

When Recorded Return To:

Parsons Behle & Latimer
201 S. Main Street, Suite 1800
Salt Lake City, Utah 84111
Attention: Shawn C. Ferrin

ENTRY NO. 01003965

09/29/2014 03:18:16 PM B: 2259 P: 0285

Agreement PAGE 1/11

MARY ANN TRUSSELL, SUMMIT COUNTY RECORDER
FEE 39.00 BY U S TITLE OF UTAH



PUBLIC PLAY PROTECTION AGREEMENT

THIS PUBLIC PLAY PROTECTION AGREEMENT (this "**Agreement**") is entered into as of the 29th day of September 2014, by and between THE CANYONS GOLF CLUB, LLC, a Utah limited liability company, having an address at 4000 The Canyons Resort Drive, Park City, Utah 84098 ("**TCGC**"), and THE CANYONS RESORT VILLAGE ASSOCIATION, INC., a Utah nonprofit corporation, having an address at 1790 Sun Peak Drive, Suite A103, Park City, Utah 84098 ("**RVMA**") (TCGC and RVMA are referred sometimes to individually as a "**Party**" and collectively as the "**Parties**"), with reference to the following:

A. TCGC is the owner of that certain real property located in Summit County, State of Utah, and legally described on Exhibit A attached hereto ("**TCGC Parcels**") upon which TCGC (either directly or through an intermediary) plans to operate a golf club and golf course facility with accompanying amenities (collectively referred to as the "**TCGC Facilities**"). RVMA is a member of TCGC.

B. The TCGC Parcels are encumbered by that certain Amended and Restated Development Agreement for the Canyons Specially Planned Area, dated November 15, 1999, as amended, and recorded November 24, 1999, as Entry No. 553911, in Book 1297, beginning Page 405 in the official records of the Summit County, Utah Recorder (the "**Development Agreement**").

C. Finding 15(e) of the Development Agreement requires certain Community Facilities including a public golf course. Section 3.2.6 of the Development Agreement requires that upon completion and the opening for golf play of the TCGC Facilities, and notwithstanding priorities given to residents and guests of properties within the boundaries of RVMA, "tee times, subject to all standard rules, regulations, and fees established for RVMA properties, shall be made available to the general public."

D. To effectuate the purposes of the Development Agreement, the Operating Agreement of TCGC (the "**TCGC Operating Agreement**"), provides for the operation and use of TCGC Facilities and includes certain requirements and restrictions regarding allocation of tee times (collectively, the "**Use Restrictions**") between the general public and members of RVMA.

E. TCGC and RVMA desire to enter into this Agreement for the purpose of providing notice of the Use Restrictions.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, TCGC and RVMA covenant and agree as follows:

1. Restriction on TCGC Parcels. The primary objectives of the TCGC Facilities are to promote and facilitate events and activities, which generate the highest economic benefit to Summit County, Utah and surrounding region and to provide recreational opportunities to residence of Summit County. The Use Restrictions set forth in the TCGC Operating Agreement advance these objectives and provide as follows:

(a) Group and/or Convention Bookings. First scheduling priority may be given to local, regional, national and international conventions, tradeshow, corporate meetings and similar group activities that: (i) are not normally open to the general public; and (ii) include sixteen (16) or more golfers ("**Group Scheduling**"). Booking for Group Scheduling events will be available at any time in advance of the desired booking date.

(b) Priority Member Bookings. Second scheduling priority may be given to the Master Developer (as defined in the Development Agreement) and members of the RMVA and their invited guests or patrons ("**Priority Member Scheduling**", together with the Group Scheduling, the "**Priority Scheduling**"). Evidence of priority membership may be demonstrated by property ownership within the RVMA and/or a lodging reservation of a unit within the Canyons SPA or from the Master Developer. Booking for Priority Member Scheduling will be available not more than 3 months in advance of the desired tee time or on the date of a lodging reservation within the Canyons SPA, if sooner (the "**Priority Member Scheduling Commencement Date**").

(c) Open Bookings. Booking for the general public will be available no less than 1 month in advance of the desired booking date (the "**Open Scheduling Commencement Date**"). Commencing on the Open Scheduling Commencement Date, the golf operator shall permit booking of tee times to the general public. The general public shall include Group Scheduling and Priority Scheduling if booked after the Open Scheduling Commencement Date.

(d) Limitations on Priority Scheduling. In no event shall the operator of the golf course permit Priority Scheduling for more than forty-five percent (45%) of available 18 hole tee times each month, prior to the Open Scheduling Commencement Date. The operator shall refuse block booking of starts by individuals if they consider the system is being used unfairly to the detriment of the public. All play, public and private, shall be subject to published rules and regulations adopted by TCGC and generally applicable to the golf course, which shall not create an unreasonable burden to general public use of the golf course in accordance with the foregoing provisions.

(e) Reporting. TCGC shall file a quarterly report with the Summit County Manager detailing tee times booked during the previous months, booking agent and whether the patron was a member of Priority Scheduling or the general public.

2. Covenants Run With the Land. The rights and obligations granted or created in this Agreement constitute an easement in gross, burden the TCGC Parcels, and run for the benefit of RVMA, the Master Developer (as defined in the Development Agreement) and Summit County, a political subdivision of the State of Utah ("**Summit County**"). The rights and obligations granted or created in this Agreement that burden the TCGC Parcels may only be transferred, assigned or encumbered in connection with the sale, transfer or conveyance of the

TCGC Parcels. The rights and obligations granted or created in this Agreement that benefit RVMA, the Master Developer and Summit County may only be transferred, assigned or encumbered as provided in Paragraph 6. Subject to the provisions of Paragraphs 4 and 6, each of the covenants contained in this Agreement (whether affirmative or negative in nature): (i) shall constitute covenants running with the land as to the TCGC Parcels; (ii) shall bind every person having a fee, leasehold or other real property interest in any portion of the TCGC Parcels at any time or from time to time; (iii) shall inure to the benefit of RVMA, the Master Developer and Summit County; and (iv) shall be binding upon TCGC and its successors and assigns as to the TCGC Parcels.

3. No Waiver. Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions of this Agreement may only be waived by a writing signed by the Party intended to be benefited by the provisions to be waived specifically acknowledging an intent to waive such provisions. A waiver by a Party of any breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

4. Not a Public Dedication; No Third Party Beneficiaries. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the TCGC Parcels, or any rights of use thereto, to or for the general public, it being the intention of the Parties that this Agreement be strictly limited to and for the purposes expressed herein. It is the specific intent of the Parties that only the Parties and Summit County shall have the right to benefit from, claim rights under, or enforce this Agreement and that no third party, including, but not limited to, the general public, shall be deemed to be a beneficiary of any to any of the rights or benefits of this Agreement, whether by operation of law or otherwise; provided, however, that either the Master Developer (as defined in the Development Agreement) or Summit County may bring an action for specific performance (but in no event for damages) of the provisions hereof. In the event a court or other judicial or quasi-judicial body makes a final determination that any third person other than Summit County has any rights under or the right to enforce this Agreement, then such third party right shall be voidable by TCGC's providing written notice to RVMA, the Master Developer and Summit County of its intent to void such third party right. In addition, subject to the provisions of Paragraph 16, TCGC may thereupon amend this Agreement to specifically eliminate such third party rights. The RVMA agrees to join in any such amendment. In the event a court or other judicial or quasi-judicial body makes a final determination that such amendment is unenforceable to void the third party right, this Agreement shall immediately become void with no further action on the part of TCGC, provided that TCGC shall provide notice of such determination to RVMA, the Master Developer and Summit County, Utah.

5. Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties. Each Party shall be considered a separate party and no Party shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

6. Successors and Assigns; Additional Land. This Agreement shall inure to the benefit of, and shall be binding on, TCGC and RVMA and their respective successors and permitted assigns, including, as to TCGC, successors in title to the TCGC Parcels. The RVMA

will not transfer, assign or encumber its rights or obligations under this Agreement without the prior written consent of TCGC. Neither the Master Developer nor Summit County will transfer, assign or encumber its beneficial rights under this Agreement without the prior written consent of TCGC; provided, however, Summit County may assign its beneficial rights under this Agreement to an agency or division of Summit County or to a nonprofit corporation wholly controlled by Summit County, but shall promptly provide TCGC and RVMA with written notice or with a copy of such the written assignment. If additional land is added to the golf course that comprises the TCGC Facilities, the public play restriction contemplated by Paragraph 1 shall be deemed to apply to such additional land and the Parties shall amend this Agreement to specifically include such additional land as part of the TCGC Parcels and shall record the amendment with the Summit County, Utah Recorder's Office.

7. Applicable Law; Jurisdiction. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah.

8. Construction. Unless otherwise provided, references in this Agreement to Paragraphs are to Paragraphs in this Agreement. This Agreement shall be construed according to its fair meaning and not strictly for or against TCGC or RVMA, as if both TCGC and RVMA had prepared it. Except as otherwise provided in this Agreement, no remedy provided in this Agreement shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Agreement), and all remedies under this Agreement may be exercised concurrently, independently or successively from time to time.

9. Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party shall have received a counterpart of this Agreement signed by the other Party. This Agreement may be delivered by facsimile.

10. Titles and Headings. Titles and headings of Paragraphs of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

11. Exhibits. Each exhibit referred to in, and attached to, this Agreement is an integral part of this Agreement and is incorporated in this Agreement by this reference.

12. Pronouns; Interpretation. All pronouns shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person to whom reference is made may require. The terms "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation."

13. Severability. If any provision herein shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, (i) such holding or action shall be strictly construed; (ii) such provision shall be fully severable; (iii) this Agreement shall be construed and enforced as if such provision had never

comprised a part hereof; (iv) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and (v) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible.

14. Authorization. Each individual executing this Agreement represents and warrants that such individual has been duly authorized to execute and deliver this Agreement in the capacity and for the entity set forth where such individual signs.

15. Entire Agreement. This Agreement (including the exhibits attached hereto) constitutes the entire agreement of the Parties regarding the public play of golf on the TCGC Parcels, and supersedes any prior promises, representations, warranties, agreements or understandings (whether oral, written or implied) between the Parties regarding such public play that are not set forth herein or therein.

16. Amendment. This Agreement may be amended only with the prior written agreement of TCGC, the RVMA, the Master Developer (as defined in the Development Agreement) and Summit County, which written agreement shall not be unreasonably withheld, conditioned or delayed (taking into consideration, if required, public hearings or other public approval processes, and the terms of the Development Agreement, if applicable). The written agreement of Summit County is required because this Agreement implements the requirements of Section 3.2.6 of the Development Agreement.

17. Boundary Adjustments.

(a) Adjustments to TCGC Parcels. Except as set forth in Sections 6 and 17(b), the legal descriptions of the TCGC Parcels shall be modified for purposes of this Agreement if and to the extent the boundaries of the TCGC Parcels are adjusted pursuant to the following subsections:

(i) Krofcheck Adjustment Agreement. If the boundaries of the TCGC Parcels are required to be adjusted pursuant to the terms the Krofcheck Adjustment Agreement, then the boundaries of the TCGC Parcels shall be modified for purposes of this Agreement upon satisfaction of all Governmental Requirements and compliance with the terms of the Krofcheck Adjustment Agreement, but without the approval of both of the Persons comprising Grantee pursuant to Section 6.

(ii) Agreements of Record Adjustments – Only Additional Land. If the boundaries of the TCGC Parcels are (i) required to be adjusted pursuant to the terms of any of the Adjustment Agreements other than the Krofcheck Adjustment Agreement; or (2) adjusted pursuant to any boundary or easement line adjustment or plat amendment that is process and approved in accordance with all Governmental Requirements, then the boundaries of the TCGC Parcels shall be modified for purposes of this Agreement upon satisfaction of all Governmental Requirements, but only with the approval of RVMA, which approval will not be unreasonably withheld, conditioned or delayed by RVMA.

(iii) Substantially Equivalent Plat Amendment Adjustments. Upon written request of the owner of the TCGC Parcels, if the boundaries of the TCGC Parcels may be adjusted in compliance with all Governmental Requirements and with the approval of RVMA, which approval shall not be unreasonably withheld, conditioned or delayed by RVMA if, but only if as a result of additional land being included in the TCGC Parcels, there is not a substantial decrease in the total number of acres encumbered by this Agreement.

(b) Further Assurances. Upon the occurrence of any adjustment of the legal descriptions of the TCGC Parcels pursuant to Section 17(a), TCGC and RVMA shall, at the written request of either of them, promptly execute and deliver an amendment to this Agreement to ratify, affirm and, if applicable, release the actual land covered by this Agreement.

(c) Definitions. For the purpose of this Agreement, “**Governmental Authorities**” means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies having jurisdiction over a specified matter and “**Governmental Requirements**” means, with respect to a specified matter, all laws, ordinances, statutes, regulations or other similar laws promulgated by Governmental Authorities having jurisdictions over that matter, and the terms and conditions of all permits and approvals issued by those Governmental Authorities required in connection with the matter.

[SIGNATURE PAGES FOLLOW]

TCGC and RVMA have caused this Public Play Protection Agreement to be executed as of the dates set forth below.

THE CANYONS GOLF CLUB, LLC,
a Utah limited liability company

By: ASC Utah LLC, a Delaware limited
liability company

Its: Manager

By: TCFC Finance Co LLC, a Delaware limited
liability company

Its: Manager

By: _____

Name: _____

Its: _____

Date: _____

**THE CANYONS RESORT VILLAGE
ASSOCIATION, INC.,** a Utah nonprofit
corporation

Date: _____

By: JG

Name: Jennifer Gwetschow

Its.: Executive Director

TCGC and RVMA have caused this Public Play Protection Agreement to be executed as of the dates set forth below.

THE CANYONS GOLF CLUB, LLC,
a Utah limited liability company

By: ASC Utah LLC, a Delaware limited
liability company

Its: Manager

By: TCFC Finance Co LLC, a Delaware limited
liability company

Its: ~~Manager~~

By: 

Name: MAURICIO PONS

Its: AUTHORIZED OFFICER

Date:

09/17/14

**THE CANYONS RESORT VILLAGE
ASSOCIATION, INC.,** a Utah nonprofit
corporation

Date:

09/17/14

By: _____

Name: _____

Its.: _____

STATE OF UTAH)
COUNTY OF SUMMIT : ss.)

The foregoing instrument was acknowledged before me this 17th day of September 2014 by Maurine Pons, the Authorized officer of TCFC Finance Co LLC, a Delaware limited liability company, as Manager of ASC Utah LLC, a Delaware limited liability company, as Manager of The Canyons Golf Club, LLC, a Utah limited liability company, on behalf of the company.



Tara Mifflin
Tara Mifflin
NOTARY PUBLIC
Residing at: Park City

My Commission Expires:

06/13/2016

STATE OF UTAH)
COUNTY OF _____ : ss.)

The foregoing instrument was acknowledged before me this ____ day of September 2014, by _____, the _____ of The Canyons Resort Village Association, Inc., a Utah nonprofit corporation, on behalf of the corporation.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of September 2014 by _____, the _____ of TCFC Finance Co LLC, a Delaware limited liability company, as Manager of ASC Utah LLC, a Delaware limited liability company, as Manager of The Canyons Golf Club, LLC, a Utah limited liability company, on behalf of the company.

NOTARY PUBLIC
Residing at: _____

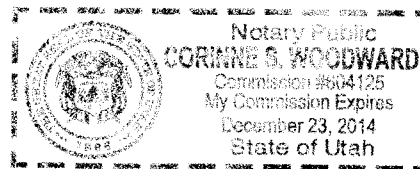
My Commission Expires:

STATE OF UTAH)
 : ss.
COUNTY OF Summit)

The foregoing instrument was acknowledged before me this 18 day of September 2014, by Jennifer Guenderson the Executive Director of The Canyons Resort Village Association, Inc., a Utah nonprofit corporation, on behalf of the corporation.

NOTARY PUBLIC
Residing at: Pa. C. H., ut

My Commission Expires:
12/23/14



**EXHIBIT A
TO
PUBLIC PLAY PROTECTION AGREEMENT**

Legal Description of TCGC Parcels

The real property referenced in the foregoing instrument is located in Summit County, Utah and is more particularly described as:

All of Lots WWD1 and WWD2, WEST WILLOW DRAW DEVELOPMENT AREA MASTER PLAT; according to the Official Plat thereof, on file and of record in the Summit County Recorder's Office. *WWDDAM - WWD1, WWDDAM - WWD2*

All of Lots EWD1 and EWD2, EAST WILLOW DRAW DEVELOPMENT AREA MASTER PLAT; according to the Official Plat thereof, on file and of record in the Summit County Recorder's Office. *EWD - EWD1, EWD - EWD2*

All of Lots LV2A, LV2B, and LV3, LOWER VILLAGE AREA MASTER PLAT; according to the Official Plat thereof, on file and of record in the Summit County Recorder's Office. *LV2AM - LV2A, LV2AM - LV2B, LV2AM - LV3-AM*

All of Parcels A, B, and C, FIRST AMENDED MASTER DEVELOPMENT PLAT OF FROSTWOOD, A PLANNED COMMUNITY; according to the Official Plat thereof, on file and of record in the Summit County Recorder's Office.

FRSTW - A - 1AM, FRSTW - B - 1AM, FRSTW - C - 1AM