

CARTER FAMILY TRUST
3131 OZZIE CT.
CARMICHAEL, CA 95608

MAY - 7 2012

RECEIVED

May 1st, 2012

Mr. Richard Spittler
City Manager
1232 Washington Street
Calistoga, CA 94515

RE: Vineyard Oaks Development, 2400 Grant St., Calistoga

Dear Mr. Spittler,

Thank you for meeting with us last week. As we approach the anniversary date of the development agreement between the City of Calistoga and Vineyard Oaks we thought it important to bring the City up to date regarding the status of our project.

Firstly, we want to inform you that neither BNK LLC nor any of the principal partners of BNK LLC have any further relationship with this project. Therefore, last December, we contracted with a local real estate broker to actively market our project throughout Northern California. At this time, we have interest from developers and we are currently negotiating in good faith. We are hopeful to have a contract in place with one of them in the near future. With the introduction of new builders we anticipate some changes to house style and housing market placement.

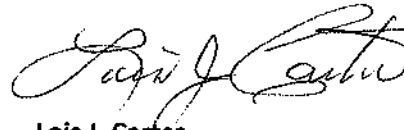
Secondly, as we are currently in the process of attracting a new buyer for the property, it will not be possible to make the payments stipulated in the development agreement that are scheduled for July 18th, 2012. We would ask that any payments due be postponed until the property is under new ownership and the final map for this project is recorded. We want the City to know that we are fully committed to assisting in the completion of the development agreement. To this end, we would ask that the agreement be extended two years to then be in place until July 18th, 2014.

Lastly, the housing market dynamics have changed dramatically from the time when this development agreement was originally negotiated. We would ask that the City and its planning department work with the new developer to recalculate the impact fees and the water/sewer hook-up fees in this agreement to more accurately reflect the current housing market in Calistoga.

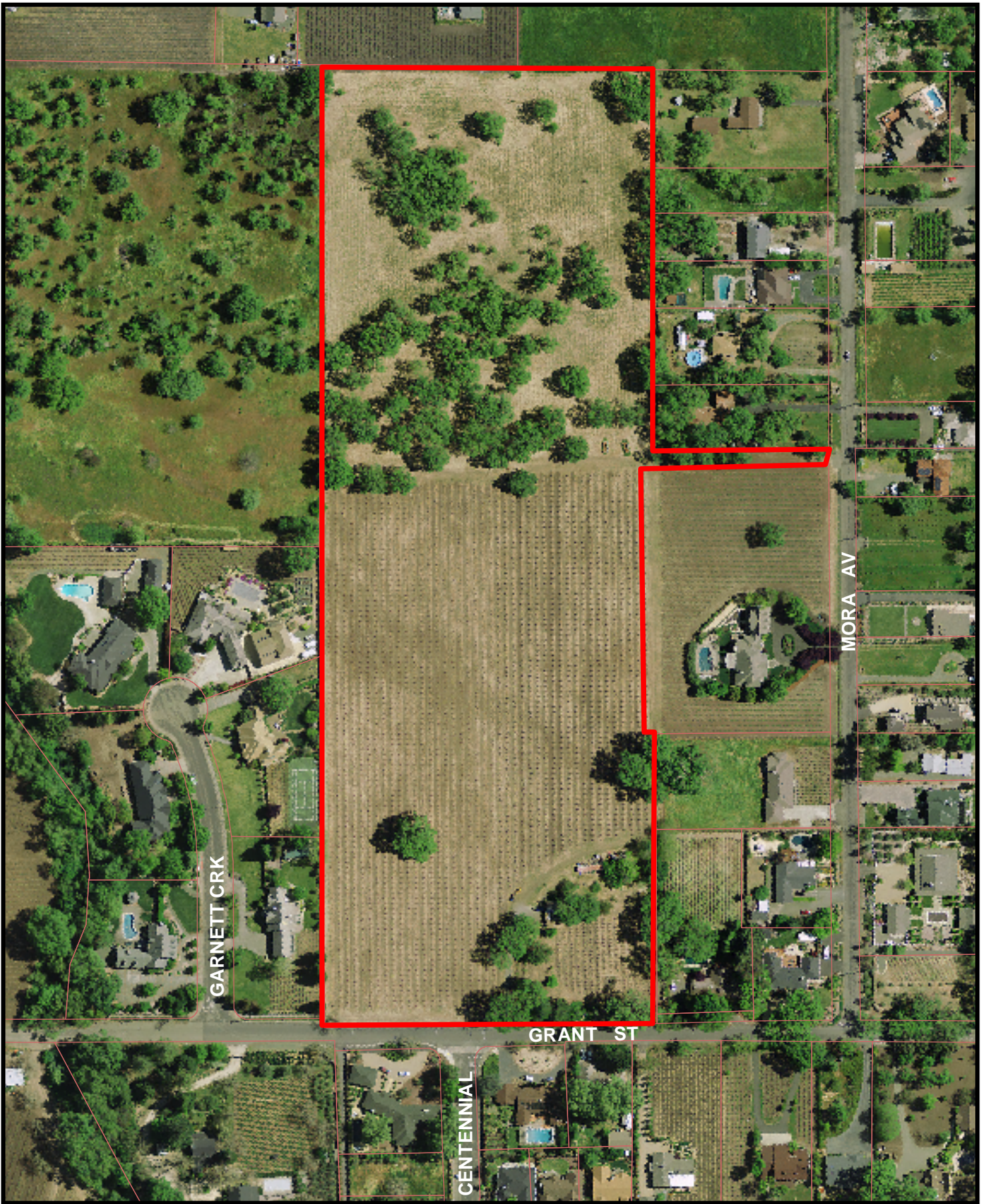
Thank you for your consideration,



Ira S. Carter
Trustee
Carter Family Trust

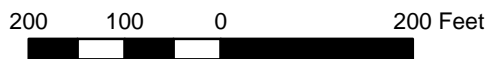


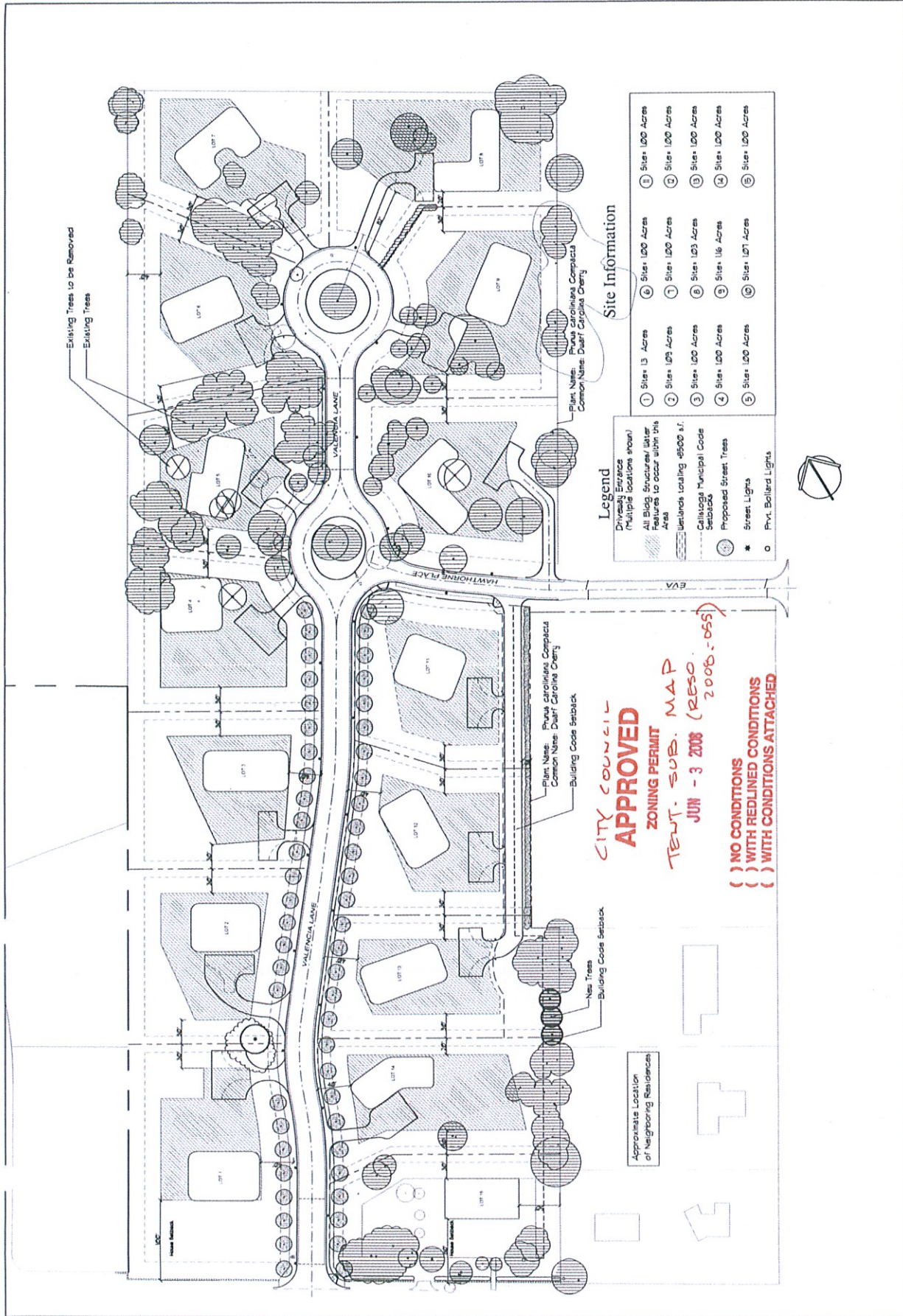
Lois J. Carter
Trustee
Carter Family Trust



VICINITY MAP

**VINEYARD OAKS
SUBDIVISION**





Existing Trees to be Removed
Existing Trees

Plant Name: *Prunella caroliniana* Compacta
Common Name: Dwarf Carolina Cherry

New Trees
Building Code Setback

Plant Name: *Prunella caroliniana* Compacta
Common Name: Dwarf Carolina Cherry
Building Code Setback

Site Information

- Legend**
- Divisibly Entrance (Multiple locations shown)
 - All Bldg Structures (shaded Area)
 - Features to occur within this Area
 - Setbacks totaling 4500 s.f.
 - Calligraphic Municipal Code Setbacks
 - Proposed Street Trees
 - Street Lights
 - Priv. Bollard Lights

- ① Site: 13 Acres
- ② Site: 103 Acres
- ③ Site: 100 Acres
- ④ Site: 100 Acres
- ⑤ Site: 100 Acres
- ⑥ Site: 100 Acres
- ⑦ Site: 103 Acres
- ⑧ Site: 116 Acres
- ⑨ Site: 100 Acres
- ⑩ Site: 107 Acres
- ⑪ Site: 100 Acres
- ⑫ Site: 100 Acres
- ⑬ Site: 100 Acres
- ⑭ Site: 100 Acres
- ⑮ Site: 100 Acres

**CITY COUNCIL
APPROVED**

ZONING PERMIT

TEUT. SUB. MAP
JUN -3 2008 (RESO. 2008.-055)

- () NO CONDITIONS
- () WITH REDLINED CONDITIONS
- () WITH CONDITIONS ATTACHED

Approximate Location of Neighboring Residences



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

D R A F T

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

THIS SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT ("Second Amendment") dated for reference as of _____, 2012 is entered into, by and among Ira Carter, an individual and Lois Carter, an individual (who are referred to, collectively, in this Second 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. City and Developer were parties to the First Amendment to that certain Development Agreement effective May 21, 2009 and recorded in the County of Napa as Record No. 2009-0017617 ("First Amendment to the Development Agreement") modifying the Development Agreement described in Attachment No. 2 attached hereto and made a part hereof ("Property").

C. Developer has filed an amendment request application with the City to extend the term of the Development Agreement and 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.

D. City and Developer desire by this Second 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.

E. On July 17, 2012, after a duly noticed public hearing, the City Council of the City adopted Ordinance No. XXX, extending the term of the Development Agreement and approving the changes to Exhibit F and Exhibit H set forth in this Second Amendment. Such ordinance took effect on _____, 2012.

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 F. Exhibit F is hereby deleted and replaced in its entirety with a new Exhibit F, attached hereto and incorporated herein as Attachment No. 3.

2. 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. 4.

3. Prior Amendments. Prior to the execution of this Second Amendment, the Development Agreement has been amended one time and there no other oral agreements, correspondence, actions or understandings that would effectively modify the terms of the Development Agreement.

4. Development Agreement in Effect. Except as amended by this Second Amendment, the Development Agreement (Attachment No. 1) and First Amendment to the Development Agreement (Attachment No. 2) remain in full force and effect.

5. Counterpart Signatures. This Second 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 Second Amendment to be effective as of the date first above written.

[SIGNATURES ON FOLLOWING PAGE]

CITY:

City of Calistoga, a municipal corporation

By: _____
Richard D. Spitler, 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

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On _____ before me, _____, the undersigned, personally
(Date)

appeared _____ 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.

Signature of Notary Public

Expiration Date

Print Name

Commission Number

Notary Public Phone Number: _____

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On _____ before me, _____ the undersigned, personally
(Date)

appeared _____ 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.

Signature of Notary Public

Expiration Date

Print Name

Commission Number

Notary Public Phone Number: _____

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On _____ before me, _____, the undersigned, personally
(Date)
appeared _____ 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
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(Place Notary Seal Above)

WITNESS my hand and official seal.

Signature of Notary Public

Expiration Date

Print Name

Commission Number

Notary Public Phone Number: _____

ATTACHMENT NO. 1
Development Agreement

ATTACHMENT NO. 2

First Amendment to the Development Agreement

ATTACHMENT NO. 3

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 prior to or upon issuance of a building permit for home construction on the lot.

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.

ATTACHMENT NO. 4

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 the remaining seventy-five percent (75%) of the connection fee for that lot. The principal and accrued interest shall be due in full prior to or upon issuance of a building permit for home construction on the lot.

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 the remaining seventy-five percent (75%) of the connection fee for that lot. The principal and accrued interest shall be due in full prior to or upon issuance of a building permit for home construction on the lot.