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AND WHEN RECORDED MAIL TO:**

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Mary Ann Trussell, Summit County Utah Recorder  
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By Founders Title Company  
Electronically Recorded

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**MODIFICATION TO LEASEHOLD DEED OF TRUST  
AND ASSIGNMENT OF RENTS**

Dated June 5, 2017

**BETWEEN**

**DV LUXURY RESORT LLC,  
a Delaware limited liability company**

**AND**

**CITIBANK, N.A.,  
a national banking association**

**MODIFICATION TO LEASEHOLD DEED OF TRUST  
AND ASSIGNMENT OF RENTS**

THIS MODIFICATION TO LEASEHOLD DEED OF TRUST AND ASSIGNMENT OF RENTS (this "Modification Agreement") is made to be effective as of June 5, 2017, and is entered into by and between the undersigned Grantor, undersigned Beneficiary and undersigned Trustee.

<u>Grantor:</u>	DV LUXURY RESORT LLC, a Delaware limited liability company
<u>Beneficiary; Bank:</u>	CITIBANK, N.A., a national banking association
<u>Trustee:</u>	PARK CITY TITLE COMPANY
<u>Deed of Trust:</u>	Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated August 2, 2012, and recorded August 3, 2012, as Entry No. 950632, in Book 2140, at Page 1348
<u>Assignment of Rents:</u>	Assignment of Leases and Rents dated August 2, 2012, and recorded August 3, 2012, as Entry No. 950633, in Book 2140, at Page 1385

**RECITALS**

A. Grantor has heretofore executed the above-described Deed of Trust and Assignment of Rents as security for, among other things, certain credit extended by Bank (the "Loan") evidenced by that certain Promissory Note dated August 2, 2012, in the original principal amount of \$113,377,974.91, executed by Grantor to the order of Bank (as amended, the "Note"), and that certain Loan Agreement dated August 2, 2012, executed by and between Bank and Grantor, as amended by that certain Amendment to Loan Agreement and Loan Documents effective as of October 25, 2012, that certain Second Amendment to Loan Agreement and Loan Documents effective as of May 1, 2014, and that certain Third Amendment to Loan Agreement and Loan Documents effective as of July 31, 2015 (as amended, the "Loan Agreement").

B. In connection with that certain Fourth Amendment to Loan Agreement and Loan Documents of even date herewith (the "Fourth Amendment"), Bank and Grantor have agreed, among other things, to release certain property from the Deed of Trust and the Assignment of Rents, to extend the maturity date of the Loan and Bank has agreed to make an additional advance of loan proceeds to be evidenced by the Note and secured by, among other things, the Deed of Trust and the Assignment of Rents.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration:

1. Amendment to Deed of Trust. The Deed of Trust is hereby modified as follows:
  - a. Exhibit A to the Deed of Trust, Legal Description of the Land, is hereby amended to reflect the release and reconveyance of the units as described in Exhibit A attached hereto.
  - b. Exhibit B to the Deed of Trust, Permitted Encumbrances, is hereby amended to add the permitted exceptions as described in Exhibit B attached hereto.
2. Amendment to Assignment of Rents. The Assignment of Rents is hereby modified as follows:
  - a. Exhibit A to the Assignment of Rents, Legal Description of the Land, is hereby amended to reflect the release and reconveyance of the units as described in Exhibit A attached hereto.
3. Partial Release and Reconveyance. Trustee does hereby reconvey, without warranty, to the Grantor or other persons entitled thereto, a portion of the trust property now held by it as the Trustee under the Deed of Trust, which portion is described in Exhibit A attached hereto. This is to be construed as a partial reconveyance. The lien of the Deed of Trust is to remain in full force and effect as to the remainder of the property secured thereby, which is described in Exhibit C attached hereto.
4. Amendment to Loan Documents. All references in the Loan Documents to the Deed of Trust shall mean the Deed of Trust as amended by the terms of this Modification Agreement. All references in the Loan Documents to the Assignment of Rents shall mean the Assignment of Rents as amended by the terms of this Modification Agreement.
5. No Further Modification. Except to the extent amended by the terms of this Modification Agreement, the terms of the Deed of Trust and Assignment of Rents shall remain in full force and effect and are hereby ratified and republished. This Modification Agreement shall control over any contrary or inconsistent term of the Deed of Trust or Assignment of Leases and Rents.
6. Ratification. The parties hereby ratify and confirm the continued force and effect of the Deed of Trust and the Assignment of Rents, each as modified by this Modification Agreement, without change except as specifically amended by this Modification Agreement.
7. No Release. Borrower specifically acknowledges and agrees that nothing contained in this Modification Agreement shall be understood or construed to be a satisfaction or release in whole or in part of any indebtedness evidenced by the Loan Documents, or to be an amendment or waiver of any of the provisions of the Loan Documents, except as specifically set

forth in this Modification Agreement, or as reasonably necessary to effect the amendments contained herein. Except as otherwise necessary to effect the intent hereof, the terms and conditions of the Loan Documents shall continue in full force and effect without change. Borrower hereby affirms its agreements to be bound by all of the obligations, covenants, liabilities and warranties set forth in the Deed of Trust and/or Assignment of Rents in accordance with their respective terms, as amended by this Modification Agreement. Borrower acknowledges that no defenses exist to the enforcement of the Loan Documents and no basis exists for asserting any offset or other claim against the Lender.

8. Savings Clause. If any provision in this Modification Agreement is invalid, illegal, or unenforceable, the remaining provisions shall not be affected or impaired thereby, and there shall be substituted for the invalid, illegal, or unenforceable provision the most similar provision that is valid, legal and enforceable.

9. Counterparts. This Modification Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Modification Agreement.

*[Signature Pages Follow]*



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Mateo )  
On June 1, 2017 before me, Sheila Shepherd notary public  
Date Here Insert Name and Title of the Officer  
personally appeared G. Christopher Smith  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles)

On 5/23/17 before me, Ryan Eazell  
(insert name and title of the officer)

personally appeared Donna Park  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Ryan Eazell (Seal)





EXHIBIT A

(Attached to and forming a part of the Modification to Leasehold Deed of Trust, and Assignment of Rents dated June 5, 2017 from DV Luxury Resort LLC for the benefit of Citibank, N.A.)

MODIFICATION TO LEGAL DESCRIPTION OF THE LAND

The Legal Description of the Land as attached to the Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated August 2, 2012, and recorded August 3, 2012, as Entry No. 950632, in Book 2140, at Page 1348 in the Office of the Recorder for Summit County, State of Utah, is hereby amended as follows:

In addition to the units previously released and reconveyed, the following units are released and reconveyed:

Units 801, 807, 821, 831, 863, 901, 905, 921, 933, 961, 983, 1001, 1021, 1031, 1043, 1081, 1202, and 1252 of the Hotel & Residences at Empire Canyon Resort, according to the Condominium Plat recorded in the office of the Summit County Recorder on January 20, 2010, as Entry No. 890518, and the First Amendment to Condominium Plat recorded June 23, 2011, as Entry No. 925198.

Tax Serial Nos.

HRECRC-801, HRECRC-807, HRECRC-821, HRECRC-831, HRECRC-863,  
HRECRC-901, HRECRC-905, HRECRC-921, HRECRC-933, HRECRC-961,  
HRECRC-983, HRECRC-1001, HRECRC-1021, HRECRC-1031,  
HRECRC-1043-1AM, HRECRC-1081, HRECRC-1202 and  
HRECRC-1252-1AM

EXHIBIT A

EXHIBIT B

(Attached to and forming a part of the Modification to Leasehold Deed of Trust,  
and Assignment of Rents dated June 5, 2017 from DV Luxury Resort LLC  
for the benefit of Citibank, N.A.)

MODIFICATION TO PERMITTED ENCUMBRANCES

The Permitted Encumbrances as attached as Exhibit B to the Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated August 2, 2012, and recorded August 3, 2012, as Entry No. 950632, in Book 2140, at Page 1348 in the Office of the Recorder for Summit County, State of Utah, are hereby amended to include the following:

1. LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING

Trustor: DV Luxury Resort LLC

Trustee: Founders Title Company

Beneficiary: Citibank, N.A.

Amount: \$113,377,974.91, plus interest

Dated: August 2, 2012

Recorded: August 3, 2012

Entry No.: 950632

Book/Page: 2140/1348

SUBSTITUTION OF TRUSTEE

Trustee: Park City Title Company

Recorded: October 19, 2012

Entry No.: 955522

Book/Page: 2152/426

2. ASSIGNMENT OF LEASES AND RENTS

Executed by: DV LUXURY RESORT LLC, A DELAWARE LIMITED LIABILITY  
COMPANY

Assignee: CITIBANK, N.A., a national banking association

Amount: \$113,377,974.91

Dated: August 2, 2012

Recorded: August 3, 2012

Entry No.: 950633

Book/Page: 2140/1385

3. UCC FINANCING STATEMENT

Debtor: DV LUXURY RESORT LLC

Creditor: CITIBANK, N.A.

For: See Document

Recorded: August 3, 2012

Entry No.: 950634

Book/Page: 2140/1394

EXHIBIT B

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EXHIBIT C

(Attached to and forming a part of the Modification to Leasehold Deed of Trust, and Assignment of Rents dated June 6, 2017 from DV Luxury Resort LLC for the benefit of Citibank, N.A.)

LEGAL DESCRIPTION OF THE LAND

All that certain real property situated in the County of Summit, State of Utah, described as follows:

LOT C OF PARCEL B-2 EMPIRE VILLAGE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT AND RECORDED AS MAY 23, 2007, AS ENTRY NO. 814178, IN THE OFFICE OF THE SUMMIT COUNTY RECORDER.

EXCEPTING THEREFROM ALL MINERAL AND SUBSURFACE RIGHTS INCLUDING ALL MINE TUNNELS, INCLUDING, BUT NOT LIMITED TO, THE MINE TUNNELS CONVEYED IN THE QUITCLAIM DEED RECORDED AUGUST 27, 2002, AS ENTRY NO. 630269, IN BOOK 1468, AT PAGE 1147.

AND

ALL UNITS OF THE HOTEL & RESIDENCES AT EMPIRE CANYON RESORT, ACCORDING TO THE CONDOMINIUM PLAT RECORDED IN THE OFFICE OF THE SUMMIT COUNTY RECORDER ON JANUARY 20, 2010, AS ENTRY NO. 890518, AND THE FIRST AMENDMENT TO CONDOMINIUM PLAT RECORDED JUNE 23, 2011, AS ENTRY NO. 925198 (THE "CONDOMINIUM PLAT") AND THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESIDENCES AT EMPIRE CANYON RESORT RECORDED IN THE OFFICE OF THE SUMMIT COUNTY RECORDER ON JANUARY 20, 2010, AS ENTRY NO. 890520, IN BOOK 2018, AT PAGE 0001 AND THE FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE RESIDENCES AT EMPIRE CANYON RESORT RECORDED JUNE 23, 2011, AS ENTRY NO. 925199, BOOK 2085 AT PAGE 1245 (THE "RESIDENTIAL DECLARATION") AND AS FURTHER DEFINED IN AND MADE SUBJECT TO THAT CERTAIN MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE HOTEL AND RESIDENCES AT EMPIRE CANYON RESORT RECORDED IN THE OFFICE OF THE SUMMIT COUNTY RECORDER ON JANUARY 20, 2010, AS ENTRY NO. 890519, IN BOOK 2017, AT PAGE 1884 (THE "MASTER DECLARATION") TOGETHER WITH AN UNDIVIDED INTEREST IN THE NON-EXCLUSIVE EASEMENT RIGHTS OVER THE ACCESS AREA, THE PARKING AREA, THE STORAGE AREA AND THE BALCONY/PATIO AREA APPURTENANT TO SUCH UNIT, AS DESIGNATED ON THE CONDOMINIUM PLAT.

LESS AND EXCEPTING UNITS 740, 801, 802, 807, 808, 820, 821, 830, 831, 840, 841, 844, 845, 850, 851, 852, 853, 860, 861, 863, 864, 880, 881, 883, 886, 901, 902, 905, 906, 920, 921, 930, 933, 940, 941, 944, 945, 950, 951, 952, 953, 960, 961, 962, 963, 980, 981, 983, 984, 1001, 1002, 1003, 1004, 1005, 1020, 1021, 1031, 1032, 1034, 1040, 1041, 1042, 1043, 1050, 1051, 1052, 1062, 1063, 1081, 1082, 1083, 1150, 1151, 1152, 1162, 1182, 1202, 1250, 1252, PS1, AND PS2.

EXHIBIT C

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TOGETHER WITH THE GENERAL EASEMENT ACROSS THE DALY WEST SHAFT SITE FOR ACCESS TO THE DALY WEST SHAFT AND USE, OPERATION AND MAINTENANCE AND REPAIR OF EXISTING UTILITY LINES AS RESERVED IN THE SPECIAL WARRANTY DEED RECORDED AUGUST 27, 2002 AS ENTRY NO. 630270, IN BOOK 1468, AT PAGE 1153.

The following is shown for information purposes only: EV-B-2-C, HRECRC-1, HRECRC-2, HRECRC-3, HRECRC-4, HRECRC-5, HRECRC-6, HRECRC-7, HRECRC-8, HRECRC-9, HRECRC10, HRECRC-601, HRECRC-733, HRECRC-771, HRECRC-HOTEL