

229 f. The developer shall submit street improvement plans addressing on site
230 and off site improvements for review and approval by the Public Works
231 Department, as follows.

232
233 North Half of Grant Street:

234
235 The north half of Grant Street shall be designed with a 24-foot half-width
236 roadway cross-section, which shall include a 12-foot wide travel way and
237 "natural setting".

238
239 South Half of Grant Street

240
241 Staff shall investigate the feasibility of constructing a pathway on the
242 south side of Grant Street. If the City Engineer finds that the pathway is
243 feasible, the applicant shall be required to construct the pathway
244 consistent with Chapter 12 of the Calistoga Municipal Code.

245
246 Valencia Lane:

247
248 Valencia Lane shall be designed with a 22-foot half-width roadway cross-
249 section, which shall include a public 10-foot wide travel way, a public 8-
250 foot wide parkway and a private 4-foot wide landscape strip containing
251 drainage swales. A minimum 5.5-foot public pedestrian easement shall
252 adjoin the Valencia Lane right-of-way and contain a 5-foot pathway. The
253 pathway shall meander and be constructed of asphalt.

254
255 Hawthorne Place:

256
257 Hawthorne Place shall be designed with a 22-foot half-width roadway
258 cross-section, which shall include a private 12-foot wide travel way,
259 private 4.5-foot wide landscape strip and a private 5-foot wide pathway
260 constructed of asphalt.

261
262 23. Water and Sanitary Sewer Improvements:

263
264 a. A downstream sewer capacity analysis shall be conducted to the
265 Washington Street trunkline.

266
267 b. Any structure in which plumbing is to be installed shall be connected to
268 the City's water and sewer systems unless an exception has been
269 explicitly granted in accordance with the provisions of the CMC.

270
271 c. All public water and sewer mains must be located in public right-of-way
272 wherever possible. Where public water and sewer mains must be located
273 on private property, all necessary easement dedications must be made
274 prior to final acceptance of the project by the City.

275

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- d. All private storm drains, water, fire line services, sewer laterals, and appurtenances, must be located within the private property and clearly identified as private on the design drawings.
 - e. Sewer grades must be designed such that ultimate finished floors are a minimum of 12" above upstream manhole or clean-out rim elevations. Inadequate elevation differentials or grade on private laterals, as determined by the City, must be mitigated by either raising finished floor elevation(s) or installing privately owned and operated sewer lift station(s) with grinder/ejector pump(s) on site.
- 287 24. Drainage Improvements:
- 288
- a. All project related flooding impacts shall be mitigated by the project developer. Drainage improvements shall be designed by a civil engineer in accordance with the Napa County Design Criteria and any applicable adopted City drainage plans. The capacity and condition of existing drainage facilities downstream of the development shall be analyzed and off-site drainage improvements shall be constructed as necessary. Site grading and drainage improvements shall be shown on the improvement plans.
 - b. The developer's engineer shall include a site-grading plan that conforms to the requirements of CMC 19.08 as part of the required improvement drawings. Lots shall be generally designed to drain to the street, unless otherwise approved in the interest of tree preservation or other unusual circumstances.
 - c. All drainage inlets shall be permanently marked "No Dumping-Flows to River".
- 297
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306
- 307 **C. Final Map Conditions**
- 308
- 309 25. The developer shall secure all necessary rights-of-way and easements for both onsite and offsite improvements. Rights-of-way and easements shall be dedicated on the map or provided by grant deed. The developer shall prepare all necessary legal descriptions and deeds.
- 310
311
312
313
- 314 26. The final map shall not be approved prior to approval of the improvement plans.
- 315
- 316 27. Prior to approval of the final map, the developer shall either complete required construction as shown on the signed improvement plans, or enter into an Improvement Agreement in accordance with Calistoga Municipal Code Section 16.18.070. A certificate of occupancy shall not be issued for any structure until required improvements are completed to the satisfaction of the City Engineer.
- 317
318
319
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321

- 322 28. A note shall be added to the final map indicating that the property owners are
323 responsible for the maintenance of all landscaping, infrastructure and
324 roadway/driveway improvements.
325
- 326 29. A final map, as defined in the State Subdivision Map Act and prepared by a
327 licensed surveyor or civil engineer, showing all parcels, rights-of-way, and
328 easement(s) shall be filed with the City Engineers Office. Upon recording of the
329 map, the subdivision is valid.
330
- 331 **D. Subdivision Final and/or Release of Securities Conditions**
332
- 333 30. All improvements shown on the Improvement Plans shall be completed and
334 accepted by the City.
335
- 336 31. A complete set of *As-Built* or Record improvement plans showing all constructive
337 changes from the original plans shall be submitted to the Public Works
338 Department prior to acceptance of the public improvements.
339
- 340 32. Prior to acceptance of the work, the developer shall provide a written statement
341 signed by his or her engineer certifying that they observed the work during
342 construction and that site grading and all private site improvements have been
343 completed in accordance with the improvement plans approved by the City
344 Engineer.
345
- 346 33. Prior to acceptance of the work, the developer shall provide a written statement
347 signed by his or her geotechnical engineer certifying that they observed the work
348 and reviewed testing results, and that all of work was performed in accordance
349 with the recommendations included in the Soils Investigation/Geotechnical Report
350 or other recommendations necessitated by field conditions.
351

352 **PASSED, APPROVED AND ADOPTED** by the City Council of the City of
353 Calistoga at a regular meeting held this **1st day of April 2008**, by the following vote:
354

355 **AYES:**

356
357 **NOES:**

358
359 **ABSENT:**

360
361 **ABSTAIN:**

362
363
364
365 **ATTEST:**

JACK GINGLES, Mayor

366
367
368
369 _____
RAQUEL CANTILLON, Deputy City Clerk

RESOLUTION NO. 2007-XX

1
2
3 **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,**
4 **COUNTY OF NAPA, STATE OF CALIFORNIA APPROVING DESIGN REVIEW**
5 **(DR 2008-01) FOR THE VINEYARD OAKS SUBDIVISION LOCATED AT 2400**
6 **GRANT STREET WITHIN THE "RR", RURAL RESIDENTIAL ZONING**
7 **DISTRICT. (APNS: 011-010-013 & 014 AND 011-021-002)**

8
9 **WHEREAS**, BNK Investments, LLC, requests an amendment to the Zoning
10 Ordinance to provide an alternative means for residential projects to satisfy the
11 affordable housing requirements and to subdivide approximately 18 acres of land into 15
12 single-family lots. The lots are approximately 1 acre in size. The subdivision includes a
13 lot line adjustment with the property to the east along Mora Avenue strictly for utility and
14 emergency vehicle access;

15
16 **WHEREAS**, An Initial Study/Mitigation Negative Declaration (IS/MND) was
17 completed in accordance with applicable CEQA Guidelines, and on February 1, 2008 the
18 IS/MND was circulated for public and agency review and comment. Copies of the
19 IS/MND were made available to the public at the Department of Planning and Building
20 on February 1, 2008, and the IS/MND was distributed to interested parties and agencies.
21 On February 1, 2008, a notice of the Planning Commission public hearing of March 12,
22 2008 to review the IS/MND was published in the local newspaper;

23
24 **WHEREAS**, the Planning Commission has reviewed and considered this
25 application at its regular meeting on March 12, 2008, and prior to taking action on the
26 application, the Commission received written and oral reports by the Staff, and received
27 public testimony. After considering the project, the Commission adopted Resolution
28 2008-10 recommending approval of Design Review (DR 2008-01) based upon findings
29 presented in the Staff Report and subject to conditions of approval;

30
31 **WHEREAS**, the City Council has reviewed and considered the application for the
32 Project at its regular meeting on April 1, 2008 and prior to taking action on the
33 application, the Council received written and oral reports by the Staff, and received
34 public testimony;

35
36 **WHEREAS**, the City Council finds that approval of the Design Review will not
37 result in detrimental or adverse impacts upon the public resources, wildlife or public
38 health, safety and welfare if the conditions of project approval proposed are adopted;

39
40 **WHEREAS**, pursuant to Chapter 17.14 of the Calistoga Municipal Code, the City
41 Council finds the proposed project, if the conditions of project approval, the Ordinance
42 adopting the Zoning Ordinance Text Amendment (ZO 2008-01), and the Ordinance
43 adopting the Development Agreement for the project are adopted, is in compliance with
44 all the required provisions of the Rural Residential Zoning District;

45
46 **WHEREAS**, the City Council pursuant to Chapter 17.06.040 of the Calistoga
47 Municipal Code, finds that the development attains the purposes set forth in CMC
48 17.06.010 and is in compliance with the following Design Review guidelines:

50 1. **The extent to which the proposal is compatible with the existing**
51 **development pattern with regard to massing, scale, setbacks, color,**
52 **textures, materials, etc.**

53
54 The Design Guidelines and the building envelopes prepared for the project are
55 keeping in context and character of the existing development pattern in the
56 vicinity.

57
58 2. **Site layout, orientation, location of structures, relationship to one another,**
59 **open spaces and topography.**

60
61 The building envelopes are design to preserve large expanses of open space
62 and consider the views to the surrounding hillsides.

63
64 3. **Harmonious relationship of character and scale with existing and proposed**
65 **adjoining development, achieving complementary style while avoiding both**
66 **excessive variety and monotonous repetition.**

67
68 The Vineyard Oaks Subdivision is keeping with the rural character of the
69 neighborhood while achieving a unique style of development.

70
71 4. **Building design, materials, colors and textures that are compatible and**
72 **appropriate to Calistoga. Whether the architectural design of structures**
73 **and their materials and colors are appropriate to the function of the project.**

74
75 The Design Guidelines set forth specific construction materials that are
76 compatible with the small town character of Calistoga. The Architect has
77 presented conceptual colors and materials that represent the residential function
78 of the properties.

79
80 5. **Harmony of materials, colors, and composition of those sides of a**
81 **structure, which are visible simultaneously.**

82
83 See response to comment No. 4.

84
85 6. **Consistency of composition and treatment.**

86
87 See response to comment No. 4.

88
89 7. **Location and type of planting with regard to valley conditions. Preservation**
90 **of specimen and landmark trees upon a site, with proper irrigation to insure**
91 **water conservation and maintenance of all plant materials.**

92
93 The protected trees on the site are preserved to the maximum extent practicable
94 and those that are slated for removal will be replaced at a ratio of 3:1.

95
96 8. **Whether exterior lighting, design signs and graphics are compatible with**
97 **the overall design approach and appropriate for the setting.**

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This residential project does not include lighting associated with signage or graphic elements.

9. **The need for improvement of existing site conditions including but not limited to signage, landscaping, lighting, etc., to achieve closer compliance with current standards.**

Street lighting will be low-level and directed downward. Street trees will accent the proposed public street. These elements will comply with the current City street standards.

10. **Whether the design promotes a high design standard and utilizes quality materials compatible with the surrounding development consistent with and appropriate for the nature of the proposed use.**

See response to comment No. 1.

11. **Responsible use of natural and reclaimed resources.**

The project has integrated green building and/or sustainable construction elements to a degree the is practicable to the scope of the project.

THEREFORE, BE IT RESOLVED by the City Council of the City of Calistoga that based on the above Findings, approves the proposed project, subject to the following Conditions of Approval:

Wherever any condition herein requires the review and/or approval of the "City," this shall mean and refer to the review and/or approval by the appropriate department staff, unless otherwise expressly stated.

**CONDITIONS OF APPROVAL
DESIGN REVIEW (DR 2008-01)**

1. The applicant agrees by accepting these conditions herein that any deviations from the approved project (dated December 3, 2007), and on file at the City's Planning and Building Department, shall be subject to review and approval by the Planning and Building Director, or Planning Commission as determined by the Director, prior to incorporating the changes on the Project site.
2. Approval of this Design Review is based on the presentation of materials kept on file by the Planning and Building Department. These materials shall be applied to the subdivision as approved and may only be changed with the approval of a Design Review application approved by the Planning and Building Department or Planning Commission, through the process established in the City of Calistoga Zoning Ordinance.

- 145 3. All construction and improvements shall be in accordance with zoning, building,
146 and all other codes, ordinances, standards, policies of the City of Calistoga.
147
- 148 4. Development on the resulting lots shall be in accordance with the Design Review
149 Guidelines prepared by Architect Howard Backen dated September 2007. All
150 residential developments and ancillary developments shall be located within the
151 approved building envelopes as generally shown on the Tentative Subdivision
152 Map dated December 3, 2007.
153
- 154 5. All overhead utilities within the subdivision shall be placed underground to protect
155 the scenic value of the property.
156
- 157 6. The property owner agrees to submit an application for Building Permit for all
158 construction of buildings or structures located on the site, not otherwise exempt by
159 the Uniform Building Code or any State or local amendment adopted thereto. Prior
160 to issuance of all building permits, the property owner agrees to pay all fees
161 associated with plan check and building inspections, and associated development
162 fees rightfully established by City Ordinance or Resolution.
163
- 164 7. Ground mounted equipment, such as backflow prevention devices and utility
165 panels, etc. shall be adequately screened from public view and view from adjoining
166 developed parcels, prior to occupancy of the project.
167
- 168 8. Exterior lighting shall be directed towards the ground to avoid light and glare upon
169 adjacent parcels, and containing the lowest illumination necessary for safety.
170 Architectural materials and lighting visible from the public right-of-way and
171 adjoining developed parcels shall be prohibited and the light source of fixtures shall
172 be limited in wattage or shielded to retain the rural character of the site and
173 surrounding area.
174
- 175 9. The house pad or "private area" on Lot 15 shall be located a minimum of 50-feet
176 from the eastern most property line. All of the various project components and
177 approvals shall reference and/or incorporate this 50-ft setback.
178

179 **PASSED, APPROVED AND ADOPTED** by the City Council of the City of
180 Calistoga at a regular meeting held this **1st day of April 2008**, by the following vote:

181
182 **AYES:**

183 **NOES:**

184 **ABSENT/ABSTAIN:**
185
186

187
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192

JACK GINGLES, Mayor

ATTEST:

SUSAN SNEDDON, City Clerk

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, ADOPTING A DEVELOPMENT AGREEMENT (DA 2007-02) FOR THE VINEYARD OAKS SUBDIVISION PROJECT [ZONING ORDINANCE TEXT AMENDMENT (ZO 2008-01), TENTATIVE SUBDIVISION MAP (TTM 2007-02) AND DESIGN REVIEW (DR 2008-01)], A 15-LOT RESIDENTIAL SUBDIVISION LOCATED AT 2400 GRANT STREET AND 1881 MORA AVENUE WITHIN THE "RR", RURAL RESIDENTIAL ZONING DISTRICT. (APNS: 011-010-013 & 014 AND 011-021-002)

1 The City Council of the City of Calistoga does hereby ordain as follows:
2

3 **SECTION ONE:**
4

5 **WHEREAS**, BNK Investments, LLC, on behalf of the property owners (Ira and
6 Lois Carter and 1881 More Avenue LLC.) requests an amendment to the Zoning
7 Ordinance to provide an alternative means for residential projects to satisfy the
8 affordable housing requirements and to subdivide approximately 18 acres of land into 15
9 single-family lots. The lots are approximately 1 acre in size. The subdivision includes a
10 lot line adjustment with the property to the east along Mora Avenue strictly for utility and
11 emergency vehicle access;
12

13 **WHEREAS**, BNK Investments filed an application with the City of Calistoga for
14 the purpose of planning and developing the Project;
15

16 **WHEREAS**, the Developers and the City of Calistoga have negotiated and
17 drafted a development agreement for the Project ("Development Agreement");
18

19 **WHEREAS**, an environmental assessment, including preparation of an Initial
20 Study, determined that a Mitigated Negative Declaration was necessary to address the
21 environmental impacts associated with the Project;
22

23 **WHEREAS**, adoption of this Development Agreement will not result in conflicts
24 with any other appropriate ordinance and to the extent such conflict exists, this
25 resolution is hereby repealed;
26

27 **WHEREAS**, the Planning Commission has reviewed and considered this
28 application at its regular meeting on March 12, 2008, and prior to taking action on the
29 application, the Commission received written and oral reports by the Staff, and received
30 public testimony. After considering the project, the Commission adopted Resolution
31 2008-08 recommending approval of a Development Agreement based upon findings
32 presented in the Staff Report and subject to conditions of approval;
33

34 **WHEREAS**, a public notice of the City Council public hearing of April 1, 2008 for
35 the Draft Initial Study/Mitigated Negative Declaration, Zoning Ordinance Text
36 Amendment, Development Agreement, Tentative Tract Map and Design Review was
37 published in the local newspaper and made available on the City's website;
38

39 **WHEREAS**, the City Council has reviewed and considered the application for the
40 Project at its regular meetings on April 1, 2008 and April 15, 2008, considered as one of
41 its items of business, this Ordinance to be adopted in accordance with Government
42 Code Section 65090, this Ordinance to be adopted in accordance with Government
43 Code Section 65850, to include the written and oral staff report, proposed findings and
44 comments received from the general public and interested agencies and parties;
45

46 **WHEREAS**, the City Council adopted the following findings with the introduction
47 of an Ordinance:
48

- 49 1. The City Council duly adopted Ordinance No. 547 enacting procedures
50 for entering into development agreements.
51
- 52 2. That this Development Agreement is a contract negotiated and entered
53 into voluntarily between the City of Calistoga, the owners of the subject
54 properties (Ira and Lois Carter and 1881 Mora LLC.), and the project
55 applicant (BNK Investments LLC) of the Vineyard Oaks Subdivision.
56
- 57 3. This Agreement furthers the public health, safety and general welfare and
58 is consistent with the General Plan and that there is no applicable specific
59 plan. City and Developer have further determined that the Project is a
60 development for which this Agreement is appropriate. This Agreement
61 will eliminate uncertainty regarding Existing Project Approvals and
62 Subsequent Project Approvals, thereby encouraging planning for,
63 investment in and commitment to development of the Property.
64 Continued use and development of the Property in accordance with this
65 Agreement is anticipated to provide substantial benefits and contribute to
66 the vitality of the City, thereby achieving the goals and purposes for which
67 the Development Agreement Statute was enacted.
68
- 69 4. That this agreement contains conditions and obligations relating to the
70 performance stated in the resolution(s) approving the project.
71
- 72 5. That the project known as Vineyard Oaks Subdivision is a project of
73 significance to the community and upon the community of Calistoga and
74 for that reason a development agreement is a proper use of the City's
75 authority to secure the project benefits for the community.
76

77 **SECTION TWO:**
78

79 The City Council hereby approves, adopts a Development Agreement for the
80 Vineyard Oaks Subdivision Project as provided in Exhibit A, attached hereto and
81 incorporated herein by reference, and authorizes the Mayor to execute the Development
82 Agreement upon the effective date of this Ordinance. Upon execution of the
83 Development Agreement by all parties, the City Clerk is hereby directed to record the
84 Development Agreement with the Napa County Recorder's Office.
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SECTION THREE:

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

SECTION FOUR:

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

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City Council meeting of the 1st day of April 2008, and was passed and adopted at a regular meeting of the Calistoga City Council on the ____ day of 2008, by the following vote:

AYES:

NOES:

ABSENT/ABSTAIN:

JACK GINGLES, Mayor

ATTEST:

SUSAN SNEDDON, City Clerk

1 Executive Summary of Draft Development Agreement
2 Planning Commission
3

4 This attachment summarizes some of the important terms of the proposed
5 Development Agreement ("DA") between the City and developers of the Vineyard Oaks
6 residential subdivision.
7

8 The Development: VINEYARD OAKS (or its successor) receives the vested right, during
9 the 5-year term of the Development Agreement, to subdivide approximately 18 acres of
10 land in accordance with the City land use approvals being considered by the Planning
11 Commission in conjunction with the Development Agreement.
12

13 The project includes:

- 14 ○ 15 residential lots, each of which may be developed with a single family
15 dwelling, an accessory dwelling unit, and accessory structures.
- 16 ○ Associated traffic and circulation improvements, including a dedicated
17 pedestrian pathway
- 18 ○ Payment of an in-lieu fee to the City's Affordable Housing Trust Fund.
19

20 Term: The term of the Agreement is five years; it can be extended for an additional year.
21 During the term of the Agreement, the applicant can rely on the City's current zoning for its
22 property. New laws that do not conflict with the project will be applicable to it.
23

24 Special Benefits to City:
25

26 In addition to the City fees and normal subdivision improvements required by City
27 ordinances, resolutions, and policies, VINEYARD OAKS will provide to the City as
28 special benefits from the Development Agreement:

- 29 ○ An additional \$800,000 for recreational and cultural facilities, which when
30 added to the required Quality of Life payments will total \$845,000.
- 31 ○ Grant Street improvements from Mora Avenue to Garnett Creek Court.
32

33 The project will also provide a \$600,000 in-lieu payment to the Calistoga Affordable
34 Housing Fund.
35

36 Fees, Financing, Timing:
37

- 38 ○ Affordable Housing Fund payment:
 - 39 ▪ \$100,000 will be paid by the Developer before recordation of the final
40 map.

41 Each of the residential lots will be subject to a lien for its proportionate share
42 of the \$500,000 balance.

- 43 ▪ Interest will be due on the note at a rate that is 2% higher per year than
44 the interest rate the City earns on its funds invested with the California
45 Local Agency Investment Fund (LAIF.)
- 46 ▪ The lien amount will be due on the earlier of issuance of the building
47 permit for home construction or four years from the effective date of
48 the development agreement.
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- Additional Recreational Funds Payment:
 - The entire \$800,000 will be paid before recordation of the final map.
- Other Development Impact Fees:
 - The project will pay all existing development impact fees at the rates in effect on the effective date of the Development Agreement.
- Processing and Review Fees: The Developer will pay actual costs of review and processing, whether by City staff or outside consultants.

Water and Wastewater Allocations and Connection Fees:

- Water and Waste Water Connection fees are fixed, for the term of the Development Agreement, at the rate at the rate in when the final subdivision map is recorded. 9.75 acre fee of potable water is reserved for the project, and 6.21 acre feet of waste water treatment capacity.
- Twenty five percent (25%) of the connection fees will be paid before recordation of the final map.
- Each of the residential lots will be subject to a lien for its proportionate share of the balance.
- The lien amount will be due on the earlier of issuance of the building permit for home construction or four years from the effective date of the development agreement.

DRAFT 3 07 08

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Calistoga
1232 Washington Street
Calistoga, CA 94515
Attention: City Clerk

Space Above This Line Reserved for Recorder's Use
Exempt from Recording Fee Per Government Code Section 27383

DEVELOPMENT AGREEMENT

BY AND AMONG

THE CITY OF CALISTOGA

AND

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

(VINEYARD OAKS SUBDIVISION)

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|------------|---|
| Exhibit A. | Property Description |
| Exhibit B. | Project Description |
| Exhibit C. | Mitigation Monitoring and Reporting Program |
| Exhibit D. | Existing Project Approvals |
| Exhibit E. | Anticipated Subsequent Project Approvals |
| Exhibit F. | Special Public Benefits |
| Exhibit G. | Existing Rules |
| Exhibit H. | Utility Capacity Allocation and Connection Fees |
| Exhibit I. | Timetable |
| Exhibit J. | Annual Review Report |

DRAFT

1 **DEVELOPMENT AGREEMENT**

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

9 **RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

74 **AGREEMENT**

75 NOW, THEREFORE, in consideration of the promises, covenants and provisions set
76 forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as
77 follows:

78 **ARTICLE 1. DEFINITIONS**

79 In this Agreement, unless the context requires otherwise:

80 Section 1.01. "Applicable Law" means the Existing Rules, modified by Subsequently
81 Adopted Rules to the extent permitted by this Agreement and Existing Project Approvals.
82 Provided, Developer may consent to additional applications of Subsequently Adopted Rules
83 without amendment of this Agreement as part of Subsequent Project Approvals.

84 Section 1.02. "CEQA" means the California Environmental Quality Act, Division 13 of
85 the California Public Resources Code, Sections 21000 and following, and the Guidelines for the
86 California Environmental Quality Act, Title 14 of the California Code of Regulations, Chapter 3,
87 Sections 15000 and following.

88 Section 1.03. "Annual Review Report" shall mean a report, in the form attached as
89 Exhibit J, filed by the Developer each year to begin the annual compliance review required by
90 the Development Agreement Statute and the City's Development Agreement Ordinance.

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

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

95 Section 1.06. "Development Impact Fees" means all fees now or in the future collected
96 by the City from applicants for new development for the funding of public services,
97 infrastructure, improvements or facilities, but not including taxes or assessments, or fees for the
98 processing applications or permits or monitoring compliance with the conditions imposed on the
99 Project. The fees included in this definition include, but are not limited, to those included in
100 Chapters 3.20, 3.28, 17.08, and 17.10. Provided, the school impact fee referenced in Section
101 17.10.010 of the Calistoga Municipal Code are not Development Impact Fees, in that they are
102 not established or collected by City.

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

104 Section 1.08. "Existing Rules" means the City ordinances, resolutions, rules,
105 regulations, official policies, standards and specification in existence as of _____,
106 200_ A list of Existing Rules applicable to the Project is attached as Exhibit G, but the failure to
107 identify any Existing Rule in Exhibit G shall not affect its applicability to the Project.

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

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

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

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

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

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

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

133 Section 1.16. "Subsequently Adopted Rules" means City ordinances, resolutions, rules,
134 regulations, official policies, standards and specification that came in to effect
135 after _____, 2008.

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

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

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

142 Section 2.02. Term.

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