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Page 1 of 10

Mary Ann Trussell, Summit County Utah Recorder

01/05/2018 02:14:06 PM Fee \$43.00

By Founders Title Company

Electronically Recorded

17-013003

Above Space for Recorder's Use Only

SECOND MODIFICATION TO LEASEHOLD DEED OF TRUST

Dated January 5, 2018

AMONG

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

AND

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

AND

**PARK CITY TITLE COMPANY,
as Trustee**

SECOND MODIFICATION TO LEASEHOLD DEED OF TRUST

THIS SECOND MODIFICATION TO LEASEHOLD DEED OF TRUST (this "Modification Agreement") is made to be effective as of January 5, 2018, and is entered into by and among 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, and as modified by that certain Modification to Leasehold Deed of Trust and Assignment of Rents dated June 5, 2017 and recorded June 5, 2017 as Entry No. 1070839, in Book 2412, at Page 1429

RECITALS

A. Grantor has heretofore executed the above-described Deed of Trust 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, that certain Third Amendment to Loan Agreement and Loan Documents effective as of July 31, 2015, and that certain Fourth Amendment to Loan Agreement and Loan Documents effective as of June 5, 2017 (as amended, the "Loan Agreement").

B. In connection with that certain Fifth Amendment to Loan Agreement and Loan Documents of even date herewith (the "Fifth Amendment"), Bank and Grantor have agreed, among other things, that Bank will make an additional advance of loan proceeds to be evidenced by the Note and secured by, among other things, the Deed of Trust.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration:

1. Amendment to Deed of Trust. Subsections 1.8 and 1.11 of the Deed of Trust are hereby amended to provide that in addition to the single advance term loan in the original principal amount of \$113,377,974.19 from Beneficiary to Grantor, as evidenced by the Note, which as of the date hereof, has a current outstanding balance of \$65,000,000.00, Beneficiary has agreed to re-advance \$30,000,000.00 to Grantor. Such re-advance shall be evidenced by the terms of the Note and secured pursuant to the terms of the Deed of Trust. Such re-advance shall constitute a part of the Loan and a part of the Secured Obligations, as such terms are defined in the Deed of Trust. Any and all references in the Deed of Trust are amended accordingly.”

2. Amendment to Loan Documents. All references in the Deed of Trust to the Loan Agreement shall include that certain Fifth Amendment to Loan Agreement and Loan Documents dated as of the date of this Modification Agreement. All references to the Deed of Trust shall mean the Deed of Trust as amended by the terms of this Modification Agreement.

3. No Further Modification. Except to the extent amended by the terms of this Modification Agreement, the terms of the Deed of Trust 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.

4. Ratification. The parties hereby ratify and confirm the continued force and effect of the Deed of Trust, as modified by this Modification Agreement, without change except as specifically amended by this Modification Agreement.

5. 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 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.

6. 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.


7. 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]

IN WITNESS WHEREOF, Grantor and Bank have executed this Modification Agreement by and through their duly authorized representatives to be effective as of the date first above written.

GRANTOR:

DV LUXURY RESORT LLC, a Delaware limited liability company

By: 
Name: G. Christopher Smith
Title: President

[ATTACH APPROPRIATE NOTARY PAGE]

[Signatures and acknowledgments continued on next page.]

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)

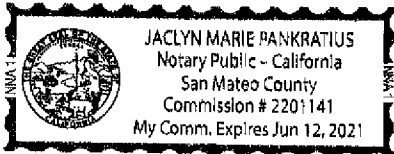
On December 21, 2017 before me, Jaclyn Marie Pankratius, Notary Public
Date Here Insert Name and Title of the Officer

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 Jaclyn Marie Pankratius
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: _____

BANK:

CITIBANK, N.A.,
a national banking association

By: 
Name: Donna Park
Title: Vice President

[ATTACH APPROPRIATE NOTARY PAGE]

[Signatures and acknowledgments continued on next page.]

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 December 29, 2017 before me, Martha Salas
(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 Martha Salas (Seal)



TRUSTEE:

PARK CITY TITLE COMPANY

By:

Nari Trotter
Nari Trotter, President

State of Utah)
 SS
County of Summit)

On this 3rd day of January, 2018, Nari Trotter did personally appear before me, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed on this instrument, and acknowledged that she is the President of Park City Title Company and that the within and foregoing instrument was signed in behalf of the said entity.

[Signature]
NOTARY PUBLIC

My Commission Expires:

August 6, 2018

[SEAL]

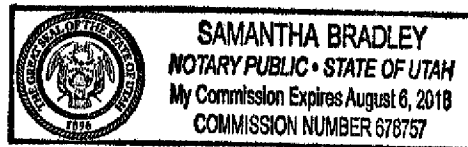


EXHIBIT A

(Attached to and forming a part of the Second Modification to Leasehold Deed of Trust,
dated January 5, 2018 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.

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