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**DEVELOPMENT AGREEMENT**

**BY AND AMONG**

**THE CITY OF CALISTOGA**

**AND**

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

**(VINEYARD OAKS SUBDIVISION)**

**TABLE OF CONTENTS**

**PAGE NO.**

ARTICLE 1. DEFINITIONS .....3  
    Section 1.01. "Applicable Law" .....3  
    Section 1.02. "CEQA" .....3  
    Section 1.03. "Annual Review Report" .....3  
    Section 1.04. "Development Agreement Ordinance" .....3  
    Section 1.05. "Development Agreement Statute" .....3  
    Section 1.06. "Development Impact Fees" .....3  
    Section 1.07. "Effective Date" .....3  
    Section 1.08. "Existing Rules" .....3  
    Section 1.09. "Existing Project Approvals" .....3  
    Section 1.10. "Mitigation Monitoring and Reporting Program ('MMRP')" .....4  
    Section 1.11. "Property" .....4  
    Section 1.12. "Project Approvals" .....4  
    Section 1.13. "Subsequent Discretionary Approvals" .....4  
    Section 1.14. "Subsequent Project Approvals" .....4  
    Section 1.15. "Subsequent Ministerial Approvals" .....4  
    Section 1.16. "Subsequently Adopted Rules" .....4  
    Section 1.17. "Utility Connection Fees" .....4  
ARTICLE 2. EFFECTIVE DATE AND TERM .....4  
    Section 2.01. Effective Date .....4  
    Section 2.02. Term. ....4  
    Section 2.03. Developer Representations and Warranties .....5  
ARTICLE 3. DEVELOPMENT OF PROPERTY .....5  
    Section 3.01. Vested Rights .....5  
    Section 3.02. Applicable Law; Documentation .....5  
    Section 3.03. Reservations of City Authority to Apply Subsequently Adopted Rules. ....6  
    Section 3.04. Conflicting Subsequent Law .....7  
    Section 3.05. Regulation by Other Public Agencies .....7  
    Section 3.06. Development Timing .....8  
    Section 3.07. Life of Project Approvals .....8  
    Section 3.08. Initiatives and Referenda .....8  
    Section 3.09. Environmental Mitigation .....8  
    Section 3.10. State and Federal Law .....9  
ARTICLE 4. DEVELOPER COMMITMENT AND SPECIAL PUBLIC BENEFITS .....9  
    Section 4.01. Special Public Benefits to the City .....9  
    Section 4.02. Taxes, Charges, Assessments, Fees and Exactions .....9  
    Section 4.03. Utility Connection Fee .....9  
    Section 4.04. Processing Fees .....9  
    Section 4.05. New Fees and Charges for Major Changes .....10  
ARTICLE 5. UTILITIES .....10  
    Section 5.01. Allocation of Water and Wastewater Services .....10  
    Section 5.02. Will-Serve Obligation .....10

Section 5.03. Utility Fees, Charges, and Exactions.....	11
ARTICLE 6. DEVELOPMENT STANDARDS AND REQUIREMENTS .....	11
Section 6.01. Compliance with State and Federal Law.....	11
ARTICLE 7. MORTGAGEE PROTECTION AND ESTOPPEL CERTIFICATE.....	11
Section 7.01. Mortgagee Protection .....	11
Section 7.02. Mortgagee Not Obligated .....	11
Section 7.03. Notice of Default to Mortgagee.....	11
Section 7.04. Estoppel Certificate. ....	12
ARTICLE 8. COOPERATION AND IMPLEMENTATION.....	12
Section 8.01. Subsequent Project Approvals.....	12
Section 8.02. Acquisition of Land Owned by Third Parties.....	13
Section 8.03. Other Government Permits.....	13
Section 8.04. Mitigation Measures.....	13
Section 8.05. Cooperation in the Event of Legal Challenge.....	13
ARTICLE 9. ASSIGNMENT, TRANSFER AND NOTICE.....	14
Section 9.01. Assignment.....	14
ARTICLE 10. DEFAULT; REMEDIES; AMENDMENT; TERMINATION .....	14
Section 10.01. Breach.....	14
Section 10.02. Default .....	15
Section 10.03. Withholding of Permits .....	15
Section 10.04. Remedies. ....	15
Section 10.05. Annual Review. ....	15
Section 10.06. Enforced Delay; Extension of Time of Performance .....	16
Section 10.07. Amendment.....	16
Section 10.08. Resolution of Disputes.....	17
Section 10.09. Termination; Surviving Provisions.....	17
Section 10.10. Indemnity and Hold Harmless .....	17
ARTICLE 11. MISCELLANEOUS PROVISIONS .....	17
Section 11.01. Incorporation of Recitals and Introductory Paragraph .....	17
Section 11.02. Exhibits.....	17
Section 11.03. Findings .....	18
Section 11.04. Severability.....	18
Section 11.05. Construction.....	18
Section 11.06. Covenants Running with the Land .....	18
Section 11.07. Notices.....	19
Section 11.08. Entire Agreement, Counterparts and Exhibits.....	19
Section 11.09. Recordation Of Development Agreement .....	20
Section 11.10. No Joint Venture or Partnership .....	20
Section 11.11. Waivers.....	20
Section 11.12. California Law.....	20

**LIST OF EXHIBITS:**

- Exhibit A. Property Description
- 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

**DRAFT**

1 **DEVELOPMENT AGREEMENT**

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

9 **RECITALS**

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

13 B. Ira Carter and Lois Carter own in fee title to that certain real property located at  
14 2400 Grant Street (APN 011-010-013, 011-010-014) in the City of Calistoga, County of Napa.  
15 1881 Mora LLC owns that certain real property located at 1881 Mora Avenue (APN 011-021-  
16 002) in the City of Calistoga, County of Napa. These parcels are collectively referred to as the  
17 Property. The Property is more particularly described in Exhibit A attached to this Agreement  
18 and a part of it. BNK, LLC has an option to purchase the Property.

19 C. To strengthen the public planning process, encourage private participation in  
20 comprehensive planning, make maximum efficient use of resources at the least economic cost to  
21 the public, and reduce the economic risk of development, the Legislature of the State of  
22 California enacted the Development Agreement Statute, which authorizes City to enter into an  
23 agreement with any person having a legal or equitable interest in real property regarding the  
24 development of such property.

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

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

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

34 1. California Environmental Quality Act Review. The environmental  
35 impacts of the Project, including the Existing Project Approvals have properly been reviewed  
36 and assessed by City pursuant to CEQA. On \_\_\_\_\_, 2008, in accordance with the  
37 recommendation of City's Planning Commission, the City Council adopted a Mitigated Negative

38 Declaration for the Project, including a Mitigation Monitoring and Reporting Program pursuant  
39 to Resolution No. \_\_\_\_\_. The MMRP is attached as Exhibit C.

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

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

45 H. The City Council finds that this Agreement furthers the public health, safety and  
46 general welfare and is consistent with the General Plan and that there is no applicable specific  
47 plan. City and Developer have further determined that the Project is a development for which  
48 this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Existing  
49 Project Approvals and Subsequent Project Approvals, thereby encouraging planning for,  
50 investment in and commitment to development of the Property. Continued use and development  
51 of the Property in accordance with this Agreement is anticipated to provide substantial benefits  
52 and contribute to the vitality of the City, thereby achieving the goals and purposes for which the  
53 Development Agreement Statute was enacted:

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

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

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

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

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

71 K. On \_\_\_\_\_, 2008, the City Council, at a duly noticed public  
72 hearing, adopted Ordinance No. \_\_\_\_\_, approving and authorizing the execution of this  
73 Agreement.

74

**AGREEMENT**

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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:

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**ARTICLE 1. DEFINITIONS**

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In this Agreement, unless the context requires otherwise:

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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.

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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.

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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.

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

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

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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.

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

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Section 1.08. "Existing Rules" means the City ordinances, resolutions, rules, regulations, official policies, standards and specification in existence as of \_\_\_\_\_, 200\_. 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.

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

110 Section 1.10. "Mitigation Monitoring and Reporting Program ('MMRP')" means the  
111 mitigation monitoring and reporting program adopted by the City pursuant to CEQA by  
112 Resolution \_\_\_\_\_ and attached as Exhibit C.

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

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

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

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

124 Section 1.15. "Subsequent Ministerial Approvals" means permits or approvals that are  
125 required by Applicable Law and that are to be issued upon compliance with uniform, objective  
126 standards and regulations. Subsequent Ministerial Approvals generally include, but are not  
127 limited to, applications for road construction permits or authorizations; grading and excavation  
128 permits; building permits, including electrical, plumbing, mechanical, Title 24 Electrical, and  
129 Title 24 Handicap permits or approvals; certificates of occupancy; encroachment permits; water  
130 connection permits; and any other similar permits required for the development and operation of  
131 the Project. Parties acknowledge that under California state law, under some circumstances,  
132 grading or building permits may be discretionary.

133 Section 1.16. "Subsequently Adopted Rules" means City ordinances, resolutions, rules,  
134 regulations, official policies, standards and specification that came in to effect  
135 after \_\_\_\_\_, 200\_.

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

## 139 **ARTICLE 2. EFFECTIVE DATE AND TERM**

140 Section 2.01. Effective Date. This Agreement shall become effective upon the date that  
141 the ordinance approving this Agreement takes effect that is \_\_\_\_\_, 2008.

142 Section 2.02. Term.

143 A. Initial Term and Discretionary Extension The Initial Term of this Agreement  
144 shall commence upon the Effective Date and shall extend for a period of five (5) years thereafter.  
145 The Term has been established by the Parties as a reasonable estimate of the time required to  
146 develop the Project, including all on- and off-site public improvements. Upon application by the



147 Developer, or its successor in interest, the City may extend the Term for an additional period of  
148 up to one (1) year, subject to the requirements of the Development Agreement Statute and City  
149 ordinances.

150 B. Termination Following Expiration. Following the expiration of the Initial Term,  
151 or the earlier completion of development of the Project and all of Developer's obligations in  
152 connection therewith, this Agreement shall be deemed terminated and of no further force and  
153 effect, subject, however, to the provisions of Section 10.09 of this Agreement. The expiration or  
154 termination of this Agreement shall not limit any property rights of the Developer or its  
155 successors that may exist independent of this Agreement.

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

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

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

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

168 **ARTICLE 3. DEVELOPMENT OF PROPERTY**

169 Section 3.01. Vested Rights. The Property is hereby made subject to the provisions of  
170 this Agreement. All development of or on the Property, or any portion thereof, shall be  
171 undertaken only in compliance with the Existing Project Approvals, Subsequent Project  
172 Approvals, Applicable Law and the provisions of this Agreement. Developer shall have a  
173 vested right to develop the Property in accordance with the Existing Project Approvals, the  
174 Subsequent Project Approvals, Applicable Law and this Agreement. The Project shall be  
175 subject to all Subsequent Project Approvals (which, upon final approval, shall be deemed part of  
176 the Existing Project Approvals hereunder).

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

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

187           A.     The Parties acknowledge and agree that City is restricted in its authority to limit  
188 its police power by contract. The limitations, reservations and exceptions contained in this  
189 Agreement are intended to reserve to City all of its police power which cannot be so limited. and  
190 this Agreement shall be so construed.

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

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

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

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

208                   (4)    City Revenue Measures. All new taxes, fees, charges or assessments of  
209 general application, including increases in the business license tax, or any other tax, fee, charge,  
210 or assessment, which are not specifically or disproportionately targeted to the Project or  
211 Property. Provided, only Development Fees established by the Existing Rules may be applied to  
212 the Project or Property unless the are authorized by Paragraph 3.04 B.(5) below or by Section  
213 5.01.

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

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

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

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

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

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

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

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

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

237 A. Change any land use designation or permitted use of the Property;

238 B. Limit or control the availability of public utilities, services or facilities or any  
239 privileges or rights to public utilities, services, or facilities (for example, water rights, water  
240 connections or sewage capacity rights, sewer connections, etc.) for the Project;

241 C. Limit or control the location, configuration or size of lots, buildings, structures, or  
242 other improvements of the Project in a manner that is inconsistent with or more restrictive than  
243 the limitations included in or imposed by the Project Approvals, Existing Law, or this  
244 Agreement;

245 D. Limit or control the rate, timing, phasing or sequencing of the approval,  
246 development or construction of all or any part of the Project in any manner, except as set forth in  
247 this Agreement, Applicable Law or the Project Approvals;

248 E. Impose on the Project or Developer any fees or exactions other than those  
249 permitted by this Agreement, Existing Law or the Project Approvals.

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

253 Section 3.05. Regulation by Other Public Agencies. City and Developer acknowledge  
254 and agree that other public agencies not within the control of City possess authority to regulate  
255 aspects of the development of the Property separately from or jointly with City, and this  
256 Agreement does not limit the authority of such other public agencies. Developer shall, at the  
257 time required by Developer in accordance with Developer's construction schedule, apply for all  
258 such other permits and approvals as may be required by other governmental entities in  
259 connection with the development of, or the provision of services to, the Project. Developer shall  
260 also pay all required fees when due to such public agencies. Developer acknowledges that City

261 does not control the amount of any such fees. City shall cooperate with Developer in  
262 Developer's effort to obtain such permits and approvals; provided, however, City shall have no  
263 obligation to incur any costs, without compensation or reimbursement, or to amend any City  
264 policy, regulation or ordinance in connection therewith.

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

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

270 Section 3.08. Initiatives and Referenda.

271 A. If any Subsequently Adopted Law is enacted or imposed by a citizen-sponsored  
272 initiative or referendum, which would conflict with the Project Approvals or Applicable Law or  
273 this Agreement, such Subsequently Adopted Law shall not apply to the Property or Project;  
274 provided, however, the Parties acknowledge that City's approval of this Agreement is a  
275 legislative action subject to referendum.

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

282 C. Developer agrees and understands that City does not have authority or jurisdiction  
283 over any other public agency's ability to grant governmental approvals or permits or to impose a  
284 moratorium or other limitations that may affect the Project.

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

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