

TOWN GRANT AGREEMENT

Between

TOWN OF MAMMOTH LAKES

and

INNSBRUCK LODGE AFFORDABLE HOUSING, LLC

(Innsbruck Lodge - Town Grant)

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TOWN GRANT AGREEMENT  
(Innsbruck Lodge –Town Grant)

This Town Grant Agreement (the "Agreement") is dated as of April \_\_\_, 2023 (the "Effective Date"), and is between the Town of Mammoth Lakes, a municipal corporation (the "Town") and Innsbruck Lodge Affordable Housing, LLC, a California limited liability company ("Grantee"), a controlled affiliate of Mammoth Lakes Housing, Inc, a California nonprofit public benefit corporation.

RECITALS

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

B. The Department of Housing and Community Development ("HCD") issued a Round 2 Notice of Funding Availability ("NOFA") for the Homekey Program, established by California Health and Safety Code Section 50675.1.1 (the "Homekey Program"), on September 9, 2021. The NOFA incorporates by reference the Multifamily Housing Program ("MHP"), as well as the MHP Final Guidelines ("MHP Guidelines"), dated June 19, 2019, both as amended and in effect from time to time. In addition, the NOFA states that Homekey grant funds are derived primarily from the Coronavirus Fiscal Recovery Fund (CSFRF), established by the American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2).

C. The Homekey Program was established during the COVID-19 Pandemic to assist Homeless Households and At Risk of Homelessness Households impacted by COVID-19. Through its September 9, 2021 NOFA, HCD considers Homeless Households and At Risk of Homelessness Households to be inherently impacted by the COVID-19 Pandemic ("Target Population").

D. The Town and the Grantee jointly applied and were awarded Homekey Funds from HCD which shall be disbursed pursuant to the terms of Standard Agreement No. 21-HK-17233, dated May 15, 2022, by and among HCD, the Town and the Grantee, which shall govern the expenditure of the Homekey Funds (the "Standard Agreement").

E. The Grantee owns a fee title interest in certain real property located at 913 Forest Trail, Mammoth Lakes, California (APN-033-041-006-000), as more particularly described in Exhibit A (the "Property"). As of the date of acquisition, the Property is improved with seventeen (17) hotel rooms and one (1) manager's unit, which will be converted into fifteen (15) affordable apartments and one (1) manager's unit (the "Improvements"). The Property and Improvements are referred to in this Agreement as the "Development."

F. The Grantee and the Town intend for the Development to be used as Permanent Housing.

G. The Town desires to make a revocable grant to Grantee in an amount not to exceed One Million Four Hundred Thousand Dollars (\$1,400,000) from the Town's general fund funds ("Town Funds") to fund the rehabilitation of the Development (the "Grant").

H. Pursuant to the terms of the Standard Agreement, the Town is required to cause a 55-year use restriction to be recorded against the Property in first lien priority (the "Use Restriction") to secure performance under the Standard Agreement. A copy of the form of Use Restriction is attached as Exhibit D.

I. The Grant is being made to finance the rehabilitation of the Development. The Development will increase the supply of affordable rental housing in the Town of Mammoth Lakes.

J. Pursuant to the California Environmental Quality Act ("CEQA", California Public Resources Code §21000 et seq.) and its implementing guidelines, the Town prepared, reviewed, and approved the Notice of Exemption under 14 CCR 15268 because this Development is a Streamlined Infill Project that satisfies the objective planning standards set forth in Senate Bill 35 (SB-35)(Government Code Section 65913.4(a)) and is subject to the streamlined ministerial approval process provided in Government Code Section 65913.4(b) and (c). The proposed project is therefore a ministerial project that is statutorily exempt from CEQA pursuant to Public Resources Code Section 21080(b)(1) and Government Code Section 65913.4.

K. HCD announced that the Homekey Funds are not subject to the National Environmental Policy Act ("NEPA"). The Town has not committed and is not using any federal funds to fund the Grant, thus the Town has determined that no NEPA review is required.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Town and the Grantee (collectively, the "Parties") agree as follows:

## AGREEMENT

### ARTICLE 1. DEFINITIONS AND EXHIBITS

#### Section 1.1 Definitions.

The following terms have the following meanings:

(a) "30% AMI Household" means a household whose Adjusted Income does not exceed 30% of Area Median Income.

(b) "Affiliate" means an entity that is controlling or controlled by Grantee. For the purposes of this definition "Control" means (1) direct or indirect management or control of the managing member or members in the case of a limited liability company; (2) direct or indirect management or control of a general partner or general partners in the case of a partnership; and (3) direct or indirect control of a majority of the directors in the case of a corporation.

(c) "Agreement" means this Town Grant Agreement, as such may be amended from time to time.

(d) "Approved Financing" means all of the following loans, grants and equity obtained by Grantee and approved by the Town for the purpose of financing the Development, in addition to the Grant, which include the following, estimated as of the Effective Date:

(1) A grant of approximately Four Million Five Hundred Sixty Thousand Dollars (\$4,560,000) of Homekey program funding from HCD (the "Homekey Acquisition Funds") or such other amount approved by HCD; and

(2) A grant of Five Hundred Fifty Thousand Dollars (\$550,000) from the County of Mono ("County") from the County's general fund for acquisition and rehabilitation.

(e) "Approved Financing Plan" means the Financing Plan approved by the County as of the date of this Agreement, attached to this Agreement as Exhibit B, incorporated herein by this reference, as the same may be amended pursuant to Section 3.5. The Approved Financing Plan shall be updated at the Close of Escrow without need for amendment of this Agreement.

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

(g) "At Risk of Homelessness Household" means a household that is at risk of homelessness, as defined in Section 578.3 of Title 24 of the Code of Federal Regulation. The definition of At Risk of Homeless Households under 24 CFR 578.3 includes limited requirements that an individual or family also qualify as a 30% AMI Household.

(h) "CEQA" has the meaning set forth in Paragraph J of the Recitals.

(i) "Certificate of Occupancy" means the final certificate of completion or certificate of occupancy issued by the Town of Mammoth Lakes, or comparable Town sign-off on the completion of conversion of the Development.

(j) "Closing Date" means the date that Grantee acquires title to the Property and all deeds of trust associated with Approved Financing as shown on the Approved Financing Plan are recorded against the Grantee's fee interest in the Property.

(k) "Completion Date" means the date that a Certificate of Occupancy, or equivalent document is issued by the Town to certify completion of the rehabilitation and conversion of the Development.

(l) "Default Rate" has the meaning set forth in Section 6.2(a)(6).

(m) "Development" has the meaning set forth in Paragraph E of the Recitals.

(n) "Escrow" means the escrow account established by the Grantee for the closing of Development financing with Inyo-Mono Title Company in its Bishop office, located at 873 North Main Street, Bishop, CA 93514, or another escrow company satisfactory to the Town.

(o) "Event of Default" has the meaning set forth in Section 6.1.

(p) "Grant" has the meaning set forth in Paragraph G of the Recitals.

(q) "Grant Documents" means this Agreement, and the Use Restriction.

(r) "Grantee" has the meaning set forth in the first paragraph of this Agreement.

(s) "Hazardous Materials" has the meaning set forth in Section 4.6.

(t) "Hazardous Materials Claims" has the meaning set forth in Section 4.6.

(u) "Hazardous Materials Law" has the meaning set forth in Section 4.6.

(v) "HCD" has the meaning set forth in Paragraph B of the Recitals.

(w) "Homekey" has the meaning set forth in Paragraph B of the Recitals.

(x) "Homekey Funds" means the Homekey Acquisition Funds provided by HCD under the Standard Agreement.

(y) "Homekey Term" means the period beginning on the date of this Agreement and ending on the fifteenth (15<sup>th</sup>) anniversary of the Completion Date.

(z) "Homekey Regulations" has the meaning set forth in Paragraph B of the Recitals.

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

(bb) "Improvements" has the meaning set forth in Paragraph E of the Recitals.

(cc) "Management Plan" has the meaning set forth in Section 3.2 of the Use Restriction.

(dd) "Memorandum of Agreement" means the Memorandum of Agreement to be recorded against the Property, attached hereto as Exhibit F, incorporated herein by this reference.

(ee) "Notice of Completion" means the Notice of Completion executed by Grantee in the form specified in California Civil Code Section 8182.

(ff) "Operating Agreement" means the Operating Agreement executed by the members of Grantee, as may be amended pursuant to the requirements of Section 7.8 hereof.

(gg) "Participant Selection Plan" means the Selection Plan, as such may be amended from time to time by the Eastern Sierra Continuum of Care, which contains a prioritization system based on greatest need, attached hereto as Exhibit E, incorporated herein by this reference. The parties agree and acknowledge that the Eastern Sierra Continuum of Care may amend the Participant Selection Plan without need to amend this Agreement and any such amendments shall be incorporated herein by this reference.

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

(ii) "Permitted Transfer" has the meaning set forth in Section 4.12(c).

(jj) "Program Participant" means a person or household which is a member of the Target Population that occupies a Unit in the Development.

(kk) "Property" has the meaning set forth in Paragraph E of the Recitals.

(ll) "Risk Management" means the persons or department designated by the Town to conduct risk management.

(mm) "Schedule of Performance" means the schedule for performance of various tasks and obligations under this Agreement that is attached as Exhibit C, as such may be modified pursuant to Section 3.1.

(nn) "Services Budget" has the meaning set forth in Section 3.6.

(oo) "Services Plan" has the meaning set forth in Section 3.6.

(pp) "Standard Agreement" has the meaning set forth in Recital D.

(qq) "Target Population" has the meaning set forth in Recital C.

(rr) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, on the fifteenth (15<sup>th</sup>) anniversary of the Completion Date.

(ss) "Town" has the meaning set forth in the first paragraph of this Agreement.

(tt) "Town Council" refers to the town council of the Town of Mammoth Lakes.

(uu) "Town Executive Officer" refers to the Town Manager of the Town of Mammoth Lakes, or an authorized designee.



(vv) "Transfer" has the meaning set forth in Section 4.12.

(ww) "Unit" means one (1) of the approximately sixteen (16) affordable housing units to be constructed at the Development, including one (1) unrestricted manager's unit.

(xx) "Use Restriction" has the meaning set forth in Recital H.

Section 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A: Legal Description of the Property  
Exhibit B: Approved Financing Plan  
Exhibit C: Schedule of Performance  
Exhibit D: Form of Use Restriction  
Exhibit E: Participant Selection Plan  
Exhibit F: Memorandum of Agreement

ARTICLE 2.  
GRANT PROVISIONS

Section 2.1 Grant.

Subject to the satisfaction of the conditions set forth in this Article, the Town shall provide to Grantee the Grant, which the Grantee may use solely to fund the acquisition and construction of the Improvements for the Homekey Term, consistent with the terms of the Use Restriction and the Standard Agreement. Except as set forth in Section 2.4, Grantee has no obligation to repay the Grant.

Section 2.2 Security.

Grantee shall also cause or permit the Use Restriction to be recorded against the fee interest in the Property, in first lien position. The Use Restriction shall not be subordinated.

Section 2.3 Forgiveness of Revocable Grant.

Provided that no Default exists under this Agreement or the Use Restriction, without further action of the parties, the Grant shall be forgiven upon expiration of the Homekey Term.

Section 2.4 Revocation of Grant Upon Default.

Notwithstanding any provision herein to the contrary, and in addition to any other rights and remedies available to the Town set forth in Article 6, upon a Default by Grantee, the Town may revoke the outstanding balance of the Grant, and declare the outstanding balance of the Grant (other than any portion of the Grant that has been previously forgiven by the Town as set

forth in Section 2.3 above) plus interest thereon to be immediately due and payable, subject to the non-recourse provisions set forth in Section 2.6.

Section 2.5 Interest on Default. In the event of a Default, interest on the Grant shall begin to accrue, as of the date of Default and continuing until such time as the outstanding balance of the Grant funds are repaid in full (other than any portion of the Grant that has been previously forgiven by the Town as set forth in Section 2.3 above) or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

Section 2.6 Non-Recourse. Neither Grantee nor any member of Grantee shall have any direct or indirect personal liability for payment of the principal of, and interest on, the Grant or the performance of the covenants of Grantee under this Agreement. The sole recourse of Town with respect to the principal of, and default interest, if any, on the outstanding balance of the Grant, and defaults by Grantee in its performance of its covenants under the Use Restriction, shall be to enforce the remedies under this Agreement, and in no event shall the Town be entitled to, or seek, a deficiency judgment.

Section 2.7 Conditions Precedent to Disbursement of Grant Funds.

(a) The Town shall disburse the Town Grant in two or more installments, but shall have no obligation to make any disbursements or to take any other action under the Grant Documents unless the following conditions precedent are satisfied prior to each such disbursement of the Grant funds.

(1) There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under this Agreement, or any other financing agreements or contracts between the Town and Grantee, or their affiliates relating to the Development;

(2) Grantee has delivered to the Town a copy of Grantee's organizational documents, including an Operating Agreement, and a corporate authorizing resolution authorizing Grantee's execution of this Agreement and the transactions contemplated by this Agreement;

(3) Grantee has caused to be executed and delivered to the Town all of the Grant Documents and any other instruments, and policies required under the Grant Documents;

(4) The Town has received and approved the Approved Financing Plan;

(5) Grantee has executed the Standard Agreement;

(6) Grantee has furnished the Town with evidence of the insurance coverage meeting the requirements of Section 4.13 below;

(7) The Use Restriction has been recorded against the Grantee's fee interest in the Property in the Office of the Recorder of the County of Mono in first lien position, in accordance with the terms of this Agreement, and recorded copies have been arranged to be delivered to the Town;

(8) The Town has received from Grantee a copy of the Management Plan, and a management agreement and contact information for the property manager of the Development and the name and phone number of the on-site property manager, in compliance with the terms of the Use Restriction;

(9) There exists no material adverse change in the financial condition of Grantee from that shown by the financial statements and other data and information furnished by Grantee to the Town prior to the date of this Agreement;

(10) The Town has received a written draw request from the Grantee including certification that the condition set forth in Section 2.7(a)(1) continues to be satisfied, and certifying the proposed uses of funds is consistent with the limitations set forth in Section 2.1, above, and will be used solely for Units occupied by an income eligible household from the Target Population.

(11) For disbursements of the Grant proceeds up to One Million Dollars (\$1,000,000) (the "Initial Grant Component"), only conditions 1-10 listed above shall apply. For any disbursements of Grant proceeds in excess of the Initial Grant Component, the Grantee must first demonstrate to the Town that Grantee has expended all other sources of financing, including the Homekey Acquisition Funds and the County Grant, and the Initial Grant Component.

(b) Notwithstanding any other provisions of this Agreement, the Town shall have no further obligation to disburse any portion of the Grant to Grantee under this Agreement following: (i) termination of this Agreement; or (ii) notification by the Town to the Grantee of an Event of Default (excluding any Event of Default of the Town) under terms of this Agreement until such time as the Event of Default has been cured.

### ARTICLE 3. GRANTEE OBLIGATIONS

#### Section 3.1 Schedule of Performance.

Subject to Section 7.15 hereof, the Grantee shall perform the tasks described in the Schedule of Performance no later than the dates set forth in the Schedule of Performance, which shall at all times be in substantial conformance with the terms and conditions of the Standard Agreement. The Schedule of Performance may be modified in writing by Grantee and the Town Executive Officer on behalf of the Town without the need for formal amendment of this Agreement or further approval by the Town Council.

Section 3.2 Conversion and Rehabilitation.

(a) Grantee shall be solely responsible to obtain all permits and approvals for the rehabilitation and operation of the Development. Grantee shall convert the Development to Permanent Housing and shall cause the commencement and completion of conversion of the Development to Permanent Housing no later than the dates set forth in the Standard Agreement.

(b) Grantee shall achieve full occupancy by the Target Population in accordance with the timelines set forth in the Standard Agreement. Grant funds provided to the Grantee may only be used to fund operating subsidies for Units that are occupied by eligible households and which may not be under active rehabilitation while occupied.

(c) The Grantee and the Town agree that the Grantee may as part of any extension seek to negotiate additional commitments of Town funds to support operating subsidies for the Development, which the Town shall provide at its sole and absolute discretion, and which shall be subject to approval by the Town Council.

Section 3.3 Prevailing Wages; Accessibility.

(a) Prevailing Wages. To the extent required by applicable law, Grantee shall:

(1) pay, and shall cause any consultants or contractors to pay, prevailing wages in the demolition of the Existing Improvements as those wages are determined pursuant to California Labor Code Sections 1720 et seq.;

(2) cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR;

(3) keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed as required by California Labor Code Section 1777.5 et seq.;

(4) post at the Property, or shall cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable per diem prevailing wages are available from DIR;

(5) cause contractors and subcontractors performing work on the Property to be registered as set forth in California Labor Code Section 1725.5;

(6) cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for work on the Property to specify that:

(A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for work on the Property unless registered with the DIR pursuant to California Labor Code Section 1725.5; and

(B) the work at the Property is subject to compliance monitoring and enforcement by the DIR;

(7) provide the Town all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

(8) cause its contractors to post job site notices, as prescribed by regulation by the DIR; and

(9) cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(b) Grantee shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Town) the Town and its councilmembers, officers and employees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Grantee, its contractors and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and prevailing wage requirements of the federal Davis-Bacon Act (40 USC 3141-3148), to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the performance of the development activities or any other work undertaken or in connection with the Property. The requirements in this subsection survive the termination of this Agreement.

(c) Accessibility Requirements. The Development will be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of the Standard Agreement.

#### Section 3.4 Inspections.

(a) The Grantee shall permit and facilitate, observation and inspection of the Development by the Town and by public authorities during reasonable business hours upon forty-eight (48) hours' written notice for the purposes of determining compliance with this Agreement, provided, however, that nothing in this Agreement shall entitle the Town to enter an occupied unit in the Development without notice to the program participant thereof, which the Grantee shall deliver on behalf of the Town, and permission from such program participant to the extent such permission is required by law. Such inspections do not relieve the Grantee, or its contractors, from any applicable requirement to obtain other Town or County inspections in connection with the conversion of the Improvements.

(b) After the completion of an inspection the Town shall deliver a copy of the inspection report to the Grantee. If the Town determines as a result of the inspection that there are any deficiencies for any of the inspectable items in the Development, the Grantee shall correct such deficiencies within fifteen (15) days from the delivery of the inspection report or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Grantee must begin to correct the deficiency within fifteen (15) day, correct the deficiency as soon as reasonably possible, and allow the Town to reinspect the corrected deficiency.

Section 3.5 Approved Financing Plan.

The Approved Financing Plan is attached as Exhibit B, and is incorporated herein by this reference. Grantee shall submit any proposed or required amendments to the Approved Financing Plan, along with evidence that the changes to the Approved Financing Plan are reasonable and necessary, to the Town for approval within fifteen (15) days of the date Grantee receives information indicating that actual costs of the Development materially vary or will vary from the costs shown on the Approved Financing Plan, which approval shall not be unreasonably withheld or delayed. The Town will make best efforts to respond in writing within fifteen (15) days after receipt of a proposed amendment to the Approved Financing Plan.

Section 3.6 Services Plan and Budget.

Grantee, in collaboration with Mono County Behavioral Health, Mono County Social Services, Mono County Adult Education Program, Mono County Workforce Services and Inyo Mono Advocates for Community Action, plans to provide on-site services to all program participants in the Development which are required under the Homekey Program (the "Social Services"). By the time specified in the Schedule, Grantee shall submit to the Town the proposed services plan which shall include written guidelines or procedures for providing the Social Services (the "Services Plan"), and a proposed budget for the provision of Social Services (the "Services Budget"). The Services Plan shall include the types of Social Services provided, staffing levels, and overall coordination of the Social Services.

ARTICLE 4.  
GRANT REQUIREMENTS

Section 4.1 Annual Operating Budget.

At the beginning of each year of the Term, Grantee shall provide to the Town an annual budget for the operation of the Development.

Section 4.2 Information.

Grantee shall provide any information related to the Development reasonably requested by the Town in connection with the Development, including (but not limited to) any information required by HCD in connection with the Standard Agreement, and any information required by the Town in connection with the Grantee's use of the Grant funds.

Section 4.3 Records.

(a) Grantee shall keep and maintain at the Development, or at the corporate offices of the Grantee's managing member, or elsewhere with the Town's written consent, full, complete and appropriate books, records and accounts relating to the Development. Books, records and accounts relating to Grantee's compliance with the terms, provisions, covenants and conditions of this Agreement. All applicable financial documents are to be kept and maintained in accordance with generally accepted accounting principles consistently applied. All such books, records, and accounts shall at reasonable times be open to and available for inspection and copying by the Town, its auditors or other authorized representatives at reasonable intervals during normal business hours and forty-eight (48) hours' prior written notice to Grantee. Grantee shall preserve such records for a period of not less than five (5) years after the creation of such records. Copies of all tax returns and other reports that Grantee may be required to furnish to any governmental agency are to be open for inspection by the Town at all reasonable times at the place that the books, records and accounts of Grantee are kept. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Grant is pending at the end of the record retention period stated herein, then Grantee shall retain the records until such action and all related issues are resolved. The records are to include all invoices, receipts, and other documents related to expenditures from the Grant funds. Such records are to include but are not limited to:

- (1) Records providing a full description of the activities undertaken under the Standard Agreement;
- (2) Records providing a full description of the activities undertaken with the use of the Grant funds;
- (3) Records documenting compliance with the Participant Selection Plan and all applicable fair housing, equal opportunity, and affirmative fair marketing requirements;
- (4) Records demonstrating compliance with Use Restriction;
- (5) Records demonstrating compliance with all applicable accessibility requirements;
- (6) Records demonstrating compliance with any applicable relocation requirements, which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments; and
- (7) Records demonstrating compliance with any applicable labor requirements (including certified payrolls from Grantee's general contractor evidencing that applicable prevailing wages have been paid).

(b) The Town shall notify Grantee of any records it deems insufficient. Grantee has thirty (30) 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 thirty (30) days is

reasonably necessary to correct the deficiency, then Grantee must begin to correct the deficiency within thirty (30) days and correct the deficiency as soon as reasonably possible.

#### Section 4.4 Town Audits.

Each year, Grantee shall provide the Town with a copy of Grantee's annual audited financial statements, which is to include information on all of Grantee's activities pertaining to the Development as is reasonably requested by the Town. Grantee shall cooperate with any audit undertaken by the Town or a Town contractor of Grantee's compliance with the terms of this Town Grant Agreement as it relates to the Project.

#### Section 4.5 Town Grant Requirements.

(a) Grantee shall, at all times during the Term hereof, comply with all applicable laws and regulations governing the use of the Homekey Funds under the Standard Agreement. Grantee shall also comply with the laws and regulations governing the use of the Grant funds including (but not limited to) the following:

(1) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Construction Act of 1973 (29 USC 794, et seq.); the Age Discrimination Act of 1975 (42 USC 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608, Executive Order 13672 concerning Gender Identity.

(2) Relocation. The parties agree and acknowledge that the project contemplated under this Agreement is not expected to result in any displacement. From and after the Closing, if and to the extent the rehabilitation of Development results in the permanent or temporary displacement of residential tenants, program participants, homeowners, or businesses, then the Grantee shall comply with all applicable local, state, and federal statutes and regulations, (including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; 24 C.F.R. 570.606; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; 24 C.F.R. 92.353; and California Government Code Section 7260 et seq. ) with respect to relocation planning, advisory assistance, and payment of monetary benefits. The Grantee shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. The Grantee shall defend, indemnify and hold harmless the Town, its governing board members, officers, representatives, agents, assigns and employees against any claim for damages, compensation, fines, penalties, relocation payments or other amounts arising out of the failure or alleged failure of any person or entity (including the



Grantee or the Town) to satisfy relocation obligations related to the rehabilitation of the Development.

(3) Homekey Regulations. Any other HCD regulations present or as may be amended, added, or waived in the future pertaining to the Homekey Funds.

Section 4.6 Hazardous Materials.

(a) Grantee shall keep and maintain the Property in compliance with, and may not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Grantee may not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in rehabilitation of projects like the Development or kept and used in and about residential property of this type.

(b) Grantee shall immediately advise the Town in writing if at any time it receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Grantee or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (2) all claims made or threatened by any third party against Grantee or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are hereinafter referred to as "Hazardous Materials Claims"); and (3) Grantee's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" (as defined in California Health and Safety Code Section 25117.4) under the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The Town has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Grantee. Grantee shall indemnify and hold harmless the Town and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (1) all foreseeable consequential damages; (2) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans and (3) all reasonable costs and expenses incurred by the Town in connection with clauses (1) and (2), including but not limited to reasonable attorneys' fees and consultant's fees. This

indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (A) losses attributable to diminution in the value of the Property; (B) loss or restriction of use of rentable space on the Property; (C) adverse effect on the marketing of any rental space on the Property; and (D) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties)

#### Section 4.7 Maintenance and Damage.

(a) During the Term, Grantee shall maintain the Development in good repair and in a neat, clean and orderly condition, consistent with quality affordable housing developments owned or operated by Grantee or its affiliates and in compliance with the Town approved Management Plan. If there arises a condition in contravention of this requirement, and if Grantee has not cured such condition within thirty (30) days after receiving written notice from the Town of such a condition, if Grantee is incapable of curing a default within such thirty (30) day period, the Town will give the Grantee ninety (90) days to cure such default provided Grantee has commenced to cure within such thirty (30) day period and is diligently proceeding to cure such default through the end of such period, then in addition to any other rights available to the Town, the Town may perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property, subject to the provisions provided in subsection (b) below.

(b) If economically feasible in the Town's judgment after consultation with Grantee, if any improvement now or in the future on the Property is damaged or destroyed, then Grantee, at its cost and expense, shall diligently undertake to repair or restore such improvement. Such work or repair is to be commenced no later than the later of: (i) one hundred twenty (120) days, or such longer period approved by the Town in writing, after the damage or loss occurs; or (ii) thirty (30) days following receipt of the insurance proceeds, and is to be completed within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction are to be applied to the cost of such repairs or restoration and, if such insurance proceeds are insufficient for such purpose, then Grantee shall make up the deficiency. If Grantee does not promptly make such repairs then any insurance proceeds collected for such damage or destruction are to be promptly delivered by Grantee to the Town as a special repayment of the Grant, subject to the rights of the Senior Lenders, as applicable.

#### Section 4.8 Fees and Taxes.

(a) Grantee is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles.

(b) Town acknowledges that the Grantee intends to apply to the State Board of Equalization for a welfare exemption from property taxes under California Revenue and Taxation Code Section 214 for the Development. A denial, or delayed approval, of such

application shall not excuse the Grantee's compliance with the terms of this Town Grant Agreement

Section 4.9 Notice of Litigation.

Grantee shall promptly notify the Town in writing of any litigation related to the Development for which the amount claimed or at issue is in excess of Two Hundred Fifty Thousand Dollars (\$250,000), and of any claims or disputes that involve a material risk of such litigation. The conditions and obligations set forth in this Section shall apply for the entire Term of this Agreement.

Section 4.10 Operation of Development as Affordable Housing.

(a) Grantee shall operate the Development as an affordable housing development for Low Income Households, consistent with: (1) HCD's requirements for use of the Homekey Funds and the terms and conditions set forth in the Standard Agreement; (2) the Use Restriction; and (3) any other regulatory requirements imposed on Grantee including but not limited to regulatory agreements associated with the Town Grant.

(b) Grantee shall evaluate the income eligibility of each Program Participant in Units. For all Units, Grantee shall certify or cause the property manager to certify each Program Participant's continued program eligibility an annual basis.

(c) Grantee shall maintain all documents setting forth the program eligibility, as applicable, household income of each household occupying a Unit, and the total amount for contribution, utilities, and related services charged to each household occupying the Development, as prescribed by the Use Restriction and all other recorded regulatory restrictions.

Section 4.11 Nondiscrimination.

(a) Grantee herein covenants by and for itself, its heirs, executors, administrators, successors and assigns, and all persons claiming under or through Grantee, that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age (except for lawful senior housing in accordance with state and federal law), familial status, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor may Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of program participants, tenants, lessees, subtenants, sublessees or vendees in the Property. Grantee shall comply with Executive Orders 11246, 11375, 11625, 12138, 12431, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and local laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted. Notwithstanding the above, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b). The foregoing covenant will run with the land.

Section 4.12 Transfer.

(a) Definition. For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (1) any rights and/or duties under this Agreement; and/or (2) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a fee interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Grantee retains title. The term "Transfer" excludes the leasing of a Unit in the Development to an occupant in compliance with the Use Restriction. The Town Executive Officer is authorized to execute assignment and assumption agreements on behalf of the Town to implement any approved Transfer.

(b) Prohibition. Except as expressly permitted in this Agreement, the Grantee represents and agrees that the Grantee shall 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.

(1) The limitations on Transfers set forth in this Section shall apply throughout the Term.

(2) Any Transfer made in contravention of this Section shall be void and shall be deemed to be a default under this Agreement whether or not the Grantee knew of or participated in such Transfer.

(c) Permitted Transfers. Notwithstanding the foregoing, the following are permitted Transfers shall be permitted and are hereby approved by the Town (each a "Permitted Transfer"):

(1) Any Transfer creating a Security Financing Interest either: (A) permitted pursuant to the Approved Financing Plan; or (B) created as a result of a loan made to developer that replaces any existing Security Financing Interest, so long as such replacement Security Financing Interest does not secure an obligation in excess of the then outstanding balance of the original principal amount of the replaced Security Financing Interest. Town will not unreasonably withhold, condition or delay its consent to any refinancing under this Section.

(2) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under this Agreement.

(3) Any Transfer to Mammoth Lakes Housing, Inc., any successor in interest and any Affiliate or subsidiary of Grantee or Mammoth Lake Housing Inc.

Section 4.13 Insurance Requirements.

(a) Grantee shall maintain the following insurance coverage throughout the Term of the Grant written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII". If the Grantee uses existing coverage to comply with these requirements and that coverage does not meet the specified

requirements, the Grantee agrees to amend, supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

(b) Without in anyway affecting the indemnity herein provided and in addition thereto, the Grantee shall secure and maintain throughout the term of this Town Grant Agreement the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability.

(A) Workers' Compensation A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Grantee and all risks to such persons under this Agreement.

(B) If Grantee has no employees, Grantee may certify or warrant to the Town, that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Director of Risk Management.

(C) With respect to borrowers that are non-profit corporations organized under California or federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

(2) Commercial General Liability. General Liability Insurance covering all operations performed by or on behalf of Grantee providing coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000), per occurrence. The policy coverage must include:

- (A) Premises operations and mobile equipment.
- (B) Products and completed operations.
- (C) Broad form property damage (including completed operations).
- (D) Explosion, collapse, and underground hazards.
- (E) Personal injury.
- (F) Contractual liability.
- (G) \$2,000,000 general aggregate limit.

(3) Commercial Automobile Liability.

(A) Primary insurance coverage must be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol I (any auto).

(B) The policy must have a combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

(C) If the Grantee is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy must have a combined single limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage per occurrence.

(D) If the Grantee owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(4) Builders' Risk/Property Insurance. Builders' Risk insurance during the course of rehabilitation, and upon completion of any rehabilitation work to be performed, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the Town, naming the Town as a Loss Payee, as its interests may appear. Earthquake and Flood insurance must be obtained if required by applicable federal regulations in amounts approved by the Town.

(5) Commercial Crime. Commercial crime insurance covering all officers and employees, for loss of Grant proceeds caused by dishonesty, in an amount approved by the Town, naming the Town a Loss Payee, as its interests may appear.

(c) Grantee shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Grantee or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (1), (2), and (3) above, meeting all of the general requirements of subsections (e) and (f) below and naming the Town as an additional insured. The Grantee agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(d) An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy must apply to bodily injury/property damage, personal injury/advertising injury and must include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage must also apply to automobile liability.

(e) The required insurance must be provided under an occurrence form, and Grantee shall maintain the coverage described in subsections (a) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit must be three times the occurrence limits specified above.

(f) Comprehensive Commercial General Liability and Commercial Automobile Liability insurance policies must be endorsed to name as an additional insured the Town and its officers, agents, employees and members of the Town Council. The additional insured endorsements must not limit the scope of coverage for the Town to vicarious liability but must allow coverage for the Town to the full extent provided by the policy. Such additional

insured coverage must be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

(g) All policies and bonds are to contain: (1) the agreement of the insurer to give the Town at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (2) an endorsement or policy term that such policies are primary and non-contributing with any insurance that may be carried by the Town; (3) a provision that no act or omission of Grantee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (4) a waiver by the insurer of all rights of subrogation against the Town and its authorized parties in connection with any loss or damage thereby insured against.

(h) The Grantee shall require the carriers of required coverages to waive all rights of subrogation against the Town, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Grantee and its employees or agents from waiving the right of subrogation prior to a loss or claim. The Grantee hereby waives all rights of subrogation against the Town.

(i) All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Town, and shall include an endorsement or policy terms to this effect.

(j) The Grantee shall furnish Certificates of Insurance to the Town Department administering this Town Grant Agreement evidencing the insurance coverage prior to the close of Escrow, additional endorsements, as required shall be provided prior to the commencement of performance of Grantee's obligations under this Town Grant Agreement, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Grantee shall maintain such insurance from the time Grantee commences performance of services hereunder until the completion of such services. Within fifteen (15) days following the close of Escrow, the Grantee shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

(k) The Grantee agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Grantee and the Town or between the Town and any other insured or additional insured under the policy.

(l) Any and all deductibles or self-insured retentions in excess of Twenty Thousand Dollars (\$20,000) shall be declared to and approved by Risk Management, provided that Risk Management may withhold or condition such approval in its reasonable discretion.

(m) In the event that any policy of insurance required in this Section does not comply with the requirements, is not procured, or is canceled and not replaced, the Town has the right but not the obligation or duty to obtain such insurance it deems necessary and any premiums paid by the Town will be promptly reimbursed by Grantee or Town disbursements to Grantee will be reduced to pay for the Town purchased insurance.

(n) Insurance requirements are subject to periodic review by the Town. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Town. In addition, if Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced and available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Town, inflation, or any other item reasonably related to the Town's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Grantee agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the Town to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Town.

Section 4.14 Anti-Lobbying Certification.

(a) Grantee certifies to the best of Grantee's knowledge or belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(b) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

Section 4.15 Covenants Regarding Approved Financing.

(a) Grantee shall promptly pay the principal and interest when due on any Approved Financing.



(b) Grantee shall promptly notify the Town in writing of the existence of any default under any documents evidencing Approved Financing, including formally declared defaults and defaults that have not been formally declared by the lender but the existence of the potential default has been communicated to the Grantee by the lender in writing or otherwise, and provide the Town copies of any notice of default. The Town shall have the right, but not the obligation, to cure any monetary default by Grantee under a loan secured by the Property.

(c) Grantee may not materially amend, modify, supplement, cancel or terminate any of the documents evidencing Approved Financing without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed, provided that no withholding of consent shall be deemed unreasonable if the proposed action by Grantee would conflict with any of its obligations under this Agreement, applicable law, and/or the Homekey Regulations.

(d) Grantee may not incur any indebtedness of any kind other than Approved Financing or encumber the Development with any liens (other than liens for Approved Financing approved by the Town or as otherwise allowed under the Town approved Operating Agreement) without the prior written consent of the Town, provided that no withholding of consent shall be deemed unreasonable if the proposed action by Grantee would conflict with any of the Grantee's obligations under this Agreement, applicable law, and/or the Homekey Regulations.

#### Section 4.16 Affordability and Project Monitoring.

(a) Throughout the Term, the Grantee shall comply with all applicable record keeping and monitoring requirements set forth in the Homekey Regulations.

(b) Representatives of the Town (and HCD or an authorized representative) shall be entitled to enter the Property upon at least forty-eight (48) hours' notice at reasonable times to monitor compliance with this Agreement, to inspect the records of the Development, and to conduct an independent audit of such records. The Grantee agrees to cooperate with the Town in making the Property available for such inspection. If for any reason the Town is unable to obtain the Grantee's consent to such an inspection, the Grantee understands and agrees that the Town may obtain, at the Grantee's expense, an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. The Grantee agrees to maintain records in a business-like manner and to make such records available to the Town upon forty-eight (48) hours' notice at reasonable times. Unless the Town otherwise approves, such records shall be maintained for the most recent five (5) years until five (5) years after the expiration of the Homekey Term.

(c) Throughout the Term, the Grantee grants the Town inspection rights as set forth in Section 3.4 above, and Grantee shall make best efforts to allow the Town to comply with all applicable physical monitoring requirements.

ARTICLE 5.  
REPRESENTATIONS AND WARRANTIES OF GRANTEE

Section 5.1 Representations and Warranties of Grantee.

Grantee hereby represents and warrants to the Town as follows and acknowledges, understands, and agrees that the representations and warranties set forth in this Article 5 are deemed to be continuing during the Term. The Grantee shall immediately advise the Town in writing if there is any material change relating to any matters set forth or referenced in the items set forth below:

(a) Organization. Grantee is duly organized, validly existing and 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. Copies of the documents evidencing the organization of the Grantee delivered to the Town are true and correct copies of the originals.

(b) Authority of Grantee. Grantee has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Grant Documents and all other documents or instruments executed and delivered, 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 the Grant Documents 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 Grantee, and all actions required under Grantee's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Grant Documents 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 the Grant Documents 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 Grantee enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Grant Documents 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 Grantee, or any provision of the organizational documents of Grantee, or will conflict with or constitute a breach of or a default under any agreement to which Grantee is a party, or will result in the creation or imposition of any lien upon any assets or property of Grantee, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The conversion 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. Grantee 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 Grantee, threatened against or affecting Grantee or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Grantee, materially affect Grantee's ability to repay the Grant or impair the security to be given to the Town pursuant hereto.

(h) Title to Land. At the time of recordation of the Use Restriction, Grantee will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens ancillary to the Approved Financing and liens in favor of the Town or approved in writing by the Town.

(i) Financial Statements. The financial statements of Grantee and other financial data and information furnished by Grantee to the Town fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any material adverse change in the financial condition of Grantee from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Grantee holds or expects to receive firm financial commitments for sufficient funds to complete the acquisition of the Property and the conversion of the Development in accordance with the Standard Agreement.

(k) Taxes. Grantee and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Grantee or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the Property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of Grantee and its subsidiaries, taken as a whole, which would be expected to result in a material impairment of the ability of Grantee to perform under any Grant Document to which it is a party, or a material adverse effect upon the legality, validity, binding effect or enforceability against Grantee of any Grant Document.

ARTICLE 6.  
DEFAULT AND REMEDIES

Section 6.1 Events of Default.

(a) Subject to Section 7.14, each of the following constitutes an "Event of Default" by Grantee under this Agreement:

(1) Failure under Standard Agreement. Failure of Grantee to obtain permits, commence, and prosecute to completion, conversion of the Development within the times set forth in the Standard Agreement.

(2) Failure to Comply with the Management Plan. Failure to comply with the Management Plan approved by the Town and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Town to the Grantee, which notice provides reasonable detail of the default and the required cure for such default.

(3) Breach of Covenants. Failure by Grantee to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Grant Documents, and Grantee fails to cure such default within forty-five (45) days after receipt of written notice thereof from the Town to Grantee. If Grantee is incapable of curing a default within such forty-five (45) day period, the Town will give the Grantee one hundred twenty (120) days to cure such default provided Grantee has commenced to cure within such forty-five (45) day period and is diligently proceeding to cure such default through the end of such period; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(4) Default Under Other Loans. A default is declared under any other financing for the Development by the lender of such financing and such default remains uncured following any applicable notice and cure period.

(5) Insolvency. A court having jurisdiction makes or enters any decree or order: (1) adjudging Grantee to be bankrupt or insolvent; (2) approving as properly filed a petition seeking reorganization of Grantee, or seeking any arrangement for Grantee under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (3) appointing a receiver, trustee, liquidator, or assignee of Grantee in bankruptcy or insolvency or for any of their properties; (4) directing the winding up or liquidation of Grantee if any such decree or order described in clauses (1) to (4), inclusive, is unstayed or undischarged for a period of ninety (90) calendar days; or (5) Grantee admits in writing its inability to pay its debts as they fall due or will have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive.

(6) Assignment; Attachment. Grantee assigns its assets for the benefit of its creditors or suffers a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon is returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution.

(7) Suspension; Termination. Grantee, or its sole and managing member, shall have: (1) the operation of their business voluntarily or involuntarily suspended by the State of California, (2) voluntarily stopped or terminated the operation of their business; (3) the Grantee shall have the operation of the limited liability company voluntarily or involuntarily dissolved, suspended or terminated by the State of California.

(8) Liens on Property and the Development. Any claim of lien (other than liens approved in writing by the Town) is filed against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Grant and the continued maintenance of said claim of lien or notice to withhold for a period of thirty (30) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the Town.

(9) Unauthorized Transfer. Any Transfer other than as permitted pursuant to Section 4.12.

(10) Representation or Warranty Incorrect. Any Grantee representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Town in connection with any of the Grant Documents, proves to have been incorrect in any material respect when made.

(11) Failure to Timely Make Units Available for Occupancy. Failure of Grantee to make the Units available for occupancy within the time specified in the Standard Agreement.

## Section 6.2 Remedies.

(a) The occurrence of an Event of Default, following the expiration of all applicable notice and cure periods, will either at the option of the Town or automatically where so specified, give the Town the right to proceed with any and all remedies set forth in this Agreement and the Grant Documents, including but not limited to the following:

(1) Revocation of Grant. The Town may demand that any portion of the Grant not forgiven pursuant to Section 2.3 above, together with any accrued interest thereon, to become immediately due and payable. The Town may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Town as a creditor and secured party under the law including the Uniform Commercial Code. Grantee is liable to pay the Town on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the Town in connection with the collection of the Grant and the preservation, maintenance, protection, sale, or other disposition of the security given for the Grant.

(2) Specific Performance. The Town has the right to mandamus or other suit, action or proceeding at law or in equity to require Grantee to perform its obligations and covenants under the Grant Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Grant Documents.

(3) Termination. The Town has the right to terminate this Agreement and, at its sole option, to seek any remedies at law or equity available hereunder.

(4) Right of Reverter. In the event that this Agreement is terminated by the Town pursuant to Section 6.2, the Town shall have the right to reenter and take possession of the Property, and all improvements thereon and to revert in the Town the estate of the Grantee in the Property. The rights of the Town under this Right of Reverter shall be subject to the rights created by, be limited by and shall not defeat, render invalid or limit any approved security interest permitted by this Agreement or the rights or interests provided in this Agreement for the protection of the holder of such approved security interests. Upon vesting or reverting in the Town of title to the Property, the Town shall promptly use its best efforts to resell the Property. Upon sale the proceeds shall be applied as follows: (i) first, to reimburse the Town for any costs incurred in managing or selling the property, including but not limited to amounts to discharge or prevent liens or encumbrances arising from any acts or omissions of the Grantee; (ii) second, reimburse the Town for damages to which it is entitled under this Agreement by reason of the Grantee's default; (iii) third, to the Grantee for the documented reasonable cost of the Improvements the Grantee has placed on the Property and such other documented reasonable costs Grantee has incurred directly in connection with development of the Property, as applicable, that were not financed by the Town; and (iv) fourth, any balance to the Town.

(5) Option to Repurchase, Reenter and Repossess. The Town shall have the additional right at its option to repurchase, reenter and take possession of the Property or any portion thereof owned by Grantee with all Improvements thereon, if there is an uncured Event of Default. The rights of the Town under this Option to Repurchase shall be subject to the rights, be limited by and shall not defeat, render invalid or limit any approved security interest permitted by this Agreement or the rights or interests provided in this Agreement for the protection of the holder of such approved security interests. To exercise its right to repurchase, reenter and take possession with respect to the Property, the Town shall pay to the Grantee, in cash an amount equal to the fair market value of the Improvements existing on the Property, at the time of the repurchase, reentry and repossession less: (i) any gains or income withdrawn or made by the Grantee from the Property and (ii) the value of any unpaid liens or encumbrances on the Property, which the Town assumes or takes subject to said encumbrances.

(6) Right to Cure. The Town has the right (but not the obligation) to cure any monetary default by Grantee under a loan other than the Grant. However, if the Grantee is in good faith contesting a claim of default under a loan or grant and the Town's interest is not imminently threatened by such default, in the Town's sole judgment, the Town shall not have the right to cure such default. Grantee shall reimburse the Town for any funds advanced by the Town to cure a monetary default by Grantee upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law and ten percent (10%) per annum (the "Default Rate") from the date of expenditure until the date of reimbursement.

(7) Recorded Agreement. The Grantee hereby agrees to record a Memorandum of Agreement to provide notice of the Town's remedies hereunder.

Section 6.3 Right of Contest.

Grantee may contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contests are to be prosecuted diligently and, other than those contesting claims, demands, levies, or assessments imposed by the Town, are to be prosecuted in a manner unprejudicial to the Town or the rights of the Town hereunder.

Section 6.4 Remedies Cumulative.

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

ARTICLE 7.  
GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement is to 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 Grantee, or their agents, employees or contractors, and Grantee will at all times be deemed an independent contractor and to 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. Grantee retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regard to the rehabilitation and operation of the Development, Grantee is 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 must include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Grantee is solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement creates or justifies any claim against the Town by any person that Grantee may have employed or with whom Grantee 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 tenancy of the Property, the rehabilitation or operation of the Development, and Grantee shall include similar requirements in any contracts entered into for the rehabilitation or operation of the Development.

Section 7.3 Indemnification.

The Grantee agrees to indemnify, defend and hold harmless the Town and its authorized officers, employees, agents and volunteers ("Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Town on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees, except as provided in the following sentence. The indemnification obligations apply to the Town's "active" as well as "passive" negligence but does not apply to the Town's "gross negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. This indemnification provision is not intended to and does not limit, negate, modify, nullify, or change the non-recourse provisions of this Agreement or any other agreement, document, instrument, certificate or covenant executed by Grantee. The provisions of this Section will survive the expiration of the Term.

Section 7.4 Non-Liability of Town Officials, Employees and Agents.

No councilmember, official, employee or agent of the Town is personally liable to Grantee in the event of any default or breach by the Town or for any amount that may become due to Grantee or its successor or on any obligation under the terms of this Agreement.

Section 7.5 No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement.

Section 7.6 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.6(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 financial interest or financial 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. Grantee shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) The conflict of interest provisions of Section 7.6(a) above apply to any person who is an employee, agent, consultant, officer of the Town, 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 California Government Code Section 1090 and the Political Reform Act, California Government Code Section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of Grantee, or immediate family member of any of the preceding, may make or participate in a decision, made by the Town or a Town council, commission or committee, 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 Grantee. Interpretation of this Section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

Section 7.7 Notices, Demands and Communications.

All notices required or permitted by any provision of this Agreement must be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

Town:

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

Grantee:

Innsbruck Lodge Affordable Housing, LLC  
c/o Mammoth Lakes Housing, Inc.  
P.O. Box 260  
Mammoth Lakes, CA 93546  
Attn: Patricia Robertson, Executive Director

with a copy to:

Goldfarb & Lipman, LLP  
1300 Clay Street, 11th Floor  
Oakland, CA 94612  
Attn: Rafael Yaquian

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

Section 7.8 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing by the Parties. The Town Executive Officer is authorized to execute on behalf of the Town amendments to the Grant Documents or amended and restated Grant Documents as long as any material change in the amount or terms of this Agreement is approved by the Town Council.

Section 7.9 Town Approval.

The Town has authorized the Town Executive Officer to execute the ancillary Grant documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Grant and the existence of defaults under the Grant Documents.

Section 7.10 Applicable Law and Venue.

This Agreement is governed by the laws of the State of California. Any action brought claiming a breach of this Agreement or interpreting this Agreement shall be brought and venued in Mono County, California

Section 7.11 Parties Bound.

Except as otherwise limited herein, this Agreement binds and inures to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and to bind Grantee and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof is to inure to the benefit of the Town and its successors and assigns.

Section 7.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 7.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will 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 7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics; pandemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather or soils conditions which, in the opinion of the Grantee's contractor, will necessitate delays; inability to secure necessary labor, materials or tools, acts of the other party; acts or failure to act of any public or governmental Town or entity (other than the acts or failure to act of the Town); or any other causes (other than the Grantee's inability to obtain financing for the Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other party within ten (10) business days from the

date the party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other party within ten (10) business days of receipt of the notice. Times of performance under this Agreement may also be extended in writing by the Town and the Grantee. In no event shall the cumulative delays during the Term of this Agreement exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing.

Section 7.15 Waivers.

Any waiver by the Town of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Town to take action on any breach or default of Grantee or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Grantee to perform any obligation under this Agreement does 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 Grantee may 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.

Section 7.16 Title of Parts and Sections.

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

Section 7.17 Entire Understanding of the Parties.

The Grant Documents constitute the entire agreement of the Parties with respect to the Grant.

Section 7.18 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 7.19 Action by the Town. Whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the Town is required or permitted under this Agreement or any other of the Grant Documents, such action may be given, made, taken, refused, denied or withheld by the Town Executive Officer, at the Town Executive Officer's reasonable discretion (unless some other standard is expressly stated). Any such action shall be in writing. For the avoidance of doubt, if the Town Executive Officer determines Town Council action is necessary or desirable prior to the granting of any approval, notice, direction, finding, consent, request, waiver, or other action, the Town Executive Officer may at their sole discretion refer the action to the Town Council for consideration of such action.

***[Signature Pages Follow]***

WHEREAS, this Agreement has been entered into by the undersigned as of the Effective Date.

**TOWN:**

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

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

APPROVED AS TO LEGAL FORM:  
ANDREW MORRIS  
Town Attorney

By: \_\_\_\_\_  
Andrew Morris, Town Attorney

Date: \_\_\_\_\_

***[Signature Page Continues]***

GRANTEE:

INNSBRUCK LODGE AFFORDABLE HOUSING, LLC, a California limited liability company

By: Mammoth Lakes Housing, Inc., a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Patricia Robertson, Executive Director

Date: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land is situated in the State of California, County of Mono, and is described as follows:

PARCEL 1 OF PARCEL MAP NO. 36-51 IN THE TOWN OF MAMMOTH LAKES, COUNTY OF MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1, PAGE 106 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B

APPROVED FINANCING PLAN

<b>Innsbruck Lodge</b>	<b>Final Development Budget</b>	<b>Awarded Budget</b>	<b>Grant Sources</b> <i>*All sources are grants and do not require repayment</i>
Land and Acquisition	\$3,503,887	\$2,700,000	Homekey
Rehab Costs	\$2,562,374	\$1,000,000	Town of Mammoth
Architecture & Soft Costs	\$736,167	\$550,000	Mono County
Insurance & Taxes	\$33,165	\$1,550,000	Homekey Match
Permit & DIF	\$45,303	\$160,000	Homekey Application Bonus
Replacement Reserves	\$31,019	\$343,338	Continuum of Care
Contingency	\$120,000	\$141,131	Mammoth Lakes Housing
		\$400,000	Town of Mammoth - last in
		\$187,445	MLH - Other
<b>Total</b>	<b>\$7,031,914</b>	<b>\$7,031,914</b>	

EXHIBIT C

SCHEDULE OF PERFORMANCE

This Schedule of Performance sets forth the schedule for various activities under the Agreement to which this exhibit is attached. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Times for performance are subject to Force Majeure, as further provided in Section 7.14 of the Agreement, and the notice and cure rights as further provided in the Agreement.

As provided in the Agreement, this Schedule of Performance may only be modified in a writing executed by all Parties, in accordance with Section 7.8 of the Agreement.

Milestone	Date
Close on Acquisition Financing	August 31, 2022
Execute Standard Agreement	March 30, 2023
Execute Town and County Grant Documents	April 30, 2023
Obtain Building Permits	April 30, 2023
Begin rehabilitation	May 30, 2023
Complete rehabilitation	November 17, 2023
Capital Expenditure Deadline	December 30, 2023
<u>90%</u> Units Occupied	February 15, 2024



EXHIBIT D

FORM OF USE RESTRICTION

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Town of Mammoth Lakes  
437 Old Mammoth Road, Suite 230  
Mammoth Lakes, CA 93546  
Attn: Daniel C. Holler, Town Manger

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

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**APN:** 033-041-006-000

REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
(Homekey – Innsbruck Lodge)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is dated as of April \_\_, 2023, and is made by and between THE TOWN OF MAMMOTH LAKES (the "Town") and INNSBRUCK LODGE AFFORDABLE HOUSING, LLC, a California limited liability company and controlled affiliate of MAMMOTH LAKES HOUSING, INC., a California nonprofit public benefit corporation (collectively referred to herein as "Owner"). The Town and Owner shall be referred individually as "the Party," and collectively, as "the Parties."

RECITALS

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

1. The Department of Housing and Community Development ("HCD") issued a Round 2 Notice of Funding Availability ("NOFA") for the Homekey Program, established by California Health and Safety Code Section 50675.1.1 (the "Homekey Program"), on September 9, 2021. The NOFA incorporates by reference the Multifamily Housing Program ("MHP"), as well as the MHP Final Guidelines ("MHP Guidelines"), dated June 19, 2019, both as amended and in effect from time to time. In addition, the NOFA states that Homekey grant funds are derived primarily from the Coronavirus Fiscal Recovery Fund (CSFRF), established by the American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2).
2. Owner acquired certain real property located at 913 Forest Trail, in the Town of Mammoth Lakes, County of Mono (APN-033-041-006-000) as further described in Exhibit A incorporated herein (the "Property"). The Property will be improved with fifteen (15) units of housing, including a manager's unit (the "Improvements"). The

Property and Improvements are referred to in this Agreement as the "Development."

3. Owner acquired the Property with funds from HCD pursuant to the Homekey program and related Standard Agreement No. 21-HK-17233 between HCD (as Grantor), and the Town, Mammoth Lakes Housing, Inc., and the Owner (together as Grantees), dated as of June 1, 2022 (the "Original Standard Agreement"), as amended by Standard Agreement-Amendment No. 1, dated March 10, 2023 (the "First Amended Standard Agreement" and collectively with the Original Standard Agreement, the "Standard Agreement"), as such may be further amended from time to time. The Homekey Program was established during the COVID-19 Pandemic to assist Homeless Households and At Risk of Homelessness Households as defined in Section 578.3 of Title 24 of the Code of Federal Regulation, impacted by COVID-19. Through its September 9, 2021 NOFA, HCD considers Homeless Households and At Risk of Homelessness Households to be inherently impacted by the COVID-19 Pandemic.
4. The Town and Owner intend for the Development to be used as Permanent Housing. This Agreement is being recorded pursuant to HCD's requirement that the Town cause to be recorded a fifty-five (55) year use restriction against the Property ensuring that Owner provides fifteen (15) "doors" of Permanent Housing at the Development which shall be low barrier and culturally competent and shall be focused on providing support for moving people out of crisis and into permanent housing as quickly as feasible.

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

ARTICLE 1.  
DEFINITIONS

Section 1.1 Definitions.

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

- (a) "30% AMI Household" means a household whose Adjusted Income does not exceed 30% of Area Median Income.
- (b) "Actual Household Size" means the actual number of persons in the applicable household.
- (c) "Adjusted Income" means with respect to the household occupying a Unit, the income from all persons in the household including nonrelated individuals, calculated using the methods to calculate income adopted by HCD in accordance with the Homekey Program.
- (d) "Area Median Income" means the median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of Mono, California as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the Town shall

provide other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD or HCD.

(e) "At Risk of Homelessness Household" means a household that is at risk of homelessness, as defined in Section 578.3 of Title 24 of the Code of Federal Regulation.

(f) "Eligible Household" means Homeless Households or At Risk of Homeless Households.

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

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

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

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

(k) "Unit" or "Doors" means one or all of the fifteen (15) units in the Development, excluding the manager's unit.

## ARTICLE 2. AFFORDABILITY AND OCCUPANCY COVENANTS

### Section 2.1 Occupancy Requirements.

(a) During the Term, Owner shall provide fifteen (15) doors at the Development that will be occupied by, or, if vacant, available for occupancy by Eligible Households. The Development shall include thirteen (13) studio units and two (2) one-bedroom units. During the Term, two (2) studio units shall be made available for occupancy to Eligible Households that qualify as 30% AMI Households, the balance of the units shall be made available to Eligible Households.

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

## ARTICLE 3. OPERATION OF THE DEVELOPMENT

Section 3.1 Residential Use; Compliance with Standard Agreement.

Owner shall operate the Development as Permanent Housing, and in accordance with the terms and conditions of this Agreement and the Standard Agreement.

Section 3.2 Covenants to Run with the Land.

The Town and Owner hereby declare its express intent that the provisions this Agreement shall run with the land and shall bind all successors in title to the Development utilized to provide the fifteen (15) doors; provided, however, that on the expiration of the Term, said covenants and restrictions expire.

Section 3.3 Enforcement by the Town.

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

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

Section 3.5 Nondiscrimination.

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

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

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

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

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

#### ARTICLE 4. MISCELLANEOUS

Section 4.1 Governing Law.

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

Section 4.2 Waiver of Requirements.

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

Section 4.3 Recording and Filing.

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

Section 4.4 Amendments.

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

Section 4.5 Notices.

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

The Town: Town Mammoth Lakes  
437 Old Mammoth Road, Suite 230  
Mammoth Lakes, CA 93546  
Attn: Daniel C. Holler, Town Manager

Owner: Innsbruck Lodge Affordable Housing, LLC  
Mammoth Lakes Housing, Inc.  
P.O. Box 1609  
Mammoth Lakes, CA 93526  
Attn: Patricia Robertson, Executive Director

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

Section 4.6 Subordination.

This Agreement shall be recorded in first lien position and shall not be subordinated to any lien or encumbrance proposed to be recorded against the Property.

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

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

Section 4.9 Third Party Beneficiaries. The parties acknowledge and agree that the Department of Housing and Community Development is an express third party beneficiary of the affordability restrictions set forth herein and shall be entitled to enforce the affordability restrictions set forth herein solely through an action for specific performance, as if HCD was a party herein. The Department has made the Grant in reliance on this Agreement, and that the Department has a

direct right of enforcement against the Owner in the event of the Owner's breach, default, or other non-compliance under this Agreement, which right is exercisable in the Department's sole and absolute discretion. There shall be no other third-party beneficiaries to this Agreement.

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

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

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

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

**[Signatures on following page.]**



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

**INNSBRUCK LODGE AFFORDABLE HOUSING, LLC, a California limited liability company**

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

By: \_\_\_\_\_  
Patricia Robertson, Executive Director

Date: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Jamie Gray, Town Clerk

**APPROVED AS TO FORM:**  
Andrew Morris, Town Attorney

By: \_\_\_\_\_

*[All signatures must be notarized.]*

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Name : Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 36-51 IN THE TOWN OF MAMMOTH LAKES, COUNTY OF MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1, PAGE 106 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT E

PARTICIPANT SELCTION PLAN



Tenant Selection Plan  
Innsbruck Lodge  
Project Homekey – Permanent Affordable Housing

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*Table of Contents*

Part 1. Introduction / Overview

Part 2. Housing First Certification

Part 3. Tenant Selection

# Tenant Selection Plan – Innsbruck Lodge

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## *1. Introduction / Overview*

Mammoth Lakes Housing, Inc. (MLH), the Sponsor, is developing Innsbruck Lodge in the North Village Specific Plan neighborhood of Mammoth Lakes, California.

Mammoth Lakes suffers from a severe lack of affordable housing in relation to the high percentage of low-wage recreation and tourism jobs. For that reason, there are a lot of working homeless couch-surfing, living in overcrowded households, in vehicles, camping in the forests, etc.

Innsbruck Lodge is a former hotel which will be converted to permanent affordable housing through the State of California's Project Homekey Program.

The Sponsor, through its Housing Navigator Program, will provide overall service coordination for Innsbruck Lodge. MLH has partnered with Mono County Social Services and other local service providers to provide any intensive case management that the tenants require. It is MLH's goal to create a service delivery system that can adapt to changing needs and circumstances of the tenants during initial occupancy and throughout the life of the project.

The Sponsor subscribes to a Housing First model of housing provision. Housing First has proven to reduce emergency room visits, hospitalization, shelter use, detox services, and incarceration. Due to this, coordination with existing service providers paired with case management at MLH is the proposed model for this site.

### **Target Population**

MLH has developed the Innsbruck Lodge for the purpose of serving single individuals and families who are homeless or who are at-risk of homelessness by virtue of their low incomes as defined in Section 578.3 of Title 24 of the Code of Federal Regulation. As described above, many of our homeless are working and earning incomes up to 80% of the Area Median Income. Many of these households will also have special needs, including, but not limited to mental illness, co-occurring mental illness and substance abuse issues, physical disabilities, developmental disabilities, HIV/AIDS, and domestic violence issues. Some of the tenants may also be youth exiting the foster care system.

The Sponsor has devised a rent structure that is appropriate for the target populations. The Innsbruck Lodge will consist of 13 studio apartments and 2 one-bedroom units. MLH has obtained financing through Project Homekey, Mono County, and the Town of Mammoth Lakes, for the entire project. Utilizing these sources, MLH is able to establish affordable rents at the following levels: 30%, 60%, and 80% AMI.

### **Service Needs**

More than two decades of experience in affordable housing has demonstrated that special needs populations, and particularly homeless and at-risk individuals and families, require a rich array

## Tenant Selection Plan – Innsbruck Lodge

of supportive services to help them maintain stable housing, to achieve their life goals, and to grow and thrive towards greater self-determination and self-sufficiency. MLH has researched projects with populations that are similar to the Innsbruck Lodge and consulted with experts in the field of supportive housing to arrive at the following description of the expected service needs of the target population.

<b>Population</b>	<b>Service Needs</b>
All tenants	Intake and assessment, information and referral, recreational and socialization activities, community building activities, support groups, etc.
Homeless individuals and families (including chronically homeless)	Intensive case management, with emphasis on behavioral health and primary health issues, independent living skills, and employment/educational goals. Intensive case management includes individualized service planning and goal setting, coordination of services, counseling and support, crisis intervention, intensive assistance with accessing mainstream services and other community-based resources. The service needs of homeless families will also include parenting support, childcare referrals, etc.
Developmentally disabled tenants	Intensive case management, with emphasis on independent living skills and vocational/educational goals. Intensive case management includes individualized service planning and goal setting, counseling and support, coordination of services, and assistance with accessing mainstream services and other community-based resources.
Extremely low income individuals and families at-risk of homelessness	Case management, with emphasis on independent living skills and employment/educational goals, behavioral health and primary health issues as needed, domestic violence counseling and parenting support as appropriate. Case management includes individualized service planning and goal setting, counseling and support, coordination of services, and assistance with accessing mainstream services and other community-based resources. Families in this group will also have service needs in the area of childcare and after-school programs.
Low income individuals and small families	Service coordination, with emphasis on employment and training services and resources for families and children. Service coordination includes information and referral, with some follow through to help tenants access needed services.
Working homeless	Service coordination, with emphasis on employment and training services and resources for families and children. Service coordination includes information and referral, with some follow through to help tenants access needed services. Potential referral to homeownership programs or preparation for home ownership education.



## Tenant Selection Plan Innsbruck Lodge Project Homekey – Permanent Affordable Housing

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### *2. Housing First Certification §501*

This project promotes Housing First.

Housing First is an approach to serving people experiencing homelessness that recognizes a homeless person must first be able to access a decent, safe place to live, that does not limit length of stay (permanent housing), before stabilizing, improving health, reducing harmful behaviors, or increasing income. Under the Housing First approach, anyone experiencing homelessness should be connected to a permanent home as quickly as possible, and programs should remove barriers to accessing the housing, like requirements for sobriety or absence of criminal history. It is based on the “hierarchy of need:” people must access basic necessities—like a safe place to live and food to eat—before being able to achieve quality of life or pursue personal goals. Finally, Housing First values choice not only in where to live, but whether to participate in services. For this reason, tenants are not required to participate in services to access or retain housing.

While Housing First recognizes housing is a necessary precursor to treatment, Housing First does not mean “housing only.” On the contrary, Housing First acknowledges social services and care coordination are necessary elements of housing stability and quality of life.

In 2016, the California Legislature passed Senate Bill 1380 (Mitchell). It required all housing programs to adopt the Housing First model. The Legislation defined Housing First with these “core components”:

- Tenant screening and selection practices promote accepting applicants regardless of their sobriety or use of substances, completion of treatment, or participation in services.
- Applicants are not rejected on the basis of poor credit or financial history, poor or lack of rental history, criminal convictions unrelated to tenancy, or behaviors that indicate a lack of "housing readiness."
- Housing providers accept referrals directly from shelters, street outreach, drop-in centers, and other parts of crisis response systems frequented by vulnerable people experiencing homelessness.
- Supportive services emphasize engagement and problem solving over therapeutic goals and service plans that are highly tenant-driven without predetermined goals.
- Participation in services or program compliance is not a condition of housing tenancy.
- Tenants have a lease and all the rights and responsibilities of tenancy.
- The use of alcohol or drugs in and of itself, without other lease violations, is not a reason for eviction.
- Funding promotes tenant selection plans for supportive housing that prioritize eligible tenants based on criteria other than "first-come-first-serve," including, but



## Tenant Selection Plan – Innsbruck Lodge

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not limited to, the duration or chronicity of homelessness, vulnerability to early mortality, or high utilization of crisis services.

- Case managers and service coordinators are trained in and actively employ evidence-based practices for engagement, including motivational interviewing and client-centered counseling.
- Services are informed by a harm-reduction philosophy that recognizes drug and alcohol use and addiction as a part of tenants' lives, where tenants are engaged in nonjudgmental communication regarding drug and alcohol use, and where tenants are offered education regarding how to avoid risky behaviors and engage in safer practices, as well as connected to evidence-based treatment if the tenant so chooses.
- The project and specific apartment may include special physical features that accommodate disabilities, reduce harm, and promote health and community and independence among tenants.

The federal and State government recognize Housing First as an evidence-based practice. In fact, a settled and growing body of evidence demonstrates—

- Tenants accessing Housing First programs are able to move into housing faster than programs offering a more traditional approach.
- Tenants using Housing First programs stay housed longer and more stably than other programs.
- Over 90% of tenants accessing Housing First programs are able to retain housing stability.
- In general, tenants using Housing First programs access services more often, have a greater sense of choice and autonomy, and are far less costly to public systems than tenants of other programs.

### *3. Tenant Selection*

#### **Non-Discrimination**

It is the policy of this property to comply fully with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a), including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act; and Section 109 of the Housing and Community Development Act of 1974. The property must also comply with HUD's Equal Access to Housing in HUD Programs regardless of Sexual Orientation or Gender Identity requirements and any legislation protecting the individual rights of residents, applicants or staff which may subsequently be enacted.

The property will not discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, age, handicap, disability, or national origin in the leasing, rental, or other disposition of housing or related facilities, or in the use or occupancy thereof. In addition, the property will not:

- Deny to any applicant the opportunity to apply for housing, nor deny to any eligible applicant the opportunity to lease housing suitable to its needs;
- Provide housing which is different from that provided others;
- Subject a person to segregation or disparate treatment;
- Restrict a person's access to any benefit enjoyed by others in connection with the housing program;
- Treat a person differently in determining eligibility or other requirements for admission;
- Deny a person access to the same level of services; or
- Deny a person the opportunity to participate in a planning or advisory group that is an integral part of the housing program.

The property shall not automatically deny admission to a particular group or category of otherwise eligible applicants. Each applicant in a particular group or category will be treated on an individual basis in the normal processing routine for property eligibility.

MLH must use referrals to the Homekey Assisted Units through the local Coordinated Entry System (CES) or another comparable prioritization system based on greatest need shall be used. All referral protocols for Homekey Assisted Units must be in a tenant selection plan developed in collaboration with the Eastern Sierra Continuum of Care and implemented consistent with the requirements set forth in the Homekey NOFA. The Sponsor shall select the greatest need eligible households that are able to pay affordable rents sufficient to maintain the long-term financial feasibility of the Development, consistent with this Tenant Selection Plan and the Eastern Sierra Continuum of Care Housing Referral Protocol attached hereto as Attachment A, and incorporated herein by this reference.

## Tenant Selection Plan – Innsbruck Lodge

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### **Section 504 of the Rehabilitation Act of 1973**

It is the policy of this property to assure that qualified individuals with disabilities are not discriminated against on the basis of their disability. The property also assures that these individuals will have equal opportunity to receive and enjoy the benefits of living at the property.

- **Reasonable Accommodations**

The property will seek to identify and eliminate situations or procedures that create a barrier to equal housing opportunity for all. In accordance with Section 504 of the Rehabilitation Act of 1973, the property will make reasonable accommodation for individuals with disabilities (applicants or residents). Such accommodations may include changes in the method of administering policies, procedures, or services at this property where such modifications would be necessary to afford full access to the housing program for qualified individuals with disabilities.

In reaching a reasonable accommodation with, or performing structural modifications for otherwise qualified individuals with disabilities, the property is not required to:

- Make structural alterations that require the removal or altering of a load-bearing structural member;
- Provide support services that are not already part of its housing programs;
- Take any action that would result in a fundamental alteration in the nature of the program or service;
- Take any action that would result in an undue financial and administrative burden on the property, including structural impracticality as defined in the Uniform Federal Accessibility Standards (UFAS).

- **Information Regarding Disabilities**

The property ensures that any questions related to disability on the application for housing, have to do with program eligibility, and allowable medical or disability deductions for housing applicants who wish to take advantage of those deductions. It is not required that any information regarding a possible disability be revealed other than for program eligibility requirements.

- **Neutral Policies**

The property will make reasonable adjustments to rules, policies, practices, and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the unit and the common areas of a dwelling, or to participate in or have access to other activities conducted or sponsored by the owner.

- **Auxiliary Aids to Ensure Effective Communication**

The property will seek to effectively communicate with applicants, residents, and members of the public who are individuals with disabilities. The use of auxiliary aides will be implemented when necessary. The property asks for 7-day notice in order to make any service, meeting, interview, appointment, or any business accessible. Requests for auxiliary aids may include visual alarms, tactile signs, visual doorbells, and other communication auxiliary aids available to management.

## Tenant Selection Plan – Innsbruck Lodge

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- **Improving Access to Services for Persons with Limited English Proficiency (LEP)**  
Executive Order (E.O.) 13166 requires Federal agencies and grantees to take affirmative steps to communicate with persons who need services or information in a language other than English.

Housing owners must take reasonable steps to ensure meaningful access to the information and services they provide for persons with LEP. This may include interpreter services and/or written materials translated into other languages.

- **Assistance Animals**  
The property will allow assistive animals, which are defined as animals that work, provide assistance, perform tasks for the benefit of a person with a disability or provide emotional support to alleviate identified symptoms or effects of a person's disability. These animals, often referred to as service animals, support animals, or therapy animals, perform many disability-related functions, including but not limited to guiding individuals who are blind, alerting individuals who are deaf, providing minimal protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. No pet deposit is required for assistive animals. The property requires a written request for a reasonable accommodation animal request and will provide assistance in completing the written request when necessary.
- **Accessible Route**  
For mobility-impaired persons, this property is an accessible facility on an accessible route. Documents that the resident would like to review may be examined during regular business hours. Please contact the management office to arrange to examine any documents.
- **Reasonable Modifications**  
The property will permit residents with disabilities to make reasonable modifications to their individual units at the expense of MLH with **prior approval**. Applicant may also make modifications at their own expense with prior approval from the property. When the resident vacates the unit, s/he must agree to restore the premises to the condition that existed before the modification, if requested by the property. The property will not require this restoration if the modification benefits the property or is needed by another resident.

To ensure with reasonable certainty that funds will be available to pay for restorations at the end of the tenancy, the owner may negotiate as part of such restoration an agreement requiring that the resident pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money, not to exceed the cost of the restorations. The property will require that the work be done in a workman like manner, utilizing licensed contractors, and that any required building permits will be obtained.

## Tenant Selection Plan – Innsbruck Lodge

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- **Equal Access**

The property will provide assistance in a confidential manner and setting to insure equal access to a resident's documents. An individual with disabilities is responsible for providing her/his own transportation to and from the location where all documents are kept.

- **Equal Access Rule**

On February 3, 2012, HUD published a final rule entitled Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity (77 FR 5662) (“Equal Access Rule” or Rule”). The Rule is intended to ensure that housing across HUD programs is open to all eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

### **Mitigating Circumstances**

Section 504 and Fair Housing regulations state that consideration for mitigating circumstances shall be given to all persons applying for occupancy. If an applicant feels there is a mitigating circumstance or reasonable accommodation to be considered for determining occupancy, they should contact the property immediately to schedule a meeting.

### **Personal Information**

It is the policy of the property to guard the privacy of individuals conferred by the Federal Privacy Act of 1974, and to ensure the protection of such individuals' records maintained by the property. Unless required by Federal or State law, neither the property nor its agents shall disclose any personal information contained in its records to any person or agency unless the individual about whom information is requested shall give written consent to such disclosure.

### **Determining Eligibility for Assistance**

This privacy policy in no way limits the property's ability to collect such information as it may need to determine eligibility and income, compute rent, or determine an applicant's suitability for tenancy.

### **Information on Disabilities**

Consistent with the intent of Section 504 of the Rehabilitation Act of 1973, any information obtained regarding disability will be treated in a confidential manner. .

### **Investigations into Fraud/Criminal Activities**

This privacy policy is not intended to preclude the cooperation of the property with local, State, or Federal investigations into fraud or criminal activity. With proper identification, the property is permitted to advise the investigating officer of the following:

- Whether or not an individual is a resident;
- How long an individual has been a resident; and
- Any other appropriate answers to questions related to the investigation.

The property will not make files, forms, or documents available to the investigating officer unless a court order for such action is provided.



Tenant Selection Plan  
Innsbruck Lodge  
Project Homekey – Permanent Affordable Housing

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*Tenant Selection and Qualifying for Admission Under Project Homekey Program  
Eligibility Requirements*

**Defining Program Eligibility**

Program Eligibility determines whether applicants are eligible for residency at this property, created utilizing State of California Project Homekey funds. The property will not admit ineligible applicants. In addition to qualifying as a household struggling with homelessness as defined by Project Homekey, a household must meet **all** of the following tests.

**Income Limits**

The State establishes income limits and revises them annually to ensure that assistance is provided only to income-eligible households. Income limits are based on household size and the annual income the household receives. These limits are available for review at the site or management office. The property will determine income eligibility prior to approving any applicant for tenancy.

**Income-Limits Requirement**

Applicants must have an income that is not greater than 80% of the Area Median Income (low-income) as established by HUD, and as published annually by TCAC as applicable to the property. Household income will be determined utilizing the State's guidance on income calculations.

**Authorization for Release of Information and Verification Forms**

All members of an applicant or tenant household, who are at least 18 years of age, and each head of household and spouse regardless of age, must sign the Authorization for Release of Information consent form prior to receiving assistance:

Refusing to sign the Authorization for Release of Information by any adult household member will cause the household to be ineligible for assistance. All adults regardless of whether they report income must sign these forms.

**Only Residence**

Applicants must agree that their rental unit will be their **only** residence. When applicants are undergoing income limit tests, they are required to reveal all assets they own including real estate. They are allowed to own real estate, whether they are retaining it for investment purposes as with any other asset, or have the property listed for sale. However, they may never use this real estate as a residence while they live in Project Homekey housing.

## Tenant Selection Plan – Innsbruck Lodge

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### **Annual Recertification Policy**

In addition, applicants must understand and agree to MLH's requirement of an annual recertification of household income and circumstances per lease agreement program description, applicable regulatory agreement and Project Homekey guidelines

### **Interim Recertification Policy**

Further, to ensure that assisted families comply with income requirements, applicants must understand and agree to MLH's requirement that they are required to supply interim information to the property when the following occurs between annually scheduled recertifications:

- A household member moves in or out of the unit;
- An adult member of the household who was reported as unemployed on the most recent certification/recertification obtains employment; or
- The household's income cumulatively increases by \$200 or more per month.

Eligibility to remain in the unit will be determined by the applicable regulatory agreement and funding guidelines.

### **Notification Policy**

The property will inform residents, through required written notices, about their responsibility annually to provide information about the household's income, which is necessary to properly complete a recertification.

### **Verifying Information**

The applicant must agree to furnish any information required to verify eligibility for occupancy including all sources of income, assets, and certain expenses. Applicants are hereby informed that, by law, the penalties for false information may include eviction, loss of assistance, fines up to \$10,000, and imprisonment up to five years. The applicant must understand that a final decision of eligibility cannot be made until all verifications are complete. In addition, the applicant must understand that MLH has the right to compare any of the information supplied in the verifications with information that Federal, State, or local agencies have on the household's income and household composition. The owner must explain all program requirements to applicants, including the following verification procedures:

- **Individual Verification Consent Forms**

In addition to the Authorization for Release of Information and the appropriate Consent Forms indicated earlier, applicants must sign Individual Verification Forms that have been designed by the owner for obtaining documentation from third parties, to verify an applicant's income and deductions for determining the rent.

- **Verification Documentation**

Documentation used as part of the verification process may include checklists completed and signed by the applicant, verification forms completed and signed by third parties, dated notes of interviews with third parties whether by phone or in person, documents provided by household members, or affidavits/ certifications supplied by the applicant. The owner will be the final judge of the credibility of any verification submitted by an applicant.

## Tenant Selection Plan – Innsbruck Lodge

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- **Preferred Forms of Verification**

Verifications must be attempted in the order indicated below. Each file will be documented to show that the owner attempted to obtain third party written documentation before relying on some less acceptable form of information.

- Upfront Income Verification through the Enterprise Income Verification (EIV) system;
- Third party written;
- Third party oral with a record kept in the file;
- Review of documents provided by the household; or
- Affidavits from the household.

- **Notice of Ineligibility and Right to Request a Reasonable Accommodation**

If the property owner or tenant-referral organization determines that an applicant is ineligible on the basis of income or household composition, or because of failure by an applicant to sign and submit consent forms, the Owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the Owner (or Owner’s designee) and has the right to request a reasonable accommodation. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, disability or familial status.

### *Qualifying for Admission Under Project Homekey Eligibility Requirements*

#### **Defining Project Eligibility**

Project Eligibility establishes whether tenant applicants are eligible to reside in the specific property to which they are applying. This property has units designed to serve all household types. The Occupancy Standards listed below take into consideration not only household type, but also household size and what unit sizes are available in the property.

#### **Occupancy Standards**

When applying to the property, the appropriately sized unit must be in the unit configuration within the development. Units are assigned according to household size and composition. If the appropriate unit size is not available at the time of application, the applicant will be put on a waiting list. To avoid overcrowding, and in order to be consistent, we have adopted the following occupancy standards.

Bedrooms	Minimum	Maximum
0	1	2
1	1	3

#### **Project Homekey Eligible Households**

MLH must use referrals to the Homekey Assisted Units through the local Coordinated Entry System (CES) or another comparable prioritization system based on greatest need shall be used. All referral protocols for Homekey Assisted Units must be in a tenant selection plan developed



## Tenant Selection Plan – Innsbruck Lodge

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in collaboration with the Eastern Sierra Continuum of Care and implemented consistent with the requirements set forth in the Homekey NOFA. The Sponsor shall select the greatest need eligible households that are able to pay affordable rents sufficient to maintain the long-term financial feasibility of the Development, consistent with this Tenant Selection Plan and the Eastern Sierra Continuum of Care Housing Referral Protocol, attached hereto as Attachment A, and incorporated herein by this reference.

### **Assigning Units for Persons with Physical Disabilities**

The property will always give a household that has indicated a need for certain unit accommodations because of a disability. The property asks the household to decide for itself, in compliance with Section 504 of the Rehabilitation Act, whether a unit meets the needs of the household. The household will be notified whenever any unit becomes available, without regard to unit accessibility, pursuant to the Tenant Selection procedures below. The property will never prohibit an eligible household with a member who has a disability from accepting a suitable non-accessible unit if no accessible unit is available when the household reaches the top of the waiting list. If the applicant decides to accept a standard unit, s/he may request some modification to the unit as a reasonable accommodation. Depending on the nature of the needed modification, it may be paid for by the project, up to an amount.

### **Reasonable Accommodation**

The property will consider requests for reasonable accommodations from applicants/residents with disabilities, in order that they may benefit from the use and enjoyment of the dwelling units. The applicant/resident must be able to show that the requested accommodation is necessary, and that there is a strong, identifiable relationship between the requested accommodation and the individual's disability.

If a household requests an accessible feature, policy modification, or other reasonable accommodation, the property may provide the requested accommodation unless doing so would result in a fundamental alteration in the nature of the program, or an undue financial and administrative burden. A fundamental alteration is a modification that is so significant that it alters the essential nature of the operations of the property.

### **Policy for Unit Transfers**

#### **Requests from Residents**

Once an applicant has become a resident, a transfer of units may be warranted. There are two (2) ADA units at this property. If a resident has an increase in household size, or has a medical/health condition that warrants a larger unit or a unit that has special design features for a person with disabilities, a transfer may be requested. On occasion, there may be other requests for transfers that the property will consider on a case-by-case basis. All transfer requests must be made in writing, and must state the reason for the request.

#### **Requirement by Owner**

On occasion, an owner may require a resident to transfer to a smaller unit size. This may occur when the household composition decreases and the household no longer qualifies for the unit size in which they are dwelling. If a unit of appropriate size is not available, the owner will not evict

## Tenant Selection Plan – Innsbruck Lodge

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the household. However, if an appropriately sized unit is available, the household may be required to move in 30 days.

### **Acceptable Reasons for Transfers**

Current residents can request a transfer to a different size unit after they have been a resident for a period of twelve (12) months and are in good standing. Current residents may qualify for a unit transfer for one of the following conditions:

- Medical/health conditions, including inability to use stairs, or the need for a live-in attendant;
- Household size increases or decreases, or composition changes;
- There is a need for a unit with special design features for a person with disabilities; or
- Other potential conditions not related to health, which will be reviewed on a case-by-case basis by the owner.

### **Placement on Transfer Waiting List**

If the property supervisor approves a request for a transfer to a different unit, and there is no current unit available, the resident will be placed on the property's transfer waiting list. In-house residents that must be transferred due to overcrowding will be transferred first. Residents needing transfers due to medical reasons must have a written physician's statement.

### **Procedures for Filling Vacancies**

If a request for a transfer to a different unit is approved, the resident agrees to pay all transfer costs prior to the move. Costs may include damages that are beyond normal wear and tear. However, if a resident is transferred as an accommodation to a household member's disability, then the owner may be obligated to pay the costs associated with the transfer as discussed under Section 504 of the Rehabilitation Act of 1973.

### **Priority for Filling Vacancies**

The property will fill its vacant units with current residents awaiting transfers before applicants from the tenant general waiting list. Unit transfers that are required by management will take priority over resident requested transfers.

## *1.4 Qualifying for Admission under the Property's Standards*

**Occupancy Standards Units** are assigned according to household size and composition. If the appropriate unit size is not available at the time of application, the applicant will be put on a waiting list. To avoid overcrowding, and in order to be consistent, we have adopted the following occupancy standards.

Bedrooms	Minimum	Maximum
0	1	2
1	1	3

## Tenant Selection Plan – Innsbruck Lodge

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### **Families with Children**

The Fair Housing Act prohibits properties receiving Federal assistance from discriminating on the basis of familial status, defined by Congress as children under the age of 18, making it illegal to discriminate against families because of the presence of children. The property will neither exclude families with children, nor will they develop policies or procedures that have the purpose or effect of prohibiting children.

### **Counting Household Members**

In order to determine the size of unit that would be appropriate for a particular household, the property will count all full-time members of the household including live-in aides and foster persons who will reside in the unit. In addition, the property will count all anticipated persons including the following:

- Children expected to be born to a pregnant woman;
- Children in the process of being adopted by an adult household member;
- Children whose custody is being obtained by an adult household member;
- Children who are temporarily in a foster home who will return to the household;
- Children in joint custody arrangements who are present in the household 50% or more of the time, but see below;
- Children who are away at school and who live at home during recesses, but see below;
- Children that are temporarily in a correctional facility/detention center who will return to the household.

### **Anticipated Children**

Anticipated children that are not currently living in the unit will be taken into consideration when determining unit size, and in some cases when determining income limits.

- Household Addition Adoption: Counts for income limits and unit size.
- Household Addition Pregnancy: Counts for income limits and unit size.
- Household Addition Foster Child: Counts for unit size.

When these anticipated children become a reality and move into the unit, an interim recertification is required including the child as a household member if the addition is due to adoption or pregnancy or as a household member if the addition is due to a foster child.

### **Joint Custody Agreements**

All families with single parents will be asked on their move-in and annual interim recertification checklists or questionnaires if they are in a joint custody agreement.

### **Children Who are Away at School**

Management will not include as a household member a child who is away at school and who has established residency at another address or location as evidenced by a lease agreement. The new address or location is considered the student's principle place of residence.

### **Remaining Household Members**

If the qualifying member of a household leaves the unit, a determination will be made as to whether the remaining member(s) of the household will be eligible to receive assistance. To qualify as a remaining member, individuals must be a party to the lease when the qualifying member leaves the unit, and must be of legal contract age under state law.

If the eligible household member leaves the unit for any reason including death, the remaining family members are eligible to remain in the unit if they income-qualify.

### **Property Standards for Unit Assignment**

#### **Assigning a Smaller Unit Than Required**

Management will consider assigning a household to a smaller unit size than the standards listed above if the household requests the smaller unit, is eligible for the smaller unit based on the number of household members, and occupancy of the smaller unit will not cause serious overcrowding, or will not conflict with the local codes.

#### **Assigning Unit Larger Than Required**

If there is no proper unit available, management may consider assigning a household to a larger unit than the standards listed above if no eligible household in need of the larger unit is available to move into the unit within 60 days, and the household agrees in writing to move out, at its own expense, when a proper size unit becomes available.

#### **Change in Unit Size after Initial Occupancy**

After a household moves into a unit, if the unit becomes underutilized due to a change in household size, management will require the household to move to a unit of appropriate size, if it is available.

#### **Change in Need for Accessible Features**

If a household is in an accessible unit but no longer needs the accessible features, management may request that the household move to another unit in the property.

### *Screening to Determine Applicant Eligibility*

#### **Applicant Screening Policy**

All applicants for subsidized housing will need to submit a complete application. MLH staff will assist applicants, as needed, in understanding the application process and completing forms. An applicant has the right to voluntarily withdraw from the application process at any time.

At the time of application submission, applicants will participate in an in-take interview at which time MLH staff will enter the household into the Coordinated Entry System (CES), to determine homelessness ranking.

## Tenant Selection Plan – Innsbruck Lodge

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### **Violence Against Women Act**

Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a resident's household or any guest or other person under the resident's control, shall not be cause for termination of assistance, or occupancy rights if the resident or an immediate member of the resident's household is the victim or the threatened victim of that abuse.

An incident(s) of actual or threatened domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease by the victim (or threatened victim), and will not be "good cause" for the termination of the assistance, tenancy, or occupancy rights of a victim of such violence.

Form HUD-91066, *Certification of Domestic Violence, Dating Violence or Stalking*.

All current tenants will be provided the option to complete form HUD-91066, *Certification of Domestic Violence, Dating Violence or Stalking*. This form will also be made available to all families at the time of admission.

Form HUD-91067, *Lease Addendum for VAWA*

Form HUD-91067, HUD's lease addendum for the VAWA provisions, is a required addendum to every lease. If it is determined that physical abuse caused by a tenant is clear and present, the law provides management the authority to bifurcate the lease, and remove, evict, or terminate housing assistance to that individual, while allowing the victim, who lawfully occupies the home, to maintain tenancy. The eviction of, or termination action against the individual, will be done in accordance with the procedures prescribed by Federal, State, and local law. If such action is deemed necessary, an interim recertification will be processed reflecting the change in household composition.

### *Application Intake and Processing*

#### **Application Intake**

All persons wishing to be admitted to the property, or placed on a waiting list, must complete an application. All applications will be taken through the Coordinated Entry System.

#### **Communications with Applicants**

All communications with applicants will be by first class mail, telephone, or through the applicable case manager/Owner. Failure to respond to communications may result in withdrawal of an application from further processing. The property will make exceptions to these procedures to take into account circumstances beyond the applicant's control, such as medical emergencies or extreme weather conditions. All communications will be in a form that the tenant can understand.

#### **Race/Ethnicity Data Collection**

The applicant provides self-certification of their race and ethnicity for data collection. Completing this form is optional and there is no penalty for not completing it.

#### **Written and Signed Applications**

## Tenant Selection Plan – Innsbruck Lodge

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Written applications will be accepted from anyone who wishes to apply. Every application must be completed and signed by the applicant or their legal designee. The information requested on the application form includes:

- Household characteristics such as name, sex, age, disability status (only where necessary to establish eligibility), need for an accessible unit, and race/ethnicity;
- General household contact information such as address, phone number, etc.;
- Sources and estimates of the household's anticipated annual income and assets;
- Higher education student status (only if a member of the household is a student in higher education);
- Marketing information regarding how the applicant heard about the property; and
- Certification from the applicant stating the accuracy and completeness of information provided, and an acknowledgement that the applicant has read the Privacy Act and understands the disclosure requirements.

Staff will be prepared to assist any applicants who might have trouble completing the application form. This assistance might take the form of answering questions about the application, helping applicants who might have literacy, vision or language problems and, in general, making it possible for interested parties to apply for assisted housing.

### **Determining an Applicant's Eligibility**

#### **Preliminary Determination**

Before any applicant is put on a waiting list, the property, in consultation with Owner will make a preliminary eligibility determination to ensure that there are no obvious factors that would make an applicant ineligible.

#### **Verification Interview**

Applicants will be contacted to schedule an interview to verify all information given on the application. The property will confirm and update all information provided on the application, and will explain program requirements, verification procedures, and penalties for false information, which include eviction, loss of assistance, fines up to \$10,000, and imprisonment up to five years. The applicant will be asked to sign the release of information consent portion of the Authorization for Release of information and any other necessary verification requests.

#### **Ineligible Applicants**

At the completion of the verification process, applicants will be ineligible to move into the property for any one of the following reasons:

- The applicant no longer meets the income requirements of the property;
- Household members have failed to sign the release of information forms;

### *Verification Requirements*

#### **Required Information**

## Tenant Selection Plan – Innsbruck Lodge

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All information relative to the following items must be verified:

- Income, assets, household composition, and Social Security numbers;
- Deductions for such things as age, disability, disability expenses, and medical costs;
- Documented ability and willingness to abide by lease requirements, previous history of tenancy, rent paying, caring for a home, and criminal activity of any household member.

All of the above information must be documented, and appropriate verification forms or letters placed in the applicant or resident file. No decision to accept or reject an application will be made until all verifications have been collected.

### **Preferred Forms of Verification**

Verifications shall be attempted in the following order:

- Third party written verification
- Third party oral verification with a record kept on the file;
- Review of documents provided by the family, or affidavits from the family.

Management must document the file for clarification, and show that management attempted to obtain third party written documentation before relying on some less acceptable form of information.

### **Verification Documentation**

Documentation used as part of the verification process may include:

- Checklists completed as part of the interview process and signed by the applicant;
- Verification forms completed and signed by third parties;
- Reports/letters of interviews; and
- Notes of telephone conversations with reliable sources.

At a minimum, such reports will indicate the date of the conversation, source of the information, name and job title of the individual contacted and a written summary of the information received. Management staff will be the final judge of the credibility of any verification submitted by an applicant. If a staff member considers documentation to be doubtful, the property manager/owner will review it before making a ruling about its acceptability. Staff will continue to pursue credible documentation until it is obtained or the applicant is rejected for failing to produce it.

### **Source of Information**

Sources of information to be checked may include; but are not limited to:

- Coordinated Entry System;
- Present and former employers;

### **Verifications and Rent Computations**

Annual Income, which is used to determine eligibility, will be computed in accordance with the definitions and procedures established in State Guidelines.

## Tenant Selection Plan – Innsbruck Lodge

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### **Verifying Annual Income**

Projections of Annual Income will include estimates for each income recipient, and will be based on the best available information, considering the past year's gross income, and for employed families, the current income rate, and any potential rate increase, bonus, or possibility of overtime. The income of irregular workers will be estimated on the basis of the best information available, considering earning ability and work history. Overtime income will be computed in accordance with verification obtained from the employer, in the absence of more reliable or accurate information.

### **Methods of Verifying Income**

Income is the most important factor in determining a household's eligibility and rent. The property has established methods of verifying income, which include:

- Written third party verification (with an appropriate release) through an employer or public agency. Property staff may update this verification by phone provided a memorandum to the file is prepared.
- Review of documentation provided by the household such as benefit checks, income tax returns, and W-2 forms.

In the absence of any of the above, affidavits from the household describing the amount and type of income is acceptable documentation.

### **Verifying Zero/Nominal Income**

If an applicant reports zero or nominal income (\$100 or less income per month), the property will advise her/him that if they are still at zero income when they become a resident, they will be asked to complete a questionnaire prepared by the property stating their source of necessary living items that are not covered by Food Stamps or other Federal assistance sources. After 90 days at zero income, and for every 90-day period thereafter, the resident will be reviewed to determine if they have begun to receive any type of income.

### *Making an Occupancy Determination*

#### **Non-Discrimination**

The following list of factors will not be considered in making a decision to admit or reject an application: race, color, religion, ancestry, national origin, age, sex, and sexual orientation, or gender identity, marital status, receipt of public assistance, parental status, political ideology, and disability, including mental or emotional illness.

#### **Applicants with Disabilities**

It is illegal to reject an applicant because s/he has a disability, or for reasons that could be overcome by the property's reasonable accommodation of the applicant's disability. If, even with a reasonable accommodation, applicants with disabilities cannot meet essential program requirements, it is permissible to reject them. Such insurmountable problems might arise because of behavior or performance in past housing, inability to comply with the terms of the property's



## Tenant Selection Plan – Innsbruck Lodge

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lease, or needed services from property staff that represent an alteration in the fundamental nature of the property's program.

### **Authorizing Admission**

If an applicant is clearly eligible and passes the screening criteria, admission will be authorized.

### **Authorizing Rejection**

Likewise, if the applicant is ineligible, rejection will be authorized. See next section of this plan for further requirements regarding rejection

### **Rejection of Ineligible Applicants**

Applicants who do not pass the eligibility requirements will immediately be sent a letter of rejection along with a copy of the Grievance Procedures (Attachment B). This written rejection notice will specifically state one of the reasons listed below for the rejection, and will inform the applicant of her/his right to respond to the owner in writing, or to request a meeting within 14 days to dispute the rejection.

Where possible, the property owner will work with the applicant to resolve issues that might lead to rejection of the housing application.

### *Acceptance of Eligible Applicants*

#### **Offering a Unit**

When a unit becomes available for occupancy, it will be offered to the household on the CES with the highest need, in accordance with the terms for waiting list management as required by Project Homekey.

#### **Preparing to Move In**

- The applicant and owner's representative will inspect the unit, and will both sign the Move-In Inspection Form;
- All applicants will sign the lease and related documents;
- The applicant will pay the security deposit by bank check, cashier's check or money order;
- The applicant will pay the pet deposit (if applicable) by bank check, cashier's check or money order;
- The applicant will pay the rent for the first month or partial month of occupancy by bank check, cashier's check or money order;
- The applicant will be given a copy of the lease, the Move-In Inspection Form, House Rules, Pet Rules (if applicable), the Lead-Based Paint Disclosure Form, and the receipt for the security deposit and first month's rent.

## Tenant Selection Plan – Innsbruck Lodge

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### **Move-In Inspection**

Before executing the lease the owner's representative and the resident will jointly inspect the unit. The move-in inspection form will be used to indicate the condition of the unit. The condition of the unit must be decent, safe, sanitary, and in good repair. If cleaning or repair is required, the owner will specify on the form the date by which the work will be completed, which will be no later than 30 days after the effective date of the lease. The inspection form must be signed and dated by both the owner and the resident.

### **Initial and Renewal Leases**

The term of the initial lease of the Assisted Units will be for not less than 6-months. In the case of a lease for a term of more than one year, the Lease must contain a provision permitting termination on 30 days advance written notice by the eligible household after the expiration of the initial lease term.

### **Determination of Security Deposit**

At the time of the initial execution of the lease, the Owner may collect a security deposit from each household in an amount equal to one and a half month's rent or \$50, whichever is greater. The eligible household may pay the security deposit from its own resources and/or other public sources. The Owner will work with the tenant to access community resources as needed for security deposit assistance. The Owner may also collect the security deposit on an installment basis if a security deposit presents a barrier to leasing. The Owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the eligible household plus any accrued interest. The Owner must comply with any applicable State and local laws concerning interest payments on security deposits and return the security deposit to the household following the legal requirements.

### **Pet Deposit (if applicable)**

Pet deposit amounts will be determined by the Owner. The pet deposit will not exceed \$300. Pet deposits are not required for assistance animals needed as a reasonable accommodation due to a disability.

### **Rent Calculation**

Rent will be determined by the Owner in accordance with Project Homekey requirements.

### **Failure to Move In on Time**

If an applicant fails to move in on the agreed date, the applicant will be contacted to determine if extenuating circumstances exist. If the property determines that extenuating circumstances do exist, and the applicant cannot immediately move into the property, the application will be returned to its current spot on the CES waiting list, and the unit will be offered to the next household on the CES waiting list.

### **Charges for Facilities and Services Damages**

Whenever damage is caused by carelessness, misuse, or neglect on the part of the resident, household member, or visitor, the resident is obligated to reimburse the owner for the damages within 30 days after the resident receives a bill from the owner. The property will deduct accrued, unpaid damage charges from the resident's security deposit at the time of move-out, as allowed by the laws of California.

### **Special Management Services**

The property will charge for special services such as responding to lockout calls and providing extra keys. At the time of move-out, the property will charge the resident for each key not returned.

### **Court Filing, Attorney, and Sheriff Fees**

The property will charge accept fees from residents who wish to avoid or settle an eviction suit as permitted by State and local laws.

### **Unit Inspections After Move-In**

In addition to the unit inspection at move-in, there will also be an annual inspection for repairs and monitoring of housekeeping habits. If a resident is written up for poor housekeeping habits, s/he must clean their unit within ten (10) business days.

### **House Rules**

The property has Community Policies (House Rules) that are attached to the lease. These rules are reviewed annually and may be modified. Residents will be notified of any modifications to the House Rules 30 days before they become effective. All residents will be given the opportunity to accept the changes in writing.

### *Resident Responsibilities after Move-In*

#### **Annual Recertification Requirements**

Once a resident has moved into assisted housing and has gone through the process of having his/her income, assets, and allowances verified, Project Homekey requires the owner to go through that same process of certification on an annual basis to ensure residents are paying rent based on their ability to pay. This system of annually re-verifying income is called Annual Recertification.

The owner will initiate the annual recertification process by first notifying the resident at the signing of each lease of their obligation to recertify next year. One hundred twenty days before the new recertification effective date, the owner will send the resident a reminder notice of their need to report for an Annual Recertification. The resident is then obligated to respond to these notices by reporting to the owner at the requested time, to complete the recertification process.

#### **Interim Recertification Requirements**

If circumstances occur in a resident's life that affect his/her ability to pay their rent, a recertification of income, assets, allowances, or household composition should take place before the next scheduled annual recertification is due. This action is called an Interim Recertification. Owners and residents both have certain responsibilities under State regulations to initiate interim recertifications to ensure that an assisted resident continues to pay rent according to his/her ability to pay.

### **Owner Responsibility**

The owner will process interim recertifications when the resident reports circumstances, such as a change in income or household make-up.

### **Resident Responsibility**

If a resident experiences certain changes in their income or household composition at a time other than their scheduled annual recertification, the State requires them to immediately report these changes to the owner, so that an interim recertification can be processed.

### **Unit Transfer Policy**

When a resident reports a change in the number of household members, or a change in the household composition, the owner will determine if the current unit is still appropriate for the new household. To make the determination the owner will rely on the occupancy standards implemented for the property.

The owner will determine if there is an appropriately sized unit in the property.

### **Implementation of House Rules**

The house rules in effect at this property are in place to ensure the safety, care, and cleanliness of the building, and the safety and comfort of the residents. They are in compliance with State and local requirements, and do not discriminate against individuals based upon membership in a protected class. The owner will give residents a written 30-day notice prior to implementing any new house rules.

### *Termination*

#### **Termination of Assistance**

Prior to initiating any actions associated with termination, the owner will consult with the tenant-referral organization to attempt to avoid termination. Following this consultation, the owner may terminate a resident's assistance if:

- The resident fails to provide required information at the time of recertification, including changes in household composition;
- The resident fails, to sign/submit required consent and verification forms;
- An annual or interim recertification determines that the resident has an increased ability to pay the full contract rent;
- The resident fails to move to a different-sized unit within 30 days after the owner notifies him/her that a transfer is required, and that the unit of the required size is available;

Actions to terminate assistance will be based only on a change in the resident's eligibility for assistance or a resident's failure to fulfill specific responsibilities under program requirements.

#### **Termination of Tenancy by Owner**

The owner will terminate a resident's tenancy for the following reasons:

### **Material Noncompliance with the Lease**

The owner will terminate tenancy when a resident is in material noncompliance with the lease, including:

- Failure of the resident to submit in time all required information on household income and composition;
- Extended absence (60 days away from unit without prior management approval);
- Abandonment of the unit (without rent payment);
- Fraud, which is when a resident knowingly provides inaccurate or incomplete information;
- Repeated lease violations;
- Nonpayment of rent due under the lease.

### **Other Criminal Activity**

- The owner will terminate tenancy for any type of criminal activity;
- The owner will evict a household if it is determined that a household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- The owner will terminate tenancy if it is determined that a household member threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;
- The owner will terminate tenancy during the term of the lease if a resident is fleeing to avoid prosecution.

### **Material Failure to Carry Out Obligations under a State or Local Landlord and Resident Act**

State and local laws impose obligations on a landlord and resident. These laws provide that violations of the resident's obligations constitute grounds for eviction.

### **Other Good Cause**

- The owner will terminate tenancy for other good cause, which is defined by state and local laws.
- The conduct of a resident may be deemed good cause, provided the owner has given the resident prior written notice and stated the conduct would constitute a basis for termination of occupancy in the future.

### **Termination of Tenancy by Resident**

In order to terminate tenancy, the resident must provide the owner with a written 30-day notice to vacate the unit, as required in the lease. Prior to initiating any actions associated with termination, the owner will consult with the service providers.

EXHIBIT F

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Town of Mammoth Lakes  
437 Old Mammoth Road, Suite 230  
Mammoth Lakes, CA 93546  
Attn: Daniel C. Holler, Town Manger

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

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**APN:** 033-041-006-000

### **MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT (the "Memorandum") is made as of April \_\_, 2023, by and between THE TOWN OF MAMMOTH LAKES (the "Town") and INNSBRUCK LODGE AFFORDABLE HOUSING, LLC, a California limited liability company and controlled affiliate of MAMMOTH LAKES HOUSING, INC., a California nonprofit public benefit corporation (collectively referred to herein as "Owner"), to confirm that the named parties have entered into that certain Town Grant Agreement dated as of April \_\_, 2023, as such may be amended as may be from time to time (the "Agreement"). The Agreement imposes certain conditions (including but not limited to, construction requirements, operating and use restrictions and covenants, and transfer restrictions) on certain real property located at 913 Forest Trail, Mammoth Lakes, California (APN-033-041-006-000), as more particularly described in Exhibit A (the "Property"). The Agreement is a public document and may be reviewed at the principal office of the Town.

This Memorandum shall incorporate herein all of the terms and provisions of the Agreement as though fully set forth herein. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Agreement, of which this is a memorandum.

This Memorandum may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

**TOWN:**

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

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

APPROVED AS TO LEGAL FORM:  
ANDREW MORRIS  
Town Attorney

By: \_\_\_\_\_  
Andrew Morris, Town Attorney

Date: \_\_\_\_\_

[SIGNATURES MUST BE NOTARIZED]

[SIGNATURE PAGE CONTINUES]



**GRANTEE:**

INNSBRUCK LODGE AFFORDABLE HOUSING, LLC, a California  
limited liability company

By: Mammoth Lakes Housing, Inc., a California nonprofit  
public benefit corporation

By: \_\_\_\_\_  
Patricia Robertson, Executive Director

Date: \_\_\_\_\_

[SIGNATURES MUST BE NOTARIZED]

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 36-51 IN THE TOWN OF MAMMOTH LAKES, COUNTY OF MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1, PAGE 106 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.