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**ENTRY NO. 00927111**

07/28/2011 02:21:44 PM B: 2089 P: 1184

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER

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**EASEMENT AGREEMENT**

(Golf Course Easements for Platted Lower Village Land)

THIS EASEMENT AGREEMENT (Golf Course Easements for Platted Lower Village Land) ("Agreement") is made as of the 27<sup>th</sup> day of July, 2011, (the "Effective Date") by and among White Pine Development Corp., a Utah corporation ("White Pine"); IHC Health Services, Inc., a Utah non-profit corporation ("Intermountain Healthcare"); Snyderville Basin Special Recreation District, a special service district organized under the laws of the State of Utah ("Recreation District"); Summit County, a political subdivision of the State of Utah ("Summit County"); The Canyons Golf Holdings, LLC, a Utah limited liability company ("TCGH"); The Canyons Resort Village Association, Inc., a Utah non-profit corporation (the "Association"); and Park City Fire Service District, a special service district organized under the laws of the State of Utah ("PCFSD") (each, individually, a "Party" and collectively, the "Parties").

RECITALS

A. The Parties own or have certain easement or use rights with respect to certain real property located in Summit County, Utah, which real property is more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference (collectively, the "Lower Village Platted Parcels" or individually, the "Lower Village Platted Parcel"). The Lower Village Platted Parcels have been subdivided and platted by that certain Lower Village Development Area Master Plat ("Lower Village Master Plat"), recorded in the official records of the Summit County, Utah Recorder ("Official Records"), and by that certain Lower Village Parcel 1 Plat, recorded in the Official Records on June 7, 2004, as Entry No. 700482, in Book 1625, beginning at Page 1779. The tracts of land comprising the Lower Village Platted Parcels (each, individually a "Parcel") may be referred to in this Agreement by the alphanumeric reference depicted on the Lower Village Master Plat.

B. TCGH owns those Lower Village Platted Parcels depicted on the Lower Village Master Plat as Parcel "LV2A," Parcel "LV2B," Parcel "LV3," and Parcel "LV7" (collectively, the "Golf Course Property"). This Agreement grants certain easements for the benefit of the Golf Course Property for purposes and in furtherance of the following activities on the Golf Course Property: (i) Open Space Uses (as defined below); and (ii) Golf Course Operations (as defined below).

C. Summit County owns Parcel "LV4" and is also the governmental authority having jurisdiction over the SPA (as defined below) and the Lower Village Platted Parcels. Summit County is executing this Agreement solely as the Owner of Parcel "LV4", and not in its

governmental capacity. Notwithstanding any other term or provision of this Agreement, to the extent previously reserved, and subject to any terms and limitations, in Paragraph 5.3 of the SPA Development Agreement (as defined below), Summit County, acting in its capacity as a governmental authority and to the extent allowed by law, reserves all police and regulatory powers, and all governmental legislative, administrative and enforcement authority with respect to zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations. This Agreement always refers to "Summit County, acting only as an Owner," when referring to Summit County solely as the Owner of Parcel "LV4", and to "Summit County, acting in its governmental capacity," when referring to Summit County as a governmental authority rather than the Owner of Parcel LV4.

D. The Parties believe that the use, development, construction, maintenance, repair, and operation of the Golf Course Property for the Golf Course Operations and the Open Space Uses will enhance the value and marketability of the Lower Village Platted Parcels. Accordingly, the Parties desire to enter into this Agreement for purposes and in furtherance of such use, development, construction, maintenance, repair, and operation of the Golf Course Property for the Golf Course Operations and the Open Space Uses, as the case may be.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## 1. DEFINITIONS.

**1.1 Definitions.** As used herein, the following capitalized terms shall have the meanings set forth:

"2011 Golf Plans" means the plans for the Golf Course approved by Summit County pursuant to the Low Impact Permit (as that term is defined in the Snyderville Basin Development Code) issued by the County on July \_\_, 2010, as amended on July 21, 2011. *September 10*

"Arbitration" is defined in Section 2.4.4.

"Arbitration Act" is defined in Section 2.4.4.

"Affiliated Persons" means, with respect to the Golf Course Owner or the operator of the Golf Course, as applicable, their respective managers, members, authorized agents, officers, directors, employees and contractors.

"Approving Representative" is defined in Section 5.8.

"Burdened Parcels" or "Burdened Parcel" means those Lower Village Platted Parcels depicted on the Lower Village Master Plat as Parcel "LV4", Parcel "LV6", Parcel "LV10", Parcel "LV11", Parcel "LV13", and the PCFSD Parcel.

"Claims" means any and all rights, claims, demands, causes of action, judgments, losses, expenses, damages, attorneys' fees, costs, and liabilities with respect to, or from, specified conduct.

"Errant Golf Equipment" means golf balls, golf clubs, golf bags, golf accessories, and other golf-related equipment, or any parts thereof, of a Golf Course User which unintentionally enters a Burdened Parcel from the Golf Course.

"Golf Cart Path" or "Golf Cart Paths" means the golf cart paths to be constructed within the Golf Cart Path Areas pursuant to the terms and conditions of this Agreement.

"Golf Cart Path Amendment" is defined in Section 2.1.

"Golf Cart Path Areas" means those areas of the Lower Village Platted Parcels designated on the Lower Village Master Plat as Easement No. 82 (Non-Exclusive Utility & 15' Wide Golf Cart Path Easement), Easement No. 83 (Golf Cart Path Access Easement, 12' Wide), and Easement No. 84 (12' Wide Golf Cart Path Easement).

"Golf Course" means a golf course and related facilities to be constructed on the Golf Course Property and certain other lands throughout the SPA as contemplated by the SPA Development Agreement.

"Golf Course Benefitted Party" or "Golf Course Benefitted Parties" means the Golf Course Owner and the operator of the Golf Course, and their respective Affiliated Persons.

"Golf Course Modifications" means changes to the Golf Course layout and improvements that are made by, through or under the Golf Course Owner after substantial completion of the construction of the Golf Course substantially in accordance with the 2011 Golf Plans. Notwithstanding the foregoing, "Golf Course Modifications" do not include: (i) subject to the written notice requirements set forth in the following sentence, modifications to the layout and improvements contemplated by the 2011 Golf Course Plans which are approved by Summit County pursuant to an amendment of the Low Impact Permit issued for the 2011 Golf Plans, or otherwise in connection with, issuance by Summit County of a final certificate of completion or certificate of occupancy for the Golf Course; (ii) any minor field adjustments or minor modifications in the layout and improvements contemplated by the 2011 Golf Plans, as otherwise modified pursuant to part (i) of this definition, that are required by conditions on the ground or are required to correct plan deficiencies; or (iii) modifications to the 2011 Golf Plans, as otherwise modified pursuant to part (i) of this definition, required by applicable law or by order or direction of governmental authorities having jurisdiction over the Golf Course. The exclusion set forth in part (i) of this definition shall only be effective as to an Owner of a specific Burdened Parcel if: (A) the Golf Course Owner delivers written notice to such Owner not later than three (3) business days after submitting an application for approval of such modification to Summit County, acting in its governmental capacity, for approval of the modification; or (B) such Owner has actual knowledge of such

application prior to approval of the modification by Summit County, acting in its governmental capacity.

"Golf Course Operations" means, for purposes of this Agreement only, the development, construction, use, operation, maintenance, and repair of the Golf Course Property as the Golf Course, which operations include, without limitation, development, construction, use, operation, maintenance, and repair of the Golf Course Property by motorized vehicles operated by the Golf Course Benefitted Parties.

"Golf Course Owner" means: (i) TCGH, so long as TCGH is the Owner of the Golf Course Property; and thereafter; (ii) any successor Owner or Owners of the Golf Course Property.

"Golf Course Property" is defined in Recital B of this Agreement.

"Golf Risks" means any and all damage and loss to real and personal property and to any natural individual person occurring on a Burdened Parcel arising in whole or in part from: (i) Golf Course Operations including, without limitation, any and all damage and loss to real and personal property and to any natural person occurring on a Burdened Parcel relating to Errant Golf Equipment; and (ii) the exercise of the easements granted in Sections 2.1, 2.2, and 2.3.

"Golf Course User" or "Golf Course Users" means golfers and other guests or invitees of the Golf Course Benefitted Parties that are presently engaging in golfing on the Golf Course Property at the times, and to the extent, the Golf Course Property is used as the Golf Course.

"Increased Golf Risks" means any actual increase in Golf Risks with respect to a specified Burdened Parcel that results from or is caused by Golf Course Modifications.

"Increased Golf Risks Notice" is defined in Section 2.4.3.

"Lower Village Master Plat" is defined in Recital A.

"Lower Village Platted Parcel" or "Lower Village Platted Parcels" have the meanings given in Recital A.

"Management Agreement" is defined in Section 5.14.

"Master Easement Agreement" means that certain Master Easement Agreement (Lower Village Development Area), dated on the date herewith, and executed by the Parties, Lower Village Holdings, LLC, a Utah limited liability company, and ASC Utah LLC, a Delaware limited liability company, d/b/a The Canyons ("ASCU").

"Official Records" is defined in Recital A.

"Open Space User" or "Open Space Users" means guests and invitees of the Golf Course Benefitted Parties for Open Space Uses.

"Open Space Uses" means, for purposes of this Agreement only, the development, use, operation, maintenance and repair of the Golf Course Property for uses allowed by open space declarations of record from time to time with respect to the Golf Course Property.

"Operation Standards" is defined in Section 2.5.

"Owner" or "Owners" means any Person holding record fee title to the Golf Course Property, Parcel "LV4", Parcel "LV6", Parcel "LV10", Parcel "LV11", Parcel "LV13", or the PCFSD Parcel.

"PCFSD Parcel" means the real property depicted on that certain Lower Village Parcel 1 Plat previously recorded in the Office of the Summit County Recorder on June 7, 2004, as Entry No. 700482, in Book 1625, beginning at Page 1779.

"Person" means any natural person, trust, estate, partnership, association, limited liability company, corporation or other legally recognized entity.

"Released Golf Persons" means each of the following Persons, and their Affiliated Persons: (i) the Association, TCGH, ASCU, the Golf Course Owner, the Golf Course Benefitted Parties, the architect, engineer, designer, or builder of the Golf Course; and any sponsor or promoter of any tournament or other organized activity on the Golf Course Property; and (ii) any authorized agent of any of the Persons listed in part (i) of this definition at any level removed. The foregoing Persons shall only be Released Golf Persons when such Persons are acting in their described capacity and not otherwise, including, without limitation, when such Persons are Golf Course Users.

"Released Golf Risks" means all Golf Risks other than the following Golf Risks: (i) Golf Risks that arise out of or in connection with the Golf Course Owner's failure to conduct Golf Course Operations in accordance with the Operation Standards; (ii) as to each Golf Course Benefitted Party, Golf Risks arising from the intentional misconduct or gross negligence of such Golf Course Benefitted Party; and (iii) Increased Golf Risks except and to the extent the Golf Course Owner takes commercially reasonable actions (as such standard is defined in Section 2.4.5) to ameliorate such Increased Golf Risks.

"Reserved Claims" means all Claims of the Owner of a Burdened Parcel that do not arise from Released Golf Risks including, without limitation; (i) Claims for damage or loss to real or personal property or personal injury occurring outside of the boundaries of the Burdened Parcel owned by such Owner, whether such Claims arise from Golf Course Operations or otherwise; and (ii) Claims for damage or loss to real or personal property or personal injury arising from activities other than Golf Course Operations.

"SPA" is defined in Section 3.

"SPA Development Agreement" is defined in Section 3.

"Trails Agreement" means the Snyderville Basin Special Recreation District Regional Trails Agreement (originally Exhibit I.2.3 to the SPA Development Agreement),

recorded May 20, 2010 as Entry No. 899057, in Book 2032, beginning at Page 1797 of the Official Records, as amended and supplemented from time to time.

"Utility Easement Area" means that specific area within the Lower Village Platted Parcels designated on the Lower Village Master Plat as Easement No. 82 (Non-Exclusive Utility & 15' Wide Golf Cart Path Easement).

"Utility Facilities" is defined in Section 3.

## **2. GOLF COURSE EASEMENTS.**

**2.1 Golf Cart Path Easements.** Each Owner of Parcels "LV10", "LV11", and "LV13" hereby grants to the Golf Course Owner, for use only in connection with the Golf Course Operations and the Open Space Uses, a perpetual, non-exclusive easement through, under, and across the Golf Cart Path Areas for the following purposes only: (i) the passage of golf carts operated by the Golf Course Benefitted Parties and the Golf Course Users subject to rules and regulations adopted by the Golf Course Owner and the Association; (ii) pedestrian and vehicle access for the Open Space Uses by the Open Space Users and the Golf Course Benefitted Parties subject to the rules and regulations adopted by the Golf Course Owner and the Association; (iii) pedestrian and vehicular access for Golf Course Operations of the Golf Course Benefitted Parties and the Golf Course Users subject to rules and regulations adopted by the Golf Course Owner and the Association; (iv) the use, development, construction, maintenance, repair, and operation of the Golf Course Property, other Golf Course areas in the SPA, and the Golf Cart Path Areas by the Golf Course Benefitted Parties; and (v) emergency access to the Golf Course Property for any purpose relating to emergencies or exigent circumstances. The easements granted by this Section 2.1 are appurtenant to the Golf Course Property and are not intended to grant any right or easement for use by the general public of any Golf Cart Paths or the Golf Cart Path Areas. In the event that, with the written consent of the Owner of Parcel "LV10", "LV11", or "LV13", as applicable, any Golf Cart Path Area is relocated or additional golf cart paths are constructed on Parcel "LV10", "LV11", or "LV13", as applicable, following the date of this Agreement, the Golf Course Owner, along with the Owner of Parcel "LV10", "LV11", or "LV13", as applicable, may prepare and record in the Official Records an amendment to this Agreement to provide for such relocated Golf Cart Path Area, additional golf cart path, or other related matters as set forth therein (a "Golf Cart Path Amendment"), and such Golf Cart Path Amendment may be accomplished without the joinder or consent of any other Party. Notwithstanding the foregoing, the Golf Course Owner shall not require, or be required to obtain, the joinder or consent, of any Party to this Agreement in order to expand or relocate a Golf Cart Path so long as such Golf Cart Path is expanded or relocated within the Golf Cart Path Areas. The Recreation District hereby subordinates all of its rights and easements under the Trails Agreement to any and all of the terms, covenants, provisions, easements and requirements set forth in this Section 2.1 and to the Lower Village Master Plat.

**2.2 Errant Golf Equipment.** Each Owner of a Burdened Parcel hereby grants to the Golf Course Owner, for use only in connection with the Golf Course Operations, a perpetual, non-exclusive easement over, through, and across the Burdened Parcels for the following purposes only: (i) permitting the Errant Golf Equipment to enter upon, over, through, or across such Burdened Parcels, and (ii) permitting the Golf Course Users and Golf Course Benefitted

Parties at reasonable times, for reasonable periods, and in a reasonable manner and subject to the limitations set forth below in this Section 2.2, to come upon, over, through, and across such Burdened Parcels from the Golf Course to retrieve Errant Golf Equipment. The easements granted by this Section 2.2 are appurtenant to the Golf Course Property and are not intended to grant any right or easement for use by the general public of any of the Burdened Parcels. Notwithstanding the provisions of the foregoing sentence, if any Burdened Parcel is fenced or walled, neither the Golf Course Users nor the Golf Course Benefitted Parties shall be entitled to enter a fenced or walled area of the Burdened Parcel without the prior oral or written permission of the Owner of such Burdened Parcel before entry; and provided that, in any case, neither the Golf Course Users nor the Golf Course Benefitted Parties shall be entitled to enter or access any building or structure constructed upon any of the Burdened Parcels without prior oral or written permission before entry; and provided further that neither the Golf Course Users nor the Golf Course Benefitted Parties shall not be entitled to play a golf ball from any portion of the Burdened Parcels. The Recreation District hereby subordinates all of its rights and easements under the Trails Agreement to any and all of the terms, covenants, provisions, easements and requirements set forth in this Section 2.2 and to the Lower Village Master Plat.

**2.3 *Golf Course Irrigation and Maintenance.*** Each Owner of a Burdened Parcel hereby grants to the Golf Course Owner, for use only by the Golf Course Benefitted Parties, a perpetual, non-exclusive easement over, through, under, and across portions of the Burdened Parcels immediately adjacent to the Golf Course Property, for overspray of effluent from any irrigation systems used for including, without limitation, water, fertilizers, pesticides, herbicides, and other materials used in connection with the upkeep and maintenance of grass, hazards, or other groundcover or vegetation on the Golf Course Property reasonably necessary for the Golf Course Operations and Open Space Uses. The easements granted by this Section 2.3 are appurtenant to the Golf Course Property and are not intended to grant any right or easement for use by the general public of any of the Burdened Parcels. The Golf Course Benefitted Parties may use treated effluent in the irrigation system serving the Golf Course Property. The Recreation District hereby subordinates all of its rights and easements under the Trails Agreement to any and all of the terms, covenants, provisions, easements and requirements set forth in this Section 2.3 and to the Lower Village Master Plat.

**2.4 *Acknowledgments and Releases Regarding Golf Course Operations.***

**2.4.1** Each Owner of a Burdened Parcel acknowledges the existence of any and all Released Golf Risks.

**2.4.2** Notwithstanding any other provision of this Agreement, each Owner of a Burdened Parcel acknowledges and agrees that the Released Golf Persons shall not be held liable for, and hereby releases the Released Golf Persons from, any and all Claims arising from Released Golf Risks, but expressly reserves any and all other Claims including specifically, without limitation, Reserved Claims.

**2.4.3** Notwithstanding any other provision of this Agreement, if Golf Course Modifications are made and the Owner of a Burdened Parcel notifies the Golf Course Owner and the Association in writing of resulting Increased Golf Risks, which written notice shall describe the Golf Course Modifications and the Increased Golf Risks in sufficient detail to allow the Golf

Course Owner to evaluate whether Increased Golf Risks have occurred and to determine what actions, if any, it could take to ameliorate actual Increased Golf Risks (such notice, an "Increased Golf Risks Notice"). After receiving an Increased Golf Risks Notice, unless the Golf Course Owner reasonably believes there is no such Increased Golf Risks, the Golf Course Owner shall take commercially reasonable actions (as that standard is defined in Section 2.4.5) to ameliorate the Increased Golf Risks; provided that the Golf Course Owner shall not be required to take any actions in addition to such commercially reasonable actions. Notwithstanding the foregoing: (i) if an Increased Golf Risks Notice is not delivered prior to December 31 of the calendar year following the calendar year in which Golf Course Modifications were made, then the Owner of the affected Burdened Parcel shall be deemed to have agreed that such the Golf Course Modifications do not result in Increased Golf Risks; and (ii) if an Increased Golf Risks Notice is delivered prior to December 31 of the calendar year following the calendar year in which Golf Course Modifications were made, the Owner of the Burdened Parcel shall be deemed to have agreed that the Increased Golf Risks it describes in the Increased Golf Risks Notice are the only Increased Golf Risks resulting from such Golf Course Modifications.

2.4.4. Notwithstanding any other provision of this Agreement, any Claim arising from, related to, or in connection with alleged Increased Golf Risks, unless otherwise resolved by the Golf Course Owner and the Owner of the Burdened Parcel, shall be subject to mandatory, binding arbitration ("Arbitration") and shall not be maintained in any federal or state court or in any other forum. The Arbitration shall be governed by the Utah Uniform Arbitration Act, Utah Code Annotated 78B-11-101 *et seq.* (the "Arbitration Act"). The Arbitration shall be referred to and conducted by a single arbitrator agreed upon by the parties to the Arbitration, and if no single arbitrator can be agreed upon by the parties, any party to the controversy may seek appointment of an arbitrator in accordance with the Arbitration Act. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof in accordance with the Arbitration Act. Except as provided below, the arbitrator shall define the issues involved in the Arbitration including, without limitation, how the cost and expense of the Arbitration, including, without limitation, all fees and expenses of the arbitrator, shall be allocated between and paid by the parties to the Arbitration. The order of the arbitrator shall be final and binding and shall not be subject to review or appeal by any court or in any other forum. In the Arbitration, the Owner of a Burdened Parcel shall bear the burden of proof in establishing each of the following:

- (i) A Golf Course Modification occurred;
- (ii) The Golf Course Modification was made by, through or under the Golf Course Owner;
- (iii) The Golf Course Modification resulted in Increased Golf Risks to such Owner's Burdened Parcel;
- (iv) The Owner of the Burdened Parcel timely provided an adequate Increased Golf Risks Notice to the Golf Course Owner; and



(v) The Golf Course Owner did not take commercially reasonable actions (as that standard is defined in 2.4.5) available to ameliorate the Increased Golf Risks articulated in an Increased Golf Risks Notice.

2.4.5 For purposes of this Section 2.4, "commercially reasonable actions" means that the Golf Course Owner has acted in a manner consistent with (i) economic prudence based on considerations of the nature and extent of the Increased Golf Risks and the anticipated costs of, and benefits derived from, an action to ameliorate the Increased Golf Risks; (ii) its obligations under Section 2.4.3 of this Agreement; and (iii) parts (ii)-(iv) of Operation Standards, as defined in Section 2.5.

2.4.6 Nothing contained in this Section 2.4 shall be construed so as to release or waive any Claim arising from any action or omission of a Golf Course User.

**2.5 Compliance with Applicable Law.** In exercising the easements granted to the Golf Course Owner in Sections 2.1, 2.2, and 2.3 the Golf Course Owner shall comply with, and shall cause all Golf Course Benefitted Parties to comply with, the following: (i) the covenants of this Agreement; (ii) applicable law, including, without limitation, all laws relating to noise, dust, lighting or other disturbances; (iii) all government permits, approvals, and requirements applicable to the Golf Course and Golf Course Operations; and (iv) to the extent not covered by subparts (i), (ii) or (iii) of this Section 2.5, with customary golf course use, operation and maintenance practices of other comparable "target" resort golf courses located in resort communities surrounded by a mountainside resort mixed-use commercial buildings, office buildings, residential condominium buildings and hotels (collectively, the "Operation Standards").

**2.6 Scope of Agreement.** By limiting the use of any easement set forth in this Agreement to Golf Course Operations and Open Space Uses, there is no intent to restrict or impose any limitation or restriction on the use of the Golf Course Property or the Golf Course themselves. Such use may be governed by other agreements or instruments recorded in the Official Records or to be recorded from time to time in the Official Records, including, but not limited to, the Lower Village Master Plat.

**3. UTILITY EASEMENT.** Each Owner of Parcels "LV7" and "LV11" hereby grants to the Owner of Parcel "LV10" a perpetual, non-exclusive easement over, through, under, and across the Utility Easement Area, which easement is appurtenant to Parcel "LV10", for the installation, operation, maintenance, repair, and replacement of underground telephone, television cable, and other communication lines and systems, electrical conduits or systems, gas mains, water lines, sewer lines, storm and water drainage lines, including without limitation, wires, cables, conduits, pipes, mains, poles, guys, anchors, fixtures, supports and terminals, repeaters, and such other appurtenances of every nature and description, and other public or private utilities or underground systems to, and serving Parcel "LV10" (collectively, "Utility Facilities") for purposes of providing utility services to Parcel "LV10". This Section 3 is not intended to grant any rights or easements for the installation of any Utility Facilities providing utility service(s) to properties located outside of The Canyons Specially Planned Area ("SPA") as such SPA is described in that certain Amended and Restated Development Agreement for The Canyons Specially Planned Area, dated November 15, 1999, and recorded on November 24,

1999, as Entry No. 553911, in Book 1297, beginning at Page 405, in the Official Records, together with amendments thereto (as amended, the "SPA Development Agreement"). All Utility Facilities shall be installed and maintained underground with at least 48 inches of cover, except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility provider providing such service (including, without limitation, temporary service required during the construction, maintenance, repair, replacement, alteration, or expansion of any buildings or other improvements within the Golf Course Property). The installation, operation, maintenance, repair, and replacement of Utility Facilities shall not: (i) unreasonably interfere with any then-installed Utility Facilities; (ii) cause unreasonable damage to any then-installed Utility Facilities or any portion of any Burdened Parcel; (iii) unreasonably interfere with any rights and easements granted to the Parties by the Master Easement Agreement; or (iv) unreasonably interfere or cause damage to any Utility Facilities or Basic Infrastructure (as those terms are defined in the Master Easement Agreement) that are then-installed on the Burdened Parcels. In addition, any such installation, operation, maintenance, repair, or replacement of Utility Facilities shall be performed only after prior written notice to the Owner of the Burdened Parcel and the Golf Course Owner by third-party utility providers and their respective employees and contractors, and only in accordance with a construction plan and schedule approved by the Golf Course Owner. The Owner of Parcel "LV10" shall bear all costs and expenses related to the installation, operation, maintenance, repair, and replacement of the Utility Facilities, and shall restore to as near the original condition as reasonably possible any portion of any Burdened Parcel disturbed by such activities. The Recreation District hereby subordinates all of its rights and easements under the Trails Agreement to the terms, covenants, provisions, and requirements set forth in this Section 3 and to the Lower Village Master Plat.

#### **4. DEFAULT.**

**4.1 Default by Owners.** In the event of a default or breach by an Owner of a Burdened Parcel of the terms, covenants, provisions, easements, and requirements granted in Section 2 or Section 3, the Golf Course Owner, and, in the case of the terms, covenants, provisions, easements, and requirements granted in Section 3, the Owner of Parcel "LV10" (but not any of the respective shareholders, officers, directors, trustees, guests, invitees, managers, members, agents, employees, or licensees of the foregoing) shall be entitled to commence proceedings (at law or in equity) against only the Owner of a Burdened Parcel who has allegedly defaulted under the terms, covenants, provisions, easements, and requirements specifically granted by that Owner, for full and adequate relief, and/or compensation from the consequences of any actual default or breach; provided, however, that such compensation shall not include consequential damages of any nature, including, without limitation, lost profits or punitive damages. Such remedies shall include, without limitation, the right to specific performance and/or injunctive relief and may be in addition to (and not in lieu of) any other rights or remedies to which such Golf Course Benefitted Parties (as such term is limited herein) may be entitled.

**4.2 Default by Golf Course Benefitted Parties.** In the event of a default or breach by any of the Golf Course Benefitted Parties, any Owner of a Burdened Parcel (but not any of such Owner's respective shareholders, officers, directors, trustees, guests, invitees, managers, members, agents, employees, or licensees) that is adversely affected by such default or breach shall be entitled to commence proceedings (at law or in equity) for full and adequate relief,

and/or compensation from the consequences of any actual default or breach against the Golf Course Owner; provided, however, that such compensation shall not include consequential damages of any nature, including, without limitation, lost profits or punitive damages; and provided further that prior to seeking any such compensation, the defaulting Golf Course Benefitted Party or the Golf Course Owner shall have thirty (30) days after receipt of written notice from a complaining Owner of a Burdened Parcel to payoff and cure any such sought after compensation. Such remedies shall include, without limitation, the right to specific performance and/or injunctive relief and may be in addition to (and not in lieu of) any rights or remedies to which such Owner may be entitled. Nothing herein shall preclude or prevent the Golf Course Owner or any Owner of a Burdened Parcel (but not any of such Owner's respective shareholders, officers, directors, trustees, guests, invitees, managers, members, agents, employees or licensees) from maintaining an action against the other Golf Course Benefitted Parties, the Golf Course Users, or the Open Space Users to enforce the terms of this Agreement.

**4.3 Breach Shall Not Permit Termination.** It is expressly agreed that no default or breach of this Agreement shall entitle any Owner, Party, or any of the Golf Course Benefitted Parties to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which any Owner, Party or any of the Golf Course Benefitted Parties may have hereunder by reason of any default or breach of this Agreement. Any default or breach of this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value; provided that this Agreement shall not entitle any Person to place a lien on any part or all of any of the Burdened Parcels.

## **5. MISCELLANEOUS.**

**5.1 Effective Date.** This Agreement shall be effective and binding only upon recording in the Official Records.

**5.2 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.

**5.3 Easements Appurtenant.** The terms, covenants, provisions, easements, and requirements granted or created herein shall be appurtenant to the Golf Course Property. The Golf Course Property shall constitute the dominant estates, and the Burdened Parcels shall constitute the servient estates. Notwithstanding the foregoing, the terms, covenants, provisions, easements, and requirements set forth in Section 3 shall be appurtenant to Parcel "LV10", in which instance Parcel "LV10" shall constitute the dominant estate and Parcels "LV7" and "LV11" shall constitute the servient estates.

**5.4 Covenants to Run With the Land.** This Agreement and the other terms, covenants, provisions, and requirements created by this Agreement are intended by the Parties to be and shall constitute covenants running with the land as to each of the Burdened Parcels and the Golf Course Property, and shall be binding upon and shall inure to the benefit of any Person who acquires or comes to have any interest in any portion of a Burdened Parcel or in the Golf Course Property, and their respective grantees, transferees, lessees, successors, and assigns. Each Owner shall comply with, and all interests in all Burdened Parcels and the Golf Course

Property shall be subject to, the terms of this Agreement. By acquiring, in any way coming to have any interest in, or occupying a Burdened Parcel or the Golf Course Property, the Person so acquiring, coming to have such interest in, or occupying a Burdened Parcel or the Golf Course Property, shall be deemed to have consented to, and shall be bound by, each and every provision of this Agreement.

**5.5 Dedication of Parcel LV11.** If Parcel "LV11" becomes a public road owned Summit County, in its governmental capacity, whether by reason of dedication to for use as a public road pursuant the Master Easement Agreement, or otherwise, the easements, rights, releases, and acknowledgments described in this Agreement that relate to Parcel "LV11" shall automatically terminate and shall be of no further force or effect.

**5.6 Authority to Execute and Deliver this Agreement; Further Agreements.** Each Party represents and warrants that it has the right, power, legal capacity, authority, and means to enter into and perform this Agreement and that, to the best of its knowledge, the same will not contravene or result in the violation of any indenture, mortgage, deed of trust, lease, contract, instrument, or agreement. The Golf Course Owner and the Owner of a Burdened Parcel may enter into separate agreements to modify or supplement the terms, covenants, provisions, easements, and requirements set forth in this Agreement. The Golf Owner shall provide a copy of each separate agreement to the Association and each other Owner of a Burdened Parcel. Such separate agreements shall not require the agreement or consent of any other Owner of a Burdened Parcel, but the Owner of a Burdened Parcel which is not a party to such separate agreement may claim that the separate agreement results in Increased Golf Risks.

**5.7 Amendment.** Except for any Golf Cart Path Amendment, which amendments may be accomplished as set forth in this Agreement, this Agreement shall not be modified or amended except by a written instrument executed by the Owner of the Burdened Parcel affected by the amendment and the Golf Course Owner, which written instrument is recorded in the Official Records. The other Owners need not execute or join in any such amendment but shall receive notice from the Golf Course Owner of any such amendment concurrently with the recording thereof.

**5.8 Approving Representative.** In the event that at any time or for any reason more than one Person is the Owner of any of the Burdened Parcels, then the Persons owning or holding interests in any of those parcels shall be required to designate in a written notice to the Golf Course Owner one Person to receive all notices and give all necessary consents and approvals required by the terms of this Agreement with respect to all of the Owners of the Burdened Parcel (an "Approving Representative").

a. The Approving Representative must be one of the following Persons: (i) if there is no owners' or condominium association, the Approving Representative shall be one (1) Person which is the owner or holder of some interest in a Burdened Parcel; (ii) if there is an owners' or condominium association with respect to a Burdened Parcel, then the only Person that may be the Approving Representative shall be the owners' association or condominium association, as applicable.

b. The name and contact information of the Approving Representative shall be provided to the Golf Course Owner in writing in a manner reasonably satisfactory to the Golf Course Owner.

c. Whenever notice is to be provided to the Owners of a Burdened Parcel under this Agreement, the Golf Course Owner may deliver such notice only to the designated Approving Representative and need not give notice to any other Person.

d. Whenever the consent or approval of the Owners of a Burdened Parcel is required under this Agreement, the Golf Course Owner may rely on the consent or approval of the designated Approving Representative and the Golf Course Owner need not obtain the consent or approval of any other Person.

e. The Approving Representative shall have absolute discretion to make the decisions on behalf of the entire Burdened Parcel.

f. In the event the name and contact information of an Approving Representative is not properly provided to the Golf Course Owner, the Golf Course Owner shall not be held liable for failure to provide notice to or seek approval from such Approving Representative or the Owners of the applicable Burdened Parcel. The Golf Course Owner may rely on the name and contact information of the Approving Representative provided to the Golf Course Owner, regardless of whether the information is, in fact, incorrect or is disputed by the Owners of the Burdened Parcel. The Golf Course Owner is under no duty to verify the authority or power of the Approving Representative or any other information given to the Golf Course Owner regarding the Approving Representative. Each Owner of an interest in a Burdened Parcel agrees to indemnify, defend, and hold harmless the Golf Course Owner in the event the Golf Course Owner contracts with, or gives notice to, a designated Approving Representative and that Approving Representative, for any reason, is not, or is disputed to be, the Approving Representative designated by such Owners.

**5.9 Subordination.** The Recreation District is a Party to this Agreement solely for the purpose of subordinating, any and all of its rights and easements granted to it under the Trails Agreement and to the Lower Village Master Plat to any and all of the terms, covenants, provisions, and requirements set forth in this Agreement. This Agreement shall be binding on and enforceable against all Parties other than the Recreation District prior to execution and delivery of this Agreement by the Recreation District, and regardless of whether the Recreation District executes and delivers this Agreement. The Recreation District may execute and deliver a counterpart to this Agreement at any time and such signature shall be binding on the Recreation District as of its execution and delivery. A separate counterpart executed by the Recreation District may be recorded in the Official Records.

**5.10 Attorneys' Fees.** In the event any action is commenced by any Party against any other Party in connection with this Agreement and, except as otherwise determined by the arbitrator in connection with an Arbitration, the prevailing Party shall be entitled to its costs and expenses, including reasonable attorneys' fees.

**5.11 Captions and Recitals.** 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. Whenever a reference is made to a Section or Recital by number or letter, or both, without otherwise specifying where the Section or Recital occurs, the reference shall be deemed to be to the corresponding Section or Recital in this Agreement.

**5.12 Partial Invalidity.** Should any of the provisions of this Agreement prove to be invalid or otherwise ineffective, the other provisions of this Agreement shall remain in full force and effect. There shall be substituted for any such invalid or ineffective provision a provision which, as far as legally possible, most nearly reflects the intention of the Parties hereto.

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

**5.14 Management Agreement and SPA Development Agreement.** Except as to the rights and obligations of the Parties specified in this Agreement, each Party reserves any rights to which it may be entitled, and shall continue to be subject to obligations to which it may be bound under the SPA Development Agreement or The Canyons Resort Village Management Agreement, dated November 15, 1999 and recorded on December 15, 1999, as Entry No. 555285, in Book 1300, beginning at Page 1, in the Official Records, together with amendments thereto (the "Management Agreement"). In the event and to the extent of any conflict between the terms and conditions of this Agreement, on the one hand, and the terms and conditions of the SPA Development Agreement or the Management Agreement, on the other hand, with respect to any rights and obligations of the Parties specified in this Agreement, the terms and conditions of this Agreement shall govern and control.

**5.15 Recitals and Exhibits.** The recitals set forth in this Agreement and the exhibits attached hereto are hereby incorporated and made a part of this Agreement by this reference.

**5.16 No Third-Party Beneficiaries.** Nothing in this Agreement is intended to create an enforceable right, claim or cause of action by any third-party against any Party hereto.

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

**5.18 No Waiver.** The failure of a Party to insist upon strict performance of any of the terms, covenants, conditions, or agreements contained herein shall not be deemed a waiver of any rights or remedies that said Party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions, or agreements contained herein by the same or any other Party.

**5.19 Construction.** The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

**5.20 Notice.** Any notice required to be sent herein may be sent by federal express, by certified mail, return receipt requested or by electronic transmission to the following: (i) if to the Owner of a Burdened Parcel, the address of the Approving Representative applicable to that

Parcel, or (ii) if to the Golf Course Owner, the address of the registered agent on file with the State of Utah.

***[INTENTIONALLY BLANK – SIGNATURE PAGES FOLLOW]***

SIGNATURE PAGE FOR SUMMIT COUNTY

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

Summit County Contact Information:

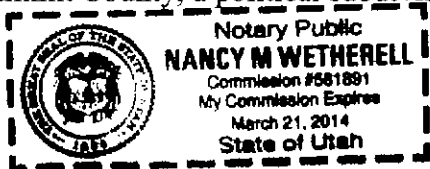
David E. Gee  
Parr Brown Gee & Loveless  
185 S. State Street, Suite 1300  
Salt Lake City, UT 84111  
Phone: 801-532-7840  
Fax: 801-532-7750  
Email: deg@pwlaw.com

SUMMIT COUNTY,  
a political subdivision of the State of Utah in its  
capacity as Owner of LV4

By Robert W. Jasper  
Its Manager

STATE OF UTAH )  
: SS.  
COUNTY OF Summit )

The foregoing instrument was acknowledged before me this 23rd day of June, 2011, by Robert Jasper, as Manager of Summit County, a political subdivision of the State of Utah.



Nancy M. Wetherell  
Notary Public  
Residing at: Erda, Utah

My Commission Expires:  
3/21/2014



SIGNATURE PAGE FOR THE CANYONS RESORT VILLAGE ASSOCIATION, INC.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

Association Contact Information:

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 non-profit  
corporation

By: [Signature]  
Name: Jennifer Guetschow  
Title: Director

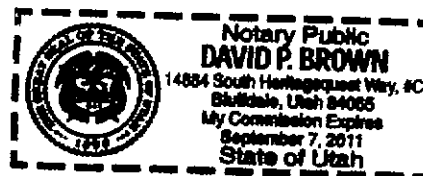
STATE OF UTAH )  
COUNTY OF Summit ) ss.

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of July, 2011, by Jennifer Guetschow, as Director of The Canyons Resort Village Association, Inc, a Utah non-profit corporation.

[Signature]  
Notary Public  
Residing at: Summit County, UTAH

My Commission Expires:

Sept. 7, 2011



SIGNATURE PAGE FOR WHITE PINE DEVELOPMENT CORP.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

White Pine Contact Information:

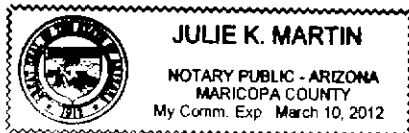
Mark Durrant  
Ballard Spahr  
201 S. Main Street, #800  
Salt Lake City, UT 84111  
Phone: 801-531-3043  
Fax: 801-321-9043  
Email: durrantm@ballardspahr.com

WHITE PINE DEVELOPMENT CORP.,  
a Utah corporation

By: [Signature]  
Name: R. Paul Barker  
Title: President

STATE OF Arizona )  
COUNTY OF Maricopa ) : ss.

The foregoing instrument was acknowledged before me this 14 day of July, 2011, by R Paul Barker, as  
of White Pine Development Corp., a Utah corporation.



[Signature]  
Notary Public  
Residing at: 8719 E Rose Ln.  
Scotts AZ 85250

My Commission Expires:  
03-10-12

SIGNATURE PAGE FOR INTERMOUNTAIN HEALTHCARE

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

Intermountain Healthcare Contact  
Information:

Guy P. Kroesche  
Stoel Rives, LLP  
201 South Main Street, Suite 1100  
Salt Lake City, Utah 84111  
Phone: 801-328-3131  
Fax: 801-578-6999  
Email: gpkroesche@stoel.com

IHC HEALTH SERVICES, INC.,  
a Utah non-profit corporation

By: [Signature]  
Name: D.R. Gardner  
Title: V.P.

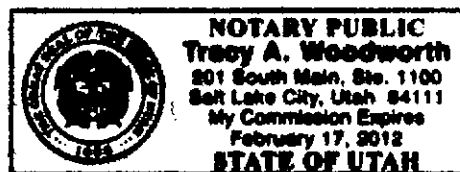
[Signature]  
7/20/11

STATE OF UTAH )  
 )  
 ) : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 20 day of July, 2011, by D.R. Gardner, as Vice-President of IHC Health Services, Inc., a Utah non-profit corporation.

[Signature]  
Notary Public  
Residing at: SLC, Utah

My Commission Expires:  
2-17-2012



SIGNATURE PAGE FOR PARK CITY FIRE SERVICE DISTRICT

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

PCFSD Contact Information:

Scott Adams  
Fire Marshall  
Park City Fire District  
P.O. Box 980010  
730 West Bitner Road  
Park City, UT 84098-0010  
Phone: 435-649-6706 x1303  
Email: sadams@pcfcd.org

PARK CITY FIRE SERVICE DISTRICT,  
a special service district organized under the laws of  
the State of Utah

By: Scott W. Adams  
Name: SCOTT W ADAMS  
Title: ASST. FIRE CHIEF

STATE OF UTAH )  
COUNTY OF Summit ) ss.

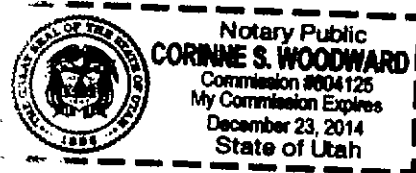
The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of July, 2011, by Scott W. Adams, as Asst. Fire Chief of Park City Fire Service District, a special service district organized under the laws of the State of Utah.

[Signature]  
Notary Public

Residing at: Park City, Utah

My Commission Expires:

12/23/2014



SIGNATURE PAGE FOR THE CANYONS GOLF HOLDINGS, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

TCGH Contact Information

The Canyons Golf Holdings, LLC  
c/o The Canyons Resort Village  
Association  
1777 Sun Peak Drive, Suite 130-B  
Park City, UT 84098  
Attention: Jennifer Guetschow

With a Copy To:

Summit County  
60 N. Main Street  
P.O. Box 128  
Coalville, UT 84017  
Attention: Jami Brackin

and

Glen D. Watkins  
Jones Waldo Holbrook & McDonough PC  
170 S. Main Street, Suite 1500  
Salt Lake City, UT 84101

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

By: Summit County, a political subdivision of the  
State of Utah

Its: Manager

By: Robert W. Jasper  
Name: Robert W. Jasper  
Title: Manager

STATE OF UTAH )  
: ss.  
COUNTY OF Summit )

The foregoing instrument was acknowledged before me this 23rd day of June, 2011, by Robert Jasper, as Manager of Summit County, a political subdivision of the State of Utah, and Manager of The Canyons Golf Holdings, LLC, a Utah limited liability company.



Nancy M. Wetherell  
Notary Public  
Residing at: Erda, Utah

My Commission Expires:  
3/21/2014

SIGNATURE PAGE FOR SNYDERVILLE BASIN SPECIAL RECREATION DISTRICT

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

Recreation District Contact Information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

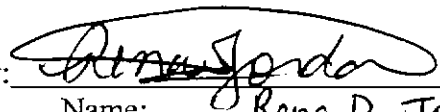
Phone: (435) 649-1564

Fax: (435) 649-1567

Email: renaj@basinrecreation.org

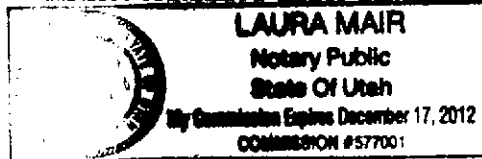
SNYDERVILLE BASIN SPECIAL  
RECREATION DISTRICT,

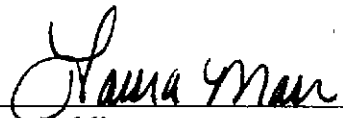
a special service district organized under the laws  
of the State of Utah

By:   
Name: Rena D. Jordan  
Title: District Director

STATE OF UTAH )  
COUNTY OF Summit ) : SS.

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of July, 2011, by Rena Jordan as, as District Director of Snyderville Basin Special Recreation District, a special service district organized under the laws of the State of Utah.



  
Notary Public  
Residing at: 5715 Trailside Dr. Park City, UT  
84098

My Commission Expires:

Dec 17, 2012

**EXHIBIT "A"**  
**TO**  
**EASEMENT AGREEMENT**

**(Golf Course Easements for Platted Lower Village Land)**

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Legal Description of Lower Village Platted Parcels

All of Parcels LV2A, LV2B, LV3, LV4, LV6, LV7, LV10, LV11, and LV13, LOWER VILLAGE DEVELOPMENT AREA MASTER PLAT; according to the Official Plat thereof, on file and of record in the Office of the Summit County Recorder.

And

Lower Village Parcel 1 Plat previously recorded in the Office of the Summit County Recorder on June 7, 2004, as Entry No. 700482, in Book 1625, beginning at Page 1779.

Tax ID NO.

PP-102-C-2-A, PP-PW-1-610-A, PP-102-B-12, PP-102-B-10-11-A,  
PP-102-B-11-X, PP-102-B-8-9-X, PP-102-B-8-11, PP-102-B-5-16-X,  
PP-102-B-6, PP-102-C-2-B, LVP-1-X