



EASTERN SIERRA COMMUNITY HOUSING

FORMERLY



MAMMOTH LAKES HOUSING, INC.

Eastern Sierra Community Housing Board Agenda

Monday, July 1, 2024, 6:00 p.m.

437 Old Mammoth Road, Suite Z, Mammoth Lakes

Members of the Board

President Tom Hodges, Vice President Lindsay Barksdale, Treasurer Sarah Nuttall, Board Member Kirk Stapp, Board Member Jennifer Kreitz, Board Member Tony Perkins, Board Member Heidi Steenstra, Board Member Brian D'Andrea, Board Member Amanda Rice

NOTE: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Eastern Sierra Community Housing, Inc. at (760) 934-4740. Notification 48 hours prior to the meeting will enable Eastern Sierra Community Housing, Inc to make arrangements to ensure accessibility to this meeting (28 CFR 13.102-35.104 ADA Title II).

NOTE: Materials related to an item on this agenda submitted after distribution of the agenda packet are available for public inspection in the Town Offices located at 437 Old Mammoth Road, Suite 230 during normal business hours. Such documents are also available on the Town of Mammoth Lakes website at www.townofmammothlakes.ca.gov subject to staff's ability to post the documents before the meeting.

NOTE: You may attend this meeting in person, or watch it live through the online eSCRIBE system here: <https://pub-townofmammothlakes.escribemeetings.com>, on the local government cable channel 18, or by utilizing the Zoom link below. Public comments may be submitted to the Executive Director at patricia@eschousing.org or clerk@townofmammothlakes.ca.gov or they may be made via Zoom or in person in Suite Z.

ZOOM INFORMATION:

Join from a PC, Mac, iPad, iPhone or Android device: <https://monocounty.zoom.us/j/98707718059>

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 646 876 9923 or +1 301 715 8592 or +1 312 626 6799

Webinar ID: 987 0771 8059 - Callers: To Raise your hand Press *9, to Unmute/Mute Press *6

1. Call to Order

Regular meeting of the public benefit corporation, 501(c)3, Eastern Sierra Community Housing, Inc. whose mission is to support affordable housing for a viable economy and sustainable community.

**Board Member Brian D'Andrea will attend this meeting remotely from the following address:
1000 Corporate Pointe, Suite 200 Culver City, CA 90230**

2. Public Comments

This is the established time for any member of the public wishing to address the Eastern Sierra Community Housing Board of Directors on any matter that does not otherwise appear on the agenda. Members of the public desiring to speak on a matter appearing on the agenda should ask the President for the opportunity to be heard when the item comes up for consideration. Public comments may be submitted to the Executive Director at patricia@eschousing.org or clerk@townofmammothlakes.ca.gov before or during the meeting, may be made in person in Suite Z or by "Raising your hand" in Zoom.

3. Consent Agenda

3.1 Approval of the Minutes from the June 3, 2024 Regular Board Meeting

4. Policy Matters

4.1 The Board will discuss and provide staff direction regarding the strategic investment of potential developer fees and will review the Draft Net Revenue and One-Time Funds Investment Guidelines and provide feedback

4.2 The Board will review the adopted 2024/2025 Fiscal Year Budget

4.3 The Board will receive updates on current construction projects: Innsbruck Lodge and Access Apartments

4.4 Review and approve Amendment#1 to the Subrecipient Agreement for 21-CDBG-HA-00015

4.5 Review and approve the Regulatory Agreement between the Town of Mammoth Lakes and Access Apartments Affordable Housing LLC for Access Apartments: 238 Sierra Manor Road, Mammoth Lakes, CA

4.6 The Board will receive a Resolution from Senator Alvarado-Gil declaring Eastern Sierra Community Housing as a 2024 Nonprofit of the Year

4.7 MLH Programs Update

5. Committee Reports

6. Board Member Reports

7. Adjourn



EASTERN SIERRA
COMMUNITY HOUSING

FORMERLY



Eastern Sierra Community Housing Board

Regular Meeting Minutes

June 3, 2024, 6:00 p.m.

437 Old Mammoth Road, Suite Z, Mammoth Lakes

Members Present: President Tom Hodges, Vice President Lindsay Barksdale, Board Member Kirk Stapp, Board Member Jennifer Kreitz, Board Member Tony Perkins, Board Member Brian D'Andrea

Members Absent: Treasurer Sarah Nuttall, Board Member Heidi Steenstra, Board Member Amanda Rice

1. Call to Order

This meeting was delayed due to technical difficulties.

President Tom Hodges called the meeting to order at 6:26 p.m. in the Council Chamber at 437 Old Mammoth Road, Suite Z, Mammoth Lakes.

2. Public Comments

There were no comments given at this time.

3. Consent Agenda

Moved by Board Member Jennifer Kreitz
Seconded by Vice President Lindsay Barksdale

Approve the Consent Agenda.

For (6): President Tom Hodges, Vice President Lindsay Barksdale, Board Member Kirk Stapp, Board Member Jennifer Kreitz, Board Member Tony Perkins, and Board Member Brian D'Andrea

Absent (3): Treasurer Sarah Nuttall, Board Member Heidi Steenstra, and Board Member Amanda Rice

Carried (6 to 0)

3.1 Approval of the Minutes from the May 6, 2024 Regular Board Meeting.

4. Policy Matters

4.1 The Board will receive updates on current construction projects: Innsbruck Lodge and Access Apartments

Program and Project Associate Erik Guzman-Rangel and Executive Director Patricia Robertson outlined the information in the Innsbruck Lodge and Access Apartments presentations. Ms. Robertson reported that she had made an offer to an applicant for the onsite manager position for the Innsbruck Apartments.

There was discussion among staff and members of the Board.

4.2 Review and possibly approve the Mammoth Lakes Housing Draft 2024/2025 Fiscal Year Budget

Executive Director Patricia Robertson outlined the information in the Mammoth Lakes Housing Draft 2024/2025 Fiscal Year Budget.

There was discussion between Ms. Robertson and members of the Board.

Moved by Board Member Jennifer Kreitz
Seconded by Board Member Kirk Stapp

Adopt the Mammoth Lakes Housing Draft 2024/2025 Fiscal Year Budget with suggested amendments.

For (6): President Tom Hodges, Vice President Lindsay Barksdale, Board Member Kirk Stapp, Board Member Jennifer Kreitz, Board Member Tony Perkins, and Board Member Brian D'Andrea

Absent (3): Treasurer Sarah Nuttall, Board Member Heidi Steenstra, and Board Member Amanda Rice

Carried (6 to 0)

4.3 MLH Programs Update

Housing Navigator Isaura Ocampo and Executive Director Patricia Robertson outlined the information in the staff report.

There was discussion between staff and members of the Board.

5. Committee Reports

Board Member Brian D'Andrea reported that the Executive Director Evaluation Committee had met and was working on a new approach to the performance evaluation process for the Executive Director and staff. Mr. D'Andrea said the Committee would propose modifications to the incentive and bonus policy as an organization. He said they would bring their proposal to the Board within the next month or so for review and consideration.

President Tom Hodges said he and Board Member Jennifer Kreitz attended the recent Mono County Partnership Discovery Committee meeting. Mr. Hodges reported that there may be a couple of parcels in the Mono Basin that could provide an opportunity for staff housing for employees of the schools in the Lee Vining area.

There was discussion among members of the Board.

6. Board Member Reports

Board Member Jennifer Kreitz recently attended the California Coalition for Rural Housing (CCRH) Legislative Committee and Mono County Partnership Discovery Committee meetings, and met with Town of Mammoth Lakes (TOML) and Mono County staff, along with two United States Department of Agriculture California Representatives today to discuss funding for childcare and other projects. Ms. Kreitz reported that the Mono County Board of Supervisors (MCBOS) held a joint

meeting with the TOML Town Council to discuss the housing needs assessment and said both agencies agreed to work together to create a new assessment. She announced that Whitebark Institute had a small grant available to be used for fire resilience projects which Homeowners Associations (HOAs), among other organizations, were eligible to apply for.

Board Member Kirk Stapp reported that his HOA Board continued to experience employee housing issues and had considered purchasing a unit within their complex and/or building a unit above the spa for employee housing.

President Tom Hodges provided updates on the Limelight, Rocksprings, and Marriott Residence Inn projects, and said that he was hopeful The Parcel would help address some of the housing demand.

There was discussion between Executive Director Patricia Robertson and members of the Board.

7. Adjourn

The meeting was adjourned at 7:55 p.m.

Angela Plaisted, Assistant Clerk
Town of Mammoth Lakes

Patricia Robertson, Secretary
Mammoth Lakes Housing, Inc.



*Mammoth Lakes Housing, Inc.
supports workforce housing
for a viable economy and
sustainable community.*

STAFF REPORT

Subject: The Board will discuss and provide staff direction regarding the strategic investment of potential developer fees and will review the Draft Net Revenue and One-Time Funds Investment Guidelines and provide feedback

Presented by: Patricia Robertson, Executive Director

BACKGROUND

Developer fees are proceeds that housing developers can collect for the risk, carrying, and upfront investments made to acquire and develop affordable housing. The amount of fees that a housing developer can collect when working with the State Department of Housing & Community Development is a pre-determined, capped amount.

A large-scale developer may use these funds towards operations or new acquisitions. Other types of strategic expenditures may include due diligence to expand the project pipeline including studies, appraisals, consultants, property acquisitions, etc. Developers that have a reliable pipeline of new projects can rely on a stream of developer fees to continue to do business. Smaller nonprofits that do not have a predictable pipeline of development options may need to think strategically about how to invest those one-time funds.

The Board discussed this item during the annual budget process in August 2023. This was in part due to the allocation of \$100,000+ of Innsbruck Lodge developer fee towards the FY 22/23 Operating Budget. Developer Fee was not allocated towards the FY 23/24 Operating Budget.

At the June 2024 meeting, the Board discussed the need to show Developer Fee revenue in the FY 24/25 Operating Budget and also the Strategic Priority investments on the expense side.

The Board has expressed a desire to discuss the strategic investment of one-time revenue sources, such as developer fees and predevelopment reimbursements, generated by current and upcoming projects. The Strategic Plan adopted in March 2024 outlines these goals:

Focus Area 1: Build & Facilitate Community Housing

Goal: Complete 3 projects in 3 years

Objective A: Identify one viable new project per year.

Objective B: Pursue housing development pipeline.

Manager 3-4 projects in various stages.

Utilize one-time revenue for the development of new units.

Below is a table displaying current projects in our development pipeline and their various stages.

PROJECT	PHASE	TIMING
Innsbruck Lodge	Construction	Summer 2024 – filled 6 units Winter 2024 – fill last 10 units
Access Apartments	Financial Closing and Construction!	Construction Summer 2024
Valley Apartments	Predevelopment – acquisition & financing	Confirm grant award; Finish acquisition and start construction ASAP
Silver Peaks	Financing	TBD
Next Project?	Pursuing	TBD

ONE-TIME REVENUE INVESTMENT GUIDELINES

At the June 2024 Board meeting, staff was asked to bring back draft guidelines regarding the expenditure of one-time revenue sources.

RECOMMENDATION

The Board should review and discuss the draft guidelines and provide feedback.

ATTACHMENTS:

1. Draft Net Revenue and One-Time Funds Investment Guidelines

Purpose

This policy establishes investment objectives, policies, guidelines related to all organizational assets, but specifically annual net proceeds and one-time funds such as developer fees, held by Eastern Sierra Community Housing.

Goals of the Policy

- To identify the criteria against which these funds will be allocated.
- To communicate the objectives to the Board, staff, donors and funding sources, and other stakeholders.
- To confirm the policies and procedures relative to the expenditure of institutional funds.
- To serve as a review document to guide the ongoing oversight of the management of the organization's investments.

Responsibilities

The Board of Directors has a direct oversight role regarding all decisions that impact the organizations funds, including operating reserves and the operational budget. The Board shall ensure that its fiduciary responsibilities concerning the proper management of the organization's funds are fulfilled through regular strategic planning efforts, management of executive staff, and oversight of financial consultants.

The Board will receive and review reports from executive staff and consultants and convene regularly to evaluate whether this policy continues to be consistent with meeting the goals and objectives set.

Executive staff shall be responsible for the day-to-day administration and implementation of policies established by the Board concerning the management of funds. Management shall also be the primary liaison between any investment consultants and/or other outside professionals that may be retained to assist in the management of such funds. Specifically, management shall:

- Oversee the day-to-day operational investment activities of all institutional funds subject to policies established by the Board,
- Contract with any necessary outside service providers, such as: investment consultants, investment managers, banks, and/or trust companies and/or any other necessary outside professionals,
- Ensure that the service providers adhere to the terms and conditions of their contracts; have no material conflicts of interests with the interests of the organization; and, performance monitoring systems are sufficient to provide the Board with timely, accurate and useful information,

DRAFT

Net Revenue and One-Time Funds Investment Guidelines

- Comply with official accounting and auditing guidelines regarding due diligence and ongoing monitoring of investments and expenditures, and
- Prepare and issue periodic status reports to the Board.

Expenditures

All individuals responsible for managing and investing the organization's funds must do so in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. In making any decision relative to the expenditure of institutional funds, each of the following factors must be considered, and properly documented, in the minutes or other records of the applicable decision-making body.

1. The mission of the organization and the currently adopted Strategic Plan documents;
2. General economic conditions;
3. Possible effect of inflation or deflation;
4. Expected tax consequences, if any, of investment decisions or strategies;
5. The role that each investment or course of action plays within the overall investment portfolio;
6. Expected total return from the income and appreciation of investments, or other long-term implications of the investment or expense;
7. The public-benefit of utilizing or pursuing a specific investment;
8. Other resources of the organization;
9. The needs of the organization and the fund to make distributions and preserve capital; and,
10. An asset's special relationship or special value, if any, to the organization's purposes.

The Board of Directors will allocate annual net proceeds, one-time developer fees, and other sporadic sources of funding in the following manner.

- Developer fees will accrue monthly over the span of a construction project and show as revenue in the organization's operating budget.
- Developer fees will be deposited into the Capital Reserve bank account for the organization.
- The Board will consider moving the Capital Reserve funds to a high interest account or other investment opportunity.
- If and when annual net proceeds are allocated to the following fiscal year operating budget, this will be documented in the financial statements.
- The annual operating budget will include an expense line item entitled "Predevelopment/Strategic Priorities" which will include a projected allocation of revenue towards the pursuit of new housing development opportunities.

DRAFT

Net Revenue and One-Time Funds Investment Guidelines

These types of expenditures may include: due diligence (appraisals, environmental analysis, capital needs assessments, title reports, etc.), capacity in the form of financial and/or project management consultants, land acquisition escrow deposits or financing costs, etc.

They may also include organizational operational deficits.

For each decision to appropriate institutional funds for expenditure in an amount that exceeds executive staff's expenditure limit, an appropriate record should be kept and maintained describing the nature and extent of the consideration that the appropriate body gave to each of the stipulated factors. This will be recorded in the Board of Directors' meeting minutes.

Donor Restrictions

In all instances, donor intent shall be respected when decisions are rendered concerning the investment or expenditure of donor restricted funds.

	FY 24/25 Budget	FY 23/24 Forecast Actual	FY 23/24 Budget	Variances 24/25 Budget vs. 23/24 Budget		Strategic Plan Alignment	Comments
				\$	%		
REVENUE							
Town Contract Services	336,000	336,000	336,000	-	0%	Goal 2 - Improve and expand programs and services.	
Mono County Housing Navigator Services	100,000	100,000	100,000			Goal 2 - Improve and expand programs and services.	Increase housing resources. Secure partnerships.
Alpine County Housing Navigator Services	50,000	100,000	100,000			Goal 2 - Improve and expand programs and services.	Increase housing resources. Secure partnerships.
Property Management Fees	13,072	30,000	30,000	(16,928)	-56%	Goal 2 - Improve and expand programs and services.	
Project Payroll Reimbursement	-	-	-				
Suppotive Services / Case Management	3,002	-	6,004				
Contract Income - Other	14,700	19,700	14,700	-	0%		
Fundraising	1,000	29,573	1,000	-	0%	Goal 3 - Grow internal operating budget.	
Application Revenue	550	500	550	-	0%		
Misc. Revenue	9,000	7,500	-	9,000	0%	Goal 3 - Grow internal operating budget.	
Grant Administration / Activity Fees	14,500	26,657	28,612	(14,112)	-49%		
One-Time Revenue (excess revenue, dev fees, etc.)	88,000						
Total Revenue	\$ 629,824	\$ 649,930	\$ 616,866	\$ 12,958	2%		

	FY 24/25 Budget	FY 23/24 Forcast Actual	FY 23/24 Budget	Variances 24/25 Budget vs. 23/24 Budget		Strategic Plan Alignment	Comments
				\$	%		
OPERATING EXPENSES							
Marketing	5,500	6,523	1,000	4,500	450%	Goal 2 - Improve and expand programs and services.	Prepare outreach materials
Board Development	2,000	2,010	5,000	(3,000)	-60%		
Dues & Subscriptions	5,500	5,427	4,400	1,100	25%		
Licenses and Permits	450	410	600	(150)	-25%		
Meeting Expense	2,200	2,106	1,800	400	22%		
Office Supplies	10,200	8,621	10,200	-	0%		
Software	5,870	1,034	5,870	-	0%		
Postage and Delivery	1,000	1,000	1,000	-	0%		
Printing and Reproduction	1,500	1,500	500	1,000	200%		
Repairs & Maintenance	500	108	1,000	(500)	-50%		
Utilities	9,400	9,600	9,000	400	4%		
Deed restriction subsidy	20,000	1,083	20,000	-	0%	Goal 2 - Improve and expand programs and services.	
SUBTOTAL	64,120	39,422	60,370	3,750	6%		
INSURANCE							
GL Office	4,128		2,000	2,128.00	106%		
D&O	1,143		1,250	(107.28)	-9%		
Professional	8,637		8,250	386.55	5%		
SUBTOTAL	13,907	12,937	11,500	2,407.28	21%		
OFFICE SPACE EXPENSES							
Property Tax	575	565	545	30.00	6%		
HOA Fees	6,864	8,876	8,173	(1,309.00)	-16%		
Loan Interest #4	2,600	3,000	2,600	-	0%		
SUBTOTAL	10,039	12,441	11,318	(1,279.00)	-11%		

MAMMOTH LAKES HOUSING, INC.
FISCAL YEAR 24/25 OPERATING BUDGET

	FY 24/25 Budget	FY 23/24 Forecast Actual	FY 23/24 Budget	Variances 24/25 Budget vs. 23/24 Budget		Strategic Plan Alignment	Comments
				\$	%		
PAYROLL EXPENSES							
Salaries & Wages	355,945	308,597	379,846	(23,901)	-6%	Goal 2 - Improve and expand programs and services.	
Payroll Taxes	29,488	19,774	31,350	(1,862)	-6%		
Health Insurance	41,600	29,425	41,600	-	0%		
Payroll Admin	1,500	1,500	1,500	-	0%		
SUBTOTAL	428,533	359,296	454,296	(25,763)	-6%		
PROFESSIONAL FEES							
Design & Copy Editing Services	-	-	5,000	(5,000)	-100%	Goal 4 - Develop a communications and outreach campaign.	Distribute materials in dominate languages.
Website Maint. & Tech Support	4,000	3,883	2,000	2,000	100%		
Interpreter Services	600	-	600	-	0%	Goal 1 - Increase housing inventory	
Accounting and Audit	32,800	12,397	20,000	12,800	64%		
Legal Fees	16,000	8,168	16,000	-	0%		
Consulting	40,000	38,772	24,000	16,000	67%		
SUBTOTAL	93,400	63,220	67,600	12,800	1		
TRAVEL AND TRAINING							
Airfare	-	-	-	-	0%	Goal 5 - Stragnthen and support the organization and the people who support the work.	
Registration Fees	-	-	2,900	(2,900)	-100%		
Hotel	-	-	6,100	(6,100)	-100%		
Per diem	-	-	3,250	(3,250)	-100%		
Mileage	-	-	6,252	(6,252)	-100%		
SUBTOTAL	15,000	11,610	18,502	(3,502)	-19%		
Strategic Plan Investments							
	-	-	-	-	-		
Total Operating Expenses	\$ 624,999	\$ 498,926	\$ 623,586	\$ 1,413	0%		
Other Revenue and Expenses							
Office Depreciation	6,621	6,621	6,621	-	0%		
Total Net Income/Change in Net Assets	\$ (1,796)	\$ 144,383	\$ (13,341)	\$ 11,545	-87%		

Innsbruck Lodge Update

Presented by: Erik Guzman

Title: Project and Program Associate

Date: July 1, 2024

Background

Funding

- MLH & Town awarded Homekey Round 2 on May 2022 (\$4,560,000)

Acquisition

- MLH acquired property in August 2022

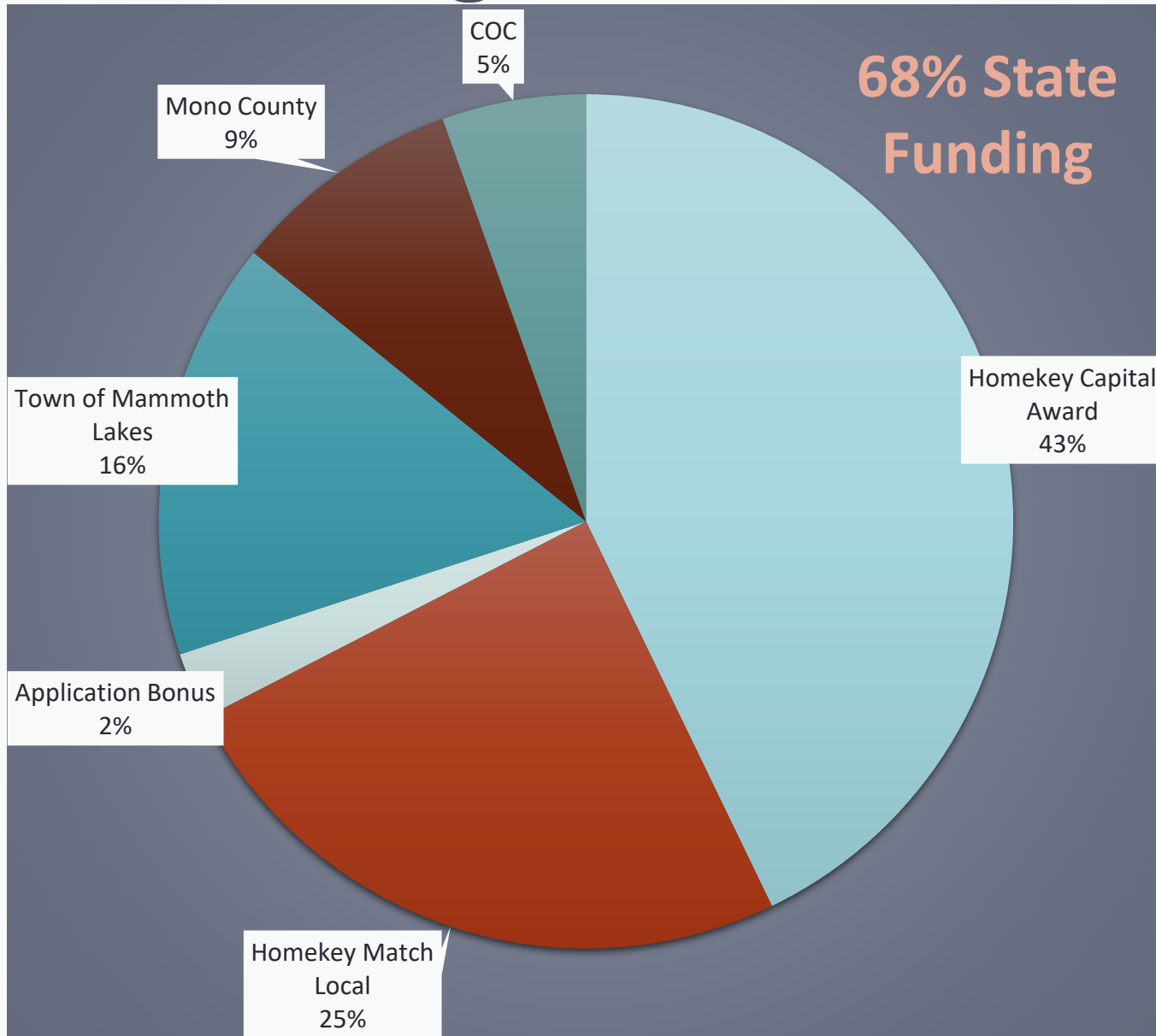
Permits

- Finished Demo March 2023
- Building Permit issued June 2023

Units

- TCO for 6 units May 2024
- COO expected by Fall 2024 for all 16 units

Funding Stack



Funding Sources

- Homekey Capital Award \$2,700,000
- Homekey Match Local \$1,550,000
- Application Bonus \$160,000
- Town of Mammoth Lakes \$1,000,000
- Mono County \$550,000
- COC \$343,338

Development Budget

Acquisition \$3,503,887

Est. Construction \$2,557,700

All Soft with Dev. \$477,000

Contingency \$149,000

Total Budget \$6,687,587

**Percent Spent to Date
up to June 2024: 91%**

Construction Budget & Percent Completed

**Percent Completed
as of June 2024: 87%**

Project Update

Temporary Certificate of Occupancy

TCO was issued on 05/02/2024

TCO expiration date on 01/30/2025

TCO Units/Punch Walk

Final Punch Walk completed 05/29/2024

Outstanding items to be completed within the next 30 days

Electrical

Electrical Equipment was ordered on October 2023. Expected arrival of electrical equipment Fall 2024

Lift installed

Lift has been installed and passed inspection.



Access Apartments Update

Presented by: Erik Guzman

Title: Project and Program Associate

Date: July 1, 2024

Background

2017

- Purchased by Mammoth Lakes Housing, Inc.

2018

- Request for Proposal (RFP) for architecture firm

2019

- Public design workshops
- NEPA environmental reports
- HOME Application submitted

2020

- Building permit approvals
- Cost of project increases by 39%

2021

- Value-engineering
- Fundraising launch
- CDBG application

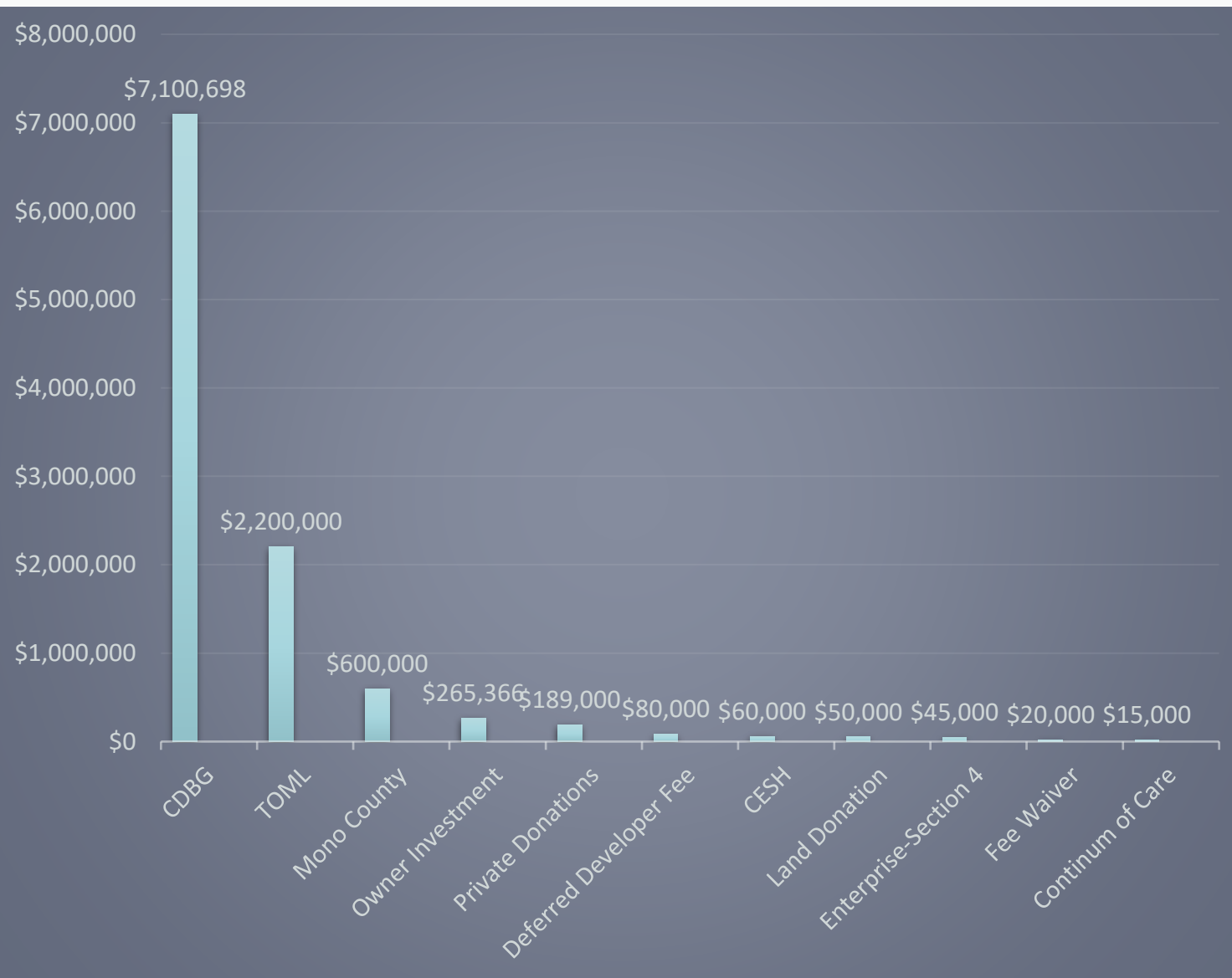
2022

- NEPA update; secure construction financing; explore additional funding; meeting road show; pursue fee waivers; extend building permit; grant awards made, etc. HOME and CDBG grant awarded for more than \$6M.

2023

- Final funding gap filled by Town of Mammoth Lakes and Mono County

Funding Sources



Funding Sources

- CDBG \$7,100,698
- TOML \$2,200,000
- Mono County \$600,000
- Owner Inv. \$265,366
- Private Donations \$189,000
- Def. Developer Fee \$80,000
- CESH \$60,000
- Land Donation \$50,000
- Enterprise-Section 4 \$45,000
- Fee Waiver \$20,000
- Continuum of Care \$15,000

Development Budget

Reserves \$60,000

Contingency \$740,432

Acquisition \$1,255,374

All Soft with Dev. \$1,678,387

Construction \$6,990,871

Total Budget \$10,725,064

Percent Spent to Date up to June 2024: 38%

Predevelopment Milestones



Southern California Edison (SCE)

3 Phase Power design drawings were sent to Shawn (SCE Rep.)

Pending Easements

Construction Permit

Received construction permits!!!

Next step is to provide town with 3 hard permitted copies of the plans and pay fees

Fees

Pending payment:

TOML

MUSD

Letter of Interest

Signed LOI on 05/17/2024 for an amount not to exceed \$100,000.

Exhibits finalized on 06/18

Project Update

Ongoing Owner Architect Contractor (OAC) Meetings

We are having weekly call with the team

Financial Closing

HOME is no longer funding project

CDBG is covering the full amount \$7.1 million

Est. Construction Start

July 2024

General Contractor

Provide GC with an LOI not to exceed \$100,000

\$100,000 used for pre-construction activities, none of which involve physical construction on the site

Est. Occupancy

Fall 2025



**FIRST AMENDMENT TO
SUBRECIPIENT AGREEMENT**

BETWEEN

**Town of Mammoth Lakes
AND
Mammoth Lakes Housing, Inc.
FOR
21-CDBG-HA-00015**

PARTIES: Mammoth Lakes Housing, Inc. (“Subrecipient”) and the Town of Mammoth Lakes (“Town”) (collectively, the “Parties”) hereby agree to enter into this First Amendment (“First Amendment”) to the subrecipient agreement between the Parties dated May 5, 2022 (“Agreement”) as set forth below, effective as of July _____, 2024.

AMENDMENTS: The following amendments are intended to reflect the following revisions to the Grant: (1) an increase in the CDBG grant amount to an amount not to exceed \$7,191,716; (2) acknowledge that the CDBG grant funds will be provided to the Subrecipient in the form of a grant, rather than as a loan; and (3) increase the unit count of the project to thirteen units, rather than eleven units.

1. Section I.A – Program Delivery is hereby amended to read as follows:

Program Delivery

Activity #1 Housing Rehabilitation – The Grantee will provide the Grant funds to the Subrecipient in the form of a grant to rehabilitate the existing commercial property owned by the Subrecipient and located at 238 Sierra Manor Road into thirteen affordable apartments.

Subrecipient shall ensure that all necessary tasks related to the delivery of the activity and specified in the Grantee’s Standard Agreement Detailed Scope of Work (Exhibit E, Section IV) and Budget Report are completed and adhered to.

2. Section I.B, Paragraph 2 is hereby amended to read as follows:

The Subrecipient certifies that the activities carried out under this Agreement will meet the National Objective to benefit low- and moderate-income persons. The National Objective will be met because CDBG program funds will be used in the Town of Mammoth Lakes to rehabilitate two structures to provide income-restricted apartments to low- (< 80% AMI) and moderate-income (< 120% AMI) households. Each household will be income certified to verify that they meet the target income requirements. 54% of the units (7 units) will be restricted to households earning up to 80% of the Mono County AMI and 46% of the units (6 units) will be restricted to households earning up to 120% of the Mono County AMI. The Grantee and/or the Subrecipient will market the program to the targeted groups: families, workforce, and single adults.

3. Portions of Section I.C are hereby amended to read as follows:

<u>Activity</u>	<u>Units Per Month</u>	<u>Total Units/Year</u>
<u>Activity #1</u>	<i>will vary</i>	<i>13</i>

4. The table in Section III is hereby amended to read as follows:

Item	Amount
Multi-Family Housing Rehabilitation	\$7,191,716 (\$7,098,884 in CDBG Grant funds + \$92,831.68 in CDBG-PI)
General Administration	\$1,817.16
TOTAL	\$7,193,533

5. Section IV, Paragraph 1 is hereby amended to read as follows:

It is expressly agreed and understood that the total amount to be paid by the Grantee to the Subrecipient under this Agreement shall not exceed \$7,191,716. Drawdowns for the payment of eligible expenses shall be made against the line-item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line-item budgets specified in Paragraph III and in accordance with performance.

NO OTHER AMENDMENT: Except as modified by this First Amendment, the Agreement remains binding on the Parties in full force and effect according to its terms.

INCORPORATION OF FIRST AMENDMENT: From and after the Effective Date of this First Amendment, wherever the term "Agreement" or contract appears in the Agreement, it shall be read and understood to mean the Agreement as amended by this First Amendment.

COUNTERPARTS: This First Amendment may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one fully executed First Amendment.

AUTHORITY TO EXECUTE: Each signatory executing this First Amendment on behalf of the Party below warrants that he or she is authorized to enter into and bind that Party to the terms of this First Amendment.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed on the Effective Date.

Town of Mammoth Lakes

Mammoth Lakes Housing, Inc.

By _____
Daniel C. Holler, Town Manager

By _____
Patricia Robertson, Executive Director

Attest _____
Town Clerk

Countersigned: _____
Finance Officer

By _____
Title _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Fed. I. D. 77-0043067

Town Attorney

AFFIRMATIVE ACTION APPROVAL

Contract Compliance Supervisor/
Town Clerk

SUBRECIPIENT AGREEMENT

**AGREEMENT BETWEEN Town of Mammoth Lakes
AND
Mammoth Lakes Housing, Inc.
FOR
21-CDBG-HA-00015**

THIS AGREEMENT, entered this 5th day of May, 2022 by and between the Town of Mammoth Lakes (herein called the “Grantee”) and Mammoth Lakes Housing, Inc. (herein called the “Subrecipient”).

WHEREAS, the Grantee has applied for and received funds from the State of California, Department of Housing and Community Development, State Community Development Block Grant Program (“the Department”) originating from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds for its Community Development Block Grant (CDBG) Grant 21-CDBG-HA-00015, Access Apartments Housing Rehabilitation project (the “Grant”).

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering the Grant in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Program Delivery

Activity #1 Housing Rehabilitation – The Grantee will loan the Grant funds to the Subrecipient to rehabilitate the existing commercial property owned by the Subrecipient and located at 238 Sierra Manor Road into eleven one-bedroom apartments.

Subrecipient shall ensure that all necessary tasks related to the delivery of the activity and specified in the Grantee’s Standard Agreement Detailed Scope of Work (Exhibit E, Section IV) and Budget Report are completed and adhered to.

General Administration

Subrecipient will also conduct all administrative duties in conjunction with this activity, such as, labor compliance reporting and oversight. Additionally, Subrecipient will provide overall general coordination of program reporting to CDBG, fiscal reporting, and general coordination on the Grant.

B. National Objectives

All activities funded with CDGB funds must meet one of the CDBG program’s National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activities carried out under this Agreement will meet the National Objective to benefit low- and moderate-income persons. The National Objective will be met because CDBG program funds will be used in the Town of Mammoth Lakes to rehabilitate two structures to provide income-restricted apartments to low-income households. Each household will be income certified to verify that they meet the low-income requirements and earn less than 80% of the Area Median Income for Mono County. The Grantee and/or the Subrecipient will market the program to the targeted groups: families, workforce, and single adults.

C. Levels of Accomplishment – Goals and Performance Measures

The levels of accomplishment may include such measures as units rehabbed, persons or households assisted and should also include time frames for performance.

The Subrecipient agrees to provide the following levels of program services:

<u>Activity</u>	<u>Units per Month</u>	<u>Total Units/Year</u>
Activity #1	<i>will vary</i>	<i>11</i>

D. Staffing

Executive Director
Grant & Financial Associate
Housing Navigator
Rural West Intern

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the effective date of the Grantee’s Standard Agreement for the Grant and end on the date specified in the Grantee’s Standard Agreement for the Grant. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

III. BUDGET

Item	Amount
Multi-Family Housing Rehabilitation	\$2,318,486
Rehabilitation Activity Delivery	\$472,212
General Administration	\$210,003 (\$15,000 reserved for Grantee)
TOTAL	\$3,000,701

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee to the Subrecipient under this Agreement shall not exceed \$2,985,701. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR Part 84.21.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee

Daniel C. Holler, Town Manager
Town of Mammoth Lakes
437 Old Mammoth Road
P.O. Box 1609
Mammoth Lakes, CA 93546
P: (760) 965-3600
F: (760) 934-7493

Subrecipient

Patricia Robertson, Executive Director
Mammoth Lakes Housing, Inc.
587 Old Mammoth Road #4
P.O. Box 260
Mammoth Lakes, CA 93546
P: (760) 934-4740
F: (760) 934-4724

VI. SPECIAL CONDITIONS

None.

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed

by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR Part 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR Part 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR Part 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with 2 CFR Part 200 subpart E, "Cost Principles for Non-Profit Organizations" (formerly OMB Circular A-122), as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a) Records providing a full description of each activity undertaken;
- b) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c) Records required to determine the eligibility of activities;
- d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f) Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g) Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by various federal, state, and county laws, regulations, and ordinances unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Closeouts

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and 2 CFR Part 200.500 (formerly OMB Circular A-133).

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report semi-annually all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. A copy of each report shall be provided by the Subrecipient to the Grantee no later than January 30th and July 31st. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balance on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee. Program Income reports completed outside of the term of this agreement will be billed on an hourly basis.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. Payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

5. State CDBG Report(s)

The Subrecipient shall submit any required status reports to the State. A copy of each report shall be provided by the Subrecipient to the Grantee in a timely fashion.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR Part 200.318.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the Town's municipal boundary with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement . If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period .
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24

CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement. The 504 Coordinator is designated as Patricia Robertson, Executive Director, Mammoth Lakes Housing, Inc.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program, including marketing, in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written

representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer. Additional State of California Requirements regarding the State Equal Opportunity provisions are contained in Attachment A.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates

compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. “Section 3” Clause

- a) Compliance: Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and

very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

- b) Notifications: The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- c) Subcontracts: The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

- a) Approvals: The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.
- b) Monitoring: The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts

shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

- c) Content: The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
- d) Selection Process: The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a) The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b) No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

d) Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information,

as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and

- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

E. NEPA Compliance

The Subrecipient shall prepare the required National Environmental Policy Act (NEPA) documentation consistent with 42 USC 4321-4347 and the implementing regulations at 24 CFR Parts 50 and 58. The Subrecipient shall provide the required NEPA documentation to the State and the original documentation to the Grantee.

XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.


IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

Town of Mammoth Lakes (Grantee)

Mammoth Lakes Housing, Inc. (Subrecipient)

By 
Daniel C. Holler, Town Manager

By 
Patricia Robertson, Executive Director

Attest 
TOWN CLERK

Countersigned: 
FINANCE OFFICER

By Rob Patterson
Title Finance Director

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


TOWN ATTORNEY

Fed. I.D. 77-0043067

AFFIRMATIVE ACTION APPROVAL


CONTRACT COMPLIANCE SUPERVISOR/
TOWN CLERK

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Town of Mammoth Lakes
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546
Attn: Rob Patterson, Town Manger

NO FEE FOR RECORDING PURSUANT
TO GOVERNMENT CODE
SECTIONS 6103 AND 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN: 035-210-014-000

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(21-CDBG-HA-00015 and Town General Fund – Access Apartments)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is dated as of June _____, 2024, and is made by and between THE TOWN OF MAMMOTH LAKES (the "Town") and ACCESS APARTMENTS AFFORDABLE HOUSING, LLC, a California limited liability company and controlled affiliate of MAMMOTH LAKES HOUSING, INC., a California nonprofit public benefit corporation (collectively referred to herein as "Owner"). The Town and Owner shall be referred individually as "the Party," and collectively, as "the Parties."

RECITALS

Capitalized terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

1. On January 21, 2020, The California Department of Housing and Community Development (Department) announced the availability of approximately \$60 million in federal Community Development Block Grant (CDBG) funding allocated for funding years 2019 and 2020 to the state from the United States Department of Housing and Urban Development (HUD), pursuant to the Housing Community Development Act of 1974, as amended. The Department amended the previously issued January 2020 CDBG program Notice of Funding Availability (NOFA) on April 3, 2020, to allow applicants additional time to complete their competitive applications and to provide clarifying instructions regarding housing element eligibility. Both amendments are incorporated.
2. Owner acquired certain real property located at 238 Sierra Manor Road, in the Town of Mammoth Lakes, County of Mono (APN-035-210-014-000) as further described in Exhibit A incorporated herein (the "Property"). The Property will be improved with thirteen (13) units of housing (the "Improvements"). The Property and Improvements are

referred to in this Agreement as the "Development."

3. The Town and Owner intend for the Development to be used as Permanent Housing. This Agreement is being recorded to memorialize the Town's grant of CDBG funds (21-CDBG-HA-00015) in the amount of three million seven hundred and one dollars (\$3,000,701) and the Town's grant of General Funds in the amount of two million two hundred thousand dollars (\$2,200,000).

The CDBG Program grant requires that 51%, or seven (7) units, of the Development serve households earning below 80% of the Area Median Income for fifty-five (55) years.

The Town General Fund grant requires that 23%, or three (3) units, of the Development serve households earning up to 120% of the Area Median Income for fifty-five (55) years.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by this reference, and the covenants and promises contained in this Agreement, the receipt and sufficient of which are hereby acknowledged, the Parties declare as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions.

When used in this Agreement, the following terms have the following meanings:

- (a) "Actual Household Size" means the actual number of persons in the applicable household.
- (b) "Adjusted Income" means with respect to the household occupying a Unit, the income from all persons in the household including nonrelated individuals, calculated using the methods to calculate income adopted by HCD.
- (c) "Area Median Income" means the median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of Mono, California as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the Town shall provide other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD or HCD.
- (d) "At Risk of Homelessness Household" means a household that is at risk of homelessness, as defined in Section 578.3 of Title 24 of the Code of Federal Regulation.
- (e) "Eligible Household" means households that meet the income requirements of the units ranging from 50-120% of the Area Median Income, and which are not greater than three (3) eligible households.

(f) "Homeless Household" means housing for individuals and families who are experiencing homelessness, as defined in Section 578.3 of Title 24 of the Code of Federal Regulation.

(g) "HUD" means the United States Department of Housing and Urban Development.

(h) "Permanent Housing" means housing, dwellings, or other living accommodations where the landlord does not limit the tenant's length of stay or restrict the tenant's movements and where the tenant has a lease and is subject to the rights and responsibilities of tenancy under California Civil Code Section 1940.

(i) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, ends fifty-five (55) years later.

(j) "Unit" or "Doors" means one or all of the thirteen (13) units in the Development.

ARTICLE 2.
AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirements.

(a) During the Term, Owner shall provide thirteen (13) doors at the Development that will be occupied by, or, if vacant, available for occupancy by Eligible Households. The Development shall include eleven (11) one-bedroom units and two (2) studio units. During the Term, three (3) one-bedroom units shall be made available for occupancy to Eligible Households that qualify as 120% AMI Households, the balance of the units shall be made available to Eligible Households.

Section 2.2 Accessibility. Owner, or its agent(s), shall operate the Development at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of the Standard Agreement.

ARTICLE 3.
OPERATION OF THE DEVELOPMENT

Section 3.1 Residential Use; Compliance with Standard Agreement.

Owner shall operate the Development as Permanent Housing, and in accordance with the terms and conditions of this Agreement and the Standard Agreement for 21-CDBG-HA-00015.

Section 3.2 Covenants to Run with the Land.

The Town and Owner hereby declare its express intent that the provisions this Agreement shall run with the land and shall bind all successors in title to the Development utilized to

provide the thirteen (13) doors; provided, however, that on the expiration of the Term, said covenants and restrictions expire.

Section 3.3 Enforcement by the Town.

The Town shall retain the right to enforce this Agreement following any transfer of the Development by Owner. If Owner's successor in ownership (either in whole or in part) fails to cure the default within thirty (30) days after the Town provided notice in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, the Town shall have the right to enforce this Agreement by any remedy provided by law.

Section 3.4 Attorneys' Fees and Costs. In any action brought to enforce this Agreement, the prevailing party must be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section must be interpreted in accordance with California Civil Code Section 1717, or successor section, and any judicial decisions interpreting that statute.

Section 3.5 Nondiscrimination.

(a) There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, source of income (e.g., SSI), disability, ancestry, age, or military and veteran status, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit. Owner shall, to the extent applicable, comply with Executive Orders 11246, 11375, 11625, 12138, 12431, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and local laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted. All deeds, leases or contracts made or entered into by Owner as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the Disposition Agreement. Notwithstanding anything to the contrary, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b).

(b) Owner shall cause the Development to be operated at all times in compliance with all applicable provisions of: (i) the Unruh Act, including but not limited to California Civil Code Sections 51.2, 51.3 and 51.4 which relate to the requirements for lawful senior housing; (ii) the California Fair Employment and Housing Act, Government Code Section 12900 et seq., which relates to lawful senior housing; (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, 42 U.S.C. Section 3607(b) and 24 CFR 100.304, which relate to lawful senior housing; (v) the Americans With Disabilities Act of 1990, which relate to disabled persons access; and (vi) any other applicable law or regulation.

The provisions of this subsection will survive expiration of the Term or other termination of this Regulatory Agreement and remain in full force and effect.

(c) Owner shall not discriminate against any applicants for tenancy or program participation on the basis of source of income or rent payment (for example, without limitation, Temporary Assistance for Needy Families (TANF) or Section 8).

Section 3.6 Notice of Expiration. Prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Residents containing the information and meeting the requirements set forth in California Government Code Sections 65863.10 and 65863.11, as such may be amended from time to time.

Section 3.7 Enforcement by the Town. If the Owner fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the Town provided notice in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, the Town shall have the right to enforce this Agreement by any remedy provided by law; including but not limited to an action at law or equity to compel Owner's performance of its obligations hereunder, and/or for damages

ARTICLE 4. MISCELLANEOUS

Section 4.1 Governing Law.

This Agreement is governed by the laws of the State of California.

Section 4.2 Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by the Town in writing, but no waiver by the Town of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

Section 4.3 Recording and Filing.

The Town and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Mono.

Section 4.4 Amendments.

This Agreement may be amended only by a written instrument executed by the Parties hereto or their successors in title that is duly recorded in the Official Records of the County of Mono.

Section 4.5 Notices.

Formal notices, demands, and communications between the Parties delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt if (i) personally delivered by a commercial service which furnishes signed receipts of delivery; or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

The Town: Town Mammoth Lakes
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546
Attn: Rob Patterson, Town Manager

Owner: Access Apartments Affordable Housing, LLC
Mammoth Lakes Housing, Inc.
P.O. Box 260
Mammoth Lakes, CA 93546
Attn: Patricia Robertson, Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 4.6 Subordination.

This Agreement shall be recorded in first third-lien position and shall be subordinate to the 19 HOME 17044 liens to be recorded against the Property.

Section 4.7 Assignment. The Town may assign their rights and obligations under this Agreement to any instrumentality of the Town or other public entity.

Section 4.8 No Claims. Nothing contained in this Agreement shall create or justify any claim against the Town by any person that Owner may have employed or with whom Owner may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Development.

Section 4.9 Third Party Beneficiaries. The parties acknowledge and agree that the Department of Housing and Community Development is an express third-party beneficiary of the affordability restrictions set forth herein and shall be entitled to enforce the affordability restrictions set forth herein solely through an action for specific performance, as if HCD was a party herein. The Department has made the Grant in reliance on this Agreement, and that the Department has a direct right of enforcement against the Owner in the event of the Owner's breach, default, or other non-compliance under this Agreement, which right is exercisable in the Department's sole and absolute discretion. There shall be no other third-party beneficiaries to this Agreement.

Section 4.10 Term. The provisions of this Agreement shall apply to the Development for the entire Term.

Section 4.11 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement will not be any way affected or impaired thereby.

Section 4.12 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original and may be signed in counterparts.

Section 4.13 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and no modification hereof shall be binding unless done in accordance with Section 4.4 of this Agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, the Town and Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

ACCESS APARTMENTS AFFORDABLE HOUSING, LLC, a California limited liability company

By: MAMMOTH LAKES HOUSING, INC., a California nonprofit public benefit corporation, its sole and managing member

By: _____
Patricia Robertson, Executive Director

Date: _____

THE TOWN OF MAMMOTH LAKES, political subdivision of the State of California

By: _____
Rob Patterson, Town Manager

Date: _____

ATTEST:

Jamie Gray, Town Clerk

APPROVED AS TO FORM:
Andrew Morris, Town Attorney

By: _____

[All signatures must be notarized.]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Name : Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Town of Mammoth Lakes
PO Box 1609
Mammoth Lakes, CA 93546
Attn: Rob Patterson, Town Manager

NO FEE FOR RECORDING PURSUANT
TO GOVERNMENT CODE
SECTIONS 6103 AND 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN: 035-210-014-000

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(21-CDBG-HA-00015 and Town General Fund – Access Apartments)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is dated as of July _____, 2024, and is made by and between THE TOWN OF MAMMOTH LAKES (the "Town") and ACCESS APARTMENTS AFFORDABLE HOUSING, LLC, a California limited liability company and controlled affiliate of MAMMOTH LAKES HOUSING, INC., a California nonprofit public benefit corporation (collectively referred to herein as "Owner"). The Town and Owner shall be referred individually as "the Party," and collectively, as "the Parties."

RECITALS

Capitalized terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

1. On January 21, 2020, The California Department of Housing and Community Development (HCD) announced the availability of approximately \$60 million in federal Community Development Block Grant (CDBG) funding allocated for funding years 2019 and 2020 to the state from the United States Department of Housing and Urban Development (HUD), pursuant to the Housing Community Development Act of 1974, as amended. HCD amended the previously issued January 2020 CDBG program Notice of Funding Availability (NOFA) on April 3, 2020, to allow applicants additional time to complete their competitive applications and to provide clarifying instructions regarding housing element eligibility. Both amendments are incorporated.
2. Owner acquired certain real property located at 238 Sierra Manor Road, in the Town of Mammoth Lakes, County of Mono (APN-035-210-014-000) as further described in Exhibit A incorporated herein (the "Property"). The Property will be improved with thirteen (13)

units of housing (the "Improvements"). The Property and Improvements are referred to in this Agreement as the "Development."

3. The Town and Owner intend for the Development to be used as Permanent Housing. This Agreement is being recorded to memorialize the Town's grant of CDBG funds (21-CDBG-HA-00015) in the amount of seven million one-hundred and ninety-one thousand seven-hundred and fifteen dollars and fifty-two cents (\$7,191,715.52) and the Town's grant of General Funds in the amount of two million two hundred thousand dollars (\$2,200,000) to the Owner. In exchange for receiving said funds, Owner agrees to restrict seven (7) of the 13 Units of the Development to Low-Income Households, and six (6) of the 13 Units of the Development to Moderate-Income Households for the entire Term.
4. The purpose of this Agreement is to regulate and restrict occupancy, rent, operations, ownership and management of the Development. This Agreement is not to be construed as altering any zoning, building, or other regulations of the Town, nor is this Agreement to be considered as a development agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by this reference, and the covenants and promises contained in this Agreement, the receipt and sufficient of which are hereby acknowledged, the Parties declare as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions.

When used in this Agreement, the following terms have the following meanings:

(a) "Actual Household Size" means the actual number of persons in the applicable household.

(b) "Adjusted Income" means with respect to the household occupying a Unit, the income from all persons in the household including nonrelated individuals, calculated using the methods to calculate income adopted by HCD.

(c) "Area Median Income" means the median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of Mono, California as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the Town shall provide other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD or HCD.

(d) "Assumed Household Size" means the household size "adjusted for family size appropriate for the unit" which in this instance means three (3) individuals for a one-bedroom unit and two (2) individuals for a studio unit.

(e) "Eligible Household" means a Low-Income Household or Moderate-Income Household, that qualifies on the basis of income to occupy the appropriately designated Unit set forth in this Agreement.

(f) "HCD" means the California Department of Housing and Community Development.

(g) "HUD" means the United States Department of Housing and Urban Development.

(h) "Low-Income Household" means persons and families whose annual incomes do not exceed eighty percent (80%) of the Area Median Income.

(i) "Moderate-Income Household" means persons and families whose annual incomes do not exceed one-hundred twenty percent (120%) of the Area Median Income.

(j) "Permanent Housing" means housing, dwellings, or other living accommodations where the landlord does not limit the tenant's length of stay or restrict the tenant's movements and where the tenant has a lease and is subject to the rights and responsibilities of tenancy under California Civil Code Section 1940.

(k) "Operating Expenses" means all income generated in connection with operation of the Development including rental income for Units, rental subsidy payments, and interest on any accounts other than approved reserve accounts, related to the Development. "Operating Income" does not include security and equipment deposits, payments to Owner for supportive services (except for funds applied towards the cost of on-site supportive service coordination), or tax benefits received by the Owner.

(l) "Rent" means all charges, other than deposits, paid by, or on behalf of, the tenant for the use and occupancy of a Unit, and any mandatory charge for direct or supportive tenant services in a rental housing development, including a Utility Allowance.

(m) "Residual Receipts" means project funds remaining after payment of expenses as described in Paragraph 3.7 of this Agreement.

(n) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, ends fifty-five (55) years later.

(o) "Unit" or "Doors" means one or all of the thirteen (13) units in the Development.

(p) "Utility Allowance" means the rent allowance for approved utility services for each Unit as determined and published annually by the Housing Authority.

ARTICLE 2.
AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirements.

(a) During the Term, Owner shall provide thirteen (13) Doors at the Development that will be occupied by, or, if vacant, available for occupancy by Eligible Households. During the Term, Fifty-Four Percent (54%), or seven (7), of the Units shall be occupied by Low-Income Households, and Forty-Six Percent (46%), or six (6), of the Units shall be occupied by Moderate-Income Households.

Section 2.2 Accessibility. Owner, or its agent(s), shall operate the Development at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of the Standard Agreement.

Section 2.3 Calculation of Rent. The maximum rent paid by Tenants of a Unit shall be as follows (the "Affordable Rent")

(a) Maximum monthly Rent for a Low Income Unit shall not exceed one-twelfth (1/12) of the product of thirty percent (30%) times eighty percent (80%) of the Area Median Income with adjustments for the Assumed Household Size.

(b) Maximum monthly Rent for a Moderate Income Unit shall not exceed one-twelfth (1/12) of the product of thirty percent (30%) times one hundred twenty percent (120%) of the Area Median Income with adjustments for the Assumed Household Size.

(c) Rent may be increased annually upon adoption by HUD of new Affordable Rent limits and publication by HCD.

Section 2.4 Certification of Tenant Income and Household Size.

(a) The income and household size of all households occupying a Unit shall be certified by Owner prior to occupancy and re-certified annually thereafter **in a manner approved by the Town** and specified in the Management Plan.

(b) Subject to Section 2.3(b), above, where a household occupying a Unit designated for occupancy by a Low-Income Household no longer meets the Low-Income Household qualifications at re-certification, but meets the qualifications as an Eligible Household for the Moderate-Income Household level, the Rent appropriate for that income level shall be charged to the tenant. In the event that this occurs, the Owner shall rent the next available Unit to a Low-Income Household at a Rent not exceeding the maximum Rent specified in Section 2.3, above.

ARTICLE 3.
OPERATION OF THE DEVELOPMENT

Section 3.1 Residential Use; Compliance with Standard Agreement. Owner shall operate the Development as Permanent Housing, and in accordance with the terms and conditions of this Agreement and the Standard Agreement for 21-CDBG-HA-00015. No part of the Units shall be operated as transient housing in which the term of occupancy is less than thirty (30) days.

Section 3.2 Hazard and Liability Insurance. Owner covenants to maintain insurance equivalent to a commercial general liability policy in the amount of One Million Dollars (\$1,000,000) combined single limit, including contractual liability coverage. Such insurance shall be written on an occurrence basis and shall name Town as loss payee as its interest may appear. Owner covenants to maintain and keep the Development insured against loss or damage by earthquake, fire, and such other hazards, casualties, and contingencies, and by such companies on such forms and in the amount of the replacement cost of the Development, and shall deliver a copy of proof of such policies to Town, together with receipts satisfactory to Town, evidencing payment of the premiums. Owner shall provide Town not less than thirty (30) days advance written notice of the cancellation, expiration, or termination of any such policy or any material change in the coverage afforded by it. Proof of renewal policies and any replacement policies, together with premium receipts satisfactory to Town, shall be delivered to Town at least thirty (30) calendar days prior to the expiration of existing policies. Neither Owner nor Town shall by reason of accepting, rejecting, approving, or obtaining insurance incur any liability for the existence, nonexistence, form, or legal sufficiency of such insurance, or solvency of any insurer for payment of losses. All insurance proceeds for such losses must be utilized for the repair or restoration of the Development.

Section 3.3 Management Plan. No later than sixty (60) days after the execution of this Agreement, Owner shall submit to the Town a plan for management of and tenant selection procedures for the Development (the "Management Plan") for review and approval. Initial occupancy of the Development shall not be permitted until the Management Plan has been approved by the Town. The Town shall keep the Management Plan on file for the duration of the Agreement. In conjunction with the review of the Annual Report pursuant to Section 3.10, the Management Plan may be reviewed and revised at the request of the Town or the Owner and such revision shall be submitted to and approved by the Town in conjunction with the approval of the **Annual Report**. The Management Plan shall, among other things, contain the following information:

- (a) Specific actions to be taken by Owner to affirmatively market the vacant Units in a manner that ensures equal access to all persons in any category protected by federal, state, or local laws governing discrimination, and regardless of any arbitrary factor;
- (b) Reasonable criteria for the determination of tenant eligibility;
- (c) Requirements that Eligible Households be selected based on order of applications, lottery, or other reasonable method approved by the Town;
- (d) Procedures specifying how tenant applications deemed to be ineligible shall be notified of the reason for their ineligibility and opportunity to appeal this determination;
- (e) Methodology for maintaining a waiting list of eligible applicants;
- (f) Specific procedures for obtaining information regarding perspective tenants' incomes as necessary to certify that such income does not exceed the applicable Low- or Moderate-Income Household eligibility limit;
- (g) Specific utility services subject to the Utility Allowance; and

(h) A list stating the annual dates on which each report, audit, or other monitoring document required by this Agreement shall be delivered to the Town.

Section 3.4 Annual Operating Budget.

(a) The fiscal year for the Development shall commence on July 1 and conclude on June 30 ("Fiscal Year").

Commented [PR1]: Changed to conform to our fiscal year

(b) No later than 60 days prior to the beginning of each subsequent Fiscal Year of the Development, the Owner shall submit to the Town a proposed annual operating budget on a form provided by the Town ("Annual Operating Budget"). The proposed Annual Operating Budget shall maintain the same format and budgetary line items as established in the initial Operating Budget unless specific changes are approved in advance by the Town. The proposed Annual Operating Budget shall set forth the Owner's estimate of the Development's income, Operating Expenses, and debt service for the upcoming year, reserves, proposed rent adjustments, and a year-to-date operating statement. During the term of this Agreement, the Owner shall comply with the then current CDBG Program Underwriting Standards (HCD Uniform Multifamily Housing Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8310), unless approved in advance by the Town after review of sufficient justification thereof. Annual Operating Budgets and rent adjustments are subject to approval by the Town.

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(c) Increases to the Annual Operating Budget of up to the greater of five percent (5%) or the CPI adjustments in any line item of the Annual Operating Budget shall be deemed approved by the Town, provided that the total Operating Expenses in the Annual Operating Budget do not exceed the amount per unit allowed in subsection (b) herein. Owner shall operate the Development in accordance with the approved Annual Operating Budget.

Section 3.5 Required Reserves.

(a) Replacement Reserve Account.

(1) Commencing no later than the end of the second month following the initial occupancy of the Development or such other date as the Town shall designate in writing, the Owner shall establish a segregated interest-bearing replacement reserve account in an FDIC or other comparable federally-insured financial institution ("Replacement Reserve Account"). The Owner shall make monthly deposits from Operating Income to the Replacement Reserve Account in the amount of \$500 per unit per year (\$6,500 annually, or \$541.67 per month). The Town may review the adequacy of these monthly deposits on an annual basis, and required adjustments, as it deems necessary.

(2) Withdrawals shall only be made for capital improvements, such as replacing or repairing structural elements, furniture, fixtures or equipment of the Development that are reasonably required to preserve the Development. Owner may withdraw, for a qualifying maintenance improvement, from the Replacement Reserve Account up to Five Thousand Dollars (\$5,000.00) per Fiscal Year or any amount included in the Annual Operating Budget for the Fiscal Year of the withdrawal without advance written approval from the Town. All other withdrawals from the Replacement Reserve Account must be approved in advance by the Town or be included in the approved Annual Operating Budget.

(3) If at any time the Replacement Reserve Account balance exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), Owner shall have an independent physical inspection of the Development, conducted by a Town approved inspector and paid for from said account. Said inspector shall evaluate the condition of the Development and determine what capital improvements are required. A copy of the inspection report shall be delivered to the Town. Based on the inspection report, Owner shall develop and deliver a capital improvement work plan to the Town within 30 days after the date of the inspection report. Failure of Owner to make and completed approved capital improvements within one year after approval by the Town of said work plan, will be deemed a default under this Agreement.

(b) Operating Reserve Account

(1) Commencing no later than the end of the second month following the initial occupancy of the Development, or such later as the Town shall designate in writing, the Owner shall establish an Operating Reserve Account or sub account within the project's general operating account ("Operating Reserve Account"). The minimum Operating Reserve Account balance shall be Sixty Thousand Dollars (\$60,000). Whenever the Operating Reserve Account balance falls below said amount, Owner shall make monthly deposits from project income to fully fund the Operating Reserve Account prior to distribution of Residual Receipts.

(2) Owner may transfer funds from the Operating Reserve Account only to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies (greater than five percent 5% of the total Development rental capacity), and other expenses that vary from month to month. Owner shall not withdraw or transfer funds from this account for any other purpose without the prior written approval of the Town, which may not be unreasonably conditioned, delayed or withheld. If the Operating Reserve Account reaches a balance equal to or greater than One Hundred and Twenty Thousand Dollars (\$120,000), the Town may approve a reduction in payments to the Operating Reserve Account to an amount necessary to maintain the account balance at this level.

Section 3.6 Use of Income from Operations.

(a) The Owner, or its management agent, shall promptly deposit all Operating Income in a segregated account established exclusively for the Development with an FDIC or other comparable federally-insured financial institution.

(b) Withdrawals from said account shall be made only in accordance with the provisions of this Agreement and the Annual Operating Budget, and shall be disbursed, applied, or reserved and set aside for payment when due for the following:

- (1) Approved Operating Expenses;
- (2) Deposits to Replacement Reserve and Operating Reserve and
- (3) Payment of a Developer Fee ~~as approved in the Annual Operating~~

Accounts;

~~Budget;~~

(4) Payment of an asset management fee ~~as approved in the Annual Operating Budget~~, and

(5) Payment of the annual monitoring fee to the Town.

(c) The balance of the Operating Income remaining after the payments described in this Paragraph shall be deemed “Residual Receipts” to be paid and applied as provided in Paragraph 3.7, below.

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Section 3.7 Residual Receipts and Distribution

(a) Residual Receipts shall be distributed as follows:

(1) One Hundred percent (100%) to Owner;

(b) Owner shall receive Distributions only once for each Fiscal Year of the Development and only; (1) upon approval by the Town of the Annual Report submitted for that year; and (2) upon determination by the Town that the Owner is in compliance with all requirements of this Agreement and all CDBG Program Requirements.

(c) No Distributions shall be made to Owner in the following circumstances:

(1) When written notice of default has been issued by any entity with an equitable or beneficial interest in the Development;

(2) When the Town determines that the Owner or its management agent has failed to comply with the Town’s written notice of any reasonable requirement for proper maintenance of the Development.

(3) If all currently required Operating Expenses have not been paid; or

(4) If the Replacement Reserve or Operating Reserve Accounts are not fully funded as specified herein.

Section 3.8 Accounting Records. In a manner subject to Town approval, Owner shall maintain, on an accrual basis, a general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income, and expenses of the Development. All records and books relating to this system, except the general ledger, shall be kept for a period of at least seven (7) years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. The general ledger shall be kept permanently in such a manner as to ensure that it is reasonably protected from destruction or tampering. All records shall be subject to Town inspection and audit.

Section 3.9 Maintenance and Management.

(a) Owner is responsible for all maintenance, repair, and management functions for the Development, including without limitation, selection of tenants, re-certification of household income and size, evictions, collection of rents, routine and extraordinary repairs, and replacement of capital items. Owner shall maintain all units and common areas in a safe and

sanitary manner in accordance with local health, building, and housing codes, HUD housing quality standards pursuant to 24 CFR Section 882.109, and the Management Plan described in Section 3.3 of this Agreement.

(b) Owner may operate the Development and assume management functions with prior written approval of the Town. Upon a determination by the Town, and notice to the Owner thereof, that the Owner has failed to operate the Development in accordance with this Agreement, the Town may require the Owner to contract with a management agent to operate the Development, or to make such other arrangements as the Town deems necessary to ensure performance of the requirements of this Agreement.

Commented [PR4]: When will the Town put this in writing?

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(c) If the Owner is going to contract with a management agent, the management agent for the Development shall be approved by the Town and the Town shall have the right to review and approve the form of the management agent services contract. Any such contract for management services will not relieve the Owner of responsibility for proper performance of these duties. Any such agent to be used for the management functions of the Development as identified in this Section shall have a minimum of five (5) years' experience managing affordable housing apartments in the Town, or equivalent experience as deemed appropriate by the Town. Such contract shall contain a provision allowing Owner to terminate the contract without penalty upon no more than thirty (30) days' notice.

Section 3.10 Annual Report. No later than April 1 following the end of the Fiscal Year, Owner shall file with the Town an annual report ("Annual Report"). The Town shall have sixty (60) days from receipt of the Annual Report to approve such Annual Report, or to request modifications or additional information as required by this Agreement. The Annual Report shall contain a certification by the Owner as to the accuracy of such information in the Annual Report including, but not limited to, the following:

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(a) Any substantial physical defects in the Development, including a description of any major repair or maintenance work undertaken or needed in the previous and current fiscal years. Such statement shall describe what steps the Owner has taken in order to maintain the Development in a safe and sanitary condition in accordance with applicable housing and building codes.

(b) The occupancy of the Development including:

(1) The verified incomes of each current household for all Units.

(2) The current Rent charged to each household and whether this Rent includes utilities for all Units.

(c) A summary of the information received from the re-certification of tenant's incomes for all Units.

(d) Evidence of current hazard insurance policy, as applicable.

(e) Evidence of current liability insurance policy.

(f) Other information reasonably required by the Town related to the operation and maintenance of the Development.

Section 3.11 Town Review and Inspections.

(a) Upon not less than 48 hour's notice to the Owner, the Town or its designee may, at any time during the term of the Agreement, enter and inspect the physical premises and inspect all income verification documentation pertaining to the persons occupying the Units. Upon request by the Town, the Owner shall notify occupants of upcoming inspections of their Units in accordance with State law.

(b) The Town may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. The Owner shall promptly provide such information.

Section 3.12 Covenants to Run with the Land. The Town and Owner hereby declare its express intent that the provisions in this Agreement shall run with the land and shall bind all successors in title to the Development; provided, however, that on the expiration of the Term, said covenants and restrictions expire. Owner may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the Town.

Section 3.13 Right of Refusal, Restrictions on Sale, Encumbrances.

(a) Owner shall not transfer, convey, sell, or agree to sell Owner's interest in the Property without first offering the Property to the Town, except for a conveyance or transfer by gift, bequest, or inheritance. After a conveyance or transfer by gift, bequest, or inheritance, the right of first refusal granted in this Agreement shall remain in effect against the person holding title or any other interest in the Property.

(b) Before Owner sells or agrees to sell the Property, Owner, shall offer to sell the Property to the Town, in writing and on terms and conditions substantially identical to those proposed for the sale of the Property to a third party ("First Offer"). The First Offer shall, at a minimum, include the following information:

(1) The purchase price proposed for the sale to the third party and method of purchase price payment including the amount and terms of any proposed grantor financing in connection with the proposed purchase, if any;

(2) The amount of any earnest money deposit;

(3) The time and locations for the close of escrow;

(4) The name of the proposed purchaser; and

(5) The other material terms and conditions of the proposed sale of the Property.

(c) The Town shall have 60 days from the date of the First Offer to accept the First Offer.

(d) If the Town declines to accept the First Offer, Owner shall not assign, sell, or otherwise transfer any interest in the Property without prior written approval of Town, which shall not be unreasonably withheld provided the following conditions are met:

(1) The existing Owner is in compliance with this Agreement or the sale, transfer, or conveyance will result in the cure of any existing violations of the Agreement.

(2) The successor in interest to the Owner agrees to assume all obligations of the existing Owner pursuant to this Agreement.

(3) The successor in interest demonstrates to the Town's satisfaction that it can own and operate the Development in full compliance with the requirements of this Agreement; and

(4) Terms of the sale, transfer, or conveyance shall not threaten the successor in interest's ability to comply with all requirements of this Agreement.

Section 3.14 Enforcement by the Town. The Town shall retain the right to enforce this Agreement following any transfer of the Development by Owner. If Owner's successor in ownership (either in whole or in part) is in default and fails to cure the default within thirty (30) days after the Town provided notice in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, the Town shall have the right to enforce this Agreement by any remedy provided by law.

Section 3.15 Attorneys' Fees and Costs. In any action brought to enforce this Agreement, the prevailing party must be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section must be interpreted in accordance with California Civil Code Section 1717, or successor section, and any judicial decisions interpreting that statute.

Section 3.16 Nondiscrimination.

(a) There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, source of income (e.g., SSI), disability, ancestry, age, or military and veteran status, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit. Owner shall, to the extent applicable, comply with Executive Orders 11246, 11375, 11625, 12138, 12431, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and local laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted. All deeds, leases or contracts made or entered into by Owner as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the Disposition Agreement Notwithstanding anything to the contrary, with respect to familial status, the above

should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b).

(b) Owner shall cause the Development to be operated at all times in compliance with all applicable provisions of: (i) the Unruh Act, including but not limited to California Civil Code Sections 51.2, 51.3 and 51.4 which relate to the requirements for lawful senior housing; (ii) the California Fair Employment and Housing Act, Government Code Section 12900 et seq., which relates to lawful senior housing; (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, 42 U.S.C. Section 3607(b) and 24 CFR 100.304, which relate to lawful senior housing; (v) the Americans With Disabilities Act of 1990, which relate to disabled persons access; and (vi) any other applicable law or regulation. The provisions of this subsection will survive expiration of the Term or other termination of this Regulatory Agreement and remain in full force and effect.

(c) Owner shall not discriminate against any applicants for tenancy or program participation on the basis of source of income or rent payment (for example, without limitation, Temporary Assistance for Needy Families (TANF) or Section 8).

Section 3.17 Notice of Expiration. Prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Residents containing the information and meeting the requirements set forth in California Government Code Sections 65863.10 and 65863.11, as such may be amended from time to time.

Section 3.18 Violation of Agreement by Owner.

(a) In the event of a breach or violation of the provisions of this Agreement, the Town may give written notice to the Owner thereof by certified mail or any express delivery service with a delivery receipt addressed to the Owner at the address stated in this Agreement. If the breach or violation is not cured to the satisfaction of the Town within the time period specified in the notice, which shall not be fewer than 30 days, the Town may declare a default and may seek legal remedies including the following:

(1) Collect all rent and income in connection with the operation of the Development and use the same and the reserve funds for the operation and maintenance of the Development.

(2) Take possession of the Development and bring any action necessary to enforce any rights of the Owner growing out of the operation of the Development; and, operate the Development in accordance with the terms of this Agreement until such time as the Town, in its sole discretion, shall determine that the Owner is again in a position to operate the Development in accordance with the terms of this Agreement.

(3) Apply to any court, State or federal, for specific performance of this Agreement or for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement or for such other relief as may be appropriate. It is agreed by the Owner that the injury to the Town arising from a default under any of the terms of

this Agreement would be irreparable and that the amount of compensation that would provide adequate relief to the Town, would be impossible to ascertain.

(4) The Town may seek other such remedies as may be available under law.

(b) In the event that the breach or violation includes Rent charged to tenants or other charges in excess of those permitted under this Agreement, the Town may demand, and seek as an additional remedy, the return of such excess Rent or other charge to the affected household.

(c) The remedies of the Town hereunder are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the Town of any one or more of its other remedies.

ARTICLE 4.
MISCELLANEOUS

Section 4.1 Governing Law. This Agreement is governed by the laws of the State of California.

Section 4.2 Waiver of Requirements. Any of the requirements of this Agreement may be expressly waived by the Town in writing, but no waiver by the Town of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

Section 4.3 Recording and Filing. The Town and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Mono.

Section 4.4 Indemnity. Owner and its successors in interest agree to indemnify, defend, and hold harmless the Town and its respective agents, employees, and officers ("Indemnitees") from any and all claims, losses, liabilities, or cause of action (including reasonable attorney's fees) arising from or in connection with Owner's management, maintenance, or operation of the Development, including the imposition of rent restrictions as set forth in this Agreement, except to the extent arising from the gross negligence or willful misconduct of the Indemnitees.

Section 4.5 Amendments. This Agreement may be amended only by a written instrument executed by the Parties hereto or their successors in title that is duly recorded in the Official Records of the County of Mono.

Section 4.6 Notices. Formal notices, demands, and communications between the Parties delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt if (i) personally delivered by a commercial service which furnishes signed receipts of delivery; or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

The Town: Town Mammoth Lakes
P.O. Box 1609

Mammoth Lakes, CA 93546
Attn: Rob Patterson, Town Manager

Owner: Access Apartments Affordable Housing, LLC
Mammoth Lakes Housing, Inc.
P.O. Box 260
Mammoth Lakes, CA 93546
Attn: Patricia Robertson, Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 4.7 Subordination. This Agreement shall be recorded in first lien position against the Property.

Section 4.8 Assignment. The Town retains the right at its sole discretion to assign all or part of its rights and obligations under this Agreement to any instrumentality of the Town or other public entity for the purpose of ensuring compliance and enforcement of Owner's duties and obligations hereunder. In addition, the Town may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

Section 4.9 No Claims. Nothing contained in this Agreement shall create or justify any claim against the Town by any person that Owner may have employed or with whom Owner may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Development.

Section 4.10 Third Party Beneficiaries. The parties acknowledge and agree that HCD is an express third-party beneficiary of the affordability restrictions set forth herein and shall be entitled to enforce the affordability restrictions set forth herein solely through an action for specific performance, as if HCD was a party herein. HCD has made the Grant in reliance on this Agreement, and that HCD has a direct right of enforcement against the Owner in the event of the Owner's breach, default, or other non-compliance under this Agreement, which right is exercisable in HCD's sole and absolute discretion. There shall be no other third-party beneficiaries to this Agreement.

Section 4.11 Term. The provisions of this Agreement shall apply to the Development for the entire Term.

Section 4.12 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement will not be in any way affected or impaired thereby.

Section 4.13 Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or the intent of this Agreement.

Section 4.14 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original and may be signed in counterparts.

Section 4.15 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and no modification hereof shall be binding unless done in accordance with Section 4.5 of this Agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, the Town and Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

ACCESS APARTMENTS AFFORDABLE HOUSING, LLC, a California limited liability company

By: MAMMOTH LAKES HOUSING, INC., a California nonprofit public benefit corporation, its sole and managing member

By: _____
Patricia Robertson, Executive Director

Date: _____

THE TOWN OF MAMMOTH LAKES, political subdivision of the State of California

By: _____
Rob Patterson, Town Manager

Date: _____

ATTEST:

Jamie Gray, Town Clerk

APPROVED AS TO FORM:
Andrew Morris, Town Attorney

By: _____

[All signatures must be notarized.]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____ : Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

1507\13\3345644.3