

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this 4th day of February, 2002, by and between ZERMATT RESORT, L.L.C. (hereinafter called "Developer"), and the CITY OF MIDWAY, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between Developer and the City involving the same Property (defined below).

RECITALS

A. The City, acting pursuant to its authority under Utah Code Ann. Section 10-9-101, *et. seq.*, in compliance with section 02.0635 of the Midway City Zoning Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Zermatt Resort and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals, and objectives of the City, and the health, safety, and general welfare of the public.

B. Developer has a legal interest in certain real property located in the City as described in Exhibit A attached hereto.

C. Developer intends to develop the real property described in Exhibit A as a conditional use recreational resort consisting of 357 dwelling units, together with other uses, including a hotel, conference center and recreational and entertainment facilities. This conditional use development is commonly known as Zermatt Resort.

D. The property is subject to the City of Midway Zoning Ordinance and is currently zoned "RA-1-15". Developer and the City desire to allow Developer to make improvements to the property.

E. The City has authorized the negotiation of and adoption of development agreements under appropriate circumstances where proposed development contains outstanding features which advance the policies, goals and objectives of the Midway City General Plan, preserves and maintains the open and rural atmosphere desired by the citizens of Midway City, and contributes to capital improvements which substantially benefit the City.

F. The City's governing body has authorized execution of this Agreement by Resolution No. 2002-04, to which this Agreement is attached.

G. Each Party acknowledges that it is entering into this Agreement voluntarily. Developer consents to all of the terms of the Agreement as valid conditions of development under all circumstances.

H. On May 18, 2000, following a duly noticed public hearing, the Midway City Council granted final approval to Developer to construct Zermatt Resort as a conditional use, subject to certain conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. EFFECTIVE DATE AND TERM

1.1 Effective Date.

This Agreement shall become effective on the date it is executed by Developer and the City (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

1.2 Term.

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of 25 years. Unless otherwise agreed between the City and Developer, Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

Section 2. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including its Exhibits.

"Applicable Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Governing Body" shall mean the Midway City Council.

"Changes in the Law" shall have that meaning set forth in Section 4.2(b) of this Agreement.

"Conditions to Current Approvals" shall have the meaning set forth in Section 3.1(b) of this Agreement.

"City" shall mean the City of Midway and shall include, unless otherwise provided, any and all of the City's agencies, departments, officials, employees or agents.

"City General Plan" or "General Plan" shall mean the General Plan of the City of Midway.

"Developer" shall have that meaning set forth in the preamble, and shall also include Developer's successors and/or assigns, including any homeowners' association which may succeed to control of all or any portion of the Project.

"Director" shall mean the Director of the Midway City Planning Department, or his or her designee.

"Effective Date" shall have that meaning set forth in Section 1.1 of this Agreement.

"Notice of Compliance" shall have that meaning set forth in Section 8.1 of this Agreement.

"Planning Commission" shall mean the Midway City Planning Commission.

"Project" shall mean the Property and the development on the Property, which is the subject of this Agreement as well as any ancillary and additional improvements or endeavors incident thereto.

"Property" shall mean the parcel or parcels of land which are the subject of this Agreement and which are more particularly described in Exhibit A.

"Subsequent Approval" means a City approval or permit, which is not otherwise provided for in this Agreement, and which is reasonably necessary for completion of the Project as reasonably determined by the City.

Section 3. OBLIGATIONS OF DEVELOPER AND THE CITY

3.1 Obligations of Developer.

(a) Generally. The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is material

consideration for Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

(b) **Conditions to Current Approvals.** Developer shall comply with all of the following Conditions to Current Approvals:

- (1) ***Payment of Fees:*** Developer agrees to pay all Midway City fees as a condition of developing the Property and Project, including all attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.
- (2) ***Special Service District Fees and Charges:*** Developer acknowledges that sewer service for the Project shall be provided by the Midway Sanitation District (the "District"). Developer agrees to pay any and all fees imposed by the District in connection with development of the Project, including (but not limited to) fees for plan check and engineering review. Developer shall not oppose annexation of the Project, or any part thereof, into the boundaries of the District.
- (3) ***Water Shares:*** Developer agrees to tender water shares for each phase of the project as specified by the City prior to recordation of any plat to which such shares apply. The City acknowledges that as of the execution of this Agreement, Developer has tendered sufficient water shares for Phases I, II and II of the Project, representing Plats C, D, and E, also known as The Villas Condominiums.
- (4) ***Construction of Project Improvements:*** Unless otherwise stated herein, the City shall not issue certificates of occupancy for residential structures within the Project unless and until all required Project improvements for the plat in question are installed by Developer in accordance with City standards and accepted in writing by the City. When all required Project improvements are installed and accepted in writing by the City with respect to any single plat, the City shall issue certificates of occupancy. Developer agrees that all infrastructure, including but not limited to sewer lines, water lines, roads, electricity, gas, telephone, detention basins, curb and gutter shall be built and completed in accordance with City standards and accepted by the City for the plat in question in writing prior to the issuance of the certificates of occupancy.
- (5) ***Additional Obligations of Developer:*** Developer also has the following additional obligations:

- a. The Developer shall comply with all conditions of approval required by the Planning Commission and the City Council.
- b. As an accepted condition of use and development, in order to ensure that the Project pays for its expected use of City services, Developer shall cause to be assessed and paid to the City an Annual Personal Occupancy Assessment of \$312 per each dwelling unit for each calendar year, or portion thereof, in which a dwelling unit is completed, in existence and approved for occupancy. Developer shall be entitled to a credit, to be deducted from the total amount due under this paragraph, for any amounts which Developer can demonstrate in writing to the City have been paid for a given dwelling unit as transient room tax for the applicable calendar year. The Annual Personal Occupancy Assessment, less any credit due under this paragraph, shall be paid to the City by April 1 of each year for the preceding calendar year. This provision is acknowledged as a material and integral condition of this Agreement and may not be severed therefrom.

(6) **Construction Schedule:** Concurrently with the construction of each phase, Developer shall construct adequate parking to serve each phase as required by the City. Developer shall construct the Project's phases according to the following specifications in consultation with the City Planning and Engineering Departments:

- a. Plats C, D, and E as shown on the plat to be recorded, also known as Phases I, II, and III, comprising 126 units of the Villas Condominiums, will be constructed concurrently with the following amenities: outdoor swimming pool, reception area, and putting green.
- b. Plat B as shown on the plat to be recorded, also known as Phase IV, comprising 68 units of the Chalet Studio Suites Condominiums, will be constructed concurrently with the following amenities: ice skating rink.
- c. Plat F as shown on the plat to be recorded, also known as Phase V, comprising 163 units of the Hotel Baren, will be constructed concurrently with the following amenities: golf course.

- d. Plat A as shown on the plat to be recorded, also known as Phase VI, will comprise the conference center and all remaining recreational and entertainment amenities.

Construction of each phase identified in sections a through d above will be allowed to proceed only after Developer has posted bonds adequate for the relevant phase as provided in section (8) below.

- (7) **Maintenance:** Developer is obligated to maintain (including snowplowing) any and all roads that are not dedicated to the City, trails, open spaces and any and all other improvements intended for public use within the Project. Maintenance provided by Developer must meet or exceed a standard of reasonableness as established by the City. The City, at its option (not obligation), may construct or maintain such improvements upon Developer's failure to do so following written notice to Developer and a reasonable opportunity to cure. The reasonable market value of the City's services to construct and/or maintain such improvements are hereby agreed to constitute a valid lien on the delinquent Property and may be charged to and collected from Developer.
- (8) **Bonding:** Performance and Maintenance Bonds: Developer agrees to post bonds in amounts established by the City and the Midway Sanitation District ("the District") related to the performance of Developer's construction and maintenance obligations for each plat, pursuant to current City and District ordinances and resolutions prior to commencing construction on that plat.
- (9) **Water and Sewer Extension:** As part of the construction of phases I, II and III, Developer agrees to extend water and sewer lines to the end of Bigler Lane, in consultation with the City Engineer, and to stub those lines to the south at that point.

3.2 Obligations of the City.

(a) **Generally.** The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

(b) **Conditions to Current Approvals.** The City shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement, unless agreed to in writing by the Parties.

(c) **Acceptance of Improvements.** The City agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that (1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; (2) Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; (3) the Project improvements have been inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the plans and specifications; (4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and (5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

Section 4. VESTED RIGHTS AND APPLICABLE LAW

4.1 Vested Rights.

(a) **Generally.** As of the Effective Date of this Agreement, Developer shall have the vested right to develop the Property only in accordance with this Agreement and Applicable Law, including, but not limited to, section 02.0635 of the Midway City Zoning Ordinance and the specific conditions and exceptions imposed upon, and granted to, Developer at the May 18, 2000 meeting of the City Council.

(b) **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1988), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

4.2 Applicable Law.

(a) **Applicable Law.** The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "Applicable Law") shall be in accordance with those set forth in the Conditions to Current Approvals set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City ordinances and resolutions, in force and effect on the date the City Council granted preliminary approval to Developer. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, including the payment of

fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.

(b) ***State and Federal Law.*** Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

Section 5. AMENDMENT.

Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project. Each person or entity (other than the City and Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

Section 6. COOPERATION-IMPLEMENTATION

6.1 Processing of Subsequent Approvals.

(a) Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) the notice and holding of all required public hearings, and (ii) granting the Subsequent Approval application as set forth below.

(b) The City's obligations under Section 6.1(a) of this Agreement are conditioned on Developer's provision to the City, in a timely manner, of all documents, applications, plans, and other information necessary for the City to meet such obligations. It is the express intent of Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals.

(c) The City may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Conditions to Current Approvals, or (iii) the City is unable to make all findings related to the Subsequent Approval required by state law or city ordinance. The City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with state law or city ordinance or to make the Subsequent Approval consistent with the Conditions to Current Approvals, so long as such conditions comply with Section 4.1(b) of this Agreement.

(d) If the City denies any application for a Subsequent Approval, the City must specify the modifications required to obtain approval of such application. Any such specified modifications must be consistent with Applicable Law (including Section 4.1(b) of this Agreement). The City shall approve the application if subsequently resubmitted for the City's review and the application complies with the specified modifications.

6.2 Other Governmental Permits.

(a) Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.

(b) The City shall cooperate with Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.1(b) of this Agreement. However, the City shall not be required by this Agreement to join, or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

Section 7. DEFAULT; TERMINATION; ANNUAL REVIEW

7.1 General Provisions.

(a) ***Defaults.*** Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement

or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

(b) Termination. If the City elects to consider terminating this Agreement due to a material default of Developer, then the City shall give to Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. The City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such hearing, Developer does not waive any and all remedies available to Developer at law or in equity.

7.2 Review by City

(a) Generally. The City may at any time and in its sole discretion request that Developer demonstrate that Developer is in full compliance with the terms and conditions of this Agreement. Developer shall provide any and all information requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.

(b) Determination of Non-Compliance. If the City Council finds and determines that Developer has not complied with the terms of this Agreement, and noncompliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to Section 7.1(a) of this Agreement. If the default is not cured timely by Developer, the City may terminate this Agreement as provided in Section 7.1(b) of this Agreement.

7.3 Default by the City.

In the event the City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided in Section 7.1 of this Agreement and provided under Applicable Law.

7.4 Enforced Delay; Extension of Time of Performance.

Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

7.5 Limitation on Liability.

No owner, director or officer of the Developer, when acting in his or her capacity as such, shall have any personal recourse, or deficiency liability associated with this Agreement, except to the extent that liability arises out of fraud or criminal acts of that owner, director, or officer.

Section 8. NOTICE OF COMPLIANCE

8.1 Timing and Content.

Within fifteen (15) days following any written request which Developer may make from time to time, the City shall execute and deliver to Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledged by the City, certifying that: (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

8.2 Failure to Deliver.

Failure to deliver a Notice of Compliance within the time set forth in Section 8.1 shall constitute a presumption that as of fifteen (15) days from the date of Developer's written request (i) this Agreement was in full force and effect without modification except as may be represented by Developer; and (ii) there were no uncured defaults in the performance of Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7.2 or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7.1 of this Agreement for defaults which commenced prior to the presumption created under this Section, and which have continued uncured.

Section 9. DEFENSE AND INDEMNITY

9.1 Developer's Actions.

Developer shall defend, hold harmless, and indemnify the City and its elected and appointed officers, agents, employees, and representatives from any and all claims, costs, judgments and liabilities (including inverse condemnation) which arise directly or indirectly from the City's approval of the Project, construction of the Project, or operations performed under this Agreement, by (a) Developer or by Developer's contractors, subcontractors, agents or employees, or (b) any one or more persons directly

or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors.

9.2 City's Actions.

Nothing in this Agreement shall be construed to mean that Developer shall defend, indemnify, or hold the City or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been offered for dedication and accepted by the City for maintenance.

Section 10. CHANGE IN DEVELOPER, ASSIGNMENT, TRANSFER AND NOTICE.

The rights of the Developer under this Agreement may not be transferred or assigned, in whole or in part except by written approval of the City. Developer shall give notice to the City of any proposed or requested assignment at least thirty (30) days prior to the effective date of the assignment. City shall not unreasonably withhold its consent to assignment.

Section 11. DEVELOPER WAIVER AND RELEASE, ARBITRATION, HAZARDOUS MATERIALS, AND INSURANCE CERTIFICATES

11.1 Mandatory Non-Binding Arbitration of City Actions. In consideration for the promises contained herein, (the sufficiency of which Developer expressly acknowledges), Developer agrees to submit to non-binding arbitration any and all claims or causes of action against the City, and its elected and appointed officers, agents, employees and representatives, arising out of the City's actions during the approval process on the Project, including but not limited to taking claims under the state or federal constitution, equal protection claims under the state or federal constitution, due process claims under the state or federal constitution, U.S.C. § 1983 claims, equitable claims relating to the interpretation or application of City ordinances, claims challenging the validity, or seeking adjustment of any impact fee, engineering review fee, or other City fee, or claims challenging any exaction required by the City as a Condition to Current Approvals.

Arbitration of any of the foregoing causes of action shall be conducted according to the rules of the American Arbitration Association. If the Parties cannot agree on a single person to arbitrate the matter, a panel of three persons shall be selected, each Party selecting its own person, and those two persons selecting the third. The arbitration shall occur in Utah and each Party shall pay its own costs and attorneys' fees, without regard to which Party prevails.

Developer agrees that a prerequisite to such arbitration shall be the exhaustion of any and all administrative remedies available under state law or city ordinance.

11.2 Hazardous, Toxic, and/or Contaminating Materials. Developer further agrees to defend and hold harmless the City and its elected and/or appointed boards, officers, employees, and agents from any and all claims, liabilities, damages, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence of hazardous, toxic and/or contaminating materials on the Project solely to the extent caused by the intentional or negligent acts of Developer, or Developer's officers, contractors, subcontractors, employees, or agents.

11.3 Insurance Certificates. Prior to beginning construction on the Project, Developer shall furnish to the City certificates of general liability insurance indicating that the City has been added as an additional named insured with respect to the Project and this Agreement. Until such time as the Project improvements described in Section 3.1(b)(4) of this Agreement are completed and approved by the City, such insurance coverage shall not terminate or be canceled or the coverage reduced until after thirty (30) days' written notice is given to the City.

Section 12. NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to by and between the Parties that: (1) the subject Project is a private development; (2) the City has no interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to the provisions of this Agreement or in connection with the various Current Approvals or Subsequent Approvals, except as otherwise expressly set forth in this Agreement; (3) Developer shall have full power over and exclusive control of the Property and Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Conditions to Current Approvals, and Subsequent Approvals, and (4) the City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and Developer.

Section 13. MISCELLANEOUS

13.1 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

13.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of

competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

13.3 Other Necessary Acts. Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions to Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

13.4 Construction. Each reference in this Agreement to any of the Conditions to Current Approvals or Subsequent Approvals shall be deemed to refer to the Condition to Current Approval or Subsequent Approval as it may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

13.5 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

13.6 Covenants Running with the Land and Manner of Enforcement.

The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

The City may look to Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. Any cost incurred by the City to secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to individual lots or units in the Project

13.7 Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach.

13.8 Remedies. Either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorneys' fees in any legal or equitable action instituted to enforce the terms of this Agreement.

13.9 Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

13.10 Other Public Agencies. The City shall not unreasonably withhold, condition, or delay its determination to enter into any agreement with another public agency concerning the subject matter and provisions of this Agreement if necessary or desirable for the development of the Project and if such agreement is consistent with this Agreement and Applicable Law. Nothing in this Agreement shall require that the City take any legal action concerning other public agencies and their provision of services or facilities other than with regard to compliance by any such other public agency with any agreement between such public agency and the City concerning subject matter and provisions of this Agreement.

13.11 Attorneys' Fees. In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.

13.12 Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured by the other Party through this Agreement can be enjoyed.

13.13 Requests to Modify Use Restrictions. Developer's successors, heirs, assigns, and transferees shall have the right, without the consent or approval of any other person or entity owning property in any other part of the Project, to request that the City modify any zoning classification, use, density, design, setback, size, height, open space, road design, road dedication, traffic configuration, site plan, or other use restrictions associated with that portion of the Project to which the successor, heir, assign, or transferee holds title. The City shall consider any such request, but is not required to grant it.

13.14 Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing warranting Party:

(a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individual(s) represent.

(c) This Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

13.15 No Third-Party Beneficiaries. This Agreement is between the City and Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

Section 14. NOTICES

Any notice or communication required hereunder between the City and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

**Director
Planning Department
Midway City
P.O. Box 277
Midway, UT 84049**

With Copies to:

TESCH, VANCE & MILLER c/o

JOSEPH E. TESCH
Midway City Attorney
2 South Main, Suite 2-D
Heber City, UT 84032

If to Developer:

DR. ROBERT L. FULLER
Zermatt Resort, L.L.C.
761 South 1030 East
Orem, UT 84097

Section 15. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

Unless otherwise noted herein, this Agreement is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A - Legal Description of the Property

Section 16. RECORDATION OF DEVELOPMENT AGREEMENT

No later than ten (10) days after the City enters into this Agreement, the City Recorder shall cause to be recorded, at Developer's expense, an executed copy of this Agreement in the Official Records of the County of Wasatch.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and the City as of the date and year first above written.

CITY OF MIDWAY:

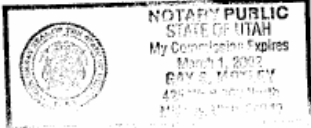
Attest:

Bill Probst
BILL PROBST
Mayor

Brad Wilson
BRAD Wilson.
City Recorder

STATE OF UTAH)
) SS:
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 4th day of February, 2002, by Bill Probst, who executed the foregoing instrument in his capacity as the Mayor of the City of Midway, Utah, and by Brad Johnson, who executed the foregoing instrument in his capacity as the Midway City Recorder.



Gary S. Motley
NOTARY PUBLIC
Residing at: *Midway Utah*

My Commission Expires:
March 1, 2002

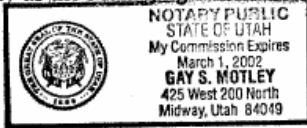
ZERMATT RESORT, L.L.C.:

By: Dr. Robert L. Fuller

Dr. Robert L. Fuller
Managing Member

STATE OF UTAH)
) :SS
COUNTY OF Wasatch)

The foregoing instrument was acknowledged before me this 4th day of February, 2002, by Robert L. Fuller, who executed the foregoing instrument in his capacity as the Managing Member of Developer, a Utah Limited Liability Company.



Gay S. Motley
NOTARY PUBLIC
Residing at: Midway, Utah

My Commission Expires:
March 1, 2002

EXHIBIT A
TO
ZERMATT RESORT DEVELOPMENT AGREEMENT

Legal Description of Property

BOUNDARY DESCRIPTION

Beginning at a point which is East 119.99 feet and North 588.58 feet from the 1996 Wasatch County Surveyor's brass cap of the Southwest Corner of Section 27, Township 3 South, Range 4 East, Salt Lake Base and Meridian:

Thence N 15°30'00" E 235.81 feet; Thence N 02°07'18" W 447.43 feet; Thence N 74°38'54" W 117.73 feet; Thence N 18°53'27" W 84.66 feet; Thence N 46°38'08" W 10.05 feet; Thence N 40°37'04" E 103.38 feet; Thence N 49°11'44" E 193.12 feet; Thence N 75°46'56" E 257.89 feet; Thence N 25°22'29" E 43.87 feet; Thence N 27°00'00" E 33.37 feet; Thence S 63°15'36" E 93.67 feet; Thence along the arc of a 190.00 foot radius curve to the left 76.60 feet (Curve has a central angle of 23°06'00" and a chord bearing S 74°48'36" E 76.09 feet); Thence S 86°21'37" E 55.78 feet; Thence along the arc of a 140.00 foot radius curve to the left 81.56 feet (Curve has a central angle of 37°28'14" and a chord bearing N 74°54'16" E 88.94 feet); Thence N 56°10'09" E 16.96 feet; Thence along the arc of a 110.00 foot radius curve to the right 62.98 feet (Curve has a central angle of 32°48'19" and a chord bearing N 72°34'18" E 62.12 feet); Thence N 88°58'28" E 4.34 feet; Thence along the arc of a 90.00 foot radius curve to the right 56.45 feet (Curve has a central angle of 35°56'11" and a chord bearing S 73°03'27" E 55.53 feet); Thence S 55°05'21" E 3.01 feet; Thence along the arc of a 160.00 foot radius curve to the left 39.23 feet (Curve has a central angle of 14°02'49" and a chord bearing S 62°08'46" E 39.13 feet); Thence S 69°08'11" E 54.59 feet; Thence S 00°50'57" W 783.33 feet; Thence N 72°46'42" W 146.52 feet; Thence S 01°07'57" W 47.20 feet; Thence N 45°00'00" W 114.66 feet; Thence West 46.77 feet; Thence S 45°00'00" W 94.21 feet; Thence West 219.92 feet; Thence S 07°00'00" W 119.78 feet; Thence S 07°18'31" E 165.70 feet; Thence South 10.00 feet; Thence N 89°05'00" W 353.74 feet to the point of beginning.

Less ZERMATT RESORT PLAT "B" ALSO KNOWN AS CHALET STUDIO SUITES

Beginning at a point which is East 571.34 feet and North 1140.40 feet from the 1996 Wasatch County Surveyor's brass cap of the Southwest Corner of Section 27, Township 3 South, Range 4 East, Salt Lake Base and Meridian to a point on Plat "B":
Thence North 86.99 feet; Thence East 171.49 feet; Thence South 86.99 feet; Thence West 171.49 feet to the point of beginning.
(Contains 14,918 s.f.)

Less ZERMATT RESORT PLAT "C" ALSO KNOWN AS THE VILLAS PHASE I

Beginning at a point which is East 194.15 feet and North 802.13 feet from the 1996 Wasatch County Surveyor's brass cap of the Southwest Corner of Section 27, Township 3 South, Range 4 East, Salt Lake Base and Meridian to a point on Plat "C":
Thence N 02°15'00" W 87.86 feet; Thence N 87°45'04" E 73.81 feet; Thence N 30°00'00" E 22.84 feet; Thence N 2°15'00" W 100.03 feet; Thence East 111.34 feet; Thence S 6°52'18" W 110.76 feet; Thence S 45°00'00" E 12.83 feet; Thence S 83°07'35" E 75.91 feet; Thence S 06°52'18" W 62.77 feet; Thence West 101.25 feet; Thence South 42.38 feet; Thence West 50.23 feet; Thence North 42.38 feet; Thence West 102.11 feet to the point of beginning. (Contains 32417 s.f.)

Less ZERMATT RESORT PLAT "D" ALSO KNOWN AS THE VILLAS PHASE II

Beginning at a point which is East 371.10 feet and North 882.88 feet from the 1996 Wasatch County Surveyor's brass cap of the Southwest Corner of Section 27, Township 3 South, Range 4 East, Salt Lake Base and Meridian to a point on Plat "D":
Thence N 5°52'18" E 229.54 feet; Thence East 86.82 feet; Thence S 6°52'18" W 247.82 feet; Thence N 83°45'59" W 74.47 feet; Thence N 45°00'00" W 14.87 feet to the point of beginning (Contains 20827 sf)

Less ZERMATT RESORT PLAT "E" ALSO KNOWN AS THE VILLAS PHASE III

Beginning at a point which is North 889.54 feet and East 191.50 feet from the 1996 Wasatch County Surveyor's brass cap of the Southwest Corner of Section 27, Township 3 South, Range 4 East, Salt Lake Base and Meridian to a point on Plat "E":
Thence N 2°15'00" W 274.23 feet; Thence N 52°45'00" E 130.00 feet; Thence S 37°07'09" E 66.38 feet; Thence South 24.65 feet; Thence S 52°45'00" W 70.16 feet; Thence S 2°15'00" E 210.14 feet; Thence S 30°00'00" W 23.54 feet; Thence S 87°54'10" W 73.44 feet to the point of beginning (Contains 30641 sf)

Less ZERMATT RESORT PLAT "F" ALSO KNOWN AS HOTEL BAREN

Beginning at a point which is North 1079.23 feet and East 339.39 feet from the 1996 Wasatch County Surveyor's brass cap of the Southwest Corner of Section 27, Township 3 South, Range 4 East, Salt Lake Base and Meridian to a point on Plat "F":
Thence North 110.00 feet; Thence East 80.66 feet; Thence North 191.17 feet; Thence East 81.79 feet; Thence South 39.00 feet; Thence East 65.00 feet; Thence North 11.67 feet; Thence East 83.00 feet; Thence South 28.67 feet; Thence East 46.00 feet; Thence South 52.00 feet; Thence West 46.00 feet; Thence South 45.01 feet; Thence West 75.33 feet; Thence North 32.22 feet; Thence West 67.67 feet; Thence South 140.38 feet; Thence West 116.94 feet; Thence South 20.00 feet; Thence S 41°59'14" W 26.91 feet; Thence West 32.52 feet to the point of beginning (Contains 47,443 s.f.)

Contains 14.30 acres

Basis of Bearing: From 1996 Wasatch County Surveyor's found brass cap of the Southwest corner of Section 27, T3S, R4E, SLB&M N 00°44'36" E to the found brass capped West 1/4 corner of Section 27, T3S, R4E, SLB&M

OMI-0246-1, OMI-0246, OMI-0195, OMI-0194-1