



2009-0017617

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

Recorded	REC FEE	0.00
Official Records	CC1 ONE CONFORM	1.00
County of Napa		
JOHN TUTEUR		
Assessor-Recorder-Cou		
08:38AM 08-Jul-2009	LS	Page 1 of 13

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**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF CALISTOGA
AND
BNK LLC, IRA CARTER AND LOIS CARTER
(VINEYARD OAKS SUBDIVISION)**

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT ("First Amendment") dated for reference as of May 21, 2009 is entered into, by and among BNK LLC, a California limited liability company, Ira Carter, an individual and Lois Carter, an individual (who are referred to, collectively, in this First Amendment as "Developer"), and the City of Calistoga, a California municipal corporation ("City"). City and Developer are sometimes referred to in this Agreement, each, as a "Party" and collectively as "Parties."

RECITALS

A. City and Developer were parties to that certain Development Agreement effective July 18, 2008 and recorded in the County of Napa as Record No. 2009-0007872 ("Development Agreement") concerning the development of the property described in Attachment No. 1 attached hereto and made a part hereof ("Property").

B. Developer has filed an amendment request application with the City to amend the timing of the Developer's payment of the Special Public Benefit and Utility Capacity Connection fees for the Project as provided in the Development Agreement.

C. City and Developer desire by this First Amendment to amend Exhibit F and Exhibit H to the Development Agreement in order to modify the timeframe for the Developer's payment of the Special Public Benefit and Utility Capacity Connection fees.

D. On April 21, 2009, after a duly noticed public hearing, the City Council of the City adopted Ordinance No. 657, approving the changes to Exhibit F and Exhibit H set forth in this First Amendment. Such ordinance took effect on May 21, 2009.

E. In addition to the foregoing, City and Developer desire by this First Amendment to memorialize a non-substantive clerical correction to the legal description set forth in Exhibit A to the Development Agreement.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Developer hereby agree as follows:

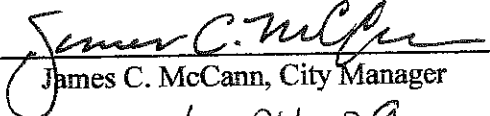
1. Exhibit A. Exhibit A is hereby deleted and replaced in its entirety with a new Exhibit A, attached hereto and incorporated herein as Attachment No. 1.
2. Exhibit F. Exhibit F is hereby deleted and replaced in its entirety with a new Exhibit F, attached hereto and incorporated herein as Attachment No. 2.
3. Exhibit H. Exhibit H is hereby deleted and replaced in its entirety with a new Exhibit H, attached hereto and incorporated herein as Attachment No. 3.
4. Prior Amendments. Prior to the execution of this First Amendment, the Development Agreement has not been amended or modified in any manner and there are no oral agreements, correspondence, actions or understandings that would effectively modify the terms of the Development Agreement.
5. Development Agreement in Effect. Except as amended by this First Amendment, the Development Agreement remains in full force and effect.
6. Counterpart Signatures. This First Amendment may be signed in multiple counterparts that, when signed by all parties, shall constitute a binding agreement.

IN WITNESS WHEREOF, the undersigned have entered into this First Amendment to be effective as of the date first above written.

[SIGNATURES ON FOLLOWING PAGE]

CITY:

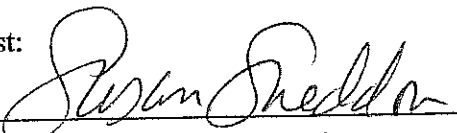
City of Calistoga, a municipal corporation

By: 
James C. McCann, City Manager

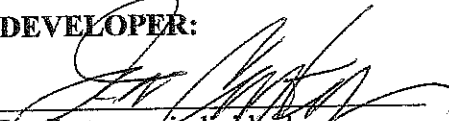
Date Signed: 6-24-09


Approved as to Form:

By: _____
Michelle M. Kenyon, City Attorney


Attest: 
By: _____
Susan Sneddon, City Clerk

DEVELOPER:


Ifa Carter, an individual


Lois Carter, an individual

BNK LLC, a California limited liability company

By: 

Name: Edward NAGEL

Its: MANAGING PARTNER

By: _____

Name: _____

Its: _____

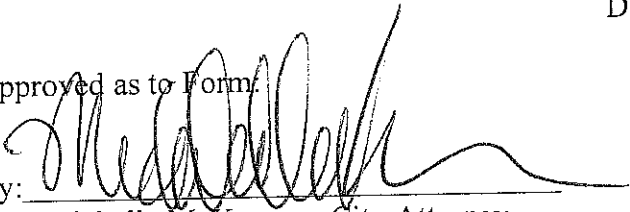
CITY:

City of Calistoga, a municipal corporation

By: _____
James C. McCann, City Manager

Date Signed: _____

Approved as to Form:

By: 
Michelle M. Kenyon, City Attorney

Attest:

By: _____
Susan Sneddon, City Clerk

DEVELOPER:

Ira Carter, an individual

Lois Carter, an individual

BNK LLC, a California limited liability
company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

ACKNOWLEDGMENT

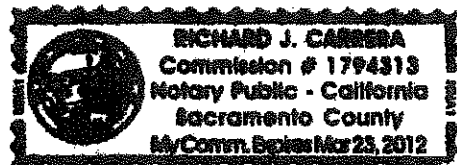
STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On JUNE 18, 2009 before me, RICHARD J. CARRERA ^{NOTARY PUBLIC} the undersigned, personally
(Date)

appeared LOIS CARTER who proved to me on the basis of satisfactory evidence
Name(s) of Signer(s)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he (she/they) executed the same in his (her/their) authorized capacity (ies), and that by his (her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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



(Place Notary Seal Above)

WITNESS my hand and official seal.

[Handwritten Signature]
Signature of Notary Public

MARCH 23, 2012
Expiration Date

RICHARD J. CARRERA
Print Name

1794313
Commission Number

Notary Public Phone Number: (916) 569-5400

ACKNOWLEDGMENT

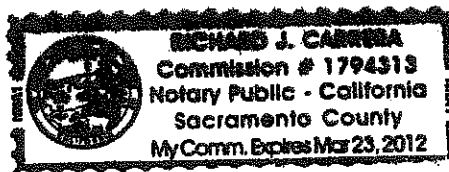
STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On JUNE 18, 2009 before me, RICHARD J. CARRERA ^{NOTARY PUBLIC} the undersigned, personally
(Date)

appeared IRA CARTER who proved to me on the basis of satisfactory evidence
Name(s) of Signer(s)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

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



(Place Notary Seal Above)

WITNESS my hand and official seal.

[Handwritten Signature]
Signature of Notary Public

MARCH 23, 2012
Expiration Date

RICHARD J. CARRERA
Print Name

1794313
Commission Number

Notary Public Phone Number: (916) 569-5400

ILLEGIBLE NOTARY SEAL DECLARATION
(GC 27361.7 and CCP 2015.5)

The notary seal on the document to which this statement is attached reads as follows:

Name of Notary Richard J Carrera

Date Commission Expires 3-23-2012

Commission Number 1794313

County of Commission Sacramento

"I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct."

Today's Date 6-29-09

Susan L Sneddon

Signature of Declarant:

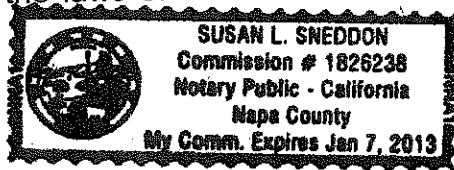
Susan L. Sneddon

Printed Name

STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On June 24, 2009 before me, Susan L Sneddon, the undersigned, personally
appeared Edward Nagel who proved to me on the basis of satisfactory evidence
(Date)
Name(s) of Signer(s)
to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

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



Place Notary Seal Above

WITNESS my hand and official seal.

Susan L Sneddon
Signature of Notary Public

Susan L Sneddon
Print Name

1-7-13
Expiration Date

1826238
Commission Number

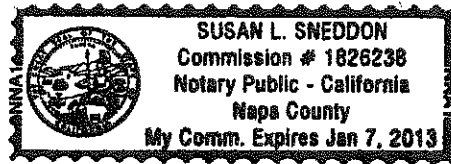
Notary Telephone Number: 707-942-2807

STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On May 28, 2009 before me, Susan L Sneddon, the undersigned, personally
(Date)
appeared James C. McCann who proved to me on the basis of satisfactory evidence
Name(s) of Signer(s)

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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



Place Notary Seal Above

WITNESS my hand and official seal.

Susan L Sneddon
Signature of Notary Public

Susan L Sneddon
Print Name

1-7-13
Expiration Date

1826238
Commission Number

Notary Public Phone Number: 707-942-2807

ATTACHMENT NO. 1

Legal Description of Property

All that real property situated in the City of Calistoga, County of Napa, State of California, described as follows:

Commencing at a point on the northeastern line of Grant street, distance thereon South 59 degrees East 20.045 chains from the point intersection thereof with the southeastern line of Greenwood Avenue, running thence along said line of Grant Street, south 59 degrees East 8.005 chains; thence North 30 ¼ degrees East 22.37 chains; thence North 58 ¾ degrees West 8.005 chains, and thence South 30 ¼ degrees West 22.37 chains, more or less, to the point of commencement.

Being Lot 3 and a portion of Lot 4 as the same are shown upon that certain map entitled "Map W.F. Fisher Tract, Calistoga, Napa Co. Cal.," filed April 17, 1897 in the office of the County Recorder of said Napa County.

EXCEPTING THEREFROM the following described parcel:

Beginning at a point on the southeasterly line of the lands of Ira S. Carter and Lois J. Carter, trustees of the CARTER FAMILY TRUST dated October 1, 2001 as described by deed recorded October 10, 2001 under Document Number 2001-0035326, Napa County Records, from which point an untagged 3/4" inch iron pipe marking the most northerly corner of the lands of 1881 Mora, LLC as described by deed recorded July 18, 2002 under Document Number 2002-0028547, Napa County Records, and as said lands are shown and delineated on "Map No. 5442, Record of Survey" filed December 11, 2002 in Book 35 of Surveys, Page 26, Napa County Records, bears N 29°56'29" E, 30.00 feet; thence from said point of beginning and along said southeasterly line S 29°56'29" W, 413.13 feet, to a ¾ inch iron pipe tagged PLS 5769, marking the most westerly corner of said lands of 1881 Mora, LLC; thence leaving said southeasterly line of the lands of the CARTER FAMILY TRUST, N 60°03'31" W, 19.65 feet; thence parallel with and 19.65 feet northwesterly from, measured at right angles to, the southeasterly line of said lands of the CARTER FAMILY TRUST, N 29°56'29" E, 413.17 feet, to a point from which the point of beginning bears S 59°57'07" E, 19.65 feet; thence S 59°57'07" E, 19.65 feet, to the point of beginning. Containing 8118 square feet, more or less.
(A Portion of APN 011-010-013 & 014)

TOGETHER WITH the following described parcel:

Beginning at an untagged 3/4 inch iron pipe marking the most northerly corner of the lands of 1881 Mora, LLC as described by deed recorded July 18, 2002 under Document Number 2002-0028547, Napa County Records, as said lands are shown and delineated on "Map No. 5442, Record of Survey" filed December 11, 2002 in Book 35 of Surveys, Page 26, Napa County Records; thence from said point of beginning and along the northeasterly line of said lands of 1881 Mora, LLC, S 59°57'07" E, 270.61 feet, to a ¾ inch iron pipe tagged PLS 5769, marking the most easterly corner of said lands of 1881 Mora, LLC, and from which point a nail and tag PLS 5769 in the centerline of Mora

Avenue, bears S 59°57'07" E, 25.00 feet; thence along the southeasterly line of said lands of 1881 Mora, LLC, S 29°59'00" W, 30.00 feet; thence leaving said southeasterly line, parallel with and 30.00 feet southwesterly from, measured at right angles to, the northeasterly line of said lands of 1881 Mora, LLC, N 59°57'07" W, 270.59 feet, to a point in the northwesterly line of said lands of 1881 Mora, LLC; thence along said northwesterly line, N 29°56'29" E, 30.00 feet, to the point of beginning. Containing 8118 square feet, more or less.
(A Portion of APN 011-021-002)

ATTACHMENT NO. 2

EXHIBIT F

Special Public Benefits

1. Funds for Affordable Housing.

Chapter 17.08 of the Calistoga Municipal Code, development of the Project requires that twenty percent (20%) of the homes in the subdivision be made available to families of low or moderate income. Alternatively, the Developer may provide other methods of addressing housing needs including a cash payment to the City. An in-lieu payment of Six Hundred Thousand Dollars (\$600,000) shall be made into the Calistoga Affordable Housing Trust Fund. The Developer shall provide \$100,000 of the in-lieu payment to City no later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map. The balance of said in-lieu payment shall be made in equal payments prior to the issuance of a building permit for home construction on each lot resulting from the Project subdivision. Said in-lieu payment shall be secured by a first position lien on each lot until such time as paid in full. The obligation secured by the lien shall provide that interest shall accrue at an interest rate equal to the last quarter annualized Local Agency Invest Fund (LAIF) rate as of the lien date plus two percent (2%). The principal and accrued interest shall be due in full on the earlier of (1) issuance of a building permit for home construction on the lot, or (2) four years from the Effective Date of this Agreement.

2. Additional Funds for Recreational Purposes.

Chapter 17.10 of the Calistoga Municipal Code requires that prior to Final Subdivision Map approval subdivision of the Property, Three Thousand Dollars (\$3,000) per lot be paid as a Quality of Life fee for the provision of land, structures and physical improvements for cultural and recreational purposes. No later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map, Developer shall pay to the City an additional sum of Eight Hundred Thousand Dollars (\$800,000) to be used for recreational purposes.

3. Grant Street Improvements.

The developer shall pay the City the full costs of the Grant Street improvements made by City. Said payment is estimated to be \$200,000 to the City for the full cost of Grant Street reconstruction (the segment from Mora Avenue to Garnett Creek Court). Actual costs shall be determined by the City following the completion and acceptance of the work by City. City shall provide reasonable accounting of all costs to Developer. Developer shall pay Grant Street Improvement costs in full no later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map.

END OF DOCUMENT

ATTACHMENT NO. 3

EXHIBIT H

Utility Capacity Allocation and Connection Fees

1. Water Allocation and Connection Fees.

The City shall reserve 9.75 acre feet of potable water for the Project. This allocation shall be assigned in equal portions to the resulting lots for home construction.

The water connection fee for the Project shall be set at the rate in effect at the time of the approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee for the lots shall be paid no later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map. The balance of the water connection fees shall be allocated in equal shares to each residential lot. Upon recordation of the Final Subdivision Map, a lien subordinate only to other City liens shall be recorded against each lot securing payment of seventy-five percent (75%) of the connection fee for that lot. The principal and interest shall be due in full on the earlier of: (1) the issuance of a building permit for home construction on the lot, or (2) four (4) years from the Effective Date of this Agreement.

2. Waste Water Allocation and Connection Fees.

The City shall reserve 6.21 acre feet of waste water treatment capacity for the development. Said allocation shall be assigned in equal portions to the resulting lots for home construction.

The waste water connection fee for the Project shall be set at the rate in effect at the time of the approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee for the lots shall be paid no later than one-hundred and eighty (180) days from the date of recordation of the Final Subdivision Map. The balance of the waste water connection fees shall be allocated in equal shares to each residential lot. Upon recordation of the Final Subdivision Map, a lien subordinate only to other City liens shall be recorded against each lot securing payment of seventy-five percent (75%) of the connection fee for that lot. The principal and interest shall be due in full on the earlier of: (1) the issuance of a building permit for home construction on the lot, or (2) four (4) years from the Effective Date of this Agreement.



2009-0007872

Recorded	REC FEE	0.00
Official Records		
County of	CCI ONE CONFORM	1.00
Napa		
JOHN TUTEUR		
Assessor-Recorder-Coul		
	CW	
02:43PM 02-Apr-2009		Page 1 of 48

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 AMONG

THE CITY OF CALISTOGA

AND

BNK LLC, IRA AND LOIS CARTER, AND 1881 MORA LLC.

(VINEYARD OAKS SUBDIVISION)

JULY 18, 2008
EFFECTIVE DATE

CITY OF CALISTOGA, CALIFORNIA

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LIST OF EXHIBITS:

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Exhibit B.	Project Description
Exhibit C.	Mitigation Monitoring and Reporting Program
Exhibit D.	Existing Project Approvals
Exhibit E.	Anticipated Subsequent Project Approvals
Exhibit F.	Special Public Benefits
Exhibit G.	Existing Rules
Exhibit H.	Utility Capacity Allocation and Connection Fees
Exhibit I.	Timetable
Exhibit J.	Annual Review Report

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("*Agreement*") is entered into as of the 17th day of June 2008, by and among BNK LLC, a California limited liability company, Ira Carter, an individual, Lois Carter, an individual, and 1881 Mora LLC, a California limited liability Company, (who are referred to, collectively, in this Agreement herein as "*Developer*"), and the CITY OF CALISTOGA, a California municipal corporation ("*City*"). City and Developer are sometimes referred to in this Agreement as a "*Party*" and collectively as "*Parties*."

RECITALS

A. These Recitals use certain terms with initial capital letters that are defined in Article 1 of this Agreement. City and Developer intend to refer to these definitions when the capitalized terms are used in these recitals.

B. Ira Carter and Lois Carter own in fee title to that certain real property located at 2400 Grant Street (APN 011-010-013, 011-010-014) in the City of Calistoga, County of Napa. 1881 Mora LLC owns that certain real property located at 1881 Mora Avenue (APN 011-021-002) in the City of Calistoga, County of Napa. These parcels are collectively referred to as the Property. The Property is more particularly described in Exhibit A attached to this Agreement and a part of it. BNK, LLC has an option to purchase the Property.

C. To strengthen the public planning process, encourage private participation in comprehensive planning, make maximum efficient use of resources at the least economic cost to the public, and reduce the economic risk of development, the Legislature of the State of California enacted the 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.

D. Pursuant to California Government Code §65865, City has adopted a Development Agreement Ordinance. This Agreement has been processed, considered and executed in accordance with that ordinance.

E. The City wishes to support the subdivision of the Property and its development with homes. This Project, more particularly described in Exhibit B, will implement the City's General Plan and contribute to the City by providing a high quality residential subdivision and providing benefits beyond those available through regular project exactions.

F. Prior to approval of this Agreement, City has taken the following actions in connection with the development of the Property:

1. California Environmental Quality Act Review. The environmental impacts of the Project, including the Existing Project Approvals have properly been reviewed and assessed by City pursuant to CEQA. On June 3, 2008, in accordance with the recommendation of City's Planning Commission, the City Council adopted a Mitigated Negative Declaration for the Project, including a Mitigation Monitoring and Reporting Program pursuant to Resolution No. 2008-053. The MMRP is attached as Exhibit C.

2. Existing Project Approvals. Existing Project Approvals have been granted as set forth in full in Exhibit D.

G. Subsequent to approval of this Agreement, City anticipates that applications for Subsequent Project Approvals will be submitted to implement the Project. A list of anticipated Subsequent Project Approvals is set forth in Exhibit E.

H. The City Council finds that this Agreement furthers the public health, safety and general welfare and is consistent with the General Plan and that there is no applicable specific plan. 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 development of the Property. Continued use and development of the Property in accordance with this Agreement is anticipated to provide substantial benefits and contribute to the vitality of the City, thereby achieving the goals and purposes for which the Development Agreement Statute was enacted:

1. Provide for the orderly development of the Property and the surrounding community.

2. ~~Provide Special Public Benefits not available without a development agreement as set forth in Exhibit F.~~

I. The City Council further finds and determines that the tentative map for the subdivision of the Property complies with the provisions of Government Code Section 66473.7. Because the City's water system has fewer than 5,000 service connections, specific findings are required for a residential subdivision that will increase the number of such connections by ten percent (10%) or more. The subdivision of the Property will create fifteen (15) residential lots, each of which may contain a principal dwelling and an accessory unit, for a maximum of thirty (30) new residential connections. This will not increase the number of connections by ten percent (10%), therefore no further findings are required under Section 66473.7.

J. The Parties intend through this Agreement to allow Developer and its authorized successors to develop the Project in accordance with the Existing Project Approvals and the Applicable Law, and with any Subsequent Project Approvals.

K. The City Council has conducted all necessary proceedings in accordance with City's rules and regulations for the approval of this Agreement.

L. On June 17, 2008, the City Council, at a duly noticed public hearing, adopted Ordinance No. 652, 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. DEFINITIONS

In this Agreement, unless the context requires otherwise:

Section 1.01. "Applicable Law" means the Existing Rules, modified by Subsequently Adopted Rules to the extent permitted by this Agreement and Existing Project Approvals. Provided, Developer may consent to additional applications of Subsequently Adopted Rules without amendment of this Agreement as part of Subsequent Project Approvals.

Section 1.02. "CEQA" means the California Environmental Quality Act, Division 13 of the California Public Resources Code, Sections 21000 and following, and the Guidelines for the California Environmental Quality Act, Title 14 of the California Code of Regulations, Chapter 3, Sections 15000 and following.

Section 1.03. "Annual Review Report" shall mean a report, in the form attached as Exhibit J, filed by the Developer each year to begin the annual compliance review required by the Development Agreement Statute and the City's Development Agreement Ordinance.

Section 1.04. "Development Agreement Ordinance" means Chapter 17.39 of the Calistoga Municipal Code.

Section 1.05. "Development Agreement Statute" means California Government Code Sections 65864 through 65869.5

Section 1.06. "Development Impact Fees" means all fees now or in the future collected by the City from applicants for new development for the funding of public services, infrastructure, improvements or facilities, but not including taxes or assessments, or fees for the processing applications or permits or monitoring compliance with the conditions imposed on the Project. The fees included in this definition include, but are not limited, to those included in Chapters 3.20, 3.28, 17.08, and 17.10. Provided, the school impact fee referenced in Section 17.10.010 of the Calistoga Municipal Code are not Development Impact Fees, in that they are not established or collected by City.

Section 1.07. "Effective Date" is defined in Section 2.01.

Section 1.08. "Existing Rules" means the City ordinances, resolutions, rules, regulations, official policies, standards and specification in existence as of June 17, 2008. A list of Existing Rules applicable to the Project is attached as Exhibit G, but the failure to identify any Existing Rule in Exhibit G shall not affect its applicability to the Project.

Section 1.09. "Existing Project Approvals" means the City approvals set forth in full in Exhibit D.

Section 1.10. "Mitigation Monitoring and Reporting Program ('MMRP')" means the mitigation monitoring and reporting program adopted by the City pursuant to CEQA by Resolution No. 2008-053 and attached as Exhibit C.

Section 1.11. "Property" means that real property described in Exhibit A.

Section 1.12. "Project Approvals" means Existing Project Approvals and Subsequent Project Approvals.

Section 1.13. "Subsequent Discretionary Approvals" shall mean all Subsequent Project Approvals, including amendments of the Project Approvals, improvement agreements, architectural review permits, use permits, Final Subdivision Maps, development agreements, re-subdivisions, and any amendments to, or repealing of, any of the foregoing, are Subsequent Discretionary Approvals.

Section 1.14. "Subsequent Project Approvals" means the additional land use approvals, entitlements and permits necessary to operate the project, a partial list of which is set forth in Exhibit E.

Section 1.15. "Subsequent Ministerial Approvals" means permits or approvals that are required by Applicable Law and that are to be issued upon compliance with uniform, objective standards and regulations. Subsequent Ministerial Approvals generally include, but are not limited to, 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. Parties acknowledge that under California state law, under some circumstances, grading or building permits may be discretionary.

Section 1.16. "Subsequently Adopted Rules" means City ordinances, resolutions, rules, regulations, official policies, standards and specification that came in to effect after June 17, 2008.

Section 1.17. "Utility Connection Fees" shall mean the water service connection fee and waste water connection fee established in Chapter 13.18 of the Calistoga Municipal Code, in the amounts set forth in Exhibit H.

ARTICLE 2. EFFECTIVE DATE AND TERM

Section 2.01. Effective Date. This Agreement shall become effective upon the date that the ordinance approving this Agreement takes effect that is July 18, 2008.

Section 2.02. Term.

A. Initial Term and Discretionary Extension The Initial Term of this Agreement shall commence upon the Effective Date and shall extend for a period of five (5) years thereafter. The 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. Upon application by the Developer, or its successor in interest, the City may extend the Term for an additional period of up to one (1) year, subject to the requirements of the Development Agreement Statute and City ordinances.

B. Termination Following Expiration. Following the expiration of the Initial 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, subject, however, to the provisions of Section 10.09 of this Agreement. The expiration or termination of this Agreement shall not limit any property rights of the Developer or its successors that may exist independent of this Agreement.

Section 2.03. Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date, Developer is the fee owner of the Property. Developer further represents and warrant that:

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

B. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary individual, limited liability company and/or general partnership action, and all necessary member approvals have been obtained; and

C. This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

ARTICLE 3. DEVELOPMENT OF PROPERTY

Section 3.01. 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).

Section 3.02. Applicable Law; Documentation. Applicable Law (defined in Section 1.01) shall apply to the development of the Property during the terms of this Agreement. Parties have prepared two sets of the Project Approvals and Existing Rules, one set for City and one set for Developer, to which shall be added, from time to time, Subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Existing Law, there will be a common set available to the Parties. Failure to include in the sets of Project Approvals and Existing Rules any ordinance, resolution, rule, regulation, official policy, standard or specification shall not affect the applicability of such rule, regulation, policy, standard or specification.

Section 3.03. Reservations of City Authority to Apply Subsequently Adopted Rules.

A. The Parties acknowledge and agree that City is restricted in its authority to limit its police power by contract. 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, and this Agreement shall be so construed.

B. Notwithstanding any other provision of this Agreement to the contrary, the Applicable Law shall include the following Subsequently Adopted Rules:

(1) Review Costs. Fees and charges of every kind and nature imposed by the City to cover actual costs to City of Project Approvals or for monitoring compliance with any Project Approvals as such fees and charges are set, on a uniform basis, from time to time.

(2) Procedures. 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 substantially similar types of development projects and properties.

(3) California Building Codes. Regulations governing construction standards and specifications including City's building code, plumbing code, mechanical code, electrical code, fire code, and other applicable construction codes as then applicable in City at the time of permit application. Upon Developer's written request, City may waive any future changes in building and construction standards that City determines in its reasonable discretion are neither necessary nor desirable to protect persons and property from health and safety perils, or to advance other City General Plan policies, but only to the extent the City's Municipal Code allows for such waivers.

(4) City Revenue Measures. All new taxes, fees, charges or assessments of general application, including increases in the business license tax, or any other tax, fee, charge, or assessment, which are not specifically or disproportionately targeted to the Project or Property. Provided, only Development Fees established by the Existing Rules may be applied to the Project or Property unless they are authorized by Paragraph 3.04 B.(5) below or by Section 5.01.

(5) Exigent Circumstances. Subsequently Adopted Laws which may be in conflict with this Agreement and the Project Approvals to the extent

C. their adoption is required by State or Federal law or,

D. they are non-discriminatory with respect to the Project or the Property, or both, and their adoption is reasonably necessary to comply with State or Federal law, or

E. the City determines they are necessary to protect against conditions that create a substantial and demonstrable risk to physical health or safety, or

F. to pass-through rate impositions or increases established by other governmental or quasi-governmental agencies.

(6) Utility Rules. Utility standards, rules and utility rates, fees and charges, as more particularly described in Exhibit H. Provided, Developer's obligation to pay Utility Connection Fees is limited as set forth in Article 5.

(7) Development Impact Fees. Except for those fees specifically described in this Agreement, payment of Development Impact Fees shall be as prescribed by the City's ordinances, resolutions and polices in place as of the effective date of this Agreement. Said fees shall be paid at the rate in place at the time of the effective date of this Agreement.

(8) Consistent Laws. Subsequently Adopted Laws which do not conflict with this Agreement or the Project Approvals, provided that they are not applied in a discriminatory manner against the Project or Property. Conflicting laws are described in Section 3.04 below.

Section 3.04. Conflicting Subsequent Law. A Subsequently Adopted Law shall be deemed to conflict with this Agreement if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

- A. Change any land use designation or permitted use of the Property;
- B. Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;
- C. Limit or control the location, configuration or size of lots, buildings, structures, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in or imposed by the Project Approvals, Existing Law, or this Agreement;
- D. Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, except as set forth in this Agreement, Applicable Law or the Project Approvals;
- E. Impose on the Project or Developer any fees or exactions other than those permitted by this Agreement, Existing Law or the Project Approvals.

A conflicting Subsequently Adopted Rule is only applicable to the Project or Property only as provided in the Existing Project Approvals, in Section 3.03 above, or elsewhere in this Agreement.

Section 3.05. 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 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 3.06. Development Timing. The timetable for completion of the Project and phasing schedule is set forth in Exhibit I.

Section 3.07. Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term, and any Extension, of this Agreement or the term otherwise applicable to such Project Approvals.

Section 3.08. Initiatives and Referenda.

A. If any Subsequently Adopted Law is enacted or imposed by a citizen-sponsored initiative or referendum, which would conflict with the Project Approvals or Applicable Law or this Agreement, such Subsequently Adopted 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.

B. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project, except under the circumstances described in Government Code Section 65869.5 or in the event of an emergency requiring such action.

C. 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.

D. City shall cooperate with Developer and, at Developer's expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot, shall not support, adopt or enact any Subsequently Enacted Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement or the Project Approvals. Provided, Parties acknowledge the obligation of the City to defend any challenge to the legality of voter-approved ballot measures.

Section 3.09. Environmental Mitigation. The Parties understand that the Project Mitigated Negative Declaration is intended to be used not only in connection with the Existing Project Approvals, but also in connection with the Subsequent Project Approvals needed for the Project. City acknowledges its obligation, in connection with Subsequent Project Approvals, not to require a supplemental or subsequent EIR, Mitigated Negative Declaration, or Negative declaration, unless required by CEQA. To the extent supplemental or additional environmental review is required in connection with Subsequent Project Approvals, Developer acknowledges that City may require additional mitigation measures that were not required at the time this Agreement was executed, but only to the extent that such additional mitigations are required by CEQA.

Section 3.10. 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 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, but the Parties shall attempt to preserve the original intent of this Agreement to the maximum extent feasible. 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 4. DEVELOPER COMMITMENT AND SPECIAL PUBLIC BENEFITS

Section 4.01. Special Public Benefits to the City. As consideration for the City's promises under the Agreement, Developer agrees to make the payments for affordable housing, recreational purposes and street improvements, as set forth in Exhibit F.

Section 4.02. Taxes, Charges, Assessments, Fees and Exactions. Developer agrees to pay all taxes, charges, fees, assessments and exactions which are payable by Developer under this Agreement and the Applicable Law.

Section 4.03. Utility Connection Fee. City may charge and Developer agrees to pay all Utility Connection Fees as set forth in Article 5.

Section 4.04. Processing Fees.

A. Developer shall pay City for its actual costs of application review, permit issuance, monitoring, inspection, and processing for all Subsequent Approvals and the work done pursuant to them. Actual costs shall be limited to (i) itemized City employee staff time, billed at the hourly rates established annually by the Director of Finance, (ii) any invoices payable to third-party providers of goods or services, (iii) any fees charged to the City by third-party agencies for review or inspection of the Project. Any flat fees payable under City ordinance or resolution shall be treated as deposits towards actual costs.

B. City may, in its sole discretion, contract with one (1) or more outside inspectors, engineers, architects, attorneys, financial advisers, or other consultants (each a "Consultant" and collectively "Consultants") to perform all or any portion of the application review, monitoring, inspection, testing and evaluation services to be performed in connection with review, construction and development of the Project. With respect to engineering review, in order to accomplish the requisite monitoring, inspection, testing and evaluation of on-site private facilities ("Engineering Inspections"), the City Manager, or his/her designee, in his/her reasonable discretion may approve the retention of a design engineer under whose such direct supervision the Engineering Inspections may be carried out, and who shall certify upon completion of improvements, in a report which shall be submitted to City, that the improvements are acceptable in form and substance to City, that such improvements were constructed in conformance with the approved plans and specifications and that all such work was performed in a workmanlike manner.

C. City shall establish a deposit account for the Developer. The developer deposit account agreement shall provide for an initial deposit of funds and a method for periodic replenishment as expenses are incurred so that a sufficient balance remains to cover currently accruing costs.

Section 4.05. New Fees and Charges for Major Changes. Any variation, modification, change or amendment to the Project, the Existing Approvals, the Subsequent Project Approvals that is inconsistent with this Development Agreement and requires its amendment shall entitle City to impose new and/or increased Development Impact Fees and exactions on the amended part of the Project, but only on the portion of the Project that is the subject of the Development Agreement amendment or is otherwise inconsistent with this Development Agreement and only to the extent that the variation, modification, change or amendment is part of a City-wide adopted fee.

ARTICLE 5. UTILITIES

Section 5.01. Allocation of Water and Wastewater Services. City hereby agrees and 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 in Exhibit H 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 Section 3.03, no change in Existing Rules shall reduce or eliminate these allocations.

Section 5.02. Will-Serve Obligation. The allocations of water and wastewater capacity in Article 5 shall constitute the "will serve" obligation of City with respect to the Project. Said "will serve" obligation of City is vested by this Development Agreement. The water and waste water allocations set forth in Exhibit H shall constitute the allocation for the Project, as that term is defined in the City's Municipal Code. Any needed additional allocation of water or wastewater service capacity to the Project or the Property shall be subject to the Growth Management provisions of the City's Municipal Code, if any, in effect at the time of such request. This provision shall supersede any conflicting City codes or regulations in effect as of the Effective Date.

Section 5.03. Utility Fees, Charges, and Exactions. Developer shall pay all utility fees, charges, and exactions as set forth in the Applicable Rules, provided, Utility Connection Fees shall be in the amounts and for the capacities set forth in Exhibit H.

ARTICLE 6. DEVELOPMENT STANDARDS AND REQUIREMENTS

Section 6.01. 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. Developer shall defend (with counsel reasonably acceptable to the City), indemnify, assume all responsibility for, and hold harmless City and its officers, officials, employees, volunteers, agents and representatives from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) arising out of or in any way connected with Developer's or its contractors' obligations, if any, to comply with all Prevailing Wage Laws, including all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781.

ARTICLE 7. MORTGAGEE PROTECTION AND ESTOPPEL CERTIFICATE

Section 7.01. 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 or otherwise.

Section 7.02. Mortgagee Not Obligated. Notwithstanding the provisions of Section 6.01 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 7.03. 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.

Section 7.04. Estoppel Certificate.

A. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Development Agreement is in full force and effect and a binding obligation of the parties, (ii) this Development Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (iii) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and extent of any such defaults. The requesting party may designate a reasonable form of certificate (including a lender's form) and the party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. The City Manager shall be authorized to execute any certificate requested by Developer hereunder.

B. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees. A request for an estoppel certificate shall clearly indicate that failure of the receiving Party to respond within the thirty (30) day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of either Party to execute an estoppel certificate shall not be deemed a default by that Party, provided that in the event the Party to whom the request is sent does not respond within the required thirty (30) day period, the requesting Party may send a second and final request, and failure by the responding Party to respond within fifteen (15) days from receipt thereof (but only if the requesting Party's request contains a clear statement that failure by the responding Party to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by the Parties of the estoppel certificate and may be relied upon as such by the requesting Party, tenants, transferees, investors, bond counsel, underwriters, bond holders and Mortgagees.

ARTICLE 8. COOPERATION AND IMPLEMENTATION

Section 8.01. Subsequent Project Approvals. Developer and City acknowledge and agree that Developer intends to submit applications for Subsequent Project Approvals, In connection with any Subsequent Discretionary Approvals, 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 3.04.

Section 8.02. Acquisition of Land Owned by Third Parties. In any instance where Developer is required to construct any public improvement on land not owned by Developer, Developer, at its sole cost and expense, shall acquire or fund the acquisition of, the real property interests necessary for the construction of such public improvements. If requested by Developer, where the affected property owner has rejected an offer by Developer based upon market value

as determined by an appraisal prepared by a City approved appraiser in cooperation with City, and upon Developer's provision of adequate funding, City shall promptly and timely negotiate and seek the purchase of the necessary real property interests to allow Developer to construct the public improvements as required by the Project Approvals. Under these circumstances, in accordance with the procedures established by law, including Government Code Section 66462.5(a), requiring approval of a final map where neither the subdivider nor public agency has an interest in land sufficient to allow offsite improvements to be constructed or installed where City fails to acquire the necessary property interests by negotiation, City shall consider use of its power of eminent domain to acquire such real property interests. Developer shall pay all costs associated with such acquisition or condemnation proceedings. Nothing herein is intended to or shall prejudice or commit City regarding any findings and determinations required to be made in connection with adoption of a resolution of necessity.

Section 8.03. Other Government Permits. City shall cooperate with Developer, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, permits and approvals from other governmental entities.

Section 8.04. Mitigation Measures. Developer and City shall comply with the Mitigation and Monitoring and Reporting Program as it applies to the Project.

Section 8.05. Cooperation in the Event of Legal Challenge.

A. In the event any legal or equitable action or proceeding is instituted by a third party challenging the validity of any provision of this Agreement or the procedures leading to its initial adoption or the initial issuance of any of the Existing Project Approvals, and any Subsequent Project Approvals, Developer reserves the right to withdraw its application for the Project. If Developer elects not to withdraw its application, Developer agrees to hire litigation counsel to diligently defend Developer and the City in any such action or proceeding and to bear the cost of litigation expenses of any joint defense, including but not limited to, attorneys' fees incurred by the City and the Developer. Developer further agrees that it shall pay for any legal fees actually incurred by the City in providing advice or oversight or assistance in defense of any Third-Party legal challenge. Developer agrees to pay such fees within thirty (30) days of receiving any written demand therefore which may be made from time to time during the course of such litigation challenges, including City's own legal counsel fees and court costs. Developer further agrees to indemnify and hold City harmless from and against any and all claims for damages including recovery of the third party's litigations expenses, including attorney's fees, regardless of Developer's withdrawal of its application. If Developer elects not to contest such litigation challenges, then the City shall have no obligation to contest such challenges.

B. In addition, City shall have the right, but not the obligation, to contest or defend such litigation challenges, in the event that Developer elects not to do so. If City elects to contest or defend such litigation challenges, Developer shall be obligated to bear any of City's related costs and expenses, including City's attorney fees, and shall indemnify, defend, and hold harmless City and its officials and employees from and against any claims, losses, or liabilities assessed or awarded against City by way of judgment, settlement, or stipulation.

ARTICLE 9. ASSIGNMENT, TRANSFER AND NOTICE

Section 9.01. Assignment.

A. City Approval 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. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement without written approval by City, provided that Developer also sells all or a portion of its interest in the Property, subject to the approval of the City, which approval shall not be unreasonably withheld.

B. Notice; Qualifications. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property and all or any portion of its interest in this Agreement at least sixty (60) days in advance of such proposed action and furnish written evidence of the proposed transferee's ability to, and experience in the development and operation of projects similar to Project, together with such other information as the City shall reasonably request. The City's consent shall be deemed given if the City has not provided written consent or objection within sixty days of receiving the notice and copy of the assignment and information described above. Assignment of the Agreement shall not release Developer of its obligations under this Agreement absent the express written consent of the City.

ARTICLE 10. DEFAULT; REMEDIES; AMENDMENT; TERMINATION

Section 10.01. Breach. Subject to extensions of time under Section 10.06 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 10.06, 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 10.03, 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 10.02. 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 10.04 below.

City may only terminate this Agreement pursuant to a duly adopted resolution of the City Council

Section 10.03. 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 Planning Director 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 10.04. Remedies.

A. 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 10.09 hereof.

B. City's determination of Developer's breach under this agreement is not subject to review by any form of writ, whether administrative or ordinary mandate.

C. City and Developer agree that in the event of Default by City, the sole remedy for Developer shall be specific performance of this Agreement. In no event shall Developer be entitled to damages. If City issues an 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.

D. 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 subsections 10.04 A and B above. Any such legal action shall be brought in the Superior Court for Napa County, California.

Section 10.05. Annual Review.

A. The City Manager shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by the Developer with the terms and conditions of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code Section 65865.1 and the City's Development Agreement Ordinance. Developer shall have the duty to initiate each annual review by submitting an Annual Review Report. Developer

shall demonstrate good faith compliance with the terms and conditions of this Agreement and provide such other information as may be reasonably requested by the City Manager and deemed by him or her to be required in order to ascertain compliance with this Agreement. The costs of notice and related costs incurred by the City for the annual review conducted by the City pursuant to this Section shall be borne by the Developer.

B. Following such review, the City Manager shall set the matter as an agenda item at a regularly scheduled Council meeting, giving an advance copy of the report and notice of the time and place of such meeting to the Developer. If the City Manager is not satisfied the Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, or for any other reason, the City Manager shall advise the City Council of this opinion.

C. The City Council shall afford the Developer an opportunity to respond to the report of the City Manager and may continue the review from time to time as necessary.

D. Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall the Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

Section 10.06. 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 but which may excuse performance by Developer). 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 three (3) years), if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. 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 10.06. 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 10.07. Amendment. This Agreement may be amended as provided in the Development Agreement Ordinance and Development Agreement Statute. Modifications of Project Approvals and other changes to the Project or its timing specifically authorized by this Agreement as consistent with it, do not require amendment to this Agreement unless specifically required by the Development Agreement Ordinance or Development Agreement Statute.

Section 10.08. 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 and/or City shall, at Developer's request, meet with Developer. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 10.08 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 10.09. Termination: Surviving Provisions. This Agreement shall terminate upon the expiration of the Term or when the Property has been fully developed and all of the obligations of City and Developer in connection therewith as set forth in this Agreement are satisfied as reasonably determined by City. Upon completion of performance of the parties or termination of this Development Agreement, a written statement acknowledging such completion or termination shall be recorded by City in the Official Records of Napa County, California. 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 Sections 6.01 (Compliance with State and Federal Law), 8.05 (Cooperation in the Event of Legal Challenge), and 10.10 (Indemnity and Hold Harmless).

Section 10.10. 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 approval or implementation of this Agreement, the development and construction of the Project by or on behalf of Developer, or from any operations performed under this Agreement, whether such operations 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. This Section 10.10 shall not apply to suits or actions brought by Developer for default of this Agreement or to suits or actions brought by any person or entity arising from the sole active negligence or willful misconduct of City or its elected or appointed representatives, officers, agents and employees.

ARTICLE 11. MISCELLANEOUS PROVISIONS

Section 11.01. 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 11.02. Exhibits. The Exhibits referenced in this Agreement and attached to it are incorporated in to this Agreement.

Section 11.03. 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 11.04. 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 11.05. 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) "include," "includes" and "including" are not limiting and shall be construed as if followed by the words "without limitation," and (v) "days" means calendar days unless specifically provided otherwise.

Section 11.06. Covenants Running with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder (a) is for the benefit of the Property and is a burden upon the Property, (b) runs with the Property, (c) is binding upon Developer and each successive owner during its ownership of the Property or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of the Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in the Property. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

Section 11.07. Notices. Written notices and other written communications by and between the Parties shall be addressed as follows and shall be deemed received on (a) the date such communication is personally delivered; (b) the first normal business hour following the physical receipt of the entire document by the receiving party's facsimile machine; or (c) five days after a registered or certified letter, properly addressed and with postage prepaid, is deposited in the United States mail:

If to City: Planning and Building Director
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

With Copies to: City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

and Michelle Marchetta Kenyon, Esq.
McDonough, Holland & Allen, PC
1901 Harrison Street, 9th Floor
Oakland, CA 94612-3501

If to Developer: Ira and Lois Carter
3131 Ozzie Court
Carmichael, CA 95608

1881 Mora LLC
765 Market Street, #28D
San Francisco, CA 94103

BNK LLC
P.O. Box 190
Kenwood, CA 95452

With a copy to:

Any party may at any time, by giving ten (10) days written notice to the other parties, may designate a new address for notices.

Section 11.08. 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 11.09. 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 11.10. 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 11.11. Waivers. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Developer.

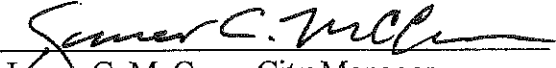
Section 11.12. California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions.

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]

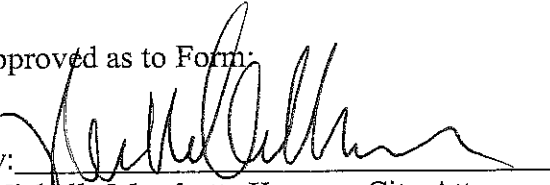
CITY:

City of Calistoga, a municipal corporation

By: 
James C. McCann, City Manager

Date Signed: March 9, 2009

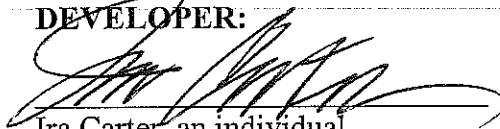
Approved as to Form:

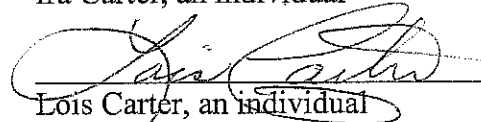
By: 
Michelle Marchetta Kenyon, City Attorney

Attest:

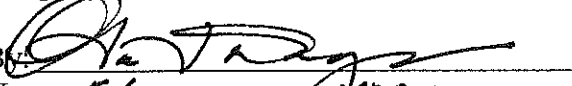
By: 
Susan Sneddon, City Clerk

DEVELOPER:


Ira Carter, an individual


Lois Carter, an individual

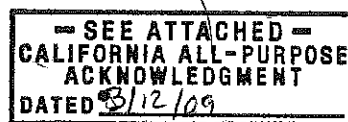
BNK LLC, a California limited liability company

By: 
Name: EDWARD W. NAGEL
Its: MANAGING PARTNER

By: _____
Name: _____
Its: _____

1881 MORA LLC, a California limited liability company:

By: Signature deliberately omitted-Property transferred to other Parties prior to execution _____
Name: _____
Its: _____



STATE OF CALIFORNIA)

COUNTY OF NAPA)

On 3-9-09, 2008 before me, Susan L. Sneddon, the
(Date) Here Insert Name and Title of the Officer
undersigned, personally appeared James C McCann
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.
Signature Susan Sneddon
Signature of Notary Public

Place Notary Seal Above

Susan L Sneddon
Napa County



STATE OF CALIFORNIA)

COUNTY OF NAPA)

Comm # 1826238
My Comm Expires 1-7-13
707-942-2807

On _____, 2008 before me, _____, the
(Date) Here Insert Name and Title of the Officer
undersigned, personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.
Signature _____
Signature of Notary Public

Place Notary Seal Above

STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On 3-11-09, 2008⁹ before me, Susan L Sneddon, the
(Date) Here Insert Name and Title of the Officer
undersigned, personally appeared Edward W. Nagel
Name(s) of Signer(s)

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

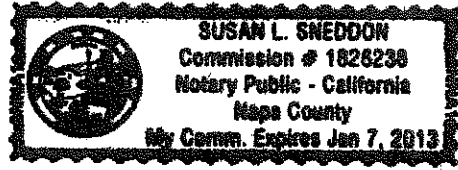
I certify under PENALTY OR PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan L Sneddon
Signature of Notary Public

Place Notary Seal Above

Susan L Sneddon
Napa County



STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

Comm # 1826238
My Comm Expires 1-7-13
707-942-2807

On _____, 2008 before me, _____, the
(Date) Here Insert Name and Title of the Officer
undersigned, personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Placer

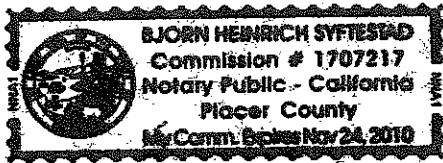
On 3/12/09 before me, Björn Heinrich Syftestad
Date Here Insert Name and Title of the Officer

personally appeared Ira Carter, Lois Carter
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement

Document Date: 3/12/09 Number of Pages: 2

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

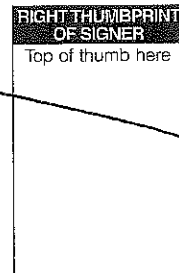
Signer Is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



ILLEGIBLE NOTARY SEAL DECLARATION
(GC 27361.7 and CCP 2015.5)

The notary seal on the document to which this statement is attached reads as follows:

Name of Notary Björn Heinrich Syftestad

Date Commission Expires 11-24-10

County of Commission Placer

Commission Number 1707217

"I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct."

Today's Date 4-2-09

Susan L. Sneddon

Signature of Declarant:

Susan L. Sneddon

Printed Name

EXHIBIT A

Legal Description of Property

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

Commencing at a point on the Northeastern line of Grant Street, distant thereon South 59° East 20.045 chains from the point of intersection thereof with the Southeastern line of Greenwood Avenue, running thence along said line of Grant Street, South 59° East 8.005 chains; and thence North 30¼° East 22.37 chains; thence North 58¾° West 8.005 chains, and thence South 30¼° West 22.37 chains, more or less, to the point of commencement.

Being Lot 3 and a portion of Lot 4 as the same are shown upon that certain Map entitled, "Map of W.F. Fisher Tract, Calistoga, Napa Co. Cal", filed April 17, 1897 in the office of the County Recorder of said Napa County.

APN 011-010-013 & 014

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

Being Lots 4, 5 and 6 as the same shown upon that certain Map entitled, "Silverado Tract No. 252", filed in Book 2 of Record Maps at Page 2 in the Office of the County Recorder of said Napa County

APN 011-022-002

Exhibit A

EXHIBIT B

Project Description

The Applicant proposes to subdivide the properties into 15 lots for single-family residential uses and associated ancillary residential uses, which may include light agricultural uses such as cultivation of vineyards. The Applicant seeks to be able to build the infrastructure (i.e. roadways and utilities) in a single phase. Upon recordation of the Final Map, the residential units will be developed as market conditions allow. Ultimately, each home site will be placed within an established building envelope that has been purposefully designed by Howard Backen of Backen & Gillam Architecture. The proposed sizes of the homes will likely range between four- to five-bedrooms and up to and over 4,000 square feet, including all outbuildings.

Vehicular circulation will be provided via tree lined public roadways (Valencia Lane and Hawthorne Place). Pedestrian circulation will be provided via a 5-foot sidewalk contain within a non-exclusive public pedestrian easement along Valencia Place, offset approximately 4 feet of the right-of-way and via a 5-foot sidewalk contained in the Hawthorne right-of-way.

The slope of the existing property is approximately 0.5-percent from the back of the properties to Grant Street. The project site is 400-feet east of Garnett Creek, which is where the storm runoff will be released.

The project also includes a request for a lot line adjustment with lands to the east located at 1881 Mora Avenue (APN 001-021-002). This lot line adjustment is being requested in order to adjust approximately 13,507 square feet of land for the purposes of installing public utilities and to provide for emergency vehicle access (EVA) to Mora Avenue.

The overall proposed subdivision design integrates open space areas upon entering the project along Grant Street to provide significant setbacks from the street. As designed, the Applicant proposes to preserve existing non-irrigated deep-rooted vines on several of the lots and relocated the vines where warranted. To preserve significant trees on the property and to provide aesthetic interest, a slightly curved public roadway with two roundabouts in the center of the roadway will be development.

Water and wastewater service will be provided by the City's water and wastewater systems. To assist the City in resolving an on-going drainage problem in the project area, the Applicant is proposing to take drainage west to Garnett Creek instead of directing the runoff south through the Napa County Fairgrounds.

In addition to the aforementioned project components, this project includes implementation of General Plan Objective H-3.1, P 3 by amending Chapter 17.08 of the Zoning Ordinance to provide an alternative means for residential projects to satisfy the affordable housing requirements. As such, the project sponsors and the City have drafted certain terms for consideration through the Development Agreement. These terms include the payment of money into the Calistoga Housing Trust Fund in-lieu of providing 20% of the resulting homes at an affordable rate.

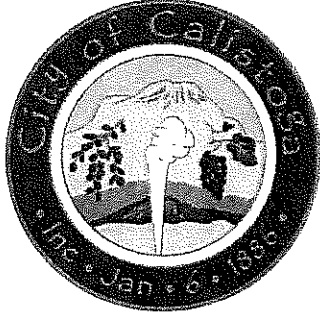
Exhibit B

The project sponsors will also be providing funds for infrastructure and recreational purposes. Funds will be provided for recreational purposes, above the amount normally collected as a Quality of Life Development Impact Fee, and additional funds will be paid for certain Grant Street roadway improvements beyond the normally required subdivision improvements.

Exhibit B

EXHIBIT C

Mitigation Monitoring and Reporting Program



**City of Calistoga
Environmental Mitigation Monitoring Program**

PROJECT NAME: Vineyard Oaks Subdivision; Zoning Ordinance Amendment (ZO 2008-01), Development Agreement (DA 2007-02), Tentative Subdivision Map (TTM 2007-02) and Design Review (DR 2008-01)

APPROVAL DATE: June 3, 2008

MITIGATED NEG. DEC.: City Council Resolution 2008-053

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City's monitoring requirements with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

Mitigation Aesthetics-1: Prior to building permit issuance or Improvement Plans, all lighting shall hooded, shielded and directed downward and shall be designed and equipped with motion detector switching and/or timers upon review and approval of the Planning and Building Department.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation AQ-1: Prior to building permit or grading permit issuance, the applicant shall incorporate the following Best Management Practices into the construction and improvement plans and clearly indicate these provisions in the specifications upon review and approval of the Public Works and Planning and Building Departments. The

Exhibit C

construction contractor shall incorporate these measures into an Erosion and Sediment Control Plan to limit fugitive dust and exhaust emissions during construction.

- a) Exposed soils shall be watered periodically during construction, a minimum of twice daily. The frequency of watering shall be increased if wind speeds exceed 15 mph. Only on-site well water, purchased city water or reclaimed water shall be used for this purpose. Responsibility for watering shall include weekends and holidays when work is not in progress.
- b) During excavation activities, haul trucks used to transport soil shall utilize tarps or other similar covering devices to reduce dust emissions.
- c) Grading and construction equipment operated during construction activities shall be properly muffled and maintained to minimize emissions. Equipment shall be turned off when not in use.
- d) Construction sites involving earthwork shall provide for a gravel pad area consisting of an impermeable liner and drain rock at the construction entrance to clean mud and debris from construction vehicles prior to entering the public roadways. Street surfaces in the vicinity of the project shall be routinely swept and cleaned of mud and dust carried onto the street by construction vehicles.
- e) Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
- f) Post-construction revegetation, repaving or soil stabilization of exposed soils shall be completed in a timely manner according to the approved Erosion and Sediment Control Plan and verified by City inspectors prior to acceptance of improvements or issuance of certificates of occupancy.
- g) The Developer shall designate a person with authority to require increased watering to monitor the dust and erosion control program and provide name and phone number to the City of Calistoga prior to issuance of grading permits.

Type:

Monitoring Dept.:

Shown on Plans:

Verified Implementation:

Remarks:

Mitigation AQ-2: Prior to occupancy, wood burning fireplaces, wood stoves and outdoor stoves/cooking centers shall require the use of natural gas or Environmental Protection Agency certified fireplaces in order to reduce any potential emissions.

Exhibit C

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation Bio-1: Prior to grading and/or building permit issuance, a Tree Removal and Replacement Plan consistent with the approved Tree Mitigation Plan dated December 16, 2007 shall be reviewed and approved by the Public Works Department in conjunction with the Planning and Building Department. All requirements and restrictions contained in Chapter 19.01 of the Calistoga Municipal Code (CMC) shall be complied with, which shall incorporate replacement trees for those trees slated for removal and shall include any recommendations of the Project Arborist into the project.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation Bio-2: Before any site work is commenced, including grading and/or trenching), a six-foot chain link fence shall be installed at the drip line (but no closer than 6 feet to any trunk) of the oak trees to be preserved. Drip line is defined as the point where the distance from the edge of the tree canopy to the trunk is the greatest. This radius shall be used in establishing the perimeter of the exclusion fencing. Fencing materials shall be highly visible and sturdy such as a portable cyclone fence or comparable fencing material. Signs shall be posted on fencing prohibiting parking of vehicles or storage of materials within the trees' drip line. Fencing shall remain in place until all construction work is complete. Four to six inches of mulch shall be placed around the perimeter of the trees when the project landscape is installed. If any ground disturbing activities are required within the dripline of the trees, an on-site qualified arborist shall monitor the work.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation Bio-3: Prior to the issuance of building permits, the project applicant shall apply to the U. S. Army Corps of Engineers, California Department of Fish and Game and the San Francisco Bay Regional Water Quality Control Board for permits under the Clean Water Act. For unavoidable impacts to existing resources, the applicant shall

Exhibit C

implement on-site mitigation and on-going monitoring. Mitigation shall include enhancement and creation of on-site wetland habitat at a ratio of 2:1 for impacts to wetlands. Impacts to "other waters of the U.S." shall be mitigated at a ratio of 1:1 for in-kind enhancement of waters and 2:1 for out-of-kind creation of wetlands.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation Bio-4: Non-native invasive plant species shall be removed from the project site and revegetated with native trees, shrubs, and herbs to improve plant diversity and wildlife cover and foraging habitat. The applicant shall be responsible for the maintenance, monitoring and funding of a three-year establishment period. Photo monitoring and survival counts shall be conducted yearly and submitted to the City's Planning Department for the first three years.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation Bio-5: If project construction is to occur from February 1 through August 31 a qualified biologist shall conduct pre-construction surveys of all potential nesting habitats within 500 feet of project activities. If nesting birds are identified on the project site or within the surveyed area, a non-disturbance buffer (determined in coordination with the California Department of Fish and Game) shall be established around the nest tree during the breeding season or until the young have fledged. If preconstruction surveys indicate that nests are inactive or potential habitat is unoccupied, no further mitigation measures are required. Raptor or other bird nests initiated during construction are presumed to be unaffected and no buffer is necessary. However, the "take" of any individuals is prohibited.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation Bio-6: Prior to construction activities within 500 feet of trees potentially supporting special-status bats, a qualified bat biologist will survey for special-status bats. If no evidence of bats is present, no further mitigation is required. If evidence of

Exhibit C

bats is observed a no-disturbance buffer acceptable in size to the CDFG will be created around active bat roosts during the breeding season (March 15-August 15). Bat roosts initiated during construction are presumed to be unaffected, and no buffer is necessary. However, "take" of individuals is prohibited. In addition, removal of trees showing evidence of bat activity will occur during the period least likely to impact bats, as determined by a qualified bat biologist, generally between February 15 and October 15 for winter hibernacula and between August 15 and March 1 for maternity roosts. If exclusion is necessary to prevent indirect impacts to bats from construction noise and human activity adjacent to trees showing evidence of bat activity, these activities shall be conducted during these periods as well.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation CR-1: Prior to the initiation of construction or ground-disturbing activities, all construction personnel should be alerted to the possibility of buried cultural remains (i.e., prehistoric and/or historic resources). Personnel should be instructed that upon discovery of buried cultural materials, work in the immediate vicinity of the find should cease and a qualified archaeologist should be contacted immediately.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation CR-2: If archaeological, historical, paleontological resources or other human remains are encountered, all construction activity in the affected area shall cease and no materials shall be removed until a qualified professional surveys the site and mitigation measures can be proposed by the qualified professional to the satisfaction of the Planning Division for approval and subsequent implementation by the permit holder.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Exhibit C

Mitigation Geo-1: Prior to the issuance of grading permits, the developer shall prepare a storm water pollution prevention plan (SWPPP), consistent with the State Water Resources Control Board NPDES requirements. The SWPPP shall be submitted to the City Engineer for review and approval.

Type:

Monitoring Dept.:

Shown on Plans:

Verified Implementation:

Remarks:

Mitigation Geo-2: Prior to the approval of the improvement plans and/or final map, a final design-level geotechnical report, with consideration of recommendations from the Geoservices Group, shall be prepared and submitted to the City for review and approval. The recommendations of the final geotechnical report shall be incorporated into the project design prior to issuance of grading or building permits for review and approval of the Public Works and Planning and Building Departments.

Type:

Monitoring Dept.:

Shown on Plans:

Verified Implementation:

Remarks:

Mitigation WQ-1: Prior to Final Map approval or grading permit issuance, the Public Works, Planning and Building Departments shall have reviewed and approved all drainage improvements. Said improvement plans shall be designed by a civil engineer and in accordance with the Napa County Design Criteria and any applicable adopted City standards. The capacity and condition of existing drainage facilities downstream of the development shall be analyzed and off-site drainage improvements shall be constructed as necessary. Site grading and drainage improvements shall be shown on the improvement plans.

Type:

Monitoring Dept.:

Shown on Plans:

Verified Implementation:

Remarks:

Mitigation WQ-2: Prior to grading and/or building permit issuance, the applicant shall submit finalized engineered drainage plans and design calculations for the City Engineer's review and approval.

Exhibit C

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation WQ-3: All drainage inlets shall be permanently marked "No Dumping-Flows to River".

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation WQ-4: Prior to building or grading permit issuance, verification shall be provided indicating that a permit has been obtained or a Notice of Intent (NOI) has been filed with the California Regional Water Quality Control Board for a General Permit to Discharge Storm Water Associated with Construction Activity subject to the review and approval of the Planning and Building Department.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation WQ-5: No discharge of hazardous materials shall be allowed in ground or surface waters or on the land. All hazardous materials shall be stored and managed.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation WQ-6: Prior to issuance of a grading or building permit, the permit holder shall submit a stormwater drainage plan for approval by the Department of Public Works in conformity with the National Pollution Discharge Elimination System and including Best Management Practices (BMP) as described in the California Stormwater

BMP Handbook or equivalent, such as sheet flow from pavement into vegetated drainage swales.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation N-1: The applicant shall develop a construction management plan to reduce traffic congestion during project construction, including staging areas on the project site and truck movements delivering and/or exporting fill material. Approval of the plan shall be required from the City prior to issuance of any grading permit.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation N-2: Construction travel shall be managed to minimize noise levels consistent with the City's Construction Ordinance.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Mitigation N-3: Construction activities shall be limited to the hours of 7 AM and 7 PM Monday through Friday. Should substantiated noise complaints be received the Planning and Building Director may implement greater restriction on construction activities.

Type:
Monitoring Dept.:
Shown on Plans:
Verified Implementation:
Remarks:

Exhibit C

Mitigation N-4: Construction restriction shall be posted on-site for the duration of construction.

Type:

Monitoring Dept.:

Shown on Plans:

Verified Implementation:

Remarks:

Exhibit C

EXHIBIT D

Existing Project Approvals

1. Mitigated Negative Declaration and Mitigation Monitoring Plan, adopted by City Council Resolution No. 2008-053 on June 3, 2008.
 2. Tentative Subdivision Map, TTM 2007-02, adopted by City Council Resolution No. 2008-055 on June 3, 2008.
 3. Design Review, DR 2008-01, adopted by City Council Resolution No. 2008-054 on June 3, 2008.
 4. Development Agreement, DA 2007-02, adopted by City Council Ordinance No. 652, on June 17, 2008.
-

Exhibit D

EXHIBIT E

Anticipated Subsequent Approvals

1. Final Subdivision Map and Improvement Plans.-Public Works Department
2. Subdivision Improvement Agreements – Public Works Department.
3. Private Roadway, Maintenance Agreement and Design Review Committee –City Attorney and Planning Department
4. Access and Open Space easements – City Attorney and Planning Department
5. Irrevocable Offer of Dedication of Land – Public Works Department
6. Lot line adjustment – Planning Department
7. Reserved

8. Tree removal permits – Public Works Department
9. Other Agency Permits
 - A. Required Permits from County of Napa Department of Environmental Management (Well Abandonment)
 - B. Required Permits from Army Corps of Engineers
 - C. Required Permits from Department of Fish and Game
 - D. Required Permits from Regional Water Quality Control Board
10. Design Review approval for individual homes on resulting lots of record –Planning Department
11. Subsequent staff issued approvals i.e. building permits, grading, permits, etc. – Planning Department
12. All required easements to be reviewed for approval by Director of Public Works and City Attorney.
13. Other permits necessary as required to satisfied project conditions of approval and Mitigated Negative Declaration Mitigation Measures.

Exhibit E

EXHIBIT F

Special Public Benefits

1. Funds for Affordable Housing.

Chapter 17.08 of the Calistoga Municipal Code, development of the Project requires that twenty percent (20%) of the homes in the subdivision be made available to families of low or moderate income. Alternatively, the Developer may provide other methods of addressing housing needs including a cash payment to the City. An in-lieu payment of Six Hundred Thousand Dollars (\$600,000) shall be made into the Calistoga Affordable Housing Trust Fund. The Developer shall provide \$100,000 of the in-lieu payment to City prior to the approval of the Final Subdivision Map. The balance of said in-lieu payment shall be made in equal payments prior to the issuance of a building permit for home construction on each lot resulting from the Project subdivision. Said in-lieu payment shall be secured by a first position lien on each lot until such time as paid in full. The obligation secured by the lien shall provide that interest shall accrue at an interest rate equal to the last quarter annualized Local Agency Invest Fund (LAIF) rate as of the lien date plus two percent (2%). The principal and accrued interest shall be due in full on the earlier of (1) issuance of a building permit for home construction on the lot, or (2) four years from the Effective Date of this Agreement.

2. Additional Funds for Recreational Purposes.

Chapter 17.10 of the Calistoga Municipal Code requires that prior to Final Subdivision Map approval subdivision of the Property, Three Thousand Dollars (\$3,000) per lot be paid as a Quality of Life fee for the provision of land, structures and physical improvements for cultural and recreational purposes. Prior to approval of the Final Subdivision Map, Developer shall pay to the City an additional sum of Eight Hundred Thousand Dollars (\$800,000) to be used for recreational purposes.

3. Grant Street Improvements.

The developer shall pay the City the full costs of the Grant Street improvements made by City. Said payment is estimated to be \$200,000 to the City for the full cost of Grant Street reconstruction (the segment from Mora Avenue to Garnett Creek Court). Actual costs shall be determined by the City following the completion and acceptance of the work by City. City shall provide reasonable accounting of all costs to Developer. Developer shall pay Grant Street Improvement costs in full prior to Final Subdivision Map approval.

EXHIBIT G

Existing Rules

1. All City of Calistoga Municipal Code and amendments/ordinances through Ordinance No. 649.
 2. City of Calistoga General Plan and amendments adopted as of January 2, 2008
 3. All City Council Resolutions adopted through Resolution 2008-055.
 4. City of Santa Rosa Design & Construction Standards, as amended as of January 2, 2008.
 5. CALTRANS Design & Construction Standards, as amended as of January 2, 2008.
 6. Napa County Stormwater Management Plan Guidelines, as amended as of January 2, 2008
-

Exhibit G

EXHIBIT H

Utility Capacity Allocation and Connection Fees

1. Water Allocation and Connection Fees.

The City shall reserve 9.75 acre feet of potable water for the Project. This allocation shall be assigned in equal portions to the resulting lots for home construction.

The water connection fee for the Project shall be set at the rate in effect at the time of the approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee for the lots shall be paid prior to recordation of the Final Subdivision Map. The balance of the water connection fees shall be allocated in equal shares to each residential lot. Upon recordation of the Final Subdivision Map, a lien subordinate only to other City liens shall be recorded against each lot securing payment of the remaining seventy-five percent (75%) of the connection fee for that lot. The principal interest shall be due in full on the earlier of, (1) the issuance of a building permit for home construction on the lot, or (2) four (4) years from the Effective Date of this Agreement.

2. Waste Water Allocation and Connection Fees.

The City shall reserve 6.21 acre feet of waste water treatment capacity for the development. Said allocation shall be assigned in equal portions to the resulting lots for home construction.

The waste water connection fee for the Project shall be set at the rate in effect at the time of the approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee for the lots shall be paid prior to recordation of the Final Subdivision Map. The balance of the waste water connection fees shall be allocated in equal shares to each residential lot. Upon recordation of the Final Subdivision Map, a lien subordinate only to other City liens shall be recorded against each lot securing payment of the remaining seventy-five percent (75%) of the connection fee for that lot. The principal interest shall be due in full on the earlier of, (1) the issuance of a building permit for home construction on the lot, or (2) four (4) years from the Effective Date of this Agreement.

EXHIBIT I

Timetable

Development will occur per Project related approvals.

Exhibit I

END OF DOCUMENT

EXHIBIT J

Annual Review Report

SAMPLE COMPLIANCE EVALUATION FORM

The Annual Compliance Evaluation Form is submitted to the City of Calistoga ("City") by BNK Investments, LLC ("Developer") pursuant to the requirements of California Government Code section 65856.1 and Chapter 17.39 of the City Municipal Code regarding Developer's good faith compliance with its obligations under that the Development Agreement having an Effective Date of _____, between the City and Developer ("Development Agreement"). All terms not otherwise defined herein shall have the meanings assigned to them in the Development Agreement:

Annual Review Period: _____ to _____.

(If yes, please attach description and/or documentation)

- A. Development Activities during this annual review period: Yes: ___ No: ___
- B. Development Impact Fees, processing fees, architectural review fees and/or other fees paid during this annual review period: Yes: ___ No: ___
- C. On- and/or off-site infrastructure improvements completed or paid for during this annual review period: Yes: ___ No: ___
- D. Other Development Agreement obligations completed during this annual review period: Yes: ___ No: ___
- E. Transfers, assignments, or dedications from or by Developer during this annual review period: Yes: ___ No: ___
- F. Awareness of any facts or circumstances that may be construed as a default by Developer during this annual review period: Yes: ___ No: ___

The undersigned representative of Developer confirms that Developer is:

- _____ In compliance with its obligations under the Development Agreement for this annual review period.
- _____ Not in compliance with its obligations under the Development Agreement for this annual review period, in response to which Developer is taking the actions set forth in the attachment hereto.

IN WITNESS WHEREOF, Developer has executed this Compliance Evaluation Form as of this _____ day of _____, 20____.

Developer,
By: _____
Its: _____