

WHEN RECORDED, RETURN TO:

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

ENTRY NO. 00910553

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Agreement PAGE 1/11

ALAN SPRIGGS, SUMMIT COUNTY RECORDER
FEE 232.00 BY JONES WALDO HOLBROOK & MCDONOUGH



**EASEMENT AGREEMENT
(Walkway Easement)**

This EASEMENT AGREEMENT (this “Agreement”) is executed as of November 9th 2010, by and between WESTGATE RESORTS, LTD., a Florida limited partnership (“Grantor”) THE CANYONS RESORT VILLAGE ASSOCIATION, INC., a Utah nonprofit corporation (“Grantee”); collectively, hereinafter “Party” in the singular and “Parties” in the plural.”

RECITALS

A. Grantor owns that certain parcel of real property (the “Grantor Parcel”) located in Summit County, Utah, and more particularly described on **Exhibit A** attached hereto and incorporated herein.

B. The Grantor Parcel is located in The Canyons Specially Planned Area Zone District (“The Canyons SPA”), established pursuant to Summit County, Utah Ordinance No. 333a, as amended and approved on November 15, 1999, and pursuant to that certain Amended and Restated Development Agreement for the Canyons Specially Planned Area (together with all exhibits thereto), dated as of November 15, 1999, and recorded on November 24, 1999 as Entry No. 53911 in Book 1297 at Page 405 of the official records of the Summit County Recorder (“Official Records”), together with all past and future amendments, hereinafter referred to as the “SPA Development Agreement.”

C. Grantee is the master owner’s association established pursuant to the SPA Development Agreement and having jurisdiction over the Grantor Parcel.

D. Grantor, American Skiing Company Resort Properties, Inc., American Skiing Company, ASC Utah, Inc., a Maine corporation and predecessor in interest to ASC Utah, LLC, a Delaware limited liability company (“ASCU”), and entered into that Guaranteed Improvement Completion Agreement (“Improvements Agreement”), and Grantee joined Improvements Agreement for the limited purposes of setting forth certain obligations respecting its construction of certain improvements, referred to in the Improvement Agreement as the “Westgate Pedestrian Improvements,” on a portion of the

Grantor Parcel more particularly described and defined in paragraph 1 below as the "Easement Area." On and subject to the terms and conditions of the Agreement, ASCU agreed to assure Grantee's performance of such obligations.

E. On and subject to the terms and conditions of this Agreement, Grantor desires to grant to Grantee an easement for such purposes upon, over, under, and across the Easement Area (as described and defined below).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

TERMS

1. **Grant of Easement; Location of Easement Area.** At no cost or expense to Grantee, Grantor hereby grants and conveys to Grantee, for the benefit of Grantee and its officers, employees, contractors (and their subcontractors), suppliers, agents, representatives and invitees (collectively, "Grantee's Invitees"), a perpetual, non-exclusive easement, upon, over, under and across that portion of Grantor's Parcel described and depicted on **Exhibit B** attached hereto and incorporated herein by this reference (the "Easement Area") for the construction, use, operation, maintenance, repair, and replacement of the Westgate Pedestrian Improvements, including walkway snow melt system and utility lines and related facilities required for the operation of such snow melt system, all of which are collectively referred to herein as the "Walkway Improvements." The easement and related rights granted to Grantee pursuant to this Agreement is hereafter referred to as the "Easement."

2. **Maintenance and Repair Obligations.**

a. Upon their completion, Grantee shall be the owner of the Walkway Improvements. Accordingly, Grantee shall be responsible for the maintenance, repair and replacement of the Walkway Improvements, as reasonably necessary to maintain the Walkway Improvements in good condition and repair.

b. If the Walkway Improvements are damaged or destroyed, Grantee as soon as reasonably practicable in light of the circumstances and the weather (but in any case not to exceed two hundred seventy (270) days), shall repair or replace such damaged or destroyed improvements to a condition substantially similar to that existing before any such damage or destruction.

c. Notwithstanding the foregoing, Grantor shall be responsible for repairing (within the foregoing periods and in accordance with the foregoing requirements) any damage or destruction to the Walkway Improvements arising out of the actions of Grantor or its officers, employees, contractors or agents, including without limitation the negligence, gross negligence or intentional misconduct thereof. Grantor shall have no responsibility, liability or obligation

for the maintenance, repair or replacement of the Easement Area except as provided for in this Subsection 2.c. If, as required by this Subsection 2.c or by Section 4 below, Grantor fails to repair any such damage or destruction to the Walkway Improvements within one hundred twenty (120) days after notice, subject to reasonable extensions necessitated by adverse weather or other similar conditions, Grantee shall have the right (but not the obligation) to perform such maintenance and repairs at Grantor's sole cost and expense, which Grantor shall reimburse to Grantee within thirty (30) days after Grantor's receipt of an invoice (accompanied by reasonable supporting documentation).

3. Limitations.

a. Neither Party, without the advance written consent of the other (which consent shall not be unreasonably withheld, conditioned or delayed), shall construct or erect any building or structure or other above-ground fixture on any part or all of the Easement Area, other than the Walkway Improvements.

b. No fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, shall be erected or constructed by any Party on the Easement which limits or impairs the free and unimpeded use and access over the Easement Area, except as Grantee may determine to be reasonably necessary (on a temporary basis) for repair or maintenance or pedestrian traffic regulation and control.

4. Use by Grantors of the Easement Area. Grantor may use the Easement Area for any purpose, including, without limitation, the installation of underground utilities and the placement of outdoor seating (that is not permanent in nature) for the Westgate Grill and/or any retail space owned by Grantor or its related or affiliated entities, provided that any such use shall be subject to RVMA approval and applicable guidelines (such approval not to be unreasonably withheld or delayed) and further provided that such use does not interfere with the use of the Easement Area or the Walkway Improvements. The design of any outdoor seating placed in the Easement Area shall meet Grantee approval. Any damage to, or any extraordinary repair or maintenance required of, the Walkway Improvements caused by Grantor's use thereof shall be promptly repaired by Grantor, at Grantor's sole cost and expense, in accordance with the requirements and deadlines set forth in Subsection 2.c above. It is the intent of the Parties that the easement granted herein be strictly limited to and for the purposes expressed herein.

5. Indemnification. Grantee shall defend, indemnify and hold Grantor and its successors and assigns (collectively referred to as "Grantor" within this section) harmless from and against all liabilities, damages, expenses, claims, losses, costs and attorneys' fees incurred by Grantor as a result of the actions by Grantee, its agents, independent contractors, professionals, representatives, contractors, suppliers, materialmen, subcontractors, and other persons employed and/or engaged by Grantee in connection with the construction, use, operation, maintenance, repair, and replacement of

the Easement Area and any personal injury or property damage occurring within the Easement Area. This indemnification shall not include an indemnification for liability arising from the willful misconduct or gross negligence of Grantor, its employees, licensees, agents, guests, and invitees. Additionally, the foregoing indemnification obligation shall not include consequential damages.

6. Insurance. During the time periods in which the rights under this Agreement may be exercised, Grantee shall maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) covering its obligations under this Section 6 and insuring it against claims for personal injury, bodily injury or death, and property damage or destruction. Such insurance shall be written with an insurer licensed to do business in Utah and shall name Grantor as an additional insured. The limits of liability of all such insurance shall be not less than One Million Dollars (\$1,000,000) for personal injury or bodily injury or death of any one person, Two Million Dollars (\$2,000,000) for personal injury or bodily injury or death of more than one person in one occurrence and One Million Dollars (\$1,000,000) with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage and destruction) with a limit of not less than Five Million Dollars (\$5,000,000) per occurrence. Grantee shall furnish Grantor with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or non-renewed without the giving of thirty (30) days prior written notice to the holders of such insurance and the holders of such certificates.

7. Mechanics' Liens. Grantee shall at all times keep the Easement Area and the Construction Easement free from mechanics' or similar liens arising on account of or resulting from any act by or on behalf of Grantee. In the event any mechanics' or similar lien is recorded against the Easement Area or the Construction Easement on account of any act by or on behalf of Grantee, Grantee shall, within 10 days after notice from Grantor, cause such mechanics' lien to be removed from the Easement Area or the Construction Easement, as the case may be.

8. Liens. Upon request, Grantor shall take reasonable efforts to obtain subordination agreements from any then-existing Mortgagee, subordinating any such Liens or Mortgages to the terms of this Agreement; provided that, Grantor does not make any guaranty as to same. For purposes of this Agreement, the term "Mortgage" shall mean a recorded mortgage, deed of trust or other security agreement creating a lien on all or any portion thereof of the Easement Area; the term "Mortgagee" shall mean the mortgagee, beneficiary or other secured party under a Mortgage; the term "Occupant" shall mean any person or entity that, pursuant to a lease, rental arrangement, license or any other instrument or agreement that is entitled to occupy, possess or use all or any portion of the Easement Area; and the term "Lien" shall mean any lien arising under any state or federal law, under any order or judgment of any court, or under any instrument or agreement excluding, however, general real property taxes and assessments not yet due and payable.

9. Default; Remedies.

a. In the event a Party undertakes or causes to be undertaken any use or activity in violation of the terms of this Agreement, or in the event of a breach of its representations, warranties or covenants set forth in this Agreement, or in the event of a default by a Party of any of its obligations under this Agreement (a "Defaulting Party"), then the non-defaulting Party, following delivery of its written notice to the Defaulting Party of such violation or default, and a failure by the Defaulting Party to cease such uses and activities violating this Agreement or to cure any such default (as the case may be) within thirty (30) days following receipt of such notice from the non-Defaulting Party (or such longer period as may be reasonably necessary therefor, so long as any such cure shall be commenced within such thirty (30) day period), shall be entitled to rights and remedies available at law or in equity, including without limitation (i) the bringing of legal proceedings for full and adequate relief against the Defaulting Party in law or in equity, including without limitation the right to obtain injunctive relief or writs from courts of competent jurisdiction to stop any unauthorized activities or uses or otherwise enforce compliance with the requirements of this Agreement, and/or (ii) any other remedy available at law or in equity. Notwithstanding anything set forth herein to the contrary, Grantor shall not have the right to terminate this Agreement or the Easement granted herein except after notice and expiration of such cure period after default without cure and, in the event of a dispute regarding the default, final adjudication and expiration of the adequate cure period without cure.

b. The Parties acknowledge that actual or threatened instances of non-compliance with the terms of this Agreement or a default hereunder constitute immediate and irreparable harm, and that it would be difficult to ascertain the exact money damages suffered by a non-defaulting Party in the event of a default. Accordingly, a non-defaulting Party is entitled to invoke the equitable jurisdiction of any court to enforce this Agreement, including, without limitation, specific performance or injunction.

10. **Duration.** This Agreement and the easements and undertakings contained herein shall be perpetual.

11. **Covenants to Run with the Land.** Each of the easements and rights contained in this Agreement (whether affirmative or negative in nature) shall (i) constitute covenants running with the land, (ii) bind every person having a fee, leasehold or other interest in any portion of the Grantor Parcel, at any time or from time to time, to the extent such portion is affected or bound by the Easement or rights granted hereunder, or to the extent that the Easement Area (or any portion thereof relocated hereunder) is located, or the rights granted hereunder are to be performed, on such portion, and (iii) shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

12. **Notices.** Any notices or statements required or given under this Agreement, unless otherwise provided herein, shall be hand delivered (receipted), delivered by a nationally recognized courier or sent by United States certified mail (return receipt requested) to the address set forth below, until notice of a different address is given. Notices not hand delivered shall be deemed given one (1) business day after deposit with a nationally recognized, overnight courier or three (3) business days after deposit in the United States mail, properly addressed and with postage prepaid.

13. **No Dedication.** Nothing set forth in this Agreement shall constitute a dedication to any governmental or quasi-governmental entity or other to the public of any right or interest whatsoever in the Easement Area or otherwise in the Grantor Parcel.

14. **No Partnership.** The provisions of this Agreement are not intended to create, and shall not be in any way interpreted or construed to create, for any purpose, a partnership, joint venture or similar relationship between the Parties in the conduct of their respective businesses or otherwise.

15. **Further Action.** The Parties shall execute and deliver all documents, provide all information, take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

16. **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Utah.

17. **Waiver of Jury Trial.** EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF THIS AGREEMENT BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING UNDER COMMON LAW OR ANY APPLICABLE STATUTE, LAW, RULE OR REGULATION. FURTHER, EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

18. **Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, or default of this Agreement, the Party that is the prevailing party in such action or proceeding shall be entitled to recover from the Party that is not the prevailing party in such action, reasonable attorneys' fees and other costs and fees incurred in such action or proceeding, in addition to any other relief to which such prevailing party may be entitled.

19. **Integration; Modification.** This Agreement contains the entire agreement between the Parties hereto with respect to the matters addressed herein. The recitals set forth above are incorporated in this Agreement by this reference. This Agreement cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the Parties and recorded in the Official Records.

20. **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.

21. **Exhibits.** The Parties acknowledge that the exhibits referred to herein are attached and by reference are incorporated herein.

22. **Recording.** This Agreement shall be recorded in the Official Records promptly following its execution by the Parties.

23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

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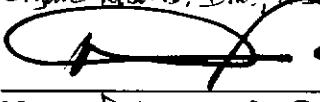
SIGNATURE PAGE FOR GRANTOR

Contact Information

Phone: 407-351-3383
Fax: 407-352-8935
Email: david.siegel@wgresorts.com

Phone: Westgate Resorts, Ltd.
Fax: 5601 Windhover Drive
Email: Orlando, FL 32819
Attention: David A. Siegel

WESTGATE RESORTS, LTD.,
a Florida limited partnership through
Westgate Resorts, Inc., its general partner

By: 
Name: DAVID A Siegel
Title: president

STATE OF FL)
: ss.
COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 2 day of
November, 2010, by David A. Siegel,
President of Westgate Resorts, Inc., the
General partner


Notary Public
Residing at: _____

My Commission Expires:



LEONA HURRELL
Commission # DD 865785
Expires May 3, 2013
Bonded thru Troy Fain Insurance 800-385-7010

SIGNATURE PAGE FOR GRANTEE

Contact Information

The Canyons Resort Village Association
1790 Sun Peak Drive, B105
Park City, UT 84098
Attention: Jennifer Guetschow

and a copy to:

Glen D. Watkins
Jones Waldo Holbrook & McDonough PC
170 S. Main Street, Suite 1500
Salt Lake City, UT 84101
Phone: 801-521-3200
Fax: 801-328-0537
Email: gwatkins@joneswaldo.com

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

By: *[Signature]*
Its: Manager-Director

By: *[Signature]*
Name: Jennifer Guetschow
Title: Manager-Director

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

November, 2010, by Jennifer Guetschow, Director of Summit
County, Manager of The Canyons Resort Village Association, Inc., a Utah nonprofit
corporation.



My Commission Expires:

June 6th, 2012

Beth A. Jepsen
Notary Public
Residing at: 170 S. Main St., Ste. 1500
Salt Lake City, UT
84101

EXHIBIT A

Description of Grantor Parcel

Beginning at the southeast corner of Section 36. Township 1 South, Range 3 East, Salt Lake Base and Meridian, a found brass cap; thence N.89°59'43"W., a distance of 1328.95 feet along the south line of said Section 36, (basis of bearing being N.89°59'43"W. along the south line of said Section 36 between the southeast corner and south quarter corner of said Section 36); thence leaving said section line North a distance of 129.02 feet to a point on the west side of the designed location of the top back of curb of the proposed High Mountain Road, said point being the TRUE POINT OF BEGINNING; thence leaving said top back of curb N.47°29'38"W., a distance of 235.63 feet; thence N.74°29'38"W., a distance of 113.25 feet; thence N.15°30'22"E., a distance of 1.50 feet; thence N.74°29'38"W., a distance of 30.50 feet; thence S.80°30'22"W., a distance of 6.00 feet; thence S.50°30'22"W., a distance of 11.75 feet; thence N.74°29'38"W., a distance of 5.00 feet; thence N.29°29'38"W., a distance of 20.00 feet; thence N.74°29'38"W., a distance of 10.50 feet; thence N.29°29'38"W., a distance of 18.00 feet; thence N.15°30'22"E., a distance of 17.77 feet; thence N.29°29'38"W., a distance of 258.65 feet; thence N.60°30'24"E., a distance of 109.66 feet thence N.29°29'36"W.. a distance of 120.00 feet; thence N.60°30'24"E., a distance of 104.67 feet; thence N.29°29'36"W., a distance of 15.00 feet; thence N.60°30'24"E., a distance of 101.23 feet to the southwest side of the designed location of the top back of curb of the proposed Grand Summit Drive; thence continuing along said top back of curb the following eight courses: 1.) S.31°03'19"E., a distance of 8.51 feet to a point of curve to the left having a radius of 60.00 feet and a central angle of 58°55'54"; 2.) thence southeasterly along the arc a distance of 61.71 feet; 3.) S.89°59'12"E., a distance of 2.24 feet to a point of curve to the right having a radius of 22.50 feet and a central angle of 90°00'00"; 4.) thence southeasterly along the arc a distance of 35.34 feet; 5.) S.00°00'48"W., a distance of 71.24 feet to a point of curve to the left having a radius of 115.00 feet and a central angle of 81°35'31"; 6.) thence southeasterly along the arc a distance of 163.77 feet; 7.) S.81°34'44"E., a distance of 18.12 feet to a point of curve to the right having a radius of 22.50 feet and a central angle of 27°01'36"; 8.) thence easterly along the arc a distance of 10.61 feet to a point on the proposed The Canyons Resort Drive right-of-way and point of curve of a non tangent curve to the left, of which the radius point lies S.85°56'44"E., a radial distance of 224.00 feet thence southerly along the arc of said curve and said right-of-way, through a central angle of 51°34'32", a distance of 201.64 feet; thence continuing along said right-of-way S.47°31'16"E., a distance of 202.65 feet to the point of curve of a non tangent curve to the right, of which the radius point lies N.84°23'02"W., a radial distance of 25.00 feet; said point being on the west side of the said top back of curb of the said High Mountain Road; thence continuing southwesterly along said top back of curb and arc, through a central angle of 36°51'46", a distance of 16.08 feet; thence continuing along said top back of curb S.42°28'44"W., a distance of 217.19 feet to the POINT OF BEGINNING.

Containing 4.84 acres, more or less.

Tax Parcel Numbers: WGC-1; Lodge at Westgate Park City Resort & Spa 202 Units; LWPCRS-3301A-AM thru LWPCRS-CRC-AM

EXHIBIT B

Description and Depiction of the Easement Area

