

ACCOMMODATION RECORDING

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Linda Dempsey
Snowcreek Investment Company
Box 657
Mammoth Lakes, Ca 93546-0657

Doc # 2005003071
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Date: 4/20/2005 01:12P
Filed by: INYO-MONO TITLE COMPANY
Filed & Recorded in Official Records
of MONO COUNTY
RENN HOLAN
CLERK-RECORDER
Fee: \$25.00

COVENANT

THIS COVENANT is made this ^{15th} day of February, 2005, by and between SNOWCREEK INVESTMENT CO., a California corporation (SNOWCREEK) and the TOWN OF MAMMOTH LAKES, a municipality (THE TOWN), at the Town of Mammoth Lakes, County of Mono, State of California.

Recitals

A. SNOWCREEK is the owner of undeveloped real property acreage located in the Town of Mammoth Lakes, County of Mono, California, legally described as follows:

Tracts 46 and 47 in Section 2, of Township 4 South, Range 27 East Mount Diablo Meridian, Mono County, California, according to the official plat thereof attached as "Exhibit A".

the "Property".

B. SNOWCREEK acquired the Property in a land trade with the United States Department of Agriculture, Forest Service (USFS). In connection with the land trade process, SNOWCREEK agreed that the Property would be used for golf course purposes and annexed to the existing Snowcreek Golf Course. This use combined with the existing Snowcreek Golf Course would result in an 18-hole golf course, and related facilities, as part of the Snowcreek at Mammoth Master Plan and the Snowcreek Development Project.

C. In connection with the Environmental Review conducted by USFS in the land trade process, SNOWCREEK stated its intent to place a covenant on the Property in a form approved by THE TOWN limiting future land use to recreation, open space, and appropriate ancillary uses. This use restriction would be placed on the Property as provided for in this Agreement, and thus would not affect the value of the Property in the exchange process.

D. It is the intention of the parties to impose upon the Property certain use restrictions to ensure that the Property will be used as a golf course, including the right to have related uses and activities occur on the Property. All such limitations, covenants, conditions, restrictions, and servitudes shall constitute covenants running with the land and shall be binding upon SNOWCREEK and all successors and assigns of SNOWCREEK, and all parties having or acquiring any right, title, or interest in and to any part of the Property.

This instrument is being recorded by
INYO-MONO TITLE COMPANY as an
accommodation only and without
benefit of examination. No additional
liability assumed

Agreement

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated by reference herein.
2. **General Use of Property.** The Property shall be used primarily as a golf course. Such use shall include as permitted uses: (1) all uses permitted by and consistent with zoning regulations, rules, and ordinances of the Town, and as the same may be amended from time to time; (2) commercial activities permitted by and consistent with the foregoing and related to the operations of a resort recreational golf course, including without limitation (except as restricted by this Agreement) the following: retail operations, food and beverage, transportation, storage, parking, nordic skiing, alpine skiing and snowboarding and other recreational activities.
3. **Use Restrictions.** The following use restrictions shall apply to the Property, notwithstanding the permitted uses set forth in section 2 above:
 - 3.1. The Property may not be further subdivided where any such subdivision is governed by the California Subdivision Map Act (Government Code §§66410, et seq.), except that Lot Line Adjustments and Parcel Maps are not prohibited by this Agreement. Lot Line Adjustments shall not result in a net decrease of the land area of the Property. Any parcel map that would be inconsistent with the intention of the parties with regard to the making of this Agreement or that would result in any condition or circumstance inconsistent with the terms of this Agreement shall be prohibited.
 - 3.2. There shall be no residential housing units constructed on the Property. The foregoing shall not apply to housing necessary for custodial services, security services, or caretakers necessary in support of the uses permitted by this Agreement. Such housing shall be attached or adjacent to clubhouse or maintenance facilities and shall be limited to no more than three individual housing units.
 - 3.3. No commercial lodging shall be constructed on the Property.
 - 3.4. No unit shall be constructed on the Property for transient occupancy purposes as "Transient Occupancy" is defined in Chapter 3.12 of the Town of Mammoth Lakes Municipal Code, and as the same may be amended from time to time.
4. **General Enforceability.** It is the express intent of the parties hereto that each of the promises, covenants, restrictions, and conditions set forth herein is made for the benefit of, and with the express intent to bind, the parties, their successors-in-interest, heirs and assigns. The promises, covenants, use restrictions, and conditions, or equitable servitudes, as the case may be, are to run with the Property as identified herein and shall be binding upon all parties and all persons or entities claiming under each of the parties until termination of any such provision in writing by the parties or any persons or entities claiming under them.
5. **Effective Upon Recording and Issuance of Permits and Approvals.** The covenants, restrictions, and conditions set forth herein shall all take effect upon the occurrence of both of the following: (1) the recording hereof in the office of the County Recorder of Mono County; and (2) the issuance by the Town of Mammoth Lakes and any other governmental authority having jurisdiction over the Property of all permits and approvals necessary or otherwise required for SNOWCREEK to plan, develop, and build the golf course, including related or accessory improvements necessary for the operation and maintenance of the golf course.
6. **Permitted Public Uses.** The parties retain the right to mutually agree upon additional permitted uses, in addition to that which is set forth elsewhere in this Agreement, for facilities that pertain to

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arts and cultural activities and forums open to the public; provided that, such uses and facilities are permitted by and consistent with zoning regulations, rules, and ordinances of THE TOWN, and as the same may be amended from time-to-time.

7. Remedies. Enforcement of any provision of this Agreement shall be by proceedings at law or in equity against any persons or entities violating or attempting to violate any promise, covenant, or condition contained herein, either to restrain violation, compel action and/or to recover damages.

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

9. Attorney's Fees. In the event any action at law or in equity is initiated to enforce or interpret the terms of this Agreement, or arises out of or pertains to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

10. Integration. It is intended by the parties that this Agreement be the final expression of the intentions and agreements of the parties. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or in writing, between the parties hereto and contains all of the covenants and agreements between the parties. No other agreements, representations, inducements, or promises, not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing and signed by the party to be charged.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of each of the parties hereto. Further, all terms and provisions of this Agreement shall bind and benefit the respective properties of the parties hereto and shall run with the respective properties of the parties hereto.

12. Severance. In the event any term or provision of this Agreement is deemed to be in violation of law, null and void, or otherwise of no force or effect, the remaining terms and provisions of this Agreement shall remain in full force and effect.

13. Governing Law, Venue. This Agreement shall be interpreted under the laws of the State of California. Exclusive venue for any legal action shall be Mono County, California.

14. Effect of Waiver. No waiver of any breach of any term, covenant, agreement, restriction, or condition of this Agreement shall be construed as a waiver of any succeeding breach of the same or any other covenant, agreement, term, restriction, or condition of this Agreement. The consent or approval of either party to or of any action or matter requiring consent or approval shall not be deemed to waive or render unnecessary any consent to or approval of any subsequent or similar act or matter.

15. Joint Preparation. This Agreement shall be deemed to be jointly prepared by all parties hereto. In connection therewith, the provisions of Civil Code §1854 shall not be deemed applicable in the event of any interpretation of this Agreement.

16. Eastern Sierra Land Trust. SNOWCREEK and THE TOWN hereby grant to Eastern Sierra Land Trust, a California Corporation ("ESLT") the right to approve any material modification to this agreement or any agreement by SNOWCREEK and THE TOWN to terminate this agreement, in order to ensure that the recreational and open space uses intended for the Property as set forth in this Agreement be maintained consistent with all of the terms of this Agreement. Such approval shall not be unreasonably withheld. Except as specifically set forth in this Agreement, ESLT shall have no other rights, duties, or obligations under this Agreement

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16.1. Prohibition of Suits for Monetary Damages Against Eastern Sierra Land Trust. SNOWCREEK and THE TOWN, and each of them, on behalf of their respective officers, officials, directors, employees, agents, successors and assigns, agree that, as consideration for the participation of ESLT as described in this section 16, and in recognition of the non-profit status of ESLT, SNOWCREEK and THE TOWN will hereby forever waive any rights either party may now or hereafter have to file any lawsuit or other legal action or claim of whatever nature against ESLT, its officers, directors, employees, agents, successors and assigns for monetary damages of any kind, compensatory or punitive, arising in any way, directly or indirectly, from the participation by ESLT, its officers, directors, employees, agents, successors and assigns pursuant to this Agreement. Nothing in this section shall preclude SNOWCREEK or THE TOWN from initiating any lawsuit or other legal action for injunctive, declaratory or other nonmonetary relief against ESLT arising out of the participation of ESLT in this Agreement. Further, nothing in this section shall inhibit the applicability of section 9 of this Agreement ("Attorney's Fees") to ESLT, it being the intention of the parties that ESLT shall be a third party beneficiary to this section, and to sections 9, 16 and 17 of this Agreement.

16.2. Mediation. In the event of any dispute arising from or pursuant to the participation of ESLT in this Agreement, the party seeking to initiate legal action to resolve such dispute shall be required to first submit the matter to mediation pursuant to this section. Such party shall give written notice to all other parties, by hand-delivery or certified mail, return receipt requested, setting forth (1) notice of the party's intention to initiate action, and (2) a brief summary of the dispute which would constitute the basis for such action. Within 10 days of such notice, if by hand-delivery, or within 15 days if by certified mail, any responding party shall notify the initiating party that mediation is demanded. The failure of any responding party to timely give such notice shall be deemed a waiver of this mediation requirement. In the event a timely demand for mediation is given pursuant to this section, the parties shall have 10 days thereafter to agree on a mediator. Failing such an agreement, either party may petition the Mono County Superior Court for the appointment of a mediator. The cost of the mediation shall be shared equally by the parties. The mediation requirements of this section shall not apply where injunctive or declaratory relief is sought by either party and immediate relief is necessary.

17. Termination. The parties may terminate this Agreement by a subsequent written Agreement to Terminate signed by each of the parties hereto and subject to the approval of ESLT as provided for in section 16.

IN WITNESS WHEREOF, this instrument is executed as of the day and year first above written.

SNOWCREEK INVESTMENT COMPANY

BY: Linda Dempsey

TOWN OF MAMMOTH LAKES

BY: Ron V. Umik

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

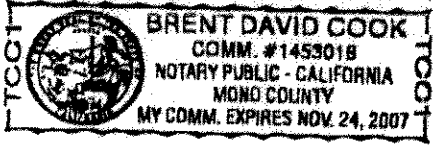
County of MONO } ss.

On FEBRUARY 15, 2005 before me, BRENT DAVID COOK Notary Public

personally appeared LINDA DEMPSEY

- Name(s) of Signer(s)
- personally known to me
 - proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Brent David Cook
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: COVENANT

Document Date: 2-15-05 Number of Pages: _____

Signer(s) Other Than Named Above: Town of Mammoth Lakes

Capacity(ies) Claimed by Signer

Signer's Name: Linda Dempsey

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

Signer is Representing: Snowcreek Investment Company

