

MEMORANDUM OF UNDERSTANDING
REGARDING
NEGOTIATION OF DEVELOPMENT AGREEMENT FOR
FRANCIS HOUSE INN

CITY OF CALISTOGA AGREEMENT NO. 0186

This MEMORANDUM OF UNDERSTANDING REGARDING NEGOTIATION OF DEVELOPMENT AGREEMENT FOR FRANCIS HOUSE INN (the “**Agreement**”) is made and entered into as of the 15th day of August 2006 (the “**Effective Date**”), by and between the CITY OF CALISTOGA (“**City**”), a municipal corporation, and NEIL SCHAFER, an individual (“**Developer**”).

RECITALS

A. Developer intends to purchase that certain real property located in the City of Calistoga at Spring and Myrtle Streets, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Property**”). The Property is the site of a National Register Landmark, the James H. Francis House (“**Francis House**”), which has fallen into a state of disrepair, as well as other blighted structures.

B. Developer intends to develop the Property and renovate the Francis House as a small historic inn with reception facilities (the “**Project**”).

C. In furtherance of the Project, Developer and the City desire to memorialize their understandings in a development agreement (the “**Development Agreement**”). Prior to finalizing the Development Agreement, the parties intend to set forth in this non-binding Agreement the parties' understanding of the terms that will be negotiated.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are true and correct and are incorporated into the body of this Agreement as though expressly set forth herein.

2. City and Developer Discretion. By execution of this Agreement, (a) City is not committing itself to or agreeing to undertake any acts or activities requiring the subsequent independent exercise or discretion of City or any agency or department thereof, and (b) Developer is not committing itself to or agreeing to undertake any acts or activities. Execution

of this Agreement by City and Developer is merely an agreement to enter into a period of good faith negotiations according to the terms hereof, reserving final discretion and approval by City and Developer as to any Development Agreement, the Project Entitlements (as defined below) and all proceedings and decisions in connection therewith. In particular, the parties acknowledge the following statutory requirements with which the City must comply:

a. ~~The provisions of the California Environmental Quality Act, California Public Resources Code Section 2100 *et seq.* ("CEQA"), including the provisions of Section 15004 of the CEQA Guidelines;~~

b. The provisions of Government Code Section 65864 *et seq.* governing the approval of development agreements, including the requirement that a public hearing on an application for a development agreement be held by the planning agency and by the legislative body and that certain findings be made; and

c. The provisions of any local, state or federal regulations, ordinances or statutes regarding historic structures and preservation.

3. Good Faith Negotiation of a Development Agreement. During the term of this Agreement, Developer and City shall negotiate in good faith the terms and conditions of the Development Agreement, subject to the retained discretion described in Section 2 above. In the event that Developer has not purchased the Property by the time of approval of the Development Agreement, the current owner, Donald Selvey, shall be a party to the agreement. The Development Agreement resulting from negotiations hereunder shall become effective only after, and if, the Development Agreement has been considered and approved by the City in accordance with Government Code Section 65864 *et seq.*, and approved by Developer. If the Development Agreement is executed by the City and Developer, the Development Agreement shall thereafter govern the right and obligations of the parties with respect to the Project. The Development Agreement is contemplated by Developer and the City to include, without limitation, the following terms:

a. Term. The Development Agreement would be for a term of two (2) years, contemplating the completion of the Project by December 31, 2008.

b. Project Development. Developer would agree to construct and develop the Project. The Project would consist of an historic inn of up to 25 rooms, with reception and conference facilities and appurtenant on-site and off-site improvements. As part of the Project, Developer would renovate the Francis House in accordance with the National Park Service Secretary of Interior Standards for rehabilitation. The Project must be of high architectural quality and conform to all federal, state and local requirements for historic structures.

c. City Approvals. The Project would require the following approvals: (1) Growth Management allocations (water and wastewater); (2) a General Plan Land Use Map amendment; (3) a Rezone of the Property to Planned Development District; (4) a Planned Development Plan, with appropriate standards such as lot coverage, setbacks, parking ratios; (5) a Public Convenience and Necessity determination to allow a liquor license to be issued by the ABC; (6) a lot merger; (7) Design Review approval; and (8) demolition and building permits (the

“**Project Entitlements**”). Items (1) through (3) would be obtained prior to or concurrently with approval of the Development Agreement.

d. Project Public Improvement Requirements. Developer would agree to construct and dedicate certain on- and off-site public improvements required as conditions of approval of the Project.

e. Development Impact Fees. The City would agree to defer Developer's payment of the following development impact fees: Water and Wastewater Connection fees, Quality of Life fees, Affordable Housing fees, and Public Safety fees (the “**Impact Fees**”). The parties would execute a Fee Deferral Agreement, which would (1) require the Impact Fees to be paid by Developer from future tax revenue generated by the Project, (2) limit Developer's ability to transfer the Property and (3) allow the City to lien the Property in the event of non-payment. The Fee Deferral Agreement would be recorded against the Property. Developer would be required to pay all fees imposed by outside agencies, including the school impact fee.

f. Vested Development Rights. City would grant Developer vested rights to develop the Property subject to the provisions of the Development Agreement and the Project Entitlements.

g. Reimbursement. Developer would agree to pay City all costs related to the processing of the applications for the Project and the negotiation and drafting of the Development Agreement, including all attorney fees, in addition to the standard application fees, building permit and plan check, and inspection costs.

h. Mills Act Property Tax Agreement. City would in good faith consider adoption of a property tax ordinance and, if adopted, the parties would enter into a Mills Act Property Tax Agreement.

i. Use Restrictions. Developer would execute use restrictions to ensure that the use of the Property would be restricted to use and operation as a first-class historic inn for short-term occupancy.

j. Maintenance Obligations. Developer would agree to execute a Maintenance Agreement ensuring that the Project is well maintained and operated in a first-class, professional manner in accordance with historic preservation standards.

k. Outstanding Lien. Developer would agree to pay the outstanding lien of approximately \$9,000.00 from the dangerous tree removal action prior to the issuance of the demolition and building permits.

l. Expansion of the Project. The parties would acknowledge Developer's desire to expand the Project to adjacent properties in the future if the Project is successful.

m. Subsequent Project Entitlements Cooperation. City would agree to cooperate and diligently process subsequent land use and planning approvals and environmental review in connection with the Project, which are consistent with the Development Agreement and any approved Project Entitlements.

n. Transfer Rights. Developer would agree to limitations on its right to assign or transfer the Development Agreement, provided, however, that City would agree to the assignment of the entirety of Developer's rights and obligations to Schafer, as the sole developer party, upon Schafer's purchase of the Property in the event that the Owner is a party to the Development Agreement.

4. Timeline. Developer would agree to commence clean-up of the Property, secure the building from future deterioration and demolish selective structures within thirty (30) days of approval of the Development Agreement. Developer and City would negotiate a timeline for the filing of applications and commencement and completion of construction. The timeline which would require the Project to be open for business by December 31, 2008.

5. Third Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and shall not be construed to create any rights in any person or entity other than the parties.

6. Notices. All notices and communications in connection with this Agreement shall be in writing and shall be deemed given when delivered by personal service, or via facsimile to the parties as noted below (with proof of successful transmission), or three (3) business days after placement in the U.S. Mail, certified, return receipt requested, postage prepaid, and addressed to the addresses for City and Developer set forth below, or such other addresses as either party may designate by written notice to the other in accordance with this Section. In the event a facsimile number is provided below, all notices hereunder may be sent via facsimile to said parties.

City: City of Calistoga
Attn: City Manager
1232 Washington St.
Calistoga, CA 94515
Tel: (707) 942-2800
Fax: (707) 942-0732

With a copy to: City of Calistoga
Attn: City Attorney
McDonough Holland & Allen PC
1901 Harrison Street
Oakland, CA 94612
Tel: (510) 273-8780
Fax: (510) 839-9104

Developer: Mr. Neil Schafer
1026 Hardman Avenue
Napa, CA 94558
Tel: (707) 480-7232
Fax: (707) 265-0919

7. Term. The term of this Agreement shall commence upon the Effective Date and shall continue until the Development Agreement and Project Entitlements are considered for final approval by the City, or until terminated by mutual written agreement of the parties.

8. Non-Binding. This Agreement is non-binding and is entered into as an expression of the parties' good faith intent to draft, negotiate, and enter into the Development Agreement.

9. Binding on Successors. Neither party shall be entitled to assign its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other, which consent may be granted in such party's sole and absolute discretion. Subject to the foregoing, the terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assignees of the parties hereto.

10. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to choice of laws principles. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Napa County in the State of California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

11. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

13. Counterparts. This Agreement may be executed in one or more counterparts, including facsimile counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

14. Ambiguity. The parties and their counsel have each carefully reviewed this Agreement, and the parties have agreed to each term of the Agreement. No ambiguity shall be presumed to be construed against either party.

15. Waiver. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

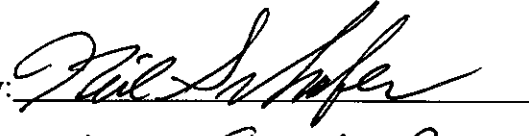
17. Authority. The signatories to this Agreement hereby represent and warrant that they are fully authorized to sign this Agreement on behalf of the party that they represent.

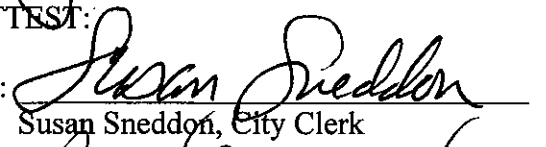
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CITY OF CALISTOGA,
a municipal corporation

NEIL SCHAFER,
an individual

By: 

By: 

ATTEST:
By: 
Susan Sneddon, City Clerk

Name: NEIL SCHAFER
Its: 9/7/06

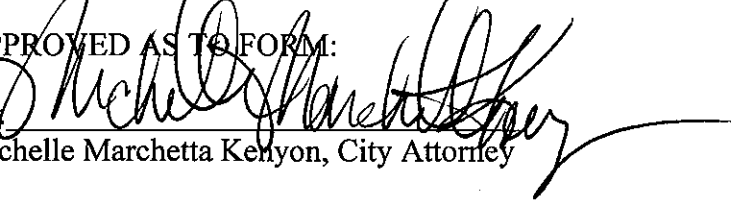
APPROVED AS TO FORM:
By: 
Michelle Marchetta Kenyon, City Attorney

EXHIBIT A

Escrow Number: 00205945-003-CG

LOTS 5, 6, 7, 8 and 9 in Block K of Middle Addition, so called, as shown on the map entitled "Map of Calistoga, showing its extensions, surroundings and the Hot Sulphur Springs, Napa County, Cal.," filed March 1, 1871, in the office of the County Recorder of Napa County, being that Block so lettered on said map and bounded on the North by Myrtle Street, on the East by Spring Street, on the South by Main Street, and on the West by Berry Street.

APN 011-242-015; -04 and -014