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DEVELOPMENT AGREEMENT

by and among

TOWN OF MAMMOTH LAKES, a municipal corporation,

**SNOWCREEK HILLTOP DEVELOPMENT COMPANY L.P.,
a California limited partnership;**

**SNOWCREEK INVESTMENT COMPANY L.P.,
a California limited partnership**

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**DEVELOPMENT AGREEMENT
BY AND AMONG
TOWN OF MAMMOTH LAKES, SNOWCREEK HILLTOP DEVELOPMENT
COMPANY LP and SNOWCREEK INVESTMENT COMPANY L.P., a California
Limited Partnership**

This DEVELOPMENT AGREEMENT ("Agreement"), effective as of July 23, 2010 ("Effective Date"), is entered into by and among the TOWN OF MAMMOTH LAKES, a municipal corporation (the "Town"), and SNOWCREEK HILLTOP DEVELOPMENT COMPANY L.P. a California limited partnership ("SHDC") and SNOWCREEK INVESTMENT COMPANY L.P., a California limited partnership ("SIC") (collectively SHDC and SIC are sometimes referred to as "Developer" or "Snowcreek") with reference to the following facts and intentions:

RECITALS:

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risk of development, the Legislature of the State of California enacted Government Code Section 65864-65869.5, *et seq.* ("Development Agreement Statute"). The Development Agreement Statute authorizes the Town to enter into a binding development agreement with a developer having a legal or equitable interest in real property, establishing certain development rights in such property.

B. The parties are negotiating this Development Agreement at a time of great economic crisis in the United States, the State of California and the Town of Mammoth Lakes. Many development projects have been put on hold or the properties on which such projects were to have been developed have been foreclosed upon or conveyed to the projects' lenders. There has probably never been a more appropriate time for a government agency to enter into a development agreement and carry out the legislative intent behind the Development Agreement Statute.

C. Pursuant to the Development Agreement Statute, the Town has adopted the Development Agreement Ordinance (defined below), which sets forth rules and regulations establishing procedures and requirements for processing and approval of development agreements, including a requirement for such agreements to provide greater community benefit to the community than under present zoning, such as needed facilities, improvements or services. This Agreement has been processed and approved in accordance with the Development Agreement Statute and the Development Agreement Ordinance.

D. SHDC owns the following development project, which is affected by the terms of this Agreement: "Snowcreek VII;" and SIC owns the following development project which is affected by the terms of this Agreement: "Snowcreek VIII" (collectively, sometimes referred to herein as the Snowcreek Projects).

The real property owned by SHDC and included in each Project is legally described on Exhibit A attached hereto and referred to herein as the "Snowcreek VII Property;" and the real property owned by SIC and included in Snowcreek VIII is legally described on Exhibit A-2 attached hereto and referred to herein as the "Snowcreek VIII Property" (collectively, sometimes referred to herein as the "Snowcreek Properties").

E. Since the adoption of the original Master Plan by Mono County in 1974 and the amendment/update thereto by the County in 1981, as the property has been developed by Developer's predecessor-in-interest, many substantial community benefits have been provided to the community both by Developer's predecessor-in-interest and by Developer. The most significant of those are:

1. Water Rights from Arcularius Land, totaling over 4,500,000 gallons per day. The majority of these rights were conveyed in trust to the Mammoth Community Water District ("MCWD").
2. Mammoth High School land. Approximately twenty-two (22) acres were acquired from United States Forest Service ("USFS") and donated to the Mammoth Unified School District ("MUSD") on November 30, 1983.
3. The Crowley Lake School Site, APN 60-110-14. Twenty (20) acres were acquired from USFS and donated to MUSD.
4. An Elementary School Site. Ten (10) acres were acquired from USFS and donated to MUSD.
5. A Water Treatment Plant site. The Water Treatment Plant site property was sold to MCWD.
6. Fire Station Site. The Fire Station site property was donated to MLFPD.
7. Snowcreek Athletic Club. The Snowcreek Athletic Club was developed as an amenity for residents of the area and the Town as a whole.
8. Golf Course. A 9-hole golf course was built and open to the public.
9. Granted easements to MCWD for Well #4 and Well #6, wells located on private land along with numerous pipeline easements to connect these wells and Well #10. Also granted an easement to the MCWD for Monitoring Well #28M on property acquired in a land exchange with the USFS.
10. As a completely voluntary act of Developer's predecessor-in-interest and without any express or implied encouragement of the Town, two acres of land was provided for the Catholic Church.
11. Road improvements. Constructed Minaret Road offsite (no Snowcreek frontage) between the "bell" parcel and Starwood subdivision. Full road section with drainage improvements constructed for 1,200 feet north of Snowcreek ownership.

Constructed additional 1,200 feet of full width improvements between Snowcreek Crest subdivision and Starwood subdivision.

12. Less than maximum density on the site. Snowcreek VI has been designed to have less density in the Project than allowable under the current zoning regulations and Master Plan.

13. Significant landscaping and water features complete with two ponds and a waterfall.

14. Fees, Taxes and Other Positive Fiscal Impact. Snowcreek VI and every prior phase of Snowcreek have generated significant revenues (taxes, including transient occupancy tax, and fees, including development and art fees) for the Town and other taxing agencies.

15. SIC also has provided funds to subsidize The Snowcreek Athletic Club so that it will remain an amenity for Snowcreek residents and the Town as a whole.

F. Benefits associated with the development of the remaining portion of Snowcreek VII include:

1. Bike path/recreational trail public easement. A bike path has been completed and connects a section of trail linking the Old Mammoth area from the Snowcreek Athletic Club to the intersection of Old Mammoth Road and Minaret Road. A 12' wide public easement has been recorded for recreational trail purposes. Trail maintenance will be paid for through a benefit assessment district. The entire bike path/recreational trail was constructed in connection with the first phase of Snowcreek VII.

2. Public access easement for fishing and hiking along Mammoth Creek. A 40' wide public access and drainage easement has been recorded along Mammoth Creek from the Athletic Club to Minaret Road.

3. The historic Wildasinn Cabin and Pelton Wheel (Knight Wheel) will remain on site and the Cabin has been restored. The Pelton wheel was originally used for mining operations in the area. It was salvaged by Charles F. Wildasinn to supply power to the Wildasinn Hotel, Mammoth's first resort.

4. Open space areas. The Project will have open space areas throughout for the enjoyment of owners and visitors to the area.

5. Recycling stations. Recycling stations will be placed on site and serviced on a weekly or as needed basis by a recycling service.

6. Fees, Taxes and Other Positive Fiscal Impacts. Snowcreek VII has provided and will continue to provide significant revenues (taxes, including property taxes, sales and use taxes and transit occupancy taxes, and fees, including development impact fees) for the Town and other taxing agencies.

G. Benefits associated with the development of Snowcreek VIII include:

1. Increased Town revenues.
 - a. Transient Occupancy Tax (TOT). It is estimated that Snowcreek VIII will generate approximately \$5.3 Million annually in TOT revenue to the Town.
 - b. Sales Tax. It is estimated that Snowcreek VIII's residents and visitors will make approximately \$45.4 Million in taxable purchases per year in the Town for entertainment, food and retail. The total combined estimated sales tax revenue generated by the Snowcreek VIII Project is \$477,000 per year.
 - c. Property Tax. At the Town's current property tax rate, it is anticipated that the Snowcreek VIII Project will generate \$733,000 in annual property tax revenue. An additional approximate \$9.2 million in total annual property tax revenue will be divided among the Mammoth Lakes Fire Protection District, MUSD, County Library, MCWD and MCWD 2, Southern Mono Hospital and the Mono County general fund.
 - d. Utility User Tax and Franchise Fees. Estimated added utility tax revenue is \$66,000. Estimated annual franchise fee revenue is \$33,000.
 - e. Business License Tax. Total business license tax generated by the project is estimated at \$9,000.
 - f. Intragovernmental revenues and administrative service fees. Approximately \$2,000 per year will be generated in each category.
2. A world class destination resort hotel complements the Mammoth Mountain Ski Area experience and provides a year-round tourist draw to the Town.
3. A championship level 18-hole golf course (expanding the existing 9-hole golf course) and a practice facility.
4. A Golf Clubhouse.
5. Restaurant(s), bar(s) and lounge(s).
6. Retail opportunities at the Resort Hotel.
7. Conference facilities.
8. A spa/wellness center.

9. A Commercial/Retail Facility in the Project Entry/Gateway area.
10. A Natural Resources Interpretive Area to provide residents and visitors with information and exhibits regarding the history of Mammoth and the qualities of the natural characteristics of the region.
11. An Outfitters Cabin located in or near the Resort Hotel for use by residents and visitors alike, that can act as a rental facility and staging area for year-round outdoor activities.
12. Cooperation in the MCWD expansion and possible improvement and distribution of MCWD tertiary water treatment to the extent available, legally permissible and on a schedule and in volumes agreed to by MCWD and Developer.
13. In accordance with Town regulations and the private land use covenant between the Town and Developer, provision of land for ancillary utility use (propane tank storage) to assist in meeting the Town's predicted future energy needs in the event the site currently under consideration by the Town, Turner Gas and the USFS is determined to be unacceptable by those parties.
14. Well planned multi-use paths to facilitate the use of non-automobile forms of transportation and recreation. Careful placement of multi-use paths, sidewalks, and public plazas are included in the Project. These paths are designed to connect the Resort Hotel with the Town, the Outfitters Cabin, Commercial/Retail Facility, the existing Snowcreek Athletic Club, and Equestrian Center.
15. An internal open space corridor.
16. Transit enhancements, including:
 - a. A shuttle service for hotel guests to Eagle Lodge and the Village/Gondola areas.
 - b. Shuttle vans for residents to use, provided by the Snowcreek VIII Homeowners Association, going to major visitor stops.
17. Art Fees. The Project will provide public art on-site pursuant to the Snowcreek Master Plan Update and Section 5.5.3 herein.
18. A snow play area.
19. A mini-park.
20. A Great Lawn at the Resort Hotel, providing a large outdoor entertainment area.
21. Winter cross-country Trails on the Golf Course, for cross-country skiing and snow shoeing.

22. Convenient egress for backcountry skiers and snowshoers. The Golf Course and its cross-country trails will act as a legal, convenient portal from the Sherwins for backcountry skiers and snowshoers.

23. A secondary access road serving both Snowcreek V and Snowcreek VIII and solving a longstanding problem affecting both Snowcreek V residents and the Town.

24. An Emergency Vehicle Access road.

H. The Town acknowledges a number of project features in both Snowcreek Projects as conditioned and approved by Town Council go beyond what may legally be imposed on development projects through an entitlement process. Those greater community benefits include but are not limited to:

1. The Additional Financial Contribution.
2. Fiscal benefits that will accrue to the Town and community through the implementation of the Project as intended that would not occur without this Agreement, including transient occupancy taxes.
3. 8.9 acres of park area provided in excess of that required in conjunction with the buildout of Snowcreek VIII.
4. Preservation of Mammoth Creek open space corridor.
5. Championship 18-hole golf course will be designed by a top course architect.
6. Practice facility to be designed by a top course architect.
7. Secondary access for both Snowcreek V and VIII and the Emergency Vehicle Access Road connecting the Snowcreek VIII Project to Sherwin Creek Road is in addition to Mammoth Lakes Fire Protection District ("MLFPD") requirements.
8. Allowing egress of backcountry skiers, snowboarders, snowshoers from the Sherwin Range immediately upon approval of the Project prior to its construction and completion.
9. Programming of public spaces, including but not limited to the Great Lawn and Outfitters' Cabin, to increase visitation to the project and Town.
10. Establishment of public access across certain points of the project to allow public egress to surrounding public lands prior to Project construction and after completion and which would also provide access to an enhanced network of publicly accessible multi-use paths that is connected to the Town's trail system.

11. If needed by the Town, the Developer will provide the property described on Exhibit F attached hereto and incorporated herein by this reference for propane storage tanks.

I. The Town and Developer have determined a development agreement is appropriate for the Snowcreek Projects. The complexity, magnitude, and multi-use nature of the Snowcreek Projects, and the substantial financial investment by both parties associated with development of the Snowcreek Projects and the investment both parties plan for the Snowcreek Projects and surrounding geographic areas, as well as the economic recession currently affecting the country, the State and the Town, justify the Town's agreement to provide a degree of certainty in the land use regulatory process. Pursuant to this Agreement, the Town provides assurances to Developer it will have the right to develop, use and operate the Snowcreek Projects during the term of this Agreement, subject to all the terms and conditions set forth herein.

J. The Town Council has determined by entering into this Agreement the community will receive greater benefit from the Snowcreek Projects than would be provided under present zoning. Those benefits are set forth in Exhibit B to this Agreement. In addition, this Agreement will facilitate orderly growth and quality development of the Snowcreek Projects in conformance with the goals and policies of the Town's General Plan and the Snowcreek Master Plan Update.

K. Developer would not proceed with the Snowcreek Projects without the Town's assurances set forth in this Agreement. Developer has and will continue to invest substantial money and effort in reliance upon the Town's assurances as set forth in this Agreement. Developer acknowledges the Town would not enter into this Agreement without Developer's assurances set forth in this Agreement and the anticipated benefits, as described in Exhibit B, to be provided in connection with development of the Snowcreek Projects.

L. On July 8, 2009, in Town Council Resolution No. 09-45, the Town certified the Environmental Impact Report (EIR) for the Snowcreek Master Plan Update 2007.

M. The Town Council has given the required notice of its consideration of this Agreement and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, the Town Council has found the provisions of this Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in the Town's General Plan (and the Snowcreek Master Plan) and will provide for an orderly development of the Snowcreek Projects in accordance with the objectives set forth in the General Plan and the Master Plan Update, as amended as of the Effective Date.

N. The terms and conditions of this Agreement have undergone extensive review by the Town staff, the Planning Commission and the Town Council at publicly noticed meetings and have been found to be fair, just, reasonable and in conformance with the Town's General Plan and the Snowcreek Master Plan Update. Further, the Town Council finds the interests of the Town and the public health, safety and welfare of the Mammoth Lakes community will be served by entering into this Agreement.

O. On June 23, 2010, the Town Council adopted the Approving Ordinance (defined below) approving this Agreement and authorizing its execution, and that Ordinance became effective on July 23, 2010. Prior to approval of this Agreement, the Town Council has made certain findings, as set forth in the Approving Ordinance, including the following specific findings pursuant to Section 17.48.070 of the Development Agreement Ordinance:

1. This Agreement is consistent with the goals, policies, general land uses and programs specified in the Town's General Plan.
2. This Agreement and the development plans for the Property are compatible with the uses authorized in, and the performance and development standards prescribed in the Snowcreek Master Plan Update.
3. This Agreement is in conformity with and will promote public convenience, the general welfare and good land use and development practices.
4. This Agreement provides greater benefit to the community than under present zoning, including the Snowcreek Master Plan Update such as needed facilities, improvements or services.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants set forth herein, the Town and Developer agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, unless defined in this Article 1, capitalized terms shall have the meanings set forth in the Snowcreek Master Plan Update.

1.1 **"Additional Financial Contribution"** means up to the \$10 Million amount Developer has agreed to pay to the Town for use for purposes beneficial to the community, depending on the number of residential units and Resort Hotel Rooms/Suites actually constructed and the cumulative cost of other impact fees, including fees paid pursuant to the Affordable Housing Mitigation Financial Framework, as well as the other variables delineated in the Affordable Housing Mitigation Financial Framework which is explained in Section 2.2.3 herein.

1.2 **"Affordable Housing Mitigation Financial Framework"** means the financial parameters that establish the limit for Developer's affordable housing mitigation obligations.

1.3 **"Approving Ordinance"** means Ordinance No. 10-08 of the Town Council, adopted on June 23, 2010, approving execution of this Agreement.

1.4 **"Area of Geographic Nexus"** means the area described as the "Snowcreek District Sphere of Influence" and the "Sherwin Area Recreation Plan" as described in Exhibit J.

1.5 **"Assignment Agreement"** is defined in Section 8.1 and a form is attached as Exhibit G.

1.6 “Code” means the Town of Mammoth Lakes Municipal Code, as amended as of the Effective Date.

1.7 “COLA” means the cost of living adjustment codified in section 15.16.083 of the Code.

1.8 “Community Development Director” means the person so designated by the Town Manager or his designee.

1.9 “County” means Mono County, California.

1.10 “Developer” means the Party or Parties who sign this Agreement as Developer, and, subject to the restrictions on assignment set forth herein, successor Owners.

1.11 “Development Agreement Ordinance” means Chapter 17.48 of the Code.

1.12 “Development Agreement Statute” means Government Code Section 65864, *et seq.*

1.13 “Development Impact Fees” means Development Impact Mitigation Fees as defined in the DIF Resolution, but as applied to the Snowcreek Projects in accordance with this Agreement.

1.14 “DIF Resolution” means Resolution 10-14 approved by the Town Council on May 5, 2010.

1.15 “Effective Date” means the effective date of this Agreement and commencement of the Term, which is the date the Approving Ordinance becomes effective.

1.16 “Fiscal Year” means each fiscal year of the Town (July 1 through June 30), beginning with the fiscal year in which the Effective Date of this Agreement occurs.

1.17 “General Plan” means the Town of Mammoth Lakes General Plan, approved in 2007, as amended by GPA 2009-01.

1.18 “Lot” shall mean any legally subdivided lot or parcel within the Property, from time to time.

1.19 “Master Developer” means SNOWCREEK HILLTOP DEVELOPMENT COMPANY L.P., a California limited partnership, and SNOWCREEK INVESTMENT COMPANY L.P., a California limited partnership.

1.20 “Master Plan” means the approved development plan pertaining to Snowcreek, approved April 1981, that regulates uses and development standards on all portions of Snowcreek other than Snowcreek VIII.

1.21 “Mortgagee” means a mortgagee under any mortgage or a beneficiary under a deed of trust affecting any portion of the Property.

1.22 **“Official Records”** means the official records maintained in the Recorder’s Office of Mono County, California.

1.23 **“Operating Memorandum”** is defined in Section 7.1.

1.24 **“Owner”** means each owner of record fee title to all or any portion of the Snowcreek Project, during the time such party holds the requisite ownership interest. As of the Effective Date, each Developer (including Master Developer) is an Owner.

1.25 **“Party”** means, individually, and **“Parties”** means, collectively, the parties to this Agreement, consisting of the Town (and its successors and assigns hereunder) and Developer (including, subject to the restrictions on assignment set forth herein, successor Owners).

1.26 **“Person”** means any individual or legal entity.

1.27 **“Project Approvals”** means the Town approvals (including the conditions to such approvals) governing development of each of the Snowcreek Projects described in Section 3.2, any Subsequent Permits granted for one or more of the Snowcreek Projects during the Term in conformance with the Development Agreement Ordinance, and all environmental approvals, determinations and certifications relating to the foregoing.

1.28 **“Property”** means the property legally described in Exhibits A-1 and A-2.

1.29 **“Public Improvements”** means the public facilities, infrastructure and improvements constructed by Developer in connection with the Snowcreek Projects.

1.30 **“SNOWCREEK HILLTOP DEVELOPMENT COMPANY L.P. Affiliate”** means an entity controlled by, controlling, or under common control with SHDC, Developer herein. For purposes of this definition, “control” means the possession, directly or indirectly, of (a) an ownership in the applicable entity and (b) power to direct or cause the direction of the management and policies of such entity.

1.31 **“SNOWCREEK INVESTMENT COMPANY L.P. Affiliate”** means an entity controlled by, controlling, or under common control with SIC, Developer defined herein. For purposes of this definition, “control” means the possession, directly or indirectly, of (a) an ownership in the applicable entity and (b) power to direct or cause the direction of the management and policies of such entity.

1.32 **“Snowcreek Master Plan Update”** or **“Master Plan Update”** means the Town approved development plan, including Appendix B, Design Guidelines and Appendix C, Landscape Master Plan, governing Snowcreek VIII, submitted in 2007 and approved by the Town Council on August 5, 2009, by Ordinance No. 200905.

1.33 **“Snowcreek Project”** means, individually, and **“Snowcreek Projects”** means, collectively, the development projects identified in Recital D, which are being developed or are to be developed, on the Snowcreek VII Property or Snowcreek VIII Property as anticipated by the Project Approvals.

1.34 “**Subordination Agreement**” is defined in Section 8.2.1 and a form is attached as Exhibit H.

1.35 “**Subsequent Permits**” is defined in Section 5.1.1.

1.36 “**Term**” means the term of this Agreement, as defined in Section 2.2.

1.37 “**This Agreement**” means this Development Agreement.

1.38 “**Town Council**” means the Town Council of the Town of Mammoth Lakes, its governing body.

1.39 “**Town Manager**” means the person so designated by the Town pursuant to the Code or his/her designee.

1.40 “**Unavoidable Delays or Events**” as defined in Section 11.15.

1.41 “**Vested Rules**” are defined in Section 3.1.

ARTICLE 2 GENERAL PROVISIONS

2.1 Property Subject to This Development Agreement. This Agreement shall benefit and encumber the Property to be developed as the Snowcreek Projects (collectively the “2009 Properties”).

2.2 Term of Agreement. Subject to compliance with Sections 2.2.1 and 2.2.2, the Term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for twenty (20) years thereafter unless (i) earlier terminated as provided herein or (ii) extended as provided in section 11.15. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Projects and obtain the public benefit of the Projects. Pursuant to Section 17.48.060 of the Development Agreement Ordinance, the Town Council has made specific findings, incorporated in the Approving Ordinance, that exceptional circumstances exist to justify this Term, including but not limited to the economic crisis described in Recital B, the greater community benefits described in the items enumerated in Recital H and the importance of the Snowcreek Projects to the economic development of the Town. Because of those factors, particularly the worldwide economic crisis, it is not practical to set forth rigid phasing of residential units or the Resort Hotel. In establishing and agreeing to such Term, the Town has determined the Vested Rules, the Project Approvals, the vested right to develop, and the other terms of this Agreement incorporate sufficient provisions to permit the Town to adequately monitor and respond to changed circumstances and conditions in granting permits and approvals and undertaking actions to carry out the Projects.

2.2.1 Subject to section 11.15, Developer shall satisfactorily complete the following the milestones:

- a. Developer has already allowed egress of backcountry skiers, snowboarders and snowshoers from the Sherwin Range prior to the

effective date of this Agreement and shall continue to allow that egress during the pendency of construction of that portion of the Projects so long as Developer, at its sole election, determines that such egress shall not negatively affect public safety.

b. No later than two years after the ordinance approving this Agreement becomes effective, Developer shall have recorded a real estate conveyance document, whether a grant deed, a conservation easement or another legal mechanism reasonably approved by the Town Attorney, to permanently protect the Mammoth Creek Open Space Corridor, the legal description of which is attached hereto as Exhibit K and incorporated herein by this reference.

c. **Phasing and Performance**

1. The Vested Rules contemplate the Snowcreek Projects shall be developed in phases. Actual construction, however, will occur in phases and subphases based on what the market will absorb at any given point in time. It is the intention of the parties for each phase or subphase of the Projects to provide all of the facilities, programs (including affordable housing), features, amenities, access and easements described in the Vested Rules as well as payment of all fees at the time set forth in the Vested Rules, related to that phase or subphase. The parties agree to discuss the actual phasing of development and the associated timing for completion of the facilities, programs (including affordable housing), features, amenities, access and easements in connection with the application for each use permit or Subsequent Approval.

2. In order to assure the Town receives the benefits and amenities that result from the implementation of the Resort Hotel and the 18-hole championship golf course, specific added performance measures are established and recognizing the timing of development of the Snowcreek Projects will be subject to future market and economic conditions and no specific dates can be set for completing various phases of the Snowcreek Projects, it is the Town's position that if good faith efforts to develop the Resort Hotel and the 18-hole championship golf course are not undertaken by Developer in some reasonable fashion, the term of this Agreement should be reduced. Therefore, the parties agree, subject to Section 11.15, if development of the Resort Hotel and 18-hole championship golf course has not commenced within ten (10) years after the effective date of this Agreement (the "10-Year Milestone"), then the remaining 10-year term of this Agreement

shall be reduced one day for each day, or portion thereof, the 10-Year Milestone has not been met.

2.2.2 The Additional Financial Contribution shall be calculated and paid in accordance with the following:

- a. The Additional Financial Contribution shall be divided by the number of residential units and Resort Hotel Rooms/Suites approved by the Town Council to determine a pro rata amount per unit, which, for residential units, to be paid at the time of the issuance of the building permit for each unit.
- b. The pro rata contribution per residential unit will be approximately \$10,000 per unit, assuming all entitled units are constructed. For Resort Hotel Rooms/Suites (which constitute ½ unit as explained in the Snowcreek Master Plan Update), the pro rata contribution of approximately \$5,000 per ½ unit, assuming all entitled units are constructed, shall be paid prior to the issuance of a Certificate of Occupancy for each unit, room or suite.
- c. At Developer's sole election, Developer may allocate the Additional Financial Contribution amount solely or mainly to residential units to facilitate the economic viability of the Resort Hotel.
- d. The Additional Financial Contribution shall be reduced in three possible ways:
 1. First, in the event that not all of the entitled units are constructed, the actual pro-rata allocation of the up to \$10 Million contribution for each unit not constructed shall be deducted from \$10 million,
 2. Second, in the event that not all of the entitled Resort Hotel Rooms/Suites are constructed, the actual pro-rata allocation of the up to \$10 Million contribution for each Resort Hotel Room/Suite not constructed shall be deducted from \$10 million; and
 3. Third, as set forth below in Section 2.2.3 which establishes the elements of the Affordable Housing Mitigation Financial Framework, any and all amounts calculated due to a change in one or more of the variables set forth in Section 2.2.3 below shall be deducted from the Additional Financial Contribution.
- e. It is intended the Additional Financial Contribution will be utilized for public facilities within the Area of Geographic Nexus.
- f. The Additional Financial Contribution (AFC) and the off-site affordable housing in-lieu fee shall be subject to the following:

1. When the average retail sale price of market rate residential and private residence club (PRC) units is greater than \$800.00 and less than \$1,000.00 per square foot, the AFC and off-site affordable housing in-lieu fee shall be indexed at 50% of the U.S. National CPI.
2. When the average retail sale price of market rate residential and private residence club units is \$1,000.00 or greater per square foot, the AFC and off-site affordable housing in-lieu fee shall be indexed at 100% of the U.S. National CPI.
3. Publicly available Project sales price activity shall be reviewed during the Annual Review, pursuant to Section 7.2.

2.2.3 The Affordable Housing Mitigation Financial Framework shall be comprised of the following elements:

2.2.3.1 Project Summary (excluding commercial). The Snowcreek Master Plan Update contemplates 790 residential units and 200 Resort Hotel Rooms/Suites and Private Residence Club units (250 Resort Hotel Rooms/Suites, assuming units of 850 sq.ft. or less and 150 Private Residence Club units, assuming units of 850 sq.ft. or less) for a total of 990 units. 990 units (assuming full buildout) less the number of onsite deed restricted units are the "Market Rate Units" Mitigation shall only be provided for units actually built. Affordable housing mitigation shall not be required for any non-residential or commercial land use on the site including ancillary commercial uses within the Resort Hotel.

2.2.3.2 Ratio of On-Site to Off-Site Mitigation. Developer proposes that the affordable housing requirement for Snowcreek VIII shall be ten percent (10%) of the Market Rate Units. Developer proposes 50% of the ten percent requirement will be built on site, assuming full buildout (47 deed restricted units) and the other 50% shall be mitigated for through a combination of payment of in-lieu fees and FTEE credits already owned by Developer.

2.2.3.3 Features of the On-Site Mitigation.

- (i) Dispersed throughout the project in the High Density Residential Product buildings.
- (ii) One, two, three and four bedroom affordable units may be built. The average number of bedrooms per on-site affordable unit shall be equal to two bedrooms.
- (iii) Deed restricted units must be owner-occupied and cannot be leased in whole or in part at any time.

2.2.3.4 Features of the In-lieu Fee Program.

- (i) Developer owns 16.5 FTEEs credits.

- (ii) The residential unit in lieu fee shall be \$85,000/unit for 30.5 units or \$2,592,500 assuming full buildout. This amount shall be allocated to all market rate units so assuming full build-out the fee will be \$3,489.23 per residential unit. The in-lieu fee shall be paid on a per unit basis prior to the issuance of a building permit for each residential unit.

2.2.3.5 Variables that Require Adjustment to Additional Financial Contribution. As stated earlier in Section 2.2.2 above, the Additional Financial Contribution may be reduced in the event that the aggregate cost of the on-site deed restricted units or off-site in-lieu fee increases. The Additional Financial Contribution shall be decreased if costs increase due to a change in one or more of the following variables:

- (i) AMI level. For the purpose of calculating an impact to the Additional Financial Contribution, the assumption shall be that 50% of the deed restricted units shall be sold to families whose income is 175% of AMI for Mono County and 50% of the deed restricted units shall be sold to families whose income is 200% of AMI for Mono County. AMI shall be calculated at the time of issuance of Certificate of Occupancy;
- (ii) Percentage of household income that can be used for a mortgage payment which for the purpose of the calculations in this Section 2.2.3 shall be assumed to be 35%;
- (iii) Affordable housing requirement increases in excess of ten percent (10%) of market rate units;
- (iv) Percentage of affordable housing mitigation required on-site increases in excess of fifty percent (50%) of the ten percent (10%) of market rate units;
- (v) In lieu fee;
- (vi) Value of the 16.5 FTEE credits Snowcreek Investment Company currently owns;
- (vii) Type of on-site unit required (low, medium or high density);
- (viii) Size of the on-site units (number of bedrooms).

In no event shall the aggregate adjustment in value due to changes in one or more of the eight variables listed in 2.2.3.5 exceed \$10 Million Dollars.

ARTICLE 3 APPLICABLE RULES, REGULATIONS AND POLICIES

3.1 Vested Rules. “Vested Rules” mean, collectively, the ordinances, resolutions (including, but not limited to, the DIF Resolution), rules, regulations, requirements, Master Plan at Mammoth (with respect to Snowcreek VII approved in 1981), Snowcreek Master Plan Update 2007 (with respect to Snowcreek VIII approved in 2009), and official policies of the Town in effect as of the Effective Date, whether set forth in the General Plan, the Code or otherwise, which govern the following, to the extent applicable to the Snowcreek Properties and Snowcreek Projects: development agreements; permitted uses; density and building intensity; growth control; zoning designations and regulations; subdivision, improvement, grading, landscaping and signage; design, development, improvement and construction standards and specifications; standards and requirements for public reservations and dedications, public improvements and facilities, transit, parking, open space, employee housing and affordable housing; standards and requirements for processing of Subsequent Permits (as defined in Section 5.1.1); and the Project Approvals described in Section 3.2. The Vested Rules do not include (i) uniform building codes or standards, or changes thereto from time to time or (ii) subject to the proviso clause of section 3.8, any other rule, law or policy adopted by the Town Council, after review at one or more public meetings, that applies generally throughout the Town’s jurisdiction, but only if, based on substantial evidence, the Town Council finds failure to apply such rule, law or policy would place the residents of the Town in a condition dangerous to their health and safety. A list of the Vested Rules as of the Effective Date is attached hereto as Exhibit C. A compilation of complete copies of the Vested Rules as of the Effective Date has been prepared by the Town and Developer, and they are contained in a binder with the title “Snowcreek VII & VIII Development Agreement—Vested Rules” on file in the offices of the Town Clerk of the Town and in the Master Developer’s office in Mammoth Lakes, California. Various Subsequent Permits, such as tentative subdivision maps, grading permits and use permits, are required in order to implement the development of the Snowcreek Projects under the terms of the Vested Rules. In addition, Subsequent Permits, such as a change in zoning standards, may be desirable due to changes in development products or standards or for other reasons during the Term of this Agreement. This Agreement and the vested right to develop are not intended to preclude changes or additions to the Vested Rules which (i) Town reasonably imposes as a result of Developer’s request to make a change or addition to one or more of the Vested Rules or (ii) are mutually acceptable. All Subsequent Permits shall be processed in accordance with the procedures, standards and requirements set forth in the Vested Rules, except to the extent changes to the Vested Rules are proposed by the Subsequent Permit, and the Subsequent Permits shall be incorporated into (and amend or supplement, as appropriate) the Vested Rules upon adoption by the Town and approval by the affected Developer(s). If Developer proposes any amendment or addition to the Vested Rules, then the application therefore shall clearly indicate such request, and, if the application is reasonably approved by the Town, then the Town’s action shall clearly state that the Vested Rules have been amended or supplemented. If an amendment or supplement to the Vested Rules is adopted by the Town other than pursuant to an application by a Developer, then it shall amend or supplement the Vested Rules only if the affected Developer(s) approved the same in writing. Nothing contained herein expressly or impliedly requires the Town to approve or conditionally approve any amendment or addition to the Vested Rules.

3.2 **Project Approvals.** "Project Approvals" means: (a) the existing Town permits, approvals and entitlements for the Projects set forth below in this Section 3.2; plus (b) any amendments or additions to the Project Approvals and any Subsequent Permits (as defined in Section 5.1.1) which are subsequently issued by the Town and approved by Developer, in accordance with the procedures described in Section 3.1. The Project Approvals are included in the Vested Rules.

3.2.1 **Snowcreek VII.** The existing Project Approvals approved by the Town for the Snowcreek VII Project, are the following:

3.2.1.1 Master Plan at Mammoth, approved by Mono County.

3.2.1.2 Final Tract Map 36-236 for Phase 1 recorded 7/10/07, Book 10, Page 105.

3.2.1.3 Tentative Tract Map 36-236 for Phases 2 and 3 as modified by Resolution PC2009-01 and as further modified by this Agreement with respect to Special Planning Condition of Approval No. 11 in Resolution 2006-15, which shall read as originally approved (new italicized language is hereby deleted).

3.2.1.4 Use Permit 2005-11 approved by Resolution 2006-15, dated 5/24/06, as modified by Resolution PC 2009-01.

3.2.1.5 Grading Permits: Restricted Permit 2006-15 dated 4/24/07, Full Phase I Permit 2006-15 dated (in error) 4/24/07 (signed May 3, 2007); Amendment 01 to Grading Permit 2006-15 allowing dirt stockpiling on Snowcreek VIII property, dated 8/2/07.

3.2.1.6 Building Permits for Bldg 11, permit #181551 and 12, permit #181552, issued on 6/13/07, Bldg. 10, permit #183968, issued on 7/26/07; Bldg. 9, permit #183970, issued on 8/29/07; and Bldg. 8, permit #183967, issued on 9/28/07.

3.2.1.7 Encroachment Permit 2006-10 dated 9/21/06 for sewer line and water line work.

3.2.1.8 Improvement Permit 2006-20 dated 6/18/06 for water line work.

3.2.1.9 Permit 2007-164041 dated 4/28/08 allowing Rec Building Remodel.

3.2.1.10 Certificates of Occupancy for the following buildings and addresses:

Building 10
1501
1503
1505
Clear Creek Road

Building 11
1300
1302
1304
Timber Creek Place

Building 12
1310
1312
1314
1316
Timber Creek Court

The permitted uses, the density or intensity of use, the zoning, the maximum height and size of buildings, the provisions for reservation and dedication of land, and the subdivision or use permit improvement requirements for Snowcreek VII are set forth in the existing Project Approvals, as supplemented by Subsequent Permits issued in conformance with the Vested Rules.

3.2.2 Snowcreek VIII. The existing Project Approvals approved by the Town for the Snowcreek VIII Project, are the following:

3.2.2.1 General Plan Amendment to the Urban Growth Boundary.

3.2.2.2 Zone Code Amendment to effectuate the Snowcreek VIII Master Plan Update 2007, approved on August 5, 2009 (“Snowcreek Master Plan Update 2007”). Permitted uses for the Snowcreek VIII portion of the Snowcreek Projects are set forth in the Snowcreek Master Plan Update 2007.

3.2.2.3 Snowcreek VIII Master Plan Update 2007, approved on July 8, 2009 (“Snowcreek Master Plan Update 2007”). Permitted uses for the Snowcreek VIII portion of the Snowcreek Projects are set forth in the Snowcreek Master Plan Update 2007.

3.2.2.4 Conditional Use Permit # 88-19 approved 4/12/1989 for the current 9-hole golf course existing on the Snowcreek VIII Property.

3.2.2.5 Tentative Tract Map 09-002 to allow parcelization of approximately 222 acres within the Snowcreek Master Plan Update Area approved by Resolution on December 9, 2009, and recorded on January 14, 2010.

3.2.2.6 CDDD 2009-25 for AP 09-004 dated 1/12/10 approving the temporary restaurant at the Golf Course and extending the use permit on the existing temporary clubhouse.

The permitted uses, the density or intensity of use, the zoning, the maximum height and size of buildings, the provisions for reservation and dedication of land, and the subdivision or use permit improvement requirements for the Snowcreek Projects are set forth in the existing Project

Approvals, as supplemented by Subsequent Permits issued in conformance with the Vested Rules.

3.3 Vested Right to Develop. During the Term of this Agreement, with regard to the Snowcreek Projects listed in Recital D and the Property legally defined in Exhibit A, Developer is assured, and the Town agrees, the development rights, obligations, terms and conditions specified in the Project Approvals, the other Vested Rules and this Agreement are fully vested in Developer and may not be changed or modified by the Town, whether by administrative action, legislative action, or vote of the electorate, except as may be expressly permitted by and in accordance with the terms and conditions of this Agreement, or as may be expressly consented to by Developer. Developer shall have the vested right to develop and construct the Snowcreek Projects on the Snowcreek Properties and each portion thereof, in accordance with the Project Approvals, the other Vested Rules and this Agreement.

3.4 No Conflicting Enactments. Except as provided in Section 3.3 of this Agreement, during the Term of this Agreement, the Town shall not, without the prior written consent of Developer, do any of the following:

3.4.1 Apply to the Snowcreek Projects or the Snowcreek Properties, or any portion thereof, any change in the Vested Rules or any new or amended rule, ordinance, resolution, regulation, requirement or official policy which conflicts with or is inconsistent with this Agreement, or which reduces the development rights provided by this Agreement, or which limits or reduces the permitted uses allowed under the Vested Rules, or which prevents, impedes or materially adversely affects development, construction or operation of the Snowcreek Projects or any portion thereof in accordance with the Vested Rules, or which discriminates against Developer or the Snowcreek Projects or any portion thereof, or which applies only to the 2009 Projects or a portion thereof.

3.4.2 Apply to the Snowcreek Projects or the Snowcreek Properties any new rule, ordinance, resolution, regulation, requirement or official policy that requires any additional discretionary review or approval.

3.4.3 Apply to the Snowcreek Projects or the Snowcreek Properties any new or amended rule, ordinance, resolution, regulation, requirement or official policy that materially, adversely affects the timing or phasing of construction or development or that limits the availability of utilities, infrastructure or public services for the Snowcreek Projects or the Snowcreek Properties.

3.5 Term of Project Approvals. To the extent allowed by the Subdivision Map Act, the term of any tentative map approved for any portion of the Property, whether as stated in the existing Project Approvals, or as stated in any subsequent amendment or addition to the Project Approvals, including, but not limited to, any tentative parcel map, tentative tract map, vesting tentative tract map or vesting tentative parcel map, any amendment of any such map, and any subdivision improvement agreement entered into in connection with any of the aforementioned maps, shall be automatically extended for the Term of this Agreement. Similarly, the term of any Project Approvals approved for any portion of the Property, whether now existing or subsequently approved, shall be automatically extended for the Term of this Agreement. In

addition, in accordance with Government Code sections 66452.6(b)(1), (2) and (3), the term of any map or other Project Approval shall be extended for a period equal to any period of time during which: (a) a development moratorium exists, including, but not limited to, a water or sewer moratorium or the actions of public agencies (other than the Town) that regulate land use, development or the provision of services to the Property, that prevents, prohibits or delays the construction of the Projects; or (b) a lawsuit involving any development approvals or permits for the Project is pending. A development moratorium adopted or implemented by the Town shall not apply to the Property, as further described in Section 3.7.

3.6 Initiatives/Referendum. Any law enacted or imposed after the Effective Date by initiative or referendum, or by the Town Council, directly or indirectly, in connection with any proposed initiative or referendum, which law would conflict with the vested rights to develop granted to Developer under this Agreement shall, to the maximum extent permitted by law, not apply to the Snowcreek Projects.

3.7 Moratoria; Growth Control Measures. Developers' rights to develop the Snowcreek Projects on the Snowcreek Properties in conformance with the Vested Rules under this Agreement shall prevail over any growth control measure or development moratorium adopted or implemented by the Town after the Effective Date, whether adopted specifically to prohibit construction of the Snowcreek Projects or any portion thereof, or as an interim measure during the processing of contemplated General Plan, Specific Plan or zoning changes, or as a general growth control management measure.

3.8 Effect of Inconsistent State or Federal Laws. This Agreement may be modified or suspended as may be necessary to comply with State of California or Federal legislation, case law, codes or regulations enacted/issued after the Effective Date, which preempt local jurisdiction and which prevent or preclude compliance with one or more provisions of this Agreement; provided, however, that such modification or suspension shall be made to the minimum extent necessary and only after the Parties have met and conferred in good faith to determine the feasibility of such modification or suspension and to minimize its effect on the rights of the Parties and fulfillment of the purposes and intent of this Agreement. The Parties shall cooperate to process applications for any Town or governmental approvals which may be required as a result of any such modification or suspension of this Agreement.

ARTICLE 4 2010 PROJECT PROCESSING AGREEMENTS

4.1 Affordable Housing Requirements.

4.1.1 Developer and Town agree the affordable housing requirements shall not exceed the parameters set forth in Section 2.2.3 of this Agreement. The Total Affordable Housing Cost is defined to mean the value of the 47 units of on-site affordable housing, as specified in Section 2.2.3, an in-lieu of fee payment for 47 units of off-site affordable housing, as specified in Section 2.2.3, and the application of existing housing credits (16.5 FTEE). Developer and Town agree the Total Affordable Housing Cost reasonably implements Town's affordable housing requirements, which will be further implemented through subsequent submittals of Affordable Housing Implementation Plans (each an "AHIP"). Notwithstanding