

**MONTH-TO-MONTH LEASE**

**By and Between**

**Olof and Elizabeth Carmel**

**("Landlord")**

**and**

**CITY OF CALISTOGA**  
a municipal corporation of the State of California

**("Tenant" or "City")**

**LEASE AGREEMENT  
FOR PORTION OF  
1329 LINCOLN AVENUE**

**BASIC LEASE INFORMATION**

1. Tenant: City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Phone: (707) 942-2827  
Facsimile: (707) 942-2831
  
2. Landlord: Olof and Elizabeth Carmel  
12419 Pinnacle Loop  
Truckee, CA 96161  
Phone: 530-582-1231  
Facsimile: 530-582-1231
  
3. Premises: An approximately 900 contiguous square foot portion of that certain approximately 3,000 square foot lot located at 1329 Lincoln Avenue, Calistoga, California as shown on **Exhibit A** attached hereto.
  
4. Permitted Uses: Pedestrian park for use by residents and visitors of the City of Calistoga.
  
5. Initial Term: Month-to-month lease commencing as of January 3, 2011 ("Commencement Date").
  
6. Base Rent: The rent shall be \$1.00 for the month.
  
7. The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. Each reference in this Lease to any of the Basic Lease Information shall mean the respective information above and shall be construed to incorporate all of the terms provided under the particular Lease section pertaining to such information. In the event of any conflict between the Basic Lease Information and the provisions of the Lease, the latter shall control.

LANDLORD'S INITIALS \_\_\_\_\_

TENANT'S INITIALS \_\_\_\_\_

**LEASE AGREEMENT**  
**FOR PORTION OF**  
**1329 LINCOLN AVENUE**

This lease agreement ("Lease") is effective as of the 3<sup>rd</sup> day of January, 2011 ("Effective Date"), by and between the City of Calistoga, a municipal corporation in the County of Napa, State of California ("Tenant" or "City"), and Olof and Elizabeth Carmel ("Landlord").

**RECITALS**

A. Landlord is the fee owner of that certain real property located at 1329 Lincoln Avenue, Calistoga, California, Napa County, State of California, described in Exhibit A attached hereto ("Property").

B. Landlord has indicated his willingness to allow the City to use an approximately 900 square foot parcel located on the Property as shown and described in Exhibit A attached hereto ("Premises"), on an interim basis for public enjoyment free of charge pending commencement of Landlord's development of the Property.

C. City and Landlord desire that Landlord lease the premises to the City for the purposes and on the terms set forth herein.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, the parties hereto agree as follows:

1. Lease of Premises. Landlord hereby leases to City, and City hereby leases from Landlord, the Premises. Landlord hereby grants to Tenant rights of ingress and egress to the Premises, including that certain real property identified as Assessor's Parcel No. 011-221-019, together with all rights of access therein.

2. Term and Termination.

A. Term. The "Initial Term" of this Lease shall be as set forth in Item 5 of the Basic Lease Information, and shall commence on the Commencement Date. The Initial Term and any Extension Term are referred to herein as the "Term."

B. Default. In the event of the occurrence of a Default by either party, the non-defaulting party shall have the right to give written notice to the defaulting party which states the Default and the non-defaulting party's intention to terminate. The defaulting party shall have a period of thirty (30) days to cure such stated Default ("Cure Period"). If the defaulting party fails or delays to cure the Default or does not commence to cure, correct or remedy such failure or delay upon the expiration of the Cure Period, this Lease shall terminate.

Except as otherwise provided herein, neither party shall have any further rights or liability upon termination of this Lease. "Default" refers to a material breach of either party's obligations or covenants under this Lease.

C. Termination. City or Landlord may terminate this Lease upon thirty (30) days written notice to the other party of its intention to terminate.

3. Rent. The rent shall be One Dollar (\$1.00) per month for the term of this Lease. Rent shall be paid by the City on the first day of each month commencing on the Commencement Date, without deduction, set-off, prior notice or demand.

4. Alterations.

A. Condition of Premises. The Premises is being leased to City in its current, existing, "as is" condition.

B. Surrender. Upon the termination of this Lease, City shall remove any or all improvements that the City has installed on the Premises.

5. Use.

A. Usage. The Premises shall be used for the permitted uses set forth in Item 4 of the Basic Lease Information.

B. Public Use. Landlord understands and acknowledges that the Property, upon City's payment of Rent and performance of its obligations under this Lease, shall be publicly accessible, subject to rules and regulations promulgated by City in its sole discretion, and of the Applicable Laws (defined in Section 11 below).

6. Utilities.

A. Utilities and Services. City shall be solely responsible for contracting for, and shall promptly pay all charges for services City deems necessary to, or elects to install on the Premises. City's installation of any services on the Premises does not obligate City to approve or continue such services upon expiration or termination of this Lease.

B. Conservation and Use Policies. In the event of imposition of federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and City shall be bound thereby.

C. Water Charges. The City shall pay for monthly water services.

7. Repairs and Maintenance. City shall maintain the Premises in good condition and repair.

8. Damage and Destruction. If, during the Term, improvements on the Property are totally or partially destroyed from any cause rendering the Premises totally or partially inaccessible or unusable, then City shall have the right, in its sole discretion, to either (i) repair

such damage, or (ii) terminate this Lease by giving thirty (30) days prior written notice to the Landlord.

9. Eminent Domain. If any portion of the Premises is permanently taken by condemnation, the City can elect to terminate this Lease by giving thirty (30) days prior written notice to Landlord.

10. Assignment And Subletting. City shall not assign, sublet or otherwise transfer this Lease, the Premises or any part thereof, without Landlord's prior written approval, which shall not be unreasonably withheld.

11. Applicable Laws. Landlord, at Landlord's expense, shall comply with all applicable statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually and collectively, "Applicable Laws"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or concerning the management, use, generation, storage, transportation, presence, discharge or disposal of hazardous, toxic, radioactive or carcinogenic materials, substances or wastes.

12. Quiet Enjoyment; Non-Disturbance. City shall peaceably and quietly enjoy the Premises. Any request for Tenant's subordination to any future ground lease, mortgage, or deed of trust shall be accompanied by a form of non-disturbance agreement acceptable to Tenant which shall provide that Tenant's possession of the Premises shall not be interfered with following a foreclosure of the Property.

13. Taxes. Landlord shall pay directly to the taxing authority all taxes and assessment levied upon the Property and any improvements thereon. City shall have no liability for any taxes assessed directly or indirectly as a result of this Lease.

14. General Liability Insurance. City shall maintain the following insurance coverage during the Term of the Lease:

A. Commercial General Liability Insurance: No less broad than ISO form CG 00 01. Coverage must be on a standard occurrence form.

B. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; the General Aggregate shall apply separately to each location. Landlord must be an additional insured for liability arising out the ownership, maintenance or use of that part of the premises leased to the Tenant. The insurance provided to Landlord as an additional insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by City. Thirty (30) days' prior written notice of cancellation or material change must be provided to Landlord.

15. Indemnity. City shall defend, indemnify and hold Landlord, its officers, employees and agents harmless from and against any and all liability, loss, expense of any kind whatsoever, including reasonable attorneys' fees, or claims for injury or damages which arise out of the performance of this Lease, but only in proportion to, and to the extent that such liability,

loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of City, its officers, employees or agents. Landlord shall defend, indemnify and hold City, its officers, employees and agents harmless from and against any and all liability, loss, expense of any kind whatsoever, including reasonable attorneys' fees, or claims for injury or damages which arise out of the performance of this Agreement, but only in proportion to, and to the extent that such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Landlord, its officers, employees or agents.

16. Miscellaneous.

A. Entire Agreement. This Lease sets forth all the agreements between Landlord and City concerning the Premises and there are no agreements either oral or written other than as set forth herein.

B. Attorneys' Fees. In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.

C. Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

D. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and City, respectively.

E. Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

F. Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Lease shall be interpreted as though prepared jointly by both parties.

G. Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

H. Notices. Formal written notices, demands, correspondence and communications between City and Landlord shall be sufficiently given if: (a) personally delivered; or (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Landlord indicated below, provided that a receipt for delivery is provided; or (c) if dispatched by first class mail, postage prepaid, to the offices of City and Landlord indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this section.

City: City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Attn: Richard Spitler

with a copy to: Burke, Williams & Sorensen, LLP  
1901 Harrison Street, Ninth Floor  
Oakland, CA 94612  
Attn: Michelle Marchetta Kenyon

Landlord: Olof and Elizabeth Carmel  
12419 Pinnacle Loop  
Truckee, CA 96161

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

I. Governing Law; Venue. This Lease shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Lease shall be brought only in the Superior Court of the County of Napa, State of California.

J. Authority. Each party executing this Lease on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Lease and perform all of its obligations hereunder.

K. Time is of the Essence. Time is of the essence of this Lease and of each and every term and condition hereof.

L. Counterparts. This Lease may be executed in counterparts.

IN WITNESS WHEREOF, City and Landlord have executed this Lease through their duly authorized officers effective as of the date and year first above written.

CITY OF CALISTOGA  
a municipal corporation

By: \_\_\_\_\_  
RICHARD SPITLER, City Manager

OWNERS OF THE PROPERTY  
1329 LINCOLN AVENUE, CALISTOGA

By: \_\_\_\_\_  
OLOF CARMEL

By: \_\_\_\_\_  
ELIZABETH CARMEL

ATTEST:

\_\_\_\_\_  
SUSAN SNEDDON, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
MICHELLE MARCHETTA KENYON,  
City Attorney



EXHIBIT A

Depiction and Legal Description of the Property

COMMENCING at a point on the western line of Lincoln Avenue, distant thereon 270 feet, southerly from the point of intersection thereof with the southern line of Washington Street as shown on the map, hereinafter referred to; thence Southerly along said line of Lincoln Avenue, 30 feet; thence at right angles westerly, 30 feet; thence at right angles northerly 30 feet; and thence at right angles easterly 30 feet to the point of commencement.

BEING the south half of Lot 3 in Block D as shown upon a certain map entitled, "Map of Calistoga, showing its extensions, surroundings and the Hot Sulphur springs, Napa County, Cal.", filed March 1, 1871 in the office of the county Recorder of said Napa County.

EXCEPTING THEREFROM the eastern 8 feet thereof which was heretofore conveyed to the Town of Calistoga for street purposes by Deed recorded July 1, 1889 in Book 45 of Deeds at page 242, said Napa County Records.

APN 011-221-023