

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

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ENTRY NO. 00950633

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Assignment PAGE 1/9

ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE 120.00 BY FOUNDERS TITLE COMPANY



5-12370

Above Space for Recorder's Use Only

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), dated as of August 2, 2012 is given by DV LUXURY RESORT LLC, a Delaware limited liability company ("Assignor"), whose address is c/o Ohana Real Estate Investors LLC, 1991 Broadway St., Suite 140, Redwood City, CA 94063-2068, Attn: Sarah Mancuso, in favor of CITIBANK, N.A., a national banking association, whose address is 787 West 5th Street, 28th Floor, Los Angeles, CA 90071, Attention: Jens Krause ("Lender").

RECITALS

A. Assignor has entered into a Loan Agreement, dated as of the date hereof, providing for a loan (the "Loan") from Lender to Assignor in the amount of \$113,377,974.91.

B. The Loan is evidenced by a Promissory Note, dated the date hereof, from Assignor payable to Lender in the face amount of \$113,377,974.91 (the "Note"). The Note is secured by, among other things, a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, from Assignor to the Trustee listed therein, for the benefit of Lender (the "Deed of Trust") encumbering the Property (as defined below). Capitalized terms used herein but not defined herein shall have the meaning given them in the Deed of Trust.

C. Assignor has entered into and may hereafter enter into written and/or oral lease(s) or occupancy arrangements affecting all or part of the land described on Exhibit A attached hereto (the "Land") and/or the improvements thereon (the Land, together with all such improvements is referred to herein as the "Property").

D. The assignment of Assignor's rights in such Leases (as defined below), as more fully provided in this Assignment, is a condition precedent to the making of the Loan by Lender.

AGREEMENT

THEREFORE, in order to induce Lender to make the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees with Lender as follows:

1. Assignment.

(a) Assignor hereby absolutely and unconditionally grants, bargains, sells, transfers, assigns and conveys to Lender, its successors and assigns:

(i) all right, title and interest that Assignor has or may hereafter have in and to all leases, tenancies or other occupancy arrangements, whether oral or written, now or hereafter entered into in connection with or affecting the Property, or any part thereof, including without limitation, that certain Agreement of Lease, dated as of May 23, 2007, between Talisker Empire Pass Hotel LLC, as landlord, and Assignor, as tenant (as amended, restated or supplemented from time to time, the "Ground Lease") (collectively, the "Leases");

(ii) all Rents from or in connection with the Property (the term "Rents" as used herein shall be construed as including without limitation any and all of the rents, income, issues, profits, avails and any other benefits now due and that may hereafter become due under or by virtue of any Leases (other than the Ground Lease), or letting of or any agreement for the use or occupancy of any part of the Property that may have heretofore been made or may hereafter be made or agreed to between Assignor or any other owner of the Property and any tenant or occupant of any part of the Property, or that may be made or agreed to by Lender under the power herein granted); and

(iii) all of Assignor's right, title and interest in and to all security deposits in connection with any Leases; on the condition that Lender shall have no obligation to a lessee with respect to such security deposit unless and until Lender comes into actual possession and control of said deposit.

2. Covenants of Assignor. Assignor hereby covenants and agrees as follows as to all Leases (other than the Ground Lease):

(a) Assignor shall abide by, perform and discharge each and every material obligation, material covenant and material agreement that is to be performed by the lessor under the Leases, to the extent that a failure to do so would be reasonably likely to result in a Material Adverse Change;

(b) at the sole cost and expense of Assignor, Assignor shall enforce or secure the material performance of each and every material obligation, covenant, condition and

agreement of the Leases to be performed by the lessees thereunder, to the extent that a failure to do so would be reasonably likely to result in a Material Adverse Change;

(c) at Assignor's sole cost and expense, Assignor shall appear in and defend any action or proceeding arising under, growing out of or in any material manner connected with any of the Leases hereby assigned, or the material obligations, material duties or material liabilities of the lessor or lessee thereunder or any guarantor thereof;

(d) Assignor shall not request, consent to, agree to or accept subordination of the Leases to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting all or any part of the Property, other than the Deed of Trust;

(e) Assignor shall not accept any accelerated payment of rent under any of the Leases for any part of the Property; and

(f) Assignor shall not make or execute any other assignment of Leases or Rents from the Property or any part thereof during the term of this Assignment.

3. Representations and Warranties of Assignor. Assignor hereby represents and warrants to Lender that:

(a) Assignor has not executed any prior assignment of Leases with respect to the Property or any of the Leases that are presently outstanding, Assignor is entitled to receive Rents from the Property and to enjoy all other rights mentioned herein and Assignor has free right to transfer to Lender such rights, interests, powers and authorities as are herein granted or conferred;

(b) Assignor has not performed any act or executed any instrument that would prevent Lender from exercising or obtaining the benefit of any of the terms and conditions hereof;

(c) to Assignor's actual knowledge, Assignor has not accepted rent under any of the Leases for any part of the Property for any period other than the current period for which rent has already become due and payable; and

(d) to Assignor's actual knowledge, Assignor has provided Lender true and correct copies of each of the material Leases and all material modifications and material amendments thereto.

4. Default and Remedies. Assignor further agrees with Lender as follows:

(a) Upon or at any time after the occurrence and continuation of any Event of Default (as defined in the Loan Agreement), (i) Lender shall at once become entitled to the Rents of the Property, from the date of such occurrence and continuing during the pendency of any

proceedings for sale by the trustee or foreclosure proceedings, and the period of redemption, if any and (ii) Lender shall be entitled to a receiver for the Property, and of the Rents thereof. Lender shall be entitled to such receiver as a matter of right, without regard to the solvency or insolvency of Assignor, or of the then owner of the Property, and without regard to the value thereof, and such receiver may be appointed by any court of competent jurisdiction upon *ex parte* application, and without notice, notice being hereby expressly waived, and all Rents therefrom shall be applied by such receiver to the payment of the Secured Obligations (as defined in the Deed of Trust) according to the orders and directions of the court, or in the absence of such orders or directions, in the manner set forth in (d) below.

(b) Upon or at any time after the occurrence and during the continuance of any Event of Default, to the extent permitted by applicable law, Lender may, at its option, without notice, and whether or not the indebtedness evidenced by the Note and secured hereby shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, (i) enter upon, take possession of, manage and operate the Property, or any part thereof (including, without limitation, making necessary repairs, alterations and improvements to the Property); (ii) make, cancel, enforce or modify Leases; (iii) obtain and evict tenants; (iv) fix or modify Rents; (v) do any acts which Lender deems reasonably proper to protect the security hereof; and (vi) either with or without taking possession of the Property, in its own name sue for or otherwise take any and all actions Lender deems necessary or advisable to collect and receive such Rents, including, without limitation, those past due and unpaid. In connection with the foregoing, Lender shall be entitled and empowered to employ attorneys and their staff, and management, rental or other agents in and about the Property and to effect the matters which the Lender is empowered to do, and the fees, charges, costs and expenses of such persons shall be so much additional indebtedness evidenced by the Note secured hereby. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect notice of default under the Note or invalidate any act done pursuant to said notice.

(c) Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Lender hereunder without investigating the reason for any action taken by Lender, or the validity or the amount of indebtedness owing to Lender, or the existence of any default under the Note, or under or by reason of this Assignment, or the application to be made by Lender of any amounts to be paid to Lender. The sole signature of Lender shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of Lender for any sums received shall be a full discharge and release therefor to any such tenant or occupant on the Property. Checks for all or any part of the rentals collected under this Assignment shall be drawn to the exclusive order of Lender unless Assignor has the right to retain rents pursuant to Section 5 below.

(d) Any monies received by Lender or receiver hereunder shall be applied when received from time to time in payment of (i) any fees or expenses due Lender hereunder or under any of the Loan Documents, (ii) costs of collections and all costs of renting, maintaining,

altering, renovating, operating, repairing or managing the Property, (iii) any taxes, assessments or other liens affecting the Property regardless of the delinquency or priority, and (iv) all amounts due under the Note and Loan Documents, such application to be in such order as Lender may determine. The acceptance of this Assignment by Lender or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any tenancy or lease nor an assumption of any liability under any such tenancy or lease.

(e) Assignor hereby grants Lender a power of attorney and appoints Lender as Assignor's attorney-in-fact for the purpose of Lender carrying out the rights and remedies of Lender hereunder; provided that Lender will not exercise any such powers unless and until an Event of Default has occurred and is continuing. The appointment of the Lender as Assignor's attorney-in-fact hereunder is coupled with an interest and is irrevocable, and Assignor expressly grants to Lender, among other things, the authority to sign the name of Assignor and to bind Assignor on all papers and documents relating to the operation, leasing and maintenance of the Property.

5. Assignor's Right to Retain Rents. It is the parties' intention that this Assignment constitutes an absolute and present assignment. However, it is understood that so long as no Event of Default shall have occurred and be continuing, Assignor shall have the right to collect, but not in excess of one month prior to accrual under such Lease, all Rents from the Property, but only as trustee for the benefit of Lender; and Assignor shall apply the amounts so collected first to the payment of interest and principal and all other sums due and payable under the Note, this Assignment and the other Loan Documents, and thereafter, so long as no Event of Default has occurred and is continuing, the balance of such Rents shall be retained by Assignor for its own account. Nothing contained in this paragraph 5 or elsewhere in this Assignment or any other Loan Document shall be construed to make Lender a "mortgagee-in-possession."

6. No Obligation of Lender. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases assigned hereunder or under or by reason of this Assignment.

7. Waiver/Further Cooperation. Assignor further agrees as follows:

(a) Assignor will execute upon request of Lender any and all instruments reasonably requested by Lender to carry out the terms and conditions of this Assignment or the assignments intended hereby;

(b) Lender's omission or failure to give any notice of or under this Assignment to Assignor or any lessee, tenant or other occupant of the Property or any part thereof, or to collect any such Rents therefrom, or any part thereof, shall not constitute or be deemed a waiver of any of Lender's rights hereunder, under any other Loan Document; and

(c) on written request of the Lender, Assignor will execute and deliver to the Lender such instruments or documents confirming the assignment of Leases to Lender.

8. Release. The recording of a full reconveyance of the Deed of Trust shall automatically constitute a full release of this Assignment and shall constitute a reconveyance hereunder.

9. Miscellaneous.

(a) All notices, demands or documents that are required or permitted to be given or served hereunder shall be given or served as provided in the Deed of Trust.

(b) This Assignment shall be governed by and construed under the laws of the State of Utah.

(c) This Assignment and all of the terms, covenants and conditions thereof shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

(d) Notwithstanding any future amendment to or modification of any Loan Document other than this Assignment, this Assignment and the rights and benefits hereby assigned and granted shall continue in full force and effect in accordance with the terms of this Assignment.

(e) This Assignment may not be changed, amended, modified, abridged, canceled or discharged other than by a written instrument signed by Lender and Assignor.

(f) Time is of the essence of this Assignment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED as of the day and year first set forth above.

ASSIGNOR:

DV LUXURY RESORT LLC, a Delaware limited liability company

By: [Signature]
Name: Michael S Mohr
Title: Manager

RW 7/30/12
[UTAH NOTARY]
Hawaii

Doc. Date: 7/30/12 # Pages 1

Notary Name: Randy Wagner First Circuit

Doc. Description Assignment of
leases

[Signature] 7/30/12
Notary Signature Date



[Signature Page to Assignment of Leases]

EXHIBIT 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 820, 841, 844, 845, 852, 853, 861, 930, 952, 963, 1004, 1034, 1082, 1150, 1151, 1182, 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.

EV-B-2-C

The following is shown for informational purposes only: Tax Parcel No. HRECRC-1, HRECRC-2, HRECRC-3, HRECRC-4, HRECRC-5, HRECRC-6, HRECRC-7, HRECRC-8, HRECRC-9, HRECRC-10, HRECRC-601, HRECRC-733, HRECRC-740-1AM, HRECRC-771, HRECRC-801, HRECRC-802, HRECRC-807, HRECRC-808, HRECRC-821, HRECRC-830, HRECRC-831, HRECRC-840, HRECRC-850, HRECRC-851, HRECRC-860, HRECRC-863, HRECRC-864, HRECRC-880, HRECRC-881, HRECRC-883, HRECRC-886, HRECRC-901, HRECRC-902, HRECRC-905, HRECRC-906, HRECRC-920, HRECRC-921, HRECRC-933, HRECRC-940, HRECRC-941, HRECRC-944, HRECRC-945, HRECRC-950, HRECRC-951, HRECRC-953, HRECRC-960, HRECRC-961, HRECRC-962, HRECRC-980, HRECRC-981, HRECRC-983, HRECRC-984, HRECRC-1001, HRECRC-1002, HRECRC-1003, HRECRC-1005, HRECRC-1020, HRECRC-1021, HRECRC-1031, HRECRC-1032, HRECRC-1040-1AM, HRECRC-1041-1AM, HRECRC-1042-1AM, HRECRC-1043-1AM, HRECRC-1050, HRECRC-1051, HRECRC-1052, HRECRC-1062, HRECRC-1063, HRECRC-1081, HRECRC-1083, HRECRC-1152, HRECRC-1162, HRECRC-1202, HRECRC-1250-1AM, HRECRC-1252-1AM, HRECRC-PS1-1AM, AND HRECRC-HOTEL.