

**ORDINANCE NO. 20  
SERIES OF 2005**

**AN ORDINANCE REPEALING AND RE-ENACTING ORDINANCE NO. 9, SERIES OF 2003, PROVIDING FOR THE MAJOR AMENDMENT OF SPECIAL DEVELOPMENT DISTRICT NO. 36, FOUR SEASONS RESORT, AND AMENDING THE APPROVED DEVELOPMENT PLAN FOR SPECIAL DEVELOPMENT DISTRICT NO. 36 IN ACCORDANCE WITH CHAPTER 12-9A, VAIL TOWN CODE; AND SETTING FORTH DETAILS IN REGARD THERETO.**

WHEREAS, Chapter 12-9A of the Town of Vail Zoning Regulations permits the adoption of Special Development Districts; and

WHEREAS, Vail Development, LLC, has submitted an application for a major amendment to Special Development District No. 36, Four Seasons Resort; and

WHEREAS, in accordance with the provisions outlined in the Zoning Regulations, the Planning & Environmental Commission held public hearings on the application; and

WHEREAS, the Planning & Environmental Commission has reviewed the prescribed criteria for the amendment of special development districts and has submitted its recommendation of approval to the Vail Town Council; and

WHEREAS, the Vail Town Council finds that the proposed amendment to Special Development District No. 36, Four Seasons Resort, complies with the nine design criteria outlined in Section 12-9A-8 of the Vail Town Code and that the applicant has demonstrated that any adverse effects of the requested deviations from the development standards of the underlying zoning are outweighed by the public benefits provided; and

WHEREAS, the approval of the major amendment to Special Development District No. 36, Four Seasons Resort, and the development standards in regard thereto shall not establish precedence or entitlements elsewhere within the Town of Vail; and

WHEREAS, all notices as required by the Town of Vail Municipal Code have been sent to the appropriate parties; and

WHEREAS, the Vail Town Council considers it in the best interest of the public health, safety, and welfare to adopt the proposed Approved Development Plan for Special Development District No. 36, Four Seasons Resort.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

**Section 1. Purpose of the Ordinance**

The purpose of Ordinance No. 20, Series of 2005, is to adopt an Approved Development Plan for Special Development District No. 36, Four Seasons Resort, and to prescribe appropriate development standards for Special Development District No. 36, in accordance with the provisions of Chapter 12-9A, Vail Town Code. The "underlying" zone district for Special Development District No. 36 shall remain Public Accommodation zone district.

**Section 2. Establishment Procedures Fulfilled, Planning Commission Report**

The procedural requirements described in Chapter 12-9A of the Vail Town Code have been fulfilled and the Vail Town Council has received the recommendation of approval from the Planning & Environmental Commission for the major amendment to Special Development District No. 36, Four Seasons Resort. Requests for the amendment of a special development district follow the procedures outlined in Chapter 12-9A of the Vail Town Code.

**Section 3. Special Development District No. 36**

The Special Development District is hereby amended to assure comprehensive development and use of the area in a manner that would be harmonious with the general character of the Town, provide adequate open space and recreation amenities, and promote the goals, objectives and policies of the Town of Vail Comprehensive Plan. Special Development District No. 36, Four Seasons Resort, is regarded as being complementary to the Town of Vail by the Vail Town Council and the Planning & Environmental Commission, and has been amended because there are

significant aspects of the Special Development District that cannot be satisfied through the imposition of the standard Public Accommodation zone district requirements.

**Section 4. Development Standards - Special Development District No. 36, Four Seasons Resort Development Plan -**

The Approved Development Plan for Special Development District No. 36, Four Seasons Resort, shall include the following plans and materials prepared by Zehren and Associates, Inc., and Hill Glazier Architects, and Alpine Engineering, dated August 8, 2005, and stamped approved by the Town of Vail, dated August 8, 2005:

- a. C1. Existing Conditions Plan
- b. C3. Water and Sanitary Sewer Plan
- c. C4. Grading and Drainage Plan
- d. C5. Erosion and Sediment Control Plan
- e. C6. Shallow Utility Plan
- f. A-2.0.1 Level 1 Plan (132')
- g. A-2.0.2 Level 2 Plan (140',142')
- h. A-2.0.3 Level 3 Plan (152')
- i. A-2.0.4 Level 4 Plan (162')
- j. A-2.0.5 Level 5 Plan (172')
- k. A-2.0.6 Level 6 Plan (182')
- l. A-2.0.7 Level 7 Plan (192')
- m. A-2.0.8 Level 8 Plan (202')
- n. A-2.0.9 Level 9 Plan (212')
- o. A-2.0.10 Level 10 Plan (222')
- p. A-2.0.11 Roof Plan
- q. A-5.0.1 Elevations

- r. A-5.0.2 Elevations
- s. A-5.0.3 Elevations
- t. A-8.0.1 Site Plan North
- u. A-8.0.2 Site Plan South
- v. A-9.0.1 Landscape Plan North
- w. A-9.0.2 Landscape Plan South
- x. A-10.0.1 Building Height Calculations – Absolute Height/Interpolated Contours
- y. A-10.0.2 Building Height Calculations – Maximum Height/Interpolated Contours
- z. A-10.0.3 Building Height Calculations at Proposed Grades
- aa. A-11.0.1 Existing Circulation
- bb. A-11.0.2 Proposed Circulations
- cc. A-12.0.1 Off-site Improvements Plan
- dd. A-13.0.1 Landscape Area
- ee. A-14.0.1 Hardscape Area
- ff. A-15.0.1 Above Ground Site Coverage
- gg. A-15.0.2 Site Coverage Below Grade
- hh. A-16.0.1 Streetscape Elevations

**Permitted Uses--**

The permitted uses in Special Development District No. 36 shall be as set forth in the development plans referenced in Section 4 of this ordinance.

**Conditional Uses--**

The conditional uses for Special Development District No. 36, Four Seasons Resort, shall be set forth in Section 12-7A-3 of the Town of Vail Zoning Regulations. All conditional uses shall be reviewed per the procedures as outlined in Chapter 12-16 of the Town of Vail Zoning Regulations.

**Density-- Units per Acre - Dwelling Units, Accommodation Units, Fractional Fee Club Units and Employee Housing Units --**

The number of units permitted in Special Development District No. 36, Four Seasons Resort, shall not exceed the following:

Dwelling Units – 16

Accommodation Units – 122

Fractional Fee Club Units – 19

Type III Employee Housing Units - 28

**Density-- Floor Area --**

The gross residential floor area (GRFA), common area and commercial square footage permitted for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance.

Specifically:

GRFA - 177,609 square feet

Retail – 2,386 square feet

Restaurant/Lounge – 5,946 square feet (seating capacity)

Conference Facilities – 11,139 square feet

Health Club and Spa – 18,577 square feet

**Setbacks--**

Required setbacks for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance.

**Height--**

The maximum building height for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance

(89 feet maximum).

**Site Coverage--**

The maximum site coverage allowed for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance (70,150 square feet above grade or 59%; and 85,091 square feet below grade or 71%).

**Landscaping--**

The minimum landscape area requirement for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance (35,268 square feet or 30%).

**Parking and Loading –**

The required number of off-street parking spaces and loading/delivery berths for Special Development District No. 36, Four Seasons Resort, shall be provided as set forth in the Approved Development Plan referenced in Section 4 of this ordinance (211 spaces required, 215 spaces provided). In no instance shall Vail Road, West Meadow Drive or the South Frontage Road be used for loading/delivery or guest drop-off/pick-up without the prior written approval of the Town of Vail. The required parking spaces shall not be individually sold, transferred, leased, conveyed, rented or restricted to any person other than a condominium owner, fractional fee owner, tenant, occupant or other user of the building, except that six (6) of the required spaces may be utilized by the Holiday House Condominium Association, d/b/a Nine Vail Road Condominiums for parking pursuant to the terms of a recorded Easement Agreement. The foregoing language shall not prohibit the temporary use of the parking spaces for events or uses outside of the building, subject to the approval of the Town of Vail nor shall it limit the number of spaces available for sale or lease to condominium and/or fractional fee owners.

**Section 5. Approval Agreements for Special Development District No. 36, Four Seasons**

## Resort

The approval of Special Development District No. 36, Four Seasons Resort shall be conditioned upon the developer's demonstrated compliance with the following approval agreements:

1. That the developer shall provide deed-restricted housing that complies with the Town of Vail Employee Housing requirements (Chapter 12-13) for a minimum of 56 employees on the Four Seasons Resort site, and that said deed-restricted employee housing shall be made available for occupancy, and that the deed restrictions shall be recorded with the Eagle County Clerk & Recorder, prior to issuance of a Temporary Certificate of Occupancy for the Four Seasons Resort.
2. That the Memorandum of Understanding as provided in Exhibit A, shall be adopted with the second reading of Ordinance No. 20, Series of 2005. This fulfills approval agreement number 2 of first reading of Ordinance No. 20, Series of 2005.
3. That the developer shall record a drainage easement for Spraddle Creek. The easement shall be prepared by the developer and submitted for review and approval by the Town Attorney. The easement shall be recorded with the Eagle County Clerk & Recorder's Office prior to the issuance of a Temporary Certificate of Occupancy for the Four Seasons Resort.
4. That the developer shall submit a final exterior building materials list, a typical wall section and complete color renderings for review and approval of the Design Review Board, prior to submittal of an application for a building permit.
5. That the developer shall submit a comprehensive sign program proposal for the Four Seasons Resort for review and approval by the Design Review Board, prior to the issuance of a Temporary Certificate of Occupancy for the Four Seasons Resort.
6. That the developer shall submit a rooftop mechanical equipment plan for review and approval by the Design Review Board prior to the issuance of a building permit. All rooftop mechanical equipment shall be incorporated into the overall design of the hotel and enclosed and visually screened from public view.
7. That the developer shall post a bond to provide financial security for the 150% of the total cost of the required off-site public improvements. The bond shall be in place with the Town prior to the issuance of a building permit.
8. That the developer shall comply with all fire department staging and access requirements pursuant to Title 14, Development Standards, Vail Town Code. This will be demonstrated on a set of revised plans for Town review and approval prior to building permit submittal.
9. That the required Type III deed-restricted employee housing units shall not be eligible for resale and that the units be owned and operated by the hotel and that said ownership shall transfer with the deed to the hotel property.
10. That the developer shall coordinate the relocation of the existing electric transformers on the property with local utility providers. The revised location of the transformers shall be part of the final landscape plan to be submitted for review and approval by the Design Review Board.

11. That the developer shall submit a written letter of approval from Nine Vail Road Condominium Association, the Scorpio Condominium Association, and the Alphorn Condominium Association granting access to allow for the construction of sidewalk, drainage, Spraddle Creek relocation, and landscaping improvements, respectively, prior to the issuance of a building permit.
12. That the developer provides a 6 ft. to 8 ft. heated paver pedestrian walkway from the Frontage Road bus stop adjacent to the West Star Bank then continuing east to Vail Road and then south to the 9 Vail Road property line. All work related to providing these improvements including lighting, retaining, utility relocation, curb and gutter, drainage and landscaping shall be included. A plan shall be submitted for review and approval by the Town and the Design Review Board prior to submittal of a building permit.
13. That the developer shall provide a heated pedestrian walk connection from the Frontage Road to West Meadow Drive. The developer shall record a pedestrian easement for this connection for review and approval by the Town Attorney prior to issuance of a Temporary Certificate of Occupancy.
14. That the developer shall prepare and submit all applicable roadway and drainage easements for dedication to the Town for review and approval by the Town Attorney. All easements shall be recorded with the Eagle County Clerk and Recorder's Office prior to issuance of a Temporary Certificate of Occupancy.
15. That the developer shall be assessed an impact fee of \$5,000 for all net increase in pm traffic generation as shown in the revised April 4, 2003, Traffic Study. The net increase shall be calculated using the proposed peak generating trips less the existing Resort Hotel and Auto Care Center trips, respectively being  $155 - (108 + 7) = 40$  net peak trips @ \$5,000 = \$200,000. This fee will be offset by the cost of non-adjacent improvements constructed.
16. That the developer shall receive approval for all required permits (CDOT access, ACOE, dewatering, storm-water discharge, etc.) prior to issuance of a building permit.
17. That the developer shall submit a full site grading and drainage plan for review and approval by the Town and the Design Review Board. The drainage plan will need to be substantiated by a drainage report provided by a Colorado professional Engineer, include all drainage, roof drains, landscape drains etc., and how they will connect with the TOV storm system. The developer shall submit all final civil plans and final drainage report to the Town for civil approval by the Department of Public Works, prior to submittal of a building permit.
18. That the developer shall provide detailed civil plans, profiles, details, limits of disturbance and construction fence for review and civil approval by the Department of Public Works, prior to submittal of a building permit.
19. That the developer shall be responsible for all work related to providing landscaping and lighting within the proposed Frontage Rd. medians. A detailed landscape plan of the medians shall be provided for review and approval by the Design Review Board.
20. That the developer shall provide additional survey information of the south side of the Frontage Road to show existing trees to be removed and additional survey in front of the Scorpio building



in order to show accurate grades for the construction of the path from the Four Seasons to the bus stop at West Star bank. Final design shall be reviewed and approved by the Town and the Design Review Board.

21. That the developer is responsible for 100% of final design improvements along West Meadow Drive from the centerline of the road back to the Four Seasons property line from Mayors' park to western most property line of the Four Seasons, including any drainage and grade tie-ins beyond the west property line. This includes all improvements, including, drainage, lighting, art, streetscape enhancements, edge treatments, curbs, heated walks, etc. Final plans shall match and be coordinated with the proposed Town of Vail Streetscape plan for West Meadow Drive and shall be provided for review and approval by the Design Review Board.
22. That the developer shall incorporate public art into the development, and shall coordinate all art proposals with the Art in Public Places Board, subject to review and approval by the Design Review Board.
23. That the developer shall resolve all of the following design-related issues for final Design Review Board review and approval:
  - a. Proposed hydrant relocation at the NW corner of the property shall be graded to be level with the proposed sidewalk and landscaping will be located as to not interfere with the operation of the hydrant.
  - b. The cross-slope on the West Meadow Drive walk shall maintain a max. 2.0% cross slope that is sloped towards the road.
  - c. The boulder walls and grading at the SE corner of the property shall be modified as to not impact the existing 2-36" CMP's.
  - d. The foundation wall at the SE corner of the parking structure shall be modified to accommodate the existing Spraddle Creek vault.
  - e. The proposed Spraddle Creek vault and concrete box culvert shall be modified to work with the existing phone vault.
  - f. All known existing utilities shall be shown on a plan with the proposed drainage and utilities in order to clarify potential conflicts.
  - g. The proposed walk that meets the frontage road walk at the eastern portion of the property shall be realigned slightly to the west to avoid the existing inlet.
  - h. Fire staging turning movements shall be show on plans.
  - i. Retaining walls west of the loading and delivery access drive shall be curved/angled in order to "bench" access drive wall.
  - j. Top of wall elevation for the Frontage Rd-West Meadow Drive path reads as 185.5?(Typo)
  - k. Railings shall be provided for paths where necessary
  - l. Show edge of existing pavement for Frontage road on civil plans and show match point.
  - m. Erosion control plan shall be updated.
  - n. Show grading around proposed electric vault.
  - o. Show driveway grades, spot elevations on civil plans.
  - p. Show additional TOW/BOW elevations on pool walls.
24. That the developer shall begin initial construction of the Four Seasons Resort within three years from the time of its final approval at second reading of the ordinance amending Special Development District No. 36, Four Seasons Resort, and continue diligently toward the completion of the project. If the developer does not begin and diligently work toward the

completion of the special development district or any stage of the special development district within the time limits imposed, the approval of said special development district shall be void. The Planning and Environmental Commission and Town Council shall review the special development district upon submittal of an application to reestablish the special development district following the procedures outlined in Section 12-9A-4, Vail Town Code.

25. That the Developer shall commit no act or omission in any way to cause the current operation of the Chateau at Vail to cease until such time as a demolition permit is issued by the Department of Community Development.

#### **Section 6.**

If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

#### **Section 7.**

The repeal or the repeal and re-enactment of any provisions of the Vail Municipal Code as provided in this ordinance shall not affect any right which has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and reenacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

#### **Section 8.**

All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. The repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON  
FIRST READING this 20<sup>th</sup> day of December, 2005, and a public hearing for second reading of  
this Ordinance set for the 3<sup>rd</sup> day of January, 2006, in the Council Chambers of the Vail Municipal  
Building, Vail, Colorado.



A handwritten signature in cursive script, appearing to read "Rodney E. Slifer", written over a horizontal line.

Rodney E. Slifer, Mayor

ATTEST:

A handwritten signature in cursive script, appearing to read "Lorelei Donaldson", written over a horizontal line.

Lorelei Donaldson, Town Clerk

INTRODUCED, READ, ADOPTED AND ENACTED ON SECOND READING AND ORDERED  
PUBLISHED IN FULL this 3<sup>rd</sup> day of January, 2006.

A handwritten signature in cursive script, appearing to read "Rodney E. Slifer", written over a horizontal line.

Rodney E. Slifer, Mayor

ATTEST:

A handwritten signature in cursive script, appearing to read "Lorelei Donaldson", written over a horizontal line.

Lorelei Donaldson, Town Clerk



Exhibit A:

**TOWN OF VAIL**  
**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is made and entered into on the 3<sup>rd</sup> day of January, 2006, by and between **VAIL DEVELOPMENT LLC.**, a Minnesota corporation and the **TOWN OF VAIL** a Municipal corporation, situated in the County of Eagle, State of Colorado.

WHEREAS, Vail Development LLC is planning the development and construction of a mixed use project consisting primarily of a five star hotel, a fractional fee club, condominiums, retail, employee housing units and related facilities at 28 South Frontage Road and 13 Vail Road, Vail Colorado (Lots 9A and 9C, Vail Village 2<sup>nd</sup> Filing) currently and commonly known as the Chateau at Vail hotel and the Alpine Standard/Amoco gasoline station;

WHEREAS, in connection with its proposed mixed use development Vail Development LLC, is requesting from the Town of Vail certain entitlements pursuant to its applications for a major amendment to Special Development District No. 36, a conditional use permit for Type III Employee Housing Units, a conditional use permit for a Fractional Fee Club and a rezoning of Lot 9A, Vail Village 2<sup>nd</sup> Filing;

WHEREAS, in connection with the applications and requested entitlements, Vail Development, LLC, is required by the Town of Vail to make certain off-site/public improvements (as specifically set forth in detail below) along South Frontage Road and West Meadow Drive consistent with the Town of Vail Streetscape Master Plan, as amended;

WHEREAS, as a condition to the second reading of Ordinance No. 20, Series of 2005, the parties are required to enter into this Memorandum of Understanding setting forth the

responsibilities, obligations and requirements of the parties in connection with said offsite/public improvements to be performed by Vail Development, LLC,

**NOW, THEREFORE,** in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**I. DEFINITIONS**

1. When used in *this* Memorandum of Understanding, the following terms shall have the following meanings unless otherwise specifically defined. The singular shall include the plural and the masculine gender shall include the feminine and the neuter unless otherwise required by the context.

"Improvements" shall mean those off-site/public improvements as specifically defined in Section III below.

"MOU" shall mean this Memorandum of Understanding agreement and all exhibits annexed hereto.

"Vail Development" shall mean Vail Development, LLC, a Minnesota corporation, whose address is 600 Foshay Tower, 821 Marquette Avenue South, Minneapolis, Minnesota 55402; Attention: Thomas J, Brink

"Parties" shall mean both Vail Development and Town of Vail.

"Project" shall mean the mixed use project being planned by Vail Development and consisting primarily of a five star hotel, a fractional fee club, condominiums, retail, employee housing units and related facilities to be located at the Property, *which* mixed use project is the subject of Ordinance No. 20, Series 2005.

"Property" shall mean those properties commonly known as the Alpine Standard/Amoco gasoline station and the Chateau at Vail hotel, located respectively at 28 South Frontage Road and 13 Vail Road, Vail Colorado - Lots 9A and 9C, Vail Village 2' Filing.

"Town of Vail" shall mean the Town of Vail, a municipal corporation, whose address is 75 South Frontage Road, Vail Colorado 81657; Attention:

## II. PURPOSE

2. The express purpose of this MOU is to establish the mutual responsibilities, obligations and requirements of the Parties hereto regarding the Improvements to be performed by Nicollet in connection with Vail Development's entitlements and Project. These Improvements *are* required to be made by Vail Development based upon the design and functionality of the Project or as specifically required by the Town of Vail in connection with Vail Development's entitlements.

## III. VAIL DEVELOPMENT'S OBLIGATIONS

3. Vail Development *shall* be responsible, at its sole cost and expense, except as specifically provided herein, to complete and perform the following (collectively, the "Improvements") in connection with the Project:

(a) *South Frontage Road.* Vail Development shall perform the following improvements along the South Frontage Road, using new and first class materials, as approved by the Town of Vail and the Town of Vail Design Review Board and in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations: (i) widen the south side of South Frontage Road and install a left turn lane in South Frontage Road to the entrance of the hotel and a corresponding left turn lane to the entrance of the existing Town of Vail Police Station; (ii) install medians in South Frontage Road from the main roundabout to the *western* lot line of the Scorpio Condominium property; (iii) provide all landscaping and lighting within the

proposed South Frontage Road median to be constructed by Vail Development; (iv) install an attached heated paver sidewalk/walkway (6 to 8 feet wide) adjacent to the South Frontage Road from the bus stop adjacent to the Weststar Bank east along the Scorpio Condominium property and the Property to Vail Road including all lighting retaining walls, railings, utility relocation, curb and gutter, drainage and landscaping as necessary; (v) relocate the fire hydrant adjacent to South Frontage Road; and (vi) pavement overlay from the centerline of South Frontage Road to the property line of the Property from the main roundabout west to the bus stop adjacent to the Weststar Bank (subject to timing and coordination of the CDOT overlay project that will be at CDOT's sole cost and expense).

(b) *Vail Road.* Vail Development shall perform the following improvements along the Vail Road, using new and first class materials, as approved by the Town of Vail and the Town of Vail Design Review Board and in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations: (i) install an attached heated paver sidewalk/walkway (6 to 8 feet wide) adjacent to Vail Road from the South Frontage Road south along the Property to 9 Vail Road property, including all lighting retaining walls, railings, utility relocation, curb and gutter, drainage and landscaping as necessary; (ii) relocate the Spraddle creek piping and install new box culverts; and (iii) pavement overlay from the centerline of Vail Road to the property line of the Property from the main roundabout (South Frontage Road) south to the property line of 9 Vail Road. along West Meadow Drive, using new and first class materials, as approved by the Town of Vail and the Town of Vail Design Review Board and in accordance with all applicable federal,

(c) *West Meadow Drive.* Vail Development shall perform the following state and local laws, statutes, ordinances and regulations: (i) install an attached heated paver

sidewalk/walkway (6 to 14 feet wide, or as required by the final approved Town of Vail Streetscape Master Plan for West Meadow Drive) adjacent to West Meadow Drive from the western most side of Mayors' Park west along the 9 Vail Road property and the Property to the western most property line of the Property, including all lighting retaining walls, railings, utility relocation, curb and gutter, drainage and landscaping as necessary and to match, and be coordinated with the final approved Town of Vail Streetscape plan for West Meadow Drive; (ii) all design improvements along West Meadow Drive from the centerline of the right-of-way to the property line of the Property and the 9 Vail Road property from the western most side of Mayors' park west to the western most property line of the Property (specifically including any drainage and grade tie-ins necessary beyond the western most property line of the Property), including all drainage, lighting, art, streetscape enhancements, utility relocation, edge treatments, curb and gutter and landscaping as necessary and to match and be coordinated with the final approved Town of Vail Streetscape plan for West Meadow Drive.

(d) **Pedestrian Walkway.** Vail Development shall perform the following improvements along the western property line of the Property from the South Frontage Road to West Meadow Drive, using new and first class materials, as approved by the Town of Vail and the Town of Vail Design Review Board and in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations: (i) design and install an attached heated pedestrian sidewalk/walkway along the western property line of the Property from the South Frontage Road south to West Meadow Drive, including all lighting retaining walls, railings, utility relocation, drainage and landscaping as necessary.

(e) **Spraddle Creek.** Vail Development shall perform the following improvements in connection with Spraddle Creek, using new and first class materials, as approved by the Town of



Vail and the Town of Vail Design Review Board and in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations. (i) relocate the Spraddle creek piping and install new box culverts, as necessary.

#### **IV. EASEMENTS**

4. Vail Development shall be responsible, at its sole cost and expense, to prepare and submit all applicable roadway, drainage, and pedestrian easements for dedication in connection with the Project or the Improvements to the Town of Vail for review and approval by the Town of Vail, Town Attorney and all such easements shall be filed and recorded with the Eagle County Clerk and Recorder's Office prior to the issuance of a Temporary Certificate of Occupancy for the Property.

#### **V. TOWN OF VAIL'S OBLIGATIONS**

5. Once the Improvements have been completed by Nicollet and accepted by the Town of Vail, the Town of Vail shall be responsible for all maintenance, upkeep, watering, mowing, trimming, weed control, snow removal, debris removal, repair and replacement of any and all Improvements located in a public right of way or in a public easement, including any and all cost and expenses associated directly or indirectly therewith (except the Town of Vail shall have no obligation to heat or repair the heat for the sidewalks) and Vail Development shall have no continuing or further obligations or responsibilities in connection therewith.

#### **VI. FINANCIAL GUARANTEE REQUIREMENTS**

6. Nicollet shall provide and post with the Town of Vail a Bond in the total amount of One Hundred Fifty Percent (150%) of the total cost of the Improvements (as mutually determined and agreed to by and between Vail Development and the Town of Vail), to provide financial security to the Town of Vail and to assure the completion of the Improvements by Vail Development.

*The*

Bond shall be provided and posted with the Town of Vail prior to the issuance of a building permit for the Project.

#### **VII. MISCELLANEOUS PROVISIONS**

7.1 Amendments. This MOU and all documents and instruments executed in connection herewith may be amended, modified or supplemented only by a written instrument, executed by the party against which enforcement thereof may be sought.

7.2 Binding Effect. This MOU shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. The obligations assumed and agreed to be performed by each party hereunder with respect to the Property shall be binding upon such, party and their respective successors, assigns and transferees. The covenants of the Parties contained herein are intended by the parties to be covenants which run with the land under applicable law.

Vail Development, LLC, agrees to make any transfer of any interest in the Property subject to the obligations contained in this MOU.

7.3 Colorado Law. This MOU shall be construed and enforced In accordance with the laws of the State of Colorado.

7.4 Time of Essence. Time is of the essence of this MOU. In the event the provisions of this MOU require any act to be done or action to be taken hereunder on a date which is a Saturday, Sunday or legal holiday, such act or action shall be deemed to have been validly done or taken if done or take on the next succeeding day which is not a Saturday, Sunday or legal holiday.

7.5 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute a separate document but all of which together shall constitute one and the same

agreement. Signature and acknowledgment pages may be detached and reattached to physically form one document.

7.6 Attorneys' Fees. If legal action is commenced in connection with the enforcement, interpretation, or breach of any provision of this MOU, the Court as part of its judgment shall award reasonable attorneys' fees and costs to the prevailing party.

7.7 Invalidity of Certain Provisions. Every provision of this MOU is intended to be several. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

7.8 Entire Agreement. This MOU and the documents referenced herein set forth all the covenants, promises, agreements, conditions and understandings among the Parties concerning the subject matter hereof and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein, it being understood that this MOU supersedes and cancels any and all previous negotiations, arrangements, understandings and representations and none thereof shall be used to interpret or construe this MOU.

7.9 Notices. All notices, certificates or other communications required to be given to the Town of Vail or Vail Development, LLC, hereunder shall be sufficiently given and shall be deemed given when delivered, or when deposited in the United States mail, first class, with postage fully prepaid and addressed as follows:

If to the Town of Vail;

Town of Vail  
c/o \_\_\_\_\_  
75 South Frontage Road  
Vail, Colorado 81657

If to Vail Development, LLC: Vail Development LLC, c/o  
Thomas J. Brink 600 Foshay Tower  
821 Marquette Avenue South  
Minneapolis, Minnesota 55402

7.10 No Third Party Beneficiary. This MOU and any financial guarantees required pursuant to its terms are not intended for the benefit of any third party.

7.11 Indemnification. Vail Development, LLC, agrees to indemnify and hold the Town of Vail harmless against any and all liability, loss, damages, costs and expenses, including reasonable attorney's fees, which the Town of Vail may hereafter sustain, incur or be required to pay by reason of any negligent act or omission or intentional act of Nicollet, its agents, officers, employees, contractors, or subcontractors, which is incurred in connection with or is of any nature whatsoever arising out of the construction or the installation of the Improvements which Nicollet is required to perform under the terms of this MOU.

7.12 Termination. So long as the Town of Vail approval for the Special Development District No. 36 - Four Seasons Resort remains valid and has not terminated by passage of time or otherwise, this MOU may not be terminated, in whole or in part, without the mutual written consent of the Parties hereto

above.

**WHEREFORE**, the Parties hereto have executed this MOU as of the date first set forth

**VAIL DEVELOPMENT, LLC**

\_\_\_\_\_  
By: Thomas J. Brink  
Its: Vice President & General Counsel

**TOWN OF VAIL**

\_\_\_\_\_  
By:\_\_\_\_\_

I  
t  
s  
ss ACKNOWLEDGMENT BY VAIL DEVELOPMENT, LLC

COUNTY OF HENNEPIN

This instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me a notary within and for said County by Thomas J. Brink, the Vice President and General Counsel of Vail Development, LLC, a Minnesota corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )

ss

ACKNOWLEDGMENT BY TOWN OF VAIL

COUNTY OF EAGLE

On the day of \_\_\_\_\_, 2006, before me a notary public within and for said County, personally appeared \_\_\_\_\_ to me personally known and by me duly sworn, the \_\_\_\_\_ of the Town of Vail, a municipality named in the foregoing instrument and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said municipality.

\_\_\_\_\_

**PROOF OF PUBLICATION**

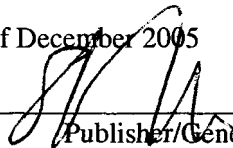
**STATE OF COLORADO }  
                                  }  
                                  } SS.  
**COUNTY OF EAGLE }  
                                  }****

I, Steve Pope, do solemnly swear that I am a qualified representative of the Vail Daily. That the same Daily newspaper printed, in whole or in part and published in the County of Eagle, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said County of Eagle for a period of more than fifty-two consecutive weeks next prior to the first publication of the annexed legal notice or advertisement and that said newspaper has Published the requested legal notice and advertisement as requested.

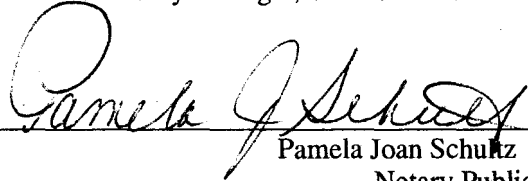
**The Vail Daily is an accepted legal advertising medium, only for jurisdictions operating under Colorado's Home Rule provision.**

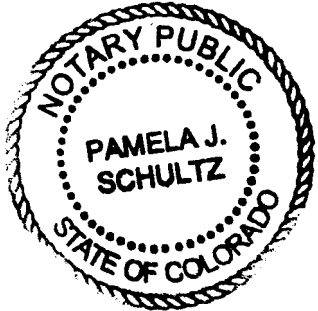
That the annexed legal notice or advertisement was published in the regular and entire issue of every number of said daily newspaper for the period of 1 consecutive insertions; and that the first publication of said notice was in the issue of said newspaper dated **December 24 A.D. 2005** and that the last publication of said notice was in the issue of said newspaper dated **December 24 A.D. 2005**.

In witness whereof has here unto set my hand this 29th day of December 2005

  
\_\_\_\_\_  
Publisher/General Manager/Editor

Subscribed and sworn to before me, a notary public in and for the County of Eagle, State of Colorado this 29th day December, 2005.

  
\_\_\_\_\_  
Pamela Joan Schultz  
Notary Public



My Commission expires: **November 1, 2007**



## ORDINANCE NO. 20 SERIES OF 2005

## AN ORDINANCE REPEALING AND RE-ENACTING ORDINANCE NO. 9, SERIES OF 2003, PROVIDING FOR THE MAJOR AMENDMENT OF SPECIAL DEVELOPMENT DISTRICT NO. 36, FOUR SEASONS RESORT, AND AMENDING THE APPROVED DEVELOPMENT PLAN FOR SPECIAL DEVELOPMENT DISTRICT NO. 36 IN ACCORDANCE WITH CHAPTER 12-9A, VAIL TOWN CODE; AND SETTING FORTH DETAILS IN REGARD THERETO.

WHEREAS, Chapter 12-9A of the Town of Vail Zoning Regulations permits the adoption of Special Development Districts; and

WHEREAS, Vail Development, LLC, has submitted an application for a major amendment to Special Development District No. 36, Four Seasons Resort; and

WHEREAS, in accordance with the provisions outlined in the Zoning Regulations, the Planning & Environmental Commission held public hearings on the application; and

WHEREAS, the Planning & Environmental Commission has reviewed the prescribed criteria for the amendment of special development districts and has submitted its recommendation of approval to the Vail Town Council; and

WHEREAS, the Vail Town Council finds that the proposed amendment to Special Development District No. 36, Four Seasons Resort, complies with the nine design criteria outlined in Section 12-9A-8 of the Vail Town Code and that the applicant has demonstrated that any adverse effects of the requested deviations from the development standards of the underlying zoning are outweighed by the public benefits provided; and

WHEREAS, the approval of the major amendment to Special Development District No. 36, Four Seasons Resort, and the development standards in regard thereto shall not establish precedence or entitlements elsewhere within the Town of Vail; and

WHEREAS, all notices as required by the Town of Vail Municipal Code have been sent to the appropriate parties; and

WHEREAS, the Vail Town Council considers it in the best interest of the public health, safety, and welfare to adopt the proposed Approved Development Plan for Special Development District No. 36, Four Seasons Resort.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

**Section 1. Purpose of the Ordinance**

The purpose of Ordinance No. 20, Series of 2005, is to adopt an Approved Development Plan for Special Development District No. 36, Four Seasons Resort, and to prescribe appropriate development standards for Special Development District No. 36, in accordance with the provisions of Chapter 12-9A, Vail Town Code. The "underlying" zone district for Special Development District No. 36 shall remain Public Accommodation zone district.

**Section 2. Establishment Procedures Fulfilled, Planning Commission Report**

The procedural requirements described in Chapter 12-9A of the Vail Town Code have been fulfilled and the Vail Town Council has received the recommendation of approval from the Planning & Environmental Commission for the major amendment to Special Development District No. 36, Four Seasons Resort. Requests for the amendment of a special development district follow the procedures outlined in Chapter 12-9A of the Vail Town Code.

**Section 3. Special Development District No. 36**

The Special Development District is hereby amended to assure comprehensive development and use of the area in a manner that would be harmonious with the general character of the Town, provide adequate open space and recreation amenities, and promote the goals, objectives and policies of the Town of Vail Comprehensive Plan. Special Development District No. 36, Four Seasons Resort, is regarded as being complementary to the Town of Vail by the Vail Town Council and the Planning & Environmental Commission, and has been amended because there are significant aspects of the Special Development District that cannot be satisfied through the imposition of the standard Public Accommodation zone district requirements.

**Section 4. Development Standards - Special Development District No. 36, Four Seasons Resort, Development Plan**

The Approved Development Plan for Special Development District No. 36, Four Seasons Resort, shall include the following plans and materials prepared by Zehren and Associates, Inc., and Hill Glazier Architects, and Alpine Engineering, dated August 8, 2005, and stamped approved by the Town of Vail, dated August 8, 2005:

- a. C1. Existing Conditions Plan
- b. C3. Water and Sanitary Sewer Plan
- c. C4. Grading and Drainage Plan
- d. C5. Erosion and Sediment Control Plan
- e. C6. Shallow Utility Plan
- f. A-2.0.1 Level 1 Plan (132')
- g. A-2.0.2 Level 2 Plan (140', 142')
- h. A-2.0.3 Level 3 Plan (152')
- i. A-2.0.4 Level 4 Plan (162')
- j. A-2.0.5 Level 5 Plan (172')
- k. A-2.0.6 Level 6 Plan (182')
- l. A-2.0.7 Level 7 Plan (192')
- m. A-2.0.8 Level 8 Plan (202')
- n. A-2.0.9 Level 9 Plan (212')
- o. A-2.0.10 Level 10 Plan (222')
- p. A-2.0.11 Roof Plan
- q. A-5.0.1 Elevations
- r. A-5.0.2 Elevations
- s. A-5.0.3 Elevations
- t. A-8.0.1 Site Plan North
- u. A-8.0.2 Site Plan South
- v. A-9.0.1 Landscape Plan North
- w. A-9.0.2 Landscape Plan South
- x. A-10.0.1 Building Height Calculations - Absolute Height/Interpolated Contours
- y. A-10.0.2 Building Height Calculations - Maximum Height/Interpolated Contours
- za. A-10.0.3 Building Height Calculations at Proposed Grades
- ab. A-11.0.1 Existing Circulation
- bb. A-11.0.2 Proposed Circulations
- cc. A-12.0.1 Off-site Improvements Plan
- dd. A-13.0.1 Landscape Area
- ee. A-14.0.1 Hardscape Area
- ff. A-15.0.1 Above Ground Site Coverage
- gg. A-15.0.2 Site Coverage Below Grade
- hh. A-16.0.1 Streetscape Elevations

**Permitted Uses**

The permitted uses in Special Development District No. 36 shall be as set forth in the development plans referenced in Section 4 of this ordinance.

**Conditional Uses**

The conditional uses for Special Development District No. 36, Four Seasons Resort, shall be set forth in Section 12-7A-3 of the Town of Vail Zoning Regulations. All conditional uses shall be reviewed per the procedures as outlined in Chapter 12-16 of the Town of Vail Zoning Regulations.

**Density-- Units per Acre - Dwelling Units, Accommodation Units, Fractional Fee Club Units and Employee Housing Units**

The number of units permitted in Special Development District No. 36, Four Seasons Resort, shall not exceed the following:

- Dwelling Units - 46-16
- Accommodation Units - 446-122
- Fractional Fee Club Units - 22-19
- Type III Employee Housing Units - 34-29

**Landscaping**

The minimum landscape area requirement for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance (35,268 square feet or 30%).

**Parking and Loading**

The required number of off-street parking spaces and loading/delivery berths for Special Development District No. 36, Four Seasons Resort, shall be provided as set forth in the Approved Development Plan referenced in Section 4 of this ordinance (211 spaces required; 215 spaces provided). In no instance shall Vail Road, West Meadow Drive or the South Frontage Road be used for loading/delivery or guest drop-off/pick-up without the prior written approval of the Town of Vail. The required parking spaces shall not be individually sold, transferred, leased, conveyed, rented or restricted to any person other than a condominium owner, fractional fee owner, tenant, occupant or other user of the building, except that six (6) of the required spaces may be utilized by the Holiday House Condominium Association, d/b/a Nine Vail Road Condominiums for parking pursuant to the terms of a recorded Easement Agreement. The foregoing language shall not prohibit the temporary use of the parking spaces for events or uses outside of the building, subject to the approval of the Town of Vail nor shall it limit the number of spaces available for sale or lease to condominium and/or fractional fee owners.

**Section 5. Approval Agreements for Special Development District No. 36, Four Seasons**

**Resort**

The approval of Special Development District No. 36, Four Seasons Resort shall be conditioned upon the developer's demonstrated compliance with the following approval agreements:

1. That the developer shall provide deed-restricted housing that complies with the Town of Vail Employee Housing requirements (Chapter 12-13) for a minimum of 56 employees on the Four Seasons Resort site, and that said deed-restricted employee housing shall be made available for occupancy, and that the deed restrictions shall be recorded with the Eagle County Clerk & Recorder, prior to issuance of a Temporary Certificate of Occupancy for the Four Seasons Resort.
2. That the Memorandum of Understanding as provided in Exhibit A, shall be adopted with the second reading of Ordinance No. 20, Series of 2005. This fulfills approval agreement number 2 of first reading of Ordinance No. 20, Series of 2005.
3. That the developer shall record a drainage easement for Spradde Creek. The easement shall be prepared by the developer and submitted for review and approval by the Town Attorney. The easement shall be recorded with the Eagle County Clerk & Recorder's Office prior to the issuance of a Temporary Certificate of Occupancy for the Four Seasons Resort.
4. That the developer shall submit a final exterior building materials list, a typical wall section and complete color renderings for review and approval of the Design Review Board, prior to submittal of an application for a building permit.
5. That the developer shall submit a comprehensive sign program proposal for the Four Seasons Resort for review and approval by the Design Review Board, prior to the issuance of a Temporary Certificate of Occupancy for the Four Seasons Resort.
6. That the developer shall submit a rooftop mechanical equipment plan for review and approval by the Design Review Board prior to the issuance of a building permit. All rooftop mechanical equipment shall be incorporated into the overall design of the hotel and enclosed and visually screened from public view.
7. That the developer shall post a bond to provide financial security for the 150% of the total cost of the required off-site public improvements. The bond shall be in place with the Town prior to the issuance of a building permit.
8. That the developer shall comply with all fire department staging and access requirements pursuant to Title 14, Development Standards, Vail Town Code. This will be demonstrated on a set of revised plans for Town review and approval prior to building permit submittal.
9. That the required Type III deed-restricted employee housing units shall not be eligible for resale and that the units be owned and operated by the hotel and that said ownership shall transfer with the deed to the hotel property.
10. That the developer shall coordinate the relocation of the existing electric transformers on the property with local utility providers. The revised location of the transformers shall be part of the final landscape plan to be submitted for review and approval by the Design Review Board.
11. That the developer shall submit a written letter of approval from Nine Vail Road Condominium Association, the Scorpion Condominium Association, and the Alphon Condominium Association granting access to allow for the construction of sidewalk, drainage, Spradde Creek relocation, and landscaping improvements, respectively, prior to the issuance of a building permit.
12. That the developer provides a 6 ft. to 8 ft. heated paver pedestrian walkway from the Frontage Road bus stop adjacent to the West Star Bank then continuing east to Vail Road and then south to the 9 Vail Road property line. All work related to providing these improvements including lighting, retaining, utility relocation, curb and gutter, drainage and landscaping shall be included. A plan shall be submitted for review and approval by the Town and the Design Review Board prior to submittal of a building permit.
13. That the developer shall provide a heated pedestrian walk connection from the Frontage Road to West Meadow Drive. The developer shall record a pedestrian easement for this connection for review and approval by the Town Attorney prior to issuance of a Temporary Certificate of Occupancy.
14. That the developer shall prepare and submit all applicable roadway and drainage easements for dedication to the Town for review and approval by the Town Attorney. All easements shall be recorded with the Eagle County Clerk and Recorder's Office prior to issuance of a Temporary Certificate of Occupancy.
15. That the developer shall be assessed an impact fee of \$5,000 for all net increase in pm traffic generation as shown in the revised April 4, 2003, Traffic Study. The net increase shall be calculated using the proposed peak generating trips less the existing Resort Hotel and Auto Care Center trips, respectively being 155-(108+7) = 40 net peak trips @ \$5,000 = \$200,000. This fee will be offset by the cost of non-adjacent improvements constructed.
16. That the developer shall receive approval for all required permits (CDOT review, ACOE, dewatering, storm-water discharge, etc.) prior to issuance of a building permit.
17. That the developer shall submit a full site grading and drainage plan for review and approval by the Town and the Design Review Board. The drainage plan will need to be substantiated by a drainage report provided by a Colorado professional Engineer, include all drainage, roof drains, landscape drains etc., and how they will connect with the TOV storm system. The developer shall submit all final civil plans and final drainage report to the Town for civil approval by the Department of Public Works, prior to submittal of a building permit.
18. That the developer shall provide detailed civil plans, profiles, details, limits of disturbance and construction fence for review and civil approval by the Department of Public Works, prior to submittal of a building permit.
19. That the developer shall be responsible for all work related to providing landscaping and lighting within the proposed Frontage Rd. medians. A detailed landscape plan of the medians shall be provided for review and approval by the Design Review Board.
20. That the developer shall provide additional survey information of the south side of the Frontage Road to show existing trees to be removed and additional survey in front of the Scorpion building in order to show accurate grades for the construction of the path from the Four Seasons to the bus stop at West Star bank. Final design shall be reviewed and approved by the Town and the Design Review Board.
21. That the developer is responsible for 100% of final design improvements along West Meadow Drive from the centerline of the road back to the Four Seasons property line from Mayors' park to western most property line of the Four Seasons, including any drainage and grade tie-ins beyond the west property line. This includes all improvements, including, drainage, lighting, art, streetscape enhancements, edge treatments, curbs, heated walks, etc. Final plans shall match and be coordinated with the proposed Town of Vail Streetscape plan for West

- l. Retaining walls west of the loading dock entry access drive shall be curved/angled in order to "bunch" access drive wall.
  - m. Top of wall elevation for the Frontage Road West Meadow Drive path reads as 185.57(Typo)
  - n. Retainings shall be provided for paths where necessary
  - o. Show edge of existing pavement for Frontage road on civil plans and show match point.
  - p. Erosion control plan shall be updated.
  - q. Show grading around proposed electric vault.
  - r. Show driveway grades, spot elevations on civil plans.
  - s. Show additional TOW/BOW elevations on pool walls.
24. That the developer shall begin initial construction of the Four Seasons Resort within three years from the time of its final approval at second reading of the ordinance amending Special Development District No. 36, Four Seasons Resort, and continue diligently toward the completion of the project. If the developer does not begin and diligently work toward the completion of the special development district or any stage of the special development district within the time limits imposed, the approval of said special development district shall be void. The Planning and Environmental Commission and Town Council shall review the special development district upon submittal of an application to reestablish the special development district following the procedures outlined in Section 12.9A-4, Vail Town Code.
25. That the Developer shall commit no act or omission in any way to cause the current operation of the Chateau at Vail to cease until such time as a demolition permit is issued by the Department of Community Development.

**Section 6. Effective Date of the Ordinance**

Ordinance No. 20, Series of 2005, shall take effect on January 3, 2006.

**Section 7.**

If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance, and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

**Section 8.**

The repeal or the repeal and re-enactment of any provisions of the Vail Municipal Code as provided in this ordinance shall not affect any right which has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and reenacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

**Section 9.**

All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. The repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON FIRST READING this 20<sup>th</sup> day of December, 2005, and a public hearing for second reading of this Ordinance set for the 3<sup>rd</sup> day of January 3, 2006, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

Rodney E. Siler, Mayor  
ATTEST:

Lorelei Donaldson, Town Clerk

**Exhibit A:  
TOWN OF VAIL  
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is made and entered into on the 20<sup>th</sup> day of December, 2005 by and between **VAIL DEVELOPMENT LLC.**, a Minnesota corporation and the **TOWN OF VAIL**, a Municipal corporation, situated in the County of Eagle, State of Colorado.

WHEREAS, Vail Development LLC is planning the development and construction of a mixed use project consisting primarily of a five star hotel, a fractional fee club, condominiums, retail, employee housing units and related facilities at 28 South Frontage Road and 13 Vail Road, Vail Colorado (Lots 9A and 9C, Vail Village "F" Filing) currently and commonly known as the Chateau at Vail hotel and the Alpine Standard/Amoco gasoline station.

WHEREAS, in connection with its proposed mixed use development Vail Development LLC is requesting from the Town of Vail certain entitlements pursuant to its applications for a major amendment to Special Development District No. 36, a conditional use permit for Type III Employee Housing Units, a conditional use permit for a Fractional Fee Club and a rezoning of Lot 9A, Vail Village 2<sup>nd</sup> Filing.

WHEREAS, in connection with the applications and requested entitlements, Vail Development, LLC, is required by the Town of Vail to make certain off-site/public improvements (as specifically set forth in detail below) along South Frontage Road and West Meadow Drive consistent with the Town of Vail Streetscape Master Plan, as amended;

WHEREAS, as a condition to the second reading of Ordinance No. 20, Series of 2005, the parties are required to enter into this Memorandum of Understanding setting forth their responsibilities, obligations and requirements of the parties in connection with said offsite/public improvements to be performed by Vail Development, LLC.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**I. DEFINITIONS**

1. When used in this Memorandum of Understanding, the following terms shall have the following meanings unless otherwise specifically defined. The singular shall include the plural and the masculine gender shall include the feminine and the neuter unless otherwise required by the context.

"Improvements" shall mean those off-site/public improvements as specifically defined in Section III below.

"MOU" shall mean this Memorandum of Understanding agreement and all exhibits annexed hereto.

"Vail Development" shall mean Vail Development, LLC, a Minnesota corporation, whose address is 600 Foshay Tower, 821 Marquette Avenue South, Minneapolis, Minnesota 55402, Attention: Thomas J. Brink "Parties" shall mean both Vail Development and Town of Vail.

"Project" shall mean the mixed use project being planned by Vail Development and consisting primarily of a five star hotel, a fractional fee club, condominiums, retail, employee housing units and related facilities to be located at the Property, which mixed use project is the subject of Ordinance No. 20, Series 2005

"Property" shall mean those properties commonly known as the Alpine Standard/Amoco gasoline station and the Chateau at Vail hotel, located respectively at 28 South Frontage Road and 13 Vail Road, Vail Colorado - Lots 9A and 9C, Vail Village 2<sup>nd</sup> Filing.

"Town of Vail" shall mean the Town of Vail, a municipal corporation, whose address is 75 South Frontage Road, Vail Colorado 81657, Attention:

**II. PURPOSE**

2. The express purpose of this MOU is to establish the mutual responsibilities, obligations and requirements of the Parties hereto regarding the Improvements to be performed by Nicolet in connection with Vail Development's entitlements and Project. These Improvements are required to be made by Vail Development based upon the design and functionality of the Project or as specifically required by the Town of Vail in connection with Vail Development's entitlements.

**III. VAIL DEVELOPMENT'S OBLIGATIONS**

3. Vail Development shall be responsible, at its sole cost and expense, except as specifically provided herein, to complete and perform the following (collectively, the "Improvements") in connection with the Project:

(a) **South Frontage Road.** Vail Development shall perform the following improvements along the South

Road south along the Property to 9 Vail Road property, including all lighting, retaining walls, railings, utility relocation, curb and gutter, drainage and landscaping as necessary; (ii) relocate Spraddle creek piping and install new box culverts; and (iii) pavement overlay from the centerline of West Meadow Drive to the property line of the Property from the main roundabout (South Frontage Road) south to the property line of 9 Vail Road along West Meadow Drive, using new and first class materials, as approved by the Town of Vail and the Town of Vail Design Review Board and in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations; (i) install an attached heated paver

**ESIDEWALK/WALKWAY** (6 to 14 feet wide, or as required by the final approved Town of Vail Streetscape Master Plan for West Meadow Drive) adjacent to West Meadow Drive from the western most side of Mayors' Park west along the 9 Vail Road property and the Property to the western most property line of the Property, including all lighting retaining walls, railings, utility relocation, curb and gutter, drainage and landscaping as necessary and to match and be coordinated with the final approved Town of Vail Streetscape plan for West Meadow Drive; (ii) all design improvements along West Meadow Drive from the centerline of the right-of-way to the property line of the Property and the 9 Vail Road property from the western most side of Mayors' park west to the western most property line of the Property (specifically including any drainage and grade ties necessary beyond the western most property line of the Property), including all drainage, lighting, art, streetscape enhancements, utility relocation, edge treatments, curb and gutter and landscaping as necessary and to match and be coordinated with the final approved Town of Vail Streetscape plan for West Meadow Drive

(d) **Pedestrian Walkway.** Vail Development shall perform the following improvements along the western property line of the Property from the South Frontage Road to West Meadow Drive, using new and first class materials, as approved by the Town of Vail and the Town of Vail Design Review Board and in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations: (i) design and install an attached heated pedestrian sidewalk/walkway along the western property line of the Property from the South Frontage Road south to West Meadow Drive, including all lighting retaining walls, railings, utility relocation, drainage and landscaping as necessary.

(e) **Spraddle Creek.** Vail Development shall perform the following improvements in connection with Spraddle Creek, using new and first class materials, as approved by the Town of Vail and the Town of Vail Design Review Board and in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations (i) relocate the Spraddle creek piping and install new box culverts, as necessary.

**IV. EASEMENTS**

4. Vail Development shall be responsible, at its sole cost and expense, to prepare and submit all applicable roadway, drainage, and pedestrian easements for dedication in connection with the Project or the Improvements to the Town of Vail for review and approval by the Town of Vail, Town Attorney and all such easements shall be filed and recorded with the Eagle County Clerk and Recorder's Office prior to the issuance of a Temporary Certificate of Occupancy for the Property.

**V. TOWN OF VAIL'S OBLIGATIONS**

5. Once the Improvements have been completed by Nicolet and accepted by the Town of Vail, the Town of Vail shall be responsible for all maintenance, upkeep, watering, mowing, trimming, weed control, snow removal, debris removal, repair and replacement of any and all Improvements located in a public right of way or in a public easement, including any and all cost and expenses associated directly or indirectly therewith (except the Town of Vail shall have no obligation to haul or repair the seal for the sidewalks) and Vail Development shall have no continuing or further obligations or responsibilities in connection therewith.

**VI. FINANCIAL GUARANTEE REQUIREMENTS**

6. Nicolet shall provide and post with the Town of Vail a Bond in the total amount of One Hundred Fifty Percent (150%) of the total cost of the Improvements (as mutually determined and agreed to by and between Vail Development and the Town of Vail), to provide financial security to the Town of Vail and to assure the completion of the Improvements by Vail Development. The Bond shall be provided and posted with the Town of Vail prior to the issuance of a building permit for the Project.

**VII. MISCELLANEOUS PROVISIONS**

7.1 **Amendments.** This MOU and all documents and instruments executed in connection herewith may be amended, modified or supplemented only by a written instrument, executed by the party against which enforcement thereof may be sought.

7.2 **Binding Effect.** This MOU shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. The obligations assumed and agreed to be performed by each party hereunder with respect to the Property shall be binding upon such party, and their respective successors, assigns and transferees. The covenants of the Parties contained herein are intended by the parties to be covenants which run with the land under applicable law. Vail Development, LLC, agrees to make any transfer of any interest in the Property subject to the obligations contained in this MOU.

7.3 **Colorado Law.** This MOU shall be construed and enforced in accordance with the laws of the State of Colorado.

7.4 **Time of Essence.** Time is of the essence of this MOU. In the event the provisions of this MOU require any act to be done or action to be taken hereunder on a date which is a Saturday, Sunday or legal holiday, such act or action shall be deemed to have been validly done or taken if done or take on the next succeeding day which is not a Saturday, Sunday or legal holiday.

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7.8 **Entire Agreement.** This MOU and the documents referenced herein set forth all the covenants, promises, agreements, conditions and understandings among the Parties concerning the subject matter hereof and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein, it being understood that this MOU supersedes and cancels any and all previous negotiations, arrangements, understandings and representations and none thereof shall be used to interpret or construe this MOU.

7.9 **Notices.** All notices, certificates or other communications required to be given to the Town of Vail or Vail Development, LLC, hereunder shall be sufficiently given and shall be deemed given when delivered, or when deposited in the United States mail, first class, with postage fully prepaid and addressed as follows: If to the Town of Vail - Town of Vail c/o 75 South Frontage Road Vail, Colorado 81657. If to Vail Development, LLC - Vail Development LLC, c/o Thomas J. Brink 600 Foshay Tower 821 Marquette Avenue South Minneapolis, Minnesota 55402.

7.10 **No Third Party Beneficiary.** This MOU and any financial guarantees required pursuant to its terms are not intended for the benefit of any third party.

7.11 **Indemnification.** Vail Development, LLC, agrees to indemnify and hold the Town of Vail harmless against any and all liability, loss, damages, costs and expenses, including reasonable attorneys' fees, which the Town of Vail may hereafter sustain, incur or be required to pay by reason of any negligent act or omission or intentional act of Nicolet, its agents, officers, employees, contractors, or subcontractors, which is incurred in connection with or is of any nature whatsoever arising out of the construction or the installation of the Improvements which Nicolet is required to perform under the terms of this MOU.

7.12 **Termination.** So long as the Town of Vail approves for the Special Development District No. 36 - Four Seasons Resort remains valid and has not terminated by passage of time or otherwise, this MOU may not be terminated, in whole or in part, without the mutual written consent of the Parties here to above.

**WHEREFORE**, the Parties hereto have executed this MOU as of the date first set forth

**PROOF OF PUBLICATION**

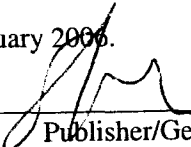
**STATE OF COLORADO }  
                                  } SS.  
COUNTY OF EAGLE     }**

I, Steve Pope, do solemnly swear that I am a qualified representative of the Vail Daily. That the same Daily newspaper printed, in whole or in part and published in the County of Eagle, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said County of Eagle for a period of more than fifty-two consecutive weeks next prior to the first publication of the annexed legal notice or advertisement and that said newspaper has Published the requested legal notice and advertisement as requested.


**The Vail Daily is an accepted legal advertising medium, only for jurisdictions operating under Colorado's Home Rule provision.**

That the annexed legal notice or advertisement was published in the regular and entire issue of every number of said daily newspaper for the period of **1** consecutive insertions; and that the first publication of said notice was in the issue of said newspaper dated **January 06 A.D. 2006** and that the last publication of said notice was in the issue of said newspaper dated **January 06 A.D. 2006**.

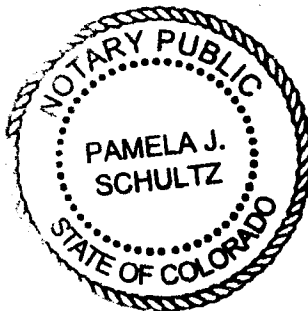
In witness whereof has here unto set my hand this 06<sup>th</sup> day January 2006.

  
\_\_\_\_\_  
Publisher/General Manager/Editor

Subscribed and sworn to before me, a notary public in and for the County of Eagle, State of Colorado this 06<sup>th</sup> day of January 2006.

  
\_\_\_\_\_  
Pamela Joan Schultz  
Notary Public

My Commission expires: **November 1, 2007**



**ORDINANCE NO. 20 SERIES OF 2005**

**AN ORDINANCE REPEALING AND RE-ENACTING ORDINANCE NO. 9, SERIES OF 2003, PROVIDING FOR THE MAJOR AMENDMENT OF SPECIAL DEVELOPMENT DISTRICT NO. 36, FOUR SEASONS RESORT, AND AMENDING THE APPROVED DEVELOPMENT PLAN FOR SPECIAL DEVELOPMENT DISTRICT NO. 36 IN ACCORDANCE WITH CHAPTER 12-9A, VAIL TOWN CODE; AND SETTING FORTH DETAILS IN REGARD THERETO.**

WHEREAS, Chapter 12-9A of the Town of Vail Zoning Regulations permits the adoption of Special Development Districts; and  
 WHEREAS, Vail Development, LLC, has submitted an application for a major amendment to Special Development District No. 36, Four Seasons Resort; and  
 WHEREAS, in accordance with the provisions outlined in the Zoning Regulations, the Planning & Environmental Commission held public hearings on the application; and  
 WHEREAS, the Planning & Environmental Commission has reviewed the prescribed criteria for the amendment of special development districts and has submitted its recommendation of approval to the Vail Town Council; and  
 WHEREAS, the Vail Town Council finds that the proposed amendment to Special Development District No. 36, Four Seasons Resort, complies with the nine design criteria outlined in Section 12-9A-8 of the Vail Town Code and that the applicant has demonstrated that any adverse effects of the requested deviations from the development standards of the underlying zoning are outweighed by the public benefits provided; and  
 WHEREAS, the approval of the major amendment to Special Development District No. 36, Four Seasons Resort, and the development standards in regard thereto shall not establish precedence or entitlements elsewhere within the Town of Vail; and  
 WHEREAS, all notices as required by the Town of Vail Municipal Code have been sent to the appropriate parties; and  
 WHEREAS, the Vail Town Council considers it in the best interest of the public health, safety, and welfare to adopt the proposed Approved Development Plan for Special Development District No. 36, Four Seasons Resort.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

**Section 1. Purpose of the Ordinance**

The purpose of Ordinance No. 20, Series of 2005, is to adopt an Approved Development Plan for Special Development District No. 36, Four Seasons Resort, and to prescribe appropriate development standards for Special Development District No. 36, in accordance with the provisions of Chapter 12-9A, Vail Town Code. The "underlying" zone district for Special Development District No. 36 shall remain Public Accommodation zone district.

**Section 2. Establishment Procedures Fulfilled, Planning Commission Report**

The procedural requirements described in Chapter 12-9A of the Vail Town Code have been fulfilled and the Vail Town Council has received the recommendation of approval from the Planning & Environmental Commission for the major amendment to Special Development District No. 36, Four Seasons Resort. Requests for the amendment of a special development district follow the procedures outlined in Chapter 12-9A of the Vail Town Code.

**Section 3. Special Development District No. 36**

The Special Development District is hereby amended to assure comprehensive development and use of the area in a manner that would be harmonious with the general character of the Town, provide adequate open space and recreation amenities, and promote the goals, objectives and policies of the Town of Vail Comprehensive Plan. Special Development District No. 36, Four Seasons Resort, is regarded as being complementary to the Town of Vail by the Vail Town Council and the Planning & Environmental Commission, and has been amended because there are significant aspects of the Special Development District that cannot be satisfied through the imposition of the standard Public Accommodation zone district requirements.

**Section 4. Development Standards - Special Development District No. 36, Four Seasons Resort Development Plan -**

The Approved Development Plan for Special Development District No. 36, Four Seasons Resort, shall include the following plans and materials prepared by Zehren and Associates, Inc., and Hill Glazier Architects, and Alpine Engineering, dated August 8, 2005, and stamped approved by the Town of Vail, dated August 8, 2005:

- a. C1. Existing Conditions Plan
- b. C3. Water and Sanitary Sewer Plan
- c. C4. Grading and Drainage Plan
- d. C5. Erosion and Sediment Control Plan
- e. C6. Shallow Utility Plan
- f. A-2.0.1 Level 1 Plan (132')
- g. A-2.0.2 Level 2 Plan (140', 142')
- h. A-2.0.3 Level 3 Plan (152')
- i. A-2.0.4 Level 4 Plan (162')
- j. A-2.0.5 Level 5 Plan (172')
- k. A-2.0.6 Level 6 Plan (182')
- l. A-2.0.7 Level 7 Plan (192')
- m. A-2.0.8 Level 8 Plan (202')
- n. A-2.0.9 Level 9 Plan (212')
- o. A-2.0.10 Level 10 Plan (222')
- p. A-2.0.11 Roof Plan
- q. A-5.0.1 Elevations
- r. A-5.0.2 Elevations
- s. A-5.0.3 Elevations
- t. A-8.0.1 Site Plan North
- u. A-8.0.2 Site Plan South
- v. A-9.0.1 Landscape Plan North
- w. A-9.0.2 Landscape Plan South
- x. A-10.0.1 Building Height Calculations - Absolute Height/Interpolated Contours
- y. A-10.0.2 Building Height Calculations - Maximum Height/Interpolated Contours
- z. A-10.0.3 Building Height Calculations at Proposed Grades
- aa. A-11.0.1 Existing Circulation
- bb. A-11.0.2 Proposed Circulations
- cc. A-12.0.1 Off-site Improvements Plan
- dd. A-13.0.1 Landscape Area
- ee. A-14.0.1 Hardscape Area
- ff. A-15.0.1 Above Ground Site Coverage
- gg. A-15.0.2 Site Coverage Below Grade
- hh. A-16.0.1 Streetscape Elevations

**Permitted Uses-**

The permitted uses in Special Development District No. 36 shall be as set forth in the development plans referenced in Section 4 of this ordinance.

**Conditional Uses-**

The conditional uses for Special Development District No. 36, Four Seasons Resort, shall be set forth in Section 12-7A-3 of the Town of Vail Zoning Regulations. All conditional uses shall be reviewed per the procedures as outlined in Chapter 12-16 of the Town of Vail Zoning Regulations.

**Density- Units per Acre - Dwelling Units, Accommodation Units, Fractional Fee Club Units and Employee Housing Units -**

The number of units permitted in Special Development District No. 36, Four Seasons Resort, shall not exceed the following:

- Dwelling Units - 16
- Accommodation Units - 122
- Fractional Fee Club Units - 19
- Type III Employee Housing Units - 28

**Density- Floor Area -**

The gross residential floor area (GRFA), common area and commercial square footage permitted for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance.

**Specifically:**

- GRFA - 177,609 square feet
- Retail - 2,386 square feet
- Restaurant/Lounge - 5,946 square feet (seating capacity)

Conference Facilities - 11,139 square feet  
 Health Club and Spa - 18,577 square feet

**Setbacks-**

Required setbacks for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance.

**Height-**

The maximum building height for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance (89 feet maximum).

**Site Coverage-**

The maximum site coverage allowed for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance (70,150 square feet above grade or 59%; and 85,091 square feet below grade or 71%).

**Landscaping-**

The minimum landscape area requirement for Special Development District No. 36, Four Seasons Resort, shall be as set forth in the Approved Development Plan referenced in Section 4 of this ordinance (35,268 square feet or 30%).

**Parking and Loading -**

The required number of off-street parking spaces and loading/delivery berths for Special Development District No. 36, Four Seasons Resort, shall be provided as set forth in the Approved Development Plan referenced in Section 4 of this ordinance (211 spaces required, 215 spaces provided). In no instance shall Vail Road, West Meadow Drive or the South Frontage Road be used for loading/delivery or guest drop-off/pick-up without the prior written approval of the Town of Vail. The required parking spaces shall not be individually sold, transferred, leased, conveyed, rented or restricted to any person other than a condominium owner, fractional fee owner, tenant, occupant or other user of the building, except that six (6) of the required spaces may be utilized by the Holiday House Condominium Association, d/b/a Nine Vail Road Condominiums for parking pursuant to the terms of a recorded Easement Agreement. The foregoing language shall not prohibit the temporary use of the parking spaces for events or uses outside of the building, subject to the approval of the Town of Vail nor shall it limit the number of spaces available for sale or lease to condominium and/or fractional fee owners.

**Section 5. Approval Agreements for Special Development District No. 36, Four Seasons Resort**

The approval of Special Development District No. 36, Four Seasons Resort shall be conditioned upon the developer's demonstrated compliance with the following approval agreements:

1. That the developer shall provide deed-restricted housing that complies with the Town of Vail Employee Housing requirements (Chapter 12-13) for a minimum of 56 employees on the Four Seasons Resort site, and that said deed-restricted employee housing shall be made available for occupancy, and that the deed restrictions shall be recorded with the Eagle County Clerk & Recorder, prior to issuance of a Temporary Certificate of Occupancy for the Four Seasons Resort.
2. That the Memorandum of Understanding as provided in Exhibit A, shall be adopted with the second reading of Ordinance No. 20, Series of 2005. This fulfills approval agreement number 2 of first reading of Ordinance No. 20, Series of 2005.
3. That the developer shall record a drainage easement for Spraddle Creek. The easement shall be prepared by the developer and submitted for review and approval by the Town Attorney. The easement shall be recorded with the Eagle County Clerk & Recorder's Office prior to the issuance of a Temporary Certificate of Occupancy for the Four Seasons Resort.
4. That the developer shall submit a final exterior building materials list, a typical wall section and complete color renderings for review and approval of the Design Review Board, prior to submittal of an application for a building permit.
5. That the developer shall submit a comprehensive sign program proposal for the Four Seasons Resort for review and approval by the Design Review Board, prior to the issuance of a Temporary Certificate of Occupancy for the Four Seasons Resort.
6. That the developer shall submit a rooftop mechanical equipment plan for review and approval by the Design Review Board prior to the issuance of a building permit. All rooftop mechanical equipment shall be incorporated into the overall design of the hotel and enclosed and visually screened from public view.
7. That the developer shall post a bond to provide financial security for the 150% of the total cost of the required off-site public improvements. The bond shall be in place with the Town prior to the issuance of a building permit.
8. That the developer shall comply with all fire department staging and access requirements pursuant to Title 14, Development Standards, Vail Town Code. This will be demonstrated on a set of revised plans for Town review and approval prior to building permit submittal.
9. That the required Type III deed-restricted employee housing units shall not be eligible for resale and that the units be owned and operated by the hotel and that said ownership shall transfer with the deed to the hotel property.
10. That the developer shall coordinate the relocation of the existing electric transformers on the property with local utility providers. The revised location of the transformers shall be part of the final landscape plan to be submitted for review and approval by the Design Review Board.
11. That the developer shall submit a written letter of approval from Nine Vail Road Condominium Association, the Scorpio Condominium Association, and the Alphon Condominium Association granting access to allow for the construction of sidewalk, drainage, Spraddle Creek relocation, and landscaping improvements, respectively, prior to the issuance of a building permit.
12. That the developer provides a 6 ft. to 8 ft. heated paver pedestrian walkway from the Frontage Road bus stop adjacent to the West Star Bank then continuing east to Vail Road and then south to the 9 Vail Road property line. All work related to providing these improvements including lighting, retaining, utility relocation, curb and gutter, drainage and landscaping shall be included. A plan shall be submitted for review and approval by the Town and the Design Review Board prior to submittal of a building permit.
13. That the developer shall provide a heated pedestrian walk connection from the Frontage Road to West Meadow Drive. The developer shall record a pedestrian easement for this connection for review and approval by the Town Attorney prior to issuance of a Temporary Certificate of Occupancy.
14. That the developer shall prepare and submit all applicable roadway and drainage easements for dedication to the Town for review and approval by the Town Attorney. All easements shall be recorded with the Eagle County Clerk and Recorder's Office prior to issuance of a Temporary Certificate of Occupancy.
15. That the developer shall be assessed an impact fee of \$5,000 for all net increase in pm traffic generation as shown in the revised April 4, 2003, Traffic Study. The net increase shall be calculated using the proposed peak generating trips less the existing Resort Hotel and Auto Care Center trips, respectively being 155-(108+7) = 40 net peak trips @ \$5,000 = \$200,000. This fee will be offset by the cost of non-adjacent improvements constructed.
16. That the developer shall receive approval for all required permits (CDOT access, ACOE, dewatering, storm-water discharge, etc.) prior to issuance of a building permit.
17. That the developer shall submit a full site grading and drainage plan for review and approval by the Town and the Design Review Board. The drainage plan will need to be substantiated by a drainage report provided by a Colorado professional Engineer, include all drainage, roof drains, landscape drains etc., and how they will connect with the TOV storm system. The developer shall submit all final civil plans and final drainage report to the Town for civil approval by the Department

control, snow removal, debris removal, repair and replacement of any and all Improvements located in a public right of way or in a public easement, including any and all cost and expenses associated directly or indirectly therewith (except the Town of Vail shall have no obligation to heat or repair the heat for the sidewalks) and Vail Development shall have no continuing or further obligations or responsibilities in connection therewith.

**VI. FINANCIAL GUARANTEE REQUIREMENTS**

6. Nicollet shall provide and post with the Town of Vail a Bond in the total amount of One Hundred Fifty Percent (150%) of the total cost of the Improvements (as mutually determined and agreed to by and between Vail Development and the Town of Vail), to provide financial security to the Town of Vail and to assure the completion of the Improvements by Vail Development. The Bond shall be provided and posted with the Town of Vail prior to the issuance of a building permit for the Project.

**VII. MISCELLANEOUS PROVISIONS**

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If to Vail Development, LLC: Vail Development LLC, c/o Thomas J. Brink 600 Foshay Tower 821 Marquette Avenue South Minneapolis, Minnesota 55402

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**WHEREFORE,** the Parties hereto have executed this MOU as of the date first set forth **VAIL DEVELOPMENT, LLC**

**By: Thomas J. Brink**  
**Its: Vice President & General Counsel**  
**TOWN OF VAIL**

**By:**  
**as ACKNOWLEDGMENT BY VAIL DEVELOPMENT, LLC**

**Its:**  
**STATE OF MINNESOTA**  
**COUNTY OF HENNEPIN**

This instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me a notary within and for said County by Thomas J. Brink, the Vice President and General Counsel of Vail Development, LLC, a Minnesota corporation, on behalf of the corporation.

**Notary Public**  
**STATE OF COLORADO )**  
**COUNTY OF EAGLE**

**as ACKNOWLEDGMENT BY TOWN OF VAIL**  
On the day of \_\_\_\_\_, 2006, before me a notary public within and for said County, personally appeared to me personally known and by me duly sworn, the of the Town of Vail, a municipality named in the foregoing instrument and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its acknowledged said instrument to be the free act and deed of said municipality.

