ATTACHMENT 7

DRAFT DEVELOPMENT AGREEMENT

9/4/2020

RECORD WITHOUT FEE
PURSUANT TO GOVERNMENT CODE § 6103

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF CALISTOGA
1232 WASHINGTON STREET
CALISTOGA, CALIFORNIA 94515
ATTN: CITY CLERK

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

DEVELOPMENT AGREEMENT

by and between

THE CITY OF CALISTOGA,
a California municipal corporation,

and

MF CALISTOGA LLC, a California limited liability company, OH CHILD LLC, a California limited liability company, and 1504 LINCOLN LLC, a California limited liability company

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DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of the Effective Date by and between CITY OF CALISTOGA, a California municipal corporation ("**City**"), and MF CALISTOGA LLC, a California limited liability company ("**MF Calistoga**"), OH CHILD LLC, a California limited liability company ("**Oh Child**"), and 1504 LINCOLN LLC, a California limited liability company ("**1504 Lincoln**"). MF Calistoga, Oh Child and 1504 Lincoln may each be referred to as a "**Developer Party**" and collectively as the "**Developer**". City and Developer may each be referred to as a "**Party**," and collectively the "**Parties**".

R E C I T A L S

Developer and City enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement:

A. Sections 65864 through 65869.5 of the California Government Code and Chapter 17.39 of the Calistoga Municipal Code ("**Development Agreement Law**") authorize the City to establish procedures to enter into binding development agreements with persons having legal or equitable interests in real property located within the City for the development of property.

B. Developer owns those certain real properties within the City of Calistoga, of approximately 41 acres in size, identified as Napa County Assessor's Parcel Numbers 011-340-030, -029, -028, -025, -022, -021 -015, -014, -013, -006, -005, -004, and -003, as further described in Exhibit A, attached hereto and incorporated by this reference (the "**Property**").

C. Developer has submitted applications to the City for the development of a 96-room hotel expansion ("**Hotel**") over an approximate 7-acre portion of the Property, with a restaurant, a bar, retail and mercantile operations, a rooftop lounge, event lawn, pools, hot tubs, outdoor seating with fire pits, meeting rooms, offices, a gym, and other service oriented uses, as well as ancillary improvements, including on-site parking, and public amenities (the "**Project**"). The Project also includes various on- and off-site public improvements, including an emergency vehicle access road to the Calistoga Springs Mobile Home Park, water and sewer infrastructure to support adjacent residential and commercial uses, and a Napa Valley Vine Trail Downtown "landing place," all as depicted on Exhibit B attached hereto and incorporated herein by this reference.

D. The Property is subject to the General Plan land use designations of Downtown Commercial for parcels along Lincoln Ave and Community Commercial for the remaining parcels. It is also within the Gliderport Character Area Overlay (GCAO). The GCAO encourages the redevelopment of underutilized parcels that can serve as a catalyst for redeveloping downtown Calistoga into a vibrant and complimentary mix of land uses. The General Plan land use designations, including the GCAO, authorize hotel-resort and other visitor-serving commercial uses proposed by the Project. The Property is zoned Community Commercial (CC) and Downtown Commercial (DC). Pursuant to the City's Zoning Code, hotels are conditionally permitted uses within these zones. Hotels are defined in section 17.04.360 of

the City's municipal code and may be operated in conjunction with other permitted uses including restaurants, retail shops, meetings rooms, and entertainment or recreational facilities.

E. City and Developer each acknowledge that development and construction of the Project is a large-scale undertaking involving major investments by Developer, and assurances that the Project can be developed and used in accordance with the terms and conditions set forth herein and the existing rules governing development of the Property will benefit both Developer and City.

F. This Agreement will eliminate uncertainty in the comprehensive development planning of the Project and provide that the Property may be developed, constructed, completed and used pursuant to this Agreement, and in accordance with existing policies, rules and regulations of the City, subject to the exceptions and limitations expressed herein. Further, this Agreement will secure orderly development of the Property and meet the goals of the General Plan. In addition, this Agreement will provide the following public benefits: (i) ensure the construction of necessary public improvements in the City's Downtown corridor and surrounding neighborhoods; (ii) provide public improvements to expand access to the City's downtown; and (iii) require that an essential business, the existing laundromat on the Property, is relocated. A number of these public benefits are in excess of those otherwise having a "nexus" to the Project and beyond the public benefits which could be expected from the Project in absence of this Agreement.

G. City has conducted environmental review in accordance with the California Environmental Quality Act ("**CEQA**") and prepared a Mitigated Negative Declaration ("**MND**") and a Mitigation Monitoring and Reporting Program ("**MMRP**").

H. Prior to execution of this Agreement, City has taken actions in connection with the development of the Project on the Property. The approvals and development actions described in this Recital H are collectively referred to herein as the "**Existing Project Approvals**." These include:

1. Environmental Review. On _____, 2020, the City Council adopted Resolution No. _____, adopting CEQA findings, the MND, and the MMRP.

2. Design Review and Use Permit. On _____, 2020, the Planning Commission adopted Resolution No. _____, approving design review application DR 2017-7 and conditional use permit UP 2017-9.

3. Development Agreement Ordinance. On _____, 2020, the City Council adopted Ordinance No. ____, directing the City to enter into this Agreement.

I. Subsequent to approval of this Agreement, the City and Developer anticipate that applications for additional approvals, entitlements, and permits related to the development and operation of the Project will be submitted to implement the Project (the "**Subsequent Project Approvals**").

A G R E E M E N T

NOW, THEREFORE, pursuant to the authority contained in California Government Code section 65864, and in consideration of the mutual representations, covenants and promises of the Parties, the Parties hereto agree as follows:

1. DEFINITIONS.

"1504 Lincoln" shall have the meaning set forth in the introductory paragraph preceding the Recitals.

"Administrative Agreement Amendment" shall have the meaning set forth in Section 6.4(a).

"Administrative Project Amendment" shall have the meaning set forth in Section 6.3(a)(i).

"Agreement" shall have the meaning set forth in the introductory paragraph preceding the Recitals.

"Applicable Law" shall have the meaning set forth in Section 3.2.

"Building Permit" means a permit issued by the City for the renovation or construction of a building or structure, as required by the California Building, Residential, Mechanical, Electrical, Plumbing, Green Building, Fire or Energy Standard Codes, as adopted by the City and incorporated in the Calistoga Municipal Code by reference, excluding a permit to commence grading issued under Chapter 15.50 of the Calistoga Municipal Code or for the demolition of any structures.

"CEQA" shall have the meaning set forth in Recital G.

"Changes in the Law" shall have the meaning set forth in Section 3.7.

"Cure Period" shall have the meaning set forth in Section 7.1.

"City" shall have the meaning set forth in the introductory paragraph preceding the Recitals .

"City Manager" means the City Manager of the City or his/her designee.

"Consultant Fees" shall have the meaning set forth in Section 4.7.

"Default" shall have the meaning set forth in Section 7.2.

"Developer/Developer Parties" shall have the meaning set forth in the introductory paragraph preceding the Recitals.

"Development Agreement Law" shall have the meaning set forth in Recital A.

"Effective Date" shall have the meaning set forth in Section 2.1.

"Emergency Access Agreement" shall have the meaning set forth in Section 5.2.

"Emergency Access Road" shall have the meaning set forth in Section 5.2.

"Existing Public Laundromat" shall have the meaning set forth in Section 5.3.

"Existing Project Approvals" shall have the meaning set forth in Recital H.

"Extended Cure Period" shall have the meaning set forth in Section 7.1.

"Hotel" shall have the meaning set forth in Recital C.

"Initial Term" shall have the meaning set forth in Section 2.2(a).

"Major Agreement Amendment" shall have the meaning set forth in Section 6.4(b).

"MF Calistoga" shall have the meaning set forth in the introductory paragraph preceding the Recitals.

"MMRP" shall have the meaning set forth in Recital G.

"MND" shall have the meaning set forth in Recital G.

"Mortgage" shall have the meaning set forth in Section 8.1.

"Mortgagees" shall have the meaning set forth in Section 8.1.

"*New City Laws*" shall mean City's laws, rules, regulations, official policies, standards and specifications, including those enacted or imposed by a citizen-sponsored initiative or referendum or by the City Council directly or indirectly in connection with any proposed initiative or referendum, in each case to the extent amended or otherwise imposed following the Effective Date.

"Non-administrative Project Amendment" shall have the meaning set forth in Section 6.3(a)(ii).

"Non-Reimbursable Public Improvements" shall have the meaning set forth in Section 5.1(a)(i).

"Oh Child" shall have the meaning set forth in the introductory paragraph preceding the Recitals.

"Partial Assignment" shall have the meaning set forth in Section 9.2.

"Partial Transferee" shall have the meaning set forth in Section 9.2.

"Party/Parties" shall have the meaning set forth in the introductory paragraph preceding the Recitals of this Agreement.

"Prevailing Wage Laws" shall have the meaning set forth in Section 5.4(a).

"Processing Fees" shall have the meaning set forth in Section 4.5.

"Project" shall have the meaning set forth in Recital C.

"Project Approvals" means the Existing Project Approvals and any approved Subsequent Project Approvals.

"Property" shall have the meaning set forth in Recital B.

"Public Improvements" shall have the meaning set forth in Section 5.1(a).

"Public Laundromat Relocation" shall have the meaning set forth in Section 5.3.

"Reimbursable Public Improvements" shall have the meaning set forth in Section 5.1(a)(ix).

"Relocated Public Laundromat" shall have the meaning set forth in Section 5.3.

"Solage Reimbursements" shall have the meaning set forth in Section 4.3.

"Subsequent Project Approvals" shall have the meaning set forth in Recital i.

"Subsequent Discretionary Approvals" means all other Subsequent Project Approvals other than Subsequent Ministerial Approvals, including amendments of the Project Approvals, design review permits, use permits, subdivision and parcel maps, rezonings, development agreements, permits or modifications to permits that are not Subsequent Ministerial Approvals.

"Subsequent Ministerial Approvals" means permits or approvals that are to be issued upon compliance with uniform, objective standards and regulations. They include applications for lot line adjustments, or parcel mergers; road construction permits or authorizations; grading and excavation permits; building permits, including electrical, plumbing, mechanical, and other permits required by Title 24; certificates of occupancy; encroachment permits; utility connection permits; and any other similar permits required for the development and operation of the Project.

"Taxes and Assessments" shall have the meaning set forth in Section 4.6

"Term" shall have the meaning set forth in Section 2.2.

"Term Extension" shall have the meaning set forth in Section 2.2(b).

"Transfer" shall have the meaning set forth in Section 9.1.

"Transferee" shall have the meaning set forth in Section 9.1.

"Transferred Property" shall have the meaning set forth in Section 9.1.

2. EFFECTIVE DATE AND TERM.

2.1 Effective Date. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective (the "**Effective Date**").

2.2 Term. The term ("**Term**") of this Agreement shall be the Initial Term together with any Term Extension(s).

(a) Initial Term. The Term of this Agreement shall commence upon the Effective Date and shall extend for a period of seven years thereafter (**"Initial Term"**).

(b) Term Extensions. Provided neither City nor Developer have terminated this Agreement and Developer has fully complied with all terms of this Agreement, Developer may request in writing that City extend the Initial Term of this Agreement up to three times for an additional one-year period each (each, a **"Term Extension"**). Such written request may be delivered to City not earlier than 180 days nor later than 90 days prior to the termination date of the Initial Term, as may have been previously extended.

(c) City Review of Request for Term Extension. Upon receipt of such request, the City Manager shall consider the request and may approve or deny the requested extension in his or her sole and absolute discretion or may request that the City Council consider the extension in its sole and absolute discretion. If City approves the extension, the Initial Term of this Agreement shall be extended in accordance with the provisions of this section, and City shall record an instrument giving notice of the Term Extension and the termination date thereof.

2.3 Expiration. Following the expiration of the 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 7.8 below.

2.4 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

(a) MF Calistoga, Oh Child, and 1504 Lincoln are the owners of a portion of the Property and collectively own the entirety of the Property, as provided herein;

(b) Each of the Developer Parties: (i) is organized and validly existing under the laws of the State of California; (ii) to the extent required, has qualified and been authorized to do business in the State of California and has complied with all requirements pertaining thereto; and (iii) to the extent required, is in good standing and has all necessary powers under the laws of the State of California to own property;

(c) No approvals or consents of any persons are necessary for the execution, delivery or performance of this Agreement by each of the Developer Parties, except as have been obtained;

(d) The execution and delivery of this Agreement have been duly authorized by all necessary corporate action;

(e) This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms; and

(f) Each of the Developer Parties is jointly and severally liable for all obligations of Developer under this Agreement.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property and the Project in accordance with and subject to the Existing Project Approvals, the Subsequent Project Approvals, Applicable Law and this Agreement, which shall control the permitted uses, density and intensity of use of the Property, the maximum height and size of buildings on the Property, and provisions for reservation or dedication of land for public purposes.

3.2 Applicable Law. City and Developer acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power that cannot be so limited. Notwithstanding the foregoing reservation of City, it is the intent of City and Developer that this Agreement be construed to provide Developer with rights afforded by law, including but not limited to, the Development Agreement Law. Therefore, the laws, rules, regulations, official policies, standards and specifications of City applicable to the development of the Property and/or the Project shall be (collectively, "**Applicable Law**"):

(a) Those rules, regulations, official policies, standards and specifications of the City set forth in the Project Approvals and this Agreement;

(b) With respect to matters not addressed by and not otherwise inconsistent with the intent and purposes of the Project Approvals and this Agreement, those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing and manner of construction, densities, intensities of uses, heights and sizes, and requirements for on- and off-site infrastructure and public improvements, in each case only to the extent in full force and effect on the Effective Date;

(c) New City Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties and do not conflict with the procedures set forth under this Agreement;

(d) New City Laws that revise City's uniform construction codes, including City's building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided, that such New

City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

(e) New City Laws that are necessary to protect physical health and safety of the public, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties; and

(f) New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New City Laws are accepted in writing by Developer in its sole discretion.

3.3 Development Timing. The Parties acknowledge that Developer cannot at this time predict when or the rate at which the phases of the Project will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, construction financing, interest rates, absorption, completion and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that, unless otherwise provided for in this Agreement, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment, subject to the terms, requirements and conditions of the Existing Project Approvals and this Agreement. Developer will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement and the Existing Project Approvals.

3.4 Regulation by Other Public Agencies. City and Developer acknowledge and agree that other governmental or quasi-governmental entities not within the control of City possess authority to regulate aspects of the development of the Property and the Project and that this Agreement does not limit the authority of such other public agencies. City shall cooperate with Developer in Developer's effort to obtain such permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Property and/or the Project; 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.

3.5 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term, including any applicable extensions, or the term otherwise applicable to such Project Approvals. Without limiting the generality of the foregoing, pursuant to the Subdivision Map Act, any vesting or tentative maps heretofore or hereafter approved in connection with development of the Project or the Property shall be extended for the Term (and may be subject to other extensions provided under the Subdivision Map Act).

3.6 Developer's Right to Rebuild. City agrees that Developer may renovate or rebuild portions of the Project at any time within the Term should it become necessary due to any casualty, including natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval consistent with all prior Project Approvals and Applicable City Law. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, Applicable City Law, and the requirements of CEQA.

3.7 State and Federal Law. As provided in Section 65869.5 of the California Government Code, 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 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, or render substantially more expensive or time consuming, compliance with one or more provisions of this Agreement, the City and Developer 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. Nothing in this Agreement shall preclude City or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to any such Changes in the Law to the Project.

3.8 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.

4. FEES AND EXACTIONS.

4.1 Development Fees, Taxes and Exactions. Developer shall pay all fees, special assessments, special taxes, exactions and dedications payable due to the development, occupancy and use of the Property pursuant to this Agreement including Impact Fees, Processing Fees, Taxes and Assessments, and Consultant Fees, except as otherwise provided herein.

4.2 Impact Fees.

(a) Developer shall pay the City Administrative, Affordable Housing, Fire and Police Development Impact Fees, at the rate in effect as of the Effective Date, which shall be due before issuance of the first Building Permit for the Hotel. A table setting forth these fees, among other things, is attached hereto and incorporated herein by reference as Exhibit C, and includes the impact fee payments as of the Effective Date (the "Fee Table").

(b) Developer's costs to design and construct certain Public Improvements shall be credited against Developer's payment of the Transportation and Cultural and Recreational Development Impact Fees, which fees shall not be due at building permit issuance, but shall be adjusted as set forth in Section 5.1(d) below. The Fee Table includes the estimated

Transportation and Cultural and Recreational Development Impact Fees as of the Effective Date. At the time of first Building Permit issuance for the Hotel, City shall calculate the Transportation and Cultural and Recreational Development Impact Fees that are due to City in order to use such amounts to determine the applicable fee credit and adjustment as set forth in Section 5.1(d).

4.3 Solage Reimbursement Fees. Developer shall pay the Solage Reimbursements for Storm Drain and Sewer, pursuant to the provisions of the Reimbursement Agreement (Palisades Resort and Spa) recorded in the Official Records of Napa County as Document No. 2012-0013471, prior to the issuance of the first building permit for the Hotel ("**Solage Reimbursements**"). The Solage Reimbursements, prior to the calculation of any interest under the Reimbursement Agreement, are set forth in the Fee Table.

4.4 Water and Wastewater Connection Fees. Developer's costs to design and construct certain Public Improvements shall be credited against Developer's payment of the City's Water and Wastewater Connection Fees, which fees shall not be due at building permit issuance, but shall be adjusted as set forth in Section 5.1(d) below. In addition, Developer shall receive a credit for the Property's existing water and wastewater baselines, as set forth in the Fee Table. The Fee Table includes the estimated connection fee payments as of the Effective Date, which shall increase annually by the McGraw-Hill Engineering News Record (ENR) 20-City annual construction cost index, the City's existing annual fee escalator. At the time of first Building Permit issuance for the Hotel, City shall calculate the Water and Wastewater Connection Fees that are due to City in order to use such amounts to determine the applicable fee credit and adjustment as set forth in Section 5.1(d).

4.5 Processing Fees. City may charge and Developer agrees to pay all processing, application, inspection and monitoring fees, and staff and legal fees ("**Processing Fees**") for land use entitlement approvals, grading and building permits, and other permits and entitlements, which are in force and effect on a city-wide basis at the time those permits, approvals or entitlements are applied for on any or all portions of the Project, and which are intended to cover the actual costs of processing the foregoing. In addition, Developer shall any cost recovery charges imposed by City on the Project that are typically imposed on projects of a similar size.

4.6 Taxes and Assessments. City may charge and Developer agrees to pay any new, increased or modified taxes or assessments, imposed as a condition of or in connection with the Project Approvals or otherwise, provided such taxes and assessments are equally applied on a city-wide basis and have a uniform effect on a broadly-based class of land, projects, or taxpayers, as applicable, within the city ("**Taxes and Assessments**").

4.7 Consultant Fees. After consulting Developer, City may, in its reasonable discretion, contract with one or more outside inspectors, engineers, attorneys or consultants to perform all or any portion of the monitoring, inspection, testing, application processing and evaluation services to be performed in connection with construction and development of the Project or in connection with the periodic review of the Agreement ("**Consultant Fees**"). Developer shall pay to City, within 30 days following City's written demand therefore, the full amount of all Consultant Fees. City shall provide copies of consultant bills that City asks Developer to pay pursuant to this paragraph at the same time that the City submits an invoice

seeking payment to Developer. In the event that a consultant bill contains attorney-client privileged communications, City may redact those portions of the consultant bill that are privileged. The Consultant Fees shall be in addition to, and not in lieu of, the Processing Fees.

5. OBLIGATIONS OF THE PARTIES.

5.1 Design and Construction of Public Improvements.

(a) Developer will design and construct the following public improvements, as depicted and described in Exhibit D, attached hereto and incorporated herein by this reference (collectively, the "**Public Improvements**"), the costs of which shall be credited against the City's Transportation and Cultural and Recreation Development Fees and Wastewater and Water Connection Fees as set forth in more detail below:

(i) The extension of Gerard Street northerly to connect to the Fair Way extension, and new curb and gutter on Lincoln Avenue, at Developer's sole cost and expense (the "**Non-Reimbursable Public Improvements**");

(ii) Overlay of Gerard Street from its existing terminus southerly to the intersection with Washington Street, with costs to be credited against the City's Transportation Development Impact Fee, at an estimated credit of $250,400.00;

(iii) Extension of the Project's new 10-foot wide multi-use pathway on the Lincoln Avenue frontage to connect to the existing pathway on the Indian Springs property, with 60 percent of the final costs (to reflect the costs over the required four-foot sidewalk) to be credited against the City's Transportation Development Impact Fee, at an estimated credit of $114,000.00;

(iv) A Napa Valley Vine Trail "downtown landing place" on a portion of the City-owned parking lot at the rear of the railroad depot at an estimated cost of $478,000.00, with the actual scope to be determined by the Parties during review of the plans and specifications for the Public Improvements, and with costs to be credited against the City's Cultural and Recreational and Transportation Development Impact Fee, at an estimated credit of $278,100.00;

(v) Approximately 1,000 linear feet of a 24-inch sewer line, with appropriately spaced manholes, from Anna Street to the intersection of Lincoln Avenue and Fair Way, with the final costs less the estimated costs to construct 1,000 linear feet of an eight-inch sewer line (as Developer would otherwise be required to construct an eight-inch line) to be credited against the City's Wastewater Connection Fee, at an estimated credit of $517,000.00;

(vi) A new 18-inch replacement sewer main in Lincoln Avenue from the intersection of Lincoln Avenue/Fair Way to Wappo Avenue, with the final costs to be credited against the City's Wastewater Connection Fee, at an estimated credit of $950,000.00;

(vii) A 12-inch recycled water main within the former railroad right-of-way from Anna Street to Gerard Street, and along Gerard Street to Washington Street, prior to

any road repaving, with the final costs to be credited against the City's Wastewater Connection Fee, at an estimated credit of $275,000.00; and

(viii) A 12-inch water line within Lincoln Avenue from Fair Way to Stevenson Street, with the final costs to be credited against the City's Water Connection Fee, at an estimated credit of $426,600.00; and

(ix) Looping of the water main from Eddy Street to Lincoln Avenue at Fair Way with a 12-inch line connecting to mains on Franklin, Gerard, Anna and Eddy Streets, with the final costs to be credited against the City's Water Connection Fee, at an estimated credit of $372,000.00.

All of the Public Improvements, except for the Non-Reimbursable Public Improvements, may be referred to herein as the "**Reimbursable Public Improvements**."

(b) Plans and specifications for the Public Improvements shall be submitted to the City for review concurrently with Building Permit plans for the Hotel. City and Developer shall enter into one or more Public Improvement Agreements to guarantee completion of the Public Improvements. The plans and specifications for the Public Improvements, as described in this Agreement, shall be approved by City and the Public Improvement Agreement(s) executed by the parties prior to the issuance of the first Building Permit for the Hotel. Developer shall complete construction of the Public Improvements to the reasonable satisfaction of the City prior to the issuance of a certificate of occupancy for the Hotel, except as may otherwise be provided in any associated Public Improvement Agreement. In the event of a delay due to any required approvals, consents, or sign-offs from Caltrans, City shall issue a certificate of occupancy for the Hotel, provided the Public Improvements that have not been affected by the aforementioned delays have been completed.

(c) During construction of the Reimbursable Public Improvements, Developer shall maintain a complete and accurate accounting of all design and construction costs for the Reimbursable Public Improvements, which shall be available for inspection by City at any time. Developer shall notify City immediately in the event that the costs of any of the Reimbursable Public Improvements are estimated to exceed the estimated credits set forth in Section 5.1(a) by 10 percent or more. In addition, Developer shall provide City with a monthly status report on the construction and costs associated with the Reimbursable Public Improvements, including an accounting of expenditures compared to the project budget.

(d) Developer shall, within 30 days of completion of any of the Reimbursable Public Improvements provide City with all invoices submitted to Developer by its contractor(s), and a final itemized bill showing all reasonable fees and costs incurred by Developer for the construction of the Reimbursable Public Improvement. After the completion and acceptance of all Reimbursable Public Improvements and submittal of all invoices and bills, as set forth above, City shall conduct an accounting of the actual costs of the Reimbursable Public Improvements compared to the fees that would have otherwise been due. City shall calculate the actual costs for the Reimbursable Public Improvements in each fee category (e.g., Transportation Impact, Cultural and Recreation Impact, Water Connection or Wastewater Connection) and compare such actual costs to the applicable fee payment that would have been due at building permit

issuance. If the costs to construct the applicable Reimbursable Public Improvements in the fee category are less than the fee obligation, City shall notify Developer and Developer shall pay the difference to City prior to the issuance of the first Certificate of Occupancy. If the costs to construct the applicable Reimbursable Public Improvements in the fee category are greater than the fee obligation, City shall notify Developer and City shall pay the difference to Developer within three years after the issuance of the Certificate of Occupancy for the Hotel, or as otherwise negotiated by the Parties.

5.2 Emergency Access Road. Developer will design and construct a paved 20-foot wide emergency vehicle access road from the Property's shared boundary line with Chateau Calistoga to the Fair Way Extension, as depicted on Exhibit B ("**Emergency Access Road**"). Developer and City shall enter into an Emergency Vehicle Access Agreement, which shall be recorded against the Property and shall ensure the long-term access and maintenance of the Emergency Access Road (the "**Emergency Access Agreement**"). The Emergency Access Agreement shall incorporate the City's standard terms and conditions for such agreements and be in a form acceptable to the City Attorney. Plans and specifications for the Emergency Access Road shall be submitted to the City for review before or concurrently with Building Permit plans for the Hotel. The plans and specifications for the Emergency Access Road shall be approved by City and the Emergency Access Agreement shall be executed by the parties prior to issuance of the first Building Permit for the Hotel. Construction shall be completed concurrently with construction of the Hotel. No certificate of occupancy for the Project shall be issued for the Hotel until the Emergency Access Road is complete and approved by City.

5.3 Public Laundromat. Developer shall relocate the existing Public Laundromat on the Property ("**Existing Public Laundromat**") to a new appropriately zoned location reasonably acceptable to the City ("**Public Laundromat Relocation**"). Developer shall exercise commercially reasonable efforts to ensure the relocated public laundromat ("**Relocated Public Laundromat**") remains in operation to serve the residents of the City of Calistoga for the longer of (a) at least five years from the date of the completion of the Public Laundromat Relocation; or (b) the Term of this Agreement. The Public Laundromat Relocation shall be completed to the reasonable satisfaction of the City prior to the date on which the Existing Public Laundromat closes and is no longer operating, but no later than the date Developer has begun vertical construction of the Hotel, as evidenced by an approved foundation City inspection. Due to the significant public benefit of the Public Laundromat Relocation, City shall transfer one-acre foot of wastewater and water allocations, representing the allocations directly associated with the Existing Public Laundromat, to the Relocated Public Laundromat and no water or wastewater connection fees shall become due for the Relocated Public Laundromat. Three years after the completion of the Public Laundromat Relocation, the City shall determine the usage of wastewater and water used by the Relocated Public Laundromat, and shall reassess the one-acre foot allocations based on actual use and existing baseline allocations to the Relocated Public Laundromat. In the event that usage is greater than one-acre foot, Developer shall pay the additional amount for such increased allocation(s) within 30 days of notice by City. In the event that usage is less than one-acre foot, City shall reimburse Developer for any unused allocation. In the event this Agreement is terminated as a result of Developer's completion of the Project prior to the date five years from the date of completion of the Public Laundromat Relocation, this Section 5.3 shall survive termination of the Agreement.

5.4 Prevailing Wages.

(a) Developer acknowledges and agrees that the Reimbursable Public Improvements will constitute construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds as provided under California Labor Code Section 1720. Accordingly, Developer shall comply with, and cause its contractors and subcontractors to comply with, all State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works" (collectively, "**Prevailing Wage Laws**"). Developer shall require the contractor for the Project or any portion thereof involving any such publicly financed improvements, to submit, upon request by City or County, as applicable, certified copies of payroll records to City, and to maintain and make records available to City and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws, as applicable. Developer shall also include in each of its contractor agreements with respect to any such publicly financed improvements, a provision in form acceptable to City, obligating the contractor to require its contractors and/or subcontractors to comply with Prevailing Wage Laws, as applicable, and to submit, upon request by City, certified copies of payroll records to City and to maintain and make such payroll records available to City and its designees for inspection and copying during regular business hours at the Property or at another location within City.

(b) Developer shall defend (with counsel chosen by 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 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.

5.5 Sales Tax Point of Sale Designation. Developer shall use good faith efforts to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to designate City as the sole point-of-sale for purposes of computing sales taxes due under the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Taxation Code sections 7200 *et seq*. and implementing regulations) on the sale of such bulk construction and building materials and components.

6. COOPERATION AND IMPLEMENTATION.

6.1 Subsequent Project Approvals. Developer and City acknowledge and agree that Developer intends to submit applications for Subsequent Project Approvals, which shall be processed according to Applicable Law, the Project Approvals, and this Agreement.

6.2 Processing Applications for Subsequent Project Approvals.

(a) Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications. Developer

shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law or this Agreement. Developer and City shall cooperate and diligently and expeditiously work to process and obtain any and all Subsequent Project Approvals.

(b) Upon submission by Developer of all appropriate applications and processing fees for any pending Subsequent Project Approval, City shall, as allowed by law and in accordance with this Agreement, reasonably, expeditiously, and diligently commence and complete all steps necessary to act on Developer's Subsequent Project Approval applications.

(c) With the Existing Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Applications for Subsequent Ministerial Approvals that are consistent with this Agreement and the Existing Project Approvals shall be processed and considered in a manner consistent with the vested rights granted by this Agreement and shall be deemed to be tools to implement those final policy decisions, and shall be approved by City so long as they are consistent with Applicable Law, this Agreement and the Existing Project Approvals. City shall not use its discretionary authority in considering any application for a Subsequent Discretionary Approval to change the policy decisions reflected by the Existing Project Approvals or this Agreement, or otherwiseprevent or frustrate the further development of the Project as set forth in the Existing Project Approvals or this Agreement.

(d) Nothing herein shall limit the ability of City to require the necessary environmental review, reports, analysis or studies to assist in determining that any requested Subsequent Ministerial Approval is consistent with this Agreement and the Existing Project Approvals. If the City reasonably determines in light of the purposes and intent of this Agreement that an application for a Subsequent Ministerial Approval is not consistent with this Agreement or the Existing Project Approvals and should be processed as an application for a Subsequent Discretionary Approval rather than a Subsequent Ministerial Approval, the City shall specify in writing the reasons for such determination and may propose a modification which would be processed as a Subsequent Ministerial Approval. Developer shall then either modify the application to conform to this Agreement and the Existing Project Approvals, as the case may be, or the City shall process the application as an application for a Subsequent Discretionary Approval.

(e) City shall process Developer's applications for Subsequent Project Approvals to the fullest extent allowed by Applicable Law, the Existing Project Approvals, and this Agreement and Developer may proceed with Subsequent Project Approvals as provided for herein to the fullest extent allowed by Applicable Law, the Existing Project Approvals, and this Agreement.

6.3 Changes and Amendments to Project Approvals.

(a) Given the long term build-out of the Project, the City and Developer acknowledge that modifications or amendments to the Project Approvals may be appropriate and

mutually desirable. To the extent permitted by Applicable Law, any Project Approval may, from time to time, be amended or modified in the following manner:

(i) Upon the written request of Developer for an amendment or modification to a Project Approval, the City Manager or the City Manager's designee shall determine: (A) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (B) whether the requested amendment or modification is consistent with the purposes and intent of this Agreement and Applicable Law. If the City Manager finds, in his or her sole discretion, that the proposed amendment or modification is minor, consistent with the purposes and intent of this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the environmental review, the amendment shall be determined to be an "**Administrative Project Amendment**" and the City Manager may approve the Administrative Project Amendment consistent with Section 6.4(a) of this Agreement.

(ii) Any request of Developer for an amendment or modification to a Project Approval which is determined by the City Manager or his/her designee not to be an Administrative Project Amendment as set forth above shall be deemed a "**Non-administrative Project Amendment**" and shall be subject to review, consideration and action pursuant to the Project Approvals, Applicable Law and this Agreement, as applicable.

(iii) Administrative Project Amendments shall not require an amendment to this Agreement.

6.4 Amendment of this Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

(a) Administrative Agreement Amendments. Any amendment to this Agreement which does not substantially affect (a) the Term of this Agreement; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms restrictions or requirements for subsequent discretionary actions; (e) increases in the density or intensity of the use of the Property or the maximum height or size of proposed buildings; or (f) monetary contributions by Developer, shall be deemed an "**Administrative Agreement Amendment**" and the City Manager or his or her designee, except to the extent otherwise required by Applicable Law, may approve the Administrative Agreement Amendment without notice and public hearing.

(b) Major Agreement Amendments. Any amendment to this Agreement which is determined not to be an Administrative Agreement Amendment as set forth above shall be deemed a "**Major Agreement Amendment**" and shall require giving of notice and a public hearing before the Planning Commission and City Council in accordance with Applicable Law. The City Manager or his or her designee shall have the authority to determine if an amendment is a Major Agreement Amendment or an Administrative Agreement Amendment.

6.5 Mitigation Measures. Developer shall comply with all mitigation measures in the MMRP.

6.6 Cooperation in the Event of Legal Challenge.

(a) City and Developer, at Developer's sole cost and expense, shall cooperate in the event of any court action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, any Existing Project Approvals or any Subsequent Project Approvals and City shall appear in the action and defend its decision, except that City shall not be required to be an advocate for Developer. To the extent that Developer determines to contest or defend such litigation challenges, Developer shall reimburse City, within 30 days following City's written demand therefore, which may be made from time to time during the course of such litigation, all costs incurred by City in connection with the litigation challenge, including City's administrative, legal and court costs, provided that City, it its sole discretion shall determine to either: (a) elect to joint representation by Developer's counsel; or (b) retain an experienced litigation attorney. If Developer defends any such legal challenge, Developer 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. Nothing herein shall authorize Developer to settle such legal challenge on terms that would constitute an amendment or modification of this Agreement, any Existing Project Approvals or any Subsequent Project Approvals, unless such amendment or modification is approved by City in accordance with applicable legal requirements, and City reserves its full legislative discretion with respect thereto.

(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 bear all related costs and expenses, including City's attorney fees, and, in addition, 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.

6.7 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), including without limitation 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.

7. DEFAULT AND REMEDIES.

7.1 Breach. Subject to extensions of time under this Agreement 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 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 10 days to cure the breach. If the breach is of a type that cannot be cured within 30 days, the breaching Party shall, within a 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. 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 8.3, 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.

7.2 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 7.4 below.

7.3 Withholding of Permits. In the event of a Default by Developer, 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; provided, however, that in any dispute related to Developer's payment of fees under Section 5.1(d), the Developer may pay the disputed amount under protest and City shall issue such permits or approvals for the Project and Developer can seek reimbursement thereafter. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

7.4 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 reviewed in the manner set forth in Government Code Section 65867 and City regulations implementing this section. Following consideration of the evidence presented in the 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 7.8 below.

(b) City and Developer agree that in the event of Default by City, the Parties intend that the only remedy shall be declaratory relief or specific performance of this Agreement. The Parties further agree that in the event of Default by Developer, the City's primary remedy would be specific performance of the terms and provisions of this Agreement. In no event shall either Party be entitled to any actual (except in the case of certain payments and fees due under this Agreement), consequential, punitive, or special 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.

(c) 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 Section 7.4(b) above. Any such legal action shall be brought in the Superior Court for Napa County, California.

7.5 Periodic Review.

(a) The annual review date for this Agreement shall be the month and day of the Effective Date. No later than 60 calendar days prior to the annual review date, Developer shall submit to the City an accounting of the fees due and paid to the City, any assignments or transfers of the Property, all construction of public improvements under this Agreement and compliance with the MMRP. Developer shall initiate the annual review by submitting a written request to the Planning Director. Developer shall submit a request for review and pay all legally required Processing Fees as required by the City, and provide evidence as determined necessary by the Director to demonstrate good faith compliance with the provisions of this Agreement. However, failure to initiate the annual review within 30 days of receipt of written notice to do so from City shall not constitute a Default by Developer under this Agreement, unless City has provided actual notice and opportunity to cure and Developer has failed to so cure.

(b) The annual review required by Government Code section 65865.1 and the City Municipal Code shall be conducted as provided herein:

(i) The City Manager shall review Developer's submission to ascertain whether Developer has complied in good faith with the terms of this Agreement. If the City Manager finds good faith compliance by Developer with the terms of this Agreement, the City Manager shall so notify Developer and the City Council in writing and the review for that period shall be concluded. If the City Manager finds good faith compliance with this Agreement, the notification to the City Council shall not require a hearing of any kind or an appearance from Developer. If the City Manager is not satisfied that the Developer is performing in accordance with the material terms and conditions of this Agreement, the City Manager may refer the matter to the City Council for a determination as to compliance with this Agreement and, in such case, shall notify Developer in writing at least ten days in advance of the time at which the matter will be considered by the City Council.

(ii) In the event that the City Manager is not satisfied pursuant to section (b)(i) above, the City Council shall conduct a hearing at which Developer must submit evidence that it has complied in good faith with the terms and conditions of this Agreement. The findings of the City Council on whether Developer has complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines that, based upon substantial evidence, Developer has complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded. If, however, the City Council determines, based upon substantial evidence in the record, that there are significant questions as to whether Developer has complied in good faith with the terms and conditions of this Agreement, the City Council may continue the hearing and shall notify Developer of the City's intent to meet and confer with Developer within 30 days of such determination, prior to taking further action. Following the 30-day time period, the City Council

shall resume the hearing in order to further consider the matter and to make a determination, regarding Developer's good faith compliance with the terms and conditions of the Agreement and to take those actions it deems appropriate, including but not limited to, termination of this Agreement, in accordance with California Government Code section 65865.1 and the City Municipal Code.

(c) Failure of 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 Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

(d) If, after an annual review, City finds Developer has complied in good faith with this Agreement, City shall promptly following Developer's request issue to Developer a certificate of compliance certifying that Developer has so complied through the period of the applicable annual review. The Certificate of Compliance must be in recordable form and must contain such information as may be necessary to impart constructive notice of City's finding. Developer may record the Certificate of Compliance in the Official Records of the County of Napa.

7.6 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 or pandemics; quarantine or similar restrictions; freight embargoes; 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). 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 one year. 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, except to the extent such circumstances are a result of the aforementioned events described in the first sentence of this section.

7.7 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. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 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.

7.8 Termination. This Agreement shall terminate upon the earlier of (i) expiration of the Term, or (ii) when the Property has been fully developed and all of Developer's obligations have been fully satisfied as reasonably determined by City, or (iii) after all appeals

have been exhausted before a final court of judgment, or issuance of a final court order directed to the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part thereof. Upon termination of this Agreement as to all of the Property, at the request of Developer, the City shall record a Notice of Termination for each affected parcel in a form satisfactory to the City Attorney in the Office of the Napa County Recorder. 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 5.4 (Prevailing Wage), 6.6 (Cooperation in the Event of Legal Challenge), and 6.7 (Indemnity and Hold Harmless).

8. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE.

8.1 Mortgagee Protection. This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement or a memorandum thereof is recorded, 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 all persons and entities, including all deed of trust beneficiaries or mortgagees ("**Mortgagees**") who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in-lieu-of foreclosure, voluntary transfer or otherwise.

8.2 Mortgagee Obligations. City, upon receipt of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that all defaults by Developer hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as reasonably possible, provided, however, that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee. The foreclosing Mortgagee shall have the right to find a substitute developer to assume the obligations of Developer, which substitute shall be considered for approval by the City pursuant this Agreement. In any event, a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals, nor construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by the Agreement, or the Project Approvals.

8.3 Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given to Developer and specifying the address for service thereof, City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to Developer, all notices given to Developer describing all claims by the City that Developer has defaulted hereunder. If City determines that Developer is not in compliance with this Agreement, City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice.

9. TRANSFERS AND ASSIGNMENTS.

9.1 Transfers Generally. Subject to the terms of this Section 9, Developer shall have the right to assign or transfer all or any portion of its interest, rights or obligations under this Agreement to an Affiliate or to third Persons (the "**Transferee**") acquiring an interest or estate in all or a portion of the Property (the "**Transferred Property**"), including, but not limited to, purchasers or long term ground lessees of lots, parcels, or of any of the buildings located within the Property. Developer shall provide 30 days written notice to City prior to the effective date of any sale, transfer or assignment (collectively, "**Transfer**") of its interest in all or any portion of the Property or any of its interests, rights and obligations under this Agreement, and upon giving of such notice and closing the conveyance, transfer, sale or lease, said Transferee shall be deemed a Party.

9.2 Conditions for Assignment and Release. Except as provided in Section 9.4, Developer may not Transfer any of its interests, rights or obligations under this Agreement without the prior written consent of City, which consent shall not be unreasonably withheld or delayed. Any Transfer of all or a portion of this Agreement shall be documented by an Assignment and Assumption Agreement substantially in the form set forth in Exhibit E to this Agreement specifying the obligations and requirements to be assumed by the Transferee. In no event shall the obligations conferred upon Developer under this Agreement be transferred except through a Transfer of all or a portion of the Property. Should Developer transfer any of its interests, rights or obligations under this Agreement in connection with a Transfer by Developer of a portion of the Property (such Transfer, a "**Partial Assignment**"), such Partial Assignment shall be documented by an Assignment and Assumption Agreement in a form reasonably acceptable to the City. To the extent provided in the Assignment and Assumption Agreement, the transferee of such interests, rights or obligations under this Agreement (each, a "**Partial Transferee**") shall only be liable for performance of the obligations of Developer under this Agreement (including, without limitation, indemnification obligations and the obligation to install public improvements and pay fees) related to the portion of the Property transferred to such Partial Transferee, and no Default by Developer or any other assignee who received a Partial Assignment hereunder shall constitute an event of Default hereunder by such Partial Transferee. Should Developer Transfer any of its interests, rights or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of Public Improvements and payment of fees, unless the Transferee agrees to be bound by the relevant terms of the Agreement, including the obligations for installation of Public Improvements and payment of fees. During the Term, Developer shall provide City with written notice of a request to Transfer any interest in this Agreement 90 days prior to any such contemplated Transfer. Any such request for a Transfer shall be accompanied by quantitative and qualitative information that substantiates, to the City's satisfaction, that the proposed transferee has the financial capability to fulfill the rights and obligations of this Agreement. Within 45 days of such a request and delivery of information, the City Manager shall make a determination, in his or her sole discretion, as to whether the Transfer shall be permitted or whether such Transfer necessitates an amendment to this Agreement, subject to approval by the City Council. Each successor in interest to Developer shall be bound by all of the terms and provisions applicable to the portion of the Property acquired. This Agreement shall be binding upon and inure to the benefit of the Parties' successors, assigns and legal

representatives. This Agreement shall be recorded by the City in the Napa County Recorder's Office promptly upon execution by each of the Parties.

9.3 Covenants Run With The Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof and any interest therein, whether by sale, operation of law or other manner, and shall inure to the benefit of the Parties and their respective successors.

9.4 Pre-Approved Transfers. The following Transfers shall not require approval by the City, and shall automatically result in the release of Developer of its obligations hereunder upon the execution of an Assignment and Assumption Agreement in a form substantially similar to that attached as Exhibit E, as they may relate specifically to the specific property or asset sold or transferred: (a) prior to the issuance of any Building Permits, a Transfer of the Property to any corporation, limited liability company, partnership or other entity which is controlling of, controlled by or under common control with Developer ("control" for purposes of this definition means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other members of such entity); and (b) a loan or mortgage pertaining to the Property.

9.5 Foreclosure. Nothing contained in this Section shall prevent a transfer of the Property, or any portion thereof, to a lender as a result of a foreclosure or deed in lieu of foreclosure, and any lender acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Developer under this Agreement; provided, however, in no event shall such lender be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Property by such lender, and provided further, in no event shall any such lender or its successors or assigns be entitled to a Building Permit or occupancy certificate until all fees due under this Agreement (relating to the portion of the Property acquired by such lender) have been paid to City.

10. GENERAL.

10.1 Controlling Law. This Agreement shall be governed by the laws of the State of California, without reference to choice of laws principles.

10.2 Construction of Agreement. The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning. 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) "or" is not exclusive; (v) "include," "includes" and "including" are not limiting and shall be construed as if followed by the words "without limitation," and (vi) "days" means calendar days unless specifically provided otherwise.

10.3 No Waiver. No delay or omission by the City or Developer in exercising any right or power accruing upon the other Party's noncompliance or failure to perform under the provisions of this Agreement shall impair or be construed to waive any right or power. A waiver by City or Developer of any of the covenants or conditions to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants and conditions.

10.4 Agreement is Entire Agreement. This Agreement and all exhibits attached hereto or documents incorporated herein by reference, are the sole and entire agreement between the Parties concerning the Property. The Parties acknowledge and agree that they have not made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery, except representations set forth herein, and each Party acknowledges that it has relied on its own judgment in entering this Agreement. The Parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other.

10.5 Estoppel Certificate. City or Developer from time to time may deliver written notice to the other Party requesting written certification that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and constitutes a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications, and, (iii) the requesting Party does not have knowledge of default in the performance of its obligations under this Agreement, or if in known default, describing therein the nature and monetary amount, if any, of the default.

10.6 Further Documents. Each Party shall execute and deliver to the other all other instruments and documents as may be reasonably necessary to carry out this Agreement.

10.7 Time of Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties hereunder.

10.8 Construction. This Agreement has been reviewed and revised by legal counsel for both the 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.

10.9 Notices. Except as otherwise expressly provided herein, all notices and demands pursuant to this Agreement shall be in writing and delivered in person, by commercial

courier, by first-class certified mail, postage prepaid or by electronic mail. Except as otherwise expressly provided herein, notices shall be considered delivered when personally served, upon delivery if delivered by commercial courier, two (2) days after mailing if sent by mail, or upon acknowledgement of receipt of an electronic communication from its recipient if sent via electronic mail. Notices shall be sent to the addresses below for the respective Parties; provided, however, that any Party may change its address for purposes of this Section by giving written notice to the other Parties. These addresses may be used for service of process:

City:
City Manager
City of Calistoga
1232 Washington Street
Calistoga, California 94515
email: mkirn@ci.calistoga.ca.us

with copy to:
Michelle Marchetta Kenyon
City Attorney
City of Calistoga
1901 Harrison Street, 9th Floor
Oakland, California 94612
email: mkenyon@bwslaw.com

Developer:
MF Calistoga LLC
1712 Lincoln Avenue
Calistoga, CA 94515
Attention: Daniel Merchant
email: danielsmerchant@gmail.com

Oh Child LLC
7 Live Oak Way
Kentfield, CA 94940
Attention: Daniel Merchant
email: danielsmerchant@gmail.com

1504 Lincoln LLC
1013 Washington Avenue, #527
Calistoga, CA 94515
Attention: Daniel Merchant
email: danielsmerchant@gmail.com

with copy to:
(and shall not constitute notice to Developer)
Jeff Dodd
Coblentz Patch Duffy & Bass LLP
700 Main Street, Suite 301
Napa, CA 94558
email: jdodd@coblentzlaw.com

The provisions of this Section shall be deemed directive only and shall not detract from the validity of any notice given in a manner that would be legally effective in the absence of this Section.

10.10 Developer is an Independent Contractor. Developer is not an agent or employee of City, but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed or utilized by Developer in connection with this Agreement are employees or contractors of Developer and shall not be considered employees of City in any respect.

10.11 No Joint Venture. It is specifically understood and agreed that the Project is a private development. No partnership, joint venture or other association of any kind between City and Developer is formed by this Agreement.

10.12 Nondiscrimination. Developer shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, marital status, sexual orientation, age, creed, religion or disability in connection with or related to the performance of this Agreement.

10.13 No Third Party Beneficiary. This Agreement shall not be construed or deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

10.14 Joint and Several Liability. Each of the Developer Parties shall be jointly and severally liable for all obligations of Developer under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been entered into by and between the Parties as of the Effective Date.

CITY:

City of Calistoga, a California municipal corporation

By: _____
Mike Kirn
City Manager

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon
City Attorney

ATTEST:

By: _____
_____
City Clerk

DEVELOPER:

MF Calistoga LLC, a California limited liability company

By: _____
Name: _____

Oh Child LLC, a California limited liability company

By: _____
Name: _____

1504 Lincoln LLC, a California limited liability company

By: _____

Name: _____

[insert notary acknowledgments]

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL ONE:

All that real property situated in the City of Calistoga, County of Napa, State of California, being a portion of that certain 43.734 acre parcel as shown on that Record of Survey (Map No. 5583), filed September 1, 2004, in Book 36 of Surveys, at Pages 47 to 48, in the Office of the County Recorder of Napa County, more particularly described as follows:

COMMENCING at a point on the general Southerly line of PARCEL 1 as shown on that certain Parcel Map (Map No. 4108), filed January 26, 1988, in Book 15 of Parcel Maps, at Pages 95 to 96, in the Office of the County Recorder of Napa County, distant thereon North 88°01'40" West, 45.83 feet from the Northwesterly terminus of that course shown as "N61°23'16" W 158.13 feet" along said general Southerly line of said PARCEL 1; thence along a direct line between last said point and the Northwesterly terminus of that course shown as "N63°04'41"W 2000.00 feet" on said Parcel Map (Map No. 4108), South 61°25'30" East, 42.16 feet to the POINT OF BEGINNING; thence South 25°24'47" West, 570.37 feet to the Northerly boundary line of Parcel Map (Map No. 3835), filed August 9, 1985, in Book 14 of Parcel Maps, at Pages 55 to 56, in the Office of the County Recorder of Napa County; thence Easterly along said Northerly boundary line to the Easterly line of that parcel of land as described in that certain CERTIFICATE OF COMPLIANCE, recorded February 10, 2014 as Document Number 2014-0002664, Official Records of Napa County; thence Northerly along last said line to the Southerly boundary line of Parcel Map (Map No. 2093), filed August 11, 1971, in Book 3 of Parcel Maps, at Page 38, in the Office of the County Recorder of Napa County; thence Westerly along last said boundary line to the general Westerly boundary line of said Parcel Map (Map No. 2093), thence in a direct line, North 61°25'30" West, 159.09 feet to the POINT OF BEGINNING.

APN: 011-340-030

PARCEL TWO:

All that real property situated in the City of Calistoga, County of Napa, State of California, being a portion of that certain 43.734 acre parcel as shown on that Record of Survey (Map No. 5583), filed September 1, 2004, in Book 36 of Surveys, at Pages 47 to 48, in the Office of the County Recorder of Napa County, more particularly described as follows:

COMMENCING at a point on the general Easterly line of Lincoln Avenue (State Highway 29) as shown on that certain Parcel Map (Map No. 4108), filed January 26, 1988, in Book 15 of Parcel Maps, at Pages 95 to 96, in the Office of the County Recorder of Napa County, distant thereon South 36°45'55" West, 13.63 from the intersection of said general Easterly line of said Lincoln Avenue with the Southerly line of the lands of Nance's Sanitarium Inc. as shown on said Parcel Map, measuring along said general Easterly line of said Lincoln

Avenue; thence along said line of said Lincoln Avenue, South 36°45’55” West, 246.59 feet to the Southerly line of that parcel of land as described in that certain CERTIFICATE OF COMPLIANCE, recorded February 10, 2014 as Document Number 2014-0002667, Official Records of Napa County; thence along last said line, South 63°03’01” East, 421.85 feet to a point on the Northeasterly prolongation of the Northwesterly line of the lands of E.D. Grimsley as shown on that certain Parcel Map (Map No. 3835), filed August 9, 1985, in Book 14 of Parcel Maps, at Pages 55 to 56, in the Office of the County Recorder of Napa County; thence along said prolongation, South 25°24’47” West, 27.48 feet to the Southerly line of that parcel of land as described in that certain CERTIFICATE OF COMPLIANCE, recorded February 10, 2014 as Document Number 2014-0002665, Official Records of Napa County, being the POINT OF BEGINNING; thence along said prolongation, North 25°24’47” East, 451.76 feet to the general Southerly line of PARCEL 1 as shown on said Parcel Map (Map No. 4108); thence along last said line, South 88°01’40 East, 286.95 feet to a point on said general Southerly line, distant thereon North 88°01’40” West, 45.83 feet from the Northwesterly terminus of that course shown as “N61°23’16” W 158.13 feet” along said general Southerly line of said PARCEL 1; thence along a direct line between last said point and the Northwesterly terminus of that course shown as “N63°04’41”W 2000.00 feet” on said Parcel Map (Map No. 4108), South 61°25’30” East, 42.16 feet; thence South 25°24’47” West, 570.37 feet to the Northerly line of PARCEL 1 as shown on said Parcel Map (Map No. 3835); thence along last said line, North 63°04’53” West, 31.03 feet to the most Northerly corner of said PARCEL 1 (Map No. 3835); thence along the Northerly line of the lands of E.D. Grimsley as shown on said Parcel Map (No. 3835), North 63°20’15” West, 274.40 feet to the POINT OF BEGINNING.

APN: 011-340-029

PARCEL THREE:

All that real property situated in the City of Calistoga, County of Napa, State of California, being a portion of that certain 43.734 acre parcel as shown on that Record of Survey (Map No. 5583), filed September 1, 2004, in Book 36 of Surveys, at Pages 47 to 48, in the Office of the County Recorder of Napa County, more particularly described as follows:

COMMENCING at the intersection of the general Easterly line of Lincoln Avenue (State Highway 29) as shown on that certain Parcel Map (Map No. 4108), filed January 26, 1988, in Book 15 of Parcel Maps, at Pages 95 to 96, in the Office of the County Recorder of Napa County with the Southerly line of the lands of Nance’s Sanitarium Inc. as shown on said Parcel Map; thence along said Southerly line, South 87°16’44” East, 196.23 feet to the Southeasterly corner of said lands of Nance’s Sanitarium Inc.; thence along the general Southerly line of PARCEL 1 as shown on said Parcel Map, South 88°01’40” East, 89.89 feet to the POINT OF BEGINNING; thence at a right angle, South 01°58’20” West, 5.05 feet; thence North 88°43’32” West, 293.90 feet to a point on said line of said Lincoln Avenue, distant thereon South 36°45’55” West, 13.63 from the Point of Commencement, measuring along said line of said Lincoln Avenue; thence along said line of said Lincoln Avenue, South 36°45’55” West, 246.59 feet to the Southerly line of that parcel of land as described in that certain CERTIFICATE OF COMPLIANCE, recorded February 10, 2014 as Document Number 2014-0002667, Official Records of Napa County; thence along last said line, South 63°03’01” East, 421.85 feet to a point on the Northeasterly prolongation of the Northwesterly line of the lands of E.D. Grimsley as shown on that certain

Parcel Map (Map No. 3835), filed August 9, 1985, in Book 14 of Parcel Maps, at Pages 55 to 56, in the Office of the County Recorder of Napa County; thence along said prolongation, North 25°24'47" East, 424.28 feet to the general Southerly line of said PARCEL 1; thence along last said line, North 88°01'40" West, 116.58 feet to the POINT OF BEGINNING.

APN: 011-340-028

PARCEL FOUR:

Being a portion of the lands of G.W.F. Johnson as described in that Deed recorded in Book 30 of Deeds, page 194, Napa County Records, said portion being more particularly described as follows:

Commencing for boundary on the west line of Lot No. Two (2) of Bender's Survey of Calistoga lands aforesaid at the intersection of the two fences about twelve (12) chains northerly from the southwest corner of said Lot No. Two (2); thence northerly along the west line of said Lot Two (2) to the southerly line of Lot Four (4) of said survey; thence westerly with the southerly line of Lots Four (4) and Seven (7) of said survey to the western line of Brannan Street; thence southerly along said line of Brannan Street to the southern line of Washington Avenue; thence along said line of Washington Avenue westerly, southeasterly and southerly to the north line of Lot Four (4) Block Two (2) of Morgan's Survey of the Old Calistoga Springs property to Cashcank north line; thence southeasterly along said north line to Wapoo Avenue; thence along said Avenue on its western line southerly to where it intersects Lincoln Avenue; thence in a direct line to the southwest corner of Lot One (1) in Block Seven (7) of Morgan Survey; thence easterly along the line of Wapoo Avenue to a point opposite the east line of Lot Number Five (5) of Block Seven (7) Morgan's Survey; thence southerly along the east line of said Lot Five (5) to the north line of Washington Avenue; thence easterly along aid line to the southeast corner of Lot numbered nineteen (19) in Block Seven (7) of Morgan's Survey; thence in a direct line in a southeast direction to the southeast corner of Swimming Bath House; thence in a direct line southeasterly with the fence to the place of beginning.

Excepting therefrom any portion of the above described lands that may lie within the boundary lines of the deed to G.W.F. Johnson recorded in Book 32 of Deeds, Page 290, Napa County Records or the deed to G.F. Boynton recorded in Book 29 of Deeds, page 476, Napa County Records.

Also Excepting therefrom any portion of the above described lands that may lie within the boundary lines of that Map No. 2093, Parcel Map filed in Book 3 of Parcel Maps, Page 38, Napa County Records; within the boundary lines of that Map No. 4108, Parcel Map filed in Book 15 of Parcel Maps, Page 96, Napa County Records, or within the boundary lines of that Map No. 3835, parcel Map filed in Book 14 of Parcel Maps, pages 55 & 56, Napa County Records.

Also Excepting therefrom any portion of the above described lands lying northerly of the southerly line of Parcel 1 and westerly of the easterly line of Lincoln Avenue as shown on that Map No. 4108, Parcel Map filed in Book 15 of Parcel Maps, Page 96, Napa County Records and northerly of the southerly line of Parcels 1 & 2 as shown on that Map No. 2093, Parcel Map filed in Book 3 of Parcel Maps, page 38, Napa County Records.

APN: 011-340-025

PARCEL FIVE:

Being the lands of A. Banchieri as described in that Deed recorded in Book 16 of Deeds, page 238, Napa County Records, said portion being more particularly described as follows:

Commencing at the most western corner of the lot of land heretofore conveyed by N.W. Collins to Charles E. Butler by deed dated October 11th, 1913 and recorded the same day in Liber 107 of Deeds, at page 211, and running thence southeasterly and along the southwestern line of said premises conveyed to Butler as aforesaid, two hundred seventy eight (278) feet, more or less, to the northwestern line of the five acre tract conveyed to Geo. F. Boynton by deed of record in Liber 29 of Deeds, at page 476; thence southwesterly along the northwestern line of said five acre tract twenty-six (26) feet, more or less, to a point distant thereon North 25° 15' East forty (40) feet from the point of intersection thereof with the northeastern line of the right of way of the Southern Pacific Railroad (said northwestern line of said five acre tract being extended southwesterly to intersect said Railroad right of way line); thence northwesterly parallel with the northeastern line of said Railroad right of way and distant forty (40) feet northeasterly therefrom, three hundred (300) feet, more or less, to appoint which would be intersected by the northwestern line of the premises conveyed to Butler and hereinbefore referred to, if the same were extended southwesterly; and thence northeasterly along said extended line, to the point of commencement.

APN: 011-340-005

PARCEL SIX:

Being the lands of George F. Boynton as described in that Deed recorded in Book 32 of Deeds, page 118, Napa County Records, said portion being more particularly described as follows:

Commencing at the northeast corner of a certain lot deeded to Geo. F. Boynton by Geo. W.F. Johnson, said northeast corner being one hundred and fifty feet from Lincoln Avenue in a southeasterly direction; thence southeasterly two hundred and seventy eight (278) feet to the west line of G.F. Boynton's five acre tract; thence southwesterly along said five acre tract sixty (60) feet; thence northwesterly two hundred and seventy eight (278) feet to Geo. F. Boynton's southwest corner; thence northeasterly sixty (60) feet to the place of beginning, said lot being in Calistoga and surveyed by T.W. Morgan in the year 1871.

APN: 011-340-022

PARCEL SEVEN:

Being the lands of A. Banchieri as described in that Deed recorded in Book 29 of Deeds, page 403, Napa County Records, said portion being more particularly described as follows:

Commencing at a stake marked No. 2, set at the most southern corner of the tract of land heretofore conveyed to Charles E. Butler by deed of record in Liber 107 of Deeds, at page 211,

said point of commencement being also as described as being on the northwestern line of the 5 acre tract of land heretofore conveyed to Geo. F. Boynton by deed of record in Liber 29 of Deeds, at page 476; and running thence North 25° 15' West along the northwestern line of said 5 acre tract 72 feet, more or less, to the southeastern line of said premises conveyed to Achille Banchieri by deed of record in Liber 129 of Deeds, at page 330; thence northwesterly along the southeastern line of said premises conveyed to Banchieri, as aforesaid, 278 feet, more or less, to the most western corner thereof; said last named corner being also the most eastern corner of the premises heretofore conveyed to J. Leary by deed of record in Liber 29 of Deeds, at page 328; thence South 36° 15' West along the southeastern line of said premises conveyed to Leary, seventy-five (75) feet, more or less, to the most southern corner thereof; and thence South 63° 30' East 294.5 feet, more or less, to the point of commencement.

APN: 011-340-004

PARCEL EIGHT:

Being the lands of J. Leary as described in that Deed recorded in Book 29 of Deeds, page 328, Napa County Records, said portion being more particularly described as follows:

Commencing at the intersection of Lincoln and Rail Road Avenues; thence along Railroad Avenue one hundred fifty (150) feet; thence easterly seventy five (75) feet; thence westerly one hundred and fifty (150) feet to said Lincoln Avenue; thence southwesterly along said Lincoln Avenue seventy five (75) feet to the place of beginning accorder to Morgan's Survey of the Hot Springs Lands in Calistoga.

APN: 011-340-003

PARCEL NINE:

Being a portion of the lands of G.F. Boynton as described in that Deed recorded in Book 29 of Deeds, page 453 and Book 29 of Deeds, page 476, both Napa County Records, said portion being more particularly described as follows:

Commencing at the northeast corner of a certain lot deeded by Johnson to J. Leary; thence southwesterly along said Leary's line one hundred and fifty feet; thence northeasterly fifty feet; thence northwesterly one hundred and fifty feet; thence southwesterly to place of beginning, said lot being in Block Eight of Morgan's Survey of the Calistoga Springs property in the Town of Calistoga, County of Napa, California.

Together with the following described parcel, being the second parcel as described in Book 29 of Deeds, page 476, Napa County Records.

Commencing at the northeasterly corner of a lot deeded to Geo. F. Boynton by G.W.F. Johnson; thence southeasterly along said Boynton's line one hundred and fifty (150) feet; thence northerly ten (10) feet; thence northwesterly one hundred and fifty (150) feet; thence southerly along Lincoln Avenue ten (10) feet to the place of beginning. All of which being the Calistoga Hot Springs property as surveyed by T.W. Morgan's Survey of Calistoga lands in the year 1871.

APN: 011-340-021

PARCEL TEN:

Commencing at the most Western corner of the 5 acre tract of land conveyed to George F. Boynton by Deed of record in Book 29 of Deeds at page 476, said Napa County Records from which an iron stake set in the Northerly line of the Right of Way of the Southern Pacific Railroad bears South 25° 15’ West 37 feet distant said stake also bearing South 63° 30’ East along said line of said Right of Way, 452 feet from the Easterly curb line of Lincoln Avenue; running thence South 63° 30’ East 275 feet to a stake; thence North 25° 15’ East 136.5 feet to an iron stake; thence North 63° 30’ West 275 feet to the Northwestern line of said 5 acre tract; thence South 25° 15’ West 136.5 feet to the point of commencement.

PARCEL ELEVEN:

Commencing at an iron stake set in the Northern line of the Right of Way of the Southern Pacific Railroad which bears South 63° 30’ East 452 feet, along said line from the intersection of said line with the Easterly curb line of Lincoln Avenue; thence running along said Right of Way line, South 63° 30’ East 329.5 feet to an iron stake; thence North 25° 15’ East 37 feet; thence North 63° 30’ West to and along the Southwestern line of the 5 acre tract of land conveyed to George F. Boynton by Deed of record in Book 29 of Deeds at page 476, said Napa County Records, 329.5 feet to the most Western corner thereof; thence South 25° 15’ West 37 feet to the point of commencement.

APN: 011-340-006

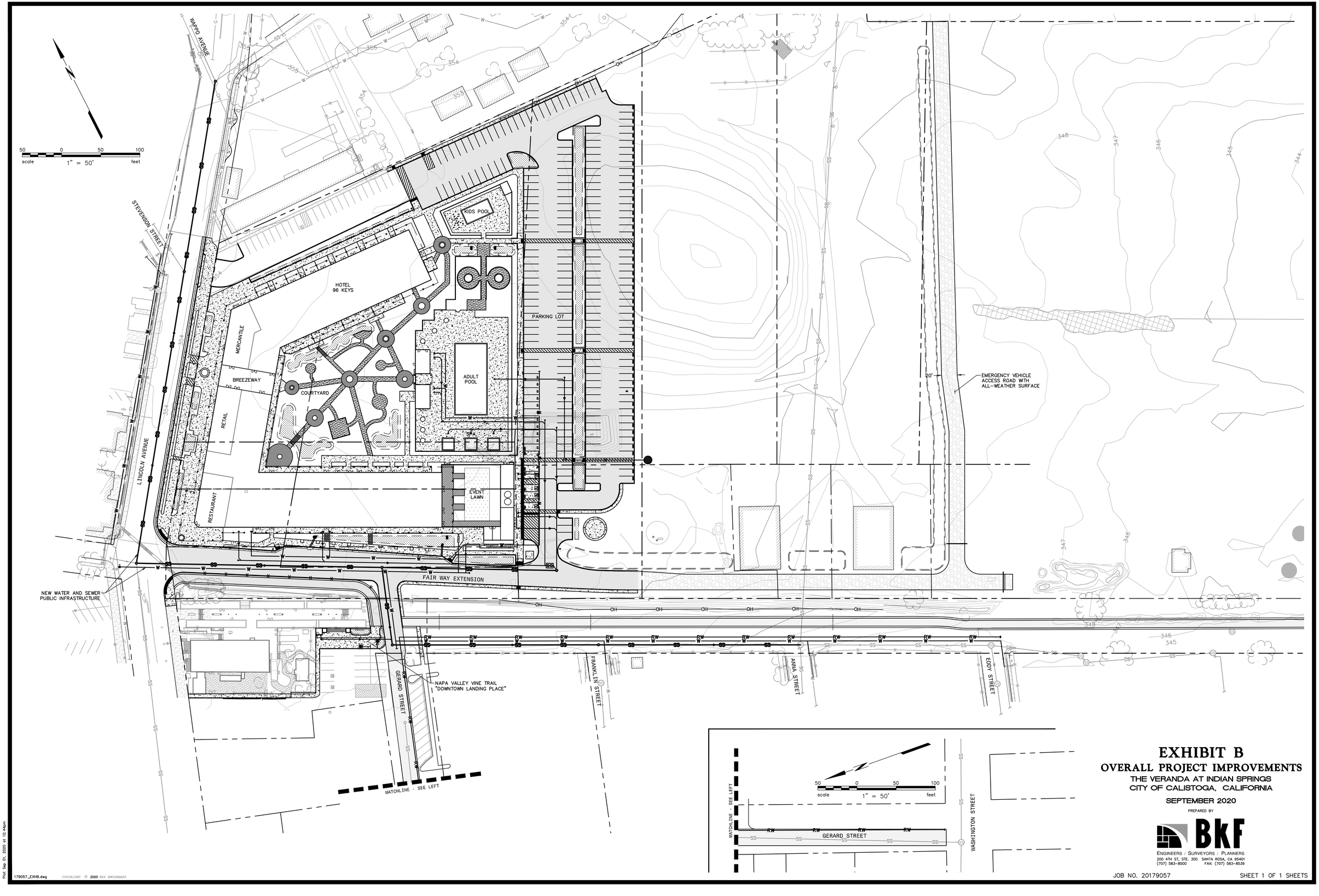

EXHIBIT B

OVERALL PROJECT IMPROVEMENTS

THE VERANDA AT INDIAN SPRINGS
CITY OF CALISTOGA, CALIFORNIA

SEPTEMBER 2020

PREPARED BY

BKF
ENGINEERS / SURVEYORS / PLANNERS
200 4TH ST, STE. 300 SANTA ROSA, CA 95401
(707) 583-8500 FAX: (707) 583-8539

JOB NO. 20179057

SHEET 1 OF 1 SHEETS

Plot Sep 01, 2020 at 12:44pm
179057_EXHB.dwg
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EXHIBIT C

Exhibit C - Fees
The Veranda at Indian Springs

Fee	**Hotel** (96 rooms)		**Restaurant** (7,818 sf)		**Retail** (5,070 sf)		**Total impact fees**
	per room		per sf		per sf		
Affordable Housing Dev. Impact Fee	$1,756.35	$168,609.60	$3.81	$29,786.58	$3.81	$19,316.70	$217,712.88
City Administrative Dev. Impact Fee	$1,380.49	$132,527.04	$1.31	$10,241.58	$1.26	$6,388.20	$149,156.82
Cultural/Recreational Dev. Impact Fee	$895.74	$85,991.04	$1.22	$9,537.96	$1.17	$5,931.90	$101,460.90
Fire Dev. Impact Fee	$1,162.70	$111,619.20	$1.11	$8,677.98	$1.07	$5,424.90	$125,722.08
Police Dev. Impact Fee	$309.12	$29,675.52	$0.29	$2,267.22	$0.28	$1,419.60	$33,362.34
Transportation Dev. Impact Fee	$2,659.11	$255,274.56	$10.71	$83,730.78	$7.87	$39,900.90	$378,906.24
SUBTOTAL							**$1,006,321.26**
Solage Reimbursement - Storm Drain*							$15,713.08
Solage Reimbursement - Sewer*							$91,177.04
Water Connection (per study)	19.38	ac/ft		$41,630.00			$806,789.40
Minus existing baseline (not including 1ac/ft for laundromat)	-7.63	ac/ft		$41,630.00			-$317,636.90
Wastewater Connection (per study)	21.24	ac/ft		$121,545.00			$2,581,615.80
Minus existing baseline (not including 1ac/ft for laundromat)	-7.77	ac/ft		$121,545.00			-$944,404.65
SUBTOTAL							**$2,126,363.65**
TOTAL (not inlcuding Solage Reimb.)							**$3,132,684.91**

*plus interest at rate set forth in Solage Reimb. Agreement

EXHIBIT D

DESCRIPTION OF PUBLIC IMPROVEMENTS

(i) Extension of Gerard Street northerly to connect to the Fair Way extension, and new curb and gutter along Lincoln Avenue adjacent to the Property.

(ii) Overlay of Gerard Street from its existing terminus southerly to the intersection with Washington Street. Approximately 20,000 square feet of road, not including curb, gutter, or improvements to the existing angled parking stalls on the southeasterly side of Gerard. Road shall be ground down 2 inches and overlaid with a 1-inch leveling course with glass grid pavement reinforcement and a 2-inch final lift of asphalt.

(iii) Extension of the Project's new 10-foot wide multi-use concrete pathway northerly on the Lincoln Avenue frontage to connect to the existing pathway on the Indian Springs property.

(iv) A Napa Valley Vine Trail "downtown landing place" on a portion of the City-owned parking lot at the rear of the railroad depot, including flatwork, seating, a bike rack, and service station, with a bike pump and bike repair tools, and a 2-stall bathroom.

(v) Approximately 1,000 linear feet of a 24-inch sewer line, with 4 appropriately spaced manholes, from Anna Street to the intersection of Lincoln Avenue and Fair Way at a depth of approximately 13 feet backfilled according to City standards.

(vi) Approximately 630 linear feet of new 18-inch replacement sewer main in Lincoln Avenue, at a depth of no more than 6.5 feet, with 3 appropriately spaced manholes, from the intersection of Lincoln Avenue/Fair Way to Wappo Avenue. Scope of work to include removal of existing main, and replacement of 5 existing 4-inch laterals, and slurry backfill of trench according to Caltrans standard with patching roadway where asphalt has been cut.

(vii) Approximately 1,500 linear feet of 12-inch recycled water main within the former railroad right-of-way from Anna Street to Gerard Street, and along Gerard Street to Washington Street. The roadway surface along the railroad right-of-way shall be backfilled according to City standards and returned to its existing all weather gravel road condition.

(viii) Approximately 400 linear feet of 12-inch water line within Lincoln Avenue from Fair Way to Stevenson Street. Scope of work to include Saw-cut 400 lf of paving, install new 12-inch PVC water main, slurry backfill according to Caltrans standard, patch paving, and replace existing water services to the 5 connections at 1507 Lincoln Avenue.

(ix) Looping of the water main from Eddy Street to Lincoln Avenue at Fair Way with approximately 1,460 linear feet 12-inch line connecting to mains on Franklin, Gerard, Anna and Eddy Streets. The roadway surface along the railroad right-of-way shall be backfilled according to City standards and returned to its existing all weather gravel road condition.

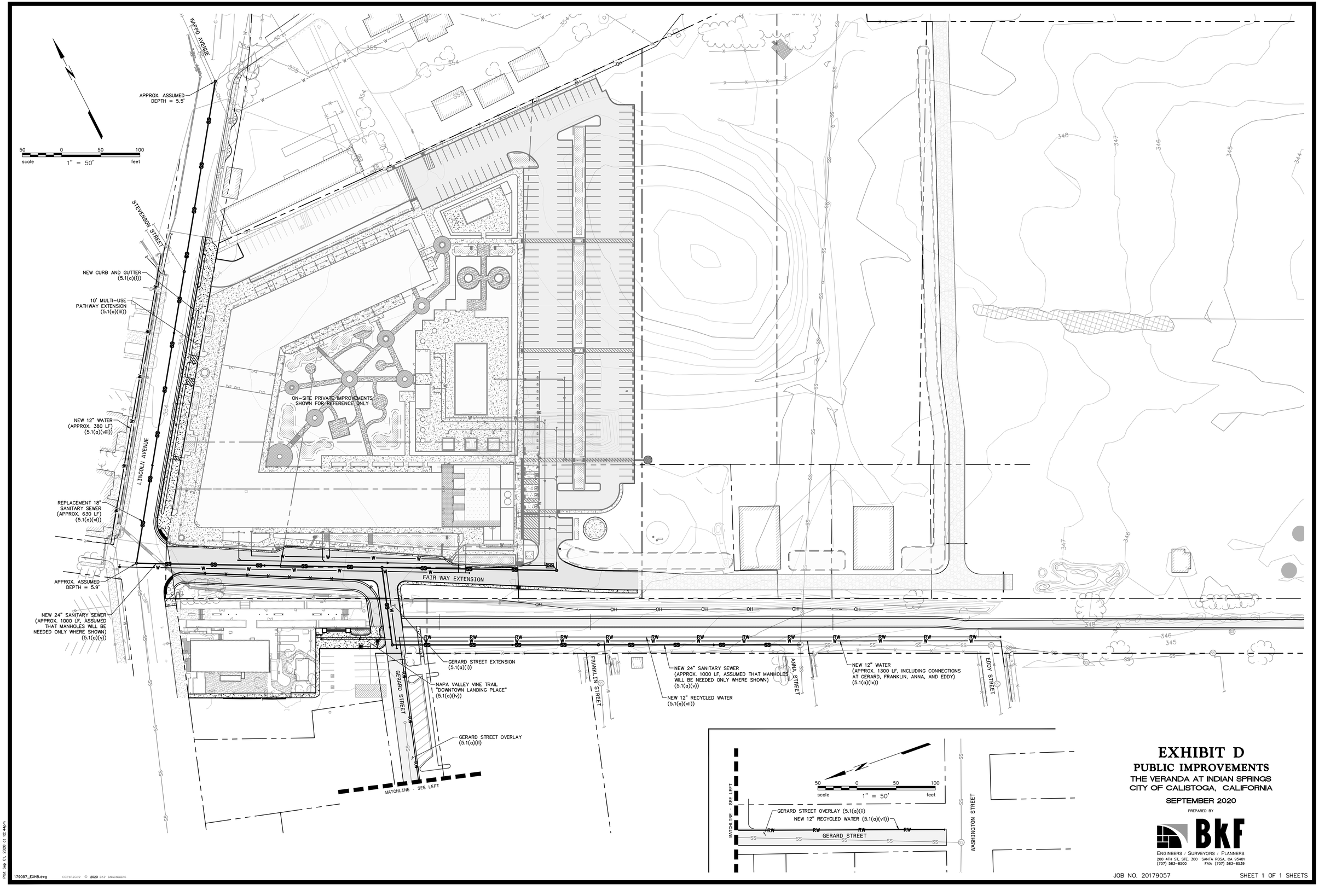

EXHIBIT D

PUBLIC IMPROVEMENTS

THE VERANDA AT INDIAN SPRINGS
CITY OF CALISTOGA, CALIFORNIA

SEPTEMBER 2020

PREPARED BY

BKF
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JOB NO. 20179057

SHEET 1 OF 1 SHEETS

Plot Sep 01, 2020 at 12:44pm
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EXHIBIT E

ASSIGNMENT & ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF CALISTOGA AND [DEVELOPER PARTIES]

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment"), dated as of _____,___, is entered into by and among [Developer Partie(s)] ("Landowner"), and _____, a _____ ("Transferee"), with respect to the property described in Exhibit A attached hereto and made a part hereof (the "Transferred Property").

RECITALS

A. In accordance with the Development Agreement Statute of the State of California (Government Code Section 65864 *et seq*.), City, entered into a development agreement with Landowner for a hotel-resort project known as Veranda (the "Project"), dated _____, ____ and recorded in the Official Records of Napa County on _____, ____ as Document No. _____ (the "Development Agreement").

B. The Development Agreement provides for the development, rehabilitation and revitalization of the property located on approximately 41 acres of real property in the City, designated by Napa County Assessor's Parcel Numbers 011-340-030, -029, -028, -025, -022, -021 -015, -014, -013, -012, -006, -005, -004, -003, and 011-211-012 and as more particularly described in the Development Agreement (the "Project Property").

C. In order to facilitate the development of the Project within the Project Property as well as the Transferred Property, the City adopted certain land use approvals for the Project. A list of these land use approvals is set forth on Exhibit B attached hereto and made a part hereof (the "Project Approvals"). The list of Project Approvals attached hereto as Exhibit B is illustrative of the material documents and instruments governing development of property within the Project Property and the Transferred Property in particular, but is not intended to be an exhaustive list of all documents, instruments, and/or other matters that may govern development of the Property.

D. The Development Agreement provides that, subject to the terms contained in Section 9 thereof, Landowner (and any Transferee) may Transfer all or any portion of the Property during the Term of the Development Agreement; (2) to assign all or a portion of its rights and obligations under the Development Agreement to a Transferee; and (3) upon the City's receipt of an Assignment and Assumption Agreement duly executed in accordance with the terms of the Development Agreement to be released from those obligations of the Landowner under the Development Agreement that are applicable to the portion of the Property so Transferred but that are not intended to be retained by the Landowner after the Transfer.

E. Landowner and Transferee have entered into that certain Purchase [Transfer] Agreement dated as of _____, pursuant to which Landowner has agreed to sell or transfer to Transferee, and Transferee has agreed to acquire from Landowner, the Transferred Property upon the terms and conditions therein set forth.

F. In connection with the conveyance of the Transferred Property from Landowner to Transferee pursuant to Section 9 of the Development Agreement, Landowner desires to assign to Transferee, effective as of the Landowner's conveyance of the Transferred Property to Transferee (the "Assignment Effective Date") certain of Landowner's rights, title, interest, burdens and obligations under the Development Agreement applicable to the Transferred Property, and Transferee is willing to accept such rights, title and interests and to assume such burdens and obligations, on the terms and conditions set forth in the Development Agreement and this Assignment. In addition, in connection with the foregoing assignment and assumption, Landowner desires to be released by City from Landowner's obligations under the Development Agreement applicable to the Transferred Property (except as expressly provided below), and City is willing to release Landowner from such obligations, on the terms and conditions set forth in this Assignment.

AGREEMENT

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

1. Assignment By Landowner.

1.1 Transferred Rights and Obligations. Except as provided in Section 1.2 hereof with respect to the Excluded Rights and Obligations, Landowner hereby assigns to Transferee as of the Assignment Effective Date each and all of the rights, title and interests of the Landowner under the Development Agreement to the extent applicable to the Transferred Property (collectively, the "Transferred Rights") and each and all of the burdens, obligations, terms, covenants, and agreements of the Landowner under the Development Agreement to the extent applicable to the Transferred Property (collectively, the "Transferred Obligations"), including without limitation, the obligation to comply with the requirements of the Development Agreement with respect to the application to the Transferred Property of (a) the MMRP, [and (b) and those items of Public Infrastructure described in Exhibit C attached hereto]. The Transferred Rights and the Transferred Obligations are sometimes collectively referred to herein as the "Transferred Rights and Obligations".

1.2 Excluded Rights and Obligations. Landowner and Transferee hereby expressly confirm and agree that the assignment and assumption contemplated in this Agreement shall not include or affect any of the following specifically excluded rights and obligations ("Excluded Rights and Obligations"): _____, and that Landowner further retains all of the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Property owned by Landowner, or which are not specifically assigned to and assumed by Transferee under this Assignment.

2. Assumption By Transferee.

2.1 Transferee's Assumption. Transferee hereby accepts each and all of the Transferred Rights, and Transferee hereby assumes and agrees to be bound by and to perform, as a direct obligation of Transferee to City, each and all of the Transferred Obligations as of the Assignment Effective Date. The parties intend that, upon the Assignment Effective Date, Transferee shall become substituted for Landowner under the Development Agreement with respect to the Transferred Property for all Transferred Rights and Obligations.

2.2 Transferee's Acknowledgment. Transferee acknowledges that Transferee has reviewed the Development Agreement and agrees to be bound by the Development Agreement and all conditions and restrictions applicable to the Transferred Property, including, without limitation, all conditions and restrictions contained in the Project Approvals that are applicable to the Transferred Property (as stated in Recital C above). The Project Approvals listed in Exhibit B attached hereto are illustrative of the material documents and instruments governing development of Property, but such list is not intended to be an exhaustive list of all documents, instruments, and/or other matters that may govern development of Property including Transferred Property).

3. Reaffirmation of Indemnifications; Survival of Public Benefits. Transferee hereby consents to and expressly reaffirms any and all indemnities of City set forth in the Development Agreement, including, without limitation, Sections 5.4, and 6.7 of the Development Agreement. Assignee understands that certain obligations may survive the expiration of the Development Agreement.

4. General Provisions.

4.1 Attorneys' Fees. Should any party hereto institute any action or proceeding in court or other dispute resolution mechanism ("DRM") to enforce any provision hereof or for damages by reason of an alleged breach of any provision hereof, the prevailing party(ies) shall be entitled to receive from the losing party(ies) court or DRM costs or expenses incurred by the prevailing party(ies), including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or DRM may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party(ies) in such action or proceeding. Attorneys' fees under this Paragraph 4.1 include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

4.2 Notices. A notice or communication under this Agreement by any party to any other party shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

4.2.1 in the case of a notice or communication to Landowner,

_____
_____
_____
Attention: _____

with copies to:

_____
_____
_____
Attention: _____

8.2.3 in the case of a notice or communication to Transferee,

_____
_____
_____

with copies to:

_____
_____
_____

4.2.4 Content of Notice. Every notice given to a party hereto, pursuant to the terms of the Development Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

(a) the Section of the Development Agreement (or this Assignment) pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto;

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval or disapproval of or consent to the subject matter of the notice;

(d) if approval is being requested, shall be clearly marked "Request for Approval"; and

(e) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

4.2.5 Effective Date of Notice. Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least 10 days prior to the effective date of the change. All notices under this Assignment shall be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

4.4 Counterparts. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one

instrument. It shall not be necessary in making proof of this Agreement to account for more than one counterpart.

4.5 Captions. Any captions to, or headings of, the Sections, subsections or Paragraphs of this Assignment are solely for the convenience of the parties hereto, are not a part of this Assignment, and shall not be used for the interpretation or determination of the validity of this Assignment or any provision hereof.

4.6 Amendment To Agreement. The terms of this Assignment may not be modified or amended except by an instrument in writing executed by each of the parties hereto and consented to by the City.

4.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

4.8 Waiver. The waiver or failure to enforce any provision of this Assignment shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

4.9 Applicable Law. This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of California.

4.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Assignment.

4.11 Partial Invalidity. If any portion of this Assignment as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Assignment and shall in no way affect the validity or enforceability of the remaining portions of this Assignment.

4.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Assignment; (b) it has executed this Assignment with the advice of such counsel; and (c) this Assignment is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Landowner and Transferee has caused this Agreement to be duly executed on its behalf as of the Effective Date.

LANDOWNER

By: _____
Name: _____
Its: _____

TRANSFEREE

By: _____
Print Name: _____
Print Title: _____

The City hereby consents to this Agreement, as required by Section 9 of the Development Agreement.

CITY OF CALISTOGA,
a municipal corporation

_____ Date: _____
Mike Kirn, City Manager

ATTEST:

_____ Date: _____
Kendall Rose Granucci, City Clerk

APPROVED AS TO FORM:

_____ Date: _____
Michelle Marchetta Kenyon, City Attorney