

APPENDIX 2

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 (5th) 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 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

With a copy to:

Peter Tracy
106 S Main St #200
P O Box 485
Bishop, CA 93515-0485
Email: invomono@stanfordalumni.org

Aleshire & Wynder, LLP
Attn: Joseph W. Pannone
515 W. 190th Street, #565
Gardena, CA 90248
Email: 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

With a copy to:

Brown, Winfield and Canzoneri
Attn: Tom Winfield
300 S. Grand Avenue, #1500
Los Angeles, CA 90071
Email: 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: 11/07/07

SNOWCREEK INVESTMENTS, LP

By: Linda Dempsey
Linda Dempsey

Dated: 11/8/07

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 2 OF RECORD OF SURVEY NO. 36-86, IN THE TOWN OF MAMMOTH LAKES, COUNTY OF MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2 PAGE 89 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. 2003012803 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

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

Snow Creek Investments ^{L.P.} 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

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

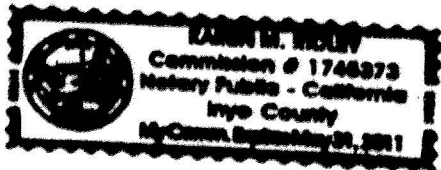
Name(s) of Signer(s)

☒ 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:

Robert F. Clark

☐ Individual

☒ Corporate Officer — Title(s):

Town Manager

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer Is Representing:

Signer's Name:

☐ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer Is Representing:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alamo

On November 9, 2007 before me,

personally appeared Linda Dempsey

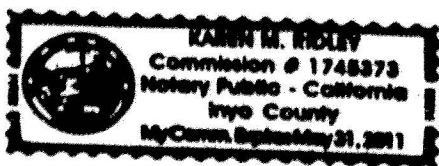
Karen M. Ridley, Notary Public

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

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

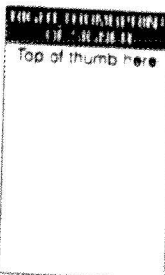
Signer(s) Other Than Named Above: _____

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: _____



Signer's Name: _____

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

Signer is Representing: _____

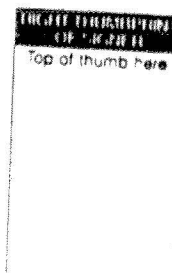


Exhibit "C"

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]