

543 Section 10.02. Default. If the breaching Party has not cured such breach within the Cure
544 Period or the Extended Cure Period, if any, such Party shall be in default ("**Default**"), and the
545 non-breaching Party, at its option, may terminate the Agreement, institute legal proceedings
546 pursuant to this Agreement and shall have such remedies as are set forth in Section 10.04 below.
547 City may only terminate this Agreement pursuant to a duly adopted resolution of the City
548 Council

549 Section 10.03. Withholding of Permits. In the event of a Default by Developer, or
550 following notice of breach by Developer and during the Cure Period or Extended Cure Period,
551 upon a finding by the City Planning Director that Developer is in serious and substantial breach,
552 City shall have the right to refuse to issue any permits or other approvals to which Developer
553 would otherwise have been entitled pursuant to this Agreement. This provision is in addition to
554 and shall not limit any actions that City may take to enforce the conditions of the Project
555 Approvals.

556 Section 10.04. Remedies.

557 A. In the event of a Default by City or Developer, the non-defaulting Party shall have
558 the right to terminate this Agreement upon giving notice of intent to terminate pursuant to
559 Government Code Section 65868 and regulations of City implementing such section. Following
560 notice of intent to terminate, the matter shall be scheduled for consideration and review in the
561 manner set forth in Government Code Section 65867 and City regulations implementing said
562 section. Following consideration of the evidence presented in said review before the City
563 Council, either Party alleging Default by the other Party may give written notice of termination
564 of this Agreement to the other Party. Termination of this Agreement shall be subject to the
565 provisions of Section 10.09 hereof.

566 B. City's determination of Developer's breach under this agreement is not subject to
567 review by any form of writ, whether administrative or ordinary mandate.

568 C. City and Developer agree that in the event of Default by City, the sole remedy for
569 Developer shall be specific performance of this Agreement. In no event shall Developer be
570 entitled to damages. If City issues an approval pursuant to this Agreement in reliance upon a
571 specified condition being satisfied by Developer in the future, and if Developer then fails to
572 satisfy such condition, City shall be entitled to specific performance for the purpose of causing
573 Developer to satisfy such condition.

574 D. In addition to any other rights or remedies, either Party may institute legal action
575 to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin
576 any threatened or attempted violation hereof, or to obtain any other remedies consistent with the
577 purpose of this Agreement except as limited by subsections 10.04 A and B above. Any such legal
578 action shall be brought in the Superior Court for Napa County, California.

579 Section 10.05. Annual Review.

580 A. The City Manager shall, at least every twelve (12) months during the term of this
581 Agreement, review the extent of good faith substantial compliance by the Developer with the

582 terms and conditions of this Agreement. Such periodic review shall be limited in scope to
583 compliance with the terms and conditions of this Agreement pursuant to California Government
584 Code Section 65865.1 and the City's Development Agreement Ordinance. Developer shall have
585 the duty to initiate each annual review by submitting an Annual Review Report. Developer
586 shall demonstrate good faith compliance with the terms and conditions of this Agreement and
587 provide such other information as may be reasonably requested by the City Manager and deemed
588 by him or her to be required in order to ascertain compliance with this Agreement. The costs of
589 notice and related costs incurred by the City for the annual review conducted by the City
590 pursuant to this Section shall be borne by the Developer.

591 B. Following such review, the City Manager shall set the matter as an agenda item at
592 a regularly scheduled Council meeting, giving an advance copy of the report and notice of the
593 time and place of such meeting to the Developer. If the City Manger is not satisfied the
594 Developer has demonstrated good faith compliance with all the terms and conditions of this
595 Agreement, or for any other reason, the City Manager shall advise the City Council of this
596 opinion.

597 C. The City Council shall afford the Developer an opportunity to respond to the
598 report of the City Manager and may continue the review from time to time as necessary.

599 D. Failure of the City to conduct an annual review shall not constitute a waiver by
600 the City of its rights to otherwise enforce the provisions of this Agreement nor shall the
601 Developer have or assert any defense to such enforcement by reason of any such failure to
602 conduct an annual review.

603 Section 10.06. Enforced Delay; Extension of Time of Performance. Subject to the
604 limitations set forth below, performance by either party hereunder shall not be deemed to be in
605 default, and all performance and other dates specified in this Agreement shall be extended, where
606 delays are due to: war; insurrection, strikes, lockouts; riots; floods; earthquakes; fires; casualties;
607 acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes;
608 governmental restrictions or priority litigation; unusually severe weather; acts or omissions of
609 the other Party; or acts or failures to act of any other public or governmental agency or entity
610 (other than the acts or failures to act of City which shall not excuse performance by City but
611 which may excuse performance by Developer). An extension of time for any such cause shall be
612 for the period of the enforced delay and shall commence to run from the time of the
613 commencement of the cause (but in any event shall not exceed a cumulative total of three (3)
614 years), if notice by the party claiming such extension is sent to the other party within thirty (30)
615 days of the commencement of the cause. Developer acknowledges that adverse changes in
616 economic conditions, either of Developer specifically or the economy generally, changes in
617 market conditions or demand, and/or inability to obtain financing or other lack of funding to
618 complete the work of on-site and off-site improvements shall not constitute grounds of enforced
619 delay pursuant to this Section 10.06. Developer expressly assumes the risk of such adverse
620 economic or market changes and/or financial inability, whether or not foreseeable as of the
621 Effective Date.

622 Section 10.07. Amendment. This Agreement may be amended as provided in the
623 Development Agreement Ordinance and Development Agreement Statute. Modifications of

624 Project Approvals and other changes to the Project or its timing specifically authorized by this
625 Agreement as consistent with it, do not require amendment to this Agreement unless specifically
626 required by the Development Agreement Ordinance or Development Agreement Statute.

627 Section 10.08. Resolution of Disputes. With regard to any dispute involving the Project,
628 the resolution of which is not provided for by this Agreement or Applicable Law, Developer
629 shall, at City's request, meet with City and/or City shall, at Developer's request, meet with
630 Developer. The parties to any such meetings shall attempt in good faith to resolve any such
631 disputes. Nothing in this Section 10.08 shall in any way be interpreted as requiring that
632 Developer and City and/or City's designee reach agreement with regard to those matters being
633 addressed, nor shall the outcome of these meetings be binding in any way on City or Developer
634 unless expressly agreed to by the parties to such meetings.

635 Section 10.09. Termination; Surviving Provisions. This Agreement shall terminate upon
636 the expiration of the Term or when the Property has been fully developed and all of the
637 obligations of City and Developer in connection therewith as set forth in this Agreement are
638 satisfied as reasonably determined by City. Upon completion of performance of the parties or
639 termination of this Development Agreement, a written statement acknowledging such
640 completion or termination shall be recorded by City in the Official Records of Napa County,
641 California. In the event this Agreement is terminated, neither party shall have any further rights
642 or obligations hereunder, except for those obligations of Developer set forth in Sections 6.01
643 (Compliance with State and Federal Law), 8.05 (Cooperation in the Event of Legal Challenge),
644 and 10.10 (Indemnity and Hold Harmless).

645 Section 10.10. Indemnity and Hold Harmless. Developer shall indemnify and hold City
646 and its elected and appointed officers, agents, employees, and representatives harmless from and
647 against any and all claims, costs, liabilities and damages (including attorneys fees and costs) for
648 any bodily injury, death, or property damage resulting directly or indirectly from the approval or
649 implementation of this Agreement, the development and construction of the Project by or on
650 behalf of Developer or from any operations performed under this Agreement, whether such
651 operations were performed by Developer or any of Developer's contractors, subcontractors,
652 agents or employees, except to the extent such claims, costs and liabilities arise from the active
653 negligence or willful misconduct of City, its elected and appointed officers, agents, employees,
654 representatives, contractors or subcontractors. This Section 10.10 shall not apply to suits or
655 actions brought by Developer for default of this Agreement or to suits or actions brought by any
656 person or entity arising from the sole active negligence or willful misconduct of City or its
657 elected or appointed representatives, officers, agents and employees.

658 **ARTICLE 11. MISCELLANEOUS PROVISIONS**

659 Section 11.01. Incorporation of Recitals and Introductory Paragraph. The Recitals
660 contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby
661 incorporated into this Agreement as if fully set forth herein.

662 Section 11.02. Exhibits. The Exhibits referenced in this Agreement and attached to it are
663 incorporated in to this Agreement.

664 Section 11.03. Findings. City hereby finds and determines that execution of this
665 Agreement furthers public health, safety and general welfare and that the provisions of this
666 Agreement are consistent with the General Plan.

667 Section 11.04. Severability. If any term or provision of this Agreement, or the
668 application of any term or provision of this Agreement to a particular situation, is held by a court
669 of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and
670 provisions of this Agreement, or the application of this Agreement to other situations, shall
671 continue in full force and effect unless amended or modified by mutual consent of the parties.
672 Notwithstanding the foregoing, if any material provision of this Agreement, or the application of
673 such provision to a particular situation, is held to be invalid, void or unenforceable, the party
674 adversely affected may (in its sole and absolute discretion) terminate this Agreement by
675 providing written notice of such termination to the other party.

676 Section 11.05. Construction. Each reference in this Agreement to this Agreement or any
677 of the Existing Project Approvals or Subsequent Ministerial or Discretionary Approvals shall be
678 deemed to refer to the Agreement, Project Approval or Subsequent Ministerial or Discretionary
679 Approval as it may be amended from time to time, whether or not the particular reference refers
680 to such possible amendment. Section headings in this Agreement are for convenience only and
681 are not intended to be used in interpreting or construing the terms, covenants or conditions of this
682 Agreement. This Agreement has been reviewed and revised by legal counsel for both City and
683 Developer, and no presumption or rule that ambiguities shall be construed against the drafting
684 party shall apply to the interpretation or enforcement of this Agreement. Unless the context
685 clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include
686 the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the
687 others; (iii) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (iv) "include,"
688 "includes" and "including" are not limiting and shall be construed as if followed by the words
689 "without limitation," and (v) "days" means calendar days unless specifically provided otherwise.

690 Section 11.06. Covenants Running with the Land. All of the provisions, agreements,
691 rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be
692 binding upon the Parties and their respective heirs, successors (by merger, consolidation or
693 otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or
694 entities acquiring the Property or any portion thereof, or any interest therein, whether by
695 operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and
696 their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the
697 provisions of this Development Agreement shall be enforceable as equitable servitudes and
698 constitute covenants running with the land pursuant to applicable law, including, but not limited
699 to, Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from
700 doing some act on the Property hereunder (a) is for the benefit of the Property and is a burden
701 upon the Property, (b) runs with the Property, (c) is binding upon Developer and each successive
702 owner during its ownership of the Property or any portion thereof, and each person or entity
703 having any interest therein derived in any manner through any owner of the Property, or any
704 portion thereof, and shall benefit the Property hereunder, and each other person or entity
705 succeeding to an interest in the Property. Every person who now or hereafter owns or acquires
706 any right, title or interest in or to any portion of the Project or the Property is and shall be
707 conclusively deemed to have consented and agreed to every provision contained herein, whether

708 or not any reference to this Development Agreement is contained in the instrument by which
709 such person acquired an interest in the Project or the Property.

710 Section 11.07. Notices. Written notices and other written communications by and
711 between the Parties shall be addressed as follows and shall be deemed received on (a) the date
712 such communication is personally delivered; (b) the first normal business hour following the
713 physical receipt of the entire document by the receiving party's facsimile machine; or (c) five
714 days after a registered or certified letter, properly addressed and with postage prepaid, is
715 deposited in the United States mail:

If to City: Planning and Building Director
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

With Copies to: City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

and Michelle Marchetta Kenyon, Esq.
McDonough, Holland & Allen, PC
1901 Harrison Street, 9th Floor
Oakland, CA 94612-3501

If to Developer: Ira and Lois Carter

1881 Mora LLC

BNK LLC

With a copy to:

716 Any party may at any time, by giving ten (10) days written notice to the other parties,
717 may designate a new address for notices.

718 Section 11.08. Entire Agreement, Counterparts and Exhibits. This Agreement may be
719 executed in multiple counterparts, each of which shall be deemed to be an original. This
720 Agreement, together with the attached Exhibits, constitutes the final and exclusive understanding
721 and agreement of the parties and supersedes all negotiations or previous agreements of the
722 parties with respect to all or any part of the subject matter hereof. The Exhibits attached to this
723 Agreement are incorporated herein for all purposes:

724 Section 11.09. Recordation Of Development Agreement. Pursuant to California
725 Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement,
726 the City Clerk shall record an executed copy of this Agreement in the Official Records of the
727 County of Napa.

728 Section 11.10. No Joint Venture or Partnership. It is specifically understood and agreed
729 to by and between the parties hereto that: (i) the subject development is a private development;
730 (ii) City has no interest or responsibilities for, or duty to, third parties concerning any
731 improvements until such time, and only until such time, that City accepts the same pursuant to
732 the provisions of this Agreement or in connection with the various Existing Project Approvals or
733 Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control
734 of the Project herein described, subject only to the limitations and obligations of Developer
735 under this Agreement, the Existing Project Approvals, Subsequent Project Approvals, and
736 Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of
737 agency relationship, joint venture or partnership between City and Developer and agree that
738 nothing contained herein or in any document executed in connection herewith shall be construed
739 as creating any such relationship between City and Developer.

740 Section 11.11. Waivers. All waivers of the provisions of this Agreement shall be in
741 writing and signed by the appropriate authorities of City and the Developer.

742 Section 11.12. California Law. This Agreement shall be construed and enforced in
743 accordance with the laws of the State of California, without reference to choice of law
744 provisions.

745 IN WITNESS WHEREOF, this Agreement has been entered into by and between
746 Developer and City as of the day and year first above written.

747 [SIGNATURES ON FOLLOWING PAGE]

748

CITY:

City of Calistoga, a municipal corporation

By: _____
City Manager

Date Signed: _____

Approved as to Form:

By: _____
City Attorney

Attest:

By: _____
City Clerk

DEVELOPER:

Ira Carter, an individual

Lois Carter, an individual

BNK LLC, a California limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

1881 MORA LLC, a California limited liability company:

By: _____
Name: _____
Its: _____

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EXHIBIT A

Legal Description of Property

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

Commencing at a point on the Northeastern line of Grant Street, distant thereon South 59° East 20.045 chains from the point of intersection thereof with the Southeastern line of Greenwood Avenue, running thence along said line of Grant Street, South 59° East 8.005 chains; and thence North 30¼° East 22.37 chains; thence North 58¾° West 8.005 chains; and thence South 30¼° West 22.37 chains, more or less, to the point of commencement

Being Lot 3 and a portion of Lot 4 as the same are shown upon that certain Map entitled, "Map of W.F. Fisher Tract, Calistoga, Napa Co. Cal", filed April 17, 1897 in the office of the County Recorder of said Napa County.

APN 011-010-013 & 014

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

Being Lots 4, 5 and 6 as the same shown upon that certain Map entitled, "Silverado Tract No. 252", filed in Book 2 of Record Maps at Page 2 in the Office of the County Recorder of said Napa County

APN 011-022-002

Exhibit A

EXHIBIT B

Project Description

The Applicant proposes to subdivide the properties into 15 lots for single-family residential uses and associated ancillary residential uses, which may include light agricultural uses such as cultivation of vineyards. The Applicant seeks to be able to build the infrastructure (i.e. roadways and utilities) in a single phase. Upon recordation of the Final Map, the residential units will be developed as market conditions allow. Ultimately, each home site will be placed within an established building envelope that has been purposefully designed by Howard Backen of Backen & Gillam Architecture. The proposed sizes of the homes will likely range between four- to five-bedrooms and up to and over 4,000 square feet, including all outbuildings.

Vehicular circulation will be provided via tree lined public roadways (Valencia Lane and Hawthorne Place). Pedestrian circulation will be provided via a 5-foot sidewalk contained within a non-exclusive public pedestrian easement along Valencia Place, offset approximately 4 feet of the right-of-way and via a 5-foot sidewalk contained in the Hawthorne right-of-way.

The slope of the existing property is approximately 0.5-percent from the back of the properties to Grant Street. The project site is 400-feet east of Garnett Creek, which is where the storm runoff will be released.

The project also includes a request for a lot line adjustment with lands to the east located at 1881 Mora Avenue (APN 001-021-002). This lot line adjustment is being requested in order to adjust approximately 13,507 square feet of land for the purposes of installing public utilities and to provide for emergency vehicle access (EVA) to Mora Avenue.

The overall proposed subdivision design integrates open space areas upon entering the project along Grant Street to provide significant setbacks from the street. As designed, the Applicant proposes to preserve existing non-irrigated deep-rooted vines on several of the lots and relocated the vines where warranted. To preserve significant trees on the property and to provide aesthetic interest, a slightly curved public roadway with two roundabouts in the center of the roadway will be development.

Water and wastewater service will be provided by the City's water and wastewater systems. To assist the City in resolving an on-going drainage problem in the project area, the Applicant is proposing to take drainage west to Garnett Creek instead of directing the runoff south through the Napa County Fairgrounds.

In addition to the aforementioned project components, this project includes implementation of General Plan Objective H-3.1, P 3 by amending Chapter 17.08 of the Zoning Ordinance to provide an alternative means for residential projects to satisfy the affordable housing requirements. As such, the project sponsors and the City have drafted certain terms for consideration through the Development Agreement. These terms include the payment of money into the Calistoga Housing Trust Fund in-lieu of providing 20% of the resulting homes at an affordable rate.

Exhibit B

The project sponsors will also be providing funds for infrastructure and recreational purposes. Funds will be provided for recreational purposes, above the amount normally collected as a Quality of Life Development Impact Fee, and additional funds will be paid for certain Grant Street roadway improvements beyond the normally required subdivision improvements.

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Exhibit B

EXHIBIT C

Mitigation Monitoring and Reporting Program

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Exhibit C

EXHIBIT D

Existing Project Approvals

1. Mitigated Negative Declaration and Mitigation Monitoring Plan, adopted by City Council Resolution No. _____ on _____, 2008.
2. Tentative Subdivision Map, TTM 2007-____, adopted by City Council Resolution No. _____ on _____, 2008.
3. Design Review, DR 2008-____, adopted by City Council Resolution No. 2008-____ on _____, 2008.
4. Development Agreement, DA 2007-____, adopted by City Council Ordinance No. _____, on _____, 2008.

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Exhibit D

EXHIBIT E

Anticipated Subsequent Approvals

1. Final Subdivision Map and Improvement Plans.-Public Works Department
2. Subdivision Improvement Agreements – Public Works Department.
3. Private Roadway, Maintenance Agreement and Design Review Committee –City Attorney and Planning Department
4. Access and Open Space easements – City Attorney and Planning Department
5. Irrevocable Offer of Dedication of Land – Public Works Department
6. Lot line adjustment – Planning Department
7. Reserved
8. Tree removal permits – Public Works Department
9. Other Agency Permits
 - A. Required Permits from County of Napa Department of Environmental Management (Well Abandonment)
 - B. Required Permits from Army Corps of Engineers
 - C. Required Permits from Department of Fish and Game
 - D. Required Permits from Regional Water Quality Control Board
10. Design Review approval for individual homes on resulting lots of record –Planning Department
11. Subsequent staff issued approvals i.e. building permits, grading, permits, etc. – Planning Department
12. All required easements to be reviewed for approval by Director of Public Works and City Attorney.
13. Other permits necessary as required to satisfied project conditions of approval and Mitigated Negative Declaration Mitigation Measures.

Exhibit E

EXHIBIT F

Special Public Benefits

1. Funds for Affordable Housing.

Chapter 17.08 of the Calistoga Municipal Code, development of the Project requires that twenty percent (20%) of the homes in the subdivision be made available to families of low or moderate income. Alternatively, the Developer may provide other methods of addressing housing needs including a cash payment to the City. An in-lieu payment of Six Hundred Thousand Dollars (\$600,000) shall be made into the Calistoga Affordable Housing Trust Fund. The Developer shall provide \$100,000 of the in-lieu payment to City prior to the approval of the Final Subdivision Map. The balance of said in-lieu payment shall be made in equal payments prior to the issuance of a building permit for home construction on each lot resulting from the Project subdivision. Said in-lieu payment shall be secured by a first position lien on each lot until such time as paid in full. The obligation secured by the lien shall provide that interest shall accrue at an interest rate equal to the last quarter annualized Local Agency Invest Fund (LAIF) rate as of the lien date plus two percent (2%). The principal and accrued interest shall be due in full on the earlier of (1) issuance of a building permit for home construction on the lot or (2) four years from the Effective Date of this Agreement.

2. Additional Funds for Recreational Purposes

Chapter 17.10 of the Calistoga Municipal Code requires that prior to Final Subdivision Map approval subdivision of the Property, Three Thousand Dollars (\$3,000) per lot be paid as a Quality of Life fee for the provision of land structures and physical improvements for cultural and recreational purposes. Prior to approval of the Final Subdivision Map, Developer shall pay to the City an additional sum of Eight Hundred Thousand Dollars (\$800,000) to be used for recreational purposes.

3. Grant Street Improvements.

The developer shall pay the City the full costs of the Grant Street improvements made by City. Said payment is estimated to be \$200,000 to the City for the full cost of Grant Street reconstruction (the segment from Mora Avenue to Garnett Creek Court). Actual costs shall be determined by the City following the completion and acceptance of the work by City. City shall provide reasonable accounting of all costs to Developer. Developer shall pay Grant Street Improvement costs in full prior to Final Subdivision Map approval.

Exhibit F

EXHIBIT G

Existing Rules

1. All City of Calistoga Municipal Code and amendments/ordinances through Ordinance No. 649.
2. City of Calistoga General Plan and amendments adopted as of January 2, 2008
3. All City Council Resolutions adopted through Resolution 2008-####.
4. City of Santa Rosa Design & Construction Standards, as amended as of January 2, 2008.
5. CALTRANS Design & Construction Standards, as amended as of January 2, 2008.
6. Napa County Stormwater Management Plan Guidelines, as amended as of January 2, 2008

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EXHIBIT H

Utility Capacity Allocation and Connection Fees

1. Water Allocation and Connection Fees.

The City shall reserve 9.75 acre feet of potable water for the Project. This allocation shall be assigned in equal portions to the resulting lots for home construction.

The water connection fee for the Project shall be set at the rate in effect at the time of the approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee for the lots shall be paid prior to recordation of the Final Subdivision Map. The balance of the water connection fees shall be allocated in equal shares to each residential lot. Upon recordation of the Final Subdivision Map, a lien subordinate only to other City liens shall be recorded against each lot securing payment of the remaining seventy-five percent (75%) of the connection fee for that lot. The principal interest shall be due in full on the earlier of, (1) the issuance of a building permit for home construction on the lot, or (2) four (4) years from the Effective Date of this Agreement.

2. Waste Water Allocation and Connection Fees.

The City shall reserve 6.21 acre feet of waste water treatment capacity for the development. Said allocation shall be assigned in equal portions to the resulting lots for home construction.

The waste water connection fee for the Project shall be set at the rate in effect at the time of the approval of the Final Subdivision Map. Twenty-five percent (25%) of the total fee for the lots shall be paid prior to recordation of the Final Subdivision Map. The balance of the waste water connection fees shall be allocated in equal shares to each residential lot. Upon recordation of the Final Subdivision Map, a lien subordinate only to other City liens shall be recorded against each lot securing payment of the remaining seventy-five percent (75%) of the connection fee for that lot. The principal interest shall be due in full on the earlier of, (1) the issuance of a building permit for home construction on the lot, or (2) four (4) years from the Effective Date of this Agreement.

Exhibit H

EXHIBIT I

Timetable

Development will occur per Project related approvals.

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Exhibit I

EXHIBIT J

Annual Review Report

SAMPLE COMPLIANCE EVALUATION FORM

The Annual Compliance Evaluation Form is submitted to the City of Calistoga ("City") by BNK Investments, LLC ("Developer") pursuant to the requirements of California Government Code section 65856.1 and Chapter 17.39 of the City Municipal Code regarding Developer's good faith compliance with its obligations under that the Development Agreement having an Effective Date of _____, between the City and Developer ("Development Agreement"). All terms not otherwise defined herein shall have the meanings assigned to them in the Development Agreement:

Annual Review Period: _____ to _____.

(If yes, please attach description and/or documentation)

- A. Development Activities during this annual review period: Yes: No:
- B. Development Impact Fees, processing fees, architectural review fees and/or other fees paid during this annual review period: Yes: No:
- C. On- and/or off-site infrastructure improvements completed or paid for during this annual review period: Yes: No:
- D. Other Development Agreement obligations completed during this annual review period: Yes: No:
- E. Transfers, assignments, or dedications from or by Developer during this annual review period: Yes: No:
- F. Awareness of any facts or circumstances that may be construed as a default by Developer during this annual review period: Yes: No:

The undersigned representative of Developer confirms that Developer is:

- In compliance with its obligations under the Development Agreement for this annual review period.
- Not in compliance with its obligations under the Development Agreement for this annual review period, in response to which Developer is taking the actions set forth in the attachment hereto.

IN WITNESS WHEREOF, Developer has executed this Compliance Evaluation Form as of this _____ day of _____, 20____.

Developer,
By: _____
Its: _____