

1                                   **MEMORANDUM OF UNDERSTANDING**  
2   **BETWEEN**  
3                                   **THE CITY OF CALISTOGA**  
4   **AND**  
5                                   **MICHAEL, MAX AND GENOVEVA QUAST**  
6                                   **REGARDING INTENDED DEVELOPMENT OF**  
7                                   **CERTAIN REAL PROPERTY LOCATED IN**  
8   **THE CITY OF CALISTOGA**  
9                                   **Authorizing Agreement No. \_\_\_\_\_**

10 This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into as of this  
11 17th day of October, 2006 (“EFFECTIVE DATE”), by and between the CITY OF  
12 CALISTOGA, a municipal corporation (“CITY”) and MICHAEL, MAX AND GENOVEVA  
13 QUAST (“QUAST”), regarding QUAST’s desire to redevelop that certain real property located  
14 at the northerly corner of the Washington and First Streets intersection (1300 Washington Street  
15 and 1424 Second Street) Assessor’s Parcel Numbers 011-204-011 and 011-205-015, in the City  
16 of Calistoga, County of Napa, State of California (the “PROPERTY”).

17 **RECITALS**

- 18       A.     WHEREAS, encouraging destination resort development integrating visitor  
19 accommodations, spa and conference uses, which broadens and diversifies the  
20 existing range of markets served by CITY’s visitor accommodations sector to include  
21 high quality facilities, supports CITY’s continuing economic vitality, through  
22 diversification of its economy in a manner which supports its small-town character,  
23 unique history as a geothermal spa destination, rural identity, and regional identity as  
24 part of the world-renowned wine region of the Napa Valley;
- 25       B.     WHEREAS, QUAST has determined that the PROPERTY as currently improved  
26 cannot effectively or efficiently support a destination resort going forward because  
27 the facilities are outdated, operationally inefficient, and cannot feasibly be  
28 modernized without significant, substantial capital investment, including substantial  
29 investments in improvements to onsite and offsite infrastructure;
- 30       C.     WHEREAS, QUAST desires and intends to commit to CITY and desires to redevelop  
31 the PROPERTY, renovating, rebuilding and expanding the visitor accommodations,  
32 spa, and conference uses, on the PROPERTY thereby providing QUAST with the  
33 necessary diversification of uses and modern physical development and operational  
34 components to operate a sustainable destination geothermal resort and spa;

- 35 D. WHEREAS, QUAST has determined that redevelopment of the PROPERTY will  
36 require substantial financial commitments by QUAST, including substantial  
37 investments in improvements to onsite and offsite infrastructure; and
- 38 E. WHEREAS, QUAST submitted for conceptual design and preliminary review to  
39 CITY in December 2005 and CITY'S Planning Commission considered at its  
40 regularly scheduled meeting on April 12 , 2006, a conceptual proposal to allow for  
41 the renovation and redevelopment on the PROPERTY;
- 42 F. WHEREAS, CITY desires to promote and sustain the City of Calistoga as a  
43 continued, viable location for high-quality destination geothermal spas and resorts for  
44 which Calistoga is renowned, making further contributions to the local and regional  
45 economies; and
- 46 G. WHEREAS, CITY supports redevelopment and improvement of the PROPERTY in a  
47 way that enhances the physical and economic conditions of the PROPERTY, the  
48 Downtown and the City of Calistoga.
- 49 H. WHEREAS, in furtherance of development of the PROPERTY, QUAST and CITY  
50 desire to memorialize their understandings in a development agreement. Prior to  
51 finalizing the development agreement, QUAST and CITY intend to set forth in this  
52 non-binding MOU the parties' understanding of some of the terms that will be  
53 negotiated.

54 NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of  
55 which are hereby acknowledged, the parties agree as follows:

56 **AGREEMENT**

57 **SECTION 1. NONBINDING EFFECT.**

58 By execution of this MOU, CITY is not committing itself to or agreeing to undertake any acts or  
59 activities requiring the subsequent independent exercise or discretion of CITY or any agency or  
60 department thereof. Execution of this MOU by CITY and QUAST is merely an agreement to  
61 enter into a period of good faith negotiations according to the terms hereof, reserving final  
62 discretion and approval by CITY and QUAST to any development agreement and all  
63 proceedings and decisions in connection therewith. In addition to the above, CITY and QUAST  
64 understand and acknowledge the following:

- 65 (A) This MOU is not intended to set forth all of the material terms and conditions  
66 regarding QUAST'S intended development of the PROPERTY nor bind  
67 QUAST to any particular development of the PROPERTY.
- 68 (B) This MOU is not intended to contractually bind CITY or QUAST to any  
69 particular course of action. No legal obligation shall arise for CITY or  
70 QUAST as a result of this MOU, except the obligation to negotiate and act in  
71 good faith in any future negotiations or other activities or discussions among  
72 the parties.

73 (C) CITY retains absolute discretion to consider any particular development  
74 proposal and related environmental analysis for development of the  
75 PROPERTY and to approve, deny or condition any discretionary permit or  
76 other approval of CITY in connection with development of the PROPERTY.

77 **SECTION 2 ACKNOWLEDGEMENTS.**

78 CITY and QUAST acknowledge the following statutory requirements with which the CITY must  
79 comply. These include, but are not limited to:

- 80 (A) The provisions of the California Environmental Quality Act, California Public  
81 Resources Code Section 2100 *et seq.* (“CEQA”), including the provisions of  
82 Section 15004 of the CEQA Guidelines; and
- 83 (B) The provisions of Government Code Section 65864 *et seq.* governing the approval  
84 of development agreements, including the requirement that a public hearing on an  
85 application for a development agreement is held by the planning agency and by  
86 the legislative body and that certain findings are made.

87 **SECTION 3 TERM.**

88 The term of this MOU shall be effective from the EFFECTIVE DATE set forth hereinabove and  
89 shall continue until the development agreement and entitlement process are considered for final  
90 approval by the CITY, or until terminated as set forth in section 16 of this MOU.

91 **SECTION 4 QUAST PLANS.**

92 QUAST intends to seek entitlements for the PROPERTY generally consistent with the  
93 preliminary application conceptual design review materials submitted to the CITY’s Planning  
94 Commission on April 12, 2006, referred to collectively hereinafter as the “PROJECT

95 **SECTION 5 CITY SUPPORT.**

- 96 (A) CITY acknowledges its desire to enhance and diversify the existing range of  
97 markets served by CITY’S visitor accommodations sector by upgrading  
98 appropriate, existing visitor accommodations facilities as destination resorts  
99 and spas integrated with the geothermal resources unique to the City of  
100 Calistoga. CITY believes that redeveloping lands such as the PROPERTY,  
101 which is located in the Downtown with an established history as a resort and  
102 spa development is in the best interests of the CITY.
- 103 (B) CITY acknowledges that QUAST is intending to make very substantial  
104 financial investments in the PROPERTY and off-site infrastructure  
105 improvements, and would not set upon a path to do so without some  
106 preliminary indication from CITY that CITY is supportive of the development  
107 concepts proposed for the PROPERTY. Without in any way relinquishing or  
108 diminishing CITY’S rights and responsibilities to exercise its reasonable  
109 discretion in evaluating and considering any development proposal related to

110 the PROPERTY, such as General Plan Land Use Map designation  
111 amendment, rezoning, conditional use permit, parking need determination,  
112 water and wastewater resource needs, design review, lot merger and related  
113 environmental analysis, CITY desires to convey to QUASt the CITY'S good  
114 faith commitment to cooperate with QUASt in connection with any  
115 development applications submitted by QUASt to CITY for the PROPERTY,  
116 and to expedite the processing of those development applications where  
117 possible when those development proposals are consistent with the vision of  
118 development of the PROPERTY set forth in this MOU.

119 (C) CITY shall cooperate with QUASt in timely processing of the PROJECT and  
120 any required applications submitted by QUASt in connection with the  
121 PROPERTY consistent with the vision for development of the PROPERTY  
122 set forth in this MOU, including a development agreement and related  
123 environmental documents, within a timeframe mutually agreed upon by CITY  
124 and QUASt, as follows:

125 (1) CITY and QUASt agree that the Department of Planning and Building  
126 ("DPB") shall, subject to land use and environmental review procedural  
127 requirements, bring the PROJECT, including its required land use  
128 entitlement requests forward for consideration by CITY'S Planning  
129 Commission in an expeditious manner, subject to acts or events not  
130 within the parties' reasonable control, such as appeals or protests to  
131 environmental clearances issued in connection with the PROJECT which  
132 might arise after certification of environmental documents under CEQA  
133 and CITY'S Municipal Code, litigation affecting the PROJECT, wars,  
134 floods, earthquakes, fires, acts of God and other similar events. To  
135 accommodate such prompt processing, QUASt and its representatives  
136 agree to prepare all required documents and respond to CITY'S reasonable  
137 requests for further information in a timely manner. CITY and QUASt  
138 agree to work cooperatively to develop a schedule for carrying out the  
139 necessary environmental and planning review and analysis to promptly  
140 bring the PROJECT before CITY'S Planning Commission.

141 (2) CITY and QUASt acknowledge that they desire to enter into a  
142 development agreement for the PROJECT pursuant to California  
143 Government Code Sections 65864 *et seq.* and Chapter 17.39 of CITY'S  
144 Municipal Code. CITY and QUASt acknowledge that they both commit  
145 to negotiate in good faith to bring forward a development agreement for  
146 consideration by CITY'S Planning Commission and City Council that  
147 reflects development of the PROPERTY and certain benefits to CITY that  
148 are mutually agreed upon by CITY and QUASt.

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151 **SECTION 6 GOOD FAITH NEGOTIATION OF DEVELOPMENT AGREEMENT**

152 During the term of this MOU, QUAST and CITY shall negotiate in good faith the terms and  
153 conditions of a development agreement, subject to the nonbinding provisions described in  
154 Section 1 above. The development agreement resulting from negotiations hereunder shall  
155 become effective only after, and if, the development agreement has been considered and  
156 approved by CITY in accordance with Government Code Section 65864 *et seq.* and approved by  
157 QUAST. If the development agreement is executed by CITY and QUAST, the development  
158 agreement shall thereafter govern the rights and obligations of the parties with respect to the  
159 PROJECT. The development agreement is contemplated by CITY and QUAST to include,  
160 without limitation, the following:

- 161 (A) Term. The development agreement would be for a term of five years,  
162 contemplating completion of the PROJECT by May of 2009.
- 163 (B) City Approvals. The PROJECT would require the following approvals:
- 164 1. An amendment of the General Plan Land Use Map
  - 165 2. Rezoning
  - 166 3. Conditional Use Permit
  - 167 4. Lot Merger
  - 168 5. Parking Needs Determination
  - 169 6. Design Review
  - 170 7. Development Agreement
- 171 (C) Project Public Improvement Requirements. QUAST would agree to construct  
172 and dedicate certain on- and off-site public improvements required as  
173 conditions of approval of the PROJECT.
- 174 (D) Vested Development Rights. CITY would grant QUAST vested rights to  
175 develop the PROPERTY subject to the provisions of the development  
176 agreement and the entitlements for the PROJECT.
- 177 (E) Reimbursement. QUAST would agree to pay CITY all costs related to the  
178 processing of the applications for the PROJECT and the negotiation and  
179 drafting of the development agreement, including all attorney fees, in addition  
180 to the standard application fees, building permit plan check and inspection  
181 costs.
- 182 (F) Other Benefits. QUAST and CITY agree to negotiate in good faith to identify  
183 other public improvements, fees, and/or additional benefits which QUAST  
184 would agree to provide to CITY beyond those imposed as part of the

185 PROJECT-related conditions of approval or associated environmental  
186 mitigation measures.

187 **SECTION 7 APPLICABLE LAW**

188 This MOU shall be governed by and construed in accordance with the laws of the State of  
189 California without reference to choice of laws principles. Litigation arising out of or connected  
190 with this MOU shall be instituted and maintained in the courts of Napa County in the State of  
191 California, and CITY and QUASt consent to jurisdiction over their person and over the subject  
192 matter of any such litigation in such courts, and consent to service of process issued by such  
193 courts.

194 **SECTION 8 PARTIAL INVALIDITY**

195 If any provision of this MOU is held by a court of competent jurisdiction to be invalid or  
196 unenforceable, the remainder of the MOU shall continue in full force and effect and shall in no  
197 way be impaired or invalidated, and CITY and QUASt agree to substitute for the invalid or  
198 unenforceable provision a valid and enforceable provision that most closely approximates the  
199 intent and economic effect of the invalid or unenforceable provision.

200 **SECTION 9 ENTIRE AGREEMENT**

201 This MOU constitutes the entire agreement between CITY and QUASt and supersedes whatever  
202 oral or written understanding they may have had prior to the execution of this MOU. This MOU  
203 shall not be amended or modified except by a written agreement executed by each of the parties  
204 hereto.

205 **SECTION 10 BINDING ON SUCCESSORS**

206 Neither party shall be entitled to assign its rights or obligations under this MOU, in whole or in  
207 part, without the prior written consent of the other, which consent may be granted in such party's  
208 sole and absolute discretion. Subject to the foregoing, the terms and conditions herein contained  
209 shall be binding upon and inure to the benefit of the successors and assignees of the parties  
210 hereto.

211 **SECTION 11 COUNTERPARTS**

212 This MOU may be executed in one or more counterparts, including facsimile counterparts, each  
213 of which shall, for all purposes, be deemed an original and all such counterparts, taken together,  
214 shall constitute one and the same instrument.

215 **SECTION 12 AMBIGUITY**

216 QUASt, the CITY and their respective counsel have each carefully reviewed this MOU, and  
217 each has agreed to each term of the MOU. No ambiguity shall be presumed to be construed  
218 against either party.

219 **SECTION 13 WAIVER**

220 Waiver by either party of any default, breach or condition precedent shall not be construed as a  
221 waiver of any other default, breach or condition precedent or any other right hereunder.

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223 **SECTION 14 HEADINGS**

224 The section headings contained in this MOU are inserted for convenience only and shall not  
225 affect in any way the meaning or interpretation of this MOU.

226 **SECTION 15 AUTHORITY**

227 The signatories to this MOU hereby represent and warrant that they are fully authorized to sign  
228 this MOU on behalf of the party that they represent.

229 **SECTION 16 TERMINATION.**

230 (G) Any party to this MOU may terminate this MOU with or without cause with at  
231 least sixty (60) day's prior written notice to the other party provided via first  
232 class United States mail or hand delivery at the following address:

City:	Planning and Building Director City of Calistoga 1232 Washington Street Calistoga, CA 94515
With a copy to:	City Manager City of Calistoga 1232 Washington Street Calistoga, CA 94515
And to:	Michelle Kenyon, Esq. McDonough, Holland & Allen, PC 1901 Harrison Street, 9th Floor Oakland, CA 94612-3501
QUAST:	Michael, Max and Genoveva Quast 1300 Washington Street Calistoga, CA 94515

233 (H) The City Manager is and shall be authorized to terminate this MOU and send  
234 the termination notice on behalf of CITY in accordance with the terms hereof.

235 WITNESSETH that this MOU is acknowledged by the parties hereto as of the EFFECTIVE  
236 DATE set forth above:

<p>APPROVED AS TO FORM:</p> <p>By: _____  MICHELLE KENYON  City Attorney</p>	<p>“CITY”</p> <p>CITY OF CALISTOGA, a municipal corporation</p> <p>By: _____</p> <p>Its: City Manager</p>
	<p>“QUAST”</p> <p>Michael, Max and Genoveva Quast</p> <p>By: _____</p> <p>By: _____</p> <p>By: _____</p> <p>Its: _____</p>

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