

## TOWN COUNCIL STAFF REPORT

Title: Consideration of the Amended and Restated Snowcreek Development Agreement for property located within the Snowcreek VII and VIII project sites within the Snowcreek Master Plan area. The project was previously analyzed pursuant to the California Environmental Quality Act (CEQA) in the certified Snowcreek VIII, Snowcreek Master Plan Update – 2007 Project Final Environmental Impact Report and the Snowcreek VII Mitigated Negative Declaration

Meeting Date: April 2, 2025

Prepared by: Nolan Bobroff, Community & Economic Development Director

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### **RECOMMENDATION:**

Waive the first reading and introduce by title only an ordinance making the required CEQA and Municipal Code findings, and approving the Amended and Restated Snowcreek Development Agreement as recommended by the Planning and Economic Development Commission.

### **PROJECT SUMMARY:**

The 2010 Snowcreek Development Agreement (SDA)<sup>1</sup> became effective in July 2010 and vests the entitlements granted in the Snowcreek Master Plan Update - 2007 (SMPU) for the Snowcreek VIII development and the entitlements granted under the previous 1981 Snowcreek Master Plan for the Snowcreek VII (Creekhouse) development.<sup>2</sup> The SDA applies to the Snowcreek VII and Snowcreek VIII project areas (See Figure 1). The term of the SDA is for 20 years covering the period of July 23, 2010 – July 23, 2030; however, starting in July 2020, the term of the SDA is reduced one day for each day that construction of the hotel and expanded golf course has not commenced. Construction of these elements has not commenced and therefore, the term is currently being reduced and will expire in July 2025, unless construction of the golf course and hotel has commenced or unless an amendment to the 2010 SDA is approved that extends the term.

For a variety of reasons, the development of the Snowcreek VIII project has not progressed at the rate envisioned at the time of adoption of the SDA, and the majority of the ‘greater community benefits’ identified in the SDA have not been achieved. This is largely attributed to the fact that development of the Snowcreek VIII project has not yet begun, and all of the ‘greater community benefits’ are tied to the Snowcreek VIII development. As a result of this and the impending expiration of the SDA in July 2025, the Developer is requesting an amendment to the SDA. The Developer and the Town have negotiated and agreed to the following amendments. These amendments are included in the Amended and Restated SDA included as Exhibit A to the Ordinance (**Attachment A**) and are shown in track changes in **Attachment B**.

- (a) Extend the term of the SDA for an additional 20-years (from 2025 to 2045), with an option for an additional 5-year extension (to 2050) if the existing 9-hole golf course is continuously operated during the term. [*2010 SDA Section 2.2*]
- (b) Remove the language that shortens the term of the SDA if the golf course and hotel are not constructed during a specified term. [*2010 SDA Section 2.2.1.c.2*]

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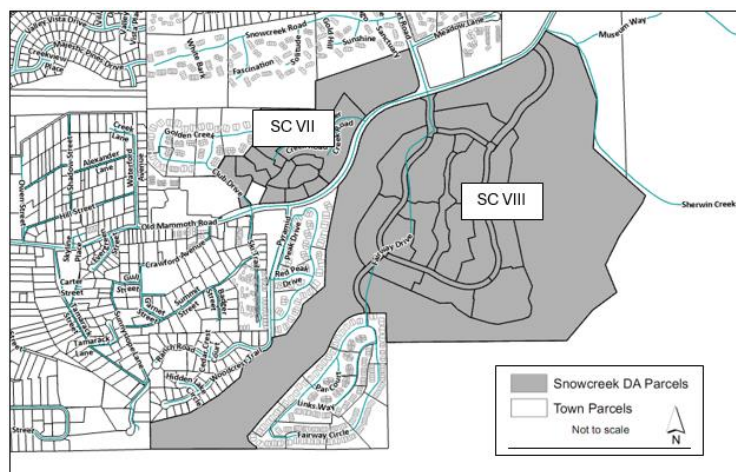
<sup>1</sup> Snowcreek DA: <https://www.townofmammothlakes.ca.gov/DocumentCenter/View/5109>

<sup>2</sup> The Snowcreek VII (Creekhouse) project was completed during the term of the SDA.

- (c) Require the operation of the existing 9-hole golf course for the term of the extended SDA and record a Golf Operations and Maintenance Agreement that outlines minimum operating and maintenance standards for the course.
- (d) Require the permanent protection of the existing 9-hole golf course area, less the area identified for residential development (Lots 3, 4, and G of TM 09-002), for recreation and open space purposes.
- (e) Encourage the Developer to work with the Town on interim recreation uses for the 94-acre golf course expansion area.
- (f) Require the Developer to work with the Mammoth Lakes Fire Protection District on the construction of fire breaks through the Snowcreek VIII site.
- (g) Clarify the affordable housing requirements, require the provision of on-site housing units be dispersed throughout the Snowcreek VIII development, and clarify what is required for each phase of development. [2010 SDA Section(s) 2.2.3 and 4.1]
- (h) Reset the building permit fees, development impact fees (DIFs), and planning fees to current rates and vest the fees for the term of the extended SDA at those rates, subject to annual inflationary cost increases. [2010 SDA Section(s) 5.5.2, 5.5.4, and 6.2]
- (i) Require any future assignment of the SDA to be to a Developer that has comparable, or better, financial capability and experience as the current developer. [2010 SDA Section 8.1]
- (j) Updated the indemnification language to better protect the Town. [2010 SDA Section 11.7]
- (k) Added an additional force majeure circumstance that identifies a decrease in the median home sales value by 10% or more over a one-year period is considered as being an unavoidable event that warrants additional time be added to the term. [SDA Section 11.15]
- (l) Minor text clean-up and updates throughout the SDA.

Development agreements (DAs) are governed by [State Government Code §65864 et seq.](#) and [Municipal Code Chapter 17.104 \(Development Agreements\)](#). The procedure for amending a development agreement is the same as the procedure for entering into a new development agreement and requires a public hearing before both the Planning and Economic Development Commission (PEDC) and the Town Council. The PEDC unanimously recommended approval to the Town Council of the Amended and Restated SDA at a public hearing on March 18, 2025. If approved by the Town Council, the ordinance approving the Amended and Restated SDA is subject to a referendum in compliance with Government Code § 65867.5 for a period of 30 days.

**FIGURE 1- PROJECT LOCATION MAP**



## **BACKGROUND:**

### **Development Agreements**

Development agreements (DAs) are voluntary contracts negotiated between project proponents and public agencies (e.g. Town of Mammoth Lakes) that govern the allowable land uses in a particular project and establish the conditions to which a development will be subject. Neither an applicant nor a public agency are required to enter into a DA. The purpose of a DA is to provide a degree of certainty in the land use regulatory process and provide mutual benefits to the parties. DAs are intended to provide the developer with assurances that it will have a vested right to develop, use, and operate the project site during the term of the agreement, including the vesting of the uses and densities identified in the regulatory documents (e.g., zoning code, master plan). In return for those assurances, DAs provide the public agency (e.g., the Town) with a variety of community benefits that are negotiated between the parties and are required to be shown to be of greater benefit to the community than development under present zoning. For example, the SDA provides the Town with the following community benefits: an additional financial contribution of up to \$10M beyond the fees otherwise required, affordable housing in excess of what is currently required by the MC, 8.9 acres of park area in excess of that required, preservation of the Mammoth Creek open space corridor, and secondary access to the Snowcreek V project.

Municipal Code Chapter 17.104 outlines the requirements for DAs in the Town. A DA is required to be accompanied by a development plan (e.g. the Snowcreek Master Plan Update - 2007), contain a schedule of development, and specify the length of time of the agreement. MC Chapter 17.104.040 identifies the required findings to approve a DA, which are:

- A. That the agreement is consistent with the goals, policies, general land uses and programs specified in the general plan;
- B. That the agreement and accompanying development plan are compatible with the uses authorized in, and the performance and development standards prescribed for, the zone classification in which the subject property is located;
- C. That the agreement is in conformity with and will promote public convenience, the general welfare and good land use and development practices;
- D. That the agreement is shown to be of greater benefit to the community than development under present zoning; and
- E. That the term or duration of the agreement has a commensurate relationship to the benefits provided.

DAs are subject to annual review, as required by State Law and Municipal Code Chapter 17.104.090, to evaluate compliance with required terms and conditions. Project proponents must demonstrate good faith compliance with the DA. DAs are recorded, which binds future owners to the requirements and obligations contained in the DA.

### **Review Process for the Amended and Restated SDA**

The SDA was adopted by the Town Council on June 23, 2010 by Ordinance 10-08 and became effective on July 23, 2010. Since that time, the Snowcreek VII project has been completed and development of the Snowcreek VIII project has not begun. As such, and with the impending expiration of the SDA in July 2025, the Developer submitted an application requesting an amendment of the SDA in October 2023 and the Town Council accepted the application for the Amended and Restated SDA in December 2023. Following acceptance of the application, the Town and Developer began negotiating the Amended and Restated SDA. The negotiating parties are Chuck Lande, Chad Lande, and attorneys from Allen Matkins Leck Gamble Mallory & Natsis, LLP on behalf of the Developer, and Nolan Bobroff, Haislip Hayes, Rob Patterson, and Nira Doherty with Burke, Williams, Sorensen, LLP on behalf of the Town.

As a part of the review process, the following steps were taken:

- **February 2024 - Town Council Workshop:** The goal of this workshop was to provide an opportunity for the Town Council to review and provide comments on the proposed amendments to the SDA.
- **July 2024 - Financial Analysis:** To analyze the value of the existing community benefit package and the proposed additional community benefits, the Town contracted with Keyser Marston Associates to provide a financial analysis of the benefits. The analysis concluded that receipt by the Town of the community benefits package is sufficient to justify approving the SDA amendments being proposed by the Developer. The full financial analysis is included as **Attachment C**.
- **August 2024 - PEDC Workshop:** The goal of this workshop was to provide an opportunity for the PEDC to review and provide comments on the proposed amendments to the SDA.
- **September 2024 - Town Council Workshop:** The goal of this workshop was to provide a timeline for the review and processing of the amendments to the SDA.
- **October 2024 - Town Council and PEDC Workshops:** The goal of these workshops were to provide the Town Council and the PEDC with a comparison of the development that could occur on the Snowcreek VIII site with and without the SDA.
- **October 2024 - February 2025:** Third party review of the proposed amendments to the SDA by the law firm Burke, Williams, Sorensen, LLP.
- **February 2025 - Town Council Workshop:** The goal of this workshop was to have the third party consultant provide a summary of their review of the proposed amendments to the SDA.

#### **Planning and Economic Development Commission Public Hearing**

On March 18, 2025, the PEDC held a public hearing to consider the Amended and Restated SDA. The PEDC voted 5-0 to recommend approval of the project to the Town Council. At the meeting, representatives from Mammoth Community Water District, Mammoth Lakes Fire Protection District, and the Mammoth Mountain Ski Area spoke about their involvement with the project and ongoing discussions they are having with the developer related to reclaimed water, wildfire mitigation, and operation of the golf course by the ski area. There was one speaker in opposition to the project, who also submitted a comment letter (**Attachment D**). An analysis of the public comment letter received is in the *Public Comments* section below.

#### **Snowcreek Master Plan Update – 2007 (SMPU) / Snowcreek VIII Project**

As indicated above, the SDA vests the entitlements granted in the Snowcreek Master Plan Update - 2007 (SMPU)<sup>3</sup> for the Snowcreek VIII development. In the event that the SDA expires, the developer can still build the project envisioned in the SMPU, but the Town would not receive any of the outstanding community benefits that have not been provided and the developer would not have a guarantee that the SMPU wouldn't be amended.

The SMPU, which updated the original 1974 and 1981 Snowcreek Master Plans, addressed the proposed buildout of the remaining Snowcreek Master Plan area – Snowcreek VIII. The 2007 update was intended to fulfill the vision of the 1974 and 1981 Snowcreek Master Plans and serves as the zoning for the 222-acre Snowcreek VIII site. The SMPU allows for development of the Snowcreek VIII site with up to 790 residential dwelling units, a resort hotel with up to 250 rooms,

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<sup>3</sup> Snowcreek Master Plan: <https://www.townofmammothlakes.ca.gov/DocumentCenter/View/562>

150 private residence club units, up to 75,000 square feet of non-residential uses, an expansion of the existing 9-hole golf course into an 18-hole championship golf course, and various recreational amenities (i.e., multi-use paths, snow play area, and winter trails). The SMPU was approved in August 2009 (Ordinance 09-05); however, to date, no development has occurred on the Snowcreek VIII site.

The initial phase of the Snowcreek VIII project (Snowcreek VIII Phase I) was approved in September 2024 and authorized the following: (1) the subdivision of Lots 1, 2, and 3 authorizing 172 condominium “airspace” units; (2) construction of the road and multi-use path network for Phase I; and (3) completion of all required subdivision improvements (i.e., mass grading, installation of utilities, drainage infrastructure, stormwater management) for Phase I. The residential area will be developed over three sub-phases (Phase(s) 1A, 1B, and 1C). Development of Phase 1C does require the relocation of the golf course infrastructure (parking area and clubhouse) and a re-orientation of Hole 1. This work is required to be completed prior to the start of construction of Phase 1C and is required to not interfere with the seasonal operation of the golf course. The proposed subdivision does not authorize the physical construction of the residential units and a subsequent use permit and design review approval is required prior to the commencement of construction of any of the three sub-phases.

Within the Recreation area (TM 09-002 Lots 17 and 18), the Phase I subdivision is only proposing the installation of stormwater retention basins and recycled water ponds for landscape irrigation purposes. The proposed stormwater retention and recycled water infrastructure does not preclude the future expansion of the golf course on the site.

## **ANALYSIS:**

### **Proposed Amendments – Amended and Restated SDA**

The following is a summary of the proposed amendment requests. Additional minor revisions to the text to improve the clarity of the SDA are proposed throughout the Amended and Restated SDA. The revisions are shown in track change format in **Attachment B**. For the exact language of the amendments, please refer to **Exhibit A** of the Ordinance (**Attachment A**).

#### **Term**

- The term of the SDA is proposed to be extended by 20 years from 2025 to 2045. Additionally, if the Developer continuously operates the 9-hole golf course during the term of the SDA, an automatic five-year extension will be granted, thereby extending the term to 2050.

The SDA has been in place for approximately 15 years and the Town has not received any of the additional community benefits outlined in the agreement since the Snowcreek VIII project has not begun. By extending the term, it will allow for those benefits to remain in place and the Town to receive those benefits over the course of the development. It is anticipated that the development will be developed in multiple phases over an extended period of time. Without the SDA, the Developer can still construct the Snowcreek VIII project as outlined in the SMPU, but the Town would not receive any of the Community Benefits outlined in the SDA.

The additional five-year extension is intended to be a ‘carrot’ for the Developer to incentivize the continued operation of the 9-hole golf course.

- Removal of the language that shortens the term of SDA if construction of the golf course and hotel is not commenced (SDA Section 2.2.1.c.2)

Since 2020, the Developer has been losing time on the term of the SDA since construction of the hotel and 18-hole golf course has not commenced and the SDA will expire in July 2025. This “shot clock” has proven to be ineffective in forcing the construction of the hotel or golf course expansion

since the Developer could still construct the Snowcreek VIII project without the SDA. However, the “shot clock” does have a negative impact for the Town since the Town would not receive any of the outstanding community benefits if the SDA were terminated. The SDA specifies that market forces dictate the phasing of the development (e.g., it has taken 15 years to get to the point that the Developer is ready to begin the project) and terms that shorten the life of the SDA are not enough of a penalty to overcome market forces.

#### 9-hole Golf Course

- Operation of the 9-Hole Golf Course: The Developer will be required to continuously operate the existing 9-hole golf course for the entire term of the SDA and record a Golf Operations and Maintenance Agreement that outlines minimum operating and maintenance standards for the course.

The continued operation of the 9-hole golf course has been a significant concern for the golf community and the residences surrounding the golf course. The Town has limited ability to force a privately owned business to operate, but through the DA negotiation process, the Developer has agreed to operate the course for the term of the Amended and Restated SDA. The operations and maintenance agreement will outline minimum standards that are intended to establish the expected annual operating period of the course and standards to ensure the safety of the community and the public (e.g., wildfire risk, nuisance abatement, and infrastructure maintenance).

- Open Space Protection: The Developer will be required to permanently protect the approximately 61-acre existing 9-hole golf course area, less the area identified for residential development (Lots 3 and 4 of TM 09-002), for recreation and open space purposes.

Similar to the operation of the existing golf course, there has been significant interest in ensuring that the existing golf course area remain as open space for recreation purposes. The Developer has agreed to record a covenant on the property that permanently protects the area for recreation and open space purposes. The covenant will be similar to the covenant that protects the 94-acre golf course expansion area and will allow for the site to be developed with recreational and open space uses, such as a golf course and ancillary amenities and other recreational activities.

#### Recreation Amenities

- Recreation Amenities: Encourage the Developer to work with the Town on interim recreation uses for the 94-acre golf course expansion area.

There is interest from a variety of user groups in developing interim recreation uses on the 94-acre golf course expansion area, and this amendment will encourage the Developer to work with the Town on these efforts. The intent would be that none of the uses are permanent or would otherwise preclude the golf course expansion in order to provide the greatest flexibility for the Developer.

#### Wildfire Mitigation

- Require the Developer to work with the Mammoth Lakes Fire Protection District on the construction of fire breaks through the Snowcreek VIII site.

The recent devastating wildfires have illustrated the need for the proactive development of fire breaks to protect at-risk communities. The language in the Amended and Restated SDA requires the developer to work with the Fire District to construct a fire break through the Snowcreek VIII development area.

#### Fees

- The Building Permit Fees, Development Impact Fees, and Planning Fees will be set to the current rates in effect on the effective date of the amendment to the SDA. The fees will then be

vested at those rates for the term of the SDA and will be subject to annual increases based on the annual percentage change in the CA Construction Cost Index (CCCI).

This resets the fees from the 2010 rates to the 2025 rates. Since the adoption of the SDA in 2010, staff have tracked the SDA fees that were vested at the 2010 rates and increased annually based on the CCCI index, to analyze what savings the vested fees were providing. For the current FY, the delta between the 2010 adjusted rates and the current year rates was approximately \$1,200. The reset will establish a new baseline for the fees going forward.

#### Affordable Housing

- Clarifies the affordable housing requirements and requires the provision of on-site housing units, payment of in-lieu fees, and use of existing credits to be proportionate throughout the development of Snowcreek VIII.

The proposed amendments to the affordable housing requirements are intended to clarify what is required during the course of the development and do not propose any changes to the amount or types of housing mitigation required in the 2010 SDA. Under the proposed changes, the Residential component of the project will be required to construct on-site units and pay in-lieu fees on a proportionate basis for each unit constructed and the Hotel component will be mitigated through the payment of in-lieu fees only.

#### Assignment and Assumption

- Require any future assignment of the SDA to be to a Developer that has comparable, or better, financial capability and experience as the current developer.

Pursuant to the SDA, the Town has the ability to review the qualifications of any transferee or assignee that will assume control of the Snowcreek project, and provide a reasonable objection if the entity is not qualified. The proposed language goes a step further and requires that any future developer be more qualified than the current developer.

#### Force Majeure

- An additional force majeure circumstance that identifies a decrease in the median home sales value by 10% or more over a one-year period is considered as being an unavoidable event that warrants additional time be added to the term. [SDA Section 11.15]

The additional unavoidable event language would address any economic downturns and would provide additional time to the term of the SDA in the event of a downturn which results in the median sales value decreasing by 10% or more over a one-year period. The Town Council expressed interest for a higher percentage threshold during the 2-5-2025 workshop.

#### Public Comments

Notice of the public hearing was posted in The Sheet newspaper on March 22, 2025 and March 29, 2025. As of the publishing date of the packet, no public comments have been received in response to the Town Council public hearing. One written public comment was received for the PEDC public hearing, and seven public comments were previously received for the prior Town Council and PEDC workshops. Those comments are included as **Attachment D**.

The March 18, 2025 letter identifies three primary issues with the Amended and Restated SDA. Those issues are: (1) the revised SDA lacks the community benefits envisioned in the 2010 SDA; (2) there are no unavoidable delays that warrant extending the SDA; and (3) authorizing the revised SDA violates CEQA. Each topic is discussed in more detail below:

##### *(1) The revised SDA lacks the community benefits envisioned in the SDA*

The benefits associated with the development of the Snowcreek VIII project remain unchanged from 2010. The SDA does not change what could be developed on the site and

it does not change the phasing plan for the development which states “Actual construction, however, will occur in phases and subphases based on what the market will absorb at any given point in time.” Development of the hotel and the expanded golf course are still permitted uses under the SMPU, and the remainder of the benefits outlined in Exhibit B remain.

The letter goes on to state that the community benefits have been reduced since 2010 since (1) the preservation of the Mammoth Creek open space corridor was completed and (2) the golf course is not required. The preservation of the open space was completed in 2018 with the recordation of a conservation easement with CDFW and the subsequent deeding of the property to the Town, thereby resulting in the Town receiving the community benefit envisioned in the SDA. In addition to this being a community benefit, it was also accepted by CDFW as satisfying the mitigation required in the FEIR for the disturbance of the roughly 3.13 acres of deer habitat by the Snowcreek VIII project. Completion of a community benefit in accordance with the terms of the SDA does not mean the benefits that the community will receive as a result of the SDA have been reduced, but rather means that some benefits have been received and some will continue to be achieved in the future, resulting in the community receiving the total package of community benefits at project completion. As noted above and throughout the report, development of the golf course is still possible, and therefore would still be a community benefit if built.

Third, the letter alleges that the Snowcreek VIII project cannot move forward without the SDA since the 2010 SDA had a recital saying the developer would not move forward with the project without the SDA. The SDA does not permit or authorize development of the site, nor does it create the framework for what could be built on the site. Those are all elements of the SMPU and subsequent development permits (e.g., tentative maps, use permits, etc.), meaning that development of the site could absolutely move forward without the SDA. Additionally, recent changes in State law (e.g., SB 330) preclude jurisdictions from denying a housing project or reducing density in a housing project if the project is consistent with all objective standards. The Snowcreek VIII project and the associated SMPU qualify under this statute as a housing project and therefore severely restrict the ability for the Town to deny a housing project on the site or alter what could be built on the site.

*(2) There are no unavoidable delays that warrant extending the SDA*

The request to extend the SDA is not being requested as the result of an unavoidable delay, but rather as an amendment pursuant to Section 10.1 in the Amended and Restated SDA. That section reads, with emphasis added to the word extended, as follows: “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.”

*(3) Authorizing the revised SDA violates CEQA*

Under CEQA, when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines that one or more of the following has occurred: (1) substantial changes are proposed to the project which will require major revisions to the previous EIR; (2) substantial changes occur with respect to the circumstances under which the project is undertaken; or (3) new information that could not have been previously known shows the project will have one or more significant effects not previously discussed in the EIR,



significant effects previously examined will be more severe, or mitigation measures have changed that would result in a change in the significance of previously identified effects of the project.

As noted throughout this report, no changes to the project will result from the Amended and Restated SDA, which means that there are no substantial changes to the project. With regards to changes in the circumstances or the availability of new information, there is substantial case law that has determined that changes in CEQA regulations (including adding new environmental factors to the Appendix G checklist) are not considered new information that would trigger a subsequent EIR (*Creed v. City of San Diego* (2011) 196 Cal.App.4<sup>th</sup> 515 [GHG not new information triggering subsequent EIR]; *Olen v. City of Newport Beach* (2023) 93 Cal.App.5<sup>th</sup> 270 [VMT not new information triggering subsequent EIR]).

### **OPTIONS ANALYSIS**

Option 1: Waive the first reading and introduce by title only an ordinance making the required CEQA and Municipal Code findings, and approving the Amended and Restated SDA as recommended by the Planning and Economic Development Commission.

Option 2: Waive the first reading and introduce by title only an ordinance making the required CEQA and Municipal Code findings, and approving the Amended and Restated SDA as modified by the Town Council.

Option 3: Deny approval of the Amended and Restated SDA.

Option 1 would allow the Ordinance, approving the Amended and Restated SDA, to proceed to a second reading by the Council and would become effective 30 days after the second reading.

As with Option 1, Option 2 would allow the ordinance to proceed to a second reading by the Council, but the Council's approval would be for a modified proposal that makes changes to the Amended and Restated SDA.

Option 3 would deny the project. The Council would need to make findings for denial.

### **FINANCIAL CONSIDERATIONS:**

All direct costs of processing, reviewing, reporting, hearing, and acting upon the Amended and Restated SDA are borne by the Applicant.

Development of the Snowcreek VIII project under the Amended and Restated SDA will result in the payment of an additional financial contribution to the Town of up to \$10 million that can be used for public facilities within the Town. The Amended and Restated SDA would vest development impact, affordable housing in-lieu, application processing, and building permit fees for the entire term of the Amended and Restated SDA at the rates specified in the Amended and Restated SDA.

### **ENVIRONMENTAL CONSIDERATIONS:**

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the Snowcreek VIII project was analyzed in the previously certified Snowcreek VIII, Snowcreek Master Plan Update – 2007 Project Final Environmental Impact Report (SCH #2006112015) (“Snowcreek EIR”) certified by the Town Council on July 8, 2009 by Resolution 09-4 and the Snowcreek VII project was analyzed in the Snowcreek VII Mitigated Negative Declaration (the “MND”) adopted on May 24, 2006. The MND found that the Snowcreek VII project would not have a significant effect on the

environment with the implementation of the mitigation measures outlined in the MND. The Snowcreek EIR analyzed the impacts of the proposed Snowcreek VIII project and specified that subsequent discretionary actions that were included in the environmental analysis, such as the SDA, are not subject to additional environmental review. The Snowcreek EIR determined that the Snowcreek VIII project could result in significant and unavoidable impacts in the areas of Aesthetics, Air Quality, and Utilities and Service Systems, and a Statement of Overriding Considerations was adopted.

The Amended and Restated SDA will further implement, in part, the SMPU and Snowcreek VIII project; however, no new development is directly associated with the SDA and no modifications to the SMPU will result from the proposed changes to the SDA since the proposed changes do not change what could be built on the site. Therefore, pursuant to CEQA Guidelines §15162, no further environmental review is required. Pursuant to CEQA Guidelines §15162, when an EIR has been certified for a project, a subsequent EIR is not required for that project, unless the lead agency determines on the basis of substantial evidence that one or more of the criteria specified in Section 15162 will occur. An analysis of each criteria is provided in the Ordinance (**Attachment A**).

### **LEGAL CONSIDERATIONS:**

The Town's legal counsel and special legal counsel are part of the Town's negotiating team for the Amended and Restated SDA and have participated in drafting the amendment language.

Section 11.7 of the SDA requires the parties to affirmatively cooperate and join in defending against any and all actions brought by any third party or parties; provided, that both the Town and Developer shall retain their respective rights to control their own defense of the litigation. In addition, the Developer shall indemnify and defend the Town with respect to any legal action or proceeding initiated by a third party against the Town's final approval of the Amended and Restated SDA, as described in Section 11.7.2 of the Amended and Restated SDA.

### **Attachments:**

Attachment A: Ordinance

Exhibit A: Amended and Restated Snowcreek Development Agreement

Attachment B: Track Changes – Amended and Restated Snowcreek Development Agreement

Attachment C: Keyser Marston Financial Analysis, July 2024

Attachment D: Public Comment Letters