOGA

AND

SILVER ROSE VENTURE, LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of the ___ day of _____ 2012, by and between Silver Rose Venture, LLC, a _____ limited liability company ("**Developer**"), and the CITY OF CALISTOGA, a California municipal corporation ("**City**"). City and Developer are sometimes referred to herein as a "**Party**" and collectively as "**Parties.**"

RECITALS

A. 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 enacted California Government Code § 65864 et seq. ("**Development Agreement Statute**"), which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. Pursuant to California Government Code §65865, City has adopted procedures and requirements for the consideration of development agreements (City Municipal Code Chapter 17.39). This Agreement has been processed, considered and executed in accordance with such procedures and requirements.

C. Developer is the fee simple owner of that certain real property consisting of approximately 22.5 acres located between Rosedale Road and Silverado Trail, which is depicted on the Site Map attached hereto as Exhibit A, and legally described in Exhibit B attached hereto and referred to herein as the "**Property**."

D. Developer proposes to develop on the Property a hotel with approximately 85 guestrooms ("**Resort**"), approximately 21 single-family homes and a restaurant, spa and fitness center, a winery, as well as other amenities and infrastructure, including on- and off-site public improvements ("**Project**"), consistent with the City's 2000 General Plan, as amended through the Effective Date ("**General Plan**").

E. Concurrently with approval of this Agreement, City is taking numerous actions in connection with the development of the Project on the Property. These include:

- Mitigated Negative Declaration and Mitigation Monitoring Plan, adopted by City Council Resolution No.____ on _____, 2012;
- Rezoning to Planned Development District, RZ ___, adopted by City Council Ordinance No. ____ on _____, 2012;
- Tentative Subdivision Map, TSM ___, adopted by City Council Resolution No._____ on _____, 2012;
- Conditional Use Permit, U __, adopted by City Council Resolution No._____ on _____, 2012; and

- Design Review, DR ___, adopted by City Council Resolution No._____ on _____, 2012.

The approvals and development policies described in this Recital E are collectively referred to herein as the "**Existing Project Approvals.**"

F. Subsequent to approval of this Agreement, City anticipates that applications for additional land use approvals, entitlements, and permits will be submitted to implement and operate the Project (the "**Subsequent Project Approvals**").

G. This Agreement furthers the public health, safety and general welfare in that the provisions of this Agreement are consistent with the General Plan. For the reasons recited herein, City and Developer have further determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Existing Project Approvals and Subsequent Project Approvals, thereby encouraging planning for, investment in and commitment to use and development of the Property. Continued use and development of the Property in accordance with this Agreement is anticipated to, in turn, provide substantial benefits to City and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Statute was enacted.

H. The Parties intend through this Agreement to allow the Developer to develop and operate the Project in accordance with the Existing Project Approvals and the Applicable Law (as defined below), and that any Subsequent Project Approvals and the imposition of any new impact fees, other fees, or monetary and non-monetary exactions should be governed by the terms of this Agreement.

I. The City Council has found that this Agreement is consistent with the General Plan and has conducted all necessary proceedings in accordance with the City's rules and regulations for the approval of this Agreement.

J. On _____, 2012, the City Council, at a duly noticed public hearing, adopted Ordinance No. _____, approving and authorizing the execution of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 EFFECTIVE DATE AND TERM

Section 1.1 Effective Date. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective ("**Effective Date**").

Section 1.2 Term. The "**Term**" of this Agreement shall be the Initial Term together with any Extended Term(s). In no event shall the Term, as may be extended, exceed 10 years.

Section 1.3 Initial Term. The Term of this Agreement shall commence upon the Effective Date and shall extend for a period of five years thereafter ("**Initial Term**"). The Initial Term has been established by the Parties as a reasonable estimate of the time required to develop the Project, including all on- and off-site public improvements, and obtain the public benefits of the Project.

Section 1.4 Extended Term. Provided neither City nor Developer has terminated this Agreement, City and Developer agree that it may be mutually desirable for the Initial Term to be extended. Accordingly, Developer may request in writing that City extend the Initial Term of this Agreement for up to five additional one year periods ("**Extended Term**"). Such written request may be delivered to City not earlier than two hundred seventy (270) days nor later than sixty (60) days prior to the termination date of the Initial Term.

Section 1.5 City Review of Request for Extended Term. Upon receipt of such request, City, through its City Manager, may agree to extend the Term. City shall not unreasonably withhold its agreement to extend the Term. If the Initial Term of this Agreement is extended in accordance with the provisions of this Section 1.5, City shall record an instrument giving notice of the Extended Term.

Section 1.6 Termination Following Expiration. Following the expiration of the Term, or the earlier completion of development of the Project and all of Developer's obligations in connection therewith, this Agreement shall be deemed terminated and of no further force and effect, except as expressly provided herein.

Section 1.7 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date, Developer is the sole fee simple owner of the Property, and that no other person or entity holds any legal or equitable interests in the Property. Developer and its members each further represent and warrant that:

1.7.1 As of the Effective Date, Developer: (i) is organized and validly existing under the laws of the State of Delaware; (ii) has qualified and been authorized to do business in the State of California and has complied with all requirements pertaining thereto; (iii) is in good standing and has all necessary powers under the laws of the State of California to own property and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement; and (iv) is not in default with respect to payment of any general or special property taxes or assessments or other property based fees allocable to the Property.

1.7.2 No approvals or consents of any persons are necessary for the execution, delivery or performance of this Agreement by Developer and its members and managers, except as have been obtained;

1.7.3 The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary limited liability company action and all necessary limited liability company approvals have been obtained; and

1.7.4 As of the Effective Date, this Agreement is a valid obligation of Developer and is enforceable in accordance with its terms and this Agreement shall remain a valid obligation of Developer and enforceable, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws of general applicability affecting the rights of creditors and by general equitable principles.

ARTICLE 2 DEVELOPMENT OF PROPERTY

Section 2.1 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. All development of or on the Property, or any portion thereof, shall be undertaken only in compliance with the Existing Project Approvals, Subsequent Project Approvals, Applicable Law and the provisions of this Agreement. Developer shall have a vested right to develop the Property in accordance with the Existing Project Approvals, the Subsequent Project Approvals, Applicable Law and this Agreement. The Project shall be subject to all Subsequent Project Approvals (which, upon final approval, shall be deemed part of the Existing Project Approvals hereunder). The Existing Project Approvals and the Subsequent Project Approvals are sometimes hereinafter referred to as the "**Project Approvals**". The Project Approvals set forth the permitted uses, density and intensity of use and maximum height and size of buildings, as incorporated herein by this reference.

Section 2.2 Applicable Law. Except as expressly set forth herein, the rules, regulations, official policies, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals and this Agreement, and, with respect to matters not addressed by these documents, those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions), to the extent not inconsistent with the Project Approvals, governing permitted uses, building locations, timing of construction, densities, design, heights, fees, and exactions in force and effect on the Effective Date ("**Applicable Law**").

Section 2.3 Development Timing. The Parties acknowledge that Developer cannot at this time predict when or the rate at which the phases of the Project will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, construction financing, interest rates, absorption, completion and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that, unless otherwise provided for in this Agreement, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment, subject to the terms, requirements and conditions of the Existing Project Approvals and this Agreement. Developer will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement and the Existing Project Approvals.

Section 2.4 Reservations of Authority.

2.4.1 The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed to reserve to City all such power and authority which cannot be restricted by contract. Notwithstanding the foregoing reservation of City, it is the intent of City and Developer that this Agreement shall be construed to provide Developer with the maximum rights affordable by law, including but not limited to, the Development Agreement Statute and the Subdivision Map Act, except as expressly provided elsewhere in this Agreement.

2.4.2 Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Property:

(a) Processing fees and charges of every kind and nature imposed by City to cover the actual costs to City of processing applications for Project Approvals or for monitoring compliance with any Project Approvals granted or issued, as such fees and charges are adjusted from time to time, but only if such fees and charges are validly imposed within the jurisdiction of the City and generally apply to all substantially similar applications or projects within the City.

(b) Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties.

(c) Regulations governing construction standards and specifications including, without limitation, the City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in City at the time of permit application.

(d) New City ordinances or resolutions which may be in conflict with this Agreement or the Project Approvals but which are necessary to protect the public health and safety, provided such new City Laws are validly adopted and imposed and are uniformly applied on a city-wide basis.

(e) New City ordinances or resolutions applicable to the Property, which do not conflict with this Agreement or the Project Approvals, provided such new City Laws are validly adopted and imposed, are uniformly applied on a city-wide basis and do not have a disproportionate effect on the Property or Project compared to other similar properties and projects within the City.

Section 2.5 Regulation by Other Public Agencies. City and Developer acknowledge and agree that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Developer shall, at the

time required by Developer in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. Developer shall also pay all required fees when due to such public agencies. Developer acknowledges that City does not control the amount of any such fees. City shall cooperate with Developer in Developer's effort to obtain such permits and approvals; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith.

Section 2.6 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals.

Section 2.7 Vesting Tentative Maps. If any tentative map heretofore or hereafter approved in connection with development of the Property is a vesting map under the Subdivision Map Act, Government Code §§ 66410 *et seq*. ("**Subdivision Map Act**"), and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to Developer for development of the Project, then and to that extent all rights and protections afforded Developer under the laws and ordinances applicable to vesting maps shall survive. Any tentative map prepared for the Property will comply with the requirements of Government Code Section 66473.7 and shall include a condition that sufficient water supply is available to serve the subdivision created by such map.

Section 2.8 Developer's Right to Rebuild. City agrees that Developer may renovate or rebuild portions of the Project at any time within the Term of this Agreement should it become necessary due to natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA. Except as and to the extent required by State or Federal law; or as may be reasonably necessary to comply with requirements of, and/or pass through rate and/or connection fee increases established by, other local governmental agencies ("**Other Local Agency Compliance Fees**"); or as otherwise provided in this Agreement, City shall not impose on the Project any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure (each, individually, a "**City Law**") that is in conflict with the Applicable Law, this Agreement or the Project Approvals or that reduces the development rights or assurances provided by this Agreement.

Section 2.9 Initiatives and Referenda. If any City Law is enacted or imposed by a citizen-sponsored initiative or referendum or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with the Project Approvals, Applicable Law or this Agreement or reduce the development rights or assurances provided by this Agreement, such City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project.

Section 2.10 State and Federal Law. As provided in section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than the City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one (1) or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and Developer shall agree to such action as may be reasonably required. This Agreement and the Project Approvals shall remain in full force and effect unless and until amended in accordance with the requirements of this Agreement, and, in any event, this Agreement and the Project Approvals shall remain in full force and effect to the extent the same are not inconsistent with such laws or regulations. Nothing in this Agreement shall preclude City or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project any such Changes in the Law. Notwithstanding the foregoing, if Changes in the Law preclude or substantially limit or delay performance in a manner that makes the Project economically infeasible, the Party adversely affected, in its sole and absolute discretion, may terminate this Agreement by providing written notice of such termination to the other Party.

ARTICLE 3 FINANCING AND PUBLIC IMPROVEMENTS

Section 3.1 Public Improvements. Developer shall reserve and dedicate land for and shall construct all public improvements in accordance with the Project Approvals. Developer shall construct all off-site improvements required by the Project Approvals without reimbursement of any kind, including, but not limited to, a reimbursement agreement or a local benefit district. All off site improvements, once inspected and approved by the City, shall become the property of the City and will be maintained by City.

Section 3.2 Taxes, Assessments, Fees and Exactions.

3.2.1 City may impose and Developer agrees to pay any new, increased or modified taxes, assessments, impact fees, other fees or other monetary and non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Ministerial Approval or Subsequent Discretionary Approval or otherwise, in accordance with the laws then in effect, but only if such taxes, assessments, fees or other monetary and non-monetary exactions are equally imposed and have a uniform and proportionate effect on a broadly based class of land, projects or taxpayers, as applicable, within the jurisdiction of the City.

3.2.2 City may charge and Developer agrees to pay all processing fees, including application and inspection and monitoring fees ("**Processing Fees**"), for land use approvals, grading and building permits, general plan maintenance fees, and other permits and entitlements, which are in force and effect on a City-wide basis and are validly imposed within the jurisdiction of the City and generally apply to all substantially similar applications or projects within the City at the time those permits, approvals or entitlements are applied for on any or all

portions of the Project, and which are intended to cover the actual costs of processing the foregoing.

3.2.3 Developer shall pay the development impact fees in the amount and at the time set forth in Exhibit C, attached hereto and incorporated herein by reference.

3.2.4 City may charge and Developer agrees to pay the City fees related to water and sewer, as set forth in Article 4.

3.2.5 City may charge and Developer agrees to pay any new, increased or modified taxes or assessments, impact fees or other monetary and non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, within the jurisdiction of the City and are reasonably necessary to comply with the requirements of any Federal or State statute or regulation which is enacted or adopted after the Effective Date of this Agreement ("**Federal/State Compliance Fees**").

3.2.6 In addition to charging the foregoing Processing Fees, City may, in its reasonable discretion, contract with one or more outside inspectors, engineers or consultants to perform all or any portion of the monitoring, inspection, testing and evaluation services to be performed in connection with construction and development of the Project ("**Consultant Fees**"). Developer shall pay to City, within thirty (30) days following City's written demand therefor, the full amount of all Consultant Fees, plus a ten percent (10%) City administration charge. The Consultant Fees, together with the associated administrative charge, shall be in addition to, and not in lieu of, the Processing Fees; provided, however, City agrees not to double-charge Developer (through the imposition of both a Processing Fee and Consultant Fee) for any individual monitoring, inspection, testing or evaluation service.

3.2.7 City may engage one or more outside architectural firms to review and evaluate Developer's architectural plans and drawings for the Project, to ensure that the Project complies with the approved architectural guidelines, and to advise City and the Planning Commission in connection with design review. City shall cooperate with Developer in establishing a scope of work and budget(s) for said architectural firm(s), however the final scope shall be at the City's reasonable discretion. City agrees that the scope of work to be undertaken by the firm(s) shall be reasonable in light of the size, type and complexity of the Project. Developer shall pay to City, within thirty (30) days following City's written demand therefor, the full amount of all costs and fees charged by such outside architects ("**Architect Fees**"), plus a ten percent (10%) City administration charge. In addition, Developer shall pay to City the actual cost of all City staff time incurred in connection with the review of Developer's architectural plans and drawings.

3.2.8 City shall provide an estimated budget for the amounts set forth in Sections 3.2.6 and 3.2.7 above, to Developer for review and comment as soon as practicable prior to incurring costs.

ARTICLE 4 WATER ALLOCATIONS

Section 4.1 Allocation of Water and Wastewater Services. City hereby agrees that the Project shall be and hereby is deemed to be exempt from the City Growth Management System

pursuant to Section 19.020.050 F and that the water and sewer service allocations set forth herein are hereby made to the Project. City agrees that unless prohibited by a moratorium lawfully adopted by another governmental agency, or by action taken by the City in accordance with this Agreement, no change in Existing Rules shall reduce or eliminate these allocations.

Section 4.2 Will-Serve Obligation. The allocations of water and wastewater capacity set forth herein shall constitute the "will serve" obligation of City with respect to the Project. This "will serve" obligation of City is vested by this Development Agreement. The water and waste water allocations set forth herein shall constitute the "Baseline" for the Project, as that term is defined in the Resource Management System of City's Municipal Code and any additional allocations shall be subject to the laws and regulations described herein. This provision shall supersede any conflicting City codes or regulations in effect as of the Effective Date.

Section 4.3 Domestic and Emergency Potable Water. City agrees to provide the Project an annual allocation of 37.04 acre feet of domestic and emergency potable water as defined under the Resource Management Services Code to service all Project uses. Developer shall place a reservation in the form of a surety bond for an additional five acre feet that may be provided under the City's Resource Management System, as provided herein. The surety bond will be released by City if the Developer waives its right to the reservation in writing. Developer shall pay a connection fee of $1,242.544.00 for the annual allocation of 37.04 acre feet ("**Water Service Connection Fee**") as provided in Exhibit C.

4.3.1 Three years from date of occupancy of the hotel described in the Project Approvals ("**Resort Occupancy**"), City and Developer shall review the Project's actual annual demand on water supplies against the projected demand of 37.04 acre feet and adjust as follows:

(a) If the Project's actual annual demand averaged over the three years of operation from Resort Occupancy, adjusted to account for the eventual stable occupancy rate of the Project, exceeds the 37.04 acre ft allocation, Developer shall pay to City the differential connection fees due at the generally applicable fee schedule in effect at the time, up to an additional five acre feet and City shall increase the Project's allocation of water supply to the level of actual annual demand. Example: If after three (3) years of full Resort Project operations the project is using 42.04 acre ft of water, project will pay City 5 acre feet x $38,463 (estimated cost per acre foot in three years) = $192,315 in additional allocations. If additional connection fees are paid, the water supply baseline will be increased accordingly

(b) If the Project's actual annual demand over the three years of operation from Resort Occupancy, adjusted to account for the eventual stable occupancy rate of the Project, is less than, the 37.04 acre ft allocation, if requested, the Developer will receive a rebate from the City in the amount of the connection fee rate that was originally paid that is below the original allocation. Example: If after three (3) years of operations the project is using 32.04 acre feet of water, the City will refund the Developer 5 x $33,546= $167,730. If connection fees are repaid, the water supply baseline will be decreased accordingly.

4.3.2 Prior to the three-year review described in section 4.3.1 above, the Project may not purchase additional domestic and emergency potable water allocation. The reserved five acre feet may be purchased only as set forth in section 4.3.1 at the three-year period. After the three-year review, and as necessary, Developer may apply for additional domestic and emergency potable water allocation beyond the five acre feet described in Section 4.3.1(a), and such amounts may be approved as provided under the terms of the City's Growth Management System.

Section 4.4 Wastewater. City agrees to provide the Project an annual allocation of 40.65 acre feet of wastewater service as defined under the Resource Management Services Code to service all Project uses. Developer shall place a reservation in the form of a surety bond for an additional five acre feet that may be provided under the City's Resource Management System, as provided herein. The surety bond will be released by City if the Developer waives its right to the reservation in writing. Developer shall pay a connection fee of $3,981,342.00 for the 40.65 acre feet ("**Wastewater Service Connection Fee**") to City as provided in Exhibit C.

4.4.1 Three years from date of occupancy of the hotel described in the Project Approvals ("**Resort Occupancy**"), City and Developer shall review the Project's actual annual demand on wastewater service demand against the projected demand of 40.65 acre feet and adjust as follows:

(a) If the Project's actual annual demand averaged over the three years of operation from Resort Occupancy, adjusted to account for the eventual stable occupancy rate of the Project, exceeds the 40.65 acre ft allocation, as reasonably determined by City, Developer shall pay to City the differential connection fees due at the generally applicable fee schedule in effect at the time, up to an additional five acre feet and City shall increase the Project's allocation of wastewater supply to the level of actual annual demand. If additional connection fees are paid, the wastewater service baseline will be increased accordingly.

(b) If the Project's actual annual demand over the three years of operation from Resort Occupancy, adjusted to account for the eventual stable occupancy rate of the Project, is less than, the 40.65 acre ft allocation, as reasonably determined by City, if requested, the Developer will receive a rebate from the City in the amount of the connection fee rate that was originally paid that is below the original allocation. Example: If after three (3) years of operations the project is using 36.65 acre feet of wastewater service demand, the City will refund the Developer 4 x $97,942= $391,768. If connection fees are repaid, the wastewater service demand baseline will be decreased accordingly

4.4.2 Prior to the three-year review described in section 4.4.1 above, the Project may not purchase additional wastewater allocation. The reserved five acre feet may be purchased only as set forth in section 4.4.1 at the three-year period. After the three-year review, and as necessary, Developer may apply for additional wastewater allocation beyond the five acre feet described in Section 4.4.1(a), and such amounts may be approved as provided under the terms of the City's Growth Management System.

ARTICLE 5 DEVELOPMENT STANDARDS AND REQUIREMENTS

Section 5.1 Compliance with State and Federal Law. Developer, at its sole cost and expense, shall comply with requirements of, and obtain all permits and approvals required by, regional, State and Federal agencies having jurisdiction over the Project.

Section 5.2 Operational Requirements. Prior to issuance of a building permit for the Resort, Developer and City shall enter into an Operational Agreement to be recorded against the Property, in a form to be approved by City, which sets forth the following requirements:

5.2.1 Construction and operation of the Resort must meet the definition of a "Luxury Resort" and quality standards as recognized by Smith Travel Research or comparable industry recognized service;

5.2.2 The operator of the Resort (**"Managing Entity"**) must have at least three years' experience operating a "Luxury Resort";

5.2.3 Selected operator must meet the City's requirements for the Formula Visitor Accommodations ordinance;

5.2.4 Transient lodging use of single family dwellings shall be managed by the Managing Entity, the Homeowners Association for the single-family development (**"HOA"**) or an entity hired and approved by the HOA and the name and contact information of the manager is provided to the City;

5.2.5 Transient Occupancy Tax (TOT) shall be paid by the Managing Entity for any short term transit uses for each of the single family dwellings; and

5.2.6 Developer agrees to provide on a first come-first serve basis, to the City and city recognized service clubs a fifty percent (50%) discount from the then standard rental fees for meeting/banquet facilities for a period of fifteen (15) years from date of issuance of certificate of occupancy for the Project.

Section 5.3 Sale Tax Point of Sale Designation. Developer shall use good faith efforts to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to designate City as the sole point-of-sale for purposes of computing sales taxes due under the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Taxation Code sections 7200 *et seq*. and implementing regulations) on the sale of such bulk construction and building materials and components.

ARTICLE 6 MORTGAGEE PROTECTION

Section 6.1 Mortgagee 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 ("**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, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, eviction or otherwise.

Section 6.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 6.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by the Agreement, or otherwise under the Project Approvals.

Section 6.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City agrees to use its best efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default, and if City makes a determination of noncompliance hereunder, City shall likewise use its best efforts to serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice. If a Mortgagee shall be required to obtain possession in order to cure any default, then vis-à-vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from the City's notice.

ARTICLE 7 COOPERATION AND IMPLEMENTATION

Section 7.1 Subsequent Project Approvals. Developer and City acknowledge and agree that Developer intends to submit applications for Subsequent Project Approvals, including both Subsequent Ministerial Approvals and Subsequent Discretionary Approvals. In connection with any Subsequent Project Approval, the City shall exercise its discretion in accordance with Applicable Law, the Project Approvals and, as provided by this Agreement, including the reservations of authority set forth in Section 2.4. Notwithstanding the foregoing, City shall not deny or unreasonably delay any Subsequent Project Approval that is necessary or desirable to the exercise of the rights vested in Developer by this Agreement, including, but not limited to, construction, occupancy and use of the vested development. Any conditions, terms, restrictions and requirements for subsequent discretionary actions imposed or required by City, including those provided for herein, shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

7.1.1 Subsequent Ministerial Approvals ("**Subsequent Ministerial Approvals**") are permits or approvals that are required by Applicable Law and that are to be issued upon compliance with uniform, objective standards and regulations. They include

applications for road construction permits or authorizations; grading and excavation permits; building permits, including electrical, plumbing, mechanical, Title 24 Electrical, and Title 24 Handicap permits or approvals; certificates of occupancy; encroachment permits; water connection permits; and any other similar permits required for the development and operation of the Project.

7.1.2 All other Subsequent Project Approvals, including amendments of the Project Approvals, site development plan approvals, improvement agreements, architectural review permits, use permits, lot line adjustments, subdivision maps, preliminary and final development plans, rezonings, development agreements, permits that are not Subsequent Ministerial Approvals, resubdivisions, and any amendments to, or repealing of, any of the foregoing, are Subsequent Discretionary Approvals ("**Subsequent Discretionary Approvals**").

Section 7.2 Cooperation in the Event of Legal Challenge. City and Developer, at Developer's sole cost and expense, shall cooperate in the event of any court action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, any Existing Project Approvals or any Subsequent Project Approvals and City shall, upon request of Developer, appear in the action and defend its decision, except that City shall not be required to be an advocate for Developer. Developer shall indemnify, defend, with counsel reasonably acceptable to City, and hold harmless City and its officials and employees from and against any and all claims, costs, liabilities and damages (including attorneys fees and costs) in connection with any such action. Further, Developer shall reimburse City, within ten (10) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all costs incurred by City in connection with the litigation challenge, including City's legal costs incurred by City's City Attorney. Nothing herein shall authorize Developer to settle such legal challenge on terms that would constitute an amendment or modification of this Agreement, any Existing Project Approvals or any Subsequent Project Approvals, unless such amendment or modification is approved by City in accordance with applicable legal requirements, and City reserves its full legislative discretion with respect thereto. Developer, as the real party in interest, shall defend, indemnify and hold harmless the City, with legal counsel reasonably acceptable to the City Attorney, in any action brought by a third party to challenge this Agreement, or any Project Approval, including the related environmental review. The parties shall cooperate fully in the defense of any such action.

ARTICLE 8 ASSIGNMENT, TRANSFER AND NOTICE

Section 8.1 No Amendment Required. No sale, transfer or assignment of all or a portion of the Property, or creation of a joint venture or partnership, shall require the amendment of this Agreement.

Section 8.2 Assignment.

8.2.1 Because of the necessity to coordinate development of the entirety of the Property pursuant to plans for the Project, particularly with respect to the provision of on- and off-site public improvements and public services, certain restrictions on the right of Developer to assign or transfer its interest under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and

public benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set forth in this Section 8.2 as reasonable and as a material inducement to City to enter into this Agreement. For purposes of this Section 8.2, a change in the identity of all managers of Developer, (including the sale or transfer, in the aggregate, of the controlling stock or interest in all managers) shall be deemed a transfer by Developer subject to the provisions of this Section 8.2. Developer shall have the right to sell, transfer, ground lease or assign the Property in whole or in part (provided that no such partial transfer shall violate the provisions of the Subdivision Map Act) to any person, partnership, joint venture, firm, company or corporation (any of the foregoing, an "**Assignee**") subject to the written consent of City; provided that Developer may assign its rights under this Agreement without the consent of City to any corporation, limited liability company, partnership or other entity which is controlling of, controlled by, or under common control with Developer, and "control," for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other Developers of such entity ("**Affiliated Party**"). City's written consent, as required above, shall be provided by City upon Developer's satisfaction of all of the following conditions:

(a) Assignee has provided a Letter of Credit, in a form reasonably approved by City, guaranteeing the payment of any outstanding amounts due to City under this Agreement, including without limitation the fees described in Exhibit C;

(b) Developer is not in Default under this Agreement or the Assignee agrees to cure any Default;

(c) If the hotel portion of the Project and/or Property is being assigned, the Assignee has agreed to assume the rights and obligations under the Operational Agreement;

(d) Developer has provided City with written notice and an form of assignment and assumption agreement reasonably acceptable to the City Manager and City Attorney; and

(e) If applicable, Assignee provides City with security equivalent to any security previously provided by Developer to secure performance of its obligations under the Agreement.

8.2.2 Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Agreement with respect to all portions of the Property retained by Developer.

8.2.3 Subject to City's written consent as provided in Section Section 8.2, City, upon request of Developer or Assignee, and following compliance with the notification provisions above, shall provide Assignee with a certificate of agreement compliance, stating that this Agreement remains valid and in full force and effect and is binding upon City, Developer and the Assignee as of the last Annual Review pursuant to the provisions of Section 9.5, except that if City knows of any non-compliance, City shall not be required to issue a certificate of

Agreement compliance but shall provide Developer and Assignee with a written description of the known non-compliance.

Section 8.3 Release of Transferring Developer. Except with respect to a permitted transfer and assignment under Section 8.2 to an Affiliated Party or to a home purchaser as provided in Section 8.4, notwithstanding any sale, transfer or assignment of all or a portion of the Property, Developer shall continue to be obligated under this Agreement as to all or the portion of the Property so transferred unless City has consented to the assignment as provided above.

Section 8.4 Home Purchaser. The burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither an assignment and assumption agreement nor the City's consent shall be required in connection with, any single-family residence conveyed to a purchaser or leased for a period in excess of one year.

ARTICLE 9 DEFAULT; REMEDIES; TERMINATION

Section 9.1 Breach. Subject to extensions of time under Section 9.6 or by mutual consent in writing, the failure or delay by either Party to perform any term or provision of this Agreement shall constitute a breach of this Agreement. In the event of alleged breach of any terms or conditions of this Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach or default may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice ("**Cure Period**") to cure such breach, except that in the event of a breach of an obligation to make a payment, the Party in breach shall have ten (10) days to cure the breach. If the breach is of a type that cannot be cured within thirty (30) days, the breaching Party shall, within a thirty (30) day period following notice to the non-breaching Party, notify the non-breaching Party of the time it will take to cure such breach which shall be a reasonable period under the circumstances ("**Extended Cure Period**"); commence to cure such breach; and be proceeding diligently to cure such breach. Subject to the provisions of Section 9.6, the Extended Cure Period shall in no event exceed one hundred twenty (120) days unless otherwise agreed by the parties. During the Cure Period or Extended Cure Period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings; but the City's right to refuse to issue a permit or Subsequent Project Approval, under Section 9.3, shall not be limited by this provision. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party's right to allege any other breach at any other time.

Section 9.2 Default. If the breaching Party has not cured such breach within the Cure Period or the Extended Cure Period, if any, such Party shall be in default ("**Default**"), and the non-breaching Party, at its option, may terminate the Agreement, institute legal proceedings pursuant to this Agreement and shall have such remedies as are set forth in Section 9.4 below.

Section 9.3 Withholding of Permits. In the event of a Default by Developer, or following notice of breach by Developer and during the Cure Period or Extended Cure Period, upon a finding by the City that Developer is in serious and substantial breach, City shall have the right to refuse to issue any permits or other approvals to which Developer would otherwise have been entitled pursuant to this Agreement. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

Section 9.4 Remedies.

9.4.1 In the event of a Default by City or Developer, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code Section 65868 and regulations of City implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867 and City regulations implementing said section. Following consideration of the evidence presented in said review before the City Council, either Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 9.8 hereof.

9.4.2 City and Developer agree that in the event of Default by City, the Parties intend that the primary remedy for Developer shall be specific performance of this Agreement. A claim by Developer for actual monetary damages against City may only be considered if specific performance is not granted by the Court. In no event shall either party be entitled to any consequential, punitive or special damages. If City issues a Subsequent Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

9.4.3 In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with the purpose of this Agreement except as limited by Section 9.4.2. above. Any such legal action shall be brought in the Superior Court for Napa County, California.

Section 9.5 Periodic Review. The annual review date for this Agreement shall be initiated during the month of _____ of each year of the Term of this Agreement, commencing with _____, _____. Developer shall initiate the annual review by submitting a written request at least sixty (60) days prior to the Planning and Building Director. Developer shall also provide evidence as determined necessary by the Director to demonstrate good faith compliance with the provisions of this Agreement, including without limitation, a written statement on the status of obligations under the Agreement and Developer's fulfillment of such obligations and the status of construction of the Project. However, failure to initiate the annual review within thirty (30) days of receipt of written notice to do so from City shall not constitute a Default by Developer under this Agreement, unless City has provided actual notice and opportunity to cure and Developer has failed to so cure.

Section 9.6 Enforced Delay; Extension of Time of Performance. Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other Party; or acts or failures to act of any other public or governmental agency or entity

(other than the acts or failures to act of City which shall not excuse performance by City). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause but in any event shall not exceed a cumulative total of two (2) years. Developer acknowledges that adverse changes in economic conditions, either of Developer specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing or other lack of funding to complete the work of on-site and off-site improvements shall not constitute grounds of enforced delay pursuant to this Section 9.6. Developer expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

Section 9.7 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 9.7 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to by the parties to such meetings.

Section 9.8 Surviving Provisions. In the event this Agreement is terminated, neither party shall have any further rights or obligations hereunder, except for those obligations of Developer set forth in Section 7.2 (Cooperation in the Event of Legal Challenge) and Section 9.9 (Indemnity and Hold Harmless).

Section 9.9 Indemnity and Hold Harmless. Developer shall indemnify and hold City and its elected and appointed officers, agents, employees, and representatives harmless from and against any and all claims, costs, liabilities and damages (including attorneys fees and costs) for any bodily injury, death, or property damage resulting directly or indirectly from the development and construction of the Project by or on behalf of Developer, whether such development and construction were performed by Developer or any of Developer's contractors, subcontractors, agents or employees, except to the extent such claims, costs and liabilities arise from the active negligence or willful misconduct of City, its elected and appointed officers, agents, employees, representatives, contactors or subcontractors.

ARTICLE 10 MISCELLANEOUS PROVISIONS

Section 10.1 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 10.2 Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.

Section 10.3 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and

provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, the party adversely affected may (in its sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

Section 10.4 Construction. Each reference in this Agreement to this Agreement or any of the Existing Project Approvals or Subsequent Ministerial or Discretionary Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Ministerial or Discretionary Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (iv) "or" is not exclusive; (v) "include," "includes" and "including" are not limiting and shall be construed as if followed by the words "without limitation," and (vi) "days" means calendar days unless specifically provided otherwise.

Section 10.5 Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Property or Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Property and is binding upon the Developer of all or a portion of the Property and each successive Developer during its development of such Property or portion thereof.

Section 10.6 Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is

deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City:	City of Calistoga 1232 Washington Street Calistoga, CA 94515 Attention: City Manager Tel: (707) 942-2805
With copies to:	
If to Developer:	Silver Rose Venture LLC 132 West Main St, Suite C Aspen, CO 81611
With a copies to:	Alcion Ventures One Post Office Square Suite 3520 Boston, MA 02109 Attn: Gene DelFavero
And to:	Thoits, Love, Hershberger & McLean 285 Hamilton Ave., Suite 300 Palo Alto, CA 94301 Attn: Anne E. Senti-Willis

Section 10.7 Entire Agreement, Counterparts and Exhibits. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Agreement, together with the attached Exhibits, constitutes the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. The Exhibits attached to this Agreement are incorporated herein for all purposes:

Section 10.8 Recordation Of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Napa.

Section 10.9 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Project Approvals or

Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Existing Project Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 10.10 Waivers. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Developer.

Section 10.11 California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions.

Section 10.12 Estoppel Certificate. Within thirty (30) days of a written request, any Party shall provide written certification, that: (a) this Agreement is in full force and effect and a binding obligation of the Parties; (b) this Agreement has not been amended or modified, or if so amended, identifying the amendments; and (c) to the knowledge of the certifying Party, the requesting Party is not in default in the performance of its obligations under this Agreement.

Section 10.13 No Third-Party Beneficiaries. The Parties expressly agree and acknowledge that there are no third-party beneficiaries to this Agreement, nor do the Parties intend for there to be any third-party beneficiaries to this Agreement.

Section 10.14 Time of Essence. Time is of the essence of each and every provision of this Agreement.

Section 10.15 Venue. Any dispute arising out of or related to this Agreement shall be brought and tried in the Napa County Superior Court.

Section 10.16 Subsequent Applications. Nothing in this Agreement shall be construed as preventing Developer from submitting a new or modified application for any land as entitlements or approvals or the Property. Any subsequent approvals or entitlements shall supersede this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

[SIGNATURES ON FOLLOWING PAGE]

CITY:

City of Calistoga, a municipal corporation

By: _____
Name: _____
Its: _____
Date Signed: _____

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

DEVELOPER:

Silver Rose Venture, LLC, a
_____

By: _____
Name: _____
Its: _____
Date Signed: _____

EXHIBIT A

Site Map

EXHIBIT B

Legal Description of Property

EXHIBIT C

FEE SUMMARY

List of Development Fees Required	Fee Amount	Payment Date
In Lieu Housing Trust Fund Fee	$1.40/sf for commercial; $18,000 per unit residential – Anticipated Total of **$496,914**	Prior to Building Permit issuance for each unit
Traffic Impact Fee	$88.06 per trip; Anticipated Total of **$102,413**	Prior to Building Permit issuance for each unit
Quality of Life Fee	**$305,255**	See paragraph below
Public Safety Fee	**$343,370**	See paragraph below
Solage Local Benefit Reimbursement	**$185,192.77 plus interest accrued from the Effective Date as set forth in approved Reimbursement Agreement for the Palisades Resort and Spa**	Prior to first Building Permit Issuance for any structure on the Property, including without limitation, a single-family unit or the Resort
Water Connection Fee	**$1,242,544**	See paragraph below
Wastewater Connection Fee	**$3,981,342**	See paragraph below

Within 100 days of the Effective Date, Developer shall make a payment to City in the amount of $2,000,000, which amount shall be credited to payment either in part or in whole to the Quality of Life Fee, Public Safety Fee, Water Service Connection Fee and the Wastewater Service Connection Fee, as determined by the City. City shall inform Developer of how the funds are allocated to the connection fee accounts and/or development impact fee obligation. Such amount, when paid, shall be non-refundable, except as provided for in Article 4 of this Agreement. Additional payments of the Water Service Connection Fee and Wastewater Service Connection Fee shall be made at such times as they would be normally required in the ordinary course of development approvals and construction.