

## ASSIGNMENT OF CREDITS

This Assignment of Credits (the "Assignment") is entered into on September 1, 2023, by and between ONE MAMMOTH, LLC, a Delaware limited liability company ("Assignor"), and 6060 MINARET, LLC, a Delaware limited liability company ("Assignee").

### RECITALS

A. Snowcreek Investments, L.P. ("SILP"), Dempsey Construction and the Town of Mammoth Lakes, a General Law City ("Town"), entered into that certain Exchange Agreement dated November 10, 2003, as thereafter amended and modified by: (a) the Assignment of Credits dated April 29, 2005, from Snowcreek Investment Company ("SIC") to Snowcreek Investments, L.P. ("SILP"); (b) the Implementation Agreement dated November 8, 2007, among Town, SILP and Minaret Investments, L.P., a California Limited Partnership; (c) the Assignment of Credits dated November 8, 2007, from SILP to Minaret; (d) the assignment of Credits dated September 6, 2018, from Minaret to Assignor and (e) all documents, exhibits and instruments attached to and/or executed in connection with the foregoing (collectively, the "Agreements").

B. Pursuant to the Agreements, Assignor is permitted to assign to Assignee the Credits, as defined in the Agreements.

NOW, THEREFORE, for good and valuable consideration, Assignor and Assignee agree:

### AGREEMENT

1. **Assignment of Credits.** Assignor hereby assigns, sells, transfers, sets over and delivers to Assignee all of the Credits held by Assignor, consisting of 40.41 Full-time Equivalent Employee Credits ("FTEE credits"), as a result of which Assignor shall have and retain no FTEE Credits, and Assignee shall have and solely own 40.41 FTEE Credits.

2. **Assumption.** Assignee hereby accepts the assignment of 40.41 FTEE Credits and assumes and agrees to perform, fulfill and comply with all covenants and obligations to be performed, fulfilled or satisfied as the owner of the FTEE Credits from and after the Effective Date (as defined below).

3. **Indemnification.**

(a) Assignee shall indemnify Assignor, and all of its officers, directors, shareholders, members, partners, employees, attorneys, agents, representatives, independent contractors, licensees, affiliated companies and persons (including but not limited to ONE MAMMOTH LLC and companies owned or controlled by them), assignees, heirs and successors (collectively 'Assignor Indemnitees') against, and agrees to hold Assignor Indemnitees harmless of and from all, liabilities, obligations, actions, suits, proceedings or claims, and all costs and expenses including, but not limited to, reasonable attorneys' fees, arising out of the FTEE Credits after the Closing Date (as defined below).

(b) Assignor shall and does hereby indemnify Assignee and its successors and assigns and all of their officers, directors, shareholders, members, partners, employees, attorneys, agents, representatives, independent contractors, licensees, affiliated companies and persons (collectively "Assignee Indemnitees") against, and agrees to hold Assignee Indemnitees harmless of and from all, liabilities, obligations, actions, suits, proceedings or claims, and all costs and expenses including, but not limited to, reasonable attorneys' fees, arising out of the FTEE Credits prior to the Closing Date.

4. **Binding Effect.** This Assignment shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

5. **Defined Terms.** Except as otherwise expressly provided in this Assignment, terms used in this Assignment shall have the same meaning as established in the Agreements.

6. **Governing Law.** This Assignment and the legal relations between the parties shall be governed by and be construed in accordance with the laws of the State of California. The exclusive venue for any dispute in any way related to this Assignment shall be Mono County, California.

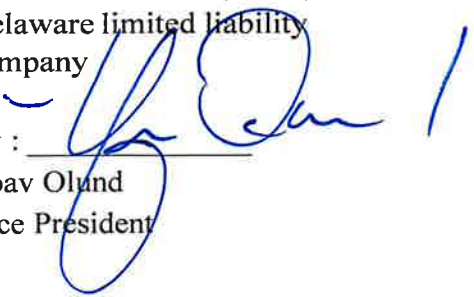
7. **Attorneys' Fees and Costs.** If a dispute arises to enforce or interpret any term of this Assignment, then the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and costs incurred in connection with that dispute, including all fees and costs incurred on appeal or in any effort to enforce a judgment.

8. **Counterparts.** This Assignment may be executed in counterparts, each of which shall constitute an original. This Assignment shall only be effective if a counterpart is signed by both Assignor and Assignee.

**Effective Date; Contingency.** This Assignment shall become effective on the Closing Date (as defined in the Commercial Property Purchase Agreement and Joint Escrow Instructions between ONE MAMMOTH, LLC, a Delaware limited liability company and 6060 MINARET, LLC, a Delaware limited liability company, dated October 17, 2022, as AMENDED AND RESTATED SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT). This Assignment is contingent upon the closing, on or before October 31, 2022, of the transaction contemplated by the PSA. as so assigned.

ASSIGNOR

ONE MAMMOTH, LLC, a  
Delaware limited liability  
company

By :   
Yoav Olund  
Vice President

ASSIGNEE

6060 MINARET, LLC, a Delaware limited  
liability company

By:   
Mark Rafeh  
Managing Member

## CONSENT

The Town of Mammoth Lakes hereby acknowledges and consents to the foregoing Assignment and affirms that as of the Effective Date, Assignee will own 40.41 FTEE credits, and Assignor will not own any FTEE Credits.

Town of Mammoth Lakes

  
\_\_\_\_\_  
Town Manager

Date: 10-18-23

**RESOLUTION NO. 2019-57**

**RESOLUTION OF THE TOWN COUNCIL OF THE  
TOWN OF MAMMOTH LAKES, STATE OF CALIFORNIA,  
ADOPTING AN AFFORDABLE HOUSING CREDIT VALUATION POLICY**

WHEREAS, under previous Housing Ordinances (i.e., pre 2015 Housing Ordinance Update), the Town provided Housing Mitigation Credits to developers in exchange for various actions that resulted in the creation of affordable housing (e.g., development of affordable housing units, donation of land for affordable housing); and

WHEREAS, under previous housing mitigation requirements, the housing mitigation requirements were calculated based on full time equivalent employees (FTEEs) and/or employee housing units (EHUs) where one EHU equals one bedroom and is calculated as fifty eight and one-half percent (58.5%) of an FTEE pursuant to Municipal Code Section 17.136.030.B.3; and

WHEREAS, the Town Council adopted Ordinance No. 15-03 for the Housing Ordinance Update on June 3, 2015, which rescinded the previous Housing Ordinances and repealed and restated Municipal Code Chapter 17.136 (Housing), which included the establishment of housing impact mitigation fees pursuant to Municipal Code Section 17.136.040; and

WHEREAS, the Town Council adopted Resolution 15-31 approving the Affordable Workforce Housing Fee Nexus Study and Fee Recommendation on July 1, 2015; and

WHEREAS, the current Housing Ordinance established a monetary valuation for the Housing Mitigation requirements utilizing the methodology established by the Workforce Housing Fee Nexus Study rather than utilizing EHUs or FTEEs; and

WHEREAS, there are existing EHU and FTEE credits that have been assigned to developers for completion of various affordable housing projects in Town and those credits remain valid; and

WHEREAS, a policy is required to establish a monetary value of the existing EHU and FTEE credits to allow for the use of those credits in a manner consistent with the methodology used to establish the current housing fees.


NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Mammoth Lakes, California, as follows:

1. That the Town Council finds the above recitals are true and correct.
2. The Town Council incorporates by reference all exhibits and attachments cited in this Resolution.
3. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the Town Council makes the following findings:


The proposed Affordable Housing Credit Valuation policy is not a project as defined by CEQA Section 21065 and State CEQA Guidelines Section 15378(B)(2), as it relates to the establishment of a general policy for determining the value for existing housing mitigation credits.

4. The Town Council adopts the Affordable Housing Credit Valuation Policy, attached hereto as Exhibit "A".
5. The Affordable Housing Credit Valuation policy shall be reviewed in conjunction with the review of the Affordable Workforce Housing Fee Nexus Study and Fee Recommendation and be updated as necessary.

APPROVED AND ADOPTED THIS 7<sup>th</sup> day of August, 2019.

  
BILL SAUSER, Mayor

ATTEST:

  
JAMIE GRAY, Town Clerk

**EXHIBIT "A"**

**AFFORDABLE HOUSING CREDIT VALUATION POLICY**

## **AFFORDABLE HOUSING CREDIT VALUATION POLICY**

### **I. Purpose and Scope**

The purpose of this policy is to establish a methodology for determining the monetary value of Full Time Employee Equivalent (FTEE) credits and/or Employee Housing Unit (EHU) credits (i.e., Affordable Housing Credits) that the Town, under previous housing mitigation requirements, assigned to developers in exchange for the development of affordable housing and/or the provision of land for the purposes of developing affordable housing.

### **II. Definitions**

**Affordable Housing Credit.** A credit assigned to an entity for the development of affordable housing and/or the provision of land for the purposes of developing affordable housing. An Affordable Housing Credit can be denominated in a variety of ways, such as an EHU or an FTEE. The denomination of the credit will be specified in the governing document that determined or assigned the number of credits to the entity.

**Employee Housing Unit (EHU).** One (1) bedroom in an affordable housing unit. An EHU is calculated as 58.5% of an FTEE.

**Full Time Employee Equivalent (FTEE).** One (1) full time year round employee.

**Housing Ordinance.** The Town's affordable housing regulations codified in Municipal Code Chapter 17.136 (Housing), as it may be amended from time to time.

**Nexus Study.** The Town's Affordable Workforce Housing Fee Nexus Study and Fee Recommendation, as it may be amended from time to time.

**Regional Housing Needs Allocation (RHNA).** The allocation assigned by the State that identifies the total number of housing units (by affordability level) that the Town must accommodate in its Housing Element. The RHNA is updated on the same schedule as the Housing Element.

### **III. Policy and Procedures**

#### **A. General Provisions.**

1. This policy does not set a static or "locked in" monetary value for the Affordable Housing Credits. Rather, credits are valued pursuant to the methodology that set the fees to which the credits would be applied.
2. This policy only applies to those Affordable Housing Credits that have been assigned by the Town.

#### **B. Procedures**

1. The value of an Affordable Housing Credit shall be determined through the following process (see Attachment 1 for a comprehensive view of the below referenced Tables):
  - a. The Nexus Study methodology calculates the subsidy, or financing gap, for affordable housing units based on income category (i.e., area median income or AMI). The subsidy (financing gap) is simply the difference between the cost to construct a unit and the price or value of the unit at the target income level (subsidy = production costs – supportable price at income level) (Table 1).

Then the Nexus Study determined what portion of the subsidy should be applied to the mitigation fee. Only 30% of the subsidy for income levels of 60% AMI and below was determined to be applicable because the other 70% would be covered by the Town, Mammoth Lakes Housing, Inc. (MLH), and/or other programs or service providers based on historic production. The full subsidy (100%) was applied to AMIs above 60% (Table

**Table 1: Affordable Housing Production Cost Subsidy and Recommended Subsidy Applicable to Fee (Nexus Study)**

	Extremely Low Income	Very Low Income	Low Income		Moderate Income	Middle Income
Percent of AMI	0-30%	31-50%	51-60%	61-80%	81-120%	121-150%
Production costs	\$283,800	\$283,800	\$283,800	\$283,800	\$283,800	\$283,800
Supportable price at income level	\$77,800	\$129,600	\$155,500	\$203,900	\$262,700	\$328,400
Subsidy (financing gap)	\$206,000	\$154,200	\$128,300	\$79,900	\$21,100	-\$44,600
% of subsidy applicable to fee	30%	30%	30%	100%	100%	100%
<b>Subsidy applicable to fee</b>	<b>\$61,800</b>	<b>\$46,260</b>	<b>\$38,490</b>	<b>\$79,900</b>	<b>\$21,100</b>	<b>-\$44,600</b>

Source: Affordable Workforce Housing Fee Nexus Study and Fee Recommendation (June 23, 2015) (Tables 14, 19-26).

Note: Development prototype is a 2-bedroom, 900 sq. ft. unit.

1).

- b. Table 1 provides a value at each AMI based on the Nexus Study development prototype, which was a 2-bedroom, 900 square foot unit. That value must be equated to Affordable Housing Credits. An Employee Housing Unit (EHU) equals one bedroom; therefore, the development prototype is equal to two EHUs. The value or 'Subsidy applicable to fee' in Table 1 is divided by two to calculate the value of one EHU (Table 2).

**Table 2: Conversion of Subsidy Applicable to Fee (Table 1) to Employee Housing Unit (EHU)**

	Extremely Low Income	Very Low Income	Low Income		Moderate Income	Middle Income
Percent of AMI	0-30%	31-50%	51-80%		81-120%	121-150%
Subsidy applicable to fee (Table 1)	\$61,800	\$46,260	\$79,900		\$21,100	-\$44,600
Development prototype EHUs	2	2	2		2	2
<b>Value per EHU by AMI</b>	<b>\$30,900</b>	<b>\$23,130</b>	<b>\$39,950</b>		<b>\$10,550</b>	<b>N/A</b>

Note: EHU = 1 bedroom (Zoning Code 17.136.030.B.3). Nexus Study 2-bedroom prototype (Table 1) = 2 EHUs. 'Subsidy applicable to fee' (Table 1) divided by 2 to calculate the value of 1 EHU at each AMI.

- c. The Housing Ordinance states that the affordability level(s) of units provided under on-site or off-site housing mitigation (as a proportion of AMI) shall be established by Council resolution (Zoning Code 17.136.050.B.1 and 17.136.060.B.2). The Council has not established these affordability levels, as development requiring housing mitigation has



been paying the fee under the current Housing Ordinance rather than providing on-site or off-site housing units. Therefore, the Town's Regional Housing Need Allocation (RHNA) for 2019 through 2027, is used to set the mix or proportion of affordability levels (AMIs) to apply in valuing Affordable Housing Credits (Table 3).

**Table 3: Mammoth Lakes Regional Housing Needs Allocation (RHNA), 2019-2027**

	<b>Extremely Low Income</b>	<b>Very Low Income</b>	<b>Low Income</b>	<b>Moderate Income</b>	<b>Above Moderate</b>
Percent of AMI	0-30%	31-50%	51-80%	81-120%	>120%
Number of Units	11	15	30	34	65
% of Total	6.90%	9.87%	19.35%	21.94%	41.94%
<b>% of Moderate and Below</b>	<b>11.88%</b>	<b>17.01%</b>	<b>33.33%</b>	<b>37.78%</b>	<b>N/A</b>
Source: California Department of Housing and Community Development (HCD) Regional Housing Needs Allocation Plan, Mono County Local Governments - Projection Period December 31, 2018 to August 15, 2027. Note: Above Moderate is not applicable because no subsidy (financing gap) exists (Tables 1 and 2).					

- d. The percentages in Table 3 are applied to the values in Table 2 to calculate a blended value for an EHU (Table 4). The value of a Full-Time Employee Equivalent (FTEE) is calculated from the blended EHU value based on a FTEE being equal to 58.5% of an EHU. This results in an EHU being valued at \$24,908 and a FTEE at \$14,571 under the current Housing Ordinance and Nexus Study.

**Table 4: Housing Credit Value**

	<b>Extremely Low Income</b>	<b>Very Low Income</b>	<b>Low Income</b>	<b>Moderate Income</b>	<b>Above Moderate</b>
Percent of AMI	0-30%	31-50%	51-80%	81-120%	>120%
Employee Housing Unit (EHU) Value by AMI (Table 2)	\$30,900	\$23,130	\$39,950	\$10,550	N/A
% of Moderate and Below (Table 3)	11.88%	17.01%	33.33%	37.78%	N/A
<b>EHU</b>	<b>\$3,672</b>	<b>\$3,933</b>	<b>\$13,317</b>	<b>\$3,986</b>	
<b>TOTAL BLENDED VALUE PER EHU:</b>				<b>\$24,908</b>	
<b>FTEE</b>	<b>\$2,148</b>	<b>\$2,301</b>	<b>\$7,790</b>	<b>\$2,332</b>	
<b>TOTAL BLENDED VALUE PER FTEE:</b>				<b>\$14,571</b>	
Note: 1 EHU = 58.5% of a FTEE (Zoning Code 17.136.030.B.3). 1 EHU = 1.71 FTEEs. 1 FTEE = 0.585 EHU.					

- The total monetary value of the Affordable Housing Credits shall be calculated by multiplying the number of available EHU / FTEE credits by the established EHU / FTEE monetary value (currently \$24,908 per FTEE and \$14,571 per EHU).
- For subsequent projects that intend to use Affordable Housing Credits to satisfy their housing mitigation requirements, the housing in-lieu fee for the proposed project would be calculated in accordance with the adopted Housing Impact Mitigation Fee Schedule and if the in-lieu fee is less than the value of the Affordable Housing Credits, the developer would

retain the additional Affordable Housing Credits as EHUs or FTEEs. Alternatively, if the in-lieu fee is more than the value of the Affordable Housing Credits, the developer would be required to satisfy the excess housing fee amount in a manner consistent with the Housing Ordinance.

4. The Town will document the use of the Affordable Housing Credits through a signed agreement between the owner of the Affordable Housing Credits and the Town that states what the value of the Affordable Housing Credits were at the time of use and if there are any remaining Affordable Housing Credits.
5. The values in the above referenced tables shall be reviewed and updated in conjunction with the review and update of the Nexus Study and/or the issuance of an updated RHNA by the State.

#### **IV. Responsibility for Review**

The Community and Economic Development Director, or designee, is responsible for reviewing and updating this policy, as needed, in conjunction with the review and update of the Nexus Study.

**ATTACHMENT 1****Affordable Housing Credit Value Calculations****Table 1: Affordable Housing Production Cost Subsidy and Recommended Subsidy Applicable to Fee (Nexus Study)**

Income Category							
Income Category	Extremely Low Income	Very Low Income	Low Income		Moderate Income	Middle Income	
Percent of AMI	0-30%	31-50%	51-60%	61-80%	81-120%	121-150%	
Production Costs	\$283,800						
Supportable Value/Price for AMI	\$77,800	\$129,600	\$155,500	\$203,900	\$262,700	\$328,400	
Subsidy (Financing Gap)	\$206,000	\$154,200	\$128,300	\$79,900	\$21,100	-\$44,600	
% of Subsidy Applicable to Fee	30%	30%	30%	100%	100%	100%	
Subsidy Applicable to Fee	\$61,800	\$46,260	\$38,490	\$79,900	\$21,100	-\$44,600	
Source: Affordable Workforce Housing Fee Nexus Study and Fee Recommendation (June 23, 2015) (Tables 14, 19-26)							
Development prototype is a 2-bedroom, 900 sq. ft. unit.							

**Table 2: Conversion of Subsidy Applicable to Fee (Table 1) to Employee Housing Unit (EHU)**

	Extremely Low Income	Very Low Income	Low Income	Moderate Income	Middle Income
EHU Value by AMI	\$30,900	\$23,130	\$39,950	\$10,550	N/A

EHU = 1-bedroom (Zoning Code 17.136.030.B.3). Nexus Study 2-bedroom prototype (Table 1) = 2 EHUs. 'Subsidy Applicable to Fee' (Table 1) divided by 2 to calculate the value of 1 EHU at each AMI.

**Table 3: Mammoth Lakes Regional Housing Needs Allocation (RHNA), 2019-2027**

	Extremely Low Income	Very Low Income	Low Income	Moderate Income	Above Moderate
Number of Units	11	15	30	34	65
Percentage of Total	6.90%	9.87%	19.35%	21.94%	41.94%
Percentage of Moderate and Below	11.88%	17.01%	33.33%	37.78%	N/A

Source: California Department of Housing and Community Development (HCD) Regional Housing Needs Allocation Plan, Mono County Local Governments - Projection Period December 31, 2018 to August 15, 2027.  
Above Moderate is not applicable because no subsidy (financing gap) exists (Tables 1 and 2).

**Table 4: Housing Credit Value - Examples**

Number of EHUs	Extremely Low Income	Very Low Income	Low Income	Moderate Income	Middle Income
1	0.12	0.17	0.33	0.38	N/A
FTEEs:	\$3,672	\$3,933	\$13,317	\$3,986	N/A
1.71	Total				
10	1.19	1.70	3.33	3.78	N/A
FTEEs:	\$36,720	\$39,334	\$133,167	\$39,856	N/A
17.09	Total				
25	2.97	4.25	8.33	9.44	N/A
FTEEs:	\$91,799	\$98,335	\$332,917	\$99,639	N/A
42.74	Total				
50	5.94	8.50	16.67	18.89	N/A
FTEEs:	\$183,598	\$196,669	\$665,833	\$199,278	N/A
85.47	Total				
75	8.91	12.75	25.00	28.33	N/A
FTEEs:	\$275,396	\$295,004	\$998,750	\$298,917	N/A
128.21	Total				
100	11.88	17.01	33.33	37.78	N/A
FTEEs:	\$367,195	\$393,339	\$1,331,667	\$398,556	N/A
170.94	Total				
	Total				
Number of FTEEs	Extremely Low Income	Very Low Income	Low Income	Moderate Income	Middle Income
1	\$2,148	\$2,301	\$7,790	\$2,332	N/A
EHUs:	Total				
0.585	Total				

1 EHU = 58.5% of a FTEE (Zoning Code 17.136.030.B.3). 1 EHU = 1.71 FTEEs. 1 FTEE = 0.585 EHU.

STATE OF CALIFORNIA       )  
COUNTY OF MONO        )  
TOWN OF MAMMOTH LAKES)       ss.

I, JAMIE GRAY, Town Clerk of the Town of Mammoth Lakes, DO HEREBY CERTIFY under penalty of perjury that the foregoing is a true and correct copy of Resolution No. 19-57 adopted by the Town Council of the Town of Mammoth Lakes, California, at a meeting thereof held on the 7<sup>th</sup> day of August 2019, by the following vote:

AYES:                       Councilmembers Hoff, Stapp, Wentworth, Mayor Pro Tem Salcido,  
                                  and Mayor Sauser

NOES:                      None

ABSENT:                   None

ABSTAIN:                  None

DISQUALIFICATION:   None

  
\_\_\_\_\_  
JAMIE GRAY, Town Clerk

## IMPLEMENTATION AGREEMENT

This Implementation Agreement (this Agreement) is made by and among the TOWN OF MAMMOTH LAKES, a municipal corporation (TOML), Minaret Investments, LP, a California limited partnership (Minaret) and Snowcreek Investments, LP, a California limited partnership (SILP).

WHEREAS, SILP is the owner of certain property located at 1616 Old Mammoth Road consisting of approximately five point four (5.4) acres and containing the Snowcreek Athletic Club, which is further described in Exhibit A, hereto (Club Parcel);

WHEREAS, on November 10, 2003, TOML and SILP and Dempsey Construction Corporation (collectively called "Snowcreek") on behalf of themselves and all other companies and entities owned or controlled by Linda Dempsey and her lineal dependants (collectively together with Snowcreek called "Dempsey") entered into that certain Exchange Agreement (Exchange Agreement);

WHEREAS, the Exchange Agreement provided, among other things, that, as partial consideration for conveying four point four one (4.41) acres of unimproved real property to TOML for workforce housing purposes, Dempsey was granted a density bonus of thirty-six point six two five (36.625) dwelling units (Residential Density Units);

WHEREAS, Minaret is one of the companies and entities owned or controlled by Linda Dempsey within the meaning of the Exchange Agreement;

WHEREAS, TOML is desirous of having the Club Parcel continue for a use other than a residential use;

WHEREAS Government Code Section 65915 provides for incentives to encourage and implement the provision of affordable housing;

WHEREAS, SILP has agreed to sell and convey the Club Parcel to Elliot Brainard (Buyer), or nominee, as permitted herein, pursuant to the terms and conditions of that certain Option Agreement (which are confidential between SILP and Buyer) dated as of **September 12, 2007**; but that sale and conveyance is contingent upon Minaret, SILP and TOML entering into this Agreement to implement the Exchange Agreement in accordance with the terms of this Agreement, the TOML Municipal Code (TMLMC) and California State Law; and

WHEREAS, at its meeting of November 7, 2007, TOML's Town Council authorized the Mayor to execute this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Unless expressly set forth herein or required by the context hereof, all capitalized terms shall be as defined in the Exchange Agreement.
2. Subject to all the conditions set forth in this Agreement, but only effective upon the actual transfer of ownership of the Club Parcel as provided in Paragraph 3, below, and the recordation of the covenant described in Paragraph 4, below, and pursuant to Section 2.(c) of the Exchange Agreement, TOML and Dempsey hereby agree to and approve the transfer of the Residential Density Units from the Club Parcel to that certain real property owned by Minaret and located at 3990 Main Street (Benefited Parcel).
3. Dempsey shall convey ownership of marketable title in fee simple interest of the Club Parcel to Buyer; provided, that Dempsey may convey that ownership to another party with the approval of TOML's Town Manager, which approval shall not be unreasonably withheld if the other party is financially capable and otherwise qualified to ensure the operation of an appropriate athletic facility on the Club Parcel in compliance with the covenant and agreement described in Paragraph 4, below, all as reasonably determined by TOML's Town Manager.
4. Concurrently with recordation of the grant deed conveying the Club Parcel to Buyer (or another party as provided in Paragraph 3, above), Dempsey shall ensure a covenant substantially similar to the covenant and agreement attached hereto as Exhibit B, is also recorded against the Club Parcel.
5. Upon the effectiveness of the transfer of the Residential Density Units as provided in Paragraph 1, above, the Benefited Property shall have a total density equal to that allowed by the North Village Specific Plan, as of the effective date of this Agreement, plus the Residential Density Units. For purposes of this foregoing 36.625 Density Bonus units shall be considered equal to 73.25 bedrooms on the Benefited Property; and the total revised density of the Benefited Property shall be determined by the number of acres of the Benefited Property, times 48 bedrooms per acre, plus 73.25 bedrooms. The 73.25 bedrooms shall be exempt from the requirements set forth in the provisions of Chapter 17.36 of the TMLMC.
6. The parties agree and understand TOML will allow Minaret to build a quality 198 bedroom project on the Benefited Property. Based on the authority granted in California Government Code Section 65915 and the North Village Specific Plan (NVSP), the TOML Town Council hereby finds the proposed (i) maximum projected height of fifty-five (55'), (ii) maximum average height of forty-four feet (44'), (iii) maximum site coverage of seventy-five percent (75%), and (iv) reductions to building setbacks, as described in Land Use

Section 6, including Table 5 of the NVSP, up to a maximum of twenty percent (20%) of each required setback shall be permitted on the Benefited Property to achieve the goals of the NVSP and the Exchange Agreement; provided, that the northerly setback may only be adjusted to less than ten (10) feet through a Use Permit or similar discretionary development project approval. In addition, the parties agree to work in good faith, but without any express or implied promise or commitment for approval, to process amendments to the NVSP, as needed, including any required environmental review, to allow an increase in the height of the project by twelve feet (12') and to add a fifth (5<sup>th</sup>) story.

7. The parties agree any project developed on the Benefited Property shall be subject only to those planning or development criteria (such as roads, rights of way, paths), except as provided for in this Agreement, as are necessary to comply with the General Plan, the TMLMC, and policies of the Town (such as design guidelines), and California law, as applicable by law. The parties agree and understand the Benefited Property shall not be subject to the "mobility plan" recently discussed but not adopted by TOML Town Council.
8. SILP shall convey to the Benefited Property the remaining 40.41 FTEE credits owned by SILP by means of a document substantially similar to the Assignment of Credits attached hereto as Exhibit C.
9. Notices:
  - A. Any notice, request, approval or other communication to be provided by either party shall be in writing and dispatched by first class registered or certified mail, postage prepaid, return-receipt requested, or by electronic facsimile transmission followed by delivery or a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United States Parcel Service or Federal Express, or by U. S. Postal Service) to the addresses of TOML, Minaret and SILP set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either party may from time to time designate.
  - B. Any notice that is transmitted by electronic facsimile transmission followed by delivery or a "hard" copy, shall be deemed delivered upon its transmission; any notice personally delivered (including by means of professional messenger service, courier service such as United States Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return-receipt requested shall be deemed received on the date of receipt thereof.

C. If to TOML:

Town of Mammoth Lakes  
Attention: Rob Clark, Town Manager  
PO Box 1609  
Mammoth Lakes, CA 93546  
Email: [rclark@ci.mammoth-lakes.ca.us](mailto:rclark@ci.mammoth-lakes.ca.us)

With a copy to:

Peter Tracy  
106 S Main St #200  
P O Box 485  
Bishop, CA 93515-0485  
Email: [inyomono@stanfordalumni.org](mailto:inyomono@stanfordalumni.org)

Aleshire & Wynder, LLP  
Attn: Joseph W. Pannone  
515 W. 190<sup>th</sup> Street, #565  
Gardena, CA 90248  
Email: [jpannone@awattorneys.com](mailto:jpannone@awattorneys.com)

D. If to Minaret or SILP

Snowcreek Investments, LP  
Minaret Investments, LP  
Attn: Linda Dempsey  
P O Box 657  
Mammoth Lakes, CA 93546  
Email: [linda@snowcreek.com](mailto:linda@snowcreek.com)

With a copy to:

Brown, Winfield and Canzoneri  
Attn: Tom Winfield  
300 S. Grand Avenue, #1500  
Los Angeles, CA 90071  
Email: [twinfield@bwclaw.com](mailto:twinfield@bwclaw.com)

10. This Agreement may be executed in counterpart originals which, when taken together, shall constitute but one and the same instrument.

11. This Agreement and the exhibits referred to below represent the entire agreement of the parties and supersedes all negotiations or previous agreements between the parties regarding the subject matter hereof, including that certain letter of intent previously signed by the parties.



The Exhibits to this Agreement are:  
Exhibit A: Description of Club Property  
Exhibit B: Covenant and Agreement  
Exhibit C: Assignment of Credits.

This Agreement may not be amended, unless agreed as such in writing and certified by the signatures of the parties hereunder.

12. Except as may otherwise be provided in any agreement hereafter executed by the parties, neither party shall be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any agreement resulting from this Agreement. Each party represents it has engaged no broker, agent or finder in connection with this transaction, and each party shall defend and hold the other party harmless from any claims by any broker, agent or finder retained by the other party.

13. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

14. The effective date of this Agreement shall be the date it is signed on behalf of TOML, but it shall not be operative unless signed by all the parties.

MINARET INVESTMENTS, LP

TOWN OF MAMMOTH LAKES

By: Linda Dempsey  
Linda Dempsey

By: Skip Harvey  
Skip Harvey, Mayor

Dated: 11/8/07

Dated: 11/09/07

SNOWCREEK INVESTMENTS, LP

By: Linda Dempsey  
Linda Dempsey

Dated: 11/8/07

**EXHIBIT A**

**LEGAL DESCRIPTION**

PARCEL 2 OF RECORD OF SURVEY NO. 36-66, IN THE TOWN OF MAMMOTH LAKES, COUNTY OF MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2 PAGE 69 OF RECORD OF SURVEY MAP, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE TOWN OF MAMMOTH LAKES BY DEED RECORDED NOVEMBER 13, 2003 AS INSTRUMENT NO. 2003012603 OF OFFICIAL RECORDS.

EXHIBIT B  
TO  
IMPLEMENTATION AGREEMENT

Recording Requested by and  
When Recorded Return to:

TOWN OF MAMMOTH LAKES  
P.O. Box 1609  
Mammoth Lakes, CA 93546  
Attention: Robert F. Clark

OFFICIAL BUSINESS. FREE  
RECORDING REQUESTED PURSUANT  
TO GOVERNMENT CODE §6103

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AGREEMENT CONTAINING USE RESTRICTION COVENANTS  
AFFECTING REAL PROPERTY

THIS AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (this "Agreement") is entered into by and between the TOWN OF MAMMOTH LAKES, a municipal corporation (hereinafter referred to as "TOML") and, Snowcreek Investments, L.P., a California Limited Partnership ("Owner"), with reference to the following:

RECITALS

WHEREAS, Owner is owner of fee simple title of certain real property located within TOML, County of Mono, State of California (hereinafter referred to as the "Property") described as such in the document attached hereto, labeled Exhibit "A" and incorporated herein by this reference;

WHEREAS, the Property previously was entitled to a residential density bonus of 36.625 units ("Density Bonus");

WHEREAS, TOML approved a transfer of the Density Bonus to another real property within TOML's jurisdiction pursuant to that certain Implementation Agreement by and among TOML Minaret Investments, LP, a California Limited Partnership, Snowcreek Investments, LP, a California Limited Partnership effective November 30, 2007 (the "Implementation Agreement");

WHEREAS, one condition for the Implementation Agreement to become effective is the recordation of this Agreement concurrently with the recordation of the grant deed by which the Owner has become the fee simple owner of the Property; and

WHEREAS, the parties desire to satisfy that condition and intend for this Agreement to accomplish that.

NOW, THEREFORE, TOML and Owner HEREBY AGREE AS FOLLOWS:

1. Unless otherwise expressly stated or the context requires, all capitalized terms shall have the same meaning as in the Implementation Agreement.
2. From and after the date the Implementation Agreement becomes effective, the Density Bonus shall no longer be attached to the Property and the Property shall be precluded from being used or developed in any manner, other than as permitted by the TOML Resort Zone, as amended, from time to time or as otherwise approved by the TOML.
3. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by this Agreement; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

IN WITNESS WHEREOF, TOML and Owner have caused this Agreement to be executed on their behalf by their respective officers hereunto duly authorized, and this Agreement shall be effective as of the date it is recorded.

TOWN OF MAMMOTH LAKES,  
a municipal corporation

Dated: 11/7/07

By: [Signature]  
Robert F. Clark, Town Manager

Snowweek Investments <sup>L.P.</sup> a California  
limited partnership

Dated: \_\_\_\_\_

By: Thomas J. Dempsey LLC

Its General Partner

Dated: 11/9/07

By: Linda Dempsey  
Its Manager

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Mono

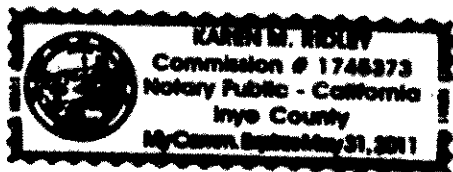
On November 9, 2007 before me, Karen M. Ridley, Notary Public

personally appeared Robert F. Clark

☒ personally known to me

☐ (or 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.



WITNESS my hand and official seal.

Place Notary Seal Above

Signature Karen M. Ridley

Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document Agreement Containing Use Restriction  
Title or Type of Document: Covenants Affecting Real Property

Document Date: November 9, 2007 Number of Pages: 3

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Robert F. Clark

☐ Individual

☒ Corporate Officer — Title(s): Town Manager

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

☐ Individual

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Mono

On November 9, 2007 before me, Karen M. Ridley, Notary Public

Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Linda Dempsey  
Name(s) of Signer(s)

☐ personally known to me

☒ (or 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.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature Karen M. Ridley  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Agreement Containing Use Restriction  
Covenants Affecting Real Property

Document Date: November 9, 2007 Number of Pages: 3

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

## Exhibit "C"

### ASSIGNMENT OF CREDITS

This Assignment of Credits (the "Assignment") is dated November 8, 2007, by and between SNOWCREEK INVESTMENTS, L.P., a California limited partnership ("Assignor") and MINARET INVESTMENTS, L.P., a California limited partnership ("Assignee").

### RECITALS

A. Assignor and the Town of Mammoth Lakes, a General Law City ("Town"), entered into that certain Exchange Agreement dated November 10, 2003, as thereafter amended and modified by the ASSIGNMENT OF CREDITS dated April 29, 2005, from Snowcreek Investment Company to Snowcreek Investments, L. P. (the "Agreement").

B. Pursuant to the Agreement, Assignor is permitted to assign to Assignee the Credits, as defined in the Agreement.

NOW, THEREFORE, for good and valuable consideration, Assignor and Assignee agree:

### AGREEMENT

1. Assignment of Credits. Assignor hereby assigns, sells, transfers, sets over and delivers to Assignee all of the remaining Credits held by Assignor currently consisting of 40.41 Full-time Equivalent Employee Credits, formerly known as Employee Housing Units, ("FTEE Credits") as a result of which Assignor shall have and retain no Credits, and Assignee shall have and solely own 40.41 FTEE Credits.
2. Assumption. Assignee hereby accepts the assignment of 40.41 FTEE Credits and assumes and agrees to perform, fulfill and comply with all covenants and obligations to be performed, fulfilled or satisfied as the owner of the Credits from and after the Effective Date.
3. Indemnification. Assignee shall and does hereby indemnify Assignor against, and agrees to hold Assignor harmless of and from all liabilities, obligations, actions, suits, proceedings or claims, and all costs and expenses including, but not limited to, reasonable attorneys' fees, based upon or arising out of any breach or failure of Assignee to observe or perform any of the obligations of Assignee as set forth in this Assignment. Assignor shall and does hereby indemnify Assignee against, and agree to hold Assignee harmless of and from, all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses, including but not limited to, reasonable attorneys' fees, based upon or arising out of any breach or failure of Assignor to observe or perform any of the obligations of Assignor as set forth in this Assignment.



4. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
5. Defined Terms. Except as otherwise expressly provided in this Assignment, terms used in this Assignment shall have the same meaning as established in the Agreement.
6. Governing Law. This Assignment and the legal relations between the parties hereto shall be governed by and be construed in accordance with the laws of the State of California.
7. Counterparts. This Assignment may be executed in counterparts, each of which shall constitute an original. This Assignment shall only be effective if a counterpart is signed by both Assignor and Assignee.
8. Effective Date. The provisions of this Assignment shall be effective and enforceable from and as of the date first written above.

ASSIGNOR  
SNOWCREEK INVESTMENTS, L.P.  
a California limited partnership

ASSIGNEE  
MINARET INVESTMENTS, L.P.  
a California limited partnership

By: Linda Dempsey

By: Linda Dempsey

#### CONSENT

On behalf of the Town of Mammoth Lakes, the undersigned hereby acknowledges and consents to the foregoing assignment and affirms that as of the Effective Date, Assignee has and owns 40.41 FTEE Credits, and Assignor have and own no Credits or FTEE Credits.

TOWN OF MAMMOTH LAKES

By: [Signature]