

**WHEN RECORDED MAIL TO:**

Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
P.O. Box 45898  
Salt Lake City, Utah 84145-0898  
Attention: Shawn C. Ferrin

**ENTRY NO. 01049566**

07/15/2016 04:32:59 PM B: 2362 P: 1319

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MARY ANN TRUSSELL, SUMMIT COUNTY RECORDER

FEE 36.00 BY COALITION TITLE



*Space Above for County Recorder's Use*

Tax Parcel ID Nos.: All or portions of  
PP-73-B; PP-73-B-3; PP-75-D; PP-73-C;  
PP-75-C; PP-75-G-1-B

**RESTRICTION AND DEVELOPMENT AGREEMENT**  
**[Parcel RC25]**

THIS RESTRICTION AND DEVELOPMENT AGREEMENT ("**Agreement**"), dated July 15, 2016 ("**Effective Date**"), is between TCFC LeaseCo LLC, a Delaware limited liability company ("**LeaseCo**"), TCFC PropCo LLC, a Delaware limited liability company ("**PropCo**"), and Apex Park City Residences LLC, a Delaware limited liability company ("**Developer**") (LeaseCo, PropCo, and Developer are referred to individually as a "**Party**" and collectively as the "**Parties**"), with reference to the following:

A. LeaseCo, PropCo and their affiliates own numerous parcels of real property located in and around the Canyons Village of Park City resort (formerly known as the "Canyons Resort") in Summit County, Utah, including the real property described on **Exhibit A ("PropCo Property")**.

B. On or about the Effective Date, Developer purchased from PropCo the parcel of real property described on **Exhibit B ("Developer Property")**. Developer intends to develop the Developer Property into a multi-family residential project that will be part of the Resort Core Development Area of the Canyons Village as contemplated by the Amended and Restated Development Agreement for The Canyons Specially Planned Area, dated November 15, 1999, and recorded with the Summit County, Utah Recorder's Office ("**Official Records**") on November 24, 1999, as Entry No. 553911, in Book 1297, beginning at Page 405, together with amendments thereto (as so amended, the "**SPA Development Agreement**"). The Developer Property is generally designated in the Land Use and Zoning Chart of the SPA Development Agreement as Parcel RC25.

C. LeaseCo, PropCo, and Developer are entering into this Agreement in order to ensure that the development and performance of the work and improvements on the Developer Property comply with certain agreed upon development restrictions and to establish a process for reviewing and approving the plans for the work and improvements on the Developer Property.

FOR GOOD AND VALUABLE CONSIDERATION, LeaseCo, PropCo, and Developer agree as follows:

1. **SPA Development Standards.** The following development standards are applicable to the Developer Property in accordance with the SPA Development Agreement:

a. **SPA Property; Master Plan.** As further defined and described in the SPA Development Agreement, the "Approved Use" for the Developer Property is 161,000 square feet of density with a principal use of "Multifamily-Residential."

b. **Development Approvals.** Developer will be responsible for obtaining all permits and approvals, and paying all related costs and fees required by Summit County and by The Canyons Resort Village Association, Inc., the management association under The Canyons Resort Village Management Agreement, dated November 15, 1999, and recorded in the Official Records on December 15, 1999, as Entry No. 555285, in Book 1300, beginning at Page 1, together with amendments thereto (as so amended, the "**RVMA Management Agreement**"), in connection with development of the Developer Property.

c. **Property Interests.** Developer will grant any and all easements, rights of way, licenses, requirements, restrictions or other property interests, of whatever nature, to other property owners or governmental authorities on, over, across, through, or under the Developer Property as may be reasonably required to effect all development in the manner and to the extent set forth in the SPA Development Agreement and the RVMA Management Agreement, so long as those grants do not materially adversely impact the Development Rights (as hereinafter defined) and operation of the project to be constructed by Developer on the Developer Property.

d. **Utility Connections.** Developer is responsible for all utility connection and utilization fees relating to development of the Developer Property.

2. **Developer Property Development Standards.** The following development standards are applicable to the Developer Property:

a. **Development Rights.** The Developer Property may only be used for the development and operation of not fewer than 55 and not more than 75 multi-family residential, whole ownership units and related improvements (including a clubhouse, plaza, pool and other recreational facilities) comprising, in total, not more than 161,000 square feet of density as calculated by the SPA Development Agreement ("**Development Rights**").

b. **Development Restrictions.** No portion of the Developer Property will be improved or operated in a manner that is not permitted by and consistent with the Development Rights. All Buildings (defined below) will be placed or constructed on the Developer Property only in the Building Areas (defined below). No Buildings or Improvements (defined below) may be constructed within the Ski Easement Areas (defined below). All Improvements on the Developer Property will be constructed in substantial conformity with the Final Plans (defined below).

3. **Development Approval Process.**

a. **Final Plans.** Prior to the Effective Date, Developer has submitted to PropCo, and PropCo has approved, Developer's final schematic design drawings, schematic site plan, and schematic exterior elevations for the Improvements to be constructed by Developer on

the Developer Property in accordance with the Development Rights listed on the Index Sheet for the Final Plans attached hereto as **Exhibit C (“Final Plans”)**. For the purposes of this Agreement, **“Building”** or **“Buildings”** means any permanently enclosed structure placed, constructed, or located on the Developer Property, which includes any appurtenant overhangs, eaves, porte-cocheres, canopies, and similar architectural and structural supports; and **“Improvements”** means any above-ground portions of Buildings and other structures, facilities and other improvements.

b. **Construction of Improvements.** Developer will complete the development of the Improvements in substantial conformity with the Final Plans.

c. **Change in Construction.** Developer is entitled to make those changes to the Final Plans specifically required by Summit County and/or the Design Review Committee under the RVMA Management Agreement, or that Developer, in its commercially reasonable discretion, deems necessary, with at least three (3) days prior written notice to, but not the consent or approval of, PropCo so long as the changes: (i) are not materially inconsistent with the scope, purpose, design, and intent of the Final Plans; and (ii) are in conformance with the SPA Development Agreement, the RVMA Management Agreement, and all other development-related requirements, documents, laws, regulations, and ordinances applicable to the Developer Property (**“Change Order Approval Criteria”**). Any construction of the Improvements that does not meet the Change Order Approval Criteria (a **“Change Order”**) must be approved in writing in advance by PropCo, which approval will not be unreasonably withheld, conditioned, or delayed so long as the proposed Change Order complies with the design, density, and use restrictions and guidelines in the RVMA Management Agreement and the SPA Development Agreement (collectively, the **“RVMA/SPA Requirements”**). If PropCo fails to approve or disapprove of a written notice of a proposed Change Order within five (5) business days after the receipt of the request, the proposed Change Order will be deemed conclusively to have been not approved. If PropCo disapproves or is deemed to have disapproved a Change Order, then the Parties will meet and work in good faith to attempt to reach a resolution on the proposed Change Order within five (5) days of a written request by either Party. If the Parties are unable to reach a final resolution within such 5-day period, then upon notice to the other Party, each of PropCo and Developer will have the right to elect to submit to mediation or binding arbitration the issue of whether the proposed Change Order complies with the RVMA/SPA Requirements. If those issues are submitted to mediation, then PropCo and Developer will be responsible for their own costs and expenses (including attorneys’ fees) and agree to split equally the mediator’s costs and expenses. If those issues are submitted to binding arbitration, the Party that the arbitrator determines is the prevailing party will be entitled to reimbursement of all costs and expenses associated with arbitration, including reasonable attorneys’ fees. The mediation and/or arbitration contemplated herein must occur within thirty (30) days of a written request by either Party. If the Parties agree through mediation or otherwise, or it is determined through arbitration, that the proposed Change Order complies with the RVMA/SPA Requirements, then the Final Plans will be deemed modified and approved in accordance with the Change Order and Developer may proceed to construct the Improvements in accordance with the Change Order, subject to any other required approvals under the SPA Development Agreement, RVMA Management Agreement, and by Summit County. If the Parties agree through mediation or otherwise, or it is determined through arbitration, that the proposed Change Order does not comply with the RVMA/SPA Requirements, then the Change Order shall not be effective and

the Final Plans and construction of the Improvements may not be modified pursuant to such Change Order.

d. **Mediation or Arbitration.** Except to the extent mutually agreed upon and waived by PropCo and Developer, if either Party elects to submit to mediation or arbitration any of the issues provided for in this paragraph 3, PropCo and Developer agree in good faith to attempt to settle such issues under the then-most-current Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (“AAA Rules”), or under rules of any other mutually agreed upon body of alternative dispute resolution. Notwithstanding the AAA Rules, PropCo and Developer agree that the mediation or arbitration will be conducted by a single mediator or arbitrator, at a mutually agreed time and place in Salt Lake City, Utah, and will be completed as promptly as possible in order to or minimize to the greatest extent possible any delays in construction of the Improvements.

4. **Enforcement and Designation of Benefited Property.** The rights and restrictive covenants granted in paragraph 1 are appurtenant to and run to the benefit of LeaseCo, PropCo, and their interests in the PropCo Property, and PropCo and LeaseCo have the right to enforce the provisions of this Agreement. If at any time or for any reason PropCo or LeaseCo elect to release or terminate all or any portion of the beneficial rights arising under this Agreement and running to the benefit of the PropCo Property, PropCo, or LeaseCo, without the approval or consent of any other Party, may do so by recording a notice in the Official Records against the Developer Property and all or any portion of the PropCo Property specifying the nature and extent of the release or termination. PropCo’s or LeaseCo’s election to release or terminate all or any portion of the beneficial rights arising under this Agreement and running to the benefit of the PropCo Property or any portion of the PropCo Property will not terminate or release all or any portion of the beneficial rights arising under this Agreement and running to the benefit of PropCo Property or that portion of the PropCo Property not released or terminated.

5. **Default.** In the event any Party fails to perform any provision of this Agreement, which failure continues for a period of ten (10) days after receipt of written notice specifying the particulars of that failure, that failure will constitute a default and any other Party may thereafter institute legal action against the defaulting Party for specific performance, declaratory or injunctive relief, monetary damages (limited to actual damages incurred and specifically excluding damages in the nature of consequential or punitive damages), or any other remedy provided by law; provided, however, that the defaulting Party will not be deemed to be in default if the failure to perform cannot be rectified within the aforementioned 10-day period and that Party is diligently proceeding to rectify the particulars of that failure and rectifies the failure as soon as practicable.

6. **Force Majeure.** The Parties will be excused from performing any of their respective obligations in this Agreement, except any obligations to pay any sums of money, so long as the performance of that obligation is prevented or delayed by an act of God, weather, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, or order of government or civil defense authorities. If any Party claims a force majeure delay under this Agreement, then they will give written notice of that delay to the other Parties promptly after the occurrence of that force

majeure event, which notice will set forth the anticipated length of the delay which has been caused by that force majeure event.

7. **Attorneys' Fees.** In the event any Party commences litigation to enforce this Agreement, the unsuccessful Party to that litigation will pay, within ten (10) days of the date when any judgment becomes final and all rights of appeal therefrom have expired, all costs and expenses, including reasonable attorneys' fees, incurred by the successful Party (which costs and expenses will be included in the amount of the judgment). The Parties waive their right to a jury trial in any dispute regarding the enforcement of this Agreement or the transactions contemplated by this Agreement.

8. **Notices.** Any notice or demand to be given by a Party to another Party must be given in writing by personal delivery; electronic transmittal (with a duplicate copy also given by any other delivery method permitted); express mail, FedEx, UPS, or any other similar form of delivery service that keeps delivery receipts; or United States mail, postage prepaid, certified and return receipt requested, and addressed to that Party at the address specified on that Party's signature page. Any Party may change the address at which it desires to receive notice on written notice of that change to the other Parties. Any notice will be deemed to have been given, and will be effective, on delivery to the notice address then applicable for the Party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated will not defeat or delay the giving of a notice.

9. **Indemnification.** Developer agrees to protect, defend, indemnify, and hold harmless PropCo, LeaseCo, and any person or entity which controls, is controlled by, or is under common control with PropCo or LeaseCo and their respective employees, officers, directors, managers, shareholders, members, controlling persons, agents, representatives and assigns ("**Indemnified Parties**") from and against any and all claims, demands, causes of action, liabilities, judgments, costs and expenses ("**Claims**"), including, without limitation, reasonable attorneys' and accountant's fees and investigation costs, asserted against or incurred by the Indemnified Parties as a result of (i) the approval and construction of the Improvements; and (ii) any failure by Developer and its employees, officers, directors, managers, shareholders, members, controlling persons, agents, representatives and, to comply with or breach of this Agreement, including the failure to develop, construct, operate, and use the Improvements in substantial compliance with the Final Plans and the Development Rights, provided that the indemnity does not apply to the extent that the Claims result from the gross-negligence or willful misconduct of PropCo.

10. **Covenants Run With the Land.** The terms of this Agreement and each restriction on the Developer Property is a burden on the Developer Property, is appurtenant to and for the benefit of the PropCo Property and each part thereof, and runs with the land. The terms of this Agreement are for the benefit of the Developer Property and the PropCo Property and run with the land.

11. **Injunctive Relief.** In the event of any violation or threatened violation of this Agreement, any Party has the right to enjoin that violation or threatened violation in court. The

right of injunction is in addition to all other remedies set forth in this Agreement or provided by law or in equity.

12. **Breach Will Not Permit Termination.** No breach of this Agreement will entitle a Party to terminate this Agreement, but that limitation does not affect in any manner any other rights or remedies which a Party may have by reason of any breach of this Agreement.

13. **Governing Law.** This Agreement is governed by the laws of Utah.

14. **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. At such time as Developer no longer owns the Developer Property, or in the event Developer transfers its title or interest to all or any specific portions of the Developer Property to a third-party purchaser, all of the then owners of the Developer Property or the transferred portion of the Developer Property and any owners' associations that may be created to manage the Developer Property or that portion of the Developer Property will, jointly and severally, assume automatically the benefits of and be responsible for Developer's rights, covenants, benefits, responsibilities, and duties in connection with this Agreement.

15. **Captions; Interpretation.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement. All Exhibits referenced in and attached to this Agreement are incorporated in this Agreement. Unless otherwise specifically indicated, any references in this Agreement to paragraphs are to paragraphs in this Agreement.

16. **Further Assurances.** Each Party will use reasonable efforts and exercise reasonable diligence to accomplish and effect the transactions contemplated by this Agreement and will execute and deliver all further documents as may be reasonably requested by the other Party in order to fully carry out the transactions contemplated by this Agreement.

17. **Counterparts.** This Agreement may be executed in counterpart originals.

18. **Joint and Several Obligations.** To the extent that Developer transfers its title and interest to all or any specific portions of the Developer Property to one or more entities that are controlled by or under common control with Developer (including, but not limited to, any owners' associations that may be formed in connection with the development of the Developer Property, but only to the extent and for so long as such owners' associations remain controlled by or under common control with Developer), then Developer shall remain jointly and severally liable, together with any such controlled or commonly controlled entities, for Developer's obligations and liabilities under this Agreement.

19. **Waiver.** Failure of either Party to exercise any right under this Agreement or to insist upon strict compliance with regard to any provision of this Agreement, will not constitute a waiver of that Party's right to exercise that right or to demand strict compliance with this Agreement.

20. **Severability.** The invalidity or unenforceability of a particular provision of this Agreement does not affect the other provisions of this Agreement, and this Agreement will be construed in all respects as if the invalid or unenforceable provision were omitted.

21. **Date for Performance.** If the time period by which any right, provided under this Agreement must be exercised, or by which any act required by this Agreement must be performed, expires on a Saturday, Sunday or legal or bank holiday, then that time period will be automatically extended through the close of business on the next regularly scheduled business day.

22. **Construction.** The Parties acknowledge that (i) each Party is of equal bargaining strength; (ii) each Party has actively participated in the drafting, preparation, and negotiation of this Agreement; (iii) each Party has consulted with its own independent counsel, and those other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Agreement; (iv) each Party and its counsel and advisors have reviewed this Agreement; (v) each Party has agreed to enter into this Agreement following that review and the rendering of that advice; and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting Parties does not apply in the interpretation of this Agreement.

23. **Relationship of Parties.** This Agreement will not be deemed or construed, either by the Parties or by any third party, to create the relationship of principal and agent or create any partnership, joint venture, or other association between the Parties.

24. **Authorization.** Each individual executing this Agreement represents that they have been duly authorized to execute and deliver this Agreement in the capacity and for the entity for whom that individual signs.

25. **Entire Agreement.** This Agreement sets forth the entire understanding of PropCo, LeaseCo and Developer with respect to the matters addressed in this Agreement and cannot be amended except pursuant to an instrument in writing signed by Developer, LeaseCo and PropCo.

*[Intentionally Blank - Signature Pages and Acknowledgements Follow]*

PROPCO SIGNATURE PAGE

THIS AGREEMENT has been signed by PropCo to be effected as of the Effective Date.

**PropCo Contact Information:**

TCFC PropCo LLC  
Attention: COO  
1840 Sun Peak Drive, Suite A201  
Park City, Utah 84098  
Telephone: 435-200-8400  
Email: notices@tc-fc.com

With a copy to:

Shawn C. Ferrin  
Parsons Behle & Latimer  
201 S. Main Street  
P.O. Box 45898  
Salt Lake City, Utah 84145-0898  
Telephone: 801-532-1234  
Telecopier: 801-536-6111  
E-mail: sferrin@parsonsbehle.com

**PROPCO:**

TCFC PropCo LLC,  
a Delaware limited liability company

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

By: *Lawrence J. White*  
Print Name: Lawrence J. White  
Title: CEO

STATE OF Utah )  
COUNTY OF Summit : ss.

The foregoing instrument was acknowledged before me this 1st day of July, 2016, by Lawrence White, the CEO of TCFC Finance Co LLC, a Delaware limited liability company, the Sole Member of TCFC PropCo LLC, a Delaware limited liability company.

*Tara Linda Mifflin*  
NOTARY PUBLIC  
Residing at: 1840 Sun Peak Dr. 84018

My Commission Expires:  
06/13/2020





LEASECO SIGNATURE PAGE

THIS AGREEMENT has been signed by LeaseCo to be effected as of the Effective Date.

**LeaseCo Contact Information:**

TCFC LeaseCo LLC  
Attention: COO  
1840 Sun Peak Drive, Suite A201  
Park City, Utah 84098  
Telephone: 435-200-8400  
Email: notices@tc-fc.com

With a copy to:

Shawn C. Ferrin  
Parsons Behle & Latimer  
201 S. Main Street  
P.O. Box 45898  
Salt Lake City, Utah 84145-0898  
Telephone: 801-532-1234  
Telecopier: 801-536-6111  
E-mail: sferrin@parsonsbehle.com

**LEASECO:**

TCFC LeaseCo LLC,  
a Delaware limited liability company

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

By: *Lawrence J. White*  
Print Name: Lawrence J. White  
Title: CEO

STATE OF Utah )  
COUNTY OF Summit : ss.

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of July, 2016, by Lawrence White, the CEO of TCFC Finance Co LLC, a Delaware limited liability company, the Sole Member of TCFC LeaseCo LLC, a Delaware limited liability company.

*Tara Linda Mifflin*  
NOTARY PUBLIC  
Residing at: 1040 SUN PEAK DR. 84098

My Commission Expires:  
06/13/2020





**EXHIBIT A  
TO  
RESTRICTION AND DEVELOPMENT AGREEMENT**

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**LEGAL DESCRIPTION OF PROP Co PROPERTY**

The real property referenced in the foregoing Restriction and Development Agreement as the "PropCo Property" is located in Summit County, Utah and is more particularly described as follows:

COMMENCING AT A FOUND MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN; THENCE N.89°59'43"W. ALONG THE SECTION LINE 1947.97 FEET; THENCE SOUTH 45.57 FEET TO THE REAL POINT OF BEGINNING;

THENCE S.30°00'00"W. 100.86 FEET; THENCE N.60°00'00"W. 29.92 FEET TO A POINT OF CURVATURE OF A 60.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY A DISTANCE OF 57.89 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 55°16'35", SUBTENDED BY A CHORD THAT BEARS N.32°21'51"W. 55.67 FEET TO A POINT OF CURVATURE OF A 55.57-FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY A DISTANCE OF 55.19 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 56°53'50", SUBTENDED BY A CHORD THAT BEARS S.89°34'34"E. 52.95 FEET; THENCE S.62°57'02"E. 25.34 FEET; THENCE N.39°23'55"E. 48.25 FEET TO THE POINT OF BEGINNING. CONTAINING 3,589 SQ FT OR 0.08 ACRES OF LAND.

**EXHIBIT B  
TO  
RESTRICTION AND DEVELOPMENT AGREEMENT**

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**LEGAL DESCRIPTION OF DEVELOPER PROPERTY**

The real property referenced in the foregoing Restriction and Development Agreement as the "Developer Property" is located in Summit County, Utah and is more particularly described as follows:

PARCEL RC25, RESORT CORE DEVELOPMENT AREA – RC25 SUBDIVISION PLAT; according to the Official Plat thereof, on file and of record in the Official Records of the Summit County, Utah Recorder, as Entry No. 01048325, in Book 2359, beginning at Page 0708.

**EXHIBIT C  
TO  
RESTRICTION AND DEVELOPMENT AGREEMENT**

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***INDEX SHEET FOR FINAL PLANS***

***1. Apex Residences Final Site Plan – SUBMITTAL SET 03312016***

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4	Overall Site Plan
5	Grading Plan
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10	Driveway & Fire Road Profile
11	Phasing Plan
12	Site Circulation Plan
13	Typical Site Section
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***2. Apex Residences Condominium Plat – SUBMITTAL SET 03312016***

<b>PAGE</b>	<b>DESCRIPTION</b>
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2	Parking Plan
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4-5	8-Plex Flat Building Units ABCD Residence Area Details
6-7	Townhome Building Units EFG Residence Area Details
8	Townhome Building Units GG Residence Area Details
9	Townhome Building Units GEF Residence Area Details
10	Townhome Building Unit H Residence Area Details
11	Townhome Building Units II Residence Area Details

***3. Apex Residences Exterior Materials Board 03222016***

<b>PAGE</b>	<b>DESCRIPTION</b>
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2	Townhome Building BB (aka Units II) Materials

- 3 Townhome Building DDC (aka Units EFG) Materials
- 4 Flat Building Units ABCD Materials

**4. Apex Residences Site Photometric with Cut Sheets 03312016**

<b>PAGE</b>	<b>DESCRIPTION</b>
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