

ENTRY NO. 00799963

12/22/2006 03:10:25 PM B: 1837 P: 1353

Easements PAGE 1 / 9

ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE \$ 63.00 BY U S TITLE OF UTAH



When Recorded Return To:

Glen D. Watkins  
Jones, Waldo, Holbrook & McDonough, P.C.  
170 South Main Street, Suite 1500  
Salt Lake City, Utah 84101

Tax Parcel I.D. No. \_\_\_\_\_

### NON-EXCLUSIVE EASEMENT AGREEMENT FOR ROADWAYS AND UTILITIES

This Non-Exclusive Easement Agreement for Roadways and Utilities (this "Agreement") is made as of December 12, 2006 by Park West Associates, L.L.C., a Utah limited liability company ("PWA").

#### RECITALS

A. The Canyons Resort Village Association, Inc., a Utah non-profit corporation ("RVMA"), ASC Utah, Inc., a Maine corporation ("ASC Utah"), Joseph L. Krofcheck ("Krofcheck"), Wolf Mountain Resorts, LC ("Wolf Mountain") and The Summit County Municipal Building Authority ("SCMBA") (collectively, "West Willow Draw Parties"), own and/or lease certain real property located in Summit County, Utah and described on the attached Exhibit A ("West Willow Draw").

B. Pursuant to Section 3.5 of that certain Amended and Restated Development Agreement For The Canyons Specially Planned Area, dated November 15, 1999 the (the "SPA Agreement"), the RVMA is the master association over the property described on the Frostwood Plat, which is a part of The Canyons Specially Planned Area as more particularly described in the SPA Agreement.

C. PWA is the overall developer of certain real property adjacent to West Willow Draw ("Frostwood") depicted on the First Amended Master Development Plat of Frostwood, a Planned Community, recorded in the real property records of Summit County, Utah (the "Frostwood Plat").

D. PWA has agreed to grant and convey to the West Willow Draw Parties a non-exclusive roadway and utilities easement over portions of Frostwood upon which certain roads commonly known as "Frostwood Boulevard," "Willow Draw Road," and "Cooper Lane" are or will be located, as shown on the Frostwood Plat and as more particularly described on the attached Exhibit B (the "Easement Property").

D. The Frostwood Plat contains an offer to dedicate Frostwood Boulevard and Cooper Lane to Summit County for the purposes specified on the Frostwood Plat (the "Offer to Dedicate").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PWA agrees as follows:

1. Grant of Non-Exclusive Easement in Willow Draw Road. PWA hereby grants and conveys to the West Willow Draw Parties, for the use and benefit of the West Willow Draw Parties and the Benefited Parties (defined below), a perpetual, non-exclusive easement on, over and under Willow Draw Road for: (i) ingress and egress by pedestrians, automobiles and other vehicular traffic; and (ii) installation and maintenance of utilities.

2. Grant of Non-Exclusive Easement in Frostwood Boulevard and Cooper Lane. Until the acceptance by Summit County of the Offer to Dedicate Frostwood Boulevard and Cooper Lane (the "Acceptance of Dedication"), at which time the easements granted in this Section 2 shall terminate, PWA hereby grants and conveys to the West Willow Draw Parties, for the use and benefit of the West Willow Draw Parties, and the Benefited Parties (defined below), a perpetual, non-exclusive easement on, over and under Frostwood Boulevard and Cooper Lane for: (i) ingress and egress by pedestrians, automobiles and other vehicular traffic; and (ii) installation and maintenance of utilities.

3. Benefited Parties. Each easement, interest and other right granted herein shall be for the use and benefit of the following parties (the "Benefited Parties"): (i) all subsequent owners of any portion of the property for the benefit of which the easement, interest, or other right is granted; (ii) such owners' tenants, subtenants, guests, employees, agents, customers, licensees, concessionaires and other invitees, and such persons' heirs, successors, and assignees; and (iii) RVMA, and (iv) with respect to the easements granted to the West Willow Draw Parties in Sections 1 and 2 above, any owners association that may be formed in connection with the development of West Willow Draw.

4. Easement for Maintenance and Repair of Roadways. PWA hereby grants and conveys to RVMA a perpetual, non-exclusive easement on, over and under the Easement Property for the purpose of maintaining, repairing, replacing, and improving the Easement Property. Such easement shall terminate as to Frostwood Boulevard upon the Dedication of Frostwood Boulevard, and shall terminate as to Cooper Lane upon the Dedication of Cooper Lane.

5. Installation of Utilities. If any West Willow Draw Party or PWA installs or repairs any utilities within the Easement Property, then such West Willow Draw Party or PWA, as the case may be, shall restore the Easement Property to the condition it was in immediately preceding the installation of such utilities at such party's sole cost and expense. No party shall initiate construction or repair of any utilities without giving PWA, the West Willow Draw Parties, and RVMA at least thirty (30) days prior written notice and without making provision to limit the disruption of traffic and operations to the extent reasonably possible.

6. Additional Easements. To the extent that the current utility lines are not located or stubbed in the Easement Property, as contemplated in the grants of easements herein, PWA shall within thirty (30) days of notice from a West Willow Draw Party, execute and deliver, in a form reasonably mutually acceptable to both parties, a perpetual, non-exclusive easement agreement granting access to such utility lines to effectuate the intent of the grant of easements set forth in this Agreement; provided, however, that such easement shall not materially interfere with any existing or future development on the property in question.

7. Covenant to Dedicate. PWA shall take all reasonable actions necessary to effectuate the dedication of Frostwood Boulevard and Cooper Lane to Summit County; provided, however, that the foregoing shall not be construed so as to place on PWA any obligation with regard to the construction of a roadway over that portion of Willow Draw Road which is not already improved. All easements granted herein on, over, under, or through Frostwood Boulevard and Cooper Lane shall terminate upon the Acceptance of Dedication.

8. Covenants to Run With the Land; Certain Easements In Gross. The easements, rights and interest granted herein shall constitute covenants running with the land, and shall burden the Easement Property, as the servient estate, and benefit the West Willow Draw property as the dominant estate, and shall be binding upon PWA, its successors, assigns and any person acquiring, leasing or otherwise owning an interest in the servient estate. Provided however that notwithstanding the foregoing, if the RVMA does not own or shall cease to own property in West Willow Draw, the easements granted to the RVMA pursuant to this Agreement shall, in addition to running with the land for the benefit of successor owners of the land, constitute easements in gross granted to the RVMA for the personal benefit of the RVMA and its agents, guests and invitees; and provided further that such easements in gross shall not be appurtenant to or tied to any real property.

9. Rights of RVMA. Upon the release by Summit County, Utah of any financial assurances in connection with the construction of Frostwood Boulevard, Cooper Lane, and Willow Draw Road, and the acceptance by RVMA of obligations with regard to maintenance of Frostwood Boulevard (until the Acceptance of Dedication), Cooper Lane (until the Acceptance of Dedication) and Willow Draw Road, PWA hereby grants RVMA the right to promulgate rules and regulations regarding Frostwood Boulevard (until the Acceptance of Dedication), Cooper Lane (until the Acceptance of Dedication), and Willow Draw Road, so long as such rules and regulations do not unreasonably interfere with the rights of any other person entitled to use the Easement Property or the rights granted to the grantee of any easement hereunder. In no event shall the RVMA accept any obligations with regard to maintenance of Frostwood Boulevard, Cooper Lane, or Willow Draw Road until such time as all construction of such road is completed and approved by Summit County, Utah and any bond being held by Summit County, Utah in connection with such improvements has been released.

10. Default. In the event of a default by PWA of the easements granted herein, following written notice of such default and a failure to cure the default on or before thirty (30) days following delivery of such notice to the defaulting party, any affected grantee of such easements shall be entitled to institute proceedings (at law or in equity) for full and adequate relief; provided, however, that such remedies shall be limited to the right to specific performance and injunctive relief.

11. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

12. Attorneys' Fees. In the event any action is commenced by any party against any other party in connection with this Agreement, including any bankruptcy proceeding, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees.

13. Incorporation of Recital and Exhibits. The Recitals located at the beginning of this page are hereby incorporated into this Agreement. The Exhibits attached to this Agreement are also hereby incorporated into this Agreement.

14. Captions. The captions to the sections of this Agreement are for convenience only and shall in no way affect the manner in which any provision thereof is construed.

15. No Relationship. The parties hereto do not, by this Agreement nor by any parties' acts, become principal and agent, limited or general partners, or joint venturers or create any other similar relationship with or between each other in the conduct of their respective businesses, or otherwise.

16. No Waiver. Failure of a party hereto to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this instrument shall be deemed to have been waived unless such waiver is in writing and signed by the party alleged to have waived its rights.

17. No Dedication. Nothing contained in this Agreement will be deemed to be a gift or a dedication of any portion of Frostwood Boulevard, Cooper Lane, or Willow Draw Road to the general public or for the use by or benefit of the general public for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

18. Entire Agreement. This Agreement sets forth the entire understanding and agreement between the parties, and supersedes all previous communications, negotiations and agreements, whether oral or written, with respect to the subject matter hereof. No addition to or modification of this Agreement shall be binding on any of the parties unless reduced to writing and duly executed and delivered by the parties.

19. Partial Invalidity. If any term, provision, covenant or condition of this Agreement, or any application thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, then all terms, provisions, covenants and conditions of this Agreement, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

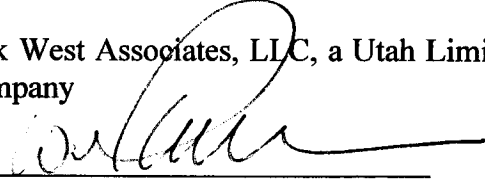
20. Applicable Law. The laws of the State of Utah shall govern the validity, construction, performance and effect of this Agreement.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement.

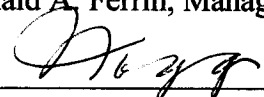
IN WITNESS WHEREOF, the Grantor has caused this Agreement to be executed by their duly authorized representatives effective as of the 12 day of December, 2006.

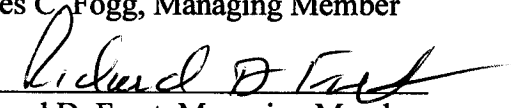
**PWA**

Park West Associates, LLC, a Utah Limited Liability Company

By:   
Walter J. Plumb, III, Managing Member

By:   
Ronald A. Ferrin, Managing Member

By:   
James C. Fogg, Managing Member

By:   
Richard D. Frost, Managing Member

STATE OF Utah )  
 )  
 ) :SS.  
COUNTY OF Salt Lake )

The foregoing Non-Exclusive Easement Agreement for Roadways and Utilities was acknowledged before me this 12th day of December, 2006, by Walter J Pumb III, who, being by me duly sworn, did say that she/he is the Manager of PARK WEST ASSOCIATES, LLC, that said instrument was signed in behalf of said company by authority of its Operating Agreement, and said Walter J Pumb III acknowledged to me that said company executed the same.

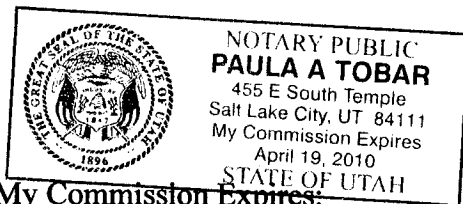


Rachael Niusulu  
NOTARY PUBLIC  
Residing at: Salt Lake City

My Commission Expires: 8-20-07

STATE OF Utah )  
 )  
 ) :SS.  
COUNTY OF Salt Lake )

The foregoing Non-Exclusive Easement Agreement for Roadways and Utilities was acknowledged before me this 12 day of December 2006, by Ronald A Ferrin, who, being by me duly sworn, did say that she/he is the Managing Member of PARK WEST ASSOCIATES, LLC, that said instrument was signed in behalf of said company by authority of its Operating Agreement, and said he acknowledged to me that said company executed the same.

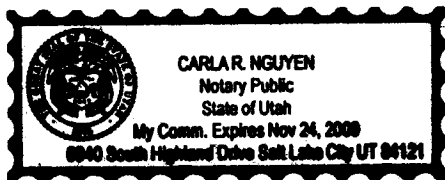


My Commission Expires:

Paul A Ferrin  
NOTARY PUBLIC  
Residing at: 455 E South Temple St, UT

STATE OF Utah )  
 )  
:SS.  
COUNTY OF Salt Lake )

The foregoing Non-Exclusive Easement Agreement for Roadways and Utilities was acknowledged before me this 12 day of December, 2006, by James C Foga, who, being by me duly sworn, did say that she<sup>(he)</sup> is the managing member of PARK WEST ASSOCIATES, LLC, that said instrument was signed in behalf of said company by authority of its Operating Agreement, and said he acknowledged to me that said company executed the same.

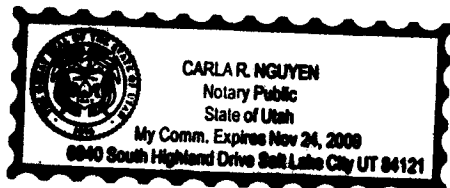


Carla R Nguyen  
NOTARY PUBLIC  
Residing at: 6940 So Highland Dr

My Commission Expires: 11-24-09

STATE OF Utah )  
 )  
:SS.  
COUNTY OF Salt Lake )

The foregoing Non-Exclusive Easement Agreement for Roadways and Utilities was acknowledged before me this 12 day of December, 2006, by Richard D Frost, who, being by me duly sworn, did say that she<sup>(he)</sup> is the managing member of PARK WEST ASSOCIATES, LLC, that said instrument was signed in behalf of said company by authority of its Operating Agreement, and said he acknowledged to me that said company executed the same.



Carla R Nguyen  
NOTARY PUBLIC  
Residing at: 6940 So Highland Dr

My Commission Expires: 11-24-09

## EXHIBIT A

### Description of West Willow Draw

Commencing at the west quarter corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence along the west line of said Section 31 S.00°00'31"W., a distance of 536.08 feet; thence leaving said section line N.89°27'00"W., a distance of 270.94 feet to the POINT OF BEGINNING; said point also being on the southerly boundary line of the Master Development Plat Of Frostwood a Planned Community, on file and of record in the office of the Summit County Recorder, thence S.50°00'00"W., a distance of 223.85 feet to a point on the Park West Condominium Project, Georgetown Portion on file and of record in the office of the Summit County Recorder; thence along said boundary the following three (3) calls ; 1) S.50°00'00"W., a distance of 247.14 feet; 2) West, a distance of 102.03 feet; 3) S.50°00'00"W., a distance of 287.50 feet; thence leaving said condominium boundary S.41°41'30"W., a distance of 225.92 feet; thence S.82°01'24"W., a distance of 171.13 feet; thence S.72°00'15"W., a distance of 201.17 feet; thence N.82°16'12"W., a distance of 347.47 feet; thence S.85°58'04"W., a distance of 202.71 feet; thence West, a distance of 306.42 feet; thence N.86°22'02"W., a distance of 609.97 feet; thence South, a distance of 394.05 feet; thence N.47°30'47"W., a distance of 742.66 feet; thence S.74°22'43"W., a distance of 719.71 feet; thence N.19°34'36"W., a distance of 445.90 feet; thence N.40°25'24"E., a distance of 200.00 feet; thence N.79°34'36"W., a distance of 200.00 feet; thence N.19°34'36"W., a distance of 150.00 feet; thence S.84°08'15"E., a distance of 415.45 feet; thence N.00°08'26"W., a distance of 627.86 feet to the east-west center section line of Section 36, Township 1 South, Range 3 East, Salt Lake Base and Meridian; thence along said line S.89°16'50"E., a distance of 1,337.84 feet to the center of said section; thence continuing along said section line S.89°16'58"E., a distance of 1,339.07 feet to a point on said Master Development Plat Of Frostwood a Planned Community; thence leaving said section line and along the boundary of said plat S.00°06'32"E., a distance of 540.04 feet; thence continuing along the boundary of said plat S.89°27'00"E., a distance of 1066.98 feet to the POINT OF BEGINNING.

Containing 92.14 acres, more or less.

PP-75-A-9-X, PP-74-G, PP-75-A-5, PP-74-G-1, PP-75-A-2, PP-74-D,  
PP-75-H-4, PP-75-H-1-A, PP-75-J, PP-74-G, PP-75-C, PP-73-A,  
PP-75-H-1, PP-75-H-2, PP-73-C, PP-73-A-X, PP-75-A-6-X, PP-75-H-6



**EXHIBIT B**

Description of the Easement Property

All of Willow Draw Road, Frostwood Boulevard and Cooper Lane, 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 Recorders Office.

FRSTW-A, FRSTW-B, FRSTW-F2-A, FRSTW-F2-B, FRSTW-F3-A,  
FRSTW-F3-B, FRSTW-F4, FRSTW-F6, FRSTW-F7  
FWSC-1 - FWSC-16, CRPC-2  
CRPCC-101 - CRPCC-107, CRPCC-201 - CRPCC-207,  
CRPCC-301 - CRPCC-307, CRPCC-401 - CRPCC-407