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Rhonda Francis Summit County Recorder

03/08/2019 12:34:10 PM Fee \$20.00

By PARK CITY TITLE

Electronically Recorded

WHEN RECORDED, MAIL TO:

DV LUXURY RESORT LLC,  
A Delaware limited liability company  
1389 Center Drive, Suite 105  
Park City, UT 84098

File No. 31199

**AMENDMENT AND PARTIAL RELEASE  
OF LEASE AGREEMENT AND  
AMENDMENT OF MEMORANDUM OF LEASE**

This Amendment and Partial Release of Lease Agreement and Amendment of Memorandum of Lease ("Release Agreement") is made and entered into effective as of March 8, 2019, by and between TALISKER EMPIRE PASS HOTEL LP, a Delaware limited partnership, successor-by-conversion to TALISKER EMPIRE PASS HOTEL, LLC, a Delaware limited liability company ("Landlord"), and DV LUXURY RESORT, LLC, a Delaware limited liability company ("Tenant"). Landlord and Tenant may be referred to herein individually as a Party, or collectively as the Parties.

RECITALS

A. Landlord and Tenant entered into that certain Agreement of Lease, dated May 23, 2007, as amended (the "Lease Agreement"), for the lease of certain real property more particularly described therein (the "Property"). A Memorandum of Lease, giving notice of the Lease Agreement, was recorded in the Office of the Summit County Recorder on May 23, 2007, as Entry No. 814188, in Book 1867 at Page 941 (the "Lease Memorandum")

B. In accordance with, and subject to the terms and conditions of, the Lease Agreement, upon request of Tenant, Landlord, as the owner and lessor of the Property, has agreed to convey to Tenant's designee, WEST HOLDINGS AND INVESTMENTS, LLC, a Wyoming limited liability company, ("Buyer"), all of Landlord's right, title and interest in and to such portion of the Property as is described in Exhibit A attached hereto and incorporated herein by this reference (the "Released Property").

C. Section 20.1(b) of the Lease Agreement provides that, upon the closing of the conveyance of the Released Property to Buyer, the Lease Agreement shall be amended to provide that the "Demised Premises" under the Lease Agreement no longer includes the Released Property, and Section 14.7.1 of the Lease Agreement requires that an amendment to the Lease Memorandum be recorded with respect to any amendment to the Lease Agreement.

D. The parties intend that this Release Agreement shall be both (x) the amendment of the Lease Agreement required by Section 20.1(b) of the Lease Agreement; and (y) the amendment of the Lease Memorandum with respect to the conveyance of the Released Property to Buyer required by Section 14.1.7 of the Lease Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Amendment to Agreement of Lease and Partial Release. The Lease Agreement is hereby amended to exclude the Released Property from the "Demised Premises" thereunder. With respect to the Released Property only, any and all liens, leasehold interests or other encumbrances created by, or arising under, the Lease Agreement are hereby released. All right, title, and interest of Tenant in and to the Released Property, whether under the Lease Agreement or otherwise, is extinguished as of the date of this Release Agreement. In conjunction therewith, the Released Property is hereby released from the Lease Memorandum, the Lease Memorandum shall no longer be of any force or effect with respect to the Released Property, the "Leased Property" as described in the Lease Memorandum shall no longer include the Released Property, and the Lease Memorandum is hereby amended and modified accordingly. Except as expressly set forth in this Section 1 (and then only with respect to the Released Property), nothing in this Release Agreement shall be construed or interpreted as modifying, amending, terminating, limiting or affecting in any manner the obligations and liabilities of Landlord and Tenant with respect to the Demised Premises (excluding the Released Property and any other units previously released from the Demised Premises pursuant to a written agreement signed by both Landlord and Tenant), whether pursuant to the Lease Agreement or otherwise.

Governing Law. This Release Agreement shall be governed and controlled by the laws of the State of Utah.

Further Assurances. Each Party agrees to do, execute, acknowledge and deliver all such further acts, instruments and assurances, and to take such further action as shall be reasonably necessary or desirable to fully carry out the express purpose and intent of this Release Agreement.

Amendment. This Release Agreement sets forth all of the terms, conditions and understandings between Landlord and Tenant with respect to the amendment and partial release of the Lease as described herein, and there are no terms, conditions or understandings, either oral or written, between the parties hereto with regard to the amendment or partial release of the Lease Agreement other than as set forth herein. No alteration, amendment, change or addition to this Release Agreement shall be binding unless reduced to writing and signed by all of the parties hereto.

Binding Effect. The covenants, conditions and agreements made and entered into by the Parties hereto are declared to be binding upon and to inure to the benefit of their respective heirs, executors, administrators, successors, and/or assigns.

Counterparts. This Release Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with the other signed counterparts, shall constitute one Release Agreement, which shall be binding upon and effective as to all Parties.

IN WITNESS WHEREOF, the Parties have executed this Release Agreement as of the day and year set forth above.

LANDLORD:

TALISKER EMPIRE PASS HOTEL LP;  
a Delaware limited partnership,  
successor-by-conversion to  
TALISKER EMPIRE PASS HOTEL LLC,  
a Delaware limited liability company  
By: TALISKER EMPIRE PASS HOTEL  
CLASS A HOLDING CO LP,  
a Delaware limited partnership,  
its General Partner

By: 

Name: D. Asher Bistric

Its Authorized Signatory

STATE OF New York )  
COUNTY OF New York ) : ss.

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of March, 2019 by D. Asher Bistker, the Authorized Signatory of Talisker Empire Pass Hotel Class A Holding Co LP, a Delaware limited partnership, as General Partner for Talisker Empire Pass Hotel LP, a Delaware limited partnership, successor-by-conversion to Talisker Empire Pass Hotel LLC, a Delaware limited liability company.

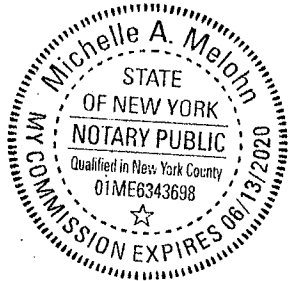
Michelle Melohn

NOTARY PUBLIC

My Commission Expires:

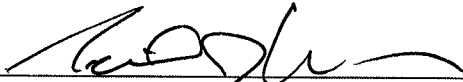
6/13/2020

(SEAL)



**TENANT:**

DV LUXURY RESORT LLC,  
a Delaware limited liability company


By:   
Neil Johnson, Authorized Signatory

STATE OF UTAH )

:ss.

COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of March, 2019 by Neil Johnson the Authorized Signatory of DV Luxury Resort LLC, a Delaware limited liability company.

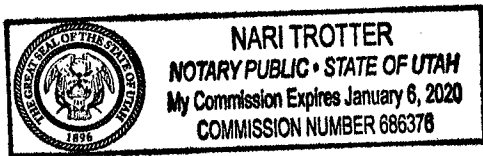


Notary Public

My Commission Expires:

1/6/2020

(SEAL)



**EXHIBIT A**

**DESCRIPTION OF RELEASED PROPERTY**

Unit No. 1021, 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, the First Amendment to Condominium Plat recorded June 23, 2011 as Entry No. 925198, and the Second Amendment to Condominium Plat recorded September 2, 2015 as Entry No. 1027256 (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 (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.

Tax ID HRECRC-1021