

**FEE DEFERRAL AGREEMENT BETWEEN
MAMMOTH COMMUNITY WATER DISTRICT
AND
MAMMOTH LAKES HOUSING, INC.**

THIS FEE DEFERRAL AGREEMENT (this “Agreement”) is entered into as of _____, 2022 (“Effective Date”), by and among the MAMMOTH COMMUNITY WATER DISTRICT, a California local public agency (“District”), MAMMOTH LAKES HOUSING, INC., a California nonprofit public benefit corporation (“MLH”), and the TOWN OF MAMMOTH LAKES, a municipal corporation (“TOWN”). District, MLH, and Town are hereinafter collectively referred to as the “Parties” and individually as a “Party.”

RECITALS

A. MLH was formed and is operating to help meet the great demand for affordable rental housing in the Town of Mammoth Lakes, California.

B. MLH has proposed to convert an existing commercial building located at 238 Sierra Manor Road, Mammoth Lakes, California, which is within District’s legally-designated boundaries, into the Access Apartments affordable housing project (the “Project”).

C. MLH has requested that District defer certain water and wastewater connection and miscellaneous fees required to be paid for construction of the Project.

D. District desires to assist MLH with developing the Project by providing the Fee Deferral and has determined that the deferral of its connection and miscellaneous fees for the Project provided for in this Agreement is necessary to make the Project economically feasible and affordable to low-income persons needing housing in the Town.

E. Town also has an interest in assuring that it has sufficient affordable housing available for lower-income residents to ensure that the community has a diverse housing stock and vibrant economy, and on that basis is willing to assist MLH with completing the Project by guaranteeing MLH’s payment of the principal amount of the Fee Deferral.

AGREEMENT

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

1. Fee Deferral. District agrees to defer the water and wastewater connection and associated fees owed by MLH to develop the Project in an amount not to exceed \$35,000 for a maximum of one year after the Project receives a certificate of occupancy from the Town (the “Fee Deferral”). The Fee Deferral shall not incur any interest, in exchange for which MLH shall pay the principal amount of the Fee Deferral no later than one year after the Town issues a certificate of occupancy or a maximum term of five years, whichever occurs first.

2. Guaranty by Town. As additional consideration for District’s providing the Fee Deferral for the Project, MLH shall, as its sole obligation and cost, obtain the Town’s

guarantee to pay the total principal amount of the Fee Deferral if MLH is unable to timely make that payment as provided in Section 1 of this Agreement. The Town's guaranty of MLH's timely payment of the Fee Deferral in full shall be unconditional and shall apply immediately upon MLH's failure to make the payment within the time specified in Section 1. If MLH defaults on its payment obligation, the Town shall promptly pay the principal amount of the Fee Deferral in full upon written demand submitted by District. This guaranty is District's sole recourse for a default by MLH in its payment obligation.

3. Prepayment. MLH shall have the right to prepay a portion or all of the principal amount of the Fee Deferral at any time without penalty or premium.

4. MLH Representations and Warranties. MLH represents and warrants the following:

4.1. MLH is duly organized under applicable laws of the State of California, is qualified to do business in and in good standing with the State of California, and is in compliance in all material respects with all laws and regulations necessary to acquire and develop the Project.

4.2. MLH has the authority, and has completed all proceedings and obtained all approvals necessary to execute, deliver, and perform its obligations under this Agreement and the transactions contemplated thereby.

4.3. The execution, delivery, and performance of this Agreement and all documents and transactions related to development of the Project will not contravene, or constitute a default under or result in a lien upon assets of MLH pursuant to any applicable law or regulation, any corporate or charter document of MLH, or any instrument binding upon or affecting MLH, or any contract, agreement, judgment, order, decree, or other instrument binding upon or affecting MLH, any of which would impair or prevent MLH's performance of its obligations under this Agreement.

4.4. When duly executed by MLH, this Agreement shall constitute a valid and binding obligation of MLH enforceable in accordance with its terms.

4.5. There is no action, suit or proceeding pending or threatened against it which might adversely affect MLH's obligations under this Agreement in any material respect.

5. MLH's Covenants. MLH promises that:

5.1. MLH shall use the Fee Deferral principal amount solely to finance a portion of the pre-development, development, and construction costs of the Project.

5.2. MLH shall punctually pay the principal balance of the Fee Deferral in the manner specified in this Agreement.

5.3. MLH shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state income taxes, property taxes, and special taxes or assessments due to the County of Mono which are the obligations of MLH in relation to the Project and non-payment of which would impair MLH's obligations under this Agreement, except those obligations which MLH may in good faith contest or as to which a

bona fide dispute may arise, provided provision is made to the satisfaction of District for eventual payment thereof in the event that it is found that the same is an obligation of MLH.

5.4. MLH shall comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Project, including all applicable regulations and rules of District.

5.5. During the construction of the Project and until its completion, MLH shall maintain all appropriate insurance coverages, including builder's risk/course of construction coverage, as shall ensure that the Project is completed and that protects District's interests in the completed Project. Such insurance shall be written on an occurrence basis and shall name District as loss payee as its interests may appear. After completion, MLH shall keep the Project insured for such limits and time as will protect District against the impairment of MLH's repayment obligation under this Agreement against partial or full loss or damage by fire and other hazards, casualties and contingencies and in the amount of the replacement cost of the Project. Upon request, MLH shall deliver a copy of proof of all such policies to District. All insurance proceeds for any losses sustained to the Project must be utilized for the repair or restoration of the Project.

6. Indemnification. MLH shall indemnify, defend (with counsel reasonably acceptable to District), and hold harmless District and its officials, officers, agents, and employees (collectively the "Indemnitees"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, injunctive or other relief, expenses and charges (including attorneys' fees and expenses of attorneys) arising directly or indirectly in any manner in connection with or as a result of: (a) any breach of MLH's covenants under this Agreement, (b) any failure of MLH's representations and warranties to be true and correct in all material respects when made, (c) any injury or death to persons or damage to property or other loss occurring on the Project, whether caused by the negligence or any other act or omission of MLH or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Fee Deferral, or any transaction contemplated thereby, or any failure of MLH to comply with all applicable state, federal and local laws and regulations, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of MLH under this Section shall survive the expiration of this Agreement.

7. Notice to District. Within three business days after any of the following occur, MLH shall provide written notice thereof to District: (1) any change in name, legal status, business location, or address of MLH; (2) any uninsured or partially uninsured loss affecting the Project through fire, theft, liability, or property damage in excess of an aggregate of \$30,000.00; and (3) MLH's receipt of a notice of default under any mortgage or other financing document affecting the Project.

8. Miscellaneous Provisions.

8.1. Relationship of Parties. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee, joint venturers, or principal

and agent among District, MLH and Town, and MLH shall at all times be deemed a borrower and shall be wholly responsible for the manner in which it or its agents, or both, perform under this Agreement.

8.2. Notices. Any notice, request or consent required pursuant to this Agreement shall be deemed delivered upon receipt when delivered personally, three business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, or one day after deposit with a nationally recognized overnight carrier addressed as follows:

District: Mammoth Community Water District
P.O. Box 597
1315 Meridian Blvd.
Mammoth Lakes, CA 93546
Attn: Mark Busby, General Manager

MLH: Mammoth Lakes Housing, Inc.
P.O. Box 260
587 Old Mammoth Road, Suite 4
Mammoth Lakes, CA 93546
Attn: Patricia Ann Robertson, Executive Director

TOWN: Town of Mammoth Lakes
P.O. Box 1609
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546
Attn: Dan Holler, Town Manager

or to such other addresses or addressee as the Parties may designate by notice as set forth above.

8.3. Successors and Assigns. All of the terms of this Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of the Parties, and all persons claiming under or through them.

8.4. Severability. If one or more provisions of this Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Agreement shall remain in full force and effect.

8.5. Amendments/Entire Agreement. The Parties reserve the right to amend this Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alteration or variation of the terms of this Agreement shall be valid unless in writing and signed and acknowledged and approved by the Parties. This Agreement constitutes the entire agreement of the Parties and no oral understandings or agreement not incorporated herein shall be binding on them.

8.6. Governing Law and Venue. The laws of the State of California shall govern this Agreement. The county and federal district court where District's office is located shall

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be venue for any state and federal court litigation concerning the enforcement or construction of this Agreement.

8.7. Assignment or Assumption. This Agreement may not be assigned to, or assumed by, a third party. Any attempt to assign or assume this Agreement shall be void.

8.8. No Waiver of Rights. Any waiver at any time by any Party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default.

8.9. Signatures and Authority. Each Party warrants that the person signing this Agreement is authorized to act on behalf of the Party for whom that person signs. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Counterparts may be delivered by facsimile, electronic mail (including PDF or any electronic signature complying with California's Uniform Electronic Transactions Act (Cal. Civ. Code, §1633.1, et seq.) or any other applicable law) or other transmission method. The Parties agree that any electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, District, MLH, and Town have executed this Agreement as of the date first above written.

DISTRICT:

By: _____
Thomas R. Smith
President, Board of Directors

ATTEST:

Secretary, Board of Directors

MAMMOTH LAKES HOUSING:

By: _____
[Name]
[Title]

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TOWN OF MAMMOTH LAKES:

By: _____
Lynda Salcido
Mayor

ATTEST:

Jamie Gray
Clerk

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EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY