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Page 1 of 8  
Rhonda Francis Summit County Recorder  
09/06/2019 02:48:29 PM Fee \$50.00  
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HRECRC-733  
HRECRC-771  
HRECRC-HOTEL

**THIRD MODIFICATION TO LEASEHOLD DEED OF TRUST**

**Dated September 6, 2019**

**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**

**THIRD MODIFICATION TO LEASEHOLD DEED OF TRUST**

THIS THIRD MODIFICATION TO LEASEHOLD DEED OF TRUST (this "Modification Agreement") is made to be effective as of September 6, 2019, and is entered into by and among the undersigned Grantor, undersigned Beneficiary and undersigned Trustee.

Grantor: DV LUXURY RESORT LLC,  
a Delaware limited liability company

Beneficiary; Bank: CITIBANK, N.A., a national banking association

Trustee: PARK CITY TITLE COMPANY

Deed of Trust: 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, 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 and as modified by that certain Second Modification to Leasehold Deed of Trust and Assignment of Rents dated January 5, 2018 and recorded January 5, 2018 as Entry No. 01084490, in Book 2445, at Page 0818.

**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, that certain Fourth Amendment to Loan Agreement and Loan Documents effective as of June 5, 2017, that certain Fifth Amendment to Loan Agreement and Loan Documents effective as of January 5, 2018, and that certain Sixth Amendment to Loan Agreement and Loan Documents effective as of February 1, 2019 (as amended, the "Loan Agreement").

B. In connection with that certain Seventh Amendment to Loan Agreement and Loan Documents of even date herewith (the "Seventh 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 advances that have been made under the existing term loan note in the original face amount of \$113,377,974.19 from Beneficiary to Grantor, which as of the date hereof, has a current outstanding balance of \$95,000,000.00, Beneficiary has agreed to re-advance \$14,450,000.00 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 Seventh 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]*



CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

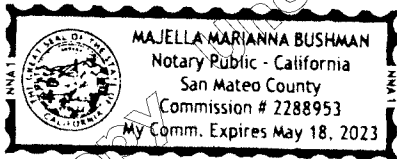
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of San Mateo }

On Aug. 23, 2019 before me, Majella Marianna Bushman, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Cr. 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 Majella Bush
Signature of Notary Public

Place Notary Seal and/or Stamp Above

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: See attached

Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Signer's Name:

Corporate Officer - Title(s): Corporate Officer - Title(s):

Partner - Limited General Partner - Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian or Conservator Trustee Guardian or Conservator

Other: Other:

Signer is Representing: Signer is Representing:

**BANK:**

**CITIBANK, N.A.,**

a national banking association

By: 

Name: DONNA PARK

Title: VICE PRESIDENT

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 )

: ss:

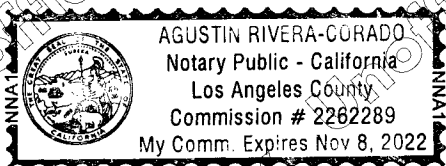
COUNTY OF Los Angeles )

On 9-4-, 2019, before me, Agustin Rivera-Corado, a Notary Public, personally appeared DONNA PARK, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in ~~his~~<sup>her</sup> authorized capacity, and that by ~~his~~<sup>her</sup> signature on the instrument the person, or the entity upon behalf of which the person 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  (SEAL)



**EXHIBIT A  
PROPERTY DESCRIPTION**

Lot C of PARCEL B-2 EMPIRE VILLAGE SUBDIVISION, according to the official plat recorded 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 Quit Claim 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, 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 1 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 in 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 & 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, parking area, the storage area and the balcony/patio area appurtenant to such units, 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.

Tax Id No.: EV-B-2-C, 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-771 and HRECRC-HOTEL