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Mary Ann Trussell, Summit County Utah Recorder
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By Coalition Title Agency, Inc.
Electronically Recorded

WHEN RECORDED MAIL TO:

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

Space above for County Recorder's Use

Tax Parcel ID Nos.: All or portions of PP-75-D; PP-75-4; PP-75-G-1-B

RESTRICTION AND DEVELOPMENT AGREEMENT

[Parcel RC22]

26123

THIS RESTRICTION AND DEVELOPMENT AGREEMENT [Parcel RC22] ("**Agreement**"), dated March 18, 2016 ("**Effective Date**"), is between TCFC LeaseCo LLC, a Delaware limited liability company ("**LeaseCo**"), TCFC PropCo LLC, a Delaware limited liability company ("**PropCo**"), and One Canyons, LLC, a Delaware limited liability company ("**Developer**") (LeaseCo, PropCo, and Developer are referred to individually as a "**Party**" and collectively as the "**Parties**"), with reference to the following:

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

B. On or about the Effective Date, Developer acquired the parcel of real property described on **Exhibit B ("Developer Property")**. Developer intends to develop the Developer Property into a "hotel/lodging" project that will be part of the Resort Core Development Area of Canyons Resort as contemplated by the Amended and Restated Development Agreement for The Canyons Specially Planned Area, dated November 15, 1999, and recorded with the Summit County, Utah Recorder's Office ("**Official Records**") on November 24, 1999, as Entry No. 553911, in Book 1297, beginning at Page 405, together with amendments thereto (as amended, the "**SPA Development Agreement**"). The Developer Property is generally designated in the Land Use and Zoning Chart of the SPA Development Agreement as Parcel RC22.

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

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

EXECUTION VERSION

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

a. **SPA Property; Master Plan.** As further defined and described in the SPA Development Agreement, the “Maximum Building Height”, “Maximum Gross Building Area”, “Accommodation Area”, and “Principle Use” for the Developer Property is set forth in the chart below:

Parcel Ref#	Maximum Building Height	Maximum Gross Building Area	Accommodation Area	Principle Use
Parcel RC22	3-6 Stories	114,000 Square Feet	114,000 Square Feet	Hotel/Lodging Units

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

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

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

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

a. **Development Rights.** The Developer Property may only be used for the development and operation of not fewer than 55 and not more than 65 hotel and/or lodging units (“Development Rights”).

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

3. **Development Plans Submittal Process.**

a. **Preliminary Plans.** Developer has submitted to PropCo, for PropCo's review, input, and approval, the following documents, plans and specifications, drawings, construction standards, and other materials related to the Improvements to be constructed on the Developer Property in accordance with the Development Rights ("**Preliminary Plans**") (for the purpose of this Agreement, "**Building**" or "**Buildings**" means any permanently enclosed structure placed, constructed, or located on a Developer Property, which includes any appurtenant overhangs, eaves, porte-cocheres, canopies, and similar architectural and structural supports; and "**Improvements**" means any means any above-ground portions of Buildings and other structures, facilities and other improvements):

(i) A schematic site plan showing the Developer Property, the Buildings and Improvements, the anticipated layout of all development on the Developer Property, and any applicable on-site areas and amenities that are intended for the use and benefit of the development and operation of the Developer Property, including, but not limited to, all road and driveways, all parking spaces, maintenance and storage facilities, landscaping, outdoor patio areas, those portions of the Developer Property that can be developed with Buildings and Improvements ("**Building Areas**"), all Building entrances and exits, all "no build" areas in the Project (including those portions of the Developer Property that are designated for ski trails that provide ski-to, ski-through and ski-out trails to benefit the Developer Property and guests and invitees of Canyons Resort ("**Ski Easement Areas**"), trails, and all beneficial easements, rights-of-way, access and service roads, sidewalks, garbage areas, and other applicable areas;

(ii) Schematic design drawings for all Improvements to be constructed on the Developer Property;

(iii) Schematic exterior elevations of all Improvements to be constructed on the Developer Property, including exterior materials;

(iv) A plan showing the locations for all permanent signage on the exterior of the Buildings, including, without limitation, monument signs, free-standing signs and other areas presently contemplated for signage;

(v) A lighting Plan for the Developer Property; and

(vi) Such other drawings, documents, plans, specifications, and materials that PropCo reasonably requested in connection with the construction, build-out, and work to be performed on the Developer Property in connection with the Improvements.

PropCo agrees and acknowledges that the Preliminary Plans have been received and approved, as submitted by Developer pursuant to this Agreement, and are a general representation of the Improvements expected to be constructed on the Developer Property.

b. **Final Plans.** Based on the Preliminary Plans that have been previously approved by PropCo, Developer shall proceed to prepare final plans related to the Improvements

("Final Plans"). Developer shall be responsible for obtaining all required approvals from Summit County, the RVMA, and all other governmental authorities with respect to the Final Plans (as such Final Plans may be subject to revision from time-to-time) and the construction of the Improvements. On the conditions that Developer has obtained all such required approvals from Summit County, the RVMA, and all other governmental authorities and that the Final Plans have not substantially changed from the Preliminary Plans that were previously reviewed and approved by PropCo, the Developer shall have the right under this Agreement to construct the Improvements based on the Final Plans. If the Final Plans undergo a substantial change from the Preliminary Plans for whatever reason, other than changes that were specifically mandated or required in order for Developer to comply with the requirements of Summit County, the RVMA or any other governmental authorities, Developer will submit and PropCo will promptly review and approve only those substantial changes from the Preliminary Plans within seven (7) business days after the receipt of those drawings, documents, and plans from Developer showing the substantial changes from the Preliminary Plans, which approval from PropCo will not be unreasonably withheld, conditioned or delayed. If PropCo fails to review and approve any substantial changes from the Preliminary Plans within the aforementioned 7-day period, such changes will be deemed conclusively approved by PropCo.

4. **Enforcement and Designation of Benefited Property.** The rights and restrictive covenants granted in paragraphs 1 and 2 are appurtenants to and run to the benefit of LeaseCo, PropCo, and their respective interests in the PropCo Property, and PropCo and LeaseCo have the right to enforce the provisions of this Agreement. If at any time or for any reason PropCo or LeaseCo elect to release or terminate all or any portion of the beneficial rights arising under this Agreement and running to the benefit of the PropCo Property, PropCo, or LeaseCo without the approval or consent of any other Party, may do so by recording a notice against the Developer Property and all or a portion of the PropCo Property specifying the nature and extent of the release or termination. PropCo's or LeaseCo's election to release or terminate all or any portion of the beneficial rights arising under this Agreement and running to the benefit of the PropCo Property or any portion of the PropCo Property will not terminate or release all or any portion of the beneficial rights arising under this Agreement and running to the benefit of PropCo Property or that portion of the PropCo Property not released or terminated.

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

6. **Force Majeure.** The Parties will be excused from performing any of their respective obligations in this Agreement, except any obligations to pay any sums of money Agreement, so long as the performance of that obligation is prevented or delayed by an act of God, weather, fire, earthquake, flood, explosion, action of the elements, war, invasion,

insurrection, riot, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, or order of government or civil defense authorities. If any Party claims a force majeure delay under this Agreement, then they will give written notice of that delay to the other Parties promptly after the occurrence of that force majeure event, which notice will set forth the anticipated length of the delay which has been caused by that force majeure event.

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

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

9. **Indemnification.** Developer and every owners' association having a fee, leasehold, or other interest in any portion of the Developer Property that fails to comply with or is in breach of this Agreement (each, an "**Indemnifying Party**") agrees to protect, defend, indemnify, and hold harmless PropCo, LeaseCo, and any person or entity which controls, is controlled by, or is under common control with PropCo or LeaseCo and their respective employees, officers, directors, managers, shareholders, members, controlling persons, agents, representatives and assigns ("**Indemnified Parties**") from and against any and all claims, demands, causes of action, liabilities, judgments, costs and expenses ("**Claims**"), including, without limitation, reasonable attorneys' and accountant's fees and investigation costs, asserted against or incurred by the Indemnified Parties as a result of such Indemnifying Party's failure to comply with or breach of this Agreement; provided that the indemnity under this paragraph 9 does not apply to the extent that the Claims result from the gross negligence or willful misconduct of any of the Indemnified Parties, and provided further that Developer and any applicable owners' association will only be liable under this Agreement for those respective Claims caused directly by their own failures to comply with or breach of this Agreement. For clarification, in no way shall the indemnification obligations under this paragraph 9 apply to any owner of Residential Units (defined below) that may be developed or constructed on the Developer Property.

10. **Covenants Run with the Land.** The terms of this Agreement and each restriction on the Developer Property is a burden on the Developer Property, is appurtenant to and for the benefit of the PropCo Property and each part thereof, and run with the land. Notwithstanding the foregoing, this Agreement does not apply to individual residential condominium units to be developed and constructed on the Developer Property (each, a “**Residential Unit**”) to the extent such owners are not the Developer or an owners’ association having an ownership interest in Residential Units.

11. **Injunctive Relief.** In the event of any violation or threatened violation of this Agreement, any Party has the right to enjoin that violation or threatened violation in court. The right of injunction is in addition to all other remedies set forth in this Agreement or provided by law or in equity.

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

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

14. **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns; provided, however, that this Agreement does not apply to any Residential Unit or the owner(s) thereof to the extent such owners are not the Developer or an owners’ association having an ownership interest in Residential Units. In the event Developer transfers its title or interest to all or any specific portions of the Developer Property to a third-party purchaser or any owners’ association prior to such time as the Improvements have been completed on the Developer Property, then each of the then owners of the Developer Property or the transferred portion of the Developer Property (other than owners of Residential Units) and any owners’ associations that may be created to own or manage the Developer Property or that portion of the Developer Property will assume automatically the benefits of and be responsible for its own compliance with Developer’s rights, covenants, benefits, responsibilities, and duties in connection with this Agreement.

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

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

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

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

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

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

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

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

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

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

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

LEASECO SIGNATURE PAGE

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

LeaseCo Contact Information:

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

LEASECO:

TCFC LeaseCo LLC,
a Delaware limited liability company

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

With a copy to:

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

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

STATE OF Utah)
COUNTY OF SUMMIT : ss.

The foregoing instrument was acknowledged before me this 11th day of March, 2016, by Lawrence J. White, the CEO of TCFC Finance Co LLC, a Delaware limited liability company, the Sole Member of TCFC LeaseCo LLC, a Delaware limited liability company.



Tara Mifflin
NOTARY PUBLIC
Residing at: 1840 Sun Peak

My Commission Expires:
06/13/2016

**EXHIBIT A
TO
RESTRICTION AND DEVELOPMENT AGREEMENT**

LEGAL DESCRIPTION OF PROP Co PROPERTY

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

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

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

**EXHIBIT B
TO
RESTRICTION AND DEVELOPMENT AGREEMENT**

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

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

PARCEL RC22, RESORT CORE DEVELOPMENT AREA – RC22 SUBDIVISION PLAT; according to the Official Plat thereof, on file and of record in the Official Records of the Summit County, Utah Recorder, as Entry No. 1040743, in Book 2342, beginning at Page 68.