

## ORDINANCE NO. 657

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING THE DEVELOPMENT AGREEMENT (DA 2007-02) FOR THE VINEYARD OAKS SUBDIVISION PROJECT (MITIGATED NEGATIVE DECLARATION, TENTATIVE TRACT MAP 2007-02 AND DESIGN REVIEW 2008-01), A 15-LOT RESIDENTIAL SUBDIVISION LOCATED AT 2400 GRANT STREET WITHIN THE "RR", RURAL RESIDENTIAL ZONING DISTRICT. (APNS: 011-010-013 & 011-010-014)**

**WHEREAS**, on June 3, 2008, the City Council adopted a Mitigated Negative Declaration and approved required planning actions associated with the Vineyard Oaks Subdivision project. These planning actions included a Tentative Tract Map and Design Review to subdivide approximately 18 acres of land into 15 single-family lots. On June 17, 2008, the City Council adopted Ordinance No. 652 authorizing the execution of a Development Agreement between the City and the owners of the subject properties Ira and Lois Carter, 1881 Mora LLC of 18 (property has since transferred to other parties prior to execution) and the project applicant (BNK, LLC) for the Vineyard Oaks Subdivision Project ("Development Agreement").

**WHEREAS**, BNK, LLC on behalf of the property owners has filed an amendment request application with the City of Calistoga for the purpose of amending the timeframe for the payment of Special Public Benefit and Utility Capacity Connection Fees for the project set forth in the Development Agreement;

**WHEREAS**, adoption of this Development Agreement amendment will not conflict with any other appropriate ordinance and to the extent such conflict exists, this ordinance is hereby repealed;

**WHEREAS**, in accordance with the California Environmental Quality Act (CEQA) and its Guidelines, the proposed action is considered an activity within the Mitigated Negative Declaration adopted by the City Council for the Vineyard Oaks Subdivision Project on June 3, 2008;

**WHEREAS**, a public notice of the City Council public hearing of April 7, 2009 for an amendment to the Development Agreement was published in the local newspaper and made available on the City's website;

**WHEREAS**, the City Council has reviewed and considered this amendment at its regular meetings on April 7, 2009 and April 21, 2009, considered as one of its items of business, this Ordinance to be adopted in accordance with Government Code Section 65090, this Ordinance to be adopted in accordance with Government Code Section 65850, to include the written and oral staff report, proposed findings and comments received from the general public and interested agencies and parties;

**WHEREAS**, the City Council adopted the following findings with the introduction of an Ordinance:

1. The City Council duly adopted Ordinance No. 547 enacting procedures for entering into development agreements.
2. The Development Agreement is a contract negotiated and entered into voluntarily between the City of Calistoga, the owners of the subject properties (Ira and Lois Carter), and the project applicant (BNK, LLC) of the Vineyard Oaks Subdivision.
3. The Development 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 the Development Agreement is appropriate. The Development Agreement eliminates 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 the Development 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.
4. The Development Agreement contains conditions and obligations relating to the performance stated in the resolution(s) approving the project.
5. That the project known as Vineyard Oaks Subdivision is a project of significance to the community and upon the community of Calistoga and for that reason a development agreement is a proper use of the City's authority to secure the project benefits for the community.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Calistoga that:

**SECTION ONE:**

Based on the above findings and the conditions and obligations the City Council adopts this Ordinance to amend the Development Agreement, specifically Exhibit F Special Public Benefits and Exhibit H Utility Capacity Allocation and Connection Fees to amend timelines for payment of certain fees.

**SECTION TWO:**

The City Council hereby adopts an amendment to the Development Agreement for the Vineyard Oaks Subdivision Project to incorporate the modifications in substantially the same form as set forth in Exhibit A, attached hereto and incorporated herein by reference, and authorizes the City Manager to execute the first amendment to the Development Agreement upon the effective date of this Ordinance. Upon execution

of the first amendment to the Development Agreement by all parties, the City Clerk is hereby directed to record the first amendment to the Development Agreement with the Napa County Recorder's Office.

**SECTION THREE:**


If any section or portion of this ordinance is for any reason held to be invalid and/or unconstitutional by a court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

**SECTION FOUR:**

**THIS ORDINANCE** shall take effect thirty (30) days after its passage and before expiration of fifteen (15) days after its passage, shall be published in accordance with law in a newspaper of general circulation published and circulated in the City of Calistoga.

**THIS ORDINANCE** was introduced with the first reading waived at the City of Calistoga City Council meeting of the **7<sup>th</sup> day of April 2009**, and was passed and adopted at a regular meeting of the Calistoga City Council on the **21<sup>st</sup> day of April 2009**, by the following vote:

**AYES:** Councilmember Kraus, Councilmember Garcia, and  
Vice Mayor Dunsford,  
**NOES:** None  
**ABSTAIN:** Councilmember Slusser and Mayor Gingles  
**ABSENT:** None

  
MICHAEL DUNSFORD, Vice-Mayor

ATTEST:  
  
SUSAN SNEDDON, City Clerk

## **EXHIBIT A to Ordinance No. 657**

### **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.

## **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 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 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.

## ORDINANCE NO. 684

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING THE DEVELOPMENT AGREEMENT (DA 2007-02) FOR THE VINEYARD OAKS SUBDIVISION PROJECT (MITIGATED NEGATIVE DECLARATION, TENTATIVE TRACT MAP 2007-02 AND DESIGN REVIEW 2008-01), A 15-LOT RESIDENTIAL SUBDIVISION LOCATED AT 2400 GRANT STREET WITHIN THE "RR", RURAL RESIDENTIAL ZONING DISTRICT. (APN 011-010-057)**

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**WHEREAS**, on June 3, 2008, the City Council adopted a Mitigated Negative Declaration and approved required planning actions associated with the Vineyard Oaks Subdivision project. These planning actions included a Tentative Tract Map and Design Review to subdivide approximately 18 acres of land into 15 single-family lots. On June 17, 2008, the City Council adopted Ordinance No. 652 authorizing the execution of a Development Agreement between the City and the owners of the subject property Ira and Lois Carter and BNK, LLC for the Vineyard Oaks Subdivision Project ("Development Agreement"); and

**WHEREAS**, on April 21, 2009, the City Council adopted Ordinance No. 657 approving the first amendment to the Development Agreement between the City and the owners of the subject properties Ira and Lois Carter and BNK, LLC for the Vineyard Oaks Subdivision Project; and

**WHEREAS**, the City has been informed by the property owners, Ira and Lois Carter, that neither BNK LLC nor any of the principal partners of BNK LLC have any further relationship with the Vineyard Oaks Subdivision project; and

**WHEREAS**, the property owners, Ira and Lois Carter, have submitted a request to the City of Calistoga to extend the term of the Development Agreement to July 18, 2014 and to amend the timeframe for the payment of Special Public Benefit and Utility Capacity Connection Fees for the project set forth in the Development Agreement; and

**WHEREAS**, adoption of this Development Agreement amendment will not conflict with any other appropriate ordinance and to the extent such conflict exists, this ordinance is hereby repealed;

**WHEREAS**, the Planning Commission held a duly noticed public hearing on the ordinance on May 23, 2012, and adopted Resolution PC 2012-15 forwarding a recommendation that the City Council approve the ordinance; and

**WHEREAS**, the City Council of the City of Calistoga has reviewed and considered this ordinance at regular meetings on June 19, 2012 and July 17, 2012, noticed in accordance with state and local law, and which included written and oral staff reports, proposed findings and comments received from the general public and interested agencies and parties; and

**WHEREAS**, this action has been determined to not be subject to the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines; and

**WHEREAS**, the City Council adopted the following findings with the introduction of an Ordinance:

1. The City Council duly adopted Ordinance No. 547 enacting procedures for entering into development agreements.
2. The Development Agreement is a contract negotiated and entered into voluntarily between the City of Calistoga and the owners of the subject property (Ira and Lois Carter), Developer of the Vineyard Oaks Subdivision.
3. The Development 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 the Development Agreement is appropriate. The Development Agreement eliminates 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 the Development 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.
4. The Development Agreement contains conditions and obligations relating to the performance stated in the resolution(s) approving the project.
5. That the project known as Vineyard Oaks Subdivision is a project of significance to the community and upon the community of Calistoga and for that reason a development agreement is a proper use of the City's authority to secure the project benefits for the community.

**NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION ONE:**

The Term of the Development Agreement is hereby extended for one additional year beyond the Initial Term identified in Section 2.02(A) of the Development Agreement.

**SECTION TWO:**

Based on the above findings and the conditions and obligations the City Council adopts this Ordinance to amend the Development Agreement, specifically Exhibit F Special Public Benefits and Exhibit H Utility Capacity Allocation and Connection Fees to amend timelines for payment of certain fees.

**SECTION THREE:**

The City Council hereby adopts an amendment to the Development Agreement for the Vineyard Oaks Subdivision Project to incorporate the modifications in substantially the same form as set forth in Exhibit A, attached hereto and incorporated herein by reference, and authorizes the City Manager to execute the second amendment to the Development Agreement upon the effective date of this Ordinance.

Upon execution of the second amendment to the Development Agreement by all parties, the City Clerk is hereby directed to record the first amendment to the Development Agreement with the Napa County Recorder's Office.

**SECTION FOUR:**

If any section or portion of this ordinance is for any reason held to be invalid and/or unconstitutional by a court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

**SECTION FIVE:**

**THIS ORDINANCE** shall take effect thirty (30) days after its passage and before expiration of fifteen (15) days after its passage, shall be published in accordance with law in a newspaper of general circulation published and circulated in the City of Calistoga.


**THIS ORDINANCE** was introduced with the first reading waived at the City of Calistoga City Council meeting of the 17<sup>th</sup> day of July, 2012, and was passed and adopted at a regular meeting of the Calistoga City Council on the 7<sup>th</sup> day of August, 2012, by the following vote:

**AYES: Councilmembers Kraus and Canning and Vice-Mayor Dunsford.**

**NOES: None.**

**ABSTAIN: Councilmember Slusser and Mayor Gingles.**

**ABSENT: None.**

  
**MICHAEL DUNSFORD, Vice-Mayor**

**ATTEST:**

  
**AMANDA DAVIS, Deputy City Clerk**



## **EXHIBIT A to Ordinance No. 684**

### **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.

## 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.