

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is made and entered into as of March _____, 2025, by and among VILLAGE LODGE PHASE 1 HOMEOWNER'S ASSOCIATION (collectively "HOA") on one side, and ROBERT SCOTT WALKER and WALKER INDUSTRIES (collectively "Contractor") on the other, and third party in interest, the TOWN OF MAMMOTH LAKES ("Town") (HOA, Contractor, and Town are hereinafter at times referred to individually as "Party" and/or "party" and collectively as "Parties" and/or "parties") with respect to the following:

RECITALS

A. In the summer of 2020, the Town hired Contractor to do work on certain sidewalks along Forest Trail in the Town of Mammoth Lakes. The scope of the project included the demolition and replacement of some of the sidewalks that are located on or adjacent to HOA property. The sidewalks on or adjacent to HOA property have buried glycol lines under them as part of their snowmelt system.

B. Contractor jackhammered the sidewalk in front of HOA's property within the Town's right of way, breaking the glycol line, and causing glycol to leak out and air to enter the system. Defendants repaired the broken lines immediately and continued with the project.

C. On or about November 11, 2020, HOA observed that the snowmelt system was not working. Nevada Chiller & Boiler ("NCB") determined that the glycol feed tank for the snowmelt system was empty as a result of Contractor cutting the snowmelt line causing the system to lose its imperative glycol charge.

D. HOA's snowmelt system consists of approximately two (2) miles of underground glycol pipes that intertwine through the entire HOA property and adjacent Town-owned sidewalks within the right of way and keep snow and ice off the pertinent pathways for the safety of the HOA's patrons.

E. Due to the size of this system, it took two of NCB's technicians five days to bleed all the air out of the entire system, and pump in new glycol to refill the system.

F. HOA paid \$34,146.70 to NCB to replace the glycol and bleed the air out of the system.

G. On or about July 20, 2023, HOA filed a complaint for damages in the Mono County Superior Court, bearing case number 23UCM64, against Contractor alleging one cause of action for Negligent Property Damage. The Town has not formally intervened in case number 23UCM64; however, the Town informally agreed to indemnify Contractor concerning the damage caused to the Glycol Line and has the authority to settle this dispute on behalf of Contractor.

H. During the discovery phase of the litigation, It was determined that the lines that were severed were located within the Town right of way and that the HOA did not have permission or an easement to have them in this location.

I. All claims, allegations, debts, and demands. without limitation, made by the Parties against each other related to the Property, are hereby referred to as the "Dispute."

J. The Parties have agreed to settle all claims, allegations, debts, and demands without limitation relating to the Dispute on the terms set forth in this Agreement.

NOW, THEREFORE in consideration of the terms, covenants, conditions, and agreements set forth hereinbelow, the Parties hereby agree as follows:

AGREEMENT

1. The Recitals set forth hereinabove are hereby incorporated into this Agreement.

2. The Parties agree to the following:

A. The HOA shall dismiss its complaint with prejudice, which it had filed in the Mono County Superior Court, case number 23UCM64, against Contractor;

B. The Town shall grant to HOA an Encroachment Permit on Town property for the HOA's glycol lines pursuant to the Encroachment Permit, attached as Exhibit A and incorporated by reference, between HOA and the Town. The Encroachment Permit shall be recorded with the Mono County Recorder's Office. The HOA shall prepare exhibits for the encroachment permit identifying the exact locations of lines, manifolds, and all infrastructure used for melting snow from driveway approaches. The Exhibits will be completed to the satisfaction of the Town of Mammoth Lakes Engineering Department. Additionally, the HOA acknowledges that it will be responsible for appropriately marking its infrastructure when 811 dig alert is called for work in the right of way.

C. Upon the earlier of: (i) 14 days from HOA's dismissal of its complaint; or (ii) 14 days following the mutual execution of this Agreement, the Town shall pay to HOA the amount of \$3,000.

3. Except as otherwise stated in this Agreement, the Parties shall bear their own attorney's fees and costs incurred in connection with the above-described Dispute.

4. Except for the obligations of the Parties described in this Agreement, the Parties and their agents, assigns, employees, officers, directors, principals, successors and nominees, do hereby remise, release, acquit and forever discharge each other, and their agents, assigns, employees, officers, directors, principals, successors and nominees, and each of them, of and from any and all claims, demands, agreements, contracts, covenants, torts, actions, causes of action, obligations, debts, costs, expenses, accounts, damages, losses and liabilities of whatever kind or nature, past or present, known or unknown, which the Parties now have or may hereafter accrue on account of or by reason of any matter, cause or thing whatsoever related to or arising out of the above-described Dispute. However, this release is not intended to and shall not be construed as a release of the rights, obligations or duties of the Parties arising out of this Agreement.

5. Each party hereto understands that the facts in respect of which this Agreement is made may be other than or different from the facts now believed by each party to be true; each party accepts and assumes the risk that said facts, or any of them, may be different from the facts now believed by each party to be true; and each party hereto agrees that this Agreement and the release given and covenants made hereunder shall be and will remain in effect as fully, completely and legally binding, notwithstanding the discovery or existence of any additional or different facts, or of any claims with respect thereto.

6. The parties acknowledge that they have been advised by each of their counsel and are

familiar with the provisions of California Civil Code Section 1542 which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

The parties hereby expressly waive any and all rights they may have thereunder, as well as under any other statute or common law principle of similar effect, except as to promises, covenants and warranties contained herein which shall survive. The parties understand and acknowledge the significance and consequences of the specific waiver of California Civil Code Section 1542, and hereby assume full responsibility for any injuries, damages, losses or liabilities they may hereafter incur from the above-mentioned dealings and disputes.

7. The parties hereto agree to execute all documents which may be required to facilitate the provisions of this Agreement. Failure to do so shall be considered a material breach of this Agreement.

8. The parties represent and warrant that they have full power to enter into this Agreement, and that the individual, if any, executing this Agreement on behalf of another is fully empowered to bind that person and is fully authorized to enter into this Agreement. The parties represent and warrant that they have not assigned, encumbered or in any manner transferred all or any portion of the claims, causes of action, or other matters released by them herein. The parties acknowledge and agree that the warranties and representations made by them in this paragraph are each an essential and material term of this Agreement, without which the consideration given herein would not have been given by any of them.

9. Confidentiality. HOA acknowledges that this Agreement and most documents held or created by Town pertaining to the Dispute, constitute public records which may be obtained by any person upon request pursuant to the California Public Records Act.

10. Non-Disparagement. Each party agrees and covenants that she/he/it shall not at any time make, publish, or communicate to any person or entity or in any public forum, any defamatory or disparaging remarks, comments, or statements concerning the other party or her/his/its businesses, or any of her/his/its family members, employees, officers, or directors, and its existing and prospective customers, suppliers, investors, and other associated third parties, now or in the future, pertaining to the Dispute or this Agreement, provided that HOA acknowledges that Town cannot restrict the speech or communications of members of the Town Council and that nothing herein shall be deemed to so restrict such speech or communications.

11. The parties acknowledge and represent that, in effecting and executing this Agreement, they have had the opportunity to seek the advice of legal counsel as to their legal rights; that they or the individual executing this Agreement on their behalf, have read all of this Agreement and fully understand its content and effect; and that they have entered into this Agreement freely and voluntarily without duress.

12. The parties acknowledge and agree that this is a compromise settlement of the above-described Dispute, which, upon implementation of the terms hereof, is not in any respect to be

deemed, construed, or treated as an admission or a concession of any liability whatsoever by any party hereto, including any person, firm, partnership, or corporation for any purpose whatsoever.

13. The parties acknowledge and agree that no representation, statement or promise not expressly set forth herein has been made by or on behalf of any of the other parties hereto or by any of their agents, servants, employees, representatives or attorneys, and that no representations, statements or promises that are not expressly set forth herein have been made or relied on by any party hereto.

14. All the covenants, releases, and agreements herein contained in favor of the persons or entities released are made for the express benefit of each and all of said persons or entities, each of whom has the right to enforce such provisions.

15. If any action or motion at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, in addition to any other relief to which the party may be entitled. Unless judgment goes by default, the attorney fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorney's fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of all parties to fully compensate for all attorney's fees paid or incurred in good faith.

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

17. This Agreement is made and entered into in the State of California and shall be interpreted, applied, and enforced under and pursuant to the laws of the State of California. Venue shall be exclusively in the Mono County Superior Court.

18. The parties have made such investigation of the facts pertaining to this Agreement and all matters pertaining hereto as they have determined necessary. This Agreement is intended to be final and binding between the parties hereto, regardless of any claims of misrepresentations, promises made without the intention of performing them, mistakes of fact or law, or any other circumstances whatsoever, and under no circumstances shall any party be entitled to set aside this Agreement, either in whole or in part. In entering into this Agreement, each party assumes the risk of any misrepresentation, concealment or mistake, whether or not any party should subsequently discover or assert for any reason that any fact relied upon by such party in entering into these releases was untrue, or that any fact was concealed from any party hereto, or that such party's understanding of the facts or the law was incorrect or incomplete.

19. The terms and provisions of this Agreement including the Dispute shall remain confidential. No party may state, reveal, disclose, imply, or infer to the other party or to others that this Dispute and/or Agreement was reached on the basis that any misrepresentation, fraud, false promise, promise made without intention to perform, or any other ground of fraud was made by either party or was considered in reaching the terms of settlement contained in this Agreement. All parties expressly agree to never reveal, disclose, directly or implicitly, any terms of this Agreement to any third party, and any person or entity affiliated with it in any way. If asked about the relationship or dispute between the Parties, the Parties may make the following statement, and only the following statement: "the Parties reached an amicable resolution." The parties agree to not disparage or criticize the other, orally, in writing or impliedly, to the public or any third party, specifically but not limited to

Steven Seat, and Ted Carlton, related to the Dispute. Breach of this paragraph shall be considered material and to cause the other party irreparable harm.

20. Time is of the essence in each and every provision of this Agreement.

21. This Agreement may be executed in counterparts and electronic signatures, including via DocuSign or Adobe, shall be deemed valid as originals.

22. The parties agree that each party has reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

TOWN OF MAMMOTH LAKES

CONTRACTOR

Robert Patterson, Town Manager

Scott Walker

Date: _____

Date: _____

VILLAGE LODGE PHASE 1
HOMEOWNER'S ASSOCIATION

Dr. Marc Kayem, President

Date: _____

APPROVED AS TO FORM

Andrew Morris, Attorney
Town of Mammoth Lakes

Jeremy Ibrahim, Attorney
Village Lodge Phase 1
Homeowner's Association