**DISPOSITION AND DEVELOPMENT AGREEMENT**
The Parcel Affordable Housing Development

This Disposition and Development Agreement (the "Agreement") is entered into as of October 13, 2021, and is between the Town of Mammoth Lakes, a California municipal corporation (the "Town"), and Pacific West Communities, Inc., an Idaho corporation, or its assignees (the "Developer"), with reference to the following facts, understandings and intentions of the Parties:

## RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The Town owns the 25-acre +/- vacant tract of land commonly known as "The Parcel," which is located in the Town of Mammoth Lakes, California, bearing APNs 035-010-020-000 & 035-100-003-000 as more particularly described in the attached **Exhibit A**.

C. California Government Code Section 37364 authorizes the Town to sell real property to provide affordable housing "under whatever terms and conditions the [Town] deems best suited to the provision of such housing", notwithstanding any other provision of law.

D. On December 21, 2020, the Town issued a request for bids (the "Request for Bids") for a developer to develop the Property with housing affordable to lower-income households or households of moderate income, as those terms are defined in California Health & Safety Code Sections 50079.5 and 50093, respectively.

E. On February 3, 2021, the Town Council awarded in principle a contract to Developer for the purchase and development of the Property.

F. Developer intends to develop the Property with up to 450 residential units serving individuals and families with a range of incomes, subject to potential future Town Council approval of a different number. Not less than 80% of the area of any portion of the Property sold to Developer shall be used for housing. Not less than 40% of the total number of residential units developed on the Property shall be affordable to households whose incomes are equal to, or less than, 75% of the maximum income of lower income households, and at least half of such units shall be affordable to very low income households. It is intended that the majority of the residential units will serve those with incomes up to 80% of the Area Median Income (AMI). However, at the request of the Town, with additional financial assistance from the Town, and subject to the requirements set forth above, Developer shall develop units for rental or sale to households with incomes up to 120% of the AMI; provided further, upon mutual agreement of Town and Developer, an agreed upon number of housing units may be developed for households with incomes up to 200% of AMI. Other intended project components are associated community space, and public park space (collectively, the "Development"), the details of which may be further refined through amendments to the master plan described in Article 2.

G. Developer has proposed to develop the Property in a phased approach outlined in the Master Plan of the Development showing the basic physical characteristics, massing, and layout of the Improvements, which is attached to this Agreement as **Exhibit E** (as it may be updated and amended, the "Conceptual Phasing Plan").

H. The Development, including all buildings, landscaping, roads, parks, infrastructure and parking spaces on the Property and any additional improvements on the Property, are referred to herein as the "Improvements."

I. The Town as the applicant, and the Developer as the co-applicant, have submitted and been awarded an Infill Infrastructure Grant of up to $20,601,216 for public infrastructure and other eligible costs associated with the Development and the Property (the "IIG") by the State of California's Housing & Community Development Department, which grant is subject to compliance with a grant agreement between the Housing & Community Development Department and the Town and Developer (the "IIG Agreement").

J. Construction and operation of the Development is not economically feasible without financial assistance and support from the Town which shall include, without limitation, the IIG funds, and such other financial assistance which may be provided by the Town (including to the extent approved by the Town, impact fee loans or deferrals) if all phases of the Development are constructed by Developer, Town Loans, and additional assistance from the County through its Behavioral Health Department as outlined in the IIG application. The IIG agreement is attached hereto as **Exhibit I** and incorporated herein by reference.

K. The Town Council has made the following findings:

1. The Property can be used to provide housing affordable to persons and families of low or moderate income as defined by Section 50093 of the Health & Safety Code (i.e., those making at or below 120% of the Area Median Income of the County), or higher incomes with respect to some portion of the Property, and this use of the Property is in the Town's best interests.

2. The proposed phased approach is intended to allow flexibility for both the Town and Developer to move forward as quickly as they are able.

3. The development of the Phases and the development phasing plan may be revised (to combine or further separate into additional Phases) upon Developer's request and in the Town's sole discretion pursuant to Article 2.

4. The disposition of the Property is not subject to the Surplus Lands Act (Government Code Section 54220 et seq), because the Development complies with the requirements of Government Code Section 37364, which by its terms authorizes the sale of real property notwithstanding any other provision of law. The Town therefore has the authority to sell the Property to Developer, under the terms set forth herein.

L. Under California Health & Safety Code Section 37001(a), the Development is exempt from Article XXXIV.

M. Developer desires the Town to provide seller carry-back financing in the amount of the appraised fair market value of the land constituting each phase of the Development to assist in the acquisition and development of each phase. In order for each phase to receive debt and equity financing from private sources, such sources will require that each carry back financing be repaid solely out of a portion of the residual cash flow from the specified phase of the Development to which such loan applies (each, a "Town Loan"), such that the Town Loan for each phase will not be cross defaulted or cross collateralized with any other Town Loan for any other phase.

N. The Developer intends to finance the remainder of the costs of the Development with Tax Credit Funds and/or other public (which may include additional Town, County, state, and federal sources) and private sources.

THEREFORE, the Parties agree as follows:

## AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

## ARTICLE 1.
## DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

(a) "Building Permit" means the building permit and all other construction permits required from the Town and other governmental agencies to construct the Development (or applicable Phase thereof), including without limitation grading permits and approved infrastructure plans.

(b) "Close of Escrow" means, with respect to each Phase, the date on which the real estate for such Phase is conveyed to the Developer by the Town.

(c) "Code" means the Internal Revenue Code of 1986, as amended.

(d) "Construction Plans" means the final construction plans for the construction of the Development (or applicable Phase thereof) submitted for a Building Permit and/or for other required approvals of the Town or other governmental entities.

(e) "Control" means (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of a general partner in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(f) "Conveyed Property" means any portion of the Property that is conveyed to the Developer or its Affiliate.

(g) "County" means the County of Mono, a political subdivision of the State of California.

(h) "Default" is defined in Section 7.2.

(i) "Developer" means Pacific West Communities, Inc. and its successors and assigns as permitted by this Agreement, including without limitation any partnership or limited liability company that is Controlled by or under common Control with Pacific West Communities, Inc.

(j) "Developer Event of Default" is defined in Section 7.2.

(k) "Development" is defined in Recital E; provided that Developer shall have the right to request to modify the proposed Development from time to time pursuant to Section 2.1.

(l) "Effective Date" means the date this Agreement is entered into by the Parties as first written above.

(m) "Financing Plan" means, with respect to each Phase of the Development, the Developer's plan for financing the acquisition and construction of such Phase, including a detailed development budget, and construction and permanent financing commitment letters (including a commitment letter from a tax credit Investor), approved by the Town pursuant to Section 4.6, and which may be revised from time to time with the approval of the Town pursuant to Section 4.6.

(n) "Financing Proposal" means, with respect to each Phase of the Development, the Developer's initial financing proposal for financing the acquisition and construction of such Phase, in the form attached hereto as **Exhibit B**, as the same may be amended by Developer from time to time and submitted to the Town for approval.

(o) "Hazardous Materials" means any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;

(1) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;

(2) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq., Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and

(3) any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Development.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, or management of residential apartments, or typically used in office or residential activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Development, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine, or (iii) materials or substances naturally occurring in the environment.

(p) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(q) "Investor" means a reputable equity investor, acceptable to the Town, committed to purchasing a limited partnership interest in the Partnership.

(r) "Land Use Approvals" are the discretionary planning permits from the Town required for the Development, including a Master Plan.

(s) "Master Plan" means the master plan for the Development approved by the Town Council.

(t) "Mayor" means the Mayor of the Town.

(u) "Parties" means, collectively, the Town and the Developer. "Party" shall refer to either of the Parties.

(v) "Phase" means each phase of the Development, as initially identified in the Conceptual Phasing Plan and to be more particularly described and depicted in the Master Plan and Phase-specific site plans to be delivered to the Town in connection with Close of Escrow of each Phase.

(w) "Property" means the real property to be developed by the Developer pursuant to this Agreement, which real property is described in Recital B above and is more particularly described in **Exhibit A**.

(x) "Regulatory Agreement" means, with respect to each Phase, the Regulatory Agreement and Declaration of Restrictive Covenants by and between the Parties to be recorded against such Phase at Close of Escrow, which shall require compliance with the affordability requirements of Government Code Section 37364 and shall be in a form substantially similar to **Exhibit D**. Developer acknowledges that the Regulatory Agreement for each Phase shall prohibit smoking inside any rental unit, and that it will require the affordability requirements for each Phase to remain in effect for not less than 55 years and will require the covenants and conditions of the Regulatory Agreement to be binding on the successors in interest of Developer with respect to that Phase.

(y) "Security Financing Interest" means a mortgage, deed of trust, or other reasonable method of security encumbering the Property that secures any loan and/or refinancing approved by the Town in connection with the approval of a Financing Plan.

(z) "Supplemental Financing" means any financing received by the Developer for the Development, including the Tax Credit Funds, other than the Town Loans.

(aa) "Tax Credit Funds" means all of the proceeds from the syndication of limited partnership interests in the Partnership to an Investor in the anticipated amount set forth in the Financing Plan, or such other amount as may be approved by the Town in an amended Financing Plan.

(bb) "Term" means the term of this Agreement, which shall consist of the period commencing as of the Effective Date and continuing until the earlier of: (i) Close of Escrow with respect to the final Phase, or (ii) **December 31, 2035**, as such date may be extended upon request by Developer for such periods as reasonably agreed to by the Town; provided, however that the Term shall automatically expire as to each Phase effective upon the Close of Escrow for such Phase.

(cc) "Title Company" means First American Title Company or such other title company as the Parties may mutually select.

(dd) "Title Report" means that certain title report issued by the Title Company for the Property prior to the date hereof and any updated or other title report issued by the Title Company covering the Property or any Phase(s) thereof.

(ee) “Town” means the Town of Mammoth Lakes, a municipal corporation.

(ff) “Town Attorney” means the Town Attorney of the Town.

(gg) “Town Council” means the Town Council of the Town.

(hh) “Town Documents” means, collectively, this Agreement, the Regulatory Agreement, documents required to be executed related to the Town Loans, and all other documents required by the Town to be executed by the Developer in connection with the transactions contemplated by this Agreement. "Town Document" means any of the Town Documents.

(ii) "Town Loan" is defined in Recital M.

(jj) “Town Manager” means the Town Manager of the Town.

(kk) "Transfer" is defined in Section 6.1.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in this Agreement:

Exhibit A: Legal Description of the Property
Exhibit B: Form of Financing Proposal
Exhibit C: Form of Grant Deed
Exhibit D: Form of Regulatory Agreement
Exhibit E: Conceptual Phasing Plan
Exhibit G: Form of Purchase Agreement
Exhibit H: Form of Loan Agreement
Exhibit I: IIG Agreement

## ARTICLE 2.

## APPROVED DEVELOPMENT AND PHASING

Section 2.1 Development.

The proposed Development is based upon current market conditions and the anticipated Town approval process, and Developer may request approval to revise, refine and update the Development from time to time to account for changing market conditions. Accordingly, Developer shall have the right to request Town approval to modify the proposed Development (including, without limitation, the precise affordability levels, building locations and types, phasing, streetscape design, and street and utility layout) from time to time to meet the needs of the community and to create a successful and feasible project. In connection with the approval by the Town of any Phase, Town shall have the right to require Developer to change the rental or sale price of certain units so that the units are affordable to households with incomes of up to 120% of the AMI, provided that Town provides or arranges for funding sufficient to replace grant or tax credit funding that would be available if such units were affordable to households with incomes of up to 80% of the AMI but that is not available if the units are affordable to households with incomes of between 80-120% of the AMI. Town may reject, approve, or conditionally approve any such request in its sole discretion, but subject to the provisions of Section 8.25.

Section 2.2 Master Plan.

On January 20, 2021, the Town Council approved a Master Plan for the Development ("Master Plan"), which may be amended by Town at any time.

Section 2.3 Phasing.

The sale of the Property by the Town to the Developer and subsequent construction of the Development will occur in phases. The timing and sequence of sale and development of each Phase shall be consistent with the Master Plan or other phasing plan approved by the Town unless the Town, in its sole discretion, approves a deviation therefrom. Developer shall diligently and in good faith pursue the design, approval, Close of Escrow and construction of each Phase consistent with the Master Plan; provided, however that due to a number of fluctuating factors, including without limitation, the then-current financial feasibility, particular sources of funds, and market needs, the Developer shall have the right to request Town consent for Developer to acquire, develop and construct the Phases concurrently or separately over time, and in any order elected by Developer, which consent may be withheld, granted, or conditionally granted in the Town's sole discretion, subject to Section 8.25. Town may require execution by Developer of a subdivision improvement agreement for each or any phase as a condition of approving the sale of land for such phase.

Section 2.4 Development Parcels.

At least sixty (60) days prior to the Close of Escrow of each Phase, the Developer shall submit to the Town a survey of the real estate comprising such Phase consistent with the Master Plan, together with a legal description, draft easements, a draft grant deed conveying the real estate comprising the Phase, and any other documents requested by the Town. On or before the Close of Escrow for such Phase the Town shall cause such real estate to be subdivided from the Property such that the Phase constitutes a distinct parcel of land, provided that Developer shall bear the costs of doing so, including without limitation Town's staff costs and attorney's fees. The documents creating each such parcel shall be subject to Developer's reasonable approval. If the Town has failed to create a Phase parcel prior to the anticipated closing date for a Phase, Developer shall have the right to prepare a proposed subdivision map for the Town's review, the Town shall cooperate with Developer in such process, and the Town may require that the Close of Escrow be extended.

Section 2.5 Expenditure of IIG Funds.

The specific improvements to be funded with the IIG funds, and the timing of such expenditures, shall be mutually agreed to by the Town and Developer, provided that in the event that the Town and Developer cannot reach agreement, the Town shall decide when and how the funds will be spent, provided that all such expenditures shall comply with the IIG Agreement.

Section 2.6 Construction of Units Required by IIG Agreement.

For avoidance of doubt, the Parties acknowledge that the IIG Agreement requires the construction of no fewer than 50 for-sale units on the Property. The Parties shall agree on the timing and phasing of the construction of for-sale and rental units, subject to the requirement of Exhibit D, Paragraph 47 of the IIG Agreement that building permits for all units used as the basis for calculating the IIG Grant amount have been issued within two years of the award of the IIG Grant, unless the California Department of Housing and Community Development ("HCD") has extended such deadline. In the event that HCD requires repayment of disbursed IIG Grant funds, and/or refuses to disburse previously-approved IIG Grant funds, due to a failure to timely construct a sufficient number, type, or income level of units to earn and retain the IIG Grant funds, Developer shall be solely responsible for the repayment of such funds and for replacing the lost IIG grant funding, as applicable. Notwithstanding the foregoing, the Town shall cooperate in good faith with Developer in approving phases of the Master Plan so that a sufficient number of units of certain sizes and income-targeting levels are approved in each phase of the Master Plan to fully earn the IIG Grant funds that have been disbursed or are scheduled for disbursement.

Section 2.7 Application for NPLH and MHSA Funding from the County.

Developer will make good faith efforts to apply to the County of Mono (the "County") for $1,800,000 in County Mental Health Services Act ("MHSA") loan funds for the portion of the Property that contains the first apartment complex to be constructed ("Initial Development") and to obtain such funds prior to or concurrently with the construction loan closing for the Initial Development pursuant to this Agreement. Developer will also collaborate with the County to obtain $500,000 of the California Department of Housing and Community Development No Place Like Home (Third Round) non-competitive ("NPLH") funds for the Initial Development. If the Developer is awarded the MHSA funds or the NPLH funds, the Developer shall construct and provide eight (8) units for MHSA/NPLH eligible households in the Initial Development (the "NPLH Restricted Units"). In addition, the Developer will provide a preference to MHSA eligible households until at least five (5) additional MHSA eligible households referred to the Developer by the County occupy units in the Initial Development (and such units will be in addition to the NPLH Restricted Units). In connection with such preference, the Developer will notify the County of available units in the Initial Development prior to lease up and as units become available upon turn over. The Developer will then provide County referred MHSA eligible tenants, who meet the applicable income criteria, with the first right to occupy such units. The bedroom size and affordability applicable to the NPLH Restricted Units as well as the Developer's tenant selection plan for the Initial Development are subject to the County's prior written approval (which approval shall be limited to confirming compliance with this Section). The provisions of this Section shall be included in the County's Regulatory Agreement recorded against title to the applicable conveyed land.

## ARTICLE 3.
## PURCHASE PRICE FOR EACH PHASE

Section 3.1 Purchase Price.

The purchase price to be paid by the Developer to the Town in connection with the disposition of each Phase will be the appraised value of the vacant land constituting such portion of the Property (the "Appraised Value"), provided that the aggregate purchase price for the land for all Phases shall be not less than six million six hundred four thousand dollars ($6,604,000), notwithstanding any lower Appraised Value. The Appraised Value shall be determined by the following appraisal process:

(a) Prior to the Close of Escrow for such Phase, the Town shall allow the portion of the Property comprising such Phase to be appraised by an appraiser mutually agreed to in good faith by the Town and Developer.

(b) The Appraised Value shall be the fair market value of the Phase based on the proposed use of the Property, which may, in any particular phase, include housing, community space, park land, and/or other uses.

Section 3.2 Promissory Note.

The Purchase Price, net of prorations and credits, shall be evidenced by a promissory note, which shall set forth terms consistent with those contained in the Financing Plan .

## ARTICLE 4.
## PREDISPOSITION REQUIREMENTS FOR CONVEYANCE OF EACH PHASE

Section 4.1 Conditions Precedent to Disposition of each Phase of the Property.

Developer shall have the right to acquire portions of the Property upon satisfaction of the conditions precedent in this Article 4. Each of the requirements set forth in this Article 4 are conditions precedent to the Town's obligation to convey the portion of the Property for each Phase to the Developer. The Town shall convey the Property for each Phase to Developer or its designee upon Developer's satisfaction of the conditions set forth in this Article 4 for such Phase; provided that the Town shall have no obligation to convey the Property for a Phase to the Developer unless the Developer has satisfied the conditions precedent set forth in this Article 4 with respect to such Phase.

Section 4.2 Approval of Master Plan; Master Plan Consistency.

The proposed Phase shall be entirely consistent with the Master Plan, as it may be amended from time to time, and shall be materially the same as an "area" depicted in the Master Plan, but the Phases shall not be required to be constructed in the same sequence contemplated for "areas" in the Master Plan. Nothing herein shall limit or restrict the Town's right to amend the Master Plan at any time. If a proposed Phase would require one or more amendments to the Master Plan, the Town may determine in its sole discretion whether to convey the land for such

Phase, and/or whether to amend the Master Plan. The Parties acknowledge that achieving the numbers of units contemplated in the Master Plan will require that each Phase contain a minimum number of units, and that the Town Council has limited the maximum number of units for the Project to 450. Accordingly, the Town shall not be obligated to convey the land for a Phase if the proposal for the Phase includes fewer than the following numbers of units for each phase:

| PHASE | LOW |
|---|---|
| Phase 1 | 81 |
| Phase 2 | 60 |
| Phase 3 | 60 |
| Phase 4 | 60 |
| Phase 5 | 90 |
| Phase 6 | 49 |
| | 400 |

Section 4.3 Financing Proposal and Financing Plan.

(a) Supplemental Financing. The Developer shall have obtained commitments for all Supplemental Financing included in the Financing Proposal.

(b) Application for 4% or 9% Low-Income Housing Tax Credits (as Applicable). The Developer intends to submit to the California Tax Credit Allocation Committee an application for federal and California State low-income housing tax credits for the first Phase and perhaps additional Phases. If such tax credits are included in the Financing Plan, the Developer shall have received an allocation of California State and federal tax credits substantially in conformance with the Financing Plan.

(c) Execution of Town Loan Documents. The Developer shall have approved and executed all documents required for closing and funding of any approved Town Loan for such Phase, including without limitation, a loan agreement, note, deed of trust, subordination agreement, or any other agreement required, prior to, or simultaneously with, the conveyance of such Phase (collectively, the "Loan Documents"). The loan agreement for each Town Loan shall be substantially in conformance with the form attached hereto as **Exhibit H**.

Section 4.4 Submittal of Proposed Financing Plan.

No less than sixty (60) calendar days prior to the Close of Escrow of each Phase, the Developer shall submit to the Town for approval a Financing Proposal for such Phase, including commitment letters and related documentation from the Investor and from all sources of Supplemental Financing and setting forth the Developer's revisions to the Financing Proposal based on such commitment letters. The Town shall endeavor to reasonably approve or disapprove the Financing Proposal in writing within fourteen (14) calendar days of the Town's receipt of all such documentation, provided that a failure to approve the Financing Proposal shall constitute a disapproval which shall be subject to resolution pursuant to Section 8.25. The Developer shall not rely on the Town's approval of the Financing Proposal as a representation of any kind, including but not limited to the business advantage of the terms of any of the Supplemental Financing or any documentation thereof. The Town's approval shall merely constitute satisfaction of the condition set forth in this section. If the Financing Proposal is disapproved by the Town, the Town shall specify the grounds for disapproval and the terms and conditions under which same shall be approved, and the Developer shall have seven (7) calendar days from the date of the Developer's receipt of the Town's notice of disapproval to submit a revised Financing Proposal. The provisions of this section relating to time periods for approval, disapproval and resubmission of a new Financing Proposal shall continue to apply until a revised Financing Proposal has been approved by the Town. Should any due date fall on a weekend or Town recognized Holiday, the deadline shall be extended to the next business day.

Section 4.5 Purchase Agreement.

Developer and the Town shall have entered into a purchase agreement for such Phase substantially in conformance with the form attached hereto as **Exhibit G**, and the conditions precedent to closing set forth in such purchase agreement shall have been satisfied or will be satisfied upon the Close of Escrow. The purchase agreement shall require the Developer to construct the Phase in a manner consistent with Developer's application to purchase the land for such Phase, including without limitation the unit count and proposed project schedule.

Section 4.6 Close of Escrow of Supplemental Financing; Evidence of Availability of Funds.

The Town Loan and all Supplemental Financing necessary to purchase and construct such Phase of the Development, as approved by the Town in the Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the conveyance of the real estate for the Phase by the Town to the Developer. The Developer shall also submit to the Town evidence, reasonably satisfactory to the Town, that any conditions to the release or expenditure of the Supplemental Financing described in the approved Financing Plan have been met, or will be met upon conveyance of the Phase to the Developer or future fulfillment of any conditions of the Supplemental Financing, and that such funds will be available upon such conveyance for purchasing the Phase and, subject to the Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Phase of the Development.

Section 4.7 Construction Plans and Building Permit.

As part of the Developer's application for a Building Permit and any other required approvals for each Phase, the Town shall have the right to review and approve the proposed Construction Plans for such Phase for conformance with the Land Use Approvals, the master infrastructure plan submitted pursuant to Section 4.8, and any other written commitments made by the Developer to the Town. The Town shall have no obligation to approve such proposed plans in the event that the Developer fails to incorporate the Town's requested modifications to the proposed Construction Plans necessary to conform to the Land Use Approvals.

Section 4.8 Site Plan, Master Infrastructure Plan, and IIG Expenditure Plan.

Developer shall have delivered to the Town a detailed site plan for such Phase, which is consistent with the Land Use Approvals for such Phase. Prior to the Town's conveyance of land for the first Phase, Developer shall have submitted a master infrastructure plan addressing all infrastructure (both onsite and offsite) to be constructed for the Development, and Developer and the Town shall either have agreed on the expenditure of any IIG funds for the Phase or pursuant to Section 2.5 the Town shall have notified Developer of when and how IIG funds will be spent for the Phase. Developer shall be solely responsible for constructing all infrastructure necessary for each Phase in compliance with Town standards, unless the Town in its sole discretion agrees to contribute funds and/or assume responsibility for constructing a portion of the infrastructure.

Section 4.9 Development Parcel.

A separate development Parcel shall have been created for such Phase pursuant to Section 2.4.

Section 4.10 Phase Developers.

With respect to each Phase, and subject to compliance with Sections 4.1-4.9, Developer shall have the right to acquire and develop such Phase with an entity other than the Developer (each such entity, a "Phase Developer"), in each case subject to the reasonable approval of the Town and in full compliance with this Agreement and the Land Use Approvals; provided that the Town's approval shall not be required with respect to an entity which is Controlled by or under common Control with Developer or its principal, Caleb Roope.

Section 4.11 Compliance with Applicable Obligations.

Developer and all previous Phase Developers shall be in full compliance with all obligations with respect to the Property and/or Development created by any law, regulation, condition of approval, mitigation measure imposed pursuant to the California Environmental Quality Act, covenant, or agreement to which Developer, on the one hand, and the Town, County or State, on the other hand, are a party, including without limitation the IIG Agreement, this Agreement, the Regulatory Agreement, and the terms of any tax credit financing or other financing obtained by Developer and/or a previous Phase Developer.

## ARTICLE 5.
## DISPOSITION OF EACH PHASE OF THE PROPERTY

Section 5.1 Phases. Each of the provisions set forth in this Article 5 shall be applicable to the transfer of each Phase of the Property from the Town to the Developer.

Section 5.2 Opening Escrow.

To accomplish the transfer of each Phase of the Property from the Town to the Developer, the Parties shall, at least thirty (30) days prior to the anticipated Close of Escrow date for such Phase, establish an escrow with the Title Company with respect to the acquisition of such Phase. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, so long as such instructions are consistent with this Agreement.

Section 5.3 Close of Escrow.

(a) The Close of Escrow for each Phase shall occur within thirty (30) days after the later of: (i) the opening of escrow; or (ii) the date on which Developer has met all of its pre-disposition conditions for such Phase as set forth in Article 4 above, with such Close of Escrow to be extended to accommodate changes in the Project schedule.

(b) At the Close of Escrow for each Phase, the Town shall convey such Phase to Developer by the execution of a grant deed in substantially the form set forth in the attached **Exhibit C**. The grant deed may reserve such easements for utilities, snow storage, pedestrian access, and other purposes as the Town may determine to be necessary in its sole discretion.

Section 5.4 Conditions to Conveyance. The Town's obligation to convey each Phase to the Developer shall be subject to satisfaction of the following pre-conditions:

(a) The conditions precedent set forth in Article 4 above shall have been satisfied with respect to such Phase.

(b) The representations, warranties, and covenants of the Developer set forth in Section 8.15 shall be true and correct, and fully observed, as of the Effective Date and as of the Close of Escrow.

(c) There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under this Agreement.

(d) There exists no uncured breach of this Agreement by any Phase Developer.

(e) The Developer has delivered to the Town a copy of the Developer's organizational documents and corporate resolution(s) authorizing the Developer's execution of this Agreement and the transactions contemplated by this Agreement.

(f) The Developer has executed and delivered to the Town the documents required for closing and funding of the Town Loan for such Phase, including without limitation a note, deed of trust, and loan agreement in form reasonably acceptable to the Town Manager, and the Regulatory Agreement, and the deed of trust and the Regulatory Agreement have been recorded against such Phase. The Town agrees to consider in good faith such commercially reasonable subordination agreements as may be requested by the Developer or other party(ies) providing Supplemental Financing for such Phase, which subordination agreements may at Developer's election be recorded against such Phase; provided that the Town shall not be required to consider subordination of any affordability requirements, nor to subordinate such requirements.

(g) All conditions contained in the Town Documents required for the Town Loan for such Phase have been complied with.

(h) The Title Company or another title insurer reasonably acceptable to the Town is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of insurance insuring the priority of the Town deed of trust in the amount of the Town Loan for such Phase, subject only to such exceptions and exclusions as may be reasonably acceptable to the Town, and containing such endorsements as the Town may reasonably require.

Section 5.5 Condition of Title.

At the Close of Escrow for each Phase, the Town shall deliver title to the Property for such Phase free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except those set forth in the Title Report covering such Phase. The Developer objected to no exception appearing on the initial Title Report. The Developer may not terminate this Agreement as a result of any of exception appearing on the initial Title Report.

Section 5.6 Condition of the Property.

(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), to the Town's Current Actual Knowledge, no release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the Town to the Developer in writing (as applicable). The Developer shall have the right to perform customary due diligence activities on and with respect to the Property (or any Phase thereof), including but not limited to a physical adequacy determination of the Property, but Developer may not terminate this Agreement as a result of the purported physical unsuitability of the Property.

(b) As used in this Agreement, the phrase "to the Town's Current Actual Knowledge" and words of similar import shall mean the actual knowledge of the Town Manager, on behalf of the Town, as of the Effective Date, without any duty of separate inquiry and investigation. The Town represents and warrants that the Town Manager is that person affiliated with the Town most knowledgeable regarding the ownership and operation of the Property. Developer hereby agrees that the foregoing person shall not have or incur any personal liability for the breach of any representation or warranty in this Agreement, and that Developer's sole remedy for any such breach shall be against the Town.

**(c) <u>"AS IS" CONVEYANCE</u>. EXCEPT AS SET FORTH ABOVE, THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, UPON THE CLOSE OF ESCROW OF EACH PHASE, THE TOWN IS CONVEYING AND THE DEVELOPER IS ACCEPTING SUCH PHASE OF THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE TOWN AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (D) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE ADJOINING OR NEIGHBORING PROPERTY; AND (E) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE TOWN OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE TOWN MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE**

**FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE HAZARD SEVERITY ZONE, WILDLAND FIRE AREA, OR OTHER AREA OF SPECIAL HAZARD OR RISK BY ANY FEDERAL, STATE OR LOCAL AGENCY.**

(d) Survival. The terms and conditions of this Section 5.6 shall expressly survive the Close of Escrow for each Phase, shall not merge with the provisions of the grant deed for any Phase, or any other closing documents and shall be deemed to be incorporated by reference into the grant deed for each Phase. The Town is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

(e) Acknowledgment. The Developer acknowledges and agrees that (i) to the extent required to be operative, the disclaimers of warranties contained in this Section 5.6 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements, and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement and that the Town would not have agreed to convey the Property to the Developer without the disclaimers and other agreements set forth in this section.

(f) Developer's Release of the Town. Concurrent with the closing of each Phase, the Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the Town and its Council members, employees, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(g) Scope of Release. The release set forth in Section 5.6(f) includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the Town from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

> **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if**

**known by him or her must have materially affected his or her settlement with the debtor."**

**Developer's Initials:__________**

Notwithstanding the foregoing, this release shall not apply to, nor shall the Town be released from, the Town's actual fraud or misrepresentation.

Section 5.7 Costs of Escrow and Close of Escrow.

Ad valorem taxes, if any, with respect to each Phase shall be prorated as of the Close of Escrow for such Phase. The lien of any bond or assessment shall be assumed by the Developer and assessments payable thereon shall be prorated as of the date of conveyance. The Town shall pay any delinquent ad valorem taxes and any amounts owning for delinquent bonds and assessments as of the date of conveyance for each Phase. For each Phase the Developer shall bear the costs of title insurance for the Town deed of trust, and any owner's title insurance policy desired by the Developer. All other costs of escrow (including the Title Company's fee) shall be borne by the Developer.

## ARTICLE 6.
## ASSIGNMENT AND TRANSFERS

Section 6.1 Definitions.

As used in this Article 6, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Property or any part thereof or any interest therein or any contract or agreement to do any of the same; provided however that “Transfer” shall not include any or more total or partial sales, assignments or conveyances of Conveyed Property; or

(b) Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer, that results in Caleb Roope no longer Controlling Developer; or

Section 6.2 Purpose of Restrictions on Transfer.

This Agreement is entered into solely for the purpose of the development and operation of the Development and its subsequent use in accordance with the terms hereof and the terms of the Town Documents. The Developer recognizes that the qualifications and identity of Developer are of particular concern to the Town, in view of:

(a) The importance of the development of the Property and the required affordable units to the general welfare of the community; and

(b) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such development possible; and

(c) The reliance by the Town upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the Town in the development of the Property; and

(d) The fact that the Property is not to be acquired or used for speculation, but only construction of the Development by the Developer in accordance with this Agreement; and

(e) The importance to the Town and the community of the standards of use, operation and maintenance of the Property.

The Developer further recognizes that it is because of such qualifications and identity that the Town is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement. The Developer further acknowledges that the limitations on Transfers set forth herein do not constitute unreasonable restraints on alienation under California law.

Section 6.3 Prohibited Transfers.

(a) The limitations on Transfers set forth in this Article shall apply throughout the Term, and shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect until a final certificate of occupancy has been issued for the applicable Phase(s) of the Development. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the Town.

(b) Any Transfer made in contravention of this Section 6.3 shall be void and shall be deemed to be a Default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 6.4 Transfers with Town Consent.

The Town may, in its sole discretion, approve in writing such Transfers as requested by the Developer. In connection with such request, the Developer shall submit to the Town for review all instruments and other legal documents proposed to effect any such Transfer and all other documents as reasonably requested by the Town to determine the qualifications and identity of the proposed transferee. If a requested Transfer is approved by the Town such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the Town within thirty (30) days of receipt by the Town of all materials required by this Section 6.4, provided that a failure to respond by the Town shall be deemed a denial.

## ARTICLE 7.
## DEFAULT AND REMEDIES

Section 7.1 General Applicability.

The provisions of this Article 7 shall govern the Parties' remedies for breach or Default under this Agreement.

Section 7.2 Events of Default.

A Party's violation of any material term of this Agreement or failure by any Party to perform any material obligation of this Agreement shall constitute a default ("Default").

The following shall additionally constitute a "Developer Event of Default":

(a) The Developer constructs or attempts to construct the Development or other improvements on the Property in violation of this Agreement;

(b) The Developer is in breach of the provisions of Section 4.11.

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 6;

(d) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Town in connection with this Agreement proves to have been incorrect in any material and adverse respect when made;

(e) A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Developer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for the Developer, under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (iv) directing the winding up or liquidation of the Developer if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of one hundred twenty (120) days unless a lesser time period is permitted for cure under any other mortgage on the Property in which event such lesser time period will apply under this subsection as well; or the Developer, shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive;

(f) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within one hundred twenty (120) days after such event or prior to sooner sale pursuant to such sequestration, attachment, or execution. In the event that the Developer is diligently working to obtain a return or release of the property and the Town's interests under the Town Documents are not immediately threatened, in the Town's reasonable business judgment, the Town may elect not to declare a Default under this subsection; or

(g) There shall occur any material default declared by the Town under any other Town Document

Upon the happening of any of the above-described events, the non-defaulting Party shall first notify the other Party in writing of the purported breach, failure, or act above described, giving the non-defaulting Party sixty (60) days from receipt of such notice to cure or, if such cure cannot be accomplished within sixty (60) days, to commence to cure such breach, failure, or act. In the event the non-defaulting Party fails to cure within said sixty (60) days, or, if the breach or failure is of such a nature that it cannot be cured within sixty (60) days, the non-defaulting Party fails to commence to cure within such sixty (60) days and thereafter diligently complete such cure within a reasonable time thereafter, then the non-defaulting Party shall be afforded the remedies described in Section 7.3 below. Notwithstanding the foregoing notice and cure periods, if a lesser cure period or notice requirement is allowed before a default occurs under any other Town Document, such period or requirement shall control in this Agreement as well.

Section 7.3 Remedies for Default.

The Town and the Developer acknowledge that the purpose of this Agreement is to carry out the Parties' objectives as set forth in the recitals. The Town and the Developer agree that to determine a sum of money which would adequately compensate either Party for choices they have made which would be foreclosed should the Property not be developed as contemplated by this Agreement is not possible and that damages would not be an adequate remedy. Therefore, the Town and the Developer agree that in the event of a breach or Default under this Agreement, monetary damages shall not be awarded to either Party, regardless of the cause of action alleged or the nature of the breach or Default. This exclusion on damages is limited to a breach of this Agreement. The Town and the Developer further agree that, in the event of a Default or breach under this Agreement, following the expiration of the notice and cure periods described in Section 7.2, the only remedies available to the non-breaching Party shall be those listed in this Section 7.3, as follows:

(a) Equitable Remedies. Upon a Default, the non-defaulting Party may prosecute an action for injunctive relief, specific performance or other equitable remedy.

(b) Termination of this Agreement. Upon a Default, the non-defaulting Party may terminate this Agreement by written notice to the defaulting Party, provided, however, that the remedies pursuant to this Article 7 or any other Town Document and the indemnification provisions of this Agreement shall survive such termination or an expiration of this Agreement.

(c) Notwithstanding the foregoing, following the conveyance of a Conveyed Property, the Town shall have no rights or remedies with respect to such Conveyed Property as a result of any breach or default by Developer under this Agreement.

Section 7.4 Waiver of Lis Pendens.

It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any Phase of the Property prior to the Close of Escrow for such Phase with respect to this Agreement or any dispute or act arising from it.

Section 7.5 Remedies Cumulative.

No right, power, or remedy given by the terms of this Agreement or the Town Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 7.6 Waiver of Terms and Conditions.

No waiver of any Default or breach by the Developer hereunder shall be implied from any omission by the Town to take action on account of such Default if such Default persists or is repeated, and no express waiver shall affect any Default other than the Default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the Town to, or of, any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any Default under this Agreement or the applicable Town Documents, nor shall it invalidate any act done pursuant to a notice of Default, or prejudice the Town in the exercise of any right, power, or remedy hereunder or under the applicable Town Documents, unless in the exercise of any such right, power, or remedy all obligations of the Developer to the Town under the applicable Town Documents are paid and discharged in full.

## ARTICLE 8.
## GENERAL PROVISIONS

Section 8.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the Town and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by email with a copy delivered the following day by reputable overnight delivery service, or delivered personally, to the principal office of the Parties as follows:

Town:
Town of Mammoth Lakes
PO Box 1609
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546
Attention: Town Manager
Email: dholler@townofmammothlakes.ca.gov

With copy to:
Town of Mammoth Lakes
PO Box 1609
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546
Attention: Town Attorney
Email: amorris@townofmammothlakes.ca.gov

Developer:
Pacific West Communities, Inc.
430 E. State Street, Suite 100
Eagle, ID 83616
Attention: Caleb Roope
Email: calebr@tpchousing.com

With a copy to
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067
Attention: David Cohen
Email: david.cohen@katten.com

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 8.1. In addition, any notice or demand from the Town to the Developer may be delivered by email to the Developer's email set forth above; provided, however, in no event shall the Developer deliver any formal notice or demand to the Town by email.

Section 8.2 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default if such delay or Default is due solely to: war; insurrection; riots; floods; pandemics; widespread public health events; government shutdowns; earthquakes; fires; casualties; acts of terrorism or the public enemy; severe and unanticipated weather conditions; unavailability of labor or materials; tariffs or other conditions outside of the reasonable control of the Party claiming an extension. An extension of time for cause shall not be refused if: (i) notice by the Party claiming such extension is sent to the other Party within thirty (30) days from the date the Party seeking the extension first discovered the cause; and (ii) the Party claiming such extension has provided written documentation satisfactory to the other Party of the specific conditions listed in this section which have caused the delay or Default and the way in which such conditions caused the delay or Default.

Section 8.3 General Indemnification.

To the full extent permitted by law, the Developer shall indemnify, defend at its own expense and with counsel acceptable to the Town, and hold the Town and its elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction (including violations of applicable prevailing wage laws), marketing and operation of the Development, and failure by the Developer to comply with any applicable law, regulation, or the IIG Agreement except to the extent such claim arises from the grossly negligent or willful misconduct of the Town or the Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 8.4 No Commissions.

The Town shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The Town represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the Town harmless from any claims by any broker, agent or finder retained by the Developer. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 8.5 Binding Upon Successors.

(a) This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by the Developer except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

(b) The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying any interest in the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the Town expressly releases the Property (or any Phase thereof) from the requirements of this Agreement.

Section 8.6 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Town and the Developer or its agents, employees or contractors, and the Developer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. The Developer has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under this Agreement. In regards to the acquisition, construction, and operation of the Development, the Developer shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. The Developer shall be solely responsible for its own acts and those of its agents and employees.

Section 8.7 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 8.8 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the Town by any person that the Developer may have employed or with whom the Developer 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 purchase of the Property, the construction or operation of the Development, and the Developer shall: (i) include similar requirements in any contracts entered into for the construction or operation of the Development; and (ii) indemnify, defend and hold harmless the Indemnitees against all such claims pursuant to Section 8.3.

Section 8.9 Non-Liability of Town Officials, Employees and Agents.

No member, official, employee or agent of the Town shall be personally liable to the Developer, any related entity, joint venturer, or any successor in interest, in the event of any Default or breach by the Town or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 8.10 No Third Party Beneficiaries.

This Agreement and the Town Documents are made and entered into solely for the benefit of the Town and the Developer and no other person shall have any right of action under or by reason of this Agreement or the Town Documents.

Section 8.11 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Developer shall exercise due diligence to ensure that the prohibition in this section is followed.

(b) The conflict of interest provisions of subsection (a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the Town, or any person related within the third (3rd) degree of such person.

(c) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of the Developer, or immediate family member of any of the preceding, shall make or participate in a decision made by the Town or a Town board, commission or committee, outside of normal interaction between a proponent and a public body, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or the Developer. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 et seq., its implementing regulations, manual and codes, and Government Code Section 1090.

Section 8.12 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties. The Mayor and Town Manager, either acting alone or together, are hereby authorized to execute on behalf of the Town amendments to Loan Documents or amended and restated Loan Documents so long as the Town first approves any related changes in the amount or terms of this Agreement or in the amounts or terms of financing provided by other parties for the Development, requiring conforming amendments to the Loan Documents.

Section 8.13 [Reserved]

Section 8.14 Conflict among Town Documents and Other Documents.

Unless otherwise provided in a particular Town Document, in the event of a conflict between the terms of this Agreement and any other Town Document, the requirements of this

Agreement shall apply. In the event of a conflict between the IIG Agreement and any Town Document, the requirements of the IIG Agreement shall apply to the extent of the conflict.

Section 8.15 Representation and Warranties of Developer.

The Developer hereby represents and warrants to the Town as follows:

(a) Organization. The Developer is a duly organized, validly existing Idaho corporation, which is qualified to do business in, and is in good standing under the laws of, the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Development.

(h) Title to Property. Upon sale of each Phase of the Property, the Developer will have good and marketable title to such Phase and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens securing the Supplemental Financing set forth in the Financing Plan, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the Town or approved in writing by the Town.

(i) Sufficient Funds. Upon the acquisition of each Phase of the Property the Developer will hold sufficient funds or binding commitments for sufficient funds to obtain and complete the construction of such Phase in accordance with this Agreement.

Section 8.16 Entry by the Town.

The Developer shall permit the Town, through its officers, agents, or employees, at all reasonable times to enter into the Property or the Development (a) to inspect the work of construction to determine that the same is in conformity with the requirements of the Land Use Approvals and this Agreement (including the exhibits hereto), and (b) following completion of construction, to inspect the ongoing operation and management of the Development to determine that the same is in conformance with the requirements of this Agreement. The Developer acknowledges that the Town is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the Town therefor. Any inspection by the Town during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement, applicable laws and codes, and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 8.17 Entire Understanding of the Parties.

This Agreement, in conjunction with the Town Documents, constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Property, and the construction of the Development. The Parties further intend that this Agreement constitutes the final and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

Section 8.18 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 8.19 Applicable Law and Venue.

This Agreement shall be interpreted under and pursuant to the laws of the State of California without regard to choice of law principles. Venue for any action to interpret or enforce this Agreement shall be the Mono County Superior Court or the federal court for the Eastern District of California.

Section 8.20 Inspection of Books and Records.

Upon request, the Developer shall permit the Town to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement.

Section 8.21 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 8.22 Time of the Essence.

In all matters under this Agreement, the Parties agree that time is of the essence.

Section 8.23 Counterparts; Multiple Originals.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Section 8.24 Preemption.

The Town shall not be obligated to convey any portion of the Property to the extent that residential development on such portion is prohibited by State or Federal law which first becomes effective after the date hereof, including without limitation through state legislation prohibiting development in fire hazard zones.

Section 8.25 Dispute Resolution.

The Developer and Town agree to use good faith efforts to resolve any dispute or disagreement hereunder, including without limitation if the Town does not grant its approval or consent under any provision which requires the Town's approval or consent. In the event of any such disagreement, dispute or disapproval hereunder, the Town shall state in writing the grounds therefor with specificity, provided that the Town may supplement or amend such statement at any time. Thereafter, the Developer shall have the right to (i) resubmit for approval (multiple times if necessary) and/or (ii) request a meeting with the appropriate Town officials (in person, via zoom or telephonically). Any such meeting shall occur as soon as practical but no later than ten (10) days after written request from the Developer. In connection therewith, either party may bring in one or more architects or other third parties in order to assist with the resolution of the matter. Nothing in this Section 8.25 shall obligate the Town to do more than consider the Developer's position or request in good faith, and the Developer acknowledges that a failure by the Town to grant its approval or consent shall not, by itself, constitute an act of bad faith or give rise to remedies hereunder. Notwithstanding that the provisions of this Section 8.25 are intended to provide a forum for dispute resolution through negotiation and mediation, each of Developer and Town retain all rights and remedies available to it hereunder, at law or in equity; provided however, that neither Party shall have the right to terminate this Agreement except for an Event of Default which is not cured pursuant to Section 7.2.

***Remainder of Page Left Intentionally Blank***

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**Developer:**

Pacific West Communities, Inc.

By: ______________________
Caleb Roope, CEO

**TOWN:**

TOWN OF MAMMOTH LAKES, a California municipal corporation

By: Daniel C. Holler
Daniel C. Holler, Town Manager

**ATTEST:**

By: Jamie Gray
Town Clerk

**APPROVED AS TO FORM:**

Andrew Morris
Andrew Morris, Town Attorney

# EXHIBIT A

## LEGAL DESCRIPTION - PARCEL 1

THAT certain real property located in the Town of Mammoth Lakes, County of Mono, State of California, said real property being further described as a portion of “PARCEL 1” and “PARCEL 2” per the “GRANT DEED” from “Tavern Road Mammoth Partners LLC, a California limited liability company”, to the “Town of Mammoth Lakes, a California municipal corporation”, and recorded March 30, 2018 as Document #2018001104 in the Official Records of said County. Said portion of Parcel 1 and said Parcel 2 also being more particularly described as follows:

NORTH HALF NORTHEAST QUARTER SOUTHEAST QUARTER SOUTHWEST QUARTER NORTHWEST QUARTER;
NORTHWEST QUARTER SOUTHEAST QUARTER SOUTHWEST QUARTER NORTHWEST QUARTER;
WEST HALF SOUTHWEST QUARTER SOUTHEAST QUARTER SOUTHWEST QUARTER NORTHWEST QUARTER;
SOUTH HALF NORTHEAST QUARTER SOUTHWEST QUARTER NORTHWEST QUARTER;
SOUTH HALF NORTHWEST QUARTER SOUTHWEST QUARTER NORTHWEST QUARTER;
SOUTHWEST QUARTER SOUTHWEST QUARTER NORTHWEST QUARTER;
ALL OF THE ABOVE BEING IN SECTION 35, TOWNSHIP 3 SOUTH, RANGE 27 EAST, MDM, ACCORDING TO THE OFFICIAL PLAT THEREOF.
TOGETHER WITH LOT 18 OF MAMMOTH CENTER SUBDIVISION AS PER MAP FILED IN BOOK 3 OF MAPS AT PAGES 26, 27 AND 28, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM that portion described as follows: COMMENCING at the southwest corner of said Lot 18;
THENCE easterly along the south line of said Lot 18, South 88°31’23” East, 26.32 feet to the TRUE POINT OF BEGINNING;
THENCE leaving said south line, South 06°08’45” East, 13.23 feet to the beginning point of a tangent curve, concave westerly, and having a radius of 468.00 feet;

THENCE southerly along said curve, through a central angle of 02°52’36”, an arc length of 23.50 feet;
THENCE tangent to said curve, South 03°16’09” East, 152.52 feet to an angle point;
THENCE South 31°54’51” West, 15.36 feet to the beginning point of a non-tangent curve, concave easterly and having a radius of 541.00 feet, a radial line to said point bears South 85°22’55” West;
THENCE southerly along said non-tangent curve, through a central angle of 03°32’13”, an arc length of 33.40 feet;

THENCE tangent to said non-tangent curve, South 08°09'18" East, 67.42 feet to an angle point;
THENCE South 86°21'24" West, 227.82 feet to an angle point;
THENCE South 41°21'24" West, 106.90 feet to an angle point;
THENCE North 48°40'25" West, 113.40 feet to the beginning point of a tangent curve, concave southwesterly and having a radius of 186.00 feet;
THENCE northwesterly along said curve through a central angle of 15°35'33", an arc length of 50.62 feet;
THENCE non-tangent to said curve, North 40°52'34" East, 171.53 feet to an angle point;
THENCE North 25°28'33" East, 71.98 feet to an angle point;
THENCE North 62°33'52" East, 77.06 feet to and angle point;
THENCE North 35°39'42" East, 42.70 feet to an angle point;
THENCE South 88°37'16" East, 113.43 feet to an angle point;
THENCE North 01°21'24" East, 2.81 feet to an angle point;
THENCE South 88°38'36" East, 32.96 feet to an angle point;
THENCE North 17°56'42" East, 31.52 feet to a point of intersection with the south line of said Mammoth Center Subdivision;
THENCE along said south line, South 88°31'23" East, 15.38 feet, more or less, to the TRUE POINT OF BEGINNING.

The Basis of Bearings for the above legal description is the south line of said "Mammoth Center Subdivision" being South 88°31'23" East as shown on said map thereof.

PROFESSIONAL LAND SURVEYOR
ANDREW K. HOLMES
No.4428
STATE OF CALIFORNIA

Legal Description Prepared
Under the Supervision of:

Andrew K Holmes

Andrew K. Holmes, P.L.S. 4428
License Expires 09/30/2021

# EXHIBIT A
# LEGAL DESCRIPTION - PARCEL 2

BEING a portion of that certain real property located in the Town of Mammoth Lakes, County of Mono, State of California, said real property being further described as "PARCEL 1" per the "GRANT DEED" from "Tavern Road Mammoth Partners LLC, a California limited liability company", to the "Town of Mammoth Lakes, a California municipal corporation", and recorded March 30, 2018 as Document #2018001104 in the Official Records of said County. Said real property is further described in said "GRANT DEED" as being in the southwest quarter of the northwest quarter of Section 35, Township 3 South, Range 27 East, Mount Diablo Meridian, according to the Official Plat thereof, and finally said portion also being more particularly described as follows:

COMMENCING at the southwest corner of Lot 18 as shown on the map entitled "Mammoth Center Subdivision" and recorded in Book 3 of Maps at Page 26 in the Office of the County Recorder of said County;
THENCE easterly along the south line of said Lot 18, South 88°31'23" East, 26.32 feet to the TRUE POINT OF BEGINNING;
THENCE leaving said south line, South 06°08'45" East, 13.23 feet to the beginning point of a tangent curve, concave westerly, and having a radius of 468.00 feet;
THENCE southerly along said curve, through a central angle of 02°52'36", an arc length of 23.50 feet;
THENCE tangent to said curve, South 03°16'09" East, 152.52 feet to an angle point;
THENCE South 31°54'51" West, 15.36 feet to the beginning point of a non-tangent curve, concave easterly and having a radius of 541.00 feet, a radial line to said point bears South 85°22'55" West;
THENCE southerly along said non-tangent curve, through a central angle of 03°32'13", an arc length of 33.40 feet;
THENCE tangent to said non-tangent curve, South 08°09'18" East, 67.42 feet to an angle point;
THENCE South 86°21'24" West, 227.82 feet to an angle point;
THENCE South 41°21'24" West, 106.90 feet to an angle point;
THENCE North 48°40'25" West, 113.40 feet to the beginning point of a tangent curve, concave southwesterly and having a radius of 186.00 feet;
THENCE northwesterly along said curve through a central angle of 15°35'33", an arc length of 50.62 feet;
THENCE non-tangent to said curve, North 40°52'34" East, 171.53 feet to an angle point;
THENCE North 25°28'33" East, 71.98 feet to an angle point;
THENCE North 62°33'52" East, 77.06 feet to and angle point;
THENCE North 35°39'42" East, 42.70 feet to an angle point;
THENCE South 88°37'16" East, 113.43 feet to an angle point;
THENCE North 01°21'24" East, 2.81 feet to an angle point;
THENCE South 88°38'36" East, 32.96 feet to an angle point;

THENCE North 17°56’42” East, 31.52 feet to a point of intersection with the south line of said Mammoth Center Subdivision;
THENCE along said south line, South 88°31’23” East, 15.38 feet, more or less, to the TRUE POINT OF BEGINNING;
CONTAINING 95,050 square feet of land, more or less.

The Basis of Bearings for the above legal description is the south line of said “Mammoth Center Subdivision” being South 88°31’23” East as shown on said map thereof.


Legal Description Prepared
Under the Supervision of:

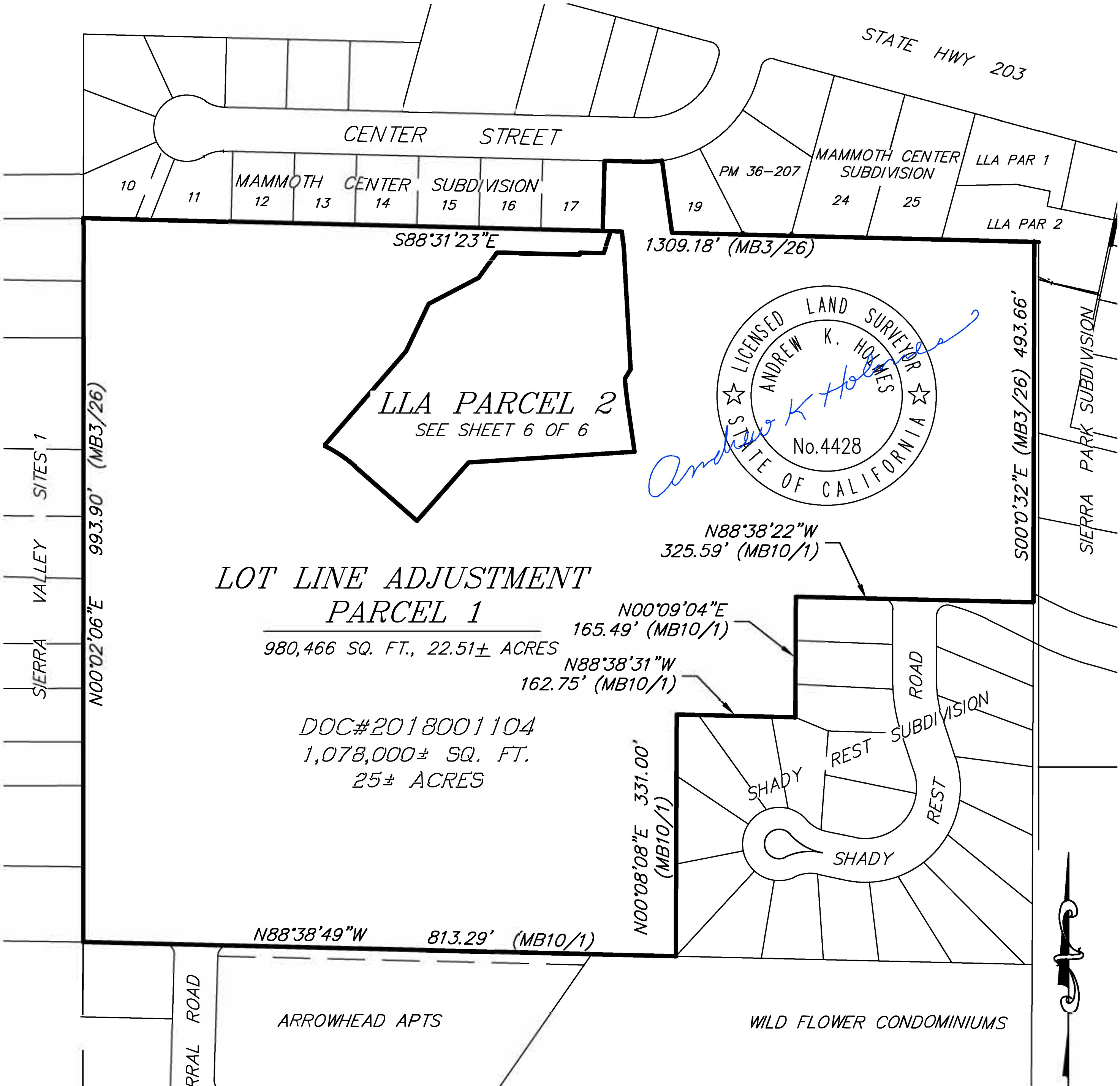
Andrew K Holmes

Andrew K. Holmes, P.L.S. 4428
License Expires 09/30/21

# EXHIBIT "C"
## LOT LINE ADJUSTMENT 21-003
## LOT LINE ADJUSTMENT PARCELS
TOWN OF MAMMOTH LAKES, MONO COUNTY , CALIFORNIA

RECORDING INFORMATION:

LOT LINE ADJUSTMENT APPLICATION BETWEEN PARCEL 1 AND PARCEL 2
OF THE PROPERTY DESCRIBED IN THE GRANT DEED RECORDED AS
DOCUMENT# 2018001104 O.R.




(MB10/1)= BEARINGS AND DISTANCE FROM MAP BOOK 10 PAGE 1
(MB3/26)= BEARINGS AND DISTANCE PER MAP BOOK 3 PAGE 26

triad/holmes associates

SCALE: 1"=200'



Z: \01 Mammoth\669-10 Parcel\acad\Center St quitclaim\01.669.10 Parcel Lot Line Adjustment.dwg May 10,2021 - 3:32pm, jpfei

# EXHIBIT "C"

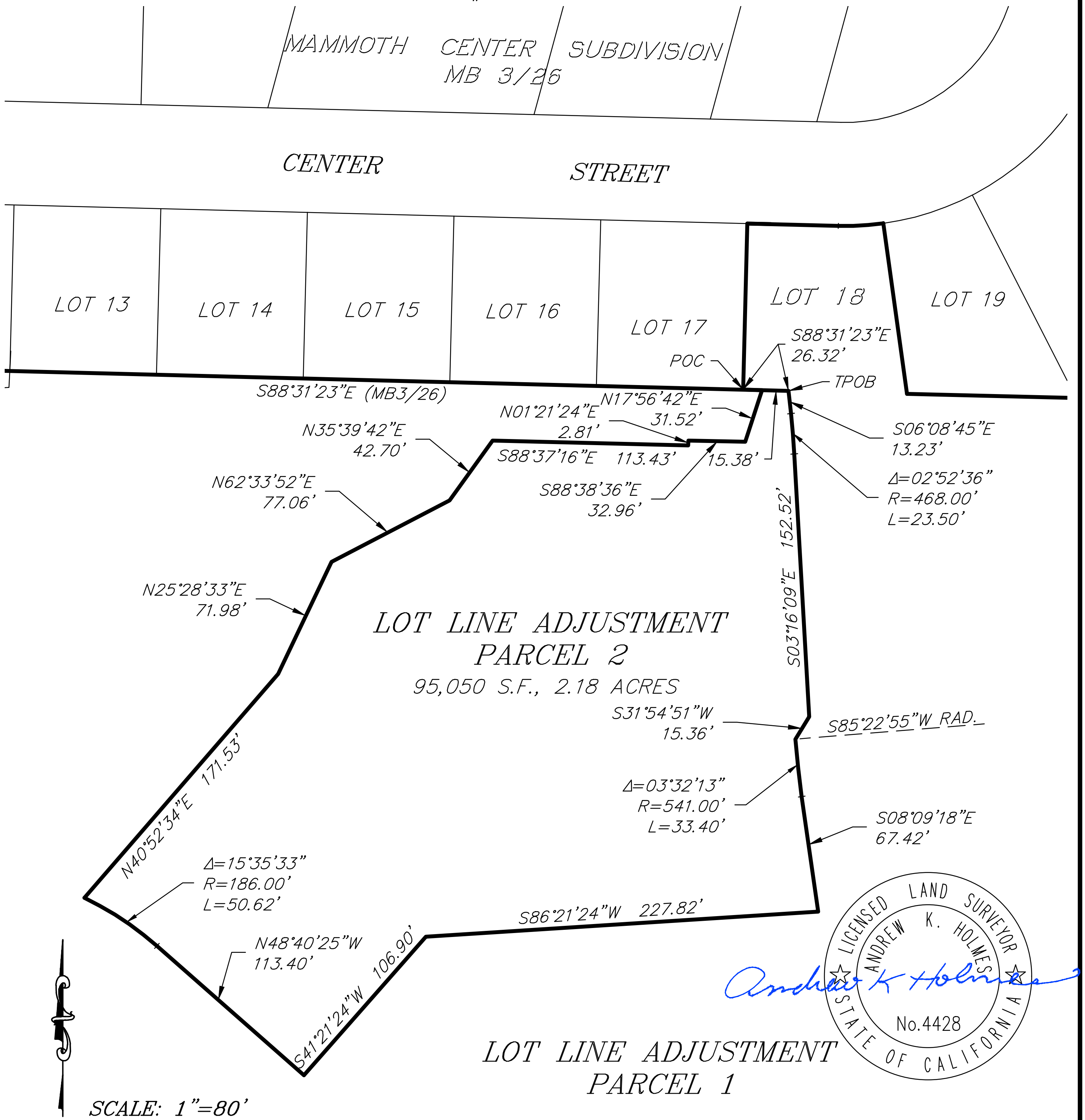
LOT LINE ADJUSTMENT 21–003

LOT LINE ADJUSTMENT PARCELS

TOWN OF MAMMOTH LAKES, MONO COUNTY, CALIFORNIA

RECORDING INFORMATION:

LOT LINE ADJUSTMENT APPLICATION BETWEEN PARCEL 1 AND PARCEL 2
OF THE PROPERTY DESCRIBED IN THE GRANT DEED RECORDED AS
DOCUMENT# 2018001104 O.R.




triad/holmes associates

SHEET 6 OF 6

Z: \01 Mammoth\669–10 Parcel\acad\Center St quitclaim\01.669.10 Parcel Lot Line Adjustment.dwg May 10,2021 – 3:34pm, jpfei

Exhibit B

# FORM OF FINANCING PROPOSAL

## The Parcel - Phase ___
## Mammoth Lakes, California

### CONSTRUCTION PHASE

**Sources of Funds**

| | | |
|---|---|---|
| Tax Credit Financing | $ | - |
| Tax Exempt Bonds | | |
| IIG | $ | - |
| Mono County Funds | $ | - |
| Deferred Fees (________________) | $ | - |
| Town of Mammoth Lakes (Land Loan) | $ | - |
| Deferred Costs | $ | - |
| Other | $ | - |
| Other | $ | - |
| Other | $ | - |
| Deferred Developer Fee | $ | - |
| **Total Sources of Funds** | $ | - |

**Uses of Funds**

| | | |
|---|---|---|
| Land | $ | - |
| Construction Costs | $ | - |
| Construction Contingency | $ | - |
| Financing Costs | $ | - |
| Architecture & Engineering | $ | - |
| Other Soft Costs | $ | - |
| Developer Fees | $ | - |
| Soft Cost Contingency | $ | - |
| Post Construction Interest & Reserves | $ | - |
| **Total Uses of Funds** | $ | - |

### PERMANENT PHASE

**Sources of Funds**

| | | |
|---|---|---|
| Total Tax Credit Financing | $ | - |
| Tax Exempt Bonds | | |
| IIG | $ | - |
| Mono County Funds | $ | - |
| Deferred Fees (________________) | $ | - |
| Town of Mammoth Lakes (Land Loan) | $ | - |
| Other | $ | - |
| Other | $ | - |
| Other | $ | - |
| Other | $ | - |
| Deferred Developer Fee | $ | - |
| **Total Sources of Funds** | $ | - |

**Uses of Funds**

| | | |
|---|---|---|
| Land | $ | - |
| Construction Costs | $ | - |
| Construction Contingency | $ | - |
| Financing Costs | $ | - |
| Architecture & Engineering | $ | - |
| Other Soft Costs | $ | - |
| Developer Fees | $ | - |
| Soft Cost Contingency | $ | - |
| Post Construction Interest & Reserves | $ | - |
| **Total Uses of Funds** | $ | - |

## EXHIBIT C

## FORM OF GRANT DEED

Recording Requested by:

After Recordation Mail to and
Mail Tax Statements to:

____________________
430 East State Street, Ste. 100
Eagle, ID 83616

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

**Documentary Transfer Tax is $________**

## GRANT DEED

**FOR VALUE RECEIVED**, the receipt and sufficiency of which are hereby acknowledged, the **TOWN OF MAMMOTH LAKES,** a California municipal corporation, hereby grants to _______________, a ___________________, all of that certain real property more particularly described in Schedule 1 attached hereto and incorporated herein by this reference, reserving therefrom the following easements: _____________________

This grant is subject to (a) all non-delinquent real property taxes, (b) all non-delinquent special assessments, if any, (c) all other liens, leases, easements, encumbrances, covenants, conditions, restrictions and other matters of record, and (d) all matters affecting the status of title that would be revealed by an accurate survey of the subject property.

Grantor disclaims any and all express or implied warranties regarding the Property other than the implied warranties stated in Section 1113 of the California Civil Code.

**Dated:** __________, 20___

TOWN OF MAMMOTH LAKES, a California municipal corporation

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

## SCHEDULE 1

## LEGAL DESCRIPTION

## EXHIBIT D

## FORM OF REGULATORY AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Town of Mammoth Lakes
P.O. Box 1609
Mammoth Lakes, CA 93546

Attention: Town Manager

No fee for recording pursuant to
Government Code Section 27383

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## REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of _______, 2021, by and between the Town of Mammoth Lakes, a California municipal corporation ("Town"), and [_________________], a California Limited Partnership ("Developer"), with reference to the following facts.

## RECITALS

A. The Town and Pacific West Communities, Inc., an Idaho corporation (the "PWC"), an affiliate of Developer, are parties to that certain Disposition and Development Agreement dated _____ __, 2020, by and between Town and Borrower (the "DDA"), with respect to development of affordable housing on a tract of land owned by the Town commonly known as "The Parcel," which is located in the Town of Mammoth Lakes, California, bearing APNs 035-010-020 & 035-100-003 ("The Parcel"). The Town and Developer have entered into a Loan Agreement of even date herewith, (the "Loan Agreement"), pursuant to which the Town will provide a loan (the "Loan") to the Developer in the amount of $6,604,000 for an affordable housing project on portion of the Parcel as more particularly described in Exhibit A attached hereto (the "Property").

B. Pursuant to the DDA, PWC intends to construct approximately 450 units of affordable housing on the Parcel ("Units"), subject to future changes as mutually agreed by Town and Developer. In furtherance thereof, Developer has agreed to construct [_______] Units on the Property, of which not less than 40% of the total number of Units shall be affordable to households whose incomes are equal to, or less than, 75% of the maximum income of lower income households as defined in California Health & Safety Code Section 50079.5, and at least half of such Units shall be affordable to very low income households as defined in California Health & Safety Code Section 50105, pursuant to California Government Code Section 37364 (the "Development", as further defined below). All such Units, will be restricted for a fifty-five (55) year period.

C. Developer has secured low-income housing tax credit financing for the Development from the California Tax Credit Allocation Committee ("TCAC") and will be required to deed restrict [___]

of the Units (other than one (1) Manager's Unit) to households earning less than [____]% of Area Median Income adjusted for family size through a regulatory agreement with TCAC (the "TCAC Regulatory Agreement"), provided that such deed-restricted Units may be counted toward the obligations set forth in Recital B above to the extent that the Units meet the affordability standards of Government Code Section 37364. This Agreement, in conjunction with the TCAC Regulatory Agreement, will ensure the Development's continuing affordability.

D. The Loan is being made to the Developer in order to help achieve financial stability for the Development and to increase the supply of affordable rental housing in the Town. In consideration for the Loan, the Developer has agreed to observe all the terms and conditions set forth below.

E. On April 28, 2021, the Town Council (the "Council") adopted Resolution No. [21-___], authorizing the execution of a Disposition and Development Agreement between the Town and PWC or PWC's assignee, which provides for Town to make the Loan to PWC or its assignee (including Developer) on certain terms and conditions and further authorizing the Town Manager to execute the Disposition and Development Agreement and all necessary loan documents to effect the Loan and all related loan documents as required for ongoing future maintenance and monitoring responsibilities, as approved by the Town Attorney.

THEREFORE, the Town and the Developer hereby agree as follows.

## ARTICLE 1
## DEFINITIONS

1.1 Definitions.

Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Disposition and Development Agreement (the "DDA") executed between Town and Developer on ________, 2021. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

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

(b) "Agreement" is this Regulatory Agreement and Declaration of Restrictive Covenants.

(c) "Area Median Income" or "AMI" is the area median income for Nevada County as published and periodically updated by the United States Department of Housing and Urban Development ("HUD"), adjusted for Actual Household Size or Assumed Household Size as specified in this Agreement.

(d) "Assumed Household Size" shall have the meaning set forth in Section 2.2(c) below.

(e) "Deed of Trust" is the deed of trust to the Town on the Property that secures repayment of the Loan and the performance of all covenants of the Loan Documents.

(f) "Developer" is as defined in the first paragraph of this Agreement.

(g) "Development" is the Property and the rental housing units to be located on the Property as described in Recital A, as well as any additional improvements, and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

(h) "HUD" is the United States Department of Housing and Urban Development.

(i) "Loan" is as defined in Recital A.

(j) "Loan Agreement" is defined in Recital A.

(k) "Low Income Household" shall mean a household with an annual income which does not exceed eighty percent (80%) of Area Median Income, adjusted for Actual Household Size.

(l) "Low Income Rent" shall mean the maximum allowable rent for a Unit occupied by a Low Income Household pursuant to Section 2.2(a) below.

(m) “Low Income Units” shall mean the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Low Income Households.

(n) "Moderate Income Household" shall mean a household with an annual income which does not exceed one hundred twenty percent (120%) of Area Median Income, adjusted for Actual Household Size.

(o) "Moderate Income Rent" shall mean the maximum allowable Rent for a Moderate Income Unit pursuant to Section 2.2(b) below.

(p) “Moderate Income Units” shall mean the Units which, pursuant to Section 2.1(b) below, are required to be occupied by Moderate Income Households.

(q) "Note" is the promissory note from the Developer to the Town evidencing the Loan.

(r) "Property" is defined in Recital A.

(t) "Rent" is the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Developer which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service, internet or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Developer, and paid by the Tenant.

(u) “Sub-Low Income Household” shall mean a household with an annual income which does not exceed 75% of the maximum income of Low Income Households, adjusted for Actual Household Size.

(v) “Sub-Low Income Rent” shall mean the maximum allowable rent for a Unit occupied by a Sub-Low Income Household pursuant to Section 2.2(c) below.

(w) “Sub-Low Income Units” shall mean the Units which, pursuant to Section 2.1(c) below, are required to be occupied by Sub-Low Income Households.

(x) "Tenant" is a household legally occupying a Unit pursuant to a valid lease with Developer.

(y) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty-fifth (55th) anniversary of the date of issuance of the last certificate of occupancy or equivalent certification provided by the Building Division of the Town’s Community Development Department for the Units.

(z) "Unit" is one of the rental housing units constructed on the Property.

(aa) “Very Low Income Household” shall mean a household with an annual income which does not exceed fifty percent (50%) of Area Median Income, adjusted for Actual Household Size.

(bb) “Very Low Income Rent” shall mean the maximum allowable Rent for a Very Low Income Unit pursuant to Section 2.2(d) below.

(cc) “Very Low Income Unit” shall mean shall the Units which, pursuant to Section 2.1(d) below, are required to be occupied by Very Low Income Households.

1.2 Exhibits.

The following exhibit is attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

## ARTICLE 2
## AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements.

The Units listed below shall be occupied by Tenants meeting the following income requirements:

(a) Low Income Units. [________] of the Units in the Development (collectively, the "Low Income Units") shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households.

(b) Moderate Income Units. The number of the Units in the Development agreed upon by Town and Developer as Moderate Income Units (collectively, the "Moderate Income Units") shall be rented to and occupied by or, if vacant, available for occupancy by Moderate Income Households.

(c) Sub-Low Income Units. Not less than 40% of the total number of Units in the Development shall be affordable to households whose incomes are equal to or less than 75% of the maximum income of Low Income Households, subject to the additional requirements of Section 2.1(d).

(d) Very Low Income Units. At least half of the Sub-Low Income Units in the Development shall be affordable to Very Low Income Households.

(e) Intermingling of Units. The Low Income Units, Sub-Low Income Units, and Very Low Income Units shall be intermingled with, and shall be of comparable quality to, the other Units in the Development.

2.2 Allowable Rent.

(a) Low Income Rent. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of the Low Income Units shall not exceed the rent permitted by TCAC for Low Income Households, adjusted for Assumed Household Size.

(b) Moderate Income Rent. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of Moderate Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of one hundred twenty percent (120%) of Area Median Income, adjusted for Assumed Household Size.

(c) Sub-Low Income Rent. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of the Sub-Low Income Units shall not exceed 75% of the rent permitted by TCAC for Low Income Households, adjusted for Assumed Household Size.

(d) Very Low Income Rent. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of Very Low Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size.

(e) Assumed Household Size. In calculating the allowable Rent for the Units, the following Assumed Household Sizes shall be utilized (except that if any federal statutes or regulations require use of alternate household size assumptions in calculating rents, such federally-mandated household size assumptions shall be used instead of the assumptions provided below):

| Number of Bedrooms | Assumed Household Size |
|---|---|
| Studio | 1 |
| One | 2 |
| Two | 3 |
| Three | 5 |

(f) Town Approval of Rents. Initial rents for all Units shall be approved by the Town prior to occupancy. Rent increases shall be calculated pursuant to Subsections 2.2(a) through (d), above. Maximum permissible rents for the Units shall also be subject to and in conformity with the schedule of maximum rents published annually by TCAC.

(g) In the event that income determinations are no longer published by HUD, or are not updated for a period of at least eighteen (18) months, the Town shall provide the Developer with other income and Rent determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.

2.3 Termination of Occupancy.

Upon termination of occupancy of a Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit shall be redetermined. In any event, Developer shall maintain the occupancy requirements set forth in Section 2.1 above, except as may be modified by Section 2.2.

2.4 Section 8 Voucher and Certificate Holders.

The Developer will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing certificate program or the Housing Choice Voucher Program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Units which have the effect of precluding occupancy of Units by such prospective Tenants.

2.5 Lease Provisions.

The Developer shall use a form of Tenant lease approved by the Town for the Units. The form of Tenant lease shall also comply with all requirements of the Loan Documents, and shall, among other matters:

(a) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Developer to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy of the Units in accordance with the standards set forth in this Agreement, or (2) to qualify as a Very Low Income Household, Sub-Low Income Household, or Low Income Household as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification;

(b) be for an initial term of not less than six months. After the initial term, the lease may be month to month by mutual agreement of the Developer and the Tenant, however the Rent may not be raised more often than once every twelve (12) months after the initial year. The Developer will provide each Tenant with at least sixty (60) days' written notice of any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 above;

(c) prohibit subleasing of the Unit, contain nondiscrimination provisions, and include the Tenant's obligation to inform the Developer of any need for maintenance or repair;

(d) include reasonable rules of conduct consistent with California law; and

(e) allow termination of the tenancy only for good cause, including serious or repeated violation of the terms and conditions of the rental agreement, violations of applicable federal, state, or local law; or other good cause.

2.6 Security Deposits.

Any security deposits collected by Developer or Developer's agent shall be kept separate and apart from all other funds in a trust account with a depository insured by the Federal Deposit Insurance Corporation or other comparable federal deposit insurance program and shall be held and disbursed in accordance with California law. The balance in the trust account shall at all times equal or exceed the aggregate of all outstanding obligations, plus accrued interest thereon.

2.7 Increased Income of Tenants.

(a) Increase from Very Low Income to at or below Low Income. If, upon recertification of a Tenant's income, the Developer determines that a former Very Low Income Household’s income has increased and exceeds the qualifying income for a Very Low Income Household, but does not exceed the qualifying limit for a Low Income Household, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to the rent for a Low Income Unit specified in Section 2.2(a); and

(2) The Developer shall rent the next available Unit to a Very Low Income Household at a Rent not exceeding the maximum Rent specified in Section 2.2(d).

(b) Increase from Very Low Income. If, upon recertification of a Tenant's income, the Developer determines that a former Very Low Income Household’s income has increased and exceeds the qualifying income for a Low Income Household, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to that of a Moderate Income Unit pursuant to Section 2.2(b); and

(2) The Developer shall rent the next available Unit to a Very Low Income Household at a Rent not exceeding the maximum Rent specified in Section 2.2(b).

## ARTICLE 3
## INCOME CERTIFICATION AND REPORTING

3.1 Tenant Selection Plan.

Ninety (90) days before leasing the Development, the Developer shall provide the Town, for its review and approval, the Developer's written tenant selection and affirmative marketing plan.

Upon receipt of the marketing plan, the Town shall promptly review the marketing plan and shall approve or disapprove it within thirty (30) days after submission. If the marketing plan is not approved, the Developer shall submit a revised marketing plan within thirty (30) days. The Developer's marketing materials shall identify the Town as a source of funding for the Units.

3.2 Income Certification.

The Developer will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications for each Tenant renting any of the Units. Developer shall make a good faith effort to verify that the income statement provided by an applicant or Tenant is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (c) obtain the three (3) most current savings and checking account bank statements; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be made available to the Town upon request.

3.3 Annual Report to Town.

(a) The Developer shall provide any information reasonably requested by the Town in connection with the Development. In particular, the Developer shall provide the Town with annual reports required by this Regulatory Agreement, including but not limited to reports regarding the Development's rent and occupancy levels, as well as the annual operating budget. Without limitation, the Developer shall provide the Town no later than the ninety (90) days after the close of each calendar year following the Effective Date, hardcopies and PDF copies of the following documents:

(1) insurance certificates detailing all coverage required under the Loan Agreement and the Deed of Trust;

(2) evidence of payment of property taxes or property tax exemption for the Development, as applicable;

(3) audited financial statements for the Development;

(4) an occupancy report in the form required by TCAC including: (i) the verified income of each tenant or household, (ii) the number of tenants in each household; (iii) the current rents charged each tenant or household and whether these rents include utilities, and (iv) the date tenancy commenced for each Unit;

(5) certifications of eligibility for all Tenants of Units at the time of initial occupancy and upon the yearly anniversary of their continuing tenancies. Such certification shall include verified income statements. Developer shall retain in the Tenant’s file all verifications of Tenant’s income (tax returns, W-2 forms, paycheck stubs, etc.);

(6) the operating reserve balance;

(7) the replacement reserve balance;

(8) the proposed annual operating budget for the subsequent fiscal year; and

(9) the proposed annual replacement budget for the subsequent fiscal year.

(b) Within fifteen (15) days after receipt of a written request, Developer shall provide any other information or completed forms requested by the Town to ensure compliance with the Loan Documents or this Agreement.

(c) Substitution of Monitoring and Compliance Reports Prepared for Other Financing Programs. If similar reports on some or all of the Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this Section by the Town, with respect to the portion of the requirements of this Section covered by such reports, provided that copies are provided on an annual basis to the Town with an owner certification addressed to the Town certifying that the Developer has complied with this Agreement.

3.4 Additional Information.

The Developer shall provide any additional information reasonably requested by the Town. The Town shall have the right to examine and make copies of all books, records or other documents of the Developer which pertain to the Units.

3.5 Records.

The Developer shall maintain complete, accurate and current records pertaining to the Units, and shall permit any duly authorized representative of the Town to inspect records, including but not limited to records pertaining to income and household size of Tenants and Rent charged Tenants, upon reasonable prior notice during normal business hours. All Tenant lists, applications and waiting lists relating to the Units shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the Town, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Town.

3.6 On-site Inspection.

(a) The Town shall have the right to perform on-site inspections of the Development, including the materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years. The Town shall have the right to inspect the Units as frequently as is reasonably required to ensure compliance with the Loan Documents, but in any case, at least once per year. The Developer agrees to cooperate in such inspection(s). If Town desires to inspect the interior of the Units, Town shall give Developer sufficient notice to allow Developer to give seventy-two (72) hours' notice to Tenants.

(b) The Town shall notify Developer of any records it deems insufficient. Developer shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the Town in such notice, or if a period longer than fifteen

(15) days is reasonably necessary to correct the deficiency, then Developer shall begin to correct the deficiency within fifteen (15) days and correct the deficiency within thirty (30) days, or as otherwise agreed by Town if a longer time period is reasonably required.

## ARTICLE 4
## OPERATION OF THE DEVELOPMENT

4.1 Residential Use.

The Property and the Units shall be used only for residential purposes consistent with the Loan Documents, and the Units shall be operated and maintained as residences for the Term of this Agreement. No part of the Units shall be operated as transient housing in which the term of occupancy is less than thirty (30) days.

4.2 Compliance with Loan Documents.

Developer shall comply with all the terms and provisions of the Loan Documents.

4.3 Taxes and Assessments

Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

4.4 Compliance with TCAC Regulatory Agreement.

Developer shall comply with all the terms and provisions of the TCAC Regulatory Agreement including, without limitation, all affordability restrictions. Breach of the TCAC Regulatory Agreement by Developer could expose Developer and the Development to loss of tax credit financing, loss of equity and foreclosure of senior debt and, therefore, shall constitute a breach of this Agreement.

## ARTICLE 5
## PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities.

The Developer is responsible for all management functions with respect to the Units, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Town shall have no responsibility over management of the Units. The Developer shall retain a professional property management company approved by the Town in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required at all times.

5.2 Management.

The Development shall at all times be managed by an experienced management agent reasonably acceptable to the Town, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Developer shall submit for the Town's approval the identity of any proposed Management Agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the Town to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the Town shall approve the proposed Management Agent by notifying the Developer in writing. Unless the proposed Management Agent is disapproved by the Town within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The Town hereby approves [Cambridge Real Estate Services, Inc.] as the initial Management Agent.

5.3 Performance Review.

The Town reserves the right to conduct an annual (or more frequently, if deemed necessary by the Town) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the Town to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall cooperate with the Town in such reviews.

5.4 Approval of Management Policies.

The Developer shall submit its written management policies with respect to the Units to the Town for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

5.5 Property Maintenance.

(a) The Developer shall, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, Town, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

(1) Landscaping. The Developer agrees to have landscape maintenance performed every other week, including replacement of dead or diseased plants with comparable plants. Developer agrees to adequately water the landscaping on the Property. No improperly maintained landscaping on the Property shall be visible from public streets and/or rights of way.

(2) Yard Area. No yard areas on the Property shall be left unmaintained, including:

(A) broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week;

(B) packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and

(C) vehicles parked or stored in other than approved parking areas.

(3) Building. No buildings located on the Property may be left in an unmaintained condition so that any of the following exist:

(A) violations of state law, uniform codes, or Town ordinances;

(B) conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance;

(C) broken windows;

(D) graffiti (must be removed within 72 hours); and

(E) conditions constituting hazards and/or inviting trespassers, or malicious mischief.

(4) Snow Removal. The Developer shall ensure that accumulations of snow are timely removed from drive aisles, parking spaces, and walkways within the project. During periods of continuous accumulation of snow, snow shall be removed not less frequently than once every 24 hours.

(b) The Town places prime importance on quality maintenance to protect its investment and to ensure that all Town-assisted affordable housing projects within the Town are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Units will be acceptable to the Town assuming the Developer agrees to provide all necessary improvements to assure the Units are maintained in good condition. The Developer shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

(c) In the event that the Developer breaches any of the covenants contained in this Section and such Default continues for a period of ten (10) days after written notice from the Town with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the Town with respect to landscaping and building improvements, then the Town, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the Default. Pursuant to such right of entry, the Town shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the Town and/or costs of such cure, which amount shall be promptly paid by the Developer to the Town upon demand.

## ARTICLE 6
## MISCELLANEOUS

6.1 Nondiscrimination.

(a) Developer herein covenants by and for itself, its subcontractors, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, nor denial of the benefits of this Agreement to, any person or group of persons, on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or political affiliation or belief, nor any unlawful discrimination against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. Developer shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, Developer shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to Developer services or works required of Town by the State of California pursuant to agreement between Town and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and Developer and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) The provisions of paragraph (a) shall further apply to the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Development, and Developer and any person claiming under or through the Developer, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the Development.

(c) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a).

(d) The Developer shall include the provisions contained in this Section in all contracts and subcontracts related to the Development.

(e) The requirements in this Section shall survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

6.2 Term.

The provisions of this Agreement shall apply to the Property for the entire Term even if the Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of the Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the Town. The Town makes the Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.3 Notice of Expiration of Term.

At least six (6) months prior the expiration of the Term the Developer shall provide by first-class mail, postage prepaid, a notice to all Tenants in Units containing (a) the anticipated date of the expiration of the Term; (b) any Rent increase anticipated upon the expiration of the Term; and (c) a statement that a copy of such notice will be sent to the Town. The Developer shall also file a copy of the above-described notice with the Town Manager. In addition, the Developer shall comply with all requirements set forth in California Government Code Sections 65863.10 and 65863.11 or successor provisions and all other requirements of State and federal law.

6.4 Effect of Other Financing Programs.

The Development may be subject to the terms of other governmental subsidy programs. This Agreement and the agreements entered into by the Developer pursuant to these subsidy programs independently regulate Units in the Development. If any provision of another regulatory agreement or applicable law is found in conflict or in contradiction with the terms of this Agreement in relation to the Units, any federally mandated regulatory agreement or law shall prevail and, with respect to conflicting state or local regulatory agreements or laws, the most restrictive requirement, shall apply to those Units, except as otherwise specified.

6.5 Loan Documents.

In the event of any conflict among the Loan Documents, the most restrictive requirements shall apply.

6.6 Covenants to Run with the Land.

The Town and the Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement, said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the Town expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.7 Indemnification.

(a) To the full extent permitted by law, the Developer shall indemnify, defend at its own expense, and hold the Town and its elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the Town or Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege.

(b) The provisions of this Section shall survive the expiration of the Term, the reconveyance of the Deed of Trust, and any release of part or all of the Property from the burdens of this Agreement.

6.8 Enforcement by the Town.

Any partners of the Developer shall have the right to cure any Default. The Town agrees that any cure of a Default by any partners of the Developer shall be deemed to be a cure by the Developer, and shall be accepted or rejected on the same basis as if made or tendered by the Developer. If the Developer fails to perform any obligation under this Agreement, and fails to cure the Default within thirty (30) days after the Town has notified the Developer 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, or such longer period as approved by the Town, in writing, the Town shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law.

(a) Calling the Loan. The Town may declare a Default under the Note, accelerate the indebtedness evidenced by the Note, and with respect to the Loan, proceed with foreclosure under the Deed of Trust.

(b) Action to Compel Performance. The Town may bring an action at law or in equity to compel the Developer's performance of its obligations under this Agreement.

(c) Remedies Provided Under Loan Agreement. The Town may exercise any other remedy provided under the Loan Agreement.

6.9 Attorneys’ Fees and Costs.

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

6.10 Recording and Filing.

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

6.11 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of California. Venue shall be Mono County.

6.12 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

6.13 Waiver of Requirements.

No waiver of the requirements of this Agreement shall occur unless expressly waived by the Town in writing. No waiver will be implied from any delay or failure by the Town to take action on any breach or Default of Developer or to pursue any remedy permitted under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Town to any act or omission by Developer shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the Town's written consent to future waivers.

6.14 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the Town of Truckee.

6.15 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

| | |
|---|---|
| Developer: | 430 E. State Street, Suite 100<br>Eagle, ID 83616<br>Attention: Caleb Roope |
| Town: | Town of Mammoth Lakes<br>P.O. Box 1609<br>Mammoth Lakes, CA 93546<br>Attention: Town Manager |

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 shall 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).

6.16 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.17 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.

**[Signatures on following page. All signatures must be notarized.]**

**[Remainder of page intentionally blank.]**

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

**Developer:**

[_______________], a California Limited Partnership

By: TPC Holdings [_________], LLC, an Idaho limited liability company
Its: Administrative General Partner

By: ____________________________
Caleb Roope, Manager

**TOWN:**

TOWN OF MAMMOTH LAKES, a California municipal corporation

By: ______________________________
Dan Holler, Town Manager

**ATTEST:**

By: ____________________________
Town Clerk

APPROVED AS TO FORM:

__________________________________
Andrew Morris, Town Attorney

**EXHIBIT "A"**
**LEGAL DESCRIPTION**

Exhibit E

Conceptual Phasing Plan

Proposed Phases 1 – 6 are shown below.

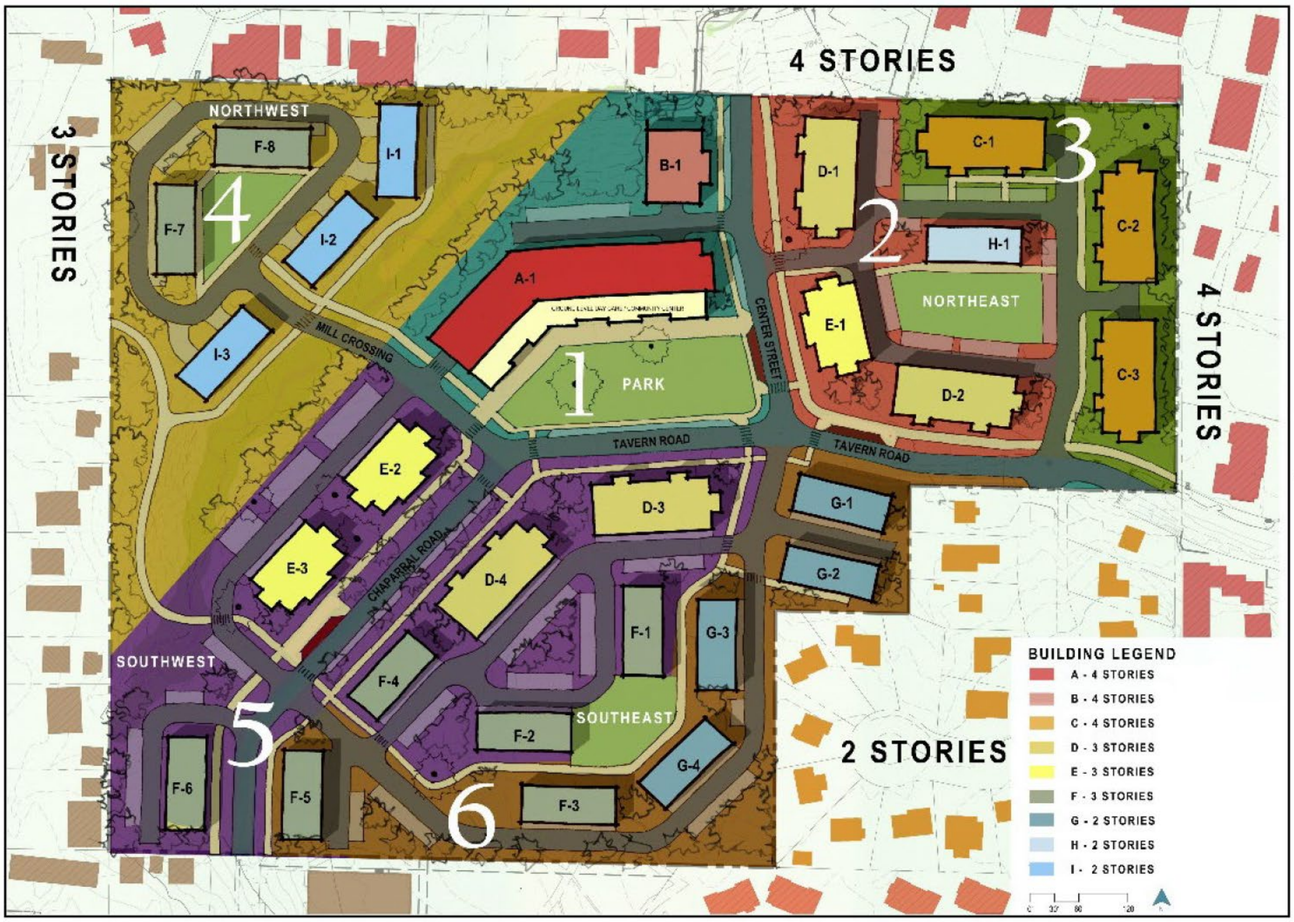

**EXHIBIT F**

**INTENTIONALLY OMITTED**

## EXHIBIT G

### FORM OF PURCHASE AGREEMENT

### LAND PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This Agreement ("Agreement") entered into on this __ day of **____, 20__** by and between the Town of Mammoth Lakes, a California municipal corporation ("Seller"), and **____________,** a California limited partnership ("Buyer") is meant to serve as the purchase agreement and the escrow instructions for this transaction.

**SALE PARCEL:** Seller herein agrees to sell to Buyer property situated in the Town of Mammoth Lakes, County of Mono, California, commonly known as a ____ acre +/- site located at _______, as more particularly described in **Exhibit A** and visually depicted in **Exhibit B** both attached hereto and incorporated herein by this reference (the "Sale Parcel"). The Sale Parcel includes all rights, privileges and easements appurtenant to the Sale Parcel, whether or not recorded, including without limitation all development rights, air rights, water and water rights, easements, rights of way or appurtenances used in connection with the Sale Parcel, and all oil, gas and other minerals in or under or that may be produced for or by the Sale parcel not otherwise reserved. Notwithstanding any provision herein to the contrary, Seller may reserve easements over and upon the Sale Parcel for streets, roads, trails, utility facilities, and public access, subject to Buyer's approval, which shall not be unreasonably withheld, conditioned, or delayed. Buyer's withholding of approval shall be deemed unreasonable if the easements to be reserved are consistent with the master infrastructure plan submitted by Buyer to Seller pursuant to the Disposition and Development Agreement between the parties and/or the master plan adopted by Seller which includes the Sale Parcel, or if the easements are the least intrusive practical means of providing trails, utility facilities, and public access. The Sale Parcel is currently a portion of APN _____ & ______ but will be assigned a new APN upon legal parcel creation, which may or may not be assigned by the close of escrow indicated below. Buyer shall construct a [_______]-unit affordable rental development on the Sale Parcel in accordance with The Parcel Master Plan. This provision shall survive the close of escrow.

**PURCHASE PRICE:** The Purchase Price shall be ____ ($___.00) and shall be paid as follows:

Seller shall carry back a Note and Deed of Trust for the full amount of the Purchase Price (as adjusted with credits and prorations at closing) with simple interest at a per annum rate of 3% for a term of 55 years, with payments based on a portion of the residual receipts from the project developed by Buyer on the Sale Parcel, as shall be more particularly described in a Loan Agreement to be entered into between Seller and Buyer at the close of escrow.

**DEPOSITS:** Within five (5) days after Seller's acceptance of this offer, Buyer shall deposit into an escrow account held by First American Title Company with an office located in Visalia, CA ("Escrow Holder") the sum of One Thousand Dollars ($1,000.00) (the "Deposit") as a deposit to be applied toward closing costs. Provided Buyer elects to move forward with the purchase of the

Sale Parcel at the completion of the Review Period, as defined below, an additional One Thousand Dollars ($1,000.00) (the "Additional Deposit") shall be deposited into escrow prior to the end of the Review Period to be applied toward closing costs.

**REVIEW PERIOD:** Buyer shall have until _______, 20__ (the "Review Period") to examine and investigate all aspects of the subject property. These investigations may include a physical and geological inspection and Buyer shall have the right, at Buyer's expense, to select an inspector(s) to make "inspections" (including tests, surveys, and other studies) of the Sale Parcel, including but not limited to soil, foundation, possible environmental hazards (such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, hazardous waste, and other substances, materials or products), geologic conditions, locations of property lines, size/square footage of the real property and improvements, and water/utility use restrictions. Seller shall make the Sale Parcel available for all inspections. Buyer shall keep the property free and clear of liens, shall indemnify and hold Seller harmless from all liability, claims and demands, damages, and costs, and shall repair all damages arising from the inspections. Buyer shall provide written notice to Seller of any items disapproved prior to expiration of the Review Period.

At any time prior to the expiration of the Review Period, Buyer shall have the right in its sole discretion to terminate this Agreement for any reason whatsoever by giving written notice to Escrow Holder and Seller. This Agreement shall also terminate after the completion of the Review Period if Buyer fails to place into escrow the Additional Deposit.

**SELLER REPRESENTATIONS:** Seller represents that Seller has no knowledge of any notice of violations of City, County, State, or Federal building, zoning, fire, or health laws, codes, statutes, ordinances, regulations, or rules filed or issued against the Sale Parcel. If Seller receives notice of violations prior to close of escrow, Seller shall immediately notify Buyer in writing. Buyer is allowed five (5) calendar days after receipt of notice to provide written notice to Seller of any disapproved items.

**TITLE:** Buyer may obtain a current preliminary title report at Buyer's expense. Title shall be free of liens, encumbrances, easements, restrictions, rights, and conditions of record or known to Seller. Buyer shall be allowed five (5) calendar days after receipt of the preliminary title report to provide written notice to Seller of any of the preceding disapproved items.

**ESCROW:** An escrow shall be opened to consummate the sale of the Sale Parcel pursuant to this Agreement through Escrow Holder upon the deposit by Seller and Buyer of an executed copy of this Agreement therein. Seller will hand Escrow Holder a Grant Deed conveying the property described herein to the vestees named below. Seller will also hand Escrow Holder an executed Note and Deed of Trust for the Purchase Price (as adjusted herein) prior to the close of escrow.

Buyer, within five (5) days of acceptance, will deliver to Escrow Holder the sum identified herein as the deposit to be applied toward closing costs. Prior to the close of escrow, Buyer will hand to Escrow Holder the additional cash deposits required to complete the total purchase price identified herein which Escrow Holder is instructed to use when Escrow Holder can obtain a CLTA Owners Policy of Title Insurance, and any policy required by Buyer's lenders which policies of title insurance will contain the insuring clauses, exceptions, exclusions, provisions and stipulations customarily contained in the printed provisions of such form with liability not less than the Purchase Price describing the Sale Parcel contained herein, and showing the fee title in said Sale Parcel vesting to Buyer or such other party Buyer may designate, subject to:

1. General and special taxes for the applicable fiscal year, a lien not yet due and payable, including levies for any district such as, but not limited thereto, drainage, irrigation, road improvement, acquisition and improvement, fire protection, etc.

2. The lien of supplemental taxes, if any, assessed pursuant to the laws of the State of California.

3. Any additional general and special taxes that may be due based on the possible re-evaluation of the herein described Sale Parcel.

4. Covenants, Conditions, Restrictions, Reservations, Easements and Rights of Way of Record, if any.

5. A first Deed of Trust and any other security instruments to record, executed by the above named vestees, to secure any loans or financing agreements in favor of a bonafide lender(s) of Buyer's choice.

**ESCROW CHARGES:** Buyer shall pay the cost of the escrow fee and a CLTA title policy. Buyer shall pay all of Escrow Holder's customary charges for document drafting, recording and miscellaneous charges. Buyer shall pay documentary transfer tax.

**PRORATIONS:**

(a) County consolidated property tax bill charges, shall be paid current by Seller and prorated between Buyer and Seller as of the date of recordation of the deed.

(b) Bonds or assessments of Special Assessment Districts which are now a lien, shall be paid current by Seller as of the date of recordation of the deed; payments that are not yet due shall be assumed by the Buyer.

(c) County transfer tax and transfer fees shall be paid by the Buyer.

**CLOSE OF ESCROW:** Close of Escrow shall be the date upon which the Grant Deed conveying title of the Sale Parcel to Buyer is recorded in the Official Records of the county in which Sale Parcel is located. This Escrow shall close on or before ___, 20__. If escrow is not in a condition to close by such date, any party which is not then in default may demand, in writing, the return of its documents; but, if both parties hereto are in default, no demand for return thereof shall be recognized until five (5) days after Escrow Holder shall have mailed copies of such demand to the other party. Notwithstanding the foregoing, Buyer at any time may elect to close on five (5) days prior notice of same to Seller and Escrow Holder.

**OTHER TERMS AND CONDITIONS:** This Agreement and the close of escrow are contingent upon Buyer obtaining financing approvals sufficient for development of the Sale Parcel within any applicable time period specified in the DDA (as defined below). In the event that Buyer cannot timely obtain such approvals, Seller may rescind this Agreement upon written notice to Buyer.

**FAILURE OF CONTINGENCIES AND TERMINATION OF ESCROW:** In the event this transaction and escrow terminate because of the failure of one or more of any contingency herein contained, all Deposits of Buyer not yet released to Seller shall be refunded in full to Buyer and neither party shall have any further obligation to the other. All escrow charges shall be paid by the Buyer and all documents delivered into escrow shall be returned to the depositing party.

**ATTORNEY FEES:** In any action, proceeding or arbitration arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

**ENTIRE CONTRACT:** Time is of the essence. All prior agreements between the parties, including without limitation the Disposition and Development Agreement ("DDA")dated _____, together with its exhibits and any documents incorporated by reference therein, are incorporated in this Agreement which constitutes the entire contract. Its terms are intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous oral agreement. The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Agreement.

**AGENCY CONFIRMATION:** The following agency relationship(s) and respective compensation to be paid by Seller are hereby confirmed for this transaction:

Agent Representing Buyer: **None** Compensation for Services:

Agent Representing Seller: **None** Compensation for Services:

**GOVERNING LAW AND VENUE:** This Agreement shall be governed by the laws of the State of California. Venue shall be Mono County.

**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.

**SEVERABILITY:** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

**(Remainder of This Page Intentionally Left Blank – Signature Page to Follow)**



Buyer Initials______ Seller Initials ______

**IN WITNESS HEREOF,** the parties hereto have caused this Agreement to be executed on the dates indicated hereinabove.

**BUYER**: **___________, a California limited partnership**

By:

Date:

**SELLER: Town of Mammoth Lakes**

By:

Date:

**Exhibit A**
**Legal Description of Sale Parcel**



Buyer Initials______ Seller Initials ______

**Exhibit B**
**Depiction of Sale Parcel**



Buyer Initials______ Seller Initials ______

# <u>EXHIBIT I</u>

## IIG AGREEMENT

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES
**STANDARD AGREEMENT**
STD 213 (Rev. 04/2020)

**SCO ID:**

| AGREEMENT NUMBER | PURCHASING AUTHORITY NUMBER (if applicable) |
|---|---|
| 19-IIG-14666 | |

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME
Pacific West Communities, Inc., and Town of Mammoth Lakes

2. The term of this Agreement is:

START DATE
Upon HCD Approval

THROUGH END DATE
06/30/2023

3. The maximum amount of this Agreement is:
$20,601,216.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

| EXHIBITS | TITLE | PAGES |
|---|---|---|
| Exhibit A | Authority, Purpose and Scope of Work | 4 |
| Exhibit B | Budget Detail and Payment Provisions | 3 |
| Exhibit C* | State of California General Terms and Conditions | GTC - 04/2017 |
| Exhibit D | IIG Terms and Conditions | 16 |
| Exhibit E | Special Conditions | 5 |
| | TOTAL NUMBER OF PAGES ATTACHED | 28 |

*Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.*
*These documents can be viewed at* https://www.dgs.ca.gov/OLS/Resources

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership,etc.)
See Attached

| CONTRACTOR BUSINESS ADDRESS | CITY | STATE | ZIP |
|---|---|---|---|
| See Attached | See Attached | See Attached | See Attached |

| PRINTED NAME OF PERSON SIGNING | TITLE |
|---|---|
| See Attached | |

| CONTRACTOR AUTHORIZED SIGNATURE | DATE SIGNED |
|---|---|
| See Attached | See Attached |

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME
Department of Housing and Community Development

| CONTRACTING AGENCY ADDRESS | CITY | STATE | ZIP |
|---|---|---|---|
| 2020 W. El Camino Ave., Suite 130 | Sacramento | CA | 95833 |

| PRINTED NAME OF PERSON SIGNING | TITLE |
|---|---|
| ~~Shaun Singh~~ Synthia Rhinehart | Contracts Manager, Business & Contract Services Branch |

| CONTRACTING AGENCY AUTHORIZED SIGNATURE | DATE SIGNED |
|---|---|
| Synthia Rhinehart | 10/19/2021 |

California Department of General Services Approval (or exemption, if applicable)

Exempt per; SCM Vol. 1 4.04.A.3 (DGS memo dated 06/12/1981)

## CONTRACTOR

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**Pacific West Communities, Inc.**
an Idaho corporation

By: ______________________ Date: 8.27.21

Caleb Roope
President

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Address:

430 East State Street, Suite 100
Eagle, ID 83616

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**Town of Mammoth Lakes**
A MUNICIPAL CORPORATION

By: Daniel C. Holler Date: 9-10-21

Daniel C. Holler
Town Manager

---

Address:

P.O. Box 1609
Mammoth Lakes, CA 93546

# EXHIBIT A

## AUTHORITY, PURPOSE AND SCOPE OF WORK

1. **Authority & Purpose**

This Standard Agreement, STD. 213 (hereinafter "Agreement") is the result of Recipient's application ("Application") for funding under the Infill Infrastructure Grant Program of 2019 ("Program") pursuant to:

A. Part 12.5 of Division 31 of the Health and Safety Code (commencing with Section 53559);

B. The Infill Infrastructure Grant Program of 2019 Guidelines (the "Guidelines") dated October 30, 2019, issued by the State of California, Department of Housing and Community Development ("Department") and as may be amended from time to time; and,

C. The Program's Notice of Funding Availability ("NOFA") under which the Contractor applied, was issued by the Department, dated October 30, 2019. In accepting this grant award, the Recipient agrees to comply with the terms and conditions of the Guidelines, the NOFA, this Agreement, and the disbursement agreement, which is more particularly described in Exhibit B, attached hereto.

D. This exhibit makes reference to Exhibits B, C, D, and E, all of which are attached hereto and made a part hereof by this reference.

2. **Scope of Work**

The Scope of Work ("Work") for this Agreement shall consist of the development and construction by or on behalf of the Recipient as follows:

A. The "Capital Improvement Project" described in Exhibit E under provision Ex. A-E.1.

B. The residential housing development designated in the Application as the "Qualifying Infill Project" (hereinafter also referred to as the "Housing Development"), to be developed and constructed by the Recipient, or other developer, as provided in the Application and meet the criteria set forth in Exhibit E under provision Ex. A-E.2.

**EXHIBIT A**

C. The Capital Improvement Project is an integral part of or is necessary for the completion of the Housing Development. The Recipient is responsible for and shall ensure the completion of the Capital Improvement Project and the completion and occupancy of the Housing Development in accordance with the criteria set forth above in Paragraph 2.B. The Department reserves the right to review and approve all Work to be performed by the Recipient, or contracted by the Recipient, in relation to this Agreement. Any substantial revision to the Work shall be submitted in writing for review and approval by the Department and shall require an amendment to this Agreement.

D. The Department, the Recipient and other parties as required by the Department, shall enter into a Disbursement Agreement governing among other things the disbursement of Program funds, as more particularly described in Exhibit B, attached hereto.

**3. Definitions**

Capitalized terms herein shall have the meaning of the definitions set forth in the Guidelines, in addition:

A. "Recipient" refers to the entity or entities submitting an application, or to a related entity approved by the Department entering into this Agreement and identified as "Contractor" on page one of this Agreement. In the case of joint applicants, "Recipient" shall also refer to each applicant or the Department-approved assignee of such applicant. Each joint applicant shall be jointly and severally liable for all obligations of a Recipient as set forth herein because the Department may only provide a single Program award under this Agreement, in the case of joint applicants, or where a related entity approved by the Department entering into this Agreement and identified as "Contractor" on page one of this Agreement is added later, all such applicants and related-entities identified as a Contractor under this Agreement shall collectively comprise and be deemed a joint venture.

B. "Capital Improvement Project" means the Capital Improvement Project described in Paragraph 2.A. of this Exhibit A.

C. "Housing Development" means the Qualifying Infill Project described in Paragraph 2.B. of this Exhibit A that is supported by the Capital Improvement Project.

## EXHIBIT A

Any reference to a specific "Section" or "section" of the Guidelines shall initially refer to that specific numbered section of the Guidelines adopted on and dated October 30, 2019. Notwithstanding, if and when the Department amends any portion of the Guidelines, all references herein to any such portion of the Guidelines shall be deemed to refer to the updated version of the Guidelines, either in whole or in part, as may be applicable. To the extent that any Guideline section or sections (Section or Sections) provision is or are amended, and thereafter receive(s) a new Guideline section number(s), any reference herein to the old Guideline section(s) number(s) shall be interpreted to refer instead to the Guideline section(s) that is (or are) intended to replace the content and substance of the former Guideline section(s).

### 4. Proximity to Amenities and Access to Transit: Large Jurisdictions

In response to submissions in the Application, the Department awarded rating points to qualifying infill projects in large jurisdictions for proximity to amenities (Guidelines Section 309(e)) and access to transit (Guidelines Section 309(d)) relative to the location of the Housing Development. At the request of the Department, Recipient shall provide evidence sufficient to support such award of points by the Department. The Department may refuse to commence or continue the disbursement of Program funds unless and until Recipient responds to such a request in a manner satisfactory to the Department.

### 5. Performance Milestones

Recipient shall ensure the completion of the PERFORMANCE MILESTONES set forth in Exhibit E under provision Ex. A-E.3, which are attached hereto and made a part hereof, by the designated dates. Recipient may apply to the Department for an extension of these timelines based on good cause shown and best efforts and assurances from the Recipient for timely completion of the remaining Milestones.

### 6. State Contract Coordinator

The State Contract Coordinator for this Agreement is the Infill Infrastructure Grant Program of 2019 Section Chief, Division of Financial Assistance, or the Chief's designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class to the State Contract Coordinator at the address specified in Exhibit E under provision Ex. A-E.4.

## EXHIBIT A

### 7. Recipient Contract Coordinator

The Recipient's Contract Coordinator for this Agreement is listed in Exhibit E under provision Ex. A-E.5. Unless otherwise informed, any notice, report, or other communication required by this Agreement may be mailed by first class mail, or sent through a commercial courier to the contact at the address specified in Exhibit E under provision Ex. A-E.5.

# EXHIBIT B

## BUDGET DETAIL AND PAYMENT PROVISIONS

**1. Project Budget**

The preliminary projected budget ("Budget") as referenced in this Exhibit contains the cost items for the design, development and construction of the approved Capital Improvement Project, including the sources and uses of funds ("Sources and Uses"). The financial information for the foregoing Budget is contained in Exhibit E under provision Ex. B-E.4 in a table entitled "PROJECT BUDGET." Recipient agrees that any cost overruns or increases resulting in a total cost for Capital Improvement Project exceeding that set forth in the Budget shall be the responsibility of Recipient.

**2. Contract Amount**

A. For the purpose of performing the Work, the Department agrees to provide the amount identified on page one, number 3, of this Agreement (STD. 213) in the form of a grant for the uses identified in the Budget. In no instance shall the Department be liable for any costs for the Work in excess of this amount, or for any unauthorized or ineligible costs.

B. The Department may approve a request from the Recipient to reallocate funds between authorized activities and itemized amounts stated in the Budget. Changes in aggregate of ten percent (10%) or less of the total grant amount between activity categories during the term of this Agreement, and expenditures pursuant thereto, may be made only after the Department's express written approval, but do not require a written amendment to this Agreement.

**3. Other Funding Sources**

A. Where the Sources and Uses set forth in this Exhibit identify funds other than Program funds, those funds shall be expended and applied to Project costs as provided in the Budget. Recipient agrees that it will make best efforts to ensure that the other funds specified in the Budget are available for disbursement as provided in this Exhibit, and approved for the use specified in the Budget, except to the extent the Budget and the Sources and Uses may be updated and modified by the Disbursement Agreement described below. The Recipient shall provide evidence and assurance of the commitment and availability of such other sources of funding identified in the Sources and Uses as provided in the Disbursement Agreement. The terms and conditions of all construction financing to be used in conjunction with the Program funds shall be subject to the Department's review and approval.

## EXHIBIT B

B. Pursuant to Sections 309(a)(3)(D) of the Guidelines, for Qualifying Infill Projects in Large Jurisdictions, the Department requires the Recipient to provide an Estoppel Letter, acceptable to the Department, evidencing that the amount of owner equity or developer funds proposed by the Recipient at application stage, and relied upon by the Department in reviewing the financial feasibility of the project, continues to be committed to the project.

### 4. Completion Dates

A. Pursuant to Guidelines Section 306(d), all Program funds must be disbursed no later than Disbursement Deadline, as that term is further defined in Exhibit E under provision Ex. B-E.1. All un-disbursed funds remaining as of the Disbursement Deadline, will no longer be available for this Project. All invoices for payment must be submitted to the Department no later than three (3) months prior to the Disbursement Deadline to ensure payment processing.

B. This Agreement shall expire on the date set forth in Exhibit E under provision Ex. B-E.2 notwithstanding a contrary date set forth on page one of this Agreement.

### 5. Method of Payment

A. Payment shall be made as progress payments as set forth in the Disbursement Agreement. Recipient shall request payment for Work completed on forms provided by the Department and subject to such documentation as the Department may require.

B. The Department shall not authorize payments unless it determines that the Program funds shall be expended in compliance with the terms and provisions of the Guidelines, the NOFA, this Agreement and the Disbursement Agreement.

C. The Department shall not authorize payment(s) for pre-development and/or soft costs until the Department has received from the Recipient:

1) An executed construction contract; and,

2) Evidence, acceptable to the Department, demonstrating that construction period funding sources have been secured, or has, or will be converted to permanent funding sources.

## EXHIBIT B

### 6. Disbursement Agreement

A. The Recipient, the Department and such other parties as may be reasonably required by the Department, shall enter into a Disbursement Agreement in a form provided by the Department. The Disbursement Agreement shall contain a specific description of the Capital Improvement Project and an updated Budget; therefore, including an updated table of Sources and Uses, and the specific terms and conditions for the disbursement of Program funds.

B. The Disbursement Agreement must be executed within two (2) years from the date of award pursuant to Section 306 (c)(2), which date is set forth in specific detail in Exhibit E under provision Ex. B-E.3.

[PROJECT BUDGET TABLE NOW APPEARS IN EXHIBIT E]

# EXHIBIT D

# IIG GENERAL TERMS AND CONDITIONS

## GENERAL

### 1. Effective Date, Commencement of Work and Completion Dates

This Agreement is effective upon approval by the Department representative's signature on page one of the fully executed Standard Agreement, STD 213. The Recipient agrees that construction of the Capital Improvement Project has not commenced as of the deadline for submittal of applications set forth in the Notice of Funding Availability. The Recipient agrees that the Work shall be completed as specified in this Agreement, subject to the termination date specified on page one, number two, of this Agreement, and subject to the expiration date provided by Exhibit B paragraph 4.B, unless a written request for an extension is submitted and written approval by the Department is provided within ninety (90) days prior to the termination or expiration date of this Agreement. Any extension to the termination or expiration date shall require an amendment to this Agreement.

### 2. Termination

The Department may terminate this Agreement at any time for cause by giving at least fourteen (14) days' notice in writing to the Recipient. Cause shall consist of violations by Recipient of any terms and/or special conditions of this Agreement, to include but not limited to Paragraph 46 of this Exhibit. Upon termination or expiration of this Agreement, unless otherwise approved in writing by the Department, any unexpended funds received by the Recipient shall be returned to the Department within fourteen (14) days of the Notice of Termination.

### 3. Infill Infrastructure Grant Documents

In addition to this Agreement the Recipient shall execute and enter into a Disbursement Agreement, which shall govern the terms, disbursement and use of the Program funds, the Covenant described below, and other additional agreements and documents as the Department may deem reasonable and necessary to meet the requirements of the Program and the terms and conditions of this Agreement. The Department may request, and if requested, the Recipient shall agree to and record a performance deed of trust ensuring the completion of Housing Development or the Infrastructure Project. Said performance deed of trust shall be recorded against the entire legal parcel underlying the project, which it ensures is being constructed.

# EXHIBIT D

## Covenant Regarding Development of Affordable Housing

Prior to the disbursement of Program funds, the Recipient shall enter into a written Covenant Regarding Development of Affordable Housing ("Covenant") with the Department and including such other parties as the Department may reasonably require, which shall require the development and construction of the Housing Development with, the number of units and the number of bedrooms per unit, the extent and depth of affordability, Net Density, as set forth in Exhibit A, and other uses and amenities for which points were granted to the Application. The Covenant shall be recorded against the parcel or parcels of real property on which the Housing Development is to be located and shall be binding on all successors, transferees, and assignees acquiring an interest in the Housing Development as follows:

A. For rental housing developments, the Covenant shall require the continuation of the affordability of the Housing Development for a period of not less than fifty-five (55) years from the date of the filing of a Notice of Completion for the Housing Development.

B. For homeownership housing developments, the Covenant shall require the continuation of the affordability for a period of not less than thirty (30) years from the date of the filing of a Notice of Completion for the Housing Development. The affordability will be ensured through a resale restriction or equity sharing upon resale.

C. [Intentionally Omitted]

D. In addition to the Covenant, the Department may request, and if requested, the Recipient shall agree to and record a performance deed of trust ensuring the completion of the Housing Development or the Infrastructure Project. Said performance deed of trust shall be recorded against the entire legal parcel underlying the object, which it ensures is being constructed. Alternatively, the Department may require that the Covenant contain a power of sale clause, which may be exercised in the event that the Housing Development or Infrastructure Project are not timely completed, or in the event of an uncured breach of this Agreement.

**EXHIBIT D**

4. **Site Control**

The Recipient must have and maintain site control sufficient to ensure the timely commencement of the Infrastructure Project and the Housing Development as determined by the Department. The Recipient shall also obtain all licenses, easements and rights-of-way or other interests required for completion of the Infrastructure Project and the Housing Development and provide evidence of such instruments prior to the first disbursement of Program funds.

5. **Appraisals**

Recipient shall, at the request of the Department, provide an appraisal of the real property to be acquired as part of the Infrastructure Project or the Housing Development, prepared in a form, and by a qualified appraiser, acceptable to the Department.

6. **Relocation Plan**

If there is or will be any residential or commercial displacement directly or indirectly caused by the Infrastructure Project or the Housing Development, or both, as defined in state law, the Recipient shall provide a relocation plan conforming to the requirements of state law and regulations issued by the Department in Subchapter 1 (commencing with Section 6000) of Chapter 6 of Division 1 of Title 25 of the California Code of Regulations. The relocation plan shall be subject to the review and approval of the Department prior to the initial disbursement of Program funds. In addition to actions that satisfy the regulatory requirements, the relocation plan shall contain a line item budget. The project and/or the development budget shall contain sufficient funds to pay all costs of relocation benefits and assistance as set forth in the relocation plan accepted by the Department.

7. **Article XXXIV**

The Recipient shall submit to the Department evidence satisfactory to the Department that the requirements of Article XXXIV of the California Constitution are inapplicable or have been satisfied as to the Housing Development.

**EXHIBIT D**

## 8. Environmental Conditions

The Recipient shall provide to the Department the following:

A. All Environmental Site Assessment ("ESA") Reports (to include Phase I, II, III, supplemental or update assessments and reports) for the Infrastructure Project and the Housing Development, in conformance with ASTM Standard Practice E 1527, evaluating whether the Infrastructure Project is affected by any recognized environmental conditions.

B. Documentation and/or a certification satisfactory to the Department that all Environmental Site Assessment Report recommendations including remediation and/or mitigation work have been completed.

C. Mitigation requirements required as a result of the Final Environmental Impact Report ("EIR") or Mitigated Negative Declaration if applicable and evidence satisfactory to the Department that all mitigation requirements have been satisfied.

## 9. Compliance with State and Federal Laws, Rules, Guidelines and Regulations

The Recipient agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Infrastructure Project and Housing Development, the Recipient, its Contractors or Subcontractors, and any grant activity.

## 10. Litigation

A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.

B. The Recipient shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

**EXHIBIT D**

**Milestones**

Recipient shall ensure the completion of the designated activities within the dates designated in Exhibit A, Performance Milestones, and as further set forth in the Disbursement Agreement.

**11. Insurance**

The Recipient shall have and maintain in full force and effect forms of insurance, at such levels and for such periods, in accordance with the Disbursement Agreement.

**12. Change of Conditions**

Notwithstanding the Department's obligations to provide payments pursuant to Exhibit B hereof, the Department reserves the right to evaluate the Infrastructure Project's need for Program funds based on new information or funding sources. If the Department determines that the Program funds, or a portion thereof, are no longer necessary to complete the Infrastructure Project, the Department may reduce the amount of the grant accordingly. In the event the Department determines the Infrastructure Project or Housing Development is no longer financially feasible, the grant commitment issued by the Department and this Agreement may be terminated.

**13. Obligations of Recipient with Respect to Certain Third-Party Relationships**

The Recipient shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Infrastructure Project and Housing Development with respect to which assistance is being provided under this Agreement. The Recipient shall comply with all lawful requirements of the Department necessary to ensure the completion, occupancy and use of the Infrastructure Project and Housing Development in accordance with this Agreement.

**14. Waivers**

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Recipient of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

**EXHIBIT D**

**Identity of Interests**

As a condition of disbursement, Recipient shall execute a Certificate of Identity of Interest ("Certificate") listing all relationships constituting an identity of interest with entities providing goods or services in connection with Recipient's performance of the Scope of Work. The Certificate shall be in a form provided by the Department. At the Department's request, Recipient shall submit contracts, instruments, documents, correspondence or other writings relating to Recipient's relationship with entities listed in the Certificate. The existence and nature of such relationships shall be subject to the review and approval of the Department to the extent necessary to ensure compliance with Program requirements and this Agreement.

**15. Loan Agreement Between Co-Recipients**

In the event of a joint application where the co-Recipient Locality or public housing authority and the co-Recipient developer have agreed in writing that the Locality or public housing authority, shall receive the Program funds as the primary Recipient in order to make a loan to the developer for tax credit purposes, the loan terms shall provide for, at a minimum, the following:

A. A zero percent (0%), deferred payment loan, with a term of at least thirty (30) years for home ownership developments, or a term of at least fifty-five (55) years for rental developments.

B. No periodic payments shall be required under the loan.

C. The co-Recipients shall be responsible for all aspects of establishing, documenting and servicing the loan.

D. The provisions governing the loan shall be entirely consistent with the IIG Guidelines and all documents required by the Department with respect to the use and disbursement of Program funds.

E. All documents governing the loan between the public agency lender and the developer borrower shall be subject to the review and approval of the Department prior to making the loan.

F. Any additional terms the Department may require, ensuring compliance with the Guidelines, this Standard Agreement, Disbursement Agreement and any other Department grant documents.

**EXHIBIT D**

## DESIGN

### 16. Architect

The Recipient shall utilize the services of an architect and/or an engineer to provide professional design and engineering services for the Infrastructure Project and Housing Development. Recipient shall ensure that an architect and/or an engineer shall supervise the construction work, conduct periodic site visits, prepare periodic inspection reports, verify the validity of the construction Contractor's payment requests, prepare or review change orders, and, upon completion of construction, provide the certification described in Paragraph 35, of this Exhibit D. At the request of the Department, Recipient shall submit all contracts for these services to the Department for its review and approval.

### 17. Plans and Specifications and Project Cost Estimates

At the request of the Department, the Recipient shall submit plans, specifications, and project cost estimates for the Infrastructure Project and Housing Development to the Department for its review and approval. The Infrastructure Project and Housing Development shall be constructed in substantial compliance with the plans and specifications, subject to any change order(s) accepted by the Department where such acceptance is required.

### 18. Reasonable Development Costs

At the request of the Department, the Recipient shall provide evidence acceptable to the Department that the total costs of the Infrastructure Project and Housing Development are reasonable and necessary for the proposed improvements. To verify cost reasonableness, the Department may require qualified third-party verification of cost, evidence of the competitive bidding of major cost components and appraisals.

### 19. Adaptability and Accessibility

The Infrastructure Project and Housing Development shall comply with all applicable federal, state and local laws regarding adaptability and accessibility for persons with disabilities in the design, construction and rehabilitation of projects.

### 20. Acoustics Report

**EXHIBIT D**

Upon request, the Recipient shall provide the Department with an acoustics report for the Housing Development in a form acceptable to the Department.

**21. Approval by Public Works Department**

Where approval by a local public works department, or its equivalent, is required for the Infrastructure Project, the Recipient must submit, prior to the disbursement of Program funds, a statement from that department, or other documentation acceptable to the Department, indicating that the Infrastructure Project has been approved by that department.

## CONSTRUCTION

**22. Construction Contract**

Except for work performed by its own employees, the Recipient shall enter into a written construction contract or contracts ("Construction Contract(s)") with a duly licensed contractor or contractors ("Contractor(s)") for the construction work of the Infrastructure Project and the Housing Development. The Construction Contract(s) shall require, where applicable, prevailing wages be paid in conformance with Labor Code Section 1720 et seq. and applicable provisions of this Agreement. The Construction Contract(s) and any amendments thereto shall be subject to the prior approval of the Department.

**23. Contractor's Assurance of Completion**

The Contractor(s) shall provide security to assure completion of the Infrastructure Project by furnishing the Recipient with Performance and Payment Bonds, or a Letter of Credit, which shall remain in effect during the entire term of the Construction Contract(s), and which shall be in a form and from an issuer, which is acceptable to the Department. The Performance Bond shall be in an amount at least equal to 100 percent (100%) of the approved construction costs included in the Construction Contract(s) to provide security for the faithful performance of the Construction Contract(s) including a warranty period of at least twelve (12) months after completion. The Payment Bond shall be in an amount at least equal to 100 percent (100%) of the approved construction costs included in the Construction Contract(s) to provide security for the payment of all persons performing labor on the Infrastructure Project and Housing Development and furnishing materials in connection with the Construction Contract. A Letter of Credit shall be in an amount equal to at least 20 percent (20%) of the approved construction costs included in the Construction Contract(s), in the form of an unconditional irrevocable, stand-by letter of credit. The Department shall be named

**EXHIBIT D**

as an additional obligee in the Bonds or an additional beneficiary under the Letter of Credit.

**24. Prevailing Wages**

Pursuant to Section 314 of the Guidelines, for the purposes of the State Prevailing Wage Law (Labor Code Sections 1720 – 1781), a grant under the Program shall be considered public funding for the construction, rehabilitation, demolition, relocation, preservation, or other physical improvement of the Infrastructure Project subject to the provisions of the State Prevailing Wage Law. Program funding of an Infrastructure Project shall not necessarily, in and of itself, be considered public funding of a Housing Development unless such funding is otherwise considered public funding under the State Prevailing Wage Law. It is not the intent of the Department to subject Housing Developments to the State Prevailing Wage Law by reason of Program funding of the Infrastructure Project in those circumstances where such public funding would not otherwise make the Housing Development subject to the State Prevailing Wage Law. Although the use of Program funds does not require compliance with federal Davis-Bacon wages, other funding sources may require compliance with federal Davis-Bacon wages. The Recipient shall prepare a plan for compliance with this section, which plan shall be subject to the review and approval of the Department.

**25. Construction Phase Information**

If requested by the Department, the Recipient shall provide the Department:

A. Information during the construction period including but not limited to all change orders and modifications to the construction documents and all inspection reports of the Infrastructure Project. Upon written notice to Recipient, the Department may require its advance written approval of all future change orders and modifications. Deviations from the plans and specifications which have the effect of reducing the quality, life or utility of a specified item or system must receive the prior written approval of the Department. Should change orders be submitted to the Department for its approval, they shall be deemed accepted if not responded to in writing within 10 (ten) business days of receipt by the Department. Recipient shall not authorize or approve any change orders rejected by the Department where the Department's approval is required.

B. Information during the construction period including but not limited to all change orders and modifications to the construction documents, all inspection reports prepared by the Housing Development architect and other consultants, and

**EXHIBIT D**

information relative to the Housing Development income, expenses, occupancy, relocation benefits and expenses, contracts, operations and conditions of the Housing Development. Upon written notice to Recipient, the Department may require its advance written approval of all future change orders and modifications. Deviations from the plans and specifications which have the effect of reducing the quality, life or utility of a specified item or system must receive the prior written approval of the Department. Should change orders be submitted to the Department for its approval, they shall be deemed accepted if not responded to in writing within 10 business days of receipt by the Department. Recipient shall not authorize or approve any change orders rejected by the Department where the Department's approval is required.

**26. Signage**

Recipient shall place signs on the construction site for the Infrastructure Project and Housing Development stating that the Department is providing financing through the Infill. Infrastructure Grant Program in an appropriate location(s), typeface and size containing the message set forth in Exhibit E under provision Ex. D-E.1.

The sign shall be maintained in a prominent location visible and legible to the public through construction completion. If the job sign includes the acknowledgment and/or logo of one or more other public lenders or grantors, the Department acknowledgement and logo shall also be displayed in a similar size and layout. A copy of the Department logo can be obtained by contacting the Department Contract Manager.

Upon installation of the sign, the Recipient shall submit a digital photograph thereof to the Department. The Recipient will also provide the Department, upon its request, with copies of any photographs that may be taken of the Infrastructure Project and the Housing Development by or on behalf of the Recipient or its architect. The Recipient will provide an acceptable written consent and release agreement, authorizing use of said photographs, all at no expense to the Department.

**INSPECTION OF GRANT ACTIVITIES**

**27. Site Inspection**

The Department reserves the right, upon reasonable notice, to inspect the Infrastructure Project site and any structures or other improvements thereon to determine whether the Infrastructure Project site meets the requirements of Program and this Agreement. If

**EXHIBIT D**

the Department reasonably determines that the site is not acceptable for the proposed Infrastructure Project in accordance with the Guidelines, the Department reserves the right to cancel its funding commitment and this Agreement.

**Infrastructure Project and Housing Development Inspection**

A. The Department and any authorized representative of the Department shall have the right, during construction and thereafter, to enter upon and inspect the construction of the Infrastructure Project and Housing Development to ensure that the construction is being and has been performed in accordance with the applicable Federal, State, and/or local requirements, the Guidelines and the terms of this Agreement. Such right to inspect shall include, but shall not be limited to, the right to inspect all work done, all materials and equipment used or to be used, and all books and records, including payroll records, maintained in connection with the construction work. Such right of inspection shall be exercised in a reasonable manner.

B. The Recipient shall be required to correct all circumstances found by such inspections not to conform to the applicable Program requirements, and to withhold payment to the Contractor and/or Subcontractor(s) until action(s) to correct the non-conforming circumstances is/are corrected by the Recipient and approved by the Department.

C. The Department reserves the right to withhold payment for any costs found not to conform to applicable Program requirements until such actions have been taken to correct the non-conforming circumstances and such corrective actions have been approved by the Department.

D. The Department shall have no affirmative duty to inspect the Infrastructure Project or the Housing Development and shall incur no liability for failing to do so. Once having undertaken any inspection, neither the Department, nor any representative of the Department shall incur any liability for failing to make any such inspection properly, or for failing to complete any such inspection. The fact that such inspection may or may not have occurred shall not relieve the Recipient, the contractor, the construction lender, the architect, the structural engineer, the locality or anyone else of any obligation to inspect the Infrastructure Project and Housing Development.

**EXHIBIT D**

**28. Audit/Retention and Inspection**

A. The Department, its representatives or employees, or its delegatee shall have the right to review, obtain, and copy all records pertaining to performance of the Agreement. Recipient shall provide the Department or its delegatee with any relevant information requested and shall permit the Department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material. Recipient further agrees to maintain such records for a minimum period of four (4) years after final payment under the Agreement, unless a longer period of records retention is stipulated.

B. Payment for any cost which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Recipient.

C. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Infrastructure Project or the Housing Development. At the Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.

D. The audit shall be performed by a qualified State, Department, local or independent auditor. The Agreement for audit shall include a clause, which permits access by the Department to the independent auditor's working papers.

E. If there are audit findings, the Recipient shall submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends, and the Department will notify the Recipient in writing. If the Department is not in agreement, the Recipient will be contacted in writing and will be informed as to the corrective actions required to cure any audit deficiencies. This action could include the repayment of disallowed costs or other remediation.

F. If so, directed by the Department upon termination of this Agreement, the Recipient shall cause all records, accounts, documentation and all other materials relevant to this Agreement to be delivered to the Department as depository.

## EXHIBIT D

## COMPLETION OF CONSTRUCTION

### 29. Relocation Plan Implementation Report

The Recipient shall provide a report, in a form acceptable to the Department, summarizing the actions taken and identifying all recipients of relocation assistance and benefits, and the amounts paid, and benefits provided, to or on behalf of each recipient.

### 30. Architect Certification

Where required by the Department, the Recipient shall cause the Infrastructure Project and Housing Development architect(s) or other appropriate professional to certify to the Department, in a form acceptable to the Department, that all construction is completed in accordance with the "as-built" Plans and Specifications and in compliance with all applicable federal, state and local laws relating to disabled accessibility.

### 31. Cost Certification

At the request of the Department, the Recipient shall submit an Infrastructure Project and Housing Development cost certification that shall have been audited by an independent certified public accountant in accordance with the requirements of the Department and the California Tax Credit Allocation Committee, if applicable. The Recipient (and the developer or builder if there is an identity of interest with the Recipient) shall keep and maintain records of all construction costs not representing work done under the Construction Contract and to make such records available for review by the Department.

### 32. Recorded Notice of Completion

The Recipient shall provide to the Department a certified copy of any Notice of Completion for the Housing Development recorded in the county in which the Housing Development is located.

### 33. "As-Built" Plans and Specifications

Upon completion, at the request of the Department, the Recipient shall submit "as-built" plans and specifications for the Infrastructure Project and Housing Development acceptable to the Department.

## EXHIBIT D

**34. Intentionally left blank**

## HOUSING DEVELOPMENT REQUIREMENTS

**35. Confirmation of Permitted Housing Units**

Conditions precedent to the first disbursement of Program funds shall include receipt of all required public agency entitlements and all required funding commitments for the Housing Development. The housing units to be developed in the Housing Development must be completed, as evidenced by receipt of a certificate of occupancy, within the time period established in this Agreement.

**36. Proximity to Amenities: Large Jurisdictions**

The following paragraph shall only apply to large jurisdictions. To ensure the Recipient's Housing Development meets or exceeds the proximity to amenities proposed in the Application, the Recipient shall submit evidence to the Department for approval prior to the final disbursement of funds that the amenities will be in service and located in distances consistent with Sections 309 and 310 of the Guidelines, as applicable, when the Housing Development is completed.

**37. Access to Transit: Large Jurisdictions**

The following paragraph shall only apply to large jurisdictions. To ensure the Recipient's Housing Development meets or exceeds the access to transit distance proposed in the Application, the Recipient shall submit evidence to the Department for approval prior to the final disbursement of funds that the transit stations or major transit stops meet the definitions in Section 302(gg) and 302(o) of the Guidelines, respectively. The evidence shall substantiate completion of the transit stations identified in the application no more than five years from the deadline for submittal of applications set forth in the NOFA, and pursuant to the definition of Transit Station of the Guidelines in Section 302.

## REPORTING REQUIREMENTS

**38. Reports on Infrastructure Project**

**EXHIBIT D**

Recipient shall submit, upon request of the Department, a periodic performance report regarding the construction of the Infrastructure Project. The reports will be filed on forms provided by the Department.

**39. Reports on Housing Development**

Recipient shall submit to the Department periodic reports, as required by the Department, but not less than annually, describing the development, construction and occupancy of the Housing Development. The report shall include, but not limited to, information regarding unit affordability and occupancy, construction and permanent financing evidenced by commitment letters, and a construction and completion schedule demonstrating compliance with this Agreement and the Guidelines. The reports will be filed on forms provided by the Department.

**40. Updated Information**

Recipient shall provide the Department updated documentation for any substantial change in the information previously provided relating to the Infrastructure Project and the Housing Development and the conditions described above.

**41. Monitoring Requirements**

The Program shall perform regular monitoring of the housing development and/or fiscal monitoring of the grant pursuant to section 312 of the Guidelines. The Recipient agrees to cooperate with any such monitoring and provide reasonable access to all Infrastructure Project files, records, documents and other information to employees or representatives of the Department. The Recipient shall resolve any monitoring findings to the Program's satisfaction by the deadlines set by the Department.

**REPAYMENT OF GRANT FUNDS**

**42. Breach of this Agreement**

In the event of a breach or violation by the Recipient of any of the provisions of this Agreement, the Department may give written notice to the Recipient to cure the breach or violation within a period of not less than thirty (30) days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default of the Agreement and may seek remedies for the default, including the following:

## EXHIBIT D

A. The Department may terminate this Agreement and demand repayment of the Program funds to the extent that work for costs to be paid by Program funds as provided in Exhibit B remains unperformed or uncompleted. Recipient shall be liable for all costs to complete all such uncompleted or unperformed work.

B. The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Infrastructure Project in accordance with Program requirements.

C. The Department may seek such other remedies as may be available under this Agreement or any law.

D. This Agreement may be cancelled by the Department under any of the following conditions:

1) An uncured breach or violation by Recipient of this Agreement or the Disbursement Agreement.

2) The objectives and requirements of the Program cannot be met by continuing the commitment or this Agreement.

3) Construction of the Infrastructure Project or Housing Development cannot proceed in a timely fashion in accordance with the Performance Milestones in Exhibit A of this Agreement.

4) Funding or disbursement conditions have not been or cannot be fulfilled within required time periods.

### 43. Repayment of Grant Funds for Failure to Develop Housing

Recipients will be required to repay disbursed Program grant funds where construction of residential units in the Housing Development used as the basis for calculating the grant amount pursuant to Section 305(a) of the Guidelines has not received building permits within two (2) years from the date of the Program grant award. The Department may extend these deadlines, for a term not to exceed seven (7) years, if the Recipient demonstrates, to the satisfaction of the Department, that it has complied with the performance milestones identified in Exhibit A of this Agreement. The amount to be repaid shall be the same proportion to the total grant amount as the number of residential units where construction has not timely commenced to the total number of designated residential units.

# EXHIBIT E

## PROJECT SPECIFIC PROVISIONS AND SPECIAL TERMS AND CONDITIONS

### 1. PROJECT SPECIFIC PROVISIONS

The following are project-specific terms and conditions (referred to as enumerated provision(s) for ease of reference in prior exhibits) and shall inform the references made to project specific information not contained in those prior exhibits.

**Provision Ex. A-E.1** (As referenced in Exhibit A paragraph 2.A)
The Parcel Mammoth Lakes is a 450-unit new construction project with 58 studios, 162 one-bedroom, 115 two-bedroom, and 33 three-bedroom units serving households with incomes ranging from 25-60 percent of Area Median Income (AMI), 29 market rate units, 50 Homeowner units, plus three two-bedroom manager's units.

## EXHIBIT E

**Provision Ex. A-E.2** (As referenced in Exhibit A paragraph 2.B)

| Capital Improvement Project costs associated with site preparation for the development of apartment units | | The Parcel Mammoth Lakes<br>1699 Tavern Rd.,<br>Mammoth Lakes, CA 93546<br>Mono County | | |
|---|---|---|---|---|
| Enter the number of units by bedroom size and income level. | | | | |
| # of Bedrooms | # of Units | IIG Restricted | Income Limit (% of AMI) | Other HCD |
| 0 | 17 | 17 | 30% | |
| 0 | 20 | 20 | 50% | |
| 0 | 21 | 21 | 60% | |
| 0 | 8 | | Market | |
| 1 | 44 | 44 | 30% | |
| 1 | 52 | 52 | 50% | |
| 1 | 66 | 66 | 60% | |
| 1 | 8 | | Market | |
| 1 | 12 | 12 | | HO Mod |
| 2 | 38 | 38 | 30% | |
| 2 | 45 | 45 | 50% | |
| 2 | 32 | 32 | 60% | |
| 2 | 6 | | Market | 3 Mgr Uts |
| 2 | 21 | 21 | | HO Mod |
| 3 | 9 | 9 | 30% | |
| 3 | 16 | 16 | 50% | |
| 3 | 8 | 8 | 60% | |
| 3 | 3 | | Market | |
| 3 | 17 | 17 | | HO Mod |
| 1 | 7 | | Market | |
| Total | 450 | 418 | | |
| Net Density (see Guidelines Sec. 302(o)) | | 378.82% | | |

**EXHIBIT E**

**Provision Ex. A-E.3** (As referenced in Exhibit A paragraph 5)

**PERFORMANCE MILESTONES**

| Performance Milestone | Infrastructure Project | Housing Development |
|---|---|---|
| Executed binding agreement between the Recipient and developer of the proposed Housing Development detailing the terms and conditions of the Project development. | N/A | N/A |
| Site Control of Housing Development site(s) by proposed housing developer. | 2/3/21 | 2/3/21 |
| Completion of all necessary environmental clearances, including those required under CEQA and NEPA. | 2/3/21 – Phase I | 2/3/21 – Phase 1 |
| Obtaining all necessary and discretionary public land use approvals. | 2/3/21 – Phase I | 2/3/21 – Phase I |
| Obtaining all enforceable funding commitments for the Housing Development supported by the Infrastructure Project. | 10/1/21 | 10/1/21 |
| Obtaining all enforceable funding commitments for all construction period financing. | 10/1/21 | 10/1/21 |
| Obtaining enforceable commitments for all construction/permanent financing described in the Sources and Uses (as defined in Exhibit B to this Agreement) including substantially final construction/permanent loan documents, and Tax Credit syndication documents for remaining phases of Project. | 10/1/21 | 10/1/21 |
| Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority. | 3/1/21 – Phase I | 6/1/21 – Phase I |
| Commencement of construction. | 6/1/21 – Phase I | 6/1/21 – Phase I |
| Construction complete and the filing of the Certificate of occupancy | 7/1/22 – Phase I | 3/1/23 – Phase I |

## EXHIBIT E

**Provision Ex. A-E.4** (As referenced in Exhibit A paragraph 6)

Jon Moore, Section Chief,
Climate Programs
Division of Financial Assistance
Department of Housing and Community Development
P.O. Box 952054
Sacramento, California 94252-2054

**Provision Ex. A-E.5** (As referenced in Exhibit A paragraph 7)

| | |
|---|---|
| Recipient: | Pacific West Communities, Inc. |
| Authorized Representative Name: | Caleb Roope |
| Authorized Representative Title: | President |
| Address: | 430 E State Street, Suite 100 |
| Phone No.: | 208-461-0022 |
| Email Address: | calebr@tpchousing.com |

**Provision Ex. B-E.1** (As referenced in Exhibit B paragraph 4.A)

The "Disbursement Deadline," as that term is used and referenced throughout the agreement, and in particular in Exhibit B paragraph 4.A, shall be no later than four (4) years from June 26, 2020.

**Provision Ex. B-E.2** (As referenced in Exhibit B paragraph 4.B)

This Agreement shall expire on June 30, 2028 notwithstanding a contrary date set forth on page 1 (entitled STD. 213) of this Agreement.

## EXHIBIT E

**Provision Ex. B-E.3** (As referenced in Exhibit B paragraph 6)

The Disbursement Agreement must be executed within two (2) years from June 26, 2020.

**Provision Ex. B-E.4** (As referenced in Exhibit B paragraph 1)

**PROJECT BUDGET**

| INFRASTRUCTURE DEVELOPMENT BUDGET AND SOURCES | | | | |
|---|---|---|---|---|
| The Parcel Mammoth Lakes | | Pacific West Communities, Inc. | | |
| ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS | | DEVELOPMENT COSTS BY FUNDING SOURCE | | |
| DEVELOPMENT COSTS | | | | |
| Costs Category | Total Amount | Infill Grant Program | | |
| PROJECT ACTIVITY (Hard Cost) | | | | |
| | | | | |
| **Total Project Activity Costs** | **$19,517,043** | **$19,517,043** | **$** | **$** |
| SOFT COST AND OTHER PROJECT RELATED COSTS | | | | |
| **Total Soft Cost and Other Project Related Costs** | **$1,084,173** | **$1,084,173** | **$** | **$** |
| | | | | |
| **TOTAL PROJECTED CIP COSTS** | **$20,601,216** | **$ 20,601,216** | **$** | **$** |

## EXHIBIT E

**Provision Ex. D-E.1** (As referenced in Exhibit D paragraph 29)

The signage required by Exhibit D, paragraph 29 shall contain the following information:

**PROJECT NAME:** ***The Parcel Mammoth Lakes***

THIS PROJECT HAS BEEN MADE POSSIBLE
BY FINANCING FROM
THE INFILL INFRASTRUCTURE GRANT PROGRAM OF 2019
THROUGH THE CALIFORNIA DEPARTMENT
OF HOUSING AND COMMUNITY DEVELOPMENT

## 2. SPECIAL TERMS AND CONDITIONS

The following Special Terms and Conditions are applicable to this Agreement and shall control notwithstanding anything to the contrary herein:

### A. Payee

The authorized Payee(s) is/are as specified below:

Payee Name: Pacific West Communities, Inc. $20,601,216
Town of Mammoth Lakes