

Agenda Item 6
April 2, 2014
File No. DA-03
600-45

AGENDA BILL

Subject: Receive and file the Intrawest Development Agreement annual review report

Written by: Jen Daugherty, Senior Planner

RECOMMENDATION:

Staff recommends the following to the Town Council: Receive and file the Intrawest Development Agreement annual review report, finding the Developers in good faith substantial compliance with the terms and conditions of the Development Agreement.

CONSIDERATION OF THE TOWN'S VISION, TOWN COUNCIL PRIORITIES, AND MANDATES:

- *The proposed action is legally mandated.* Development agreements (DAs) are subject to annual review, as required by State law and Municipal Code 17.48.090, to evaluate compliance with required terms and conditions. Project proponents must demonstrate good faith compliance with the DA.
- *The proposed action relates to the following Town Council priority -* Revenue Generation, through Economic Development, TOT education and enforcement, and TBID.

The Intrawest DA further implements the mutual benefits negotiated by both the Town and Developer through the DA.

- *The proposed action meets the following aspect(s) of the Town's Vision:* The Intrawest DA is consistent with the Town's Vision because it facilitates future development projects by providing certainty of applicable land use regulations and standards. The DA also provides greater community benefits to the Town that could not be achieved through the current zoning, including public infrastructure, dedication of property to the Town, public easement across the Village plaza, and events programming in the Village plaza.

BACKGROUND:

The purpose of this agenda bill is to allow the Town Council to receive and file the annual review report for the Intrawest Development Agreement (DA) pursuant to Section 7.2 of the DA. As shown in Attachment 1, the Town finds the Developers in good faith substantial compliance with the terms and conditions of the Intrawest DA.

Development Agreements

DAs are contracts negotiated between project proponents and public agencies that govern the allowable land uses in a particular project and establish the conditions to which a development will be subject. DAs provide mutual benefits to the parties and must be consistent with the General Plan and any applicable specific plan.

Neither an applicant nor a public agency is required to enter into a DA; DAs are voluntary agreements of both parties. The terms and conditions of DAs are negotiated between the parties and subject to the ultimate approval of the public agency after following a specifically required process.

State law, Government Code 65864 et seq., and Municipal Code Chapter 17.48 outline the requirements for development agreements in the Town of Mammoth Lakes. DAs are recorded, which binds future owners to the requirements and obligations contained in the DA. The Intrawest DA was adopted consistent with these requirements.

Intrawest DA

The Intrawest DA was approved by Town Council and became effective on February 15, 2002. The DA provides a 20-year vesting for various projects and properties, then owned by Intrawest.

ANALYSIS/DISCUSSION:

The Intrawest DA annual review provisions require completion of the review by March 31st. It is the Town Manager’s responsibility to determine whether, for the year under review, Developers are in good faith substantial compliance with the terms and conditions of the DA.

Attachment 1 is the annual review report for the Intrawest DA. This report finds that the Developers are in good faith substantial compliance with the terms and conditions of the DA.

OPTIONS ANALYSIS

Option 1: Receive and file the Intrawest Development Agreement annual review report, finding the Developers in good faith

substantial compliance with the terms and conditions of the Development Agreement.

Option 2: Receive and file the Intrawest Development Agreement annual review report, finding the Developers in good faith substantial compliance with the terms and conditions of the Development Agreement, and comment on the report or request further information, as legally permitted.

STAFFING CONSIDERATION:

The work associated with the Intrawest DA annual review has been considered in staff's work priorities and work programs.

FINANCIAL CONSIDERATIONS:

The Intrawest DA resulted in the establishment of the North Village Community Facilities District (CFD), which has funded the cost of public improvements. The Intrawest DA did not vest development impact fees or permit processing fees.

ENVIRONMENTAL CONSIDERATIONS:

Future development projects subject to the DA will be required to undergo the necessary environmental review (CEQA). The annual review does not require CEQA analysis because it will not result in any physical changes to the environment.

LEGAL CONSIDERATIONS:

The Town Attorney has reviewed this agenda bill.

Attachments

1. Intrawest DA 2014 Annual Review Report
2. Intrawest DA

ATTACHMENT 1

Intrawest DA 2014 Annual Review Report

**Intrawest Affiliates Development Agreement – 2014 Annual Review Report
Development Agreement Schedule of Performance Review**

Summary: Intrawest Affiliates Development Agreement

Effective Date: February 15, 2002

Term: 20 years

Expiration Date: February 15, 2022

Affected Projects: (see attached*)

1. Sierra Star
2. The Village at Mammoth
3. The Crest Parcel
4. The Bridges Parcel
5. Canyon Lodge Parcel
6. Twin Lakes Court
7. Previously Developed Projects
 - a. Mammoth Green at Sierra Star
 - b. The Timbers
 - c. Eagle Run
 - d. Sunstone
 - e. Juniper Springs Lodge

**Note: Properties that have been sold to residential owners are no longer subject to Development Agreement (Section 10.2, p.24).*

Town Manager Determination: Developers are in good faith substantial compliance with the terms and conditions of the Development Agreement.

Town Manager: Daniel C. Holler

Signature: 

Date: March 25, 2014

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Anticipated Phasing of Private Development (Article 4, Section 4.2.1 and 4.2.2; Exhibit N)

Subject/Phase	Development/Milestone	Date Due for Commencement¹	Actual Date of Commencement	Satisfied/Complete	Notes
Annual Review	Developers will initiate the annual review by submitting a written statement to the Town Manager describing, and supporting in reasonable detail, Developers' good faith substantial compliance with the terms and conditions of this Agreement for the prior calendar year (Article 7, Section 7.2.2).	Initiated prior to March 1 st each year	See note	See note	Town contacted owners in March 2014; no written statements provided by Developers
Right to Assign	Any assignment by Developer of their entire right, title and interest hereunder to a party who is not an Intrawest Affiliate shall require prior written consent of the Town...A copy of the fully executed Assignment Agreement (Exhibit L) shall be delivered to the Town within 30 days after the effective date of any such assignment (Article 8, Section 8.1).	Prior to assignment of a DA property to a new owner	Prior to assignment of a DA property to a new owner	Ongoing	The Town has not been receiving these Assignment Agreements recently and has requested Developers to provide.
Phase 1 (Exhibit N-1)	The Village at Mammoth (west Minaret Rd and east Canyon Blvd): Three buildings containing commercial and retail space, residential condominiums, the gondola and gondola/MMSA services buildings, underground parking, and pedestrian plazas.	April 2001	April 2001	Complete	
Phase 2 (Exhibit N-2)	Sierra Star (west of Minaret Road): Single family residential condominiums, support commercial and transient occupancy.	2002	2002	Partially	Lodestar Drive, Woodwinds, Solstice I, Area 5 (hotel site)
	The Crest Parcel: Residential condominiums.		2002	Complete	Juniper Crest, Aspen Creek

¹ The timing of construction is designed so that a preceding phase does not have to be complete before the next phase(s) begin. Also, each element within each phase is independent of each other element. Once construction of an element of a phase is commenced, construction of that phase is considered to be commenced. Commencement of each development or phase is contingent on the availability of financing, market conditions, demand, competition, and similar factors which affect high-risk resort development. Changes in the above schedule of development may be made upon notification by the Developer to the Town Manager that general market conditions warrant modifications and a new phasing schedule shall be submitted (Article 4, Section 4.2.1).

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Anticipated Phasing of Private Development (Article 4, Section 4.2.1 and 4.2.2; Exhibit N)

Subject/Phase	Development/Milestone	Date Due for Commencement¹	Actual Date of Commencement	Satisfied/Complete	Notes
	The Twin Lakes Court Parcel: Single family development.			Complete	
Phase 3 (Exhibit N-3)	The Village at Mammoth (west of Canyon Boulevard): Residential condominiums or transient occupancy.	2004	2004	Partially	Westin, Ritz Hotel/Hillside site
	The Village at Mammoth (east of Minaret Road): Commercial and residential condominiums.		N/A	Not Complete	North and South Hotel sites
	Sierra Star (east of Minaret Road): Multi-family, resort condominiums and transient occupancy.		2004	Partially	Tallus, Chutes, Tanavista site, Bungalows site
	The Bridges Parcel: Residential.		2008	Partially	Altis townhomes and single family lots
	The Canyon Lodge Parcel: Residential.		N/A	Not Complete	Rainbow Lane site
Other	Affordable housing.	Provided with each development	Provided with each development	Ongoing	See attached Housing Mitigation Status

¹ The timing of construction is designed so that a preceding phase does not have to be complete before the next phase(s) begin. Also, each element within each phase is independent of each other element. Once construction of an element of a phase is commenced, construction of that phase is considered to be commenced. Commencement of each development or phase is contingent on the availability of financing, market conditions, demand, competition, and similar factors which affect high-risk resort development. Changes in the above schedule of development may be made upon notification by the Developer to the Town Manager that general market conditions warrant modifications and a new phasing schedule shall be submitted (Article 4, Section 4.2.1).

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Schedule of Public Improvements (Article 4, Section 4.2.3; Exhibit C – CFD Facilities)

Project	Public Improvement	Date Due for Commencement ²	Actual Date of Commencement	Satisfied/Complete	Notes
The Village at Mammoth Project (Exhibit C)	<p>Realignment of Canyon Boulevard (Hillside Drive to Lake Mary Road): Rolled curb, gutter and sidewalk, 42 to 48 feet of pavement, snow poles and sleeves, street lights and conduits, earthwork, 48” storm drain and juncture structure, underground overhead utilities, new traffic signal at Lake Mary Road, sewer and water facilities, demolition, earthwork, rock-stack retaining walls, reinforced concrete retaining walls, mobilization, traffic control and erosion/sedimentation control.</p>	<p>July 2001 (realignment); 2002 (final improvements)</p>	<p>July 2001</p>	<p>Complete except as noted</p>	<p>Hillside Parcel dedication for realigned Canyon Boulevard (Ritz property). This will be required with the future final map for the Ritz/Hillside site if not dedicated prior. Final incremental CFD payment of Canyon realignment project will be paid after this dedication/acquisition is completed.</p>
	<p>Storm Drain Realignment: A 72” storm drain line will replace an existing undersized 48”-54” storm drain; proposed line will follow a new alignment. The existing pipe will be removed within the Caltrans right of way and will be abandoned in place along Old Canyon Boulevard and Old Berner Street. Abandonment measures will be to slurry-fill all pipe that will permanently remain underground. Construction of the new line will include inlets along Minaret Road immediately upstream of the crossing of the storm drain across Minaret Road.</p>	<p>July 2001</p>	<p>July 2001</p>	<p>Complete</p>	

² All of the Public Improvements are to be installed in accordance with plans and specifications approved by the Town. The timing of construction of Public Improvements may change, depending upon the timing of construction of the private developments to which they relate; however, construction shall be governed by any timing requirements set forth in the conditions of approval and/or mitigation measures which are adopted for each Project by the Town pursuant to the Vested Rules (Article 4, Section 4.2.3).

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Schedule of Public Improvements (Article 4, Section 4.2.3; Exhibit C – CFD Facilities)

Project	Public Improvement	Date Due for Commencement ²	Actual Date of Commencement	Satisfied/Complete	Notes
	Public Improvements shall include the acquisition of right of way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, landscaping and irrigation, soils testing, permits, plan check and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing.				
	Minaret Road: Caltrans standard curb, gutter and sidewalk with pavers, additional pavement where required (may require A.C. cap full width of the street where trenching for utilities occurs), snow poles and sleeves, and street lights and conduits along both sides of the street, upgrade of the traffic signal at Main Street, waterline upgrades, sewer lateral reconnects, street trees, mobilization, traffic control and erosion/ sedimentation control. Interim improvements along the east side of Minaret Road will include A.C. berm and sidewalk until permanent concrete curb, gutter, and sidewalk are constructed in a future phase. Water main upgrades and selected widening areas extend to Main Street.	2002		Partially	West side complete; east side to be completed with future development. Water mains have been upgraded and sewer laterals to Intrawest development were reconnected. The improvements have been accepted by MCWD.
	Lake Mary Road (Minaret Road to Canyon Boulevard): A 24” storm drain line and a 30” storm drain line with inlet and junction structures,	2002		Complete	

² All of the Public Improvements are to be installed in accordance with plans and specifications approved by the Town. The timing of construction of Public Improvements may change, depending upon the timing of construction of the private developments to which they relate; however, construction shall be governed by any timing requirements set forth in the conditions of approval and/or mitigation measures which are adopted for each Project by the Town pursuant to the Vested Rules (Article 4, Section 4.2.3).

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Schedule of Public Improvements (Article 4, Section 4.2.3; Exhibit C – CFD Facilities)

Project	Public Improvement	Date Due for Commencement ²	Actual Date of Commencement	Satisfied/ Complete	Notes
	mobilization, traffic control and erosion/ sedimentation control.				
	Forest Trail (Hillside Drive to Minaret Road): Rolled curb, gutter, snow poles and sleeves south side of street (except along parcel at the corner of Hillside Drive), 6 foot wide sidewalk, additional half-width pavement where required, street lights and conduits, underground overhead utilities, waterline upgrades, mobilization, traffic control and erosion/sedimentation control.	2002		Complete	
	Ski-Back bridge: Bridge across Forest Trail to The Village at Mammoth. Improvements include an elevator and stairs on the south side of Forest Trail.	2003		Complete	
	Hillside Drive (Canyon Blvd to 417 feet south): Rolled curb, gutter, additional half-width pavement as required, snow poles and sleeves, sidewalk, mobilization, traffic control and erosion/ sedimentation control.	2004		Complete	
	Hillside Drive (Canyon Boulevard to Forest Trail): Water main up-grades.	2004		Complete	
	Forest Trail (Minaret Road to Berner Street): Rolled curb, gutter and sidewalk, snow poles and sleeves south side of street, additional half-width pavement	2004		Not Complete	To be constructed with future development.

² All of the Public Improvements are to be installed in accordance with plans and specifications approved by the Town. The timing of construction of Public Improvements may change, depending upon the timing of construction of the private developments to which they relate; however, construction shall be governed by any timing requirements set forth in the conditions of approval and/or mitigation measures which are adopted for each Project by the Town pursuant to the Vested Rules (Article 4, Section 4.2.3).

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Schedule of Public Improvements (Article 4, Section 4.2.3; Exhibit C – CFD Facilities)

Project	Public Improvement	Date Due for Commencement ²	Actual Date of Commencement	Satisfied/Complete	Notes
	where required, street lights and conduits, a 48” storm drain line and junction structures, waterline upgrades, mobilization, traffic control and erosion/sedimentation control.				
	Minaret Road/Forest Trail Roundabout: In lieu of a traffic signal, a modern roundabout is to be constructed at the intersection of Minaret Road with Forest Trail. Improvements include sidewalks, bike lanes, landscaping, storm drains, street lights and conduits, and other improvements as required by Caltrans and the Town. The existing overhead utilities across the intersection will be placed underground.	2004		Not Complete	To be constructed with future development.
	Berner Street (Forest Trail to existing Berner Street): Rolled curb, gutter, snow poles and sleeves both sides of the street, minimum of 32 feet new pavement, sidewalk on the west side of the street only, street lights and conduits at Forest Trail and existing Berner Street intersections, a 48” storm drain and junction structures, sewer and water lines mobilization, traffic control and erosion/sedimentation control.	2004		Complete	
	Berner Street (existing): Rolled curb, gutter and sidewalk, snow poles and sleeves, through the curb return on the north side of the street and to the	2004		Complete	

² All of the Public Improvements are to be installed in accordance with plans and specifications approved by the Town. The timing of construction of Public Improvements may change, depending upon the timing of construction of the private developments to which they relate; however, construction shall be governed by any timing requirements set forth in the conditions of approval and/or mitigation measures which are adopted for each Project by the Town pursuant to the Vested Rules (Article 4, Section 4.2.3).

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Schedule of Public Improvements (Article 4, Section 4.2.3; Exhibit C – CFD Facilities)

Project	Public Improvement	Date Due for Commencement²	Actual Date of Commencement	Satisfied/ Complete	Notes
	easterly property line of Intrawest property on the south side of the street, additional half-width pavement where required, mobilization, traffic control and erosion/sedimentation control.				
Sierra Star Project	Required Public Improvements are to be installed at the time of development for each Project (or portion), in accordance with Code requirements and Town public improvement and engineering standards and/or project conditions of approval to be established by the Planning and Economic Development Commission.			Ongoing	
Crest Parcel				Complete except as noted	Provide Town with geotechnical/civil engineer's report and certification for retaining walls that were never inspected.
Twin Lakes Court Parcel				Complete	
Bridges Parcel				Complete	Altis single family lots
Canyon Lodge Parcel				Not Complete	Rainbow Lane site

² All of the Public Improvements are to be installed in accordance with plans and specifications approved by the Town. The timing of construction of Public Improvements may change, depending upon the timing of construction of the private developments to which they relate; however, construction shall be governed by any timing requirements set forth in the conditions of approval and/or mitigation measures which are adopted for each Project by the Town pursuant to the Vested Rules (Article 4, Section 4.2.3).

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Community Benefits (Article 6; Exhibit E and J)

Benefit	Description	Date Due for Commencement	Actual Date of Commencement	Satisfied/ Complete	Notes
Canyon Boulevard Site	Irrevocable offer to dedicate a one acre site to the Town, and the Town shall use for any public purpose. This dedication shall satisfy the Developers' duty or obligation to provide commercial parking for any or all commercial uses within The Village at Mammoth.			Complete	
Surface Parking Site	Intrawest may develop the property for temporary public parking in connection with the development of Phase I of The Village at Mammoth.			Complete	
Participation in CFD	The Developer of The Village at Mammoth Project will participate in and construct \$8.2 million in public improvements to be acquired by the Town Community Facilities 2001-01 ("CFD")			Partially	See Schedule of Public Improvements, above.
Public Access	Developer shall grant an easement to the Town for public access across the main plaza areas within The Village at Mammoth Project.			Partially	Village at Mammoth (east side) plaza easement to be realigned and completed with future development.
Events Programming	Programming Plan that will allow the Town to conduct, or otherwise arrange or provide for, a variety of community and civic events.			Ongoing	Specific to the Village; events occur throughout the year at the Village.
Conference Center	Developer shall negotiate reasonably with the Town regarding public participation in a conference center facility proposed within the Sierra Star Project, or elsewhere, and providing			Not Complete	To be completed with development of the Lodestar Master Plan Area 5 (hotel site).

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Community Benefits (Article 6; Exhibit E and J)

Benefit	Description	Date Due for Commencement	Actual Date of Commencement	Satisfied/ Complete	Notes
	for public use of and access to the facility at a level commensurate with the Town’s financial participation in the project.				
Mammoth Community Housing Foundation	Master Developer (Intrawest) agrees to participate in Mammoth Community Housing Foundation (i.e., Mammoth Lakes Housing Inc.), to lend its housing and development expertise and business acumen, to make an initial \$67,500 cash contribution towards its formation, and to an ongoing commitment of financial and/or other resources.			Complete	Master Developer obligation complete. Future Developers work with Mammoth Lakes Housing, Inc. and the Town on Affordable Housing Mitigation Plans.
Transit System	Developers agree to participate in the transit system on a fair share basis when it formed, on the terms approved for Phase I of The Village at Mammoth.			Ongoing	This is the annual transit payment paid by homeowners.
Ambassador Program	The Master Developer (Intrawest) agrees to support and participate in the activities of a Mammoth Lakes Ambassador Program. The program will provide training to full-time and part-time employees of Mammoth businesses and provide incentives to maintain and improve customer service and satisfaction.			Complete	Master Developer obligation complete. The Chamber of Commerce is currently developing an Ambassador Program.
Open Space, Parks, and Recreation (Exhibit J)	2.18 acres of open space, parks, and recreation in addition to payment of DIF, which may include the bike trail along Meridian (if adopted into Master Trail Plan) (0.28 acres), bike trail between Meridian and Segment 4 (if adopted into Master			Partially Complete	Trails and open space conservation completed. Village at Mammoth

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

Community Benefits (Article 6; Exhibit E and J)

Benefit	Description	Date Due for Commencement	Actual Date of Commencement	Satisfied/Complete	Notes
	Trail Plan) (0.4 acres), open space/conservation lands within Mammoth Creek corridor (value of 1 acre), and use agreement for plazas in The Village at Mammoth (east side) (value of 0.5 acres).				(east side) plaza use agreement to be completed with future development.

Additional Progress:

- Intrawest Settlement Agreement, February 17, 2010 (see attached)
 - Intrawest paid the Town \$338,000 to fully satisfy all of its obligations in any way related to the Emergency Facility Bond, the Transit Shelter Bonds, and the Recreation Facility Bond. The Finance Department allocated these funds as follows:
 - \$184,000 to the Mammoth Lakes Fire Protection District
 - \$38,000 still held in trust for a shared recreation facility serving the Sierra Star area
 - \$55,234 to Circulation Development Impact Fee (DIF) fund, which were used on then-current projects
 - \$60,766 to Law Enforcement DIF, which were loaned to other DIF funds for then-current projects
 - Intrawest paid the Town \$237,000 to fully satisfy the Bridge Obligations. The Finance Department transferred these funds to Circulation DIF fund, which were used on then-current projects.
 - Restrictive covenant recorded for the Kitzbuhel Apartments in November 2012.

Intrawest Affiliates Development Agreement – 2014 Annual Review Report

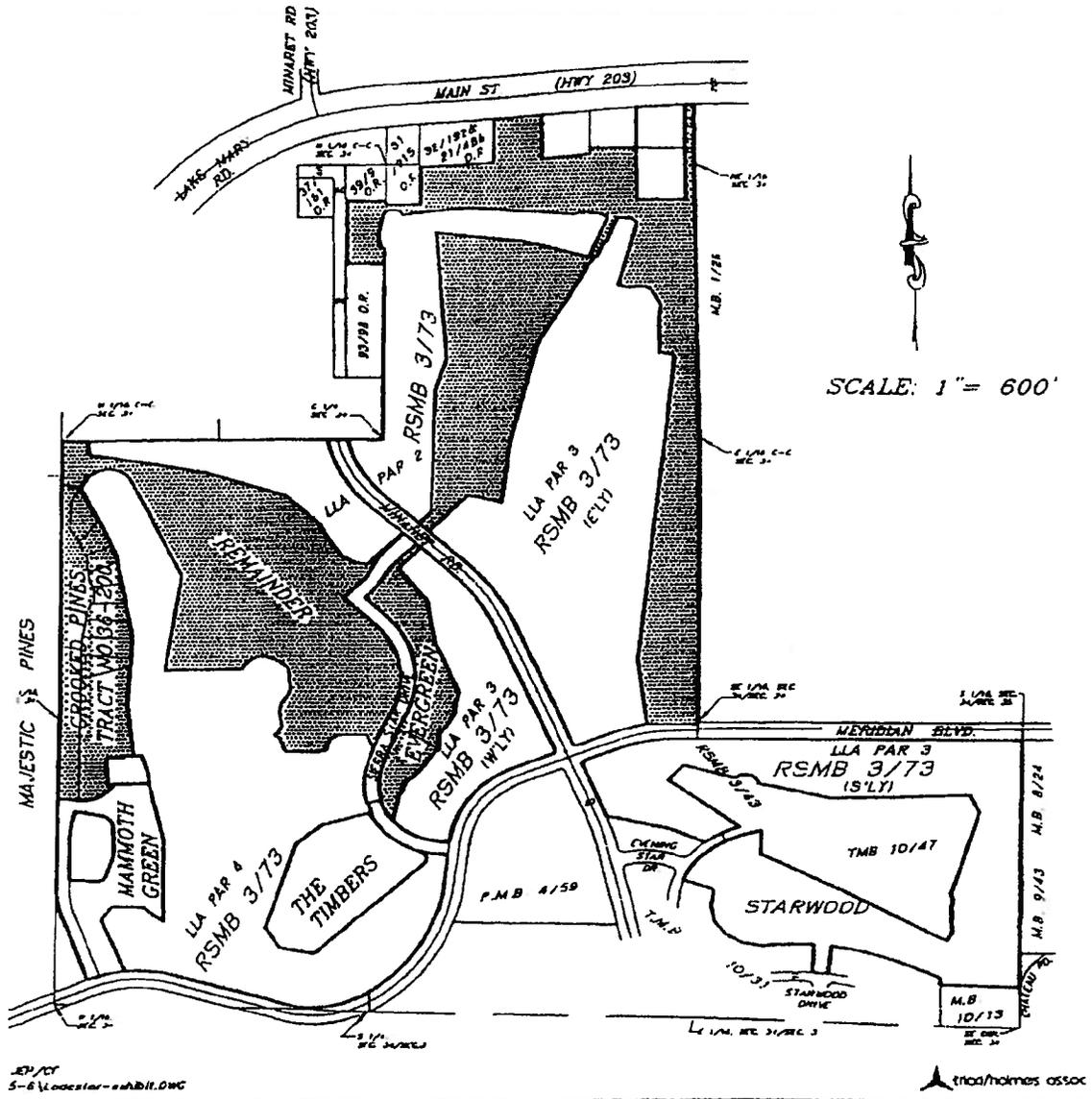
Attachments:

- Development Agreement Properties (DA Exhibits A and B)
- Map of “Active” Intrawest Development Agreement Properties
- Settlement Agreement and Mutual General Release (Intrawest Settlement Agreement)
- Accumulated DIF Credit per Public Works Engineering
- Housing Mitigation Status per Community and Economic Development
- Acquisition Agreement related to the North Village CFD (CFD 2001-1)

---End---

EXHIBIT A-1

**SIERRA STAR
PLAT MAP**



SCALE: 1" = 600'

REP/CT
5-8-14 Sierra Star - EXHIBIT.DWG

trid/holmes assoc

EXHIBIT A-2
THE VILLAGE AT MAMMOTH
PLAT MAP

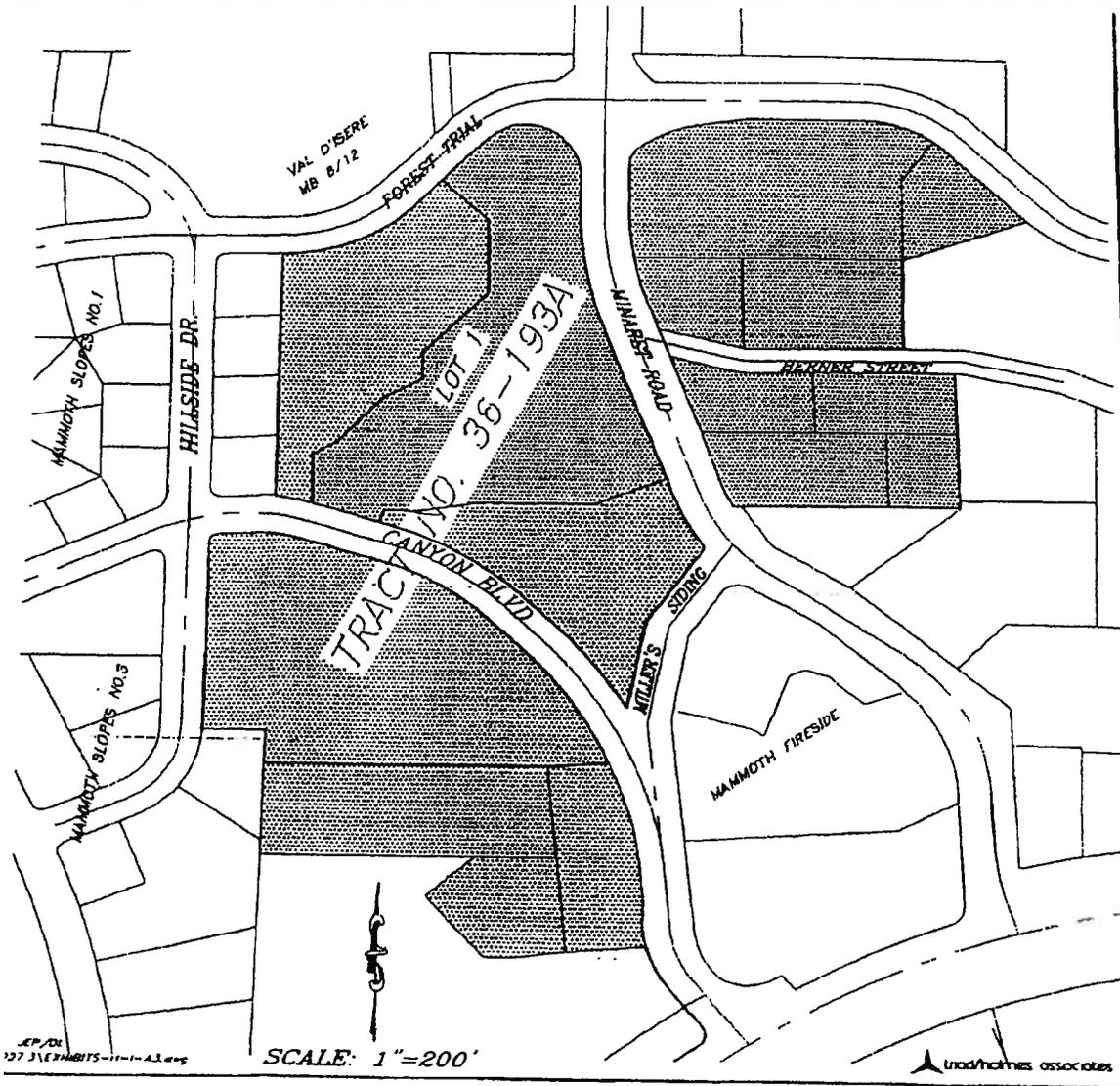


EXHIBIT A-3
THE CREST PARCEL
PLAT MAP

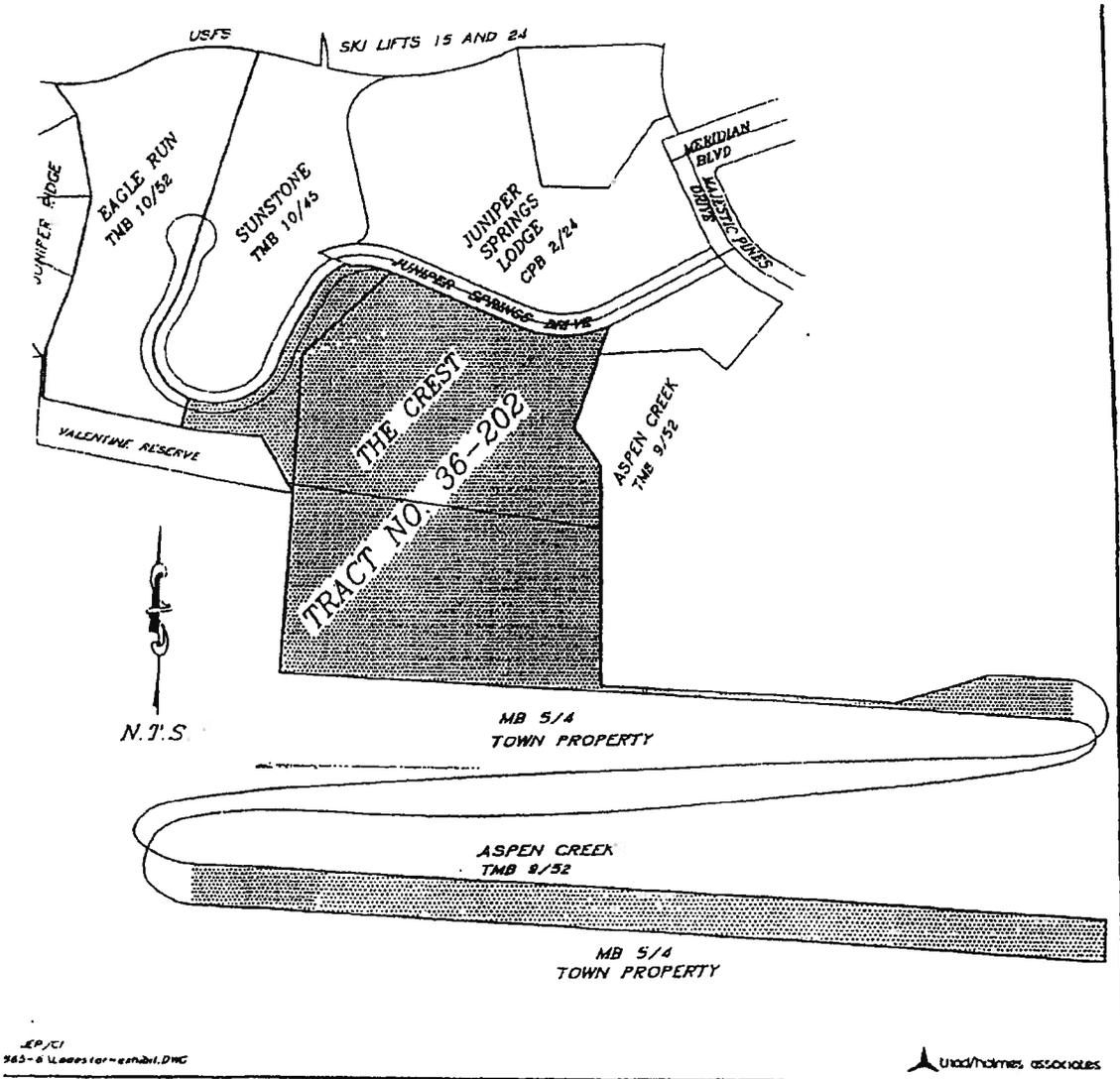


EXHIBIT A-4
THE BRIDGES PARCEL
PLAT MAP

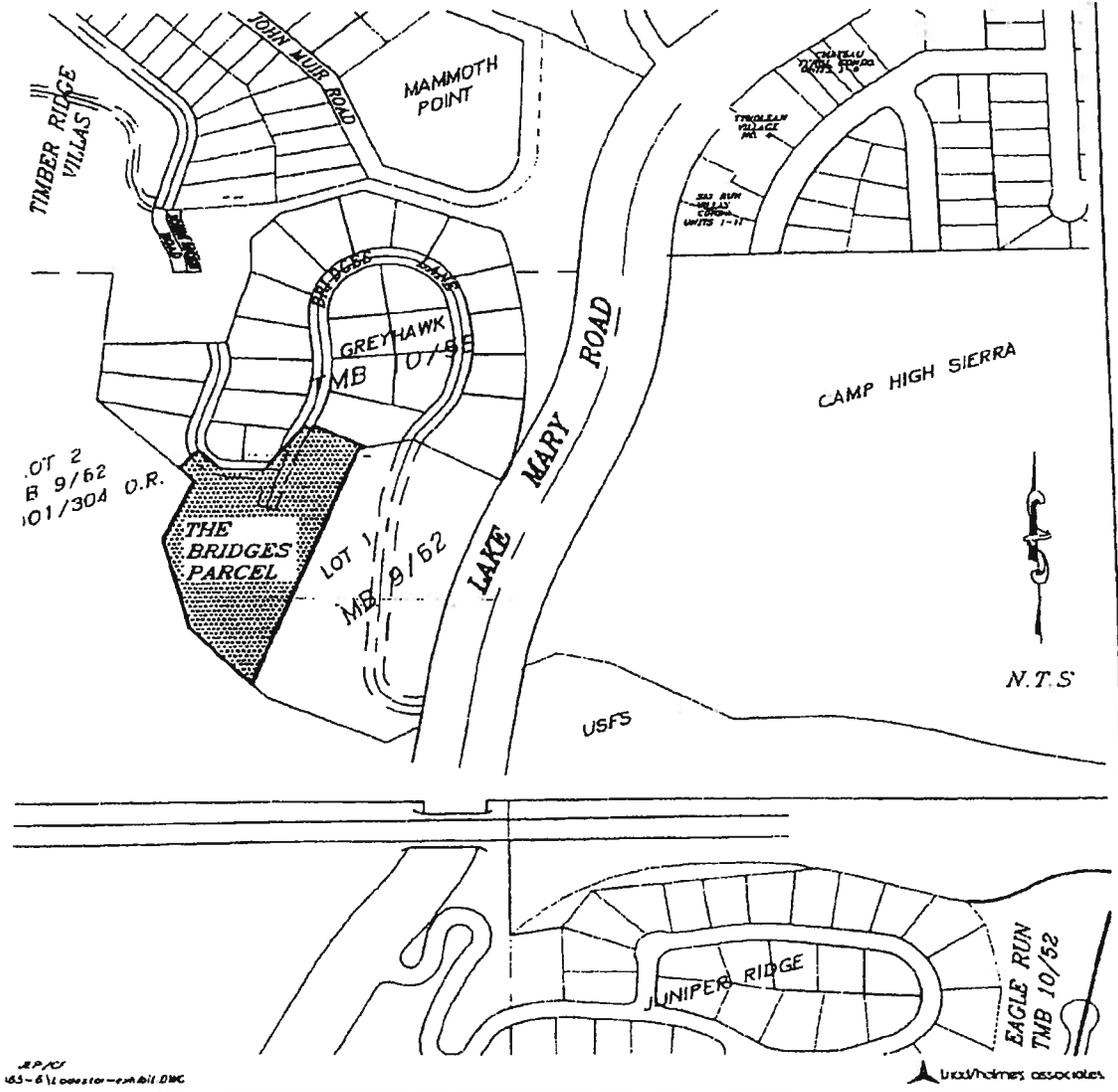


EXHIBIT A-5
CANYON LODGE PARCEL
PLAT MAP

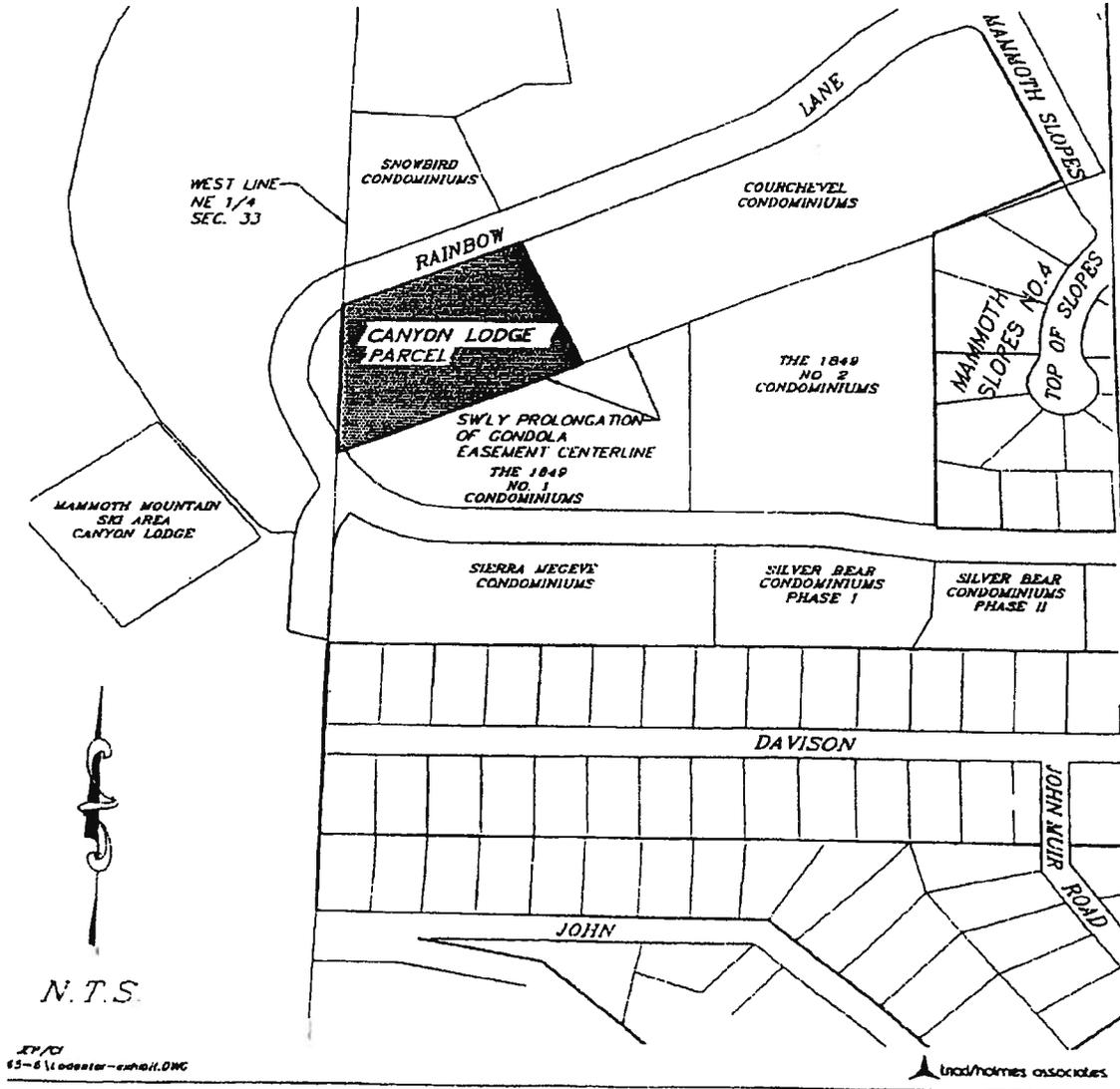


EXHIBIT A-6
TWIN LAKES COURT
PLAT MAP

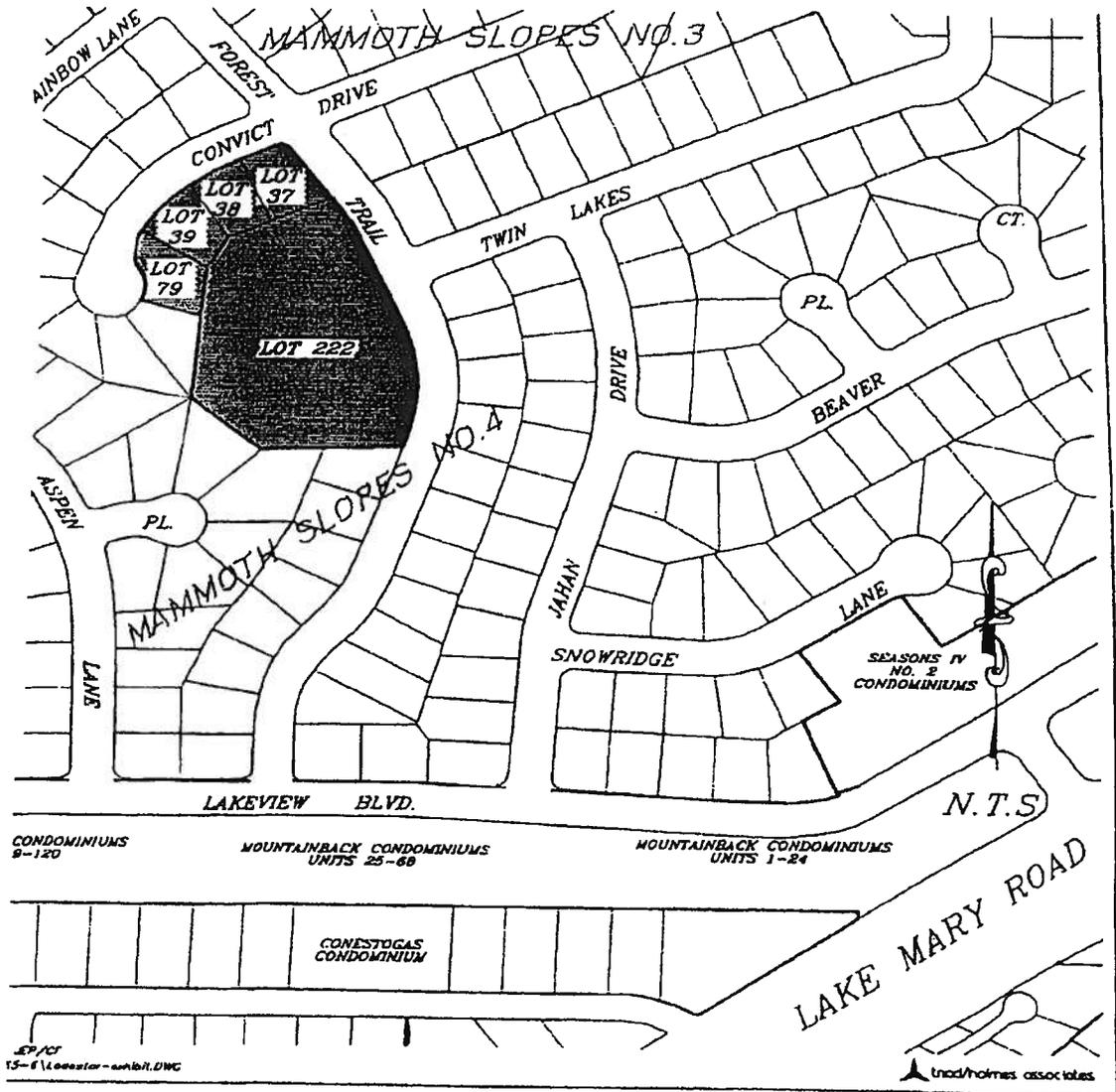
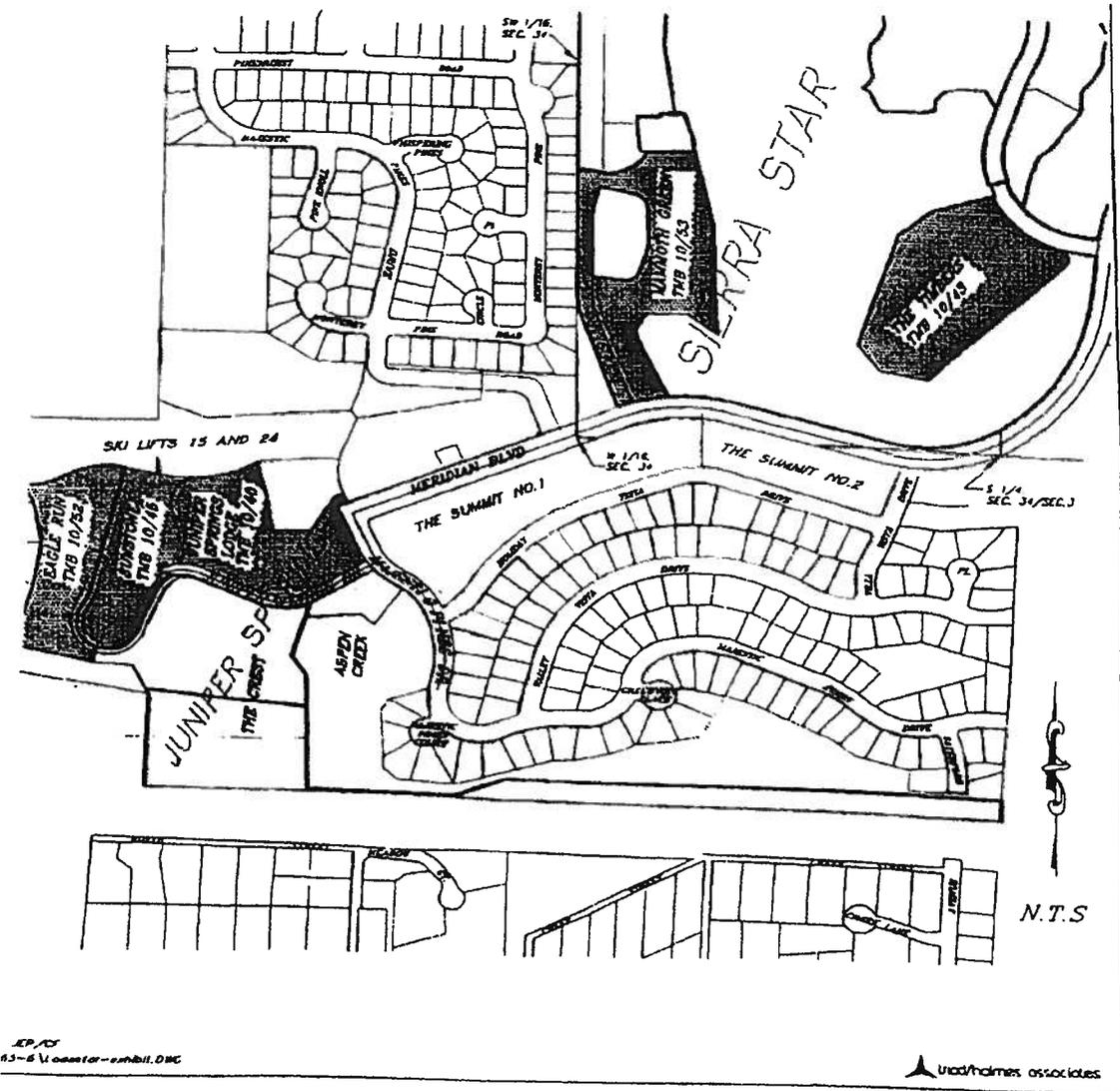


EXHIBIT B-2

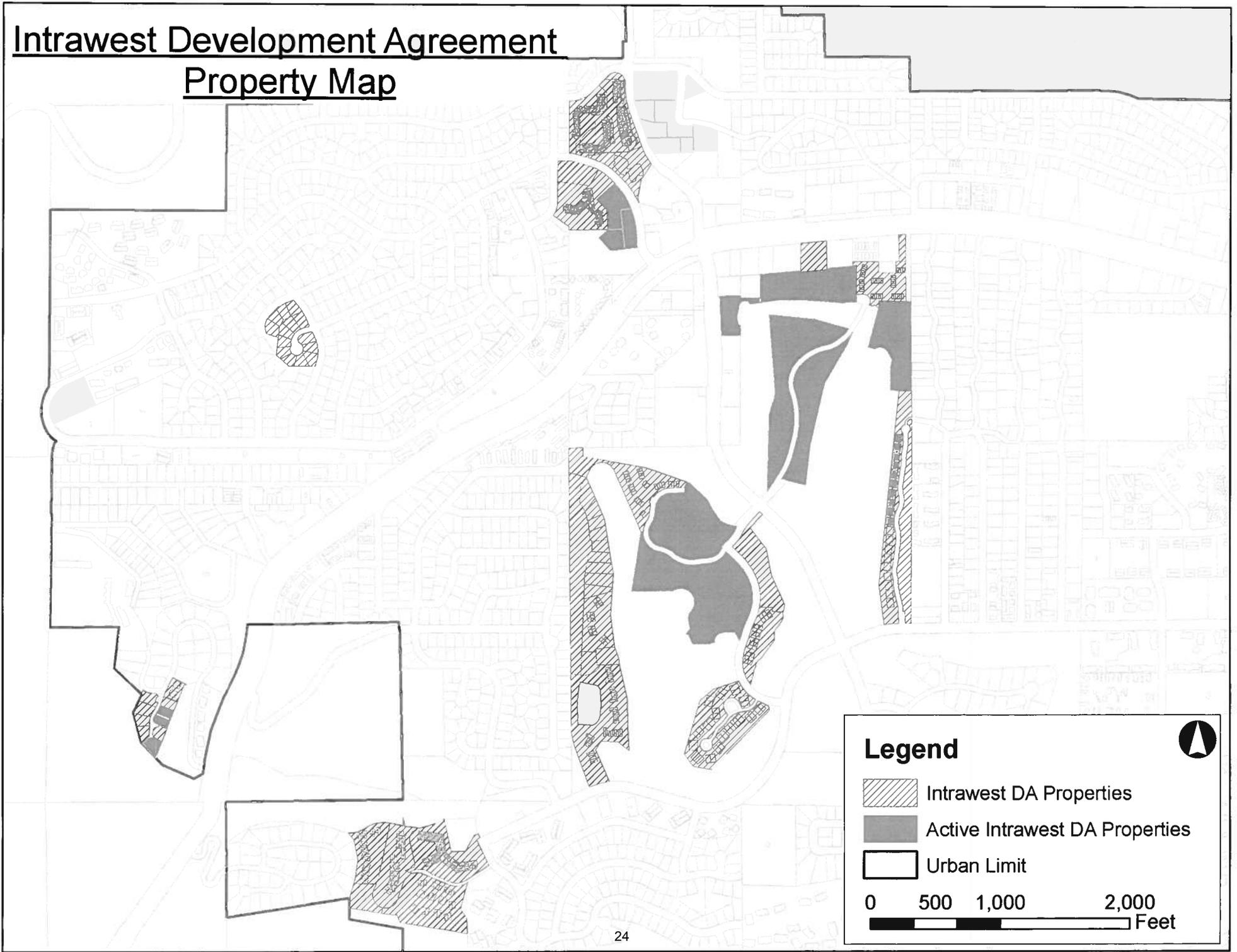
**PREVIOUSLY DEVELOPED PROJECTS
PLAT MAP**



EP/KS
65-6 V. 020101 - exhibit, DMC

Unad/halmes associates

Intrawest Development Agreement Property Map



Legend

-  Intrawest DA Properties
-  Active Intrawest DA Properties
-  Urban Limit



SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release (the "Agreement") is entered into and made effective on February 17, 2010 (the "Effective Date"), by and between the Town of Mammoth Lakes, a municipal corporation (the "Town") and Intrawest California Holdings, Inc., a California corporation ("Intrawest"), with reference to the following recitals:

RECITALS

A. The Town is the governing body for Mammoth Lakes, California and is charged with the oversight and approval of all development activities within the jurisdiction of the Town.

B. Intrawest and its Affiliates have developed several resort condominium, townhome, commercial, and related projects in Mammoth Lakes (the "Development Projects"). For purposes of this Agreement, "Affiliate(s)" means any entity which Intrawest formed, owned, or controlled which owned and/or developed one or more of the Development Projects including, but not limited to, any and all "Intrawest Affiliate(s)," as that term is defined in the Development Agreement that is defined in Recital C below. Intrawest and its Affiliates are hereafter collectively referred to as "Intrawest."

C. In connection with Intrawest's development activities, The Town and Intrawest entered into a Development Agreement (the "Development Agreement") which became effective as of February 15, 2002, pursuant to Ordinance No. 02-01 of the Town Council for the Town, adopted on January 16, 2002.

D. In connection with Intrawest's request for approval of Tentative Tract Map 36-202 for the Juniper Crest townhome project, the Planning Commission for the Town issued Resolution No. PC 2001-41, which set forth the conditions of approval for the use permit for that project. Condition number 19 ("Condition 19") provides that Intrawest shall construct a bridge crossing at Sherwin Street (the "Sherwin Street Bridge"). Condition 19 also requires Intrawest to construct a bridge crossing at Waterford Avenue, which will require two bridges and a connecting pathway (the "Waterford Bridges"). Intrawest's obligations pursuant to Condition 19, including the construction of the Sherwin Street Bridge and the Waterford Bridges, are collectively referred to in this Agreement as the "Bridge Obligations."

E. On June 22, 2006, the Town issued Restricted Improvement Permit No. GP 2005-17 (the "Grove Road Permit") to Intrawest for the construction of the roadway commonly known as the "2A Roadway" or "Grove Road" ("Grove Road") located in Mammoth Lakes, California. The Grove Road Permit required Intrawest to construct Grove Road in accordance with the approved plans (the "Grove Road Obligations"). Intrawest obtained a performance bond (the "Grove Road Bond") to guarantee that it would satisfy the Grove Road Obligations. On or around October 17, 2007, Intrawest applied the last seven loads of asphalt to the northern and central portions of Grove Road. The Town expressed concerns that these last seven loads of asphalt would not cure properly due to the weather conditions that prevailed when they were applied to Grove Road. Therefore, the Town would not agree to release the Grove Road Bond.

F. Pursuant to the Town's approvals for Use Permit Application 97-13 and Use Permit Application 99-9, the Town required Intrawest to construct two transit shelters (the "Transit Shelter Obligations"). Intrawest obtained two performance bonds (the "Transit Shelter Bonds") to secure its performance of the Transit Shelter Obligations. Intrawest has not constructed the transit shelters.

G. Intrawest obtained Use Permit 02-06 for the construction of an affordable housing project located at 3827 Main Street, Mammoth Lakes, California, which is commonly known as the "Chutes". The Town Council for the Town passed resolution No. 02-74 establishing the conditions of approval for the Chutes. Condition number 24 ("Condition 24") required Intrawest to contribute \$38,000.00 (the "Recreation Facility Contribution") toward a shared recreation amenity serving all of the resident housing projects in the Sierra Star area of the Town, as part of an overall housing strategy. Intrawest obtained a performance bond to secure its performance of Condition 24 (the "Recreation Facility Bond"). Intrawest transferred title to its Sierra Star properties to a third party prior to the construction of the recreation facility and has not made the Recreation Facility Contribution.

H. On November 18, 1998, the Planning Commission for the Town, by Resolution 420-20 (the "Kitzbuhel Approval"), granted Intrawest's request to convert the Kitzbuhel Lodge, located on Berner Street in Mammoth Lakes, to affordable housing apartments in order to meet a portion of Intrawest's affordable housing mitigation requirements generated by Intrawest's development activities in connection with UPA 97-3 (Timbers at Sierra Star), UPA 98-7 (Sunstone at Juniper Springs), and UPA 98-9 (Sierra Star Golf Course Clubhouse). As a condition of approval, the Planning Commission required Intrawest to record a covenant against the Kitzbuhel property that would restrict rental rates to affordable rates under applicable legislation. Intrawest used the Kitzbuhel property to provide mitigation for 17 EHUs of medium-income affordable rental housing, as those terms had been defined by the Municipal Code for the Town, Chapter 17.36 (the "Affordable Housing Mitigation Regulations"). Intrawest did not record the restrictive covenant against the Kitzbuhel property, however, and the Kitzbuhel has fallen into disrepair and has become uninhabitable. The Town has demanded that Intrawest bring the Kitzbuhel property back into compliance with the Kitzbuhel Approval and record the restrictive covenant. Intrawest's obligations under the Kitzbuhel Approval and the Affordable Housing Mitigation Regulations are collectively referred to in this Agreement as the "Kitzbuhel Obligations."

I. The Final Environmental Impact Report for the North Village Specific Plan ("NVSP"), Mitigation measure 5.10-1a, required each project governed by the NVSP to contribute a fair share financial contribution for an emergency services facility (the "Emergency Facility Fee"). The Town charged the Emergency Facility Fee in connection with building permits issued for Intrawest's White Mountain Lodge, Lincoln House, and Grand Sierra Lodge projects. Intrawest disputed the calculation of the Emergency Facility Fee imposed by the Town and posted a performance bond (the "Emergency Facilities Fee Bond") to secure payment of the Emergency Facility Fee pending a resolution with the Town regarding the amount of the fee.

J. Intrawest has divested the majority of its interests in Mammoth Lakes, California and desires to satisfy all of its outstanding obligations to the Town in connection with Intrawest's development activities.

K. The Town has requested that Intrawest satisfy its outstanding obligations to the Town by complying with the remaining requirements imposed upon Intrawest in connection with Intrawest's development activities, including, but not limited to: (i) the Bridge Obligations; (ii) the Grove Road Obligations; (iii) the Transit Shelter Obligations; (iv) the Recreation Facility Contribution; (v) the Kitzbuhel Obligations; and (vi) the Emergency Facilities Fee (collectively, but not expressly limited to the foregoing, the "Town's Claims").

L. A dispute developed between Intrawest and the Town concerning the Town's Claims, Intrawest's claims, and the potential causes of action, remedies, and defenses available to Intrawest and the Town, respectively, as a result. Any and all prior or existing disputes, disagreements, allegations, claims, counterclaims, and defenses between Intrawest and the Town in any way related to Intrawest's development activities in the jurisdiction of the Town, including, but not limited to the Town's Claims, Intrawest's claims, and any claims arising out of or under or otherwise pertaining to the Development Agreement, are collectively referred to as the "Dispute."

M. Intrawest and the Town desire to settle the Dispute according to the terms and conditions of this Agreement.

NOW, THEREFORE, Intrawest and the Town agree as follows:

AGREEMENT

1. Payment for Release of the Bond Obligations. On or before February 18, 2010, Intrawest shall pay the Town Three Hundred Thirty-Eight Thousand Dollars (\$338,000.00) to fully satisfy all of its obligations in any way related to the Emergency Facility Bond, the Transit Shelter Bonds, and the Recreation Facility Bond.

2. Payment for Release of the Bridges Obligations. On or before February 18, 2010, Intrawest shall pay the Town Two Hundred and Thirty-Seven Thousand Dollars (\$237,000.00) to fully satisfy the Bridge Obligations.

3. Grove Road Bond Reduction and Indemnity Agreement. Within 15 days after the Effective Date, Intrawest and the Town shall take all steps necessary to reduce the face amount of the Grove Road Bond to One Hundred Thousand Dollars (\$100,000.00) (the "Reduced Grove Road Bond"). In addition, Intrawest has agreed to defend, indemnify, and hold the Town financially free and harmless from and against any potential claims by any third party in any way related to a claim that the Town should not have approved Grove Road because one or more of the last seven loads of asphalt applied to Grove Road did not cure properly due to the weather conditions that prevailed when the asphalt was applied. Accordingly, concurrently with the execution of this Agreement, the Town and Intrawest shall execute the Indemnity Agreement which is attached as Exhibit A and incorporated into this Agreement.

4. The Kitzbuhel Obligations. Within 15 days after the Effective Date, the Town and Intrawest shall execute a restrictive covenant, for recordation in the Official Records of Mono County, which confirms that as a condition precedent to the issuance of any Certificate of Occupancy for the Kitzbuhel property, the owner of the Kitzbuhel property must supply a total of 17 EHUs of medium-income affordable housing on the Kitzbuhel Property, or elsewhere within the Town of Mammoth Lakes in any zone that otherwise allows for affordable housing (a "Suitable Property"). In this regard, Intrawest may transfer the restrictive covenant to any Suitable Property, and the Town shall cooperate in any manner, and sign any documents, that may be reasonably required to effectuate the transfer of the restrictive covenant. Upon recordation of the restrictive covenant, Intrawest shall have fully satisfied the Kitzbuhel Obligations and shall have no further obligations related to the Kitzbuhel Approval. The Town further agrees not to pursue any claims for condemnation or nuisance (pursuant to Municipal Code section 8.20.020 B or L) against the Kitzbuhel property or its owner for a period of 10 years from the Effective Date; provided, however, that all buildings on the Kitzbuhel property shall remain closed to the public and securely locked throughout that time period. Notwithstanding the foregoing, Intrawest shall maintain the building and premises in a safe and secure manner throughout the ten-year period so as not to allow the building and premises to become detrimental to the public's health and safety. Should general maintenance not meet the requirements of the Municipal Code, then the Town may use all remedies available to it to bring the site into conformance with those requirements.

5. Release of Bonds. No later than 100 days after receiving the payments from Intrawest referred to in paragraphs 1 and 2 of this Agreement, the Town agrees to take any and all actions that may be required to fully release the Emergency Facilities Bond, the Transit Shelter Bonds, the Recreation Facility Bond, the Reduced Grove Road Bond, and all other bonds in the Town's possession that are in any way related to Intrawest's development activities in Mammoth Lakes (collectively, the "Outstanding Bonds"). Notwithstanding the foregoing, if Intrawest files a petition for relief or reorganization pursuant to United States Bankruptcy laws within that 100-day period, then the Town shall have no obligation to take any action to release any of the Outstanding Bonds unless and until no legal claim by the debtor, debtor-in-possession, trustee, or third party creditor for turnover or return of the funds exists.

6. Waiver and Release of All Claims Related to the Development Agreement. The Town waives and releases Intrawest from all obligations in any way related to the Development Agreement. The Development Agreement shall remain in full force and effect, however, only to the extent that its terms pertain to any of Intrawest's successors in interest.

7. Mutual General Release. The parties intend this Agreement to be a global settlement of all claims and issues between the parties, whether or not expressly identified in this Agreement. In furtherance of this intent, Intrawest and the Town agree to waive all of their respective claims in any way related to the Dispute as follows:

7.1 The Town's General Release. The Town now and forever waives, releases, and agrees not to sue Intrawest and/or its past and present general partners, limited partners, directors, officers, managers, shareholders, employees, agents, sureties, insurance carriers, attorneys, predecessors, successors, assigns, subsidiaries, parent corporations, and

representatives from, any known or unknown claims that it may now have or may have at any time in the future in any way related to the Dispute. In this regard, the Town specifically waives the provisions of Civil Code Section 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

7.2 Intrawest's General Release. Intrawest now and forever waives, releases, and agrees not to sue the Town and/or its past and present officers, managers, employees, agents, sureties, insurance carriers, attorneys, predecessors, successors, assigns, subsidiaries, parent corporations, affiliated corporations, and representatives from, any known or unknown claims that it may now have or may have at any time in the future in any way related to the Dispute. In this regard, Intrawest specifically waives the provisions of Civil Code Section 1542 which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

8. Miscellaneous.

8.1 Recitals are True and Incorporated in this Agreement. All of the recitals set forth above are true and incorporated by this reference as though set forth fully in this Agreement.

8.2 Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

8.3 Law Governing Agreement; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue of any dispute related to this Agreement shall be Mono County, California.

8.4 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of each of the parties.

8.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters contained in this Agreement. No representation, warranties, or oral agreements with respect to the settlement of the Dispute or other matters set forth in this Agreement which are not part of this Agreement shall be of any force or effect.

8.6 Authority. This Agreement is entered into by the parties freely and voluntarily and with the advice of counsel. Each signatory warrants that the person signing below is authorized to sign this Agreement on its behalf.

8.7 Joint Preparation. The parties have been represented by counsel in the negotiation of the terms of this Agreement and have jointly prepared this Agreement. The provisions of Civil Code Section 1654 shall not apply to the interpretation of this Agreement.

8.8 Amendment and Waiver. The terms of this Agreement may not be amended or waived without a written agreement executed by all of the parties.

8.9 Counterparts. This Agreement may be executed in counterparts.

8.10 Remedies Cumulative. Any and all remedies provided by this Agreement, operation of law, or otherwise, shall be deemed cumulative, and the choice or implementation of any particular remedy shall not be deemed to be an election or remedies to the mutual exclusion or any other remedy provided for in this Agreement, by operation of law, or otherwise.

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

8.12 Future Cooperation. Each party agrees to fully cooperate with the other party, and agrees to sign any and all documents reasonably required or advisable, in order to fully accomplish the purpose and intent of this Agreement.

WHEREFORE, Intrawest and the Town have executed this Agreement to be effective on the Effective Date.

Intrawest California Holdings, Inc., a California corporation

By: 
Name: Joe Walsh
Title: Senior Vice-President

Town of Mammoth Lakes, a California municipal corporation

By: _____
Name: Robert F. Clark
Title: Town Manager

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Intrawest California Holdings, Inc., a California corporation

By: _____
Name: Joe Walsh
Title: Senior Vice-President

Town of Mammoth Lakes, a California municipal corporation

By:  _____
Name: Robert F. Clark
Title: Town Manager

EXHIBIT A

GROVE ROAD INDEMNITY AGREEMENT

This Road Indemnity Agreement (“Agreement”) is entered into and made effective on February 17, 2010 (the “Effective Date”), in Mammoth Lakes, California, by and among Intrawest California Holdings, Inc., a California corporation (“Intrawest”) and the Town of Mammoth Lakes, a municipal corporation (“Town”), with reference to the following recitals.

RECITALS

A. On June 22, 2006, the Town issued Restricted Improvement Permit, No. GP 2005-17 (the “Permit”) to Intrawest for the construction of the roadway commonly known as the “2A Roadway” or “Grove Road” (“Grove Road”) located in Mammoth Lakes, California. Intrawest ultimately, through one or more transactions, conveyed Grove Road to the successor-in-interest to Intrawest under the Permit.

B. The Permit required Intrawest to construct Grove Road in accordance with the approved plans (the “Plans”). Intrawest obtained a performance bond (the “Bond”) to guarantee that it would complete Grove Road in accordance with the Plans.

C. On or around October 17, 2007, Intrawest applied the last seven loads of asphalt to the northern and central portions of Grove Road, between “Station 10+30” and “Station 25+00”. The Town expressed concerns, however, that the asphalt would not cure properly due to the weather conditions that prevailed when those last seven loads were applied to Grove Road. Therefore, the Town would not agree to release the Bond.

D. In response to the Town’s concerns, Intrawest obtained a certification from CFA, the engineer of record, which verified Grove Road to be in substantial conformance with the Plans. In addition, Intrawest obtained an opinion letter from Sierra Geotechnical Services, Inc. (“SGSI”) which opined that the Road will perform as intended and does not need to be replaced.

E. Notwithstanding the CFA certification and SGSI’s opinion letter, the Town expressed concerns that a third party might assert a claim against the Town on the theory that the Town should not have approved Grove Road because one or more of the last seven loads of asphalt, that were applied between “Station 10+30” and “Station 25+00”, as identified on the attached map, did not cure properly due to the weather conditions that prevailed when the asphalt was applied.

F. The Town and Intrawest have agreed to take all steps necessary to reduce the face amount of the Bond to One Hundred Thousand Dollars (\$100,000.00) (the “Reduced Bond”) within 15 days of the Effective Date. To induce the Town to release the Reduced Bond, Intrawest has agreed to indemnify the Town as provided in this Agreement.

G. The Town has agreed to release the Reduced Bond on the condition that Intrawest provide the indemnities contained in this Agreement.

NOW, THEREFORE, the Town and Intrawest agree as follows:

AGREEMENT

1. **Indemnification.** Intrawest agrees to defend, indemnify, and hold the Town, its elected and appointed officials, and its employees, agents, consultants, contractors, sub-contractors, and representatives (collectively, "Indemnitees") financially free and harmless from and against any and all claims, demands, actions, and/or liability incurred, including attorneys' fees and court costs, asserted by any third party in any way related to a claim that the Town should not have approved the construction of Grove Road because one or more of the last seven loads of pavement that were applied to Grove Road, between "Station 10+30" and "Station 25+00", as identified on the attached map, did not cure properly due to the weather conditions that prevailed when those last seven loads were applied.

2. **Release of the Bond.** Within 100 days after the Effective Date, the Town shall take all steps required to cause the Reduce Bond to be released in its entirety.

3. **No Implied Acceptance of the Road.** Nothing in this Agreement implies that the Town has accepted the Road as being in accordance with the Plans.

4. **Attorneys' Fees.** If a dispute arises to enforce or interpret any term of this Agreement, then the prevailing party or parties in any such dispute shall be entitled to recover from the losing party all reasonable attorneys' fees and costs incurred, including any fees and costs incurred on appeal or in any effort to enforce a judgment.

5. **Entire Agreement.** This Agreement and the exhibits attached constitute the entire Agreement between the parties and supersede all agreements, representations, warranties, statements, promises, and understandings, whether oral or written, with respect to the subject matter of this Agreement.

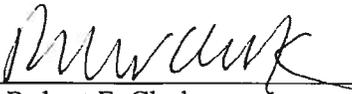
6. **Further Assurances.** Each party to this Agreement agrees to execute and deliver all documents, to perform all further acts, and to take any and all further steps that may be reasonably necessary to carry out the provisions of this Agreement.

7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8. **Recitals are True.** The parties acknowledge and agree that the recitals are true and are incorporated into this Agreement.

WHEREFORE, the parties have executed this Agreement to be effective on the Effective Date.

Town of Mammoth Lakes,
a municipal corporation,

By: 
Name: Robert F. Clark
Title: Town Manager

Intrawest California Holding, Inc.,
a California corporation

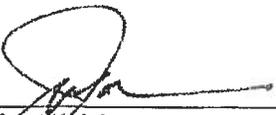
By: _____
Name: Joe Walsh
Title: Senior Vice-President

WHEREFORE, the parties have executed this Agreement to be effective on the Effective Date.

Town of Mammoth Lakes,
a municipal corporation,

By: _____
Name: Robert F. Clark
Title: Town Manager

Intrawest California Holding, Inc.,
a California corporation

By:  _____
Name: Joe Walsh
Title: Senior Vice-President

APN	Project Name	Date Submitted for Plan Check	Date Permit Issued	Permit Numbers	Street & Traffic Signals	Storm Drainage Facilities
33-360-11	Cabins	6/25/2003	10/29/2003	2003-678 thru 682	\$ (16,850.88)	\$ (16,382.60)
32-100-05	Juniper Crest I/II	2/22/2002	2/27/2003	2003-56 thru 2003-67	\$ (18,957.24)	\$ (18,430.47)
33-330-36	Solstice I	6/14/2004	10/8/2004	2004-597, 598, 599, 600, 601	\$ (33,492.75)	\$ (17,492.00)
33-330-36	Solstice II	10/26/2004	9/29/2005	2005-476 thru 2005-481	\$ (157,411.98)	\$ (35,079.99)
33-100-19	The Chutes (Project Sierra Housing)	1/22/2003	6/19/2003	2003-298	\$ (45,746.05)	\$ (23,891.35)
33-330-04	Timbers I/II		4/27/1999	1999-163, 1998-598, 1998-599,	\$ (21,515.94)	\$ (18,565.78)
			9/23/1998	1998-639, 1998-640, 1999-164,		
			10/8/1998	1999-165, 1998-641, 1998-642,		
			4/19/2000	1999-166, 1999-167, 2000-168,		
			9/15/1999	2000-169, 1999-587, 2003-402,		
			7/29/2003	2003-403		
33-020-04	Village, W-1, Grand Sierra Lodge	1/15/2003	4/30/2003	2003-160	\$ (277,420.90)	\$ (74,025.90)
33-020-04	Village, W-2, White Mountain Lodge	6/22/2001	10/3/2001	2001-596	\$ (204,239.59)	\$ (78,440.83)
33-020-04	Village, W-3, Lincoln House	6/22/2001	10/3/2001	2001-597	\$ (146,532.85)	\$ (60,730.17)
31-110-32	Westin	4/1/2005	6/23/2005	2005-208	\$ (385,112.00)	\$ (73,899.00)
	Woodwinds				\$ (50,540.00)	\$ (70,588.00)
	Storied Places (Altis)	(Withdrawn by Benno Nager)			\$ -	\$ -
	4-B (San Joaquin Villas)				\$ (182,936.00)	\$ (40,768.00)

\$ (1,540,756.18) \$ (528,294.09) \$ (2,069,050.27)

Accumulated DIF Credit per Public Works Engineering	\$ (2,461,668.00)
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Credit Remaining	\$ (392,617.73)
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INTRAWEST HOUSING MITIGATION
Revised March 2014

Project Requiring Mitigation	Number of EHU's Required	Mitigating Project	Number of EHU's Assigned to Mitigating Project	Other Mitigation Provided	Balance of Mitigating EHU's Required	Application No.'s	PC Resolution No.	PC Date
Altis Townhomes (2 Duplexes) ¹	1	Chutes	1		0	TTM 36-249, UPA 07-13	08-17	5/28/2008
Altis Single Family Lots ²	0.2	Chutes	0.2		0	DZA 12-001, TTM 12-001	TC Reso 12-65	9/19/2012
Cabins at Crooked Pines	5.9	Chutes	5.9		0	TTM 36-204, UPA 01-09	02-01	1/9/2002
Crooked Pines Homesite (Fairway 4)	0.2	Chutes	0.2		0	TTM 36-204, UPA 2001-09	02-01	1/9/2002
Eagle Run (Juniper Ridge Master Plan)	9	Chutes	9		0	TTM 36-190, UPA 99-03	99-38	9/8/1999
Juniper Crest	6.6	Chutes	6.6		0	TTM 36-202, UPA 01-08	01-41	11/28/2001
Solstice Phase I ³	6	Chutes	6		0	TTM 36-212, UPA 2004-07	04-31	5/26/2004
Solstice Phase II ⁴	8	Chutes	8		0	TTM 36-212, UPA 2004-07	04-31	5/26/2004
Woodwinds (Fairway 4&5)	6.9	Chutes	6.9		0	TTM 36-228, UPA 04-26, VAR 04-09	05-23	4/13/2005
Lincoln House (Village Phase 1) (including commercial)	23.7							
White Mountain Lodge (Village Phase 1) (including commercial)	31.1							
Grand Sierra Lodge (Village Phase 1) (including commercial)	28.1	Chutes	41	Existing credits for existing uses in the Village area (66.8 FTEE -> 39.1 EHU's)	2.8	TTM 36-193A,B,C, UPA 2000-13	00-59, 00-60, 01-17, 01-18	12/15/2000, 5/23/2001
		Chutes	2		-0.5			
Timbers - Sector 5 H	2.5	Kitzbuhel	1			TTM 36-182, UPA 97-13	98-15	4/22/1998
Sierra Star Golf Course (Club House)	5.5	Kitzbuhel	5.5		0	UPA 98-09	99-02	2/10/1999
Sunstone	11.5	Kitzbuhel	11.5		0	DZA 98-2, TTM 36-184, UPA 98-7	98-50	12/18/1998
Westin (Monache)	57	San Joaquin Villas	57		0	TTM 36-210, UPA 04-03	04-34	6/9/2004
Bungalows*	3	San Joaquin Villas	3		0	TTM 36-242, UPA 2006-12	06-35	11/8/2006
		San Joaquin Villas	60	If the 4A project is not ready for occupancy when South Hotel CofOs requested, an AHMP shall be reviewed and approved by PC				
South Hotel*	76.62	Area 4A Project TBD	16.62		0	TTM 36-234, UPA 2005-08	06-37	12/13/2006
				\$24,000 given to IMACA for the Glass Mountain Apartments (considered to satisfy remainder of requirement)	0	TTM 36-181, DZA 97-02, UPA 97-08	97-36	9/24/1997
Juniper Springs Lodge	28	Sherwin Apartments	20					
				Paid \$19,480 into the Affordable Housing Mitigation Fund	-0.3	TTM 36-191, UPA 99-09	99-42	10/13/1999
Mammoth Green (Fairway 3)	2.7	N/A	0					
Total	313.5		261.4		2.0			

*Entitled; not built.

Project Name	EHU Capacity	Number of EHU's Assigned	Balance of Mitigating EHU's Available
Chutes (Main St. Affordable Housing) ⁵	101.0	86.8	14.2
Kitzbuhel ⁶	17.0	18.0	(1.0)
Sherwin Apartments	20.0	20.0	0.0
San Joaquin Villas (Area 4 B) ⁷	96.0	120.0	(24.0)
TBD (Lodestar MP Area 4A) ⁸	0.0	16.6	(16.6)
Total	234.0	261.4	-27.4

EHU Credits Remaining -29.4

Unentitled properties:

Rainbow Lane/Canyon Lodge
North Hotel

Lodestar Area 1 - MMSA Property
Lodestar Area 2 - Various Properties
Lodestar Area 5 - Various Properties

¹ (.42 FTEE/unit)*4 units*58.5% = .983 =1 EHU.

² If assume 3,000s.f. homes on each of the 9 lots, 0.2 EHU's required (9*3000sf*.00001 FTEE/sf*58.5% = 0.16 = 0.2 EHU's); this will need to updated as homes are built.

³ Solstice TTM superseded Evergreen TTM 36-192, PC Reso 00-02.

⁴ FTM 13-001, Graystone, is under review and should be recorded soon, which will subdivide this property into 7 SFR lots. As building permits for these homes are issued, the affordable housing fee is being paid; none of the 8 EHU's for Solstice II are being used. Once FTM 13-001 is recorded, these 8 EHU's will be available for mitigation of other projects.

⁵ Chutes PC 02-31, UPA 02-06.

⁶ 17 EHU's per restrictive covenant, recordation No. 2012006021.

⁷ 150 EHU's were constructed of which 96 were assigned to Intrawest for their mitigation use (PC Resolution 05-22, UPA 2004-23).

⁸ To date, no affordable housing project has been entitled or built for Lodestar Master Plan Area 4A (Note this area is now part of Area 2 per DZA 12-002). Capacity TBD.

ACQUISITION AGREEMENT

by and between the

TOWN OF MAMMOTH LAKES

and

INTRAWEST CALIFORNIA HOLDINGS, INC.

Dated as of March 1, 2003

**Relating to:
TOWN OF MAMMOTH LAKES
COMMUNITY FACILITIES DISTRICT NO. 2001-1
(NORTH VILLAGE AREA)**

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THIS ACQUISITION AGREEMENT (the "Acquisition Agreement"), dated as of March 1, 2003, is by and between the Town of Mammoth Lakes, a municipal corporation and a political subdivision of the State of California (the "Town"), for the Town's Community Facilities District No. 2001-1 (North Village Area) (the "CFD") and Intrawest California Holdings, Inc., a California corporation (the "Developer").

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall have the meanings ascribed to them in this Section 1.01 for purposes of this Acquisition Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the Fiscal Agent Agreement (as hereinafter defined).

"Acceptable Title" means title to land or interest (such as an easement) therein, in form acceptable to the Director of Public Works, free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director of Public Works as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an "Acceptable Title" if: (i) such offer is necessary to satisfy a condition to a tentative or final parcel map, (ii) such offer is in a form acceptable to the Director of Public Works, (iii) the Director of Public Works has no reason to believe that such offer of dedication will not be accepted by the applicable public agency, and (iv) the Developer commits in writing not to allow any liens to be imposed on such property prior to its acceptance.

"Acceptance Date" means the date the Town Council (or other public entity which is to own a Facility) takes final action to accept dedication of or transfer of title to a Facility.

"Acquisition Agreement" means this Acquisition Agreement, together with any Supplement hereto.

"Act" means the Mello-Roos Community Facilities Act of 1982, Sections 53311 et seq. of the California Government Code, as amended.

"Actual Cost" means the substantiated cost of a Facility, which costs may include: (i) the costs incurred by the Developer for the construction of such Facility, (ii) the costs incurred by the Developer in preparing the Plans for such Facility and the related costs of environmental evaluations of the Facility, (iii) the fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for such Facility, (iv) professional costs incurred by the Developer or the Town associated with such Facility, such as engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; and (v) costs directly related to the construction and/or acquisition of a Facility, such as costs of payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required hereunder). "Actual Cost" may include an amount not in excess of five percent (5.0%) of the cost described in clause (i) of the preceding sentence with respect to any construction, project management or other similar fee payable to the Developer or any party related thereto. "Actual Cost" may include the cost of carry or interest expense with respect to funds advanced by the Developer to pay costs of a Facility described in clauses (i), (ii), (iii) or (iv) of the second preceding sentence, so long as such cost of carry or interest expense is not in excess of the allocable expense under any construction loan obtained by the Developer with

respect to the Facility or, if the subject amount was advanced by the Developer or a related party, an amount equal to the then Prime Rate of interest plus two percent (2%) applied to the amounts so advanced until such amount is reimbursed from payments made by the District hereunder.

"Affiliate" means any entity with respect to which fifty percent (50%) or more of the ownership or voting power is held individually or collectively by any of the Developer and any other entity owned, controlled or under common ownership or control by or with, as applicable, the Developer, and includes all general partners of any entity which is a partnership. Control shall mean ownership of fifty percent (50%) or more of the voting power of or ownership interest in the respective entity.

"Bond Amount" means an amount equal to the principal amount of the Bonds expected to be issued by the Town for the CFD, to be in an amount sufficient to make a deposit to the Improvement Fund, as well as to fund the costs of issuance of the Bonds, a reserve fund for the Bonds, initial CFD administrative costs, and capitalized interest for the Bonds, all as determined by the Town following consultation with the Developer.

"Bonds" means the bonds designated "Town of Mammoth Lakes Community Facilities District No. 2001-1 (North Village Area) 2003 Special Tax Bonds," to be issued by the Town for the CFD. It is expected that the Bonds will be in one series, in a principal amount equal to the Bond Amount, and issued in May of 2003.

"Budgeted Cost" means the amount shown in the column labeled "Budgeted Cost" for a Facility as shown on Exhibit B hereto.

"CFD" means the Town of Mammoth Lakes Community Facilities District No. 2001-1 (North Village Area), created by the Town under the Act.

"County" means the County of Mono, California.

"Developer" means Intrawest California Holdings, Inc., a California corporation, and its successors and assigns to the extent permitted under Section 10.07 hereof.

"Development Agreement" means the Development Agreement By And Among Town of Mammoth Lakes And Intrawest Affiliates, dated as of February 15, 2002, between the Town and the Developer and Affiliates thereof as specified therein.

"Director of Public Works" means the Town's Director of Public Works, or his written designee acting as such under this Acquisition Agreement.

"Discrete Component" means, with respect to any Facility, one or more of the First Component, the Second Component or the Third Component thereof, as the context requires.

"Facilities" means, collectively, the public facilities described in Exhibit A hereto, which are classified for budgeting and payment purposes of this Acquisition Agreement as described in Exhibit B hereto.

"First Component" means, with reference to any specific Facility, an amount equal to the aggregate of the costs of the character described in clauses (ii), (iii) and (iv) of the first sentence of the definition of "Actual Cost" in this Section 1.01 incurred by the Developer in connection with such Facility as set forth in a Payment Request submitted by the Developer to the Town as described in Section 5.03 hereof.

"Fiscal Agent" means Union Bank of California, N.A., in its capacity as fiscal agent under the Fiscal Agent Agreement, or any successor thereto acting as fiscal agent under the Fiscal Agent Agreement.

"Fiscal Agent Agreement" means the agreement by that name between the Town and the Fiscal Agent, providing for, among other matters, the issuance of the Bonds and the establishment of the Improvement Fund, as it may be amended from time to time.

"Improvement Amount" means amount of proceeds of the Bonds deposited to the Improvement Fund on the date of issuance of the Bonds, which shall be the proceeds of the Bonds received from the sale of the Bonds, less amounts deposited to a reserve fund for the Bonds, to the costs of issuance fund for the Bonds, to a capitalized interest account for the Bonds and to be set aside to pay initial administrative expenses of the CFD, all as set forth in the Fiscal Agent Agreement as in effect on the date of issuance of the Bonds.

"Improvement Fund" means the Improvement Fund established by the Fiscal Agent Agreement.

"Permit Issuance Date" means, with respect to any Facility, the date on which the Developer (i) certifies in writing to the Town that the Developer has obtained all governmental permits required for the construction of such Facility, and (ii) irrevocably assigns the Plans (to the extent available as of the Permit Issuance Date in the case of construction contracts) to the Town (subject to the right of the Developer to utilize the Plans to complete the respective Facility and to pursue rights and remedies against the entities that prepared the Plans); provided that the Developer need not take the actions described in the preceding clause (ii) with respect to any Facility to be owned and operated by a public entity other than the Town.

"Payment Request" means a document, substantially in the form of Exhibit C hereto, to be used by the Developer in requesting payment of a Purchase Price.

"Plans" means, with respect to any Facility, the plans, specifications and related construction contracts for the Facility approved pursuant to the applicable standards of the Town or other entity that will own, operate or maintain the respective Facility when it is completed and accepted by the Town or such other entity.

"Prime Rate" means the rate announced from time to time by Union Bank of California, N.A., at its office in San Francisco, California, as its prime rate, as identified by the Developer to the Town in connection with reimbursement for any Actual Cost of the character described in the third sentence of the definition "Actual Cost" in this Section 1.01. If Union Bank of California, N.A., for any reason ceases to announce its prime rate, then "Prime Rate" shall mean the prime rate of any successor to Union Bank of California, N.A., or the prime rate of another similar financial institution selected by the Developer and identified by written notice to the Town.

"Purchase Price" means the amount paid by the Town for a Facility and/or any Discrete Components thereof determined in accordance with Article V hereof.

"Risk Manager" shall mean the person acting in the capacity of Risk Manager for the Town.

"Second Component" means, with reference to any specific Facility, an amount equal to eighty-five percent (85%) of (i) the aggregate of the Budgeted Cost for such Facility, less (ii) the amount, if any, of the First Component of such Facility theretofore paid by the Town to the Developer under this Acquisition Agreement, as such Budgeted Cost and payment for such First

Component are set forth in a Payment Request submitted by the Developer to the Town as described in Section 5.03 hereof.

"Substantial Completion Date" means, with respect to any Facility, the date on which the Developer certifies in writing to the Town that the respective Facility is in a state of completion such that it is ready for its intended use, the Facility is the subject of an irrevocable offer of dedication by the Developer to the Town, and the Director of Public Works concludes that such certification is reasonably accurate and such offer of dedication is in a form acceptable to the City Attorney and the Director of Public Works. In addition, in the event that, as of the Permit Issuance Date for the Facility, the Developer has not irrevocably assigned all construction contracts (or any other Plans) for the Facility to the Town, an additional condition to the occurrence of the Substantial Completion Date shall be an irrevocable assignment of such construction contracts (and any other Plans not so assigned) by the Developer to the Town for the Facility.

"Supplement" means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, including any amendments to the budget for the Facilities in Exhibit B.

"Third Component" means, with reference to any specific Facility, an amount equal to (i) the aggregate of the Actual Cost incurred by the Developer in connection with such Facility, less (ii) the aggregate amount, if any, of the First Component and the Second Component of such Facility theretofore paid by the Town to the Developer under this Acquisition Agreement, as such Actual Cost and payment for such First Component and Second Component are set forth in a Payment Request submitted by the Developer to the Town as described in Section 5.03 hereof.

"Town" means the Town of Mammoth Lakes, a municipal corporation and a political subdivision of the State.

ARTICLE II

RECITALS

Section 2.01. The CFD. The Town Council has established the CFD under the Act for the financing of, among other things, the acquisition, construction and installation of public facilities identified in the proceedings to form the CFD, which include the Facilities listed in Exhibit A hereto.

Section 2.02. The Development. The Developer is developing land located within the CFD.

Section 2.03. The Facilities. The Facilities are within or in the vicinity of the CFD, and the Town and the Developer will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land owned by the Developer that is located within the CFD. The Developer acknowledges that the inclusion of Facilities in Exhibit A hereto in no way, in itself, obligates the Town to issue any Bonds to acquire the Facilities from the Developer or implies that the Town has in any way engaged the Developer to construct the Facilities, except as specifically provided in this Acquisition Agreement.

Section 2.04. The Financing. The Developer and the Town wish to finance the acquisition of the Facilities and the payment therefor by entering into this Acquisition Agreement for the acquisition of the Facilities and payment for Discrete Components thereof with a portion of the proceeds of the Bonds to be deposited in the Improvement Fund.

Section 2.05. The Bonds. The Town is proceeding with the authorization and issuance of the Bonds under the Act and the Fiscal Agent Agreement, the proceeds of which Bonds shall be used, in part, to finance the acquisition of the Facilities, subject to the provisions of this Acquisition Agreement. The Town expects to issue the Bonds in a principal amount equal to the Bond Amount by June 1, 2003, subject to bond market conditions, the provision of a letter of credit by or on behalf of the Developer as contemplated by the current drafts of the bond offering documents, and the completion of the official statement, continuing disclosure agreement and other documents necessary to sell and issue the Bonds. The execution by the Town of this Acquisition Agreement in no way obligates the Town to use other than its best efforts to issue the Bonds, or to issue any additional debt.

Section 2.06. No Advantage to Town Construction. The Town, by its approval of this Acquisition Agreement, has determined that it will obtain no advantage from undertaking the construction by the Town directly of the Facilities, and that the provisions of this Acquisition Agreement require that the Facilities be constructed by the Developer as if they had been constructed under the direction and supervision of the Town. The Developer hereby represents that it has experience in the supervision of the construction of public facilities of the character of the Facilities.

Section 2.07. Agreements. In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Town and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

ARTICLE III

FUNDING

Section 3.01. Town Proceedings. By the date on which the Bonds are issued, the Town will have conducted all necessary proceedings under the Act for the issuance, sale and delivery of the Bonds and, on the date of execution and delivery of this Acquisition Agreement, expects to issue the Bonds by June 1, 2003 in a principal amount equal to the Bond Amount.

Section 3.02. Bonds. The Town will deposit proceeds of the Bonds in an amount equal to the Improvement Amount in the Improvement Fund, which amount is equal to the sum of the Budgeted Costs of the Facilities as of the date of execution of this Acquisition Agreement. The Town shall not be obligated to pay the Purchase Price of the Facilities or any Discrete Components thereof except from amounts on deposit in the Improvement Fund. The Town makes no warranty, express or implied, that the proceeds of the Bonds deposited and held in the Improvement Fund, and any investment earnings thereon deposited to the Improvement Fund, will be sufficient for payment of the Purchase Price of all of the Facilities.

Section 3.03. Bond Proceeds. The proceeds of the Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. A portion of the proceeds of the Bonds in the amount identified in Section 3.02 above will be set aside under the Fiscal Agent Agreement in the Improvement Fund. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Fiscal Agent Agreement and the applicable provisions hereof for payment of all or a portion of the costs of construction and/or acquisition of the Facilities, all as herein provided.

The Developer agrees that the Town alone shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to the Fiscal Agent Agreement, including the Improvement Fund, and that the Developer has no right whatsoever to direct investments under the Fiscal Agent Agreement.

The Town shall have no responsibility whatsoever to the Developer with respect to any investment of funds made by the Fiscal Agent under the Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment; however, the Town agrees not to modify the "Permitted Investments" allowed under the Fiscal Agent Agreement, and to enforce compliance by the Fiscal Agent with the investment provisions of Section 6.01 of the Fiscal Agent Agreement. Any investment loss may diminish the amounts available in the Improvement Fund to pay the Purchase Price of Facilities hereunder. The Developer further acknowledges that the obligation of any owner of real property in the CFD, including the Developer to the extent it owns any real property in the CFD, to pay special taxes levied in the CFD is not in any way dependent on: (i) the availability of amounts in the Improvement Fund to pay for all or any portion of the Facilities hereunder, or (ii) the alleged or actual misconduct of the Town in the performance of its obligations under this Acquisition Agreement, the Fiscal Agent Agreement, any developer agreement or amendment thereto or any other agreement to which the Developer and the Town are signatories.

The Developer acknowledges that any lack of availability of amounts in the Improvement Fund to pay the Purchase Price of Facilities shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities required by Article 6 of the Development Agreement.

ARTICLE IV

CONSTRUCTION OF FACILITIES

Section 4.01. Plans. To the extent that it has not already done so, the Developer shall cause Plans to be prepared for the Facilities. The Developer shall obtain the written approval of the Plans in accordance with applicable ordinances and regulations of the Town and/or the public entity that will own and operate the Facilities. Copies of all Plans shall be provided by the Developer to the Director of Public Works upon request therefor, and, in any event, as built drawings and a written assignment of the Plans for any Facility shall be provided to the Town prior to its acceptance of the Facility.

Section 4.02. Duty of Developer to Construct. The Facilities shall be constructed by or at the direction of the Developer in accordance with the approved Plans; provided that the Developer shall only be obligated under this Acquisition Agreement to construct Facilities that have identified Budgeted Costs in Exhibit B, and, if the Actual Cost of all of the Facilities with Budgeted Costs is reasonably estimated by the Developer to be less than the total of the Budgeted Costs, then the amount of such difference can be allocated to pay the Actual Costs of such Facilities with no initial Budgeted Cost as determined by the Developer and identified in writing to the Town (i) following the Substantial Completion Date for all Facilities with Budgeted Costs, or (ii) with respect to Budgeted Costs for the Ski-back Bridge, such funds can be reallocated if the construction of such Facility is delayed (as described in Exhibit B hereto) in which case Developer shall not be obligated under this Acquisition Agreement to construct the Ski-back Bridge. Any amounts not so allocated within 120 days after the Substantial Completion Date for all Facilities with Budgeted Costs (but excluding the Ski-back Bridge if construction has been delayed) shall be subject to disposition under and in accordance with the terms of the Fiscal Agent Agreement and will no longer be available for purposes of this Acquisition Agreement.

The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the Town from the Developer hereunder.

Subject to the deposit by the Town of proceeds of the Bonds in an amount equal to the Improvement Amount in the Improvement Fund, the Developer shall be obligated: (i) to construct and cause conveyance to the Town (or other applicable governmental agency) all Facilities with Budgeted Costs listed in Exhibit B hereto (and any other Facilities to which funds have been allocated under the terms of the proviso in the first sentence of Section 4.02 hereof), and (ii) to use its own funds to pay all costs of the Facilities with Budgeted Costs (and any other Facilities to which funds have been allocated under the terms of the proviso in the first sentence of Section 4.02 above) in excess of the Purchase Prices thereof to be paid therefor hereunder.

The Developer shall not be relieved of its obligation to construct each Facility and convey each such Facility to the Town in accordance with the terms hereof, even if, (i) because of the limitations imposed by Section 5.06 hereof, the Purchase Price for such Facility is less

that the Actual Cost, or cost to the Developer, of such Facility, or (ii) there are insufficient funds in the Improvement Fund to pay the Purchase Prices thereof, and, in any event, this Acquisition Agreement shall not affect any obligation of any owner of land in the CFD under any other agreement or any governmental approval to which any land within the CFD is subject, with respect to the public improvements required in connection with the development of the land within the CFD. Such obligation of the Developer to construct and convey such Facilities, and pay the costs thereof in excess of available monies in the Improvement Fund, shall be an obligation of the Developer as a party to this Acquisition Agreement.

Section 4.03. Relationship to Public Works. This Acquisition Agreement is for the acquisition by the Town of the Facilities and payment for Budgeted Costs thereof listed in Exhibit B hereto (and any other Facilities to which Funds have been allocated under the terms of the proviso in the first sentence of Section 4.02 hereof) from moneys in the Improvement Fund and is not intended to be a public works contract. The Town and the Developer agree that the Facilities are of local, and not state-wide concern, and that the provisions of the California Public Contract Code shall not apply to the construction of the Facilities. The Town and the Developer agree that the Developer shall award all contracts for the construction of the Facilities and that this Acquisition Agreement is necessary to assure the timely and satisfactory completion of the Facilities and that compliance with the Public Contract Code with respect to the Facilities would work an incongruity and would not produce an advantage to the Town or the CFD.

The Town acknowledges and approves the Developer's selection of UPA Resort Construction, LLC ("UPA") as the prime contractor for the construction of the Facilities. It is expected that UPA will supervise, under the direction of the Developer, the construction of certain of the Facilities, and may itself undertake any such construction. While any amounts due to UPA in respect of its contract with the Developer related to the Facilities may be included in the "Actual Costs" of the related Facilities, the Town shall not have any obligation whatsoever to make any payments to, and shall have no liability whatsoever to UPA under any contract between the Developer and UPA. The Developer agrees to inform UPA of the provisions of this Acquisition Agreement, including those in the preceding sentence. In the event that the Developer desires to change the prime contractor for any of the Facilities, it shall discuss with the Town a process for selecting a new prime contractor, which shall be reasonably acceptable to the Town. Any selection process substantially similar to that used by the Developer in selecting UPA (as outlined in the letter of June 22, 2001 from Doug Ogilvy to Steve Julian, a copy of which is attached hereto as Exhibit D) shall be deemed to be reasonable. However, Developer may elect not to utilize a prime contractor for portions of the Facilities and to enter into contracts for the work directly, but will in any event be subject to the requirements of the next paragraph with respect to the bidding of contracts and subcontractors and the limitation in the second sentence of the definition of "Actual Cost" in Section 1.01 of this Acquisition Agreement.

Notwithstanding the preceding two paragraphs, the Developer shall award all contracts or subcontracts for the actual construction of the Facilities with Budgeted Costs listed in Exhibit B hereto and the acquisition of materials related thereto by means of a bid process whereby the Director of Public Works examines and reasonably approves the list of potential bidders, at least two independent bids are obtained, and the contract is awarded to the bidder that the Developer determines, in its reasonable discretion, to be the best responsible bidder. In any event, if the award is made to other than the lowest bidder, the Developer shall provide written documentation acceptable to the Director of Public Works supporting its decision to make the award to another bidder. The Director of Public Works shall be entitled to discuss the bidding process with the Developer at any time and from time to time, and to require reasonable changes thereto for future contracts if, in the judgment of the Director of Public Works, said process is not resulting in competitive bids for the Facilities.

From time to time at the request of the Director of Public Works, the Developer shall meet and confer with Town staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities, and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Acquisition Agreement. The Developer shall advise the Director of Public Works in advance of any regularly scheduled weekly and/or monthly coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The Director of Public Works or the Director of Public Work's designated representative shall have the right (i) to be present at such meetings, and (ii) following written notice by the Town to the Developer (who shall have the right to be present at any meetings of the Town with individual contractors), to meet and confer with individual contractors if deemed advisable by the Director of Public Works to ensure the proper completion of the Facilities.

Section 4.04. Independent Contractor. In performing this Acquisition Agreement, the Developer is an independent contractor and not the agent or employee of the Town or the CFD. Neither the Town nor the CFD shall be responsible for making any payments to UPA or to any contractor, subcontractor, agent, consultant, employee or supplier of the Developer or UPA.

Section 4.05. Performance and Payment Bonds. The Developer agrees to comply with all applicable performance and payment bonding requirements of the Town (and other applicable public entities and/or public utilities) with respect to the construction of the Facilities, with any required bonds to be provided by the Developer or its prime contractor. Performance and payment bonds for a Facility shall not be required of the Developer to the extent moneys are available in the Improvement Fund to pay the Budgeted Cost assigned to a Facility (and consistent with the limitations expressed in Section 5.06 hereof); and the Town agrees to release any such bonds provided prior to the effective date of this Acquisition Agreement in an amount up to the amount deposited to the Improvement Fund as described in Section 3.02 above. Notwithstanding the foregoing, the Developer or the contractors and/or subcontractors employed by the Developer in connection with the construction of Facilities shall provide a labor and materials and performance bonds which name the Town as an additional insured.

Section 4.06. Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as "change orders") required for the construction of the Facilities with Budgeted Costs assigned in Exhibit B hereto, as amended from time to time, and all such contracts and supplemental agreements shall be submitted to the Director of Public Works. Prior approval of supplemental agreements by the Director of Public Works shall only be required for such change orders which in any way materially alter the quality or character of the subject Facilities, or which involve an amount greater than \$50,000. The Town expects that such contracts and supplemental agreements needing prior approval by the Director of Public Works will be approved or denied (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval) within ten (10) business days of receipt by the Director of Public Works thereof. Any approval by the Director of Public Works of a supplemental agreement shall in no way affect the Budgeted Costs listed in Exhibit B for any related Facility, but to the extent that it increases the Actual Cost of a Facility, such increased cost may be payable as part of the Purchase Price of the related Facility if the Actual Costs of other Facilities with Budgeted Costs assigned are less than their respective Budgeted Costs, as provided in Section 5.06A. hereof.

Section 4.07. Time for Completion. The Developer agrees that this Acquisition Agreement is for the benefit of the Town and the Developer and, therefore, the Developer (i) covenants to commence construction of all of the Facilities which it is obligated to construct under the provisions of Section 4.02 above, other than the Ski-back Bridge, within thirty-six (36)

calendar months from the date of issuance of the Bonds, and (ii) represents that it expects, and will use its good faith efforts, to complete the Facilities which it is obligated to construct under the provisions of Section 4.02 above and to have requested payment for the Facilities with Budgeted Costs assigned in Exhibit B under this Acquisition Agreement within thirty-six (36) calendar months from the date of the issuance of the Bonds. Any failure to complete such Facilities within said time period shall not, however, in itself, constitute a breach by the Developer of the terms of this Acquisition Agreement.

ARTICLE V

ACQUISITION AND PAYMENT

Section 5.01. Inspection. No payment hereunder shall be made by the Town to the Developer for a Second Component or a Third Component of a Facility until the Substantial Completion Date has occurred with respect to such Facility. The Town shall make or cause to be made periodic site inspections of the Facilities to be acquired hereunder (it being expected that the Town typically will make inspections within 5 Business Days of the date the Developer informs the Director of Public Works in writing of the completion of a Second Component or a Third Component of a Facility); provided that in no event shall the Town incur any liability for any delay in the inspection of any Facilities (however, it is acknowledged that "Actual Cost" does permit payment for financing expense and cost of carry of Facilities). For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining such inspections and providing written evidence thereof to the Director of Public Works. The Developer agrees to pay all inspection, permit and other similar fees of the Town applicable to construction of the Facilities.

Section 5.02. Agreement to Sell and Purchase Facilities. The Developer hereby agrees to sell the Facilities with Budgeted Costs assigned in Exhibit B hereto (and any Facilities to which funds have been allocated under the terms of the proviso in the first sentence of Section 4.02 hereof) to the Town (or other applicable public agency that will own a Facility), and the Town hereby agrees to use amounts in the Improvement Fund to pay the Purchase Prices thereof to the Developer, subject to the terms and conditions hereof. The Developer shall be entitled to submit Payment Requests to the Town for payment of the Actual Cost of each Facility with Budgeted Costs assigned in Exhibit B hereto (and any Facilities to which funds have been allocated under the terms of the proviso in the first sentence of Section 4.02 hereof) as follows: (a) on or after the Permit Issuance Date, for payment of the First Component of the applicable Facility, (b) on or after the Substantial Completion Date, for payment of the Second Component of the applicable Facility, and (c) following the Acceptance Date of the applicable Facility, the payment of the Third Component of the applicable Facility; in each case subject to the applicable provisions of this Article V. The Developer acknowledges that the First Component, the Second Component and the Third Component have been identified for payment purposes only, and that the Town (or other applicable public agency that will own a Facility) shall not accept a Facility until the entire Facility has been completed. The Town acknowledges that a Facility does not have to be accepted by the Town (or other applicable public agency that will own a Facility) as a condition precedent to the payment of the Purchase Price of the First Component or the Second Component thereof, but any such payment shall not be made until the Permit Issuance Date or the Substantial Completion Date, respectively, therefor, as verified by the Director of Public Works. In any event, the Town shall not be obligated to pay the Purchase Price for any Facility except from the moneys in the Improvement Fund.

Section 5.03. Payment Requests. In order to receive the Purchase Price for a Discrete Component, the Developer shall deliver to the Director of Public Works: (i) a Payment Request in the form of Exhibit C hereto for such Discrete Component, together with all attachments and exhibits required by Exhibit C and this Section 5.03 to be included therewith (including, but not limited to Attachments 1 and 2 to Exhibit C), and (ii) if payment is requested for the Third Component of a Facility, (a) if the property on which the Facility is located is not owned by the Town (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded documents conveying to the Town (or other applicable public agency that will own the Facility) Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 6.01 hereof, (b) a copy of the recorded notice of completion of such Facility (if applicable), (c) to the extent reimbursements may be payable with respect to

the Facility, such as public or private utility reimbursements, a calculation showing a deduction from Actual Costs in the amount of any such reimbursements, (d) an assignment of the warranties and guaranties for such Facility, as described in Section 6.05 hereof, in a form acceptable to the Town (any such assignment to not preclude the Developer from independently enforcing any such warranty or guaranty), and (e) a copy of "as built" drawings for the Facility if the Facility is to be owned by or otherwise conveyed to the Town. The Developer shall be entitled to use its own funds to pay costs of any of the Facilities, without any requirement for reimbursement from amounts in the Improvement Fund, if the Developer elects not to include such costs in any Payment Request.

Section 5.04. Processing Payment Requests. Upon receipt of a Payment Request (and all accompanying documentation), the Director of Public Works shall use reasonable diligence to conduct a review in order to confirm that such request is complete, that the applicable Discrete Component identified therein is in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Discrete Component specified in such Payment Request. The Director of Public Works shall also use reasonable diligence to conduct such review as is required in his discretion to confirm the matters certified in the Payment Request. The Developer agrees to cooperate with the Director of Public Works in conducting each such review and to provide the Director of Public Works with such additional information and documentation as is reasonably necessary for the Director of Public Works to conclude each such review. For any Facilities to be acquired by another public entity or utility, the Developer shall provide evidence acceptable to the Director of Public Works that such Facilities are acceptable to such entity or utility prior to payment of any Second Component or Third Component thereof. Within ten (10) business days of receipt of any Payment Request, the Director of Public Works expects to review the request for completeness and notify the Developer whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment Request is complete, the Director of Public Works expects to provide a written approval or denial (specifying the reason for any denial) of the request within 20 days of its submittal. If a Payment Request seeking reimbursement for more than one Discrete Component is denied, the Director of Public Works shall state whether the Payment Request is nevertheless approved and complete for any one or more other Discrete Components and any such Discrete Components shall be processed for payment under Section 5.05 notwithstanding such partial denial.

Section 5.05. Payment. Upon approval of the Payment Request by the Director of Public Works, the Director of Public Works shall sign the Payment Request and forward the same to the Town's Finance Director. Upon receipt of the reviewed and fully signed Payment Request, the Town's Finance Director shall, within the then current Town financial accounting payment cycle but in any event within fifteen (15) business days of receipt of the approved Payment Request, cause the same to be paid by the Fiscal Agent under the applicable provisions of the Fiscal Agent Agreement, to the extent of funds then on deposit in the Improvement Fund. Any approved Payment Request not paid due to an insufficiency of funds in the Improvement Fund, shall be paid promptly following the deposit into the Improvement Fund of proceeds of any investment earnings or other amounts transferred to the Improvement Fund under the terms of the Fiscal Agent Agreement.

The Purchase Price paid hereunder for any Discrete Component shall constitute payment in full for such Discrete Component, including, without limitation, payment for all labor, materials, equipment, tools and services used or incorporated in the work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of such Discrete Component.

The Town agrees to use reasonable diligence in releasing any performance bonds posted in connection with any Facility the construction of which Facility has been completed and which has been accepted by the Town.

Section 5.06. Restrictions on Payments. Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Developer under Sections 5.02 and 5.05 hereof:

A. **Amounts of Payments.** Subject to the following paragraphs of this Section 5.06, payments for each Discrete Component will be made only in the amount of the Actual Cost of the respective Discrete Component; however, if the Actual Cost exceeds the Budgeted Cost for a Discrete Component, the excess shall be borne by the Developer until such time as a Budgeted Cost for another Discrete Component of the same or any other Facility with Budgeted Costs is greater than the Actual Cost therefor, in which event the savings shall be applied to reduce any excess of Actual Cost over Budgeted Cost previously paid for any Discrete Component by the Developer. ~~Any savings attributable to the Actual Cost being less than Budgeted Cost which are not disbursed under the previous sentence to cover unreimbursed Actual Costs shall be, at the discretion of the Developer, (i) carried forward to be credited against future cost overruns (i.e., Actual Costs which exceed the Budgeted Costs for any Discrete Component of any Facility), or costs related to supplemental agreements (change orders), and/or (ii) following the Substantial Completion Date for all Facilities with Budgeted Costs (other than the Ski-back Bridge if construction thereof is delayed), allocated to pay the Actual Costs of Facilities with no initial Budgeted Costs, as further described in the proviso in the first sentence of Section 4.02. In addition, Budgeted Costs for the Ski-back Bridge can be re-allocated if construction of such Facility is delayed as described in Exhibit B.~~

Nothing herein shall require the Town in any event (i) to pay more than the Actual Cost of a Discrete Component, or (ii) to pay an amount which would cause the sum of all Purchase Prices paid for all acquired Facilities to exceed the sum of all Budgeted Costs for such acquired items, or (iii) to make any payment beyond the available funds in the Improvement Fund. The parties hereto acknowledge and agree that all payments to the Developer for the Purchase Prices of Discrete Components are intended to be reimbursements to the Developer for monies already expended by the Developer.

B. **Joint or Third Party Payments.** The Town may make any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so requests the same in writing.

C. **Withholding Payments.** The Town shall be entitled, but shall not be required, to withhold any payment hereunder for a Discrete Component if the Developer or any Affiliate is delinquent in the payment of ad valorem real property taxes levied on property in the CFD, special assessments or taxes levied on property in the CFD, or Special Taxes levied by the CFD. In the event of any such delinquency, the Town shall only make payments hereunder, should any be made at the Town's sole discretion, directly to contractors or other third parties employed in connection with the construction of the Facilities or to any assignee of the Developer's interests in this Acquisition Agreement (and not to the Developer or any Affiliate), until such time as the Developer provides the Director of Public Works with evidence that all such delinquent taxes and assessments have been paid.

The Town shall be entitled to withhold any payment hereunder for a Discrete Component that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Developer for the Discrete Component that is the subject of a Payment Request, or conditional lien releases have been provided by the Developer for such Discrete Component. The Town, in its discretion, may waive this limitation upon the provision by the Developer of sureties, undertakings, securities and/or bonds of the Developer or appropriate contractors or subcontractors and deemed satisfactory by the Director of Public Works to assure payment of such claims.

The Town shall be entitled to withhold payment for the Third Component of any Facility hereunder to be owned by the Town until: (i) the Director of Public Works determines that the Facility is ready for its intended use, (ii) the Acceptance Date for the Facility has occurred and the requirements of Section 6.01, if applicable to such Facility, have been satisfied, and (iii) a Notice of Completion executed by the Developer, in a form acceptable to the Director of Public Works, has been recorded for the Facility and general lien releases conditioned solely upon payment from the proceeds of the Bonds to be used to acquire such Facility (or final Discrete Component) have been submitted to the Director of Public Works for the Facility. The Town hereby agrees that the Developer shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the Town to indemnify it for any losses sustained by the Town because of any liens that may exist at the time of acceptance of such a Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works. The Town shall be entitled to withhold payment for the Third Component of any Facility to be owned by other governmental entities, until the Developer provides the Director of Public Works with evidence that the governmental entity has accepted dedication of and/or title to the Facility. If the Director of Public Works determines that a Facility is not ready for intended use under (i) above, the Director of Public Works shall so notify the Developer as soon as reasonably practicable in writing specifying the reason(s) therefor.

Nothing in this Acquisition Agreement shall be deemed to prohibit the Developer from contesting in good faith the validity or amount of any mechanics or materialmans lien nor limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Facilities or any Discrete Component thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Developer shall post or cause the delivery of a bond in an amount equal to the amount in dispute with respect to any such contested lien, with any such bond to be drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works.

D. Retention. The Town shall withhold in the Improvement Fund an amount equal to ten percent (10%) of the Purchase Price of each Second Component and Third Component of each Facility to be paid hereunder. Any such retention will be released to the Developer upon final completion and acceptance of the related Facility and the expiration of a maintenance period consistent with applicable Town policy thereafter (currently a one year warranty period for any landscaping, and upon receipt of a faithful performance bond acceptable to the Director of Public Works to remain in effect for one year as to other Facilities).

Notwithstanding the foregoing, the Developer shall be entitled to payment of any such retention upon the completion and acceptance of a Facility or, if a maintenance or warranty bond is posted in lieu thereof in accordance with Section 6.05 hereof. Payment of any retention shall also be contingent upon the availability of monies in the Improvement Fund therefore. No retention shall apply if the Developer proves to the

Director of Public Work's satisfaction that the Developer's contracts for the Facilities provide for the same retention as herein provided, so that the Purchase Price paid for the Facility is at all times net of the required retention.

E. **Frequency.** Unless otherwise agreed to by the Director of Public Works, no more than one Payment Request shall be submitted by the Developer in any calendar month.

Section 5.07. Acquisition of Additional Facilities. If the Substantial Completion Date has occurred with respect to all the Facilities with Budgeted Costs assigned in Exhibit B (or otherwise upon a delay in the construction of the Ski-back Bridge with respect to the Budgeted Amount for such Facility), ~~and funds remaining on deposit in the Improvement Fund, the Developer may designate Budgeted Costs for Facilities not theretofore allocated Bond proceeds in Exhibit B as described in the proviso in the first sentence of Section 4.02 hereof.~~

Section 5.08. Defective or Nonconforming Work. If any of the work done or materials furnished for a Discrete Component are found by the Director of Public Works to be defective or not in accordance with the applicable Plans: (i) and such finding is made prior to payment for the Purchase Price of such Discrete Component hereunder, the Town may withhold from the payment therefor an amount determined by the Director of Public Works as sufficient to correct such defect or noncompliance until such defect or nonconformance is corrected to the satisfaction of the Director of Public Works, or (ii) and such finding is made after payment of the entire Purchase Price of such Facility, the Town and the Developer shall act in accordance with the Town's standard specification for public works construction.

Section 5.09. Modification of Facilities. Upon written request of the Developer, the Director of Public Works shall consider modification of the description of any Facility. Any such modification shall be subject to the written approval of the Director of Public Works, and shall not (a) diminish the overall Facilities to be provided by the Developer hereunder (in a material way such that the change invalidates any of the assumptions used in the appraisal conducted to sell the Bonds), (b) in any way increase the total Budgeted Costs identified in Exhibit B, or (c) modify the Facility such that it is no longer within the scope of the Facilities authorized to be funded by the CFD.

ARTICLE VI

OWNERSHIP AND TRANSFER OF FACILITIES

Section 6.01. Facilities to be Owned by the Town – Conveyance of Land and Easements to Town. Acceptable Title to all property on, in or over which each Facility to be acquired by the Town will be located, shall be deeded over to the Town by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the Town as being a sufficient interest therein to permit the Town to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Developer to perform its obligations as set forth in this Acquisition Agreement. The Developer agrees to assist the Town in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for the Third Component of a Facility, and shall be evidenced by recordation of the acceptance thereof by the Town Council or the designee thereof.

Section 6.02. Facilities to be Owned by the Town – Title Evidence. Upon the request of the Town, the Developer shall furnish to the Town a preliminary title report for land with respect to Facilities to be acquired by the Town and not previously dedicated or otherwise conveyed to the Town, for review and approval at least fifteen (15) calendar days prior to the earlier of payment for the Second Component of the Facility or the date of transfer of Acceptable Title to a Facility to the Town. The Director of Public Works shall approve the preliminary title report unless it reveals a matter which, in the judgment of the Town, could materially affect the Town's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the Town does not approve the preliminary title report, the Town shall not be obligated to accept title to such Facility or pay the Purchase Price for the Second Component or the Third Component of such Facility until the Developer has cured such objections to title to the satisfaction of the Town.

Section 6.03. Facilities Constructed on Private Lands. If any Facilities to be acquired are located on privately-owned land, the owner thereof shall retain title to the land and the completed Facilities until acquisition of the Facilities under Article V hereof. Pending the completion of such transfer, the Developer shall not be entitled to receive any payment for the Third Component of any such Facility. The Developer shall, however, be entitled to receive payment for the Second Components of any such Facility upon making an irrevocable offer of dedication of such land in form and substance acceptable to the Director of Public Works.

Section 6.04. Facilities Constructed on Town Land. If the Facilities to be acquired are on land owned by the Town, the Town hereby grants to the Developer a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and acceptance of such Facilities otherwise provided herein shall apply.

Section 6.05. Facilities to be Acquired by Other Public Agencies. With respect to any Facility to be acquired by a public entity other than the Town, the Developer shall comply with such entities rules and regulations regarding title and conveyance of property, and provide the Director of Public Works with evidence of such compliance, prior to the payment of the Purchase Price for the Third Component of any such Facility.

Section 6.06. Maintenance and Warranties. The Developer shall maintain each Facility in good and safe condition until the Acceptance Date of the Facility. Prior to the Acceptance Date, the Developer shall be responsible for performing any required maintenance on any completed Facility. On or before the Acceptance Date of the Facility, the Developer shall assign

to the Town all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Facility, but any such assignment shall not preclude the Developer from independently enforcing any such warranties, guarantees or maintenance obligation. The Developer shall maintain or cause to be maintained each Facility to be owned by the Town (including the repair or replacement thereof) for a period of one year from the Acceptance Date thereof, or, alternatively, shall provide a bond reasonably acceptable in form and substance to the Director of Public Works for such period and for such purpose (specifically, a one-year maintenance period for landscaping improvements, and for the posting of a warranty bond to remain in effect for one year as to other Facilities), to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Developer, at its own cost and expense, to the satisfaction of the Director of Public Works. The Developer shall commence to repair, replace or correct any such defects within thirty (30) days after written notice thereof by the Town to the Developer, and shall complete such repairs, replacement or correction as soon as practicable. After such one-year period, the Town shall be responsible for maintaining such Facility. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the Town shall be delivered to the Director of Public Works as part of the transfer of title.

ARTICLE VII

INSURANCE; RESPONSIBILITY FOR DAMAGE

Section 7.01. Liability Insurance Requirements. The Developer shall provide to the Director of Public Works evidence of insurance and endorsements thereto on forms acceptable to the Risk Manager prior to the execution by it of this Acquisition Agreement.

The Developer shall procure and maintain for the duration of this Acquisition Agreement the following minimum insurance coverage and limits against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work covered by this Acquisition Agreement by the Developer, its agents, representatives, employees or subcontractors:

- a) Premises, operation and mobile equipment.
- b) Products and completed operations.
- c) Explosion, collapse and underground hazards.
- d) Personal injury.
- e) Contractual liability.
- f) Errors and omissions for work performed by design professionals.

TYPE OF INSURANCE		<u>COVERAGE</u> <u>PER OCCURRENCE</u>
Commercial General Liability (Primary)		\$2,000,000
Umbrella Liability (Over Primary, if required)		\$4,000,000
Business Auto	CA 00 01 06 92	\$1,000,000
Workers' Compensation/ Employers' Liability		Statutory \$1,000,000
Errors and Omissions		\$1,000,000

Combined single limit per occurrence shall include coverage for bodily injury, personal injury, and property damage for each accident and a five million dollar (\$5,000,000) general aggregate.

The Developer maintains environmental impairment liability insurance and will name the Town as an additional insured under those policies.

The Developer shall provide endorsements or other proof of coverage for contractual liability and be approved by the Risk Manager. Each required insurance policy coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after fifteen (15) days written notice by certified mail, return receipt requested, has been given to: Director of Public Works, Town of Mammoth Lakes, P.O. Box 1609, Mammoth Lakes, California 93546.

Liability coverage shall not be limited to the vicarious liability or supervising role of any additional insured nor shall there be any limitation with the severability clause.

Any umbrella liability coverage shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies not covered by the umbrella policy. Coverage shall be following form to any other underlying coverage. Coverage shall be on a "pay on behalf" basis, with defense costs

payable in addition to policy limits. There shall be no cross policy exclusion and no limitation endorsement. The policy shall have starting and ending dates concurrent with the underlying coverage.

All liability insurance shall be on an occurrence basis. Insurance on a claims made basis will be rejected. Any deductibles or self-insured retentions shall be declared to and approved by the Risk Manager.

The Developer shall furnish to the Town certificates of insurance and endorsements on forms specified by the Director of Public Works or the Risk Manager, duly authenticated, giving evidence of the insurance coverage required in this contract and other evidence of coverage or copies of policies as may be reasonably required by the Director of Public Works or the Risk Manager from time to time. Insurance shall be placed with insurers with a Best's Rating of no less than A:VII.

All subcontractors employed on the work referred to in this Acquisition Agreement shall provide proof of workers' compensation / employers liability as required by statute for the state in which the work is to be performed. Each subcontractor shall provide a certificate of insurance to the Risk Manager showing general liability limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. If the value of the subcontractor's contract is equal or great than \$1,000,000 then they are required to provide general liability limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Subcontractors shall provide a certificate of insurance to the Risk Manager for automobile liability with limits no less than \$1,000,000.

The Town shall not be liable for any accident, loss, or damage to the work prior to its completion and acceptance, and the Developer shall save, keep and hold harmless the Town, and its consultants, and each of its Councilmembers, officers, officials, employees, agents and volunteers from all damages, costs or expenses in law or equity that may at any time arise or be claimed because of damages to property, or personal injury received by reason of or in the course of performing work, which may be caused by any willful or negligent act or omission by the Developer or any of the Developer's employees, or any subcontractor.

The cost of insurance required by this subsection shall be born by the Developer and its subcontractors and no compensation for purchasing insurance or additional coverage needed to meet these requirements will be paid for by the Town; provided, however that the Developer shall be entitled to recover, as part of the Purchase Price of a Second Component or a Third Component of a Facility, insurance costs included within the definition "Actual Cost" in Section 1.01 above.

In the event that any required insurance is reduced in coverage, canceled for any reason, voided or suspended, the Developer agrees that the Town may arrange for insurance coverage as specified, and the Developer further agrees that administrative and premium costs may be deducted from any deposits or bonds the Town may have, or from the Improvement Fund. A reduction or cancellation will be grounds for termination of this Acquisition Agreement and will cause a halt to all work on the Facilities until the insurance is reestablished.

Liability policies shall contain, or be endorsed to contain the following provisions:

(a) General Liability: The Town, and its consultants, and each of its Councilmembers, officers, officials, employees and volunteers shall be covered as additional insureds as it respects: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer' premises owned, occupied or used by the Developer; or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the

scope or protection afforded to the Town, and its consultants, and each of its Councilmembers, officers, officials, employees, or volunteers.

The Developer's insurance coverage shall be primary insurance with respect to the Town, and its consultants, and each of its Councilmembers, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town and its consultants, and each of its Councilmembers, officers, officials, employees and volunteers shall be excess of the Developer's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, and its consultants, and each of its Councilmembers, officers, officials, employees, and volunteers.

The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) **Workers' Compensation and Employer's Liability:** The Developer and all subcontractors shall have workers' compensation for all employees in conformance with the requirements in Section 3700 of the Labor Code.

(c) **Error and Omissions Liability:** The Developer and all subcontractors who are design professionals shall have and maintain errors and omissions insurance on a Claims made basis.

Section 7.02. Responsibility for Damage. The Developer shall take and assume all responsibility for the work performed as part of the Facilities constructed pursuant to this Acquisition Agreement. The Developer shall bear all losses and damages directly or indirectly resulting to it, to the Town, and its consultants, and each of its Councilmembers, officers, employees and agents, or to others on account of the performance or character of the work, unforeseen difficulties, accidents of any other causes whatsoever.

The Developer shall assume the defense of and indemnify and save harmless the Town, and its consultants, each of its Councilmembers, officers, employees, and agents, from and against any and all claims, losses, damage, expenses and liability of every kind, nature, and description, directly or indirectly arising from the performance of the work, and from any and all claims, losses, damage, expenses, and liability, howsoever the same may be caused, resulting directly, or indirectly from the nature of the work covered by the contract, regardless of responsibility for negligence, to the fullest extent permitted by law except to the extent directly caused by the gross negligence or willful misconduct of the Town or its employees, agents or contractors. In accordance with Civil Code Section 2782, nothing in this Section 7.02 shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the Town, and its consultants, and each of its Councilmembers, agents, servants or independent contractors who are directly responsible to the Town, or for defects in design furnished by such persons. Moreover, nothing in this Section 7.02 shall apply to impose on the Developer, or to relieve the Town from, liability for active negligence of the Town or its consultants as delineated in Civil Code Section 2782. Any relief for determining the Town's sole or active negligence shall be determined by a court of law.

The Town does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the Town, or deposit with the Town by the Developer, of any insurance policies described in Section 7.01. The aforesaid hold harmless agreement by the Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by

reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

No act by the Town, or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, shall in any respect relieve the Developer or anyone else from any legal responsibility, obligation or liability it might otherwise have.

ARTICLE VIII

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 8.01. Representations, Covenants and Warranties of the Developer. The Developer represents and warrants for the benefit of the Town as follows:

A. Organization. The Developer is a corporation duly organized and validly existing under the laws of the State of California, is in compliance with all applicable laws of the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

B. Authority. The Developer has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by the Developer.

C. Binding Obligation. This Acquisition Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

D. Compliance with Laws. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the CFD or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the CFD or the Facilities.

E. Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the Town for the acquisition of any improvements that are not part of the Facilities, and (ii) it will diligently follow all procedures set forth in this Acquisition Agreement with respect to the Payment Requests.

F. Financial Records. Until the date which is two (2) years following the final acceptance of the Facilities, the Developer covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto. Such accounting books shall be maintained until such date in accordance with generally accepted accounting principles, and shall be available for inspection by the Town or its agent until such date at any reasonable time during regular business hours on reasonable notice.

G. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities to be acquired from the Developer hereunder, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages for such construction.

H. Plans. The Developer represents that it has obtained or will obtain approval of the Plans for the Facilities to be acquired from the Developer hereunder from all appropriate departments of the Town and from any other public entity or public utility from which such approval must be obtained. The Developer further agrees that the Facilities to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved plans and specifications and any supplemental agreements (change orders) thereto, as approved in the same manner.

I. Land Owners. The Developer agrees that in the event that it sells any land owned by it within the boundaries of the CFD, the Developer will notify the purchaser in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

J. Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the Original Purchasers of the Bonds or the Town related to the status of construction of improvements within the CFD, the anticipated completion dates for future improvements, and any other matter material to the investment quality of the Bonds.

K. Continuing Disclosure. The Developer agrees to comply with all of its obligations under any continuing disclosure agreement executed by it in connection with the offering and sale of any of the Bonds.

L. Ownership By Affiliates. The Developer agrees to provide to the Town Finance Director on the date of issuance of the Bonds, on (or within five (5) business days of) July 1 of each year so long as the Bonds are outstanding, and on any other date upon three business days notice from the Finance Director of the Town, a written list of all Affiliates of the Developer which own or control the ownership of land located within the CFD, or which have options on land within the CFD, indicating the parcels of land by County Assessor's Parcel number of all such land so owned or optioned.

ARTICLE IX

TERMINATION

Section 9.01. Failure to Issue Bonds. This Acquisition Agreement shall terminate and be of no further force and effect if for any reason whatsoever the Bonds are not issued by December 31, 2003.

Section 9.02. Mutual Consent. This Acquisition Agreement may be terminated by the mutual, written consent of the Town and the Developer, in which event the Town may let contracts for any remaining work related to the Facilities not theretofore acquired from the Developer hereunder, and use all or any portion of the monies in the Improvement Fund to pay for same, and the Developer shall have no claim or right to any further payments for the Purchase Price of Facilities or Discrete Components hereunder, except as otherwise may be provided in such written consent.

Section 9.03. Town Election for Cause. The following events shall constitute grounds for the Town, at its option, to terminate this Acquisition Agreement, without the consent of the Developer:

(a) The Developer shall voluntarily file for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(b) The Developer shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Developer, or shall suffer an attachment or levy of execution to be made against the property it owns within the CFD unless, in any of such cases, such circumstance shall have been terminated or released within thirty (30) days thereafter.

(c) After commencement of actual construction of a Facility with Budgeted Costs assigned in Exhibit B, the Developer shall abandon substantial construction work on such Facility for a period of forty-five (45) days during the period from June to September in any calendar year without providing written notice to the Town specifying the reason and probable amount of time (in excess of the forty-five (45) day period) for the extended work stoppages. If the Developer does provide such extended stoppage notice to the Town prior to the conclusion of the forty-five (45) day period, the Town shall approve or deny in writing, in the Town's reasonable discretion, the extended work stoppage. In the event the Town denies the Developer's extended work stoppage request, the Developer shall have fifteen (15) days from the date of Developer's receipt of the Town's denial to resume work on the Facilities. Notwithstanding anything to the contrary contained herein the Developer's failure to undertake substantial construction-related work on any particular Facility which has a Budgeted Cost assigned in Exhibit B hereto shall not constitute Developer's abandonment.

(d) The Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(e) The Developer shall transfer any of its rights or obligations under this Acquisition Agreement without the prior written consent of the Town.

(f) The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with any preliminary official statement,

official statement or bond purchase contract used in connection with the sale of any series of the Bonds.

(g) The Developer or any of its Affiliates shall at any time challenge the validity of the CFD or any of the Bonds, or the levy of Special Taxes within the CFD, other than on the grounds that such levy was not made in accordance with the terms of the Rate and Method of Apportionment of the Special Taxes for the CFD or applicable law.

If any such event occurs, the Town shall give written notice of its knowledge thereof to the Developer, and the Developer agrees to meet and confer with the Director of Public Works and other appropriate Town staff and consultants as to options available to assure timely completion of the Facilities. Such options may include, but not be limited to the termination of this Acquisition Agreement by the Town. If the Town elects to terminate this Acquisition Agreement, the Town shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the Town to receive such notice) of the grounds for such termination and allow the Developer a minimum of thirty (30) days to eliminate or mitigate to the satisfaction of the Director of Public Works the grounds for such termination. Such period may be extended, at the sole discretion of the Town, if the Developer, to the satisfaction of the Town, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by the Town, the Developer has not eliminated or completely mitigated such grounds, to the satisfaction of the Town, the Town may then terminate this Acquisition Agreement.

Notwithstanding the foregoing, so long as any event listed in any of clauses (a) through and including (g) above has occurred, notice of which has been given by the Town to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the Town may in its discretion cease making payments for the Purchase Price of Facilities under Article V hereof.

Section 9.04. Force Majeure. Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, delays caused by the Town or any other governmental body (as to the Developer), or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

ARTICLE X

MISCELLANEOUS

Section 10.01. Limited Liability of Town. The Developer agrees that any and all obligations of the Town arising out of or related to this Acquisition Agreement are special and limited obligations of the Town and the Town's obligations to make any payments hereunder are restricted entirely to the moneys, if any, in the Improvement Fund and from no other source. No member of the Town Council, or Town staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 10.02. Excess Costs. The Developer agrees to pay all costs of the Facilities that it is obligated to construct pursuant to Section 4.02 in excess of the moneys available therefor in the Improvement Fund.

Section 10.03. Audit. The Director of Public Works and/or the Town's Finance Director or other finance officer of the Town shall have the right, during normal business hours and upon the giving of two (2) business days prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the Facilities, and any bids taken or received for the construction thereof or materials therefor, until the date which is two (2) years following the final acceptance of the Facilities.

Section 10.04. Attorney's Fees. In the event that any action or suit is instituted by either party against the other arising out of this Acquisition Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

Section 10.05. Notices. Any notice, payment or instrument required or permitted by this Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within twenty-four hours after such transmission), or seventy-two hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

Town or CFD: Town of Mammoth Lakes
P. O. Box 1609
Mammoth Lakes, California 93546
Attention: Director of Public Works

Developer: Intrawest California Holdings, Inc.
587 Old Mammoth Road
P. O. Box 2789
Mammoth Lakes, California 93546-2789

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 10.06. Severability. If any part of this Acquisition Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Acquisition Agreement shall be given effect to the fullest extent possible.

Section 10.07. Successors and Assigns. This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall not be assigned by the Developer, except in whole to an Affiliate, without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the Town, the Town may condition its consent upon the acceptability of the financial condition of the proposed assignee, the assignee's express assumption of all obligations of the Developer hereunder, and/or upon any other factor which the Town deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned, and shall not be effective until approved by the Town. No assignment, whether or not consented to by the Town, shall release the Developer from its obligations and liabilities under this Acquisition Agreement.

Section 10.08. Other Agreements. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the CFD. Nothing herein shall be construed as affecting the Town's or the Developer's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development of the lands in the CFD. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

Section 10.10. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Acquisition Agreement thereafter.

Section 10.11. Merger. No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Acquisition Agreement shall be binding.

Section 10.12. Parties in Interest. Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the Town and the Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the Town or the Developer shall be for the sole and exclusive benefit of the Town and the Developer.

Section 10.13. Amendment. This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the Town and the Developer.

Section 10.14. Counterparts. This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Acquisition Agreement as of the day and year first-above written.

TOWN OF MAMMOTH LAKES, for itself and on behalf of the TOWN OF MAMMOTH LAKES COMMUNITY FACILITIES DISTRICT 2001-1 (NORTH VILLAGE AREA)

By: 
Town Manager

INTRAWEST CALIFORNIA HOLDINGS, INC.

By: 
Its: Vice President

13021.03:5412

ACQUISITION AGREEMENT

EXHIBIT A

DESCRIPTION OF THE FACILITIES

The authorized public improvements include the following:

Minaret Road

Miller's Siding centerline to Forest Trail on west side, North of Berger property to Forest Trail on east side.

Improvements Proposed:

Caltrans standard curb, gutter and sidewalk with pavers, additional pavement where required, (may require A.C. cap full width of the street where trenching for utilities occurs), snow poles and sleeves, and street lights and conduits along both sides of the street, upgrade of the traffic signal at Main Street, waterline upgrades, sewer lateral re-connects, street trees, mobilization, traffic control and erosion/sedimentation control. Interim improvements along the east side of Minaret will include A.C. berm and sidewalk until permanent concrete curb, gutter and sidewalk are constructed in a future phase. Water main upgrades and selected widening areas extend to Main Street.

Lake Mary Road

Minaret to New Canyon Blvd.

Improvements Proposed:

A 24" storm drain line and a 30" storm drain line with inlet and junction structures, intersection improvements for additional turning lanes, mobilization, traffic control and erosion/sedimentation control.

Canyon Blvd

Hillside to Lake Mary Road

Improvements Proposed:

Rolled curb, gutter and sidewalk, 42 to 48 feet of pavement, snow poles and sleeves, street lights and conduits, earthwork, 48" storm drain and junction structure, underground overhead utilities, new traffic signal at Lake Mary Road, coordination and interconnection with signal at Main Street and Minaret Road, intersection improvements for additional turning lanes, sewer and water facilities, demolition, earthwork, rock-stack retaining walls, reinforced concrete retaining walls, mobilization, traffic control and erosion/sedimentation control.

Hillside Drive

Canyon to 417' South (east side only)

Improvements Proposed:

Rolled curb, gutter, additional half-width pavement as required, snow poles and sleeves, sidewalk, mobilization, traffic control and erosion/sedimentation control.

Canyon to Forest Trail

Improvements Proposed:

Water main up-grades.

Forest Trail

Hillside Drive to Minaret

Improvements Proposed:

Rolled curb, gutter, snow poles and sleeves south side of the street (except along parcel at the corner of Hillside), 6 foot wide sidewalk, additional half-width pavement where required, street lights and conduits, underground overhead utilities, waterline upgrades, mobilization, traffic control and erosion/sedimentation control.

Minaret to Berner Street

Improvements Proposed:

Rolled curb, gutter and sidewalk, snow poles and sleeves south side of the street, additional half-width pavement where required, street lights and conduits, a 48" storm drain line and junction structures, water main upgrades, mobilization, traffic control and erosion/sedimentation control.

Berner Street

Forest Trail to Existing Berner

Improvements Proposed:

Rolled curb, gutter, snow poles and sleeves both sides of the street, minimum of 32 feet new pavement, 8 foot wide sidewalk on the west side of the street only, street lights and conduits at Forest Trail and existing Berner intersections, 48" storm drain and junction structures, sewer and water lines mobilization, traffic control and erosion/sedimentation control.

Existing Berner

Improvements Proposed:

Rolled curb, gutter and 8 foot wide sidewalk, snow poles and sleeves, through the curb return on the north side of the street and to the easterly property line of Intrawest property on the south side of the street, additional half-width pavement where required, mobilization, traffic control and erosion/sedimentation control.

Other Improvements

Ski Back Bridge

Improvements Proposed:

Bridge across Forest Trail to the Village at Mammoth. Improvements to include an elevator and stairs on the south side of Forest Trail.

Roundabout

Improvements Proposed:

In lieu of a traffic signal, a modern roundabout is to be constructed at the intersection of Minaret Road with Forest Trail. Improvements include sidewalks, bike lanes, landscaping, storm drains, street lights and conduits, and/or other improvements as required by Caltrans and the Town. The existing overhead utilities across the intersection will be placed underground.

Storm Drain Realignment

Improvements Proposed:

A 72" storm drain line to replace an existing 48"-54" storm drain that is undersized. The proposed line will follow a different alignment. The existing pipe will be removed within the Caltrans right of way and will be abandoned in place along old Canyon Blvd. and Old Berner Street. Abandonment measures will be to slurry fill all pipe that will permanently remain underground. Construction of the new line will include inlets along Minaret Blvd. immediately upstream of the crossing of the storm drain line across Minaret Road.

The Public Improvements shall include the acquisition of right of way, the costs of design, engineering and planning, the costs of any environmental or traffic studies, surveys or other reports, landscaping and irrigation, soils testing, permits, plan check and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing.

ACQUISITION AGREEMENT
EXHIBIT B
BUDGETED COSTS OF FACILITIES

Facility	Estimated Facility Cost	Budgeted Cost	Notes	Discrete Component Maximum Cumulative Payments		
				First Component	Second Component	Third Component
Minaret Road Improvements						
Phase I – west side	\$355,000	\$355,000		\$53,250	\$301,750	\$355,000
Phase I – waterline	\$150,000	\$150,000	4	\$22,500	\$127,500	\$150,000
Phase II – east side	\$160,000	\$160,000		\$24,000	\$136,000	\$160,000
Canyon Boulevard Realignment						
Phase I realignment costs includes Lake Mary storm drain includes portion of 72" Berner storm drain	\$3,650,000	\$3,650,000	1, 2	\$547,500	\$3,102,500	\$3,650,000
Phase II realignment costs	\$500,000	\$500,000	1, 2	n/a	\$425,000	\$500,000
Berner Storm Drain (72")	\$1,000,000	\$1,000,000	3	\$150,000	\$850,000	\$1,000,000
Hillside-Forest Trail Waterline	\$395,000	\$395,000		\$59,250	\$335,750	\$395,000
Forest Trail Improvements – West						
Phase I	\$365,000	\$365,000		\$54,750	\$310,250	\$365,000
Phase II	\$50,000		8	\$7,500	\$42,500	\$50,000
Berner Street Realignment	\$1,000,000	\$1,000,000	5	\$150,000	\$850,000	\$1,000,000
Forest Trail – Minaret to new Berner						
Berner Street – Berner to Forest Trail						
Berner to 140' east						
Ski-back Bridge	\$450,000	\$450,000	6	\$67,500	\$382,500	\$450,000
Hillside Drive – Canyon to 417' south	\$175,000		7	\$26,250	\$148,750	\$175,000
Roundabout	\$715,000		7	\$107,250	\$607,750	\$715,000
Total Project Costs	\$8,965,000	\$8,025,000				

1. Canyon Boulevard Realignment costs are shown in two phases. Phase I work includes all work except Phase II work. Phase II consists of 1) sidewalks west of Canyon, sidewalks south and north of The Village-Phase I that are east of Canyon, 3) all preparation work associated with the Phase II sidewalks, and 4) any remaining work not completed in Phase I due to weather and/or Town delays. Phase I work may be shifted into Phase II upon mutual consent of the Director of Public Works and the Developer. Budget Amounts shall be shifted accordingly.

2. Canyon Boulevard realignment costs do not include snowmelt system costs or costs to replace curb and gutter installed per prior town direction. Town shall provide reimbursement, in full, for curb and gutter replacement by June 30, 2003.

3. Completion of manholes within easements located on private property may be completed along with adjacent grading. Substantial completion shall not be contingent upon this work.

4. Minaret Waterline costs, as shown above, are net costs after a MCWD contribution of \$282,000. If MCWD increases its contribution as a result of unknown conditions, the project budget shall remain unchanged and the Developer shall be entitled to retain such increased contribution; provided that, in any event, the Actual Cost for this Facility shall be net of any MCWD contribution.

5. This Facility may, at the discretion of the Developer and upon written notice to the Town, be constructed in phases; provided that construction of the entire Facility must be initiated within 36 months. The Developer may allocate and reallocate the Budgeted Cost among phases in any reasonable manner.

6. Construction of the Ski-back Bridge may be delayed due to the need to obtain required governmental approvals for construction of the bridge or for construction of the ski trail, or for other reasons. If Developer determines that construction of such Facility will be delayed, Developer may reallocate the Budgeted Cost allocated to this Facility, by written notice to the Town, to any other Facility (or Discrete Component thereof) set forth on Exhibit B.

7. This Facility may be funded from funds allocated to the Ski-back Bridge if construction of the bridge is delayed or from excess funds pursuant to the provisions of Section 5.07.

ACQUISITION AGREEMENT

EXHIBIT C

FORM OF PAYMENT REQUEST

PAYMENT REQUEST NO. _____

The undersigned (the "Developer"), hereby requests payment in the total amount of \$_____ for Discrete Components of the Facilities (as defined in the Acquisition Agreement, dated as of March 1, 2003, between the Town of Mammoth Lakes (the "Town"), with respect to the Town of Mammoth Lakes Community Facilities District 2001-1 (North Village Area) and the Developer), as described in Exhibit B to the Acquisition Agreement, all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby represents and warrants to the Town as follows:

1. He(she) is a duly authorized officer of the Developer, qualified to execute this Payment Request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this payment request is with respect to the Third Component of a Facility, the Developer has submitted or submits herewith to the Town as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete. To the extent that this payment request is for the First Component or the Second Component of a Facility, the Developer has in his construction office a marked set of drawings or similar plans and specifications for the respective Facility as listed in Attachment 1 hereto, which drawings or plans and specifications, as applicable, are current and show all changes or modifications which have been made to date.

3. All costs for which payment is requested hereby are Actual Costs (as defined in the Agreement referenced above) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the Town.

4. Supporting documentation (such as third party invoices) is attached with respect to each cost for which payment is requested.

5. There has been compliance with applicable laws relating to prevailing wages for the work to construct the Facilities the costs of which payment is hereby being requested.

6. The Facilities Second Components and Third Components for which payment is requested were constructed in accordance with all applicable Town or other governmental standards, and in accordance with the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.

7. The Developer is in compliance with the terms and provisions of the Acquisition Agreement and no portion of the amount being requested to be paid was previously paid.

8. The Purchase Price for each Discrete Component (a detailed calculation of which is shown in an Attachment 2 hereto for each such Discrete Component), has been calculated in conformance with the terms of Section 5.06 of the Acquisition Agreement.

9. Neither the Developer nor any Affiliate (as defined in the Acquisition Agreement) is in default in the payment of ad valorem real property taxes levied in the CFD (as defined in the Acquisition Agreement) or special taxes or special assessments levied in the CFD, except as follows: _____.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

DEVELOPER:

Intrawest California Holdings, Inc.

By: _____
Authorized Representative
of the Developer

Date: _____

TOWN:

Payment Request Approved for
Submission to the Finance Director of the
Town of Mammoth Lakes

By: _____
Director of Public Works

Date: _____

**ATTACHMENT 1
EXHIBIT C**

{list here all Discrete Components for which payment is requested, and attach support documentation}

**ATTACHMENT 2
EXHIBIT C**

CALCULATION OF PURCHASE PRICE

[Use a separate sheet for each Facility or Discrete Component
for which payment is being requested]

1. Description (by reference to Exhibit B to the Acquisition Agreement) of the Discrete Component _____

2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost, including detailed calculations with respect to any costs of carry or interest expense): \$ _____

3. Budgeted Cost: \$ _____

4. Permitted Addition to Budgeted Cost (to the extent, and only to the extent, that Actual Cost exceeds Budgeted Cost), consisting of savings (Actual Costs less than Budgeted Cost) carried forward from any prior acquired Discrete Components of any Facility with Budgeted Costs (see first paragraph of Section 5.06A) and not previously applied to cover cost overruns (Actual Costs greater than Budgeted Cost) on previously acquired Facilities or Budgeted Costs reallocated from the Ski-back Bridge pursuant to Exhibit B: \$ _____

5. Subtractions from Purchase Price:
 - A. Holdback for Lien releases (see Section 5.06(C) of the Acquisition Agreement) \$ _____
 - B. Retention (see Section 5.06(D) of the Acquisition Agreement) \$ _____

6. Total disbursement requested (Amount listed in 3, plus amount, if any, listed in 4 (total of amounts in 3 and 4 not to exceed amount listed in 2), less amounts, if any, listed in 5) \$ _____

ACQUISITION AGREEMENT

EXHIBIT D

INTRAWEST



June 22, 2001

Mr. Steve Julian
Town of Mammoth Lakes
P.O. Box 1609
Mammoth Lakes, CA 93546

INTRAWEST
MAMMOTH

P.O. Box 2789
567 OLD MAMMOTH ROAD
MAMMOTH LAKES, CA
U.S.A. 93546-2789

TEL: 760.924.8189
FAX: 760.924.0050

RE: Canyon Boulevard Realignment and Berner Storm Drain

Dear Steve:

As you are aware, Intrawest is ready to begin construction of the above-referenced DIF projects. It is the intent of Intrawest and the Town to form a Community Facilities District (CFD) to fund these and other infrastructure projects. Funding will also be provided to Intrawest for this work through DIF credits. At this time, however, the CFD is not in place and various CFD agreements, such as the acquisition agreement, remain to be finalized. Furthermore, if for some reason a CFD was not formed, projects would be funded in accordance with the DIF ordinance. In anticipation of a CFD, the Town and Intrawest have not negotiated a reimbursement agreement as provided for by the DIF ordinance.

Both DIF projects are on our critical path schedule. In order to maintain schedule and complete the projects before winter, Intrawest desires to begin construction prior to final resolution of the CFD and/or DIF reimbursement agreement. Our desire to proceed is based on the good-faith negotiations that have occurred between the Town and Intrawest and our understanding that the costs for these projects will be reimbursed by the CFD, DIF credits, and/or a DIF reimbursement agreement.

The proposed CFD acquisition agreement has several requirements that, prior to Intrawest commencing construction, we request your written approval of. The first item is approval of the prime contractor. We request approval of UPA Resort Construction, LLC as the prime contractor for the two above referenced projects. We have selected UPA

INTRAWEST

to construct Phase I of The Village. Due to the close integration required between these initial DIF projects and Phase I construction, we feel it is essential that all work is managed by one contractor. UPA was selected several years ago, from a pool of finalists, to construct Phase I based on their familiarity with resort construction, their vast knowledge of village construction and their quality, team-oriented approach. The selection process included the identification of multiple contractors, the short-listing of five finalists, the preparation of comprehensive construction analysis and management plans by the finalists, interviews with the proposed construction teams and Intrawest's final selection.

The second item we request your approval of concerns the bidding process. The proposed CFD Acquisition agreement requires at least three independent bids for sub-contracts. In recent months, UPA solicited bids from twenty-one civil contractors. Due to the heavy work volume in today's economy, the challenges for contractors to work in Mammoth, and the inability to commit and schedule the work several months in advance, UPA received only two bids. UPA's letter to Intrawest regarding the process is attached for your reference. UPA has recommended, and we concur, that it is in the project's best interest to award a sub-contract to Ledcor for a majority of the work. Subcontracts for certain aspects of the work, such as tree clearing, landscaping, traffic signals, and other components may be awarded to other responsible subcontractors when plans and pricing are finalized. Since it is strongly in Intrawest's best interest to produce a quality project in an economical manner, it is our intent to ensure all work is performed by the best responsible bidder and we will seek out competing bids as practical and appropriate. We request your concurrence that the bidding process and our intent to approve subcontracts to Ledcor and others for certain components as outlined above, will meet the intent of the CFD or a DIF reimbursement agreement.

The third item we request your approval of concerns construction timing. We intend to begin work prior to the formation of the CFD, and upon the CFD's formation, submit for reimbursement pursuant to the CFD's requirements. If a CFD is not formed and an alternative DIF reimbursement agreement is put into place, we would request reimbursement pursuant to that agreement. We request your concurrence that the above referenced projects will not be disqualified from reimbursement if the projects commence prior to finalization of the CFD or other reimbursement mechanism.

ATTACHMENT 2

Intrawest DA

(available online at <http://www.townofmammothlakes.ca.gov/index.aspx?nid=139>)