

WHEN RECORDED, RETURN TO:

Thomas G. Bennett  
Ballard Spahr LLP  
201 So. Main, Suite 800  
Salt Lake City, UT 84111-2221

**ENTRY NO. 00925199**

06/23/2011 02:30:55 PM B: 2085 P: 1245

Declaration PAGE 1/14

ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE 130.00 BY PARK CITY TITLE



**FIRST AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE RESIDENCES AT EMPIRE CANYON RESORT**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for The Residences at Empire Canyon Resort (this “**First Amendment**”) is executed and made effective as of April 20<sup>th</sup>, 2011 by DV Luxury Resort LLC, a Delaware limited liability company (“**Hotel Owner**”).

**RECITALS**

A. Hotel Owner recorded the Declaration of Covenants, Conditions and Restrictions for The Residences at Empire Canyon Resort on January 20, 2010 in the Official Records of Summit County, Utah, as Entry No. 890520 in Book 2018 at Page 1 (the “**Declaration**”).

B. The Declaration was recorded against that certain real property located in Summit County, Utah, as more particularly described on Exhibit A which is attached hereto and incorporated herein by this reference.

C. Under Section 14.1.2 of the Declaration, Hotel Owner may unilaterally amend the Declaration “to make technical corrections to fix mistakes or remove/clarify ambiguities.”

D. Hotel Owner certifies that this First Amendment, and a related Plat amendment, are being executed and recorded to correct technical errors in the original Plat and Declaration.

**AMENDMENT**

NOW, THEREFORE, Hotel Owner hereby amends the Declaration as follows:

1. Defined Terms and Status of Recitals. Capitalized terms used and not otherwise defined in this First Amendment shall have the meaning or meanings given to them in the Declaration. The Recitals set forth above shall constitute a portion of the terms of this First Amendment.

2. Replacement of Exhibit “B”. Exhibit “B” to the Declaration is hereby deleted in its entirety and replaced with Exhibit B attached to this First Amendment and incorporated herein by this reference.



**ACKNOWLEDGMENT CERTIFICATE**

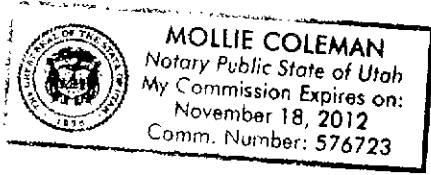
State of Utah )  
County of Wasatch ) §

On this 20 day of April, in the year 2011, before me Mollie Coleman,  
a notary public, personally appeared Alex Hill

proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are)  
subscribed to this instrument, and acknowledged (he/she/they) executed the same. Witness my  
hand and official seal.

*Mollie Coleman*

NOTARY PUBLIC



S  
E  
A  
L

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California )  
 County of San Diego )

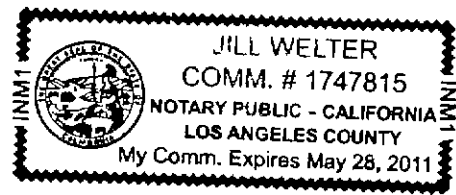
On February 22, 2011 before me, Jill Welter, Notary Public  
(here insert name and title of the officer)

personally appeared Alex Hill

personally known to me (or 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.

WITNESS my hand and official seal.

Jill Welter  
 Signature of Notary Public



(Seal)

## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

**DESCRIPTION OF THE ATTACHED DOCUMENT**  
Amend. to Mortgage Credo Declaration  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages 10 Document Date 2/22/11  
 \_\_\_\_\_  
(Additional information)

**CAPACITY CLAIMED BY THE SIGNER**

Individual (s)  
 Corporate Officer  
 \_\_\_\_\_  
(Title)

Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a public officer, include the county name (e.g., Sheriff of San Diego County).
- Securely attach this document to the signed document

00925199 Page 4 of 4 Summit County


## CONSENT TO RECORD AND ACKNOWLEDGEMENT

### (Talisker Empire Pass Hotel LLC)

The undersigned TALISKER EMPIRE PASS HOTEL LLC ("Lessor"), is the lessor under that certain Agreement of Lease dated May 23, 2007, by and between Lessor and Hotel Owner, as amended by that certain First Amendment to Agreement of Ground Lease dated July 17, 2008 and as the same may hereafter be amended (collectively, the "Talisker Lease"). Lessor hereby consents to the recordation of this First Amendment. Lessor, for itself and its successors and assigns, covenants and agrees that notwithstanding any termination of the Talisker Lease pursuant to the terms thereof, Lessor shall not, in the exercise of any of its rights to terminate under the Talisker Lease or thereafter as fee owner of the land and the interests therein that were subject to the Talisker Lease at the time of such termination, disturb or interfere with the rights or privileges of Unit Owners (or any of them) or the Residential Association under this First Amendment (but without limiting or restricting Lessor's exercise of its rights and remedies, in its capacity as successor to the interests of Hotel Owner, under this First Amendment), and Lessor hereby acknowledges and agrees that this First Amendment shall remain in full force and effect and that such land and the interests therein shall be subject to all of the terms and conditions of this First Amendment, notwithstanding any such termination of the Talisker Lease. In addition, in the event of the termination of the Talisker Lease, Lessor acknowledges and agrees that it shall honor and assume all of the obligations and responsibilities of Hotel Owner under this First Amendment to the same extent as if the termination of the Talisker Lease had not occurred.

The above consent and acknowledgement shall not act to modify, affect, vitiate, limit or alter the obligations of: (i) Hotel Owner under the Talisker Lease, as between Hotel Owner and Lessor; or (ii) the obligations and conditions of the Hotel Owner and/or owners of the Units with respect to those terms, conditions and other provisions set forth in the Talisker Lease and referenced or otherwise incorporated in this First Amendment and/or the Declaration, all of which shall remain enforceable against and/or binding upon all persons bound by this First Amendment and/or the Declaration so long as the Talisker Lease remains effective.

TALISKER EMPIRE PASS HOTEL LLC, a  
Delaware limited liability company, by its  
Manager, MRD Management, Inc., a  
Delaware corporation

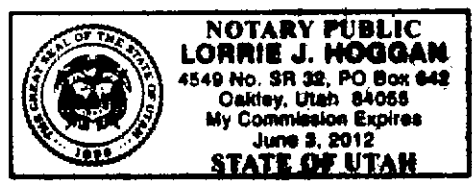
By:   
Its: Les President

STATE OF Utah )  
 ) :SS.  
COUNTY OF Summit )

The foregoing instrument was acknowledged before me on March 11, 2011, by Mark R. Thorne, as Vice President of MRD MANAGEMENT, INC., a Delaware corporation, Manager of TALISKER EMPIRE PASS HOTEL LLC, a Delaware limited liability company.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 6-3-12  
Residing at: Oakley, Utah



**CONSENT TO RECORD AND SUBORDINATION**

**(WELLS FARGO BANK, N.A.)**

The undersigned Wells Fargo Bank, National Association, is the beneficiary under that certain Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of May 27, 2008, and recorded in the Office of the Summit County, Utah Recorder on July 1, 2008, as Entry No. 848512 in Book 1937 at Page 1720, as amended by that certain Modification Agreement (Additional Advance and Consolidation) and Addendum to Deed of Trust recorded in said Office on January 30, 2009, as Entry No. 864031 in Book 1965 at Page 808, and further modified by that certain Modification Agreement (Secured Swap Contract) recorded in said Office on May 15, 2009 as Entry No. 872621, in Book 1982 at Page 915, together with related loan documents (collectively, the "Deed of Trust") which constitutes a lien of record against the fee simple estate of the property subject to the foregoing First Amendment. Wells Fargo Bank, National Association, hereby subordinates the lien and encumbrance of the Deed of Trust to this First Amendment and to the Declaration (as defined in this First Amendment), as well as to the condominium plat for The Hotel & Residences at Empire Canyon Resort recorded in said Office on January 20, 2010, as Entry No. 890518 and the First Amendment thereto which shall be recorded in said Office concurrently herewith (collectively, the "Plat"), and consents to the recordation of the Declaration, the First Amendment and the Plat.

WELLS FARGO BANK, NATIONAL ASSOCIATION

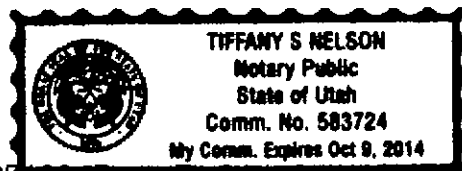
By: [Signature]  
Its: Vice President

STATE OF Utah )  
COUNTY OF Salt Lake ) :SS.

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of March 2011, by Mike Paulsen, the VP of Wells Fargo Bank, National Association

[Signature]  
NOTARY PUBLIC

My Commission Expires: 10/9/14  
Residing at: Magna UT



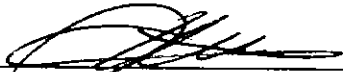
**CONSENT TO RECORD AND SUBORDINATION**

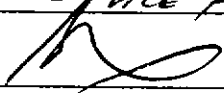
**(EUROHYPO AG)**

The undersigned EUROHYPO AG, New York Branch, is the holder of that certain Leasehold Construction Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement dated as of August 5, 2008, recorded October 7, 2008, as Entry No. 856376 in Book 1952 at Page 61 of the official records of Summit County, Utah, as amended by that certain Agreement Amending Leasehold Construction Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement dated as of December 2, 2009, recorded December 2, 2009, as Entry No. 887584, in Book 2012 at Page 249 in the official records of Summit County, Utah, and as further amended by that certain Second Agreement Amending Leasehold Construction Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement dated as of December 28, 2010, recorded January 4, 2011, as Entry No. 00914361, in Book 2064 at Page 0839 in the official records of Summit County, Utah, together with related loan documents (collectively, the "Deed of Trust") which constitutes a lien of record against the property subject to the foregoing First Amendment. EUROHYPO AG, New York Branch, hereby subordinates the lien and encumbrance of the Deed of Trust to this First Amendment, and consents to the recordation of such First Amendment and the related plat amendment recorded concurrently herewith.

No such subordination shall result in any waiver by the undersigned of any of its rights against the trustor under the Deed of Trust or any of the other Loan Documents (as defined in the Deed of Trust).

EUROHYPO AG, NEW YORK BRANCH

By:   
Its: VICE PRESIDENT

By:   
Its: Stephen Cox  
Executive Director



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

The foregoing instrument was acknowledged before me this 4 day of March 2011, by Wald Kamm, the Vice President and Stephen Cox, the Executive Director of EUROHYPO AG, New York Branch.

Patricia A. Ferro  
NOTARY PUBLIC

My Commission Expires: July 2, 2011  
Residing at: Eurohypo AG  
1114 Ave of Americas  
N.Y. N.Y. 10036

PATRICIA A. FERRO  
Notary Public - State of New York  
No. 01FE6170163  
Qualified in Kings County  
My Commission Expires July 2, 2011

**Certificate Filed in  
New York County**

**EXHIBIT A**

**Legal Description**

Lot C of Parcel B-2 EMPIRE VILLAGE SUBDIVISION, according to the Official Plat recorded as of May 23, 2007 as Entry No. 814178 in the office of the Summit County Recorder, Summit County, Utah. EV-B-2-C.

**EXHIBIT B**

**Schedule of Unit Areas; Percentage Ownership Interests\***

Unit Number	Unit Area* (in square feet)	Percentage Ownership Interest**
AHU 1	593	0.25%
AHU 2	593	0.25%
AHU 3	593	0.25%
AHU 4	593	0.25%
AHU 5	898	0.38%
AHU 6	593	0.25%
AHU 7	593	0.25%
AHU 8	593	0.25%
AHU 9	593	0.25%
AHU 10	593	0.25%
601	924	0.39%
733	1,656	0.69%
740	2,675	1.12%
771	2,309	0.97%
801	2,827	1.18%
802	2,470	1.03%
807	2,325	0.97%
808	2,325	0.97%
820	2,787	1.17%
821	2,789	1.17%
830	3,383	1.42%
831	2,630	1.10%
840	2,212	0.93%
841	2,212	0.93%
844	2,215	0.93%
845	2,215	0.93%
850	1,889	0.79%
851	1,891	0.79%
852	2,477	1.04%
853	2,489	1.04%

Unit Number	Unit Area* (in square feet)	Percentage Ownership Interest**
860	2,127	0.89%
861	1,233	0.52%
863	2,284	0.96%
864	2,224	0.93%
880	2,216	0.93%
881	1,221	0.51%
883	2,284	0.96%
886	2,249	0.94%
901	2,853	1.19%
902	2,515	1.05%
905	2,130	0.89%
906	2,127	0.89%
920	2,787	1.17%
921	2,789	1.17%
930	3,376	1.41%
933	2,644	1.11%
940	2,247	0.94%
941	2,240	0.94%
944	2,238	0.94%
945	2,231	0.93%
950	1,886	0.79%
951	1,877	0.79%
952	2,251	0.94%
953	2,605	1.09%
960	2,120	0.89%
961	1,999	0.84%
962	2,080	0.87%
963	2,196	0.92%
980	2,204	0.92%
981	3,090	1.29%
983	2,180	0.91%
984	2,071	0.87%
1001	4,407	1.85%
1002	3,800	1.59%
1003	3,391	1.42%
1004	3,720	1.56%

Unit Number	Unit Area* (in square feet)	Percentage Ownership Interest**
1005	3,668	1.54%
1020	2,770	1.16%
1021	2,770	1.16%
1031	3,533	1.48%
1032	3,373	1.41%
1034	3,417	1.43%
1040	2,195	0.92%
1041	2,195	0.92%
1042	2,201	0.92%
1043	2,202	0.92%
1050	2,712	1.14%
1051	2,683	1.12%
1052	4,367	1.83%
1062	3,754	1.57%
1063	2,228	0.93%
1081	4,086	1.71%
1082	4,067	1.70%
1083	2,251	0.94%
1150	2,682	1.12%
1151	2,699	1.13%
1152	4,367	1.83%
1162	4,667	1.95%
1182	6,858	2.87%
1202	1,851	0.78%
1250	4,864	2.04%
1252	5,377	2.25%
PS1	4,876	2.04%
PS2	5,262	2.20%
Total	238,802	100%

\*The Unit Areas set forth above represent the approximate square footage of the airspace comprising each Unit which were determined by measuring from the face of the interior surfaces of the perimeter walls bounding each Unit as well as from the interior surfaces of all interior walls and columns (i.e., the square footage comprising the spaces within all interior walls and columns located within the perimeter of each Unit are not included in the square footages set

forth above). The Unit Areas set forth above are deemed accurate for all purposes under the Residential Declaration regardless of subsequent square footage measurement(s).

\*\* May total slightly more or less than 100% due to rounding.