

Section 2.2.3.5, the parties further acknowledge each AHIP may meet affordable housing requirements in a variety of ways. Measures may include, but are not limited to, on- or off-site construction, purchase, rehabilitation, payment of an in-lieu fee and other forms of financial assistance to prospective qualified homebuyers or qualified renters. On-site measures may result in different numbers of actual units secured, different percentages of income attributed to mortgage payments, different unit types and different levels of affordability as percentages of Mono County Area Median Income other than those described in Section 2.2.3.

4.1.2 Each AHIP shall be prepared by Developer and submitted to Town with each applicable subsequent use permit. Town acknowledges the 47 on-site affordable housing units are intended to be dispersed throughout the Project in the High Density Residential Product buildings and, therefore, certain subsequent use permits may not include an on-site affordable housing component (for example, the hotel). Therefore, some use permits may include an AHIP that specifies in-lieu fees would be paid or existing housing credits or any other measure described in Section 4.1.1 would constitute the submitted AHIP.

4.1.3 The Total Affordable Housing Cost shall be reduced in two possible ways:

4.1.3.1 First, in the event not all the entitled market-rate units are constructed, the actual pro-rata allocation of the Total Affordable Housing Cost for each market-rate unit not constructed shall be deducted from the Total Affordable Housing Cost; and

4.1.3.2 Second, in the event not all the entitled Resort Hotel Rooms/Suites are constructed, the actual pro-rata allocation of the Total Affordable Housing Cost for each Resort Hotel Room/Suite not constructed shall be deducted from the Total Affordable Housing Cost.

4.1.4 The Parties agree each AHIP should meet the current needs and circumstances of Town at the time of submittal.

4.1.5 In order to maintain the integrity of the Master Plan and the Snowcreek Master Plan Update and implement the timely Phasing and Performance described in Section 2.2.1 of this Agreement, each AHIP will be subject to review and approval by the Planning Commission in conjunction with each applicable necessary use permit.

4.2 Development Schedule; Phasing. The Master Plan Update includes a general phasing plan, a copy of which is attached hereto as Exhibit D. This phasing plan anticipates build-out of the Snowcreek Projects will continue over a substantial period and the timing and phasing of development will be affected by numerous factors, which are not all within the control of Developer, such as market demand, economic conditions, competition and the like. The Parties acknowledge Developer cannot, at this time of great economic crisis, predict with specificity when or at what rate or in what order the future phases of the Snowcreek Projects shown on Exhibit D will be developed on the Property. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties agreement, it is the parties' intent to cure that deficiency by acknowledging Developer shall have the right to develop the

Property at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. This Section 4.2 does not apply to the milestones set forth in Sections 2.2.1.a and b.

4.3 Snowcreek VII Master Plan. Permitted uses and densities for Snowcreek VII are incorporated in the Master Plan approved in 1981. The General Plan and the Master Plan provide for clustering of densities within the area of the Master Plan, as long as the overall Snowcreek Project density, as approved by the Master Plan, is not exceeded. The Master Plan at Mammoth is part of the Vested Rules.

4.4 Snowcreek VIII Master Plan Update 2007. Permitted uses, densities and development standards, among other things, for the Snowcreek VIII Project are incorporated in the Snowcreek VIII Master Plan Update 2007, governing Snowcreek VIII.

## ARTICLE 5 PROCESSING OF SUBSEQUENT PERMITS AND APPROVALS

### 5.1 Subsequent Permits.

5.1.1 Defined. "Subsequent Permits" means the land use, development and building approvals that are to be processed for approval by the Town and that are necessary or appropriate in order to develop the Snowcreek Projects in accordance with the Vested Rules, the Project Approvals and this Agreement, including, but not limited to, zone changes, master plans or amendments thereto, any and all permits and/or approvals that are part of development "phases," variances, use permits, development plans, parcel maps, tentative and final subdivision maps, subdivision improvement plans and agreements, design review, site plans, landscape plans, preliminary grading plans, grading plans and permits, building plans and permits, and environmental determinations; provided, that if a Subsequent Permit requires a significant change to the Snowcreek Master Plan Update and the environmental impact of that change has not been studied under CEQA, such modification shall be treated as a discretionary permit and Town's review and approval, conditional approval or denial is not restricted by this Agreement. The Subsequent Permits shall include any permits and approvals required to complete the infrastructure and improvements necessary to develop the Property (collectively, the "Improvements"), in accordance with this Agreement and the Vested Rules, including, without limitation, those related to: (a) clearing the Property; (b) preliminary grading or grading of the Property; (c) construction of roads and storm drainage facilities; (d) construction of the golf course, snow play area, trails and bicycle paths, great lawn, open space corridor; (e) importing and stockpiling dirt on the property; and, (f) construction of all commercial and residential structures and all structures and facilities accessory thereto, subject to the limitations set forth in this Agreement. The grant of vested rights to Developer pursuant to this Agreement does not waive or remove any requirement to process and obtain Subsequent Permits for the Snowcreek Projects, to the extent required under the Vested Rules and the Project Approvals.

5.1.2 Standard of Review. The Town agrees applications for Subsequent Permits shall be processed in good faith and with reasonable diligence and granted on reasonable terms and conditions, in conformance with this Agreement, the Project Approvals and the Vested Rules. The Town shall have the right to withhold any Subsequent Permit or to conditionally

approve the same in order to ensure conformance with the Project Approvals and the Vested Rules set forth in Section 3.1, the vested right to develop set forth in Section 3.3, and/or the requirements of this Agreement. Except to the extent a conflict is the result of the Town's denial or conditional approval of a Subsequent Permit to ensure conformance with the Project Approvals and the Vested Rules set forth in Section 3.1, in the event any conflict arises between the terms and conditions of a Subsequent Permit and this Agreement, the provisions of this Agreement shall control unless otherwise agreed to in writing by the Town and Developer.

## 5.2 Timely Processing.

5.2.1 General. Subject to compliance with the Vested Rules and other applicable laws, the Subsequent Permits shall be reviewed, processed and acted upon by the Town in a timely manner, provided that: (a) applications for such approvals are submitted to the Town during the Term of this Agreement; (b) the applications are deemed complete pursuant to the Vested Rules; and (c) there is no uncured Event of Default under the terms and conditions of this Agreement with respect to the portion of the Property for which such approval is sought.

5.2.2 Plans and Permits. The Town shall review the application and schedule the application for review by the appropriate authority within the time periods set forth in this Section 5.2.2. The Town shall exercise good faith efforts to process and check all building plans, grading and improvement plans, and other plan submittals and to issue applicable permits and approvals with reasonable diligence, within the time periods set forth on Exhibit I attached to this Agreement and incorporated herein by this reference. Therefore, the parties agree, subject to Section 11.15, if plans and submittals for the Resort Hotel and the 18-hole championship golf course are not reviewed, processed and checked within the time periods listed on Exhibit I, the term of this Agreement with respect to the commencement of development of the Resort Hotel and the 18-hole championship golf course shall be extended one day for each day or portion thereof that the processing has not been completed. In no event shall the Term exceed twenty (20) years.

5.3 Term of Approvals. All Subsequent Permits, once granted or issued, shall, like the Project Approvals, continue in full force and effect during the Term, in order to facilitate implementation of Developer's development rights under this Agreement.

5.4 Vesting of Approvals. All Subsequent Permits, once granted or issued, shall become automatically vested under this Agreement, as if granted or issued prior to the adoption of this Agreement, for the duration of the Term of this Agreement.

5.5 Development Fees. Due to the consideration and benefits as described in Exhibit B, the following shall apply to the development fees described below:

5.5.1 Applicable Fees. If a Subsequent Permit requires any significant change to the Snowcreek Master Plan Update, then any additional Fees shall be reasonable and meet all applicable nexus and rough proportionality requirements. Notwithstanding Section 3.1 or any other provision of this Agreement and subject to section 5.5.4, all increases in the amount of Fees adopted by the Town on a Town-wide basis during the Term shall not apply to Developer and the Snowcreek Projects. Fees shall be payable when due; provided, however, that the Town

shall reasonably determine, at the time building permits are issued, whether Fees then due will be offset by credits that will be available to Developer as a result of subsequent construction; payment of Fees that are anticipated to be so offset by credits shall be deferred and a reconciliation of those Fees and credits shall be made prior to issuance of such certificates of occupancy. Additionally, if either California State law or the municipal code is modified to defer payment of Fees to a time later in the development process than that required on the Effective Date, then Owner or Developer shall be subject to such deferment. In addition, credits to which any portion of the Snowcreek Projects is entitled as a result of construction shall be transferable to any other portion of the Snowcreek Projects and applied to reduce fees payable and not yet paid by Developer in connection with any portion of the Snowcreek Projects. Additionally, if the amount of credits is increased, Owner or Developer shall be subject to the increased credit amount.

**5.5.2 DIF Resolution.** Developer shall pay Development Impact Fees in accordance with the DIF Resolution. The amount of Development Impact Fees shall not be increased as applied to the Snowcreek Projects during the Term. The DIF Resolution as applied to the Projects as set forth in this Agreement is included in the Vested Rules; provided, however, if Development Impact Fees applied to all or any other developer or builder of any uses similar to the Project are reduced during the Term, then any future not yet due Development Impact Fees will be at the lower rate. The vesting of the provisions of the DIF Resolution as to the availability and calculation of credits, in particular, is a material inducement to Developer in agreeing to provide the significant community benefits that are a part of these Projects..

**5.5.3 Public Arts Fund and Fee Program.** Public Art meeting the Town's Public Arts Fund and Fee Program will be provided throughout the Snowcreek Projects in accordance with the Snowcreek Master Plan Update. As stated in Section 8.1 of the Snowcreek Master Plan Update, the Town's Municipal Code only applies to the Snowcreek VIII Project where the Master Plan Update is silent. Section 8.1.5 of the Snowcreek Master Plan Update describes the Public Art Program for Snowcreek VIII. Therefore, no fee for participation in the Town's Public Arts Fund and Fee Program shall be due to, required by or paid to the Town. Developer and Town agree to implement Chapter 15.18 of the Municipal Code according to 15.18.070.F and that this Agreement constitutes the alternate provisions of that Chapter. Developer agrees to implement the goals and intent of Chapter 15.18 through the subsequent review and approvals required by this Agreement. In order to maintain the integrity of the Master Plan and Snowcreek Master Plan Update, and implement the timely Phasing and Performance described in Section 2.2.1 of this Agreement, Public Art will be subject to review and approval by the Planning Commission in conjunction with each applicable and necessary use permit.

**5.5.4 Building Permit and Application Processing Fees.** Developer shall pay the Building Permit and Application Processing Fees in effect on the date the Town Council approves this Development Agreement. The Building Permit and Application Processing Fees shall be subject to the COLA.

## **5.6 Other Local, State, Federal Approvals.**

**5.6.1 General.** The Parties contemplate development of the Snowcreek Projects pursuant to this Agreement may be subject to the approval of other governmental agencies. The

Parties shall act in good faith and use reasonable effort and diligence to process and obtain such approvals in a manner and on terms and conditions that are consistent with, and implement, the Project Approvals, the Vested Rules and this Agreement. If any revisions or corrections of plans for Project Approvals approved by the Town shall be required by any other governmental agency, then the Parties shall cooperate reasonably and in good faith to develop a mutually acceptable solution.

5.6.2 Waste Discharge Requirements permit, issued by the California Regional Water Quality Control Board, Lahontan Region, may be required for Snowcreek VIII. Developer is currently pursuing this issue and to the extent required shall obtain all the necessary permits. If significant modifications in the Snowcreek Projects are needed to obtain any of those permits, then such modifications shall be processed as a Subsequent Permit in accordance with subsection 5.1.1.

## ARTICLE 6 PUBLIC IMPROVEMENTS AND SERVICES

6.1 Community Benefits. In return for the vesting of rights granted by this Agreement, the Town Council has required that the community receive certain special benefits. Those benefits are set forth in Exhibit B to this Agreement. The rights and obligations of Developer and the Town under the terms of Exhibit B are incorporated herein as provisions of this Agreement.

6.2 Applicable Requirements. Development of the Snowcreek Projects is subject to payment of Development Impact Fees pursuant to the DIF Resolution. Development of the Snowcreek Projects is also subject to payment of the Processing Fees listed on Exhibit E to this Agreement which is attached hereto and incorporated herein by this reference, which may be increased per COLA as provided in Section 5.5.4 herein.

6.3 Land for Propane Storage Tank Area. The Town has indicated a need and desire for additional propane storage tank areas in the community. This ancillary utility use is permitted by both Town regulations and the private land use covenant between the Town and Developer. At the time of the execution of this Agreement, the Town and Turner Gas were working to find a suitable location for storage of the propane tanks and have tentatively located an appropriate site. In the event such site is not acceptable or available to the Town, then Developer agrees to allow the use of 16,875 square feet of its property as a Propane Storage Tank area, so long as such determination is made before the issuance of a use permit for the Golf Course. The legal description is attached as Exhibit F.

6.4 Bike Trail North of Old Mammoth Road & Recreational Trail Public Easement. During the construction of the first phase of Snowcreek VII, a bike path was completed connecting a section of trail linking the Old Mammoth area from the Athletic Club to the intersection of Old Mammoth Road and Minaret Road. A 12' wide public easement has been issued for recreational trail purposes along the length of the bike path. A Benefit Assessment district shall be created, largely at the expense of the Snowcreek VII homeowners, to maintain this trail both in the winter and the summer.

6.5 Public Access Easement for Fishing and Hiking Along Mammoth Creek. As part of Snowcreek VII, a 40' wide public access and drainage easement was recorded along Mammoth Creek from the Athletic Club to Minaret Road. This easement grants access to the public for fishing and hiking along the Creek.

6.6 Fairway Drive Realignment. Fairway Drive is currently the only non-exclusive public access to Snowcreek V. During construction of Snowcreek VIII, Developer will realign and improve Fairway Drive.

6.7 Secondary Access Road. Developer will create a secondary access to Old Mammoth Road from the Snowcreek Projects that will benefit Snowcreek V and Snowcreek VIII visitors and residents.

6.8 Emergency Vehicle Access Road. Developer will create an Emergency Vehicle Access Road, crossing the golf course that will connect an internal Snowcreek Projects road to Sherwin Creek Road.

6.9 Expanded Golf Course. Expanded 18-hole publicly accessible golf course and practice facility. A nine-hole golf course designed by Ted Robinson exists on the north and west portions of the property. An additional nine holes will be constructed on the north, eastern and southern edges of the Snowcreek VIII site, creating a championship 18-hole golf course and encompassing an estimated 155 acres. The course will be designed to conserve water and utilize natural vegetation. Re-grading and contouring of the new portion of the golf course, and possibly portions of the existing course, will create topographic undulations in character with the surrounding landforms fronting the main range.

6.10 Cooperation with MCWD Expansion. The Master Developer is cooperating with MCWD's expansion, and possible improvement and distribution of MCWD's tertiary water treatment to the extent available, legally permissible and on a schedule and in volumes agreed to by MCWD and the Master Developer. MCWD is in the process of establishing a Recycled Water Project that could provide irrigation for portions of the existing Snowcreek nine-hole golf course as well as the expanded additional nine-hole course. If and when this Recycled Water Project becomes active, it could free up a significant amount of potable water currently being used on the golf course, for other Town uses. Snowcreek VIII is working on an agreement with MCWD related to participating in the Recycled Water Project.

6.11 Other Public Dedications and Improvements. The Town shall not require the grant, reservation, or dedication by Developer of any additional land or easements for open space, park and recreational uses or for public rights-of-way or other public purposes, or require the construction or funding of public improvements or facilities, as a condition to development of the Projects, except as permitted under the Vested Rules, the Project Approvals, and this Agreement.

6.12 Local Economic Opportunity. The Developer and the Town acknowledge that it is in the best interest of both parties that the construction and operation of the Snowcreek Projects create economic and job opportunities for local residents and the Town. In order to meet the objectives of this section in a manner consistent with state and federal laws, Developer

agrees to use commercially reasonable efforts to take the following steps to encourage economic and job opportunities for qualified local residents:

**6.12.1 Bid Process.** Developer will ask its general contractors and major subcontractors to solicit local contractors and subcontractors to participate in the bid process. For example, to further the objectives of this Section as stated above, Developer will ask its general contractors and major subcontractors to coordinate with any local or regional contractors association to solicit bids from qualified local contractors and subcontractors consistent with this subsection. It is the intent of the parties to include qualified local contractors and subcontractors in the bid process but not to limit participation in the process solely to them nor to prohibit others from participating.

**6.12.2 Local Labor.** Developer will ask its general contractors and major subcontractors to attempt to identify and hire qualified local labor. Local labor shall include, but is not limited to, in the following order of preference, to the maximum extent legally permissible, persons living in Mammoth Lakes, Mono County, and the northern portion of Inyo County. For example, Developer will ask its general contractors and major subcontractors to attempt to coordinate with any local or regional contractors association to utilize qualified local labor consistent with this subsection. It is the intent of the parties to include qualified local labor in the hiring process but not to limit participation solely to them nor to prohibit others from participating.

**6.12.3 Local Employment Opportunity.** Developer will take steps to inform qualified local contractors, laborers and residents of potential job opportunities with the Project.

**6.12.4 Purchase of Equipment and Materials.** It has been the practice of Developer to purchase materials and equipment locally when such materials and equipment have been competitively priced and it makes economic sense to do so. Developer and Town acknowledge that it would be desirable to strive to purchase equipment and materials locally again when such materials and equipment are competitively priced. Therefore, it is the intent of the parties that, all other factors being equal, such factors including price, availability and other factors to be determined in the sole business judgment of Developer, that Developer will strive to purchase equipment and material locally; provided, however, that this provision shall not be interpreted as a restriction on Developer nor shall it be used to prohibit Developer from constructing and operating the Snowcreek Projects as Developer sees fit in its sole discretion.

## ARTICLE 7 IMPLEMENTATION

**7.1 Operating Memorandum.** The Town and Developer may implement or clarify provisions of this Agreement through the execution of one or more operating memorandum approved by the Town and Developer, from time to time during the Term (each, an "Operating Memorandum"). An Operating Memorandum shall be automatically deemed a part of this Agreement, but approval, implementation and/or amendment thereof shall not constitute or require an amendment to this Agreement or require public notice or hearing. In the event a provision in an Operating Memorandum conflicts with this Agreement, this Agreement shall control. The Town Manager or his or her designee, after consultation with the Town Attorney to

determine whether an Operating Memorandum is appropriate, is authorized to approve an Operating Memorandum, or amendment thereto, on behalf of the Town, but may request Town Council review and approval of any proposed Operating Memorandum, if he or she deems it necessary or desirable.

## 7.2 Annual Review.

7.2.1 General. The annual review required by Development Agreement Statute Section 65865.1 shall be conducted as provided in this Section 7.2. As part of that review, each Party shall have a reasonable opportunity to assert matters which such Party believes have not been undertaken or performed in conformance with this Agreement, to explain the basis for such assertion, and to receive from the other Party or Parties a justification for such other Party's or Parties' position with respect to such matter.

7.2.2 Commencement of Review. Prior to October 31, of each full calendar year after the effective date of this Agreement, Developer will initiate the annual review by submitting a written statement to the Town Manager describing, Developer's good faith substantial compliance with the terms and conditions of this Agreement for the prior calendar year. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1.

7.2.3 Determination of Substantial Compliance. Within thirty (30) days after the Town Manager's receipt of Developer's complete submittal [or thirty (30) days after the deadline for such submittal if none is submitted], unless said period is extended by mutual consent of the Town Manager and Developer or as the result of circumstances beyond the reasonable control of the Town, the Town Manager shall: (a) determine whether, for the year under review, Developer is in good faith substantial compliance with the terms and conditions of this Agreement; (b) confirm its determination in writing; (c) deliver a copy to Developer and (d) deliver a written report to the Town Council, which the Town Council, at a regular public meeting within thirty (30) days after delivery, shall receive and file that report and may comment on or request further information or public discussion at a future regular public meeting or closed session, as legally permitted. If the Town Manager's report to the Town Council determines, based upon substantial evidence, Developer is not in good faith substantial compliance with the terms of the Agreement, the Town Manager's written determination shall specify the grounds for such determination in reasonable detail, and Developer shall have thirty (30) days from receipt of such determination of non-compliance to respond in writing. After receipt of Developer's response (or expiration of such 30 day period if no response is delivered), the Town Manager shall determine whether Developer is in good faith substantial compliance and deliver a copy of such determination to Developer and the Town Council. If Developer is determined not to be in good faith substantial compliance, the Town Manager may deliver a Notice of Default to Developer pursuant to Section 9.2. A finding by the Town Manager of good faith substantial compliance with the terms of this Agreement shall conclusively determine said issue up to and including the date of said review, and shall complete the annual review. If the annual review is completed pursuant to the procedures set forth above, the Town Manager shall promptly deliver a report to the Town Council confirming the completion of the annual review.

7.2.4 Appeal to Town Council. If Developer disputes the allegation Developer is not in good-faith substantial compliance and believes the Notice of Default has been issued erroneously, then Developer shall have the right to appeal the determination to the Town Council, and the Town Council shall make such determination after Developer has been permitted an opportunity to be heard orally and in writing at a noticed public hearing before the Town Council. Any appeal must be filed with the Town Manager in writing within fourteen (14) days Developer's receipt of the Notice of Default. The Town shall deliver to Developer a copy of any staff reports that are not exempt from the California Public Records Act and any other related information submitted to the Town Council concerning Developer's performance at least seven (7) calendar days prior to the date of the noticed public meeting. If the Town Council, at that noticed public meeting, or any continued public meeting related to the appeal, determines, based upon substantial evidence, Developer is not in good faith substantial compliance with the terms and conditions of the Agreement, the Town Council may terminate or modify the Agreement, subject to compliance with the provisions in Section 9.3.

7.3 Statement of Compliance. Within thirty (30) days after receipt of a written request from a Party ("requesting Party"), a Party shall execute and deliver to the requesting Party a statement certifying: (a) the Agreement is unmodified and in full force and effect (or identifying any modifications); (b) there are no uncured defaults under the Agreement by the certifying Party or, to the certifying Party's knowledge, by any other Party (or specifying any such defaults); and (c) any other information reasonably requested regarding the status of the Agreement and performance by the Parties. The failure by a Party ("non-responding Party") to deliver such statement within such 30 day period shall be conclusively deemed to constitute a certification by the non responding Party: (a) this Agreement is in full force and effect; and (b) to the knowledge of the non responding Party, there are no uncured defaults on the part of the requesting Party. Such statement or certification may be relied upon by any purchaser, transferee, lender, title company, governmental agency or other person reasonably requesting such statement.

## ARTICLE 8 ASSIGNMENTS; MORTGAGEE PROTECTION

### 8.1 Right to Assign.

8.1.1 Right to Assign. Developer shall have the right to assign or transfer any portion of its interests, rights or obligations ("Rights") under this Agreement and under the Approvals and Subsequent Approvals to third parties acquiring successor interests in the Snowcreek Projects or Project Site, or any portion thereof, including without limitation purchasers or long-term ground lessees of individual lots, parcels, or facilities located on or within the Project Site. If Developer decides to transfer the entire Snowcreek VIII Project (a "Transfer") (other than to an affiliate or subsidiary of Developer that is controlled by SIC), then such assignee or transferee shall have significant experience in the real estate industry and sufficient financial capacity to fulfill Developer's obligations under this Agreement. Within a reasonable time period prior to a Transfer, Developer and Town shall meet and confer regarding the proposed transferee or assignee's qualifications, as stated herein. Town shall then have fifteen (15) days after receipt of a notice of a Transfer to submit a written, reasonable objection to the Transfer to Developer if Town believes, in good faith, the transferee/assignee does not

have sufficient financial capacity and development expertise to carry out Developer's obligations under this Agreement. If Town timely submits a written objection, then the parties shall meet and confer within five (5) days to try to resolve those objections. If the parties cannot resolve the objections, then the parties will either follow the dispute resolution process established by Section 9.5 of this Agreement or agree to some other more expedited process to resolve the objections.

8.1.2 Assumption of Assigned Obligations and Rights. As a condition to any Assignment under this Agreement, any person or entity accepting such Assignment ("Assignee") shall assume all of the obligations and rights of this Agreement as they pertain to the portion of the Property being transferred to the Assignee. An Assignment and Assumption Agreement, attached as Exhibit F shall be signed by the Assignor and the Assignee.

8.1.3 Release of Developer. Upon the effectiveness of any Assignment and Assumption of Developer's obligations by any Assignee, Developer shall be fully relieved and released of each of its duties and obligations with respect to the portion of the Property transferred to the transferee from and after the date of such transfer, except as to those obligations of Developer under this Agreement that affect more than the portion of the Property being transferred.

8.1.4 Successive Assignment. In the event of any Assignment under the provisions of Article 8, the provisions of this Article 8 shall apply to each successive Assignment and Assignee. Developer's obligations under this Agreement with respect to the portion of the Property transferred which are to be assumed by the Assignee shall be set out in substantially the form of the Assignment and Assumption Agreement, at Exhibit G.

8.1.5 Default. If all or any portion of the Project Site is transferred by Developer ("Transferred Property") to any person or entity (a "Transferee") the Transferee shall succeed to all of Developer's Rights under this Agreement regarding the Transferred Property. Thereafter, a default under this Agreement by Developer regarding that portion of the Project Site other than the Transferred Property (the "Remaining Property") shall not be considered or acted upon by Town as a default by the Transferee regarding the Transferred Property and shall not affect the Transferee's Rights regarding the Transferred Property. Likewise, a default by a Transferee relating to the Transferred Property shall not be considered or acted upon by Town as a default by Developer regarding the Remaining Property and shall not affect Developer's Rights regarding the Remaining Property.

## 8.2 Mortgagee Protection.

8.2.1 Right to Mortgage. Developer or Owner may assign, pledge or otherwise encumber its rights and interests under this Agreement for security purposes to a Mortgagee of any Lot(s) without the consent of the Town. Nothing contained in this Agreement shall restrict Developer from encumbering all or any portion of the Property with a Mortgage, deed of trust or other security device (collectively, "Mortgage"); provided, however, that this Agreement shall be superior and senior to the lien of any Mortgage placed upon the Property or any portion thereof after the Effective Date. Prior to recordation of this Agreement, Developer shall obtain a Subordination Agreement in the form of Exhibit H attached hereto, from the holder of any

Mortgage in effect as of the Effective Date subordinating the lien of such Mortgage to this Agreement. Notwithstanding the foregoing, no breach of this Agreement shall default, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions of this Agreement shall be binding upon and effective against any Person, including any deed of trust beneficiary or mortgagee, who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise; provided, however, that such transferee shall not be liable for defaults or monetary obligations arising prior to its acquisition of title to the Property or portion thereof.

8.2.2 Notice of Default. If the Town receives written notice from a Mortgagee requesting a copy of any notice of default given to Developer and specifying the address for service thereof, then the Town shall deliver to such Mortgagee, concurrently with the delivery to Developer, any notice given to Developer with respect to any claim by the Town Developer is in default hereunder. If the Town makes a determination of noncompliance hereunder, the Town shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service on Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to Developer hereunder, to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in the Town's notice.

## ARTICLE 9 DEFAULT; REMEDIES

9.1 Events of Default. Subject to the provisions of Section 11.15 regarding Unavoidable Delays, Section 8.1 regarding assignment and assumption, and Section 8.2 regarding Mortgagee Protection, the failure by any Party to pay any sum or to perform any obligation required under this Agreement, including, but not limited to, the Town's failure to issue Subsequent Permits for the Snowcreek Projects in conformance with this Agreement, and such Party's failure to cure such default within the specified cure period after receipt of a Notice of Default pursuant to Section 9.2 below, shall constitute an "Event of Default" under this Agreement. Failure by Developer to construct or delay in constructing the 2009 Projects or any portion thereof shall not be a default or Event of Default under this Agreement, and Developer shall not be liable to the Town for damages for failure to construct any portion of the Snowcreek Projects, unless such failure or delay constitutes a default under the terms of any Final Map, building permit or similar approval, in which event the Town may exercise any of its normal remedies for default under such permit or approval.

9.2 Notice of Default and Cure. Any Party claiming a default under this Agreement shall deliver to the defaulting Party a written notice of default ("Notice of Default"). The Notice of Default shall specify the reasons for the allegation of default with reasonable particularity and the manner in which the default can be cured. The defaulting Party shall have the right to cure the default within thirty (30) days after receipt of the Notice of Default; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within such thirty-day (30-day) period, the thirty-day (30-day) period shall be extended for the time reasonably required to complete the cure, so long as the defaulting Party commences the cure within the thirty-day period and diligently prosecutes the cure to completion thereafter and such cure is complete within one hundred twenty (120) after the cure is commenced; provided, that if a Party has timely commenced and diligently prosecutes the cure to completion thereafter, then the other

party shall reasonably provide one or more extensions up to a total of one hundred twenty (120) days.

9.3 Procedure Upon an Event of Default. After the occurrence of an Event of Default, the other Party may give notice of its intent to terminate this Agreement. Following notice of intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review at a public meeting of the Town Council within thirty (30) days after that notice. Following consideration of the evidence presented in the review before the Town, the Party alleging the default by the other Party may institute legal proceedings or may give written notice of termination of this Agreement to the other Party; provided, however, Developer may only terminate this Agreement with respect to such portion of the Property then owned by Developer, and the Town may only terminate this Agreement with respect to the portion of the Property then owned by the defaulting Developer. Evidence of default may also arise in the course of an annual review of this Agreement pursuant to Section 7.2. If Developer is determined by the Town to be in default pursuant to the procedures for annual review, and after giving effect to Developer's right of appeal of such determination to the Town Council as provided in Section 7.2.4, the Town may give a written Notice of Default pursuant to Section 9.2. If the alleged default is not cured within the cure period set forth in Section 9.2 or within such longer period specified in the Town's Notice of Default, or if Developer waives its right to cure such alleged default in writing, then this Agreement may be terminated by the Town with respect to the portion of the Property then owned by the defaulting Developer.

9.4 Remedies for Non-Defaulting Party.

9.4.1 In the event either Party is in default under the terms of this Agreement, subject to any applicable requirements under Section 9.5 of this Agreement, the other Party may elect to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided in this Agreement; (iii) pursue any judicial remedies available under the law; or (iv) terminate this Agreement.

9.4.2 Unless otherwise provided in this Agreement and subject to applicable requirements under Section 9.5 of this Agreement, either Party, in addition to any other rights or remedies, may institute legal action to cure, correct, or remedy any default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. However, each Party hereby waives any right to sue or recover monetary damages for any default hereunder, other than the recovery of monetary amounts to which such Party is entitled under express provisions of this Agreement. All remedies available to a Party under this section shall be cumulative and not exclusive of the other, and the exercise of one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

9.5 Dispute Resolution; Legal Action.

9.5.1 Mediation. Before pursuing any administrative or judicial remedies to resolve any dispute or claim under this Agreement, the Parties hereto shall attempt in good faith to resolve any such dispute through mediation conducted by a mediator, or a panel of mediators

of a size appropriate to the scope of the dispute (but not exceeding three (3) in any event), in accordance with the Commercial Mediation Rules of the American Arbitration Association.

**9.5.2 Judicial Reference.** If mediation is not required under the provisions of this Agreement or mediation has not resolved the dispute and any Party to this Agreement commences a lawsuit relating to a dispute arising under this Agreement, all the issues in such action, whether of fact or law, shall be resolved by judicial reference pursuant to the provisions of California Code of Civil Procedure Sections 638.1 and 641 through 645.1. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Developer shall not be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate.

**9.5.2.1** The proceeding shall be brought and held in Mono County, unless Parties agree to an alternative venue.

**9.5.2.2** The Parties shall use the procedures adopted by JAMS/ENDISPUTE ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties).

**9.5.2.3** The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

**9.5.2.4** The Parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or if no entity is involved, by the court in accordance with California Code of Civil Procedure Sections 638 and 640.

**9.5.2.5** The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy, other than punitive damages.

**9.5.2.6** The referee may require one or more pre-hearing conferences.

**9.5.2.7** The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

**9.5.2.8** A stenographic record of the trial shall be made.

**9.5.2.9** The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

**9.5.2.10** The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

9.5.2.11 The Parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

9.5.2.12 The costs of such proceeding, including the fees of a referee, shall be borne equally by the Parties to the dispute.

9.5.2.13 The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the Parties. Except for actions for indemnification, the Parties acknowledge and accept that they are waiving their right to a jury trial.

9.6 Extension of Agreement Term. The Term of this Agreement as set forth in Section 2.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as a direct result of such dispute resolution.

9.7 No Cross-Defaults. The rights and obligations of Developer and any successor Owner are separate from the rights and obligations of all other Developers and Owners and may be assigned separately as provided in Section 8.1 and enforced separately. A default by any one or more Developer or successor Owners under this Agreement shall not constitute a default by any other Developer or successor Owner or result in the termination of this Agreement or the vested development rights provided herein as to any other Developer or successor Owner. Master Developer shall have obligations hereunder only to the extent of its obligations as a Developer and Owner.

## ARTICLE 10 AMENDMENTS; TERMINATION

10.1 Amendments. Except as set forth in Section 3.1, this Agreement may be modified, amended and/or extended only by mutual written consent of the Parties and shall be approved in the same manner as adoption of this Agreement, by ordinance as set forth in the Development Agreement Statute.

10.2 Release. Upon the transfer or conveyance of any residential Lot, stacked flat, or condominium unit ownership, to a residential owner, this Agreement shall automatically terminate and cease to be an exception to title with respect to such residential Lot, stacked flat, or condominium unit ownership. Notwithstanding the automatic nature of such termination, within ten (10) days after receipt of a written request from a developer or the residential owner, the Town shall execute and deliver any recordable documents necessary to evidence such termination. Upon the completion of the obligations set forth in this Agreement related to a residential Lot, stacked flat, or condominium unit ownership, upon the Town's receipt of written

request, the Town shall execute and deliver any recordable documents necessary to release such residential Lot, stacked flat, or condominium unit ownership from this Agreement. The foregoing only applies if all conditions of the Project Approvals and requirements of this Agreement applicable to the subject residential Lot, stacked flat, or condominium unit ownership have been satisfactorily completed by Developer.

10.3 Effect of Expiration/Termination. Upon expiration or termination of this Agreement: (a) no Party shall have any further rights or obligation hereunder except for matters which accrued prior to such expiration or termination and matters which specifically survive expiration or termination under the express terms of this Agreement; and (b) the underlying Project Approvals shall remain in full force and effect.

## ARTICLE 11 MISCELLANEOUS

11.1 Attorney's Fees. If any legal action or mediation or arbitration proceeding is brought by any Party because of a breach of this Agreement or to enforce any provision hereof and against the other party, then the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys' fees and costs. The "prevailing party" shall be that Party receiving substantially the relief sought in the action or proceeding.

11.2 Construction, Interpretation. This Agreement has been reviewed and revised by legal counsel for Developer and the Town, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

11.3 Cooperation; Further Assurances. Each Party: (a) shall deal fairly and in good faith with the other Parties; (b) shall not impede the other Parties' right to receive the benefits of this Agreement; (c) shall cooperate with and provide reasonable assistance to the other Parties in the performance of this Agreement; and (d) shall execute such documents or take such further actions as may be reasonably necessary to consummate the performance or to carry out the purpose and intent of this Agreement.

11.4 Counterparts. This Agreement, and any documents implementing this Agreement, may be executed in multiple counterpart originals, each of which is deemed to be an original and all of which when taken together shall constitute one and the same instrument.

11.5 Entire Agreement. The Recitals set forth above in this Agreement and the Exhibits attached hereto are incorporated by references into this Agreement as an integrated portion hereof. This Agreement, including all such Recitals and Exhibits, constitutes the entire agreement of the parties regarding the subject matter hereof, and all prior or contemporaneous agreements and understandings, whether written or oral, are superseded.

11.6 Governing Law/Jurisdiction. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California, and the state courts of Mono County shall have jurisdiction.

11.7 Legal Challenges—Defense and Indemnification.

**11.7.1 Cooperation in the Event of Legal Challenge.** In the event of Litigation (as defined below in Section 11.7.2), the Parties hereby agree to affirmatively cooperate and join in defending against any and all actions brought by any third party or parties in such Litigation; provided, however, that both the Town and Developer shall retain their respective rights to control their own defense of the Litigation. Except as provided herein, the Town and Developer shall each bear their own respective costs, if any, arising from such defense of Litigation.

**11.7.2 Defense and Indemnification.** Developer shall indemnify and defend the Town, its officials, employees and representatives (the "Town Indemnitees") with respect to any legal action or proceeding, including any involving CEQA (the "Litigation") initiated by a third party against the Town's final approval or final conditional approval of the Project Approvals or this Agreement; provided, however, that if any Town Indemnitee is involved in bringing the Litigation, this indemnification shall not be applicable to him or her personally. Developer's obligation to defend and indemnify, as set forth in this condition, shall expire once the applicable statute of limitations for the discretionary and ministerial approvals associated with the Project Approvals and this Agreement has run.

**11.7.3 Joint Defense and Costs.** In the event any Litigation is filed, Developer shall select and retain legal counsel ("Counsel") to represent both the Town and Developer with respect to the Litigation, and Counsel shall cooperate with Developer and the Town in the course of defending the Litigation. Developer anticipates choosing as Counsel to provide the Town's and Developer's legal defense in any Litigation the law firm of Allen Matkins Leck Gamble Mallory & Natsis LLP, subject to either party's right to change counsel if Counsel does not provide adequate and timely professional services. Developer shall also pay all filing fees, court costs and similar out-of-pocket expenses required for the Town and Developer to defend the Litigation. However, if the Town Attorney elects to appear (either in person or by his designee) in any Litigation, Developer shall not be responsible for paying any fees, costs, attorneys' fees or expenses resulting from unreasonable actions taken by the Town against the written advice of Counsel. The Town shall cooperate with Counsel's defense of the Litigation, and shall make its records (other than documents privileged from disclosure) and personnel available to Counsel as may be reasonably requested by Counsel in connection with the Litigation.

**11.7.4 Legal Conflicts.** If a legally recognizable conflict of interest arises, which requires that each Party be represented by separate counsel, Developer shall retain a law firm reasonably acceptable to the Town to represent and defend the Town in Litigation. If another firm is retained, then Developer shall pay the reasonable and actual attorneys' fees and other costs required for the Town to defend the Litigation.

**11.7.5 Effect on Term.** The Term of this Agreement shall be tolled until final court action is taken in any Litigation.

**11.8 Notices.** All notices, demands, correspondence and communications ("Notice") shall be in writing and shall be either personally delivered or sent by certified mail, postage prepaid, return receipt requested, or delivered by a nationally recognized overnight courier service (which provides a delivery receipt), at the addresses set forth below. Any such Notice shall be deemed received on the date of personal delivery or on the date of receipt (or refusal to

accept delivery) set forth in the certified mail receipt if sent by U.S. mail or in the receipt provided by the overnight courier service if sent by such service.

Town: Town of Mammoth Lakes  
P.O. Box 1609  
437 Old Mammoth Road, Suite R  
Mammoth Lakes, CA 93546  
  
Attn: Robert F. Clark, Town Manager

with a copy to: Peter E. Tracy, Town Attorney  
P O Box 485  
Bishop, CA 93515-0485

Note, if using Fedex or UPS mail to:  
106 South Main St. #200  
Bishop, CA 93514

with a copy to: Aleshire & Wynder LLP  
1515 W. 190<sup>th</sup> Street, Suite 565  
Gardena CA 90248  
  
Attn: Joseph W. Pannone, Esq.

Developer: Snowcreek Hilltop Development Company L.P.,  
a California limited partnership;  
Snowcreek Investment Company L.P.,  
a California limited partnership  
  
P.O. Box 100, PMB #605  
1 Fairway Drive  
Mammoth Lakes, CA 93546

and

2716 Ocean Park Boulevard, Suite 1064  
Santa Monica, CA 90405

Attn: Charles R. Lande

with a copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP  
3 Embarcadero Center, 12th Floor  
San Francisco, CA 94111-4047

Attn: Sonia J. Ransom, Esq.

11.9 Private Undertaking. It is expressly understood and agreed by the Parties the development contemplated by this Agreement is a private development, no Party is acting as the agent of any other Party in any respect hereunder, and Developer shall have full power and exclusive control over its properties subject only to the limitations and obligations of Developer under the Vested Rules and this Agreement. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making the Town and Developer joint venturers or partners.

11.10 Recordation. The Town shall record a Memorandum of this Agreement with the Mono County Recorder within ten (10) days after the Effective Date, pursuant to Development Agreement Statute Section 65868.5. Thereafter, if this Agreement is terminated, modified or amended as provided herein, the Town shall record notice of such action with the Mono County Recorder.

11.11 Section Headings. Article and Section headings in this Agreement are inserted for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

11.12 Severability. If any provision or term of this Agreement, or the application of any provision or term of this Agreement to any particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, then the remainder of the Agreement shall be unaffected and shall remain in full force and effect unless enforcement of the Agreement, with such invalidation, would be unreasonable or inequitable under the circumstances or would frustrate the purposes of the Agreement or the rights and obligations of the Parties there under.

11.13 Successors and Assigns; Covenants Running with the Land. Subject to the provisions of Section 8.1 governing assignment and the provisions for release set forth in Sections 8.1 and 10.2, the rights and obligations of Developer under this Agreement shall be binding upon and inure to the benefit of successor Owners of all or any portion of the Property and shall be covenants running with the land.

11.14 Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns, including the Owners. No other Person shall have any right of action based upon any provision of this Agreement.

11.15 Unavoidable Delays or Events. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities (but only as to delays or performance by Developer), enactment of conflicting state or federal laws or regulations (but only if the Party claiming delay complies at all times with the provisions of this Agreement pertaining to such conflicting laws), market forces beyond the Parties' control, delays caused by the delay or failure by any entity other than the Party claiming such delay to provide financing for or construction of needed public facilities or infrastructure as contemplated or required by this Agreement, delays due to the enforcement of environmental regulations, litigation against this Agreement or any of the Project Approvals, referendum of this Agreement or any of the Project Approvals or similar bases for excused performance ("Unavoidable Delay")

or "Unavoidable Event"). Upon the occurrence of an Unavoidable Event, the time for performance shall be extended, for the duration of the Unavoidable Delay.

11.16 Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of the Party against whom enforcement of the waiver is sought. No waiver of any right or remedy shall be deemed a waiver of any right or remedy with respect to any other occurrence or event.

IN WITNESS WHEREOF, the Parties have executed this Development Agreement to be effective as of the Effective Date first set forth above.

TOWN:

THE TOWN OF MAMMOTH LAKES,  
a municipal corporation

By:   
Robert F. Clark, Town Manager

Date: 6/29/10

APPROVED AS TO FORM AND LEGALITY:

By:   
Peter Tracy, Town Attorney

Date: 07/01/10

State of California )  
County of Mono )

On June 29<sup>th</sup>, 2010, before me, Jamie Gray, Town Clerk,  
(insert name and title of the officer)

personally appeared Robert Clark  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jamie Gray

(Seal)



State of California )  
County of Mono )

On July 1<sup>st</sup>, 2010, before me, Jamie Gray, Town Clerk,  
(insert name and title of the officer)

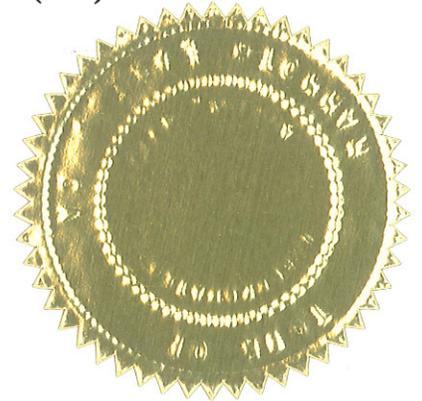
personally appeared Peter Tracy  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jamie Gray

(Seal)



**[Signature Page to Development Agreement]**

**DEVELOPER:**

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

**By: Chadmar SIC Partners LLC, its general partner**

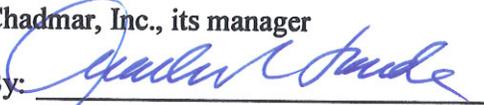
**By: Chadmar, Inc., its manager**

**By:**   
\_\_\_\_\_  
**Charles R. Lande, President**

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

**By: Chadmar SIC Partners LLC, its general partner**

**By: Chadmar, Inc., its manager**

**By:**   
\_\_\_\_\_  
**Charles R. Lande, President**

State of California )  
County of Los Angeles )

On July 7, 2010, before me, Brent David Cook, Notary Public  
(insert name and title of the officer)

personally appeared Charles R. Lane  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Brent David Cook

(Seal)