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Alan Spriggs, Summit County Utah Recorder

12/10/2009 08:10:45 AM Fee \$20.00

By PARK CITY TITLE COMPANY

Electronically Recorded by Simplifile

AFTER RECORDING MAIL TO:

Thomas G. Bennett, Esq.
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
201 SOUTH MAIN STREET, SUITE 600
SALT LAKE CITY, UTAH 84111

Tax Parcel I.D. No. EV-B-2-C

DISCLOSURE OF ENVIRONMENTAL CONDITIONS AND SETTLEMENT AGREEMENT
BETWEEN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND DV
LUXURY RESORT LLC

1. Historic Mining Property. The Hotel and Residences at Empire Canyon Resort project ("Resort") is being constructed on approximately 15.96 acres of land legally described on Exhibit A attached hereto (the "Resort Land") and located within an area of historic mining known as Empire Canyon. The Empire Canyon area (including without limitation the Resort Land) was previously the site of ore mining and processing, primarily for naturally occurring silver, lead, and zinc. There is no current mining in that area.

2. Governmental Oversight of Environmental Investigation and Cleanup. The historic mining activities produced mine waste with metals, including but not limited to: lead, arsenic, cadmium and zinc. Areas impacted by this mine waste, including areas on and near the Resort Land, are being investigated and cleaned up under the supervision of the U.S. Environmental Protection Agency ("EPA") Superfund program. In the broader Empire Canyon area, the former mine operator, United Park City Mines ("UPCM"), has been conducting environmental investigation and remediation at the request of EPA, in order to address impacted sediments and surface water. On November 6, 2003, EPA determined, in its Action Memorandum, that it was necessary for certain metal-bearing mine wastes and soils within the Empire Canyon area be removed or capped. EPA determined that the appropriate action levels were 500 parts per million for lead and 100 parts per million for arsenic, respectively. EPA and UPCM later entered into an Administrative Order on Consent for Non-Time Critical Removal Action, Docket No. CERCLA 08-2004-0003 ("UPCM AOC"). In the UPCM AOC, UPCM agreed to implement the actions determined by EPA in the Action Memorandum to be necessary. That work is nearing completion.

3. EPA Review and Approval of Environmental Work on the Resort Land. Subsequently, DV Luxury Resort LLC ("DVLRL") proposed to develop a hotel and resort complex on the Resort Land (which DVLRL leases pursuant to that certain Agreement of Lease between Talisker Empire Pass Hotel LLC and DV Luxury Resort LLC, a memorandum of which agreement of lease was recorded on May 23, 2007 in the Office of the Summit County Recorder as Instrument No. 814188), subject to the UPCM remediation obligations. Because of the ongoing environmental remediation work, DVLRL and EPA agreed to work together to ensure that development of the Resort Land was consistent with protection of public health and the environment. DVLRL conducted additional environmental investigation of the Resort Land, determining that the Resort

Land contained mine waste and metals that required remediation in order to comply with EPA's Empire Canyon cleanup standards. Those sampling results, and the development plans for the Resort and the Resort Land, were shared with EPA. EPA reviewed its Empire Canyon cleanup standards and determined that they were appropriate for the Resort development. Following its review of the proposed development, EPA issued on September 7, 2006 its *Action Memorandum Amendment for the Non-Time Critical Removal Action at the Empire Canyon Site, Park City, Utah*, Ref. No. 8EPR-SR. The Action Memorandum Amendment approved the change of land use for the Resort Land from recreational to residential and commercial. The Action Memorandum Amendment determined that the change in use was appropriate because of the precautions to be taken by DVLRL in the development of the Resort and the Resort Land, including excavation and off-site transportation or capping of materials above cleanup standards; cover and revegetation of the site; and diversion and treatment of stormwater runoff. EPA also reviewed and approved DVLRL's construction work plan for the Resort.

4. DVLRL's Legal Agreement With EPA. DVLRL's environmental obligations regarding the Resort and the Resort Land were detailed in a legal agreement between EPA and DVLRL, effective December 11, 2006, entitled *Agreement and Covenant Not to Sue DV Luxury Resort LLC*, EPA Docket No. CERCLA 08-2007-00001 ("EPA Agreement"). The EPA Agreement is attached, and its express terms govern in the event of any variance between the EPA Agreement and the summary of its terms contained in this Notice. DVLRL's obligations under the EPA Agreement included: 1) safely managing soil and groundwater during construction of the Resort; 2) preparing and complying with a plan for preventing pollution of stormwater; 3) installing a clean soil cover over areas of the Resort Land, not within the construction footprint, that contained metals above cleanup standards; 4) constructing a system to divert stormwater from the mountain around the Resort Land; 5) monitoring, managing, and treating stormwater flow from the Resort Land to ensure that area surface waters were not impaired; and 6) incorporating sustainability features into the Resort design. In addition, the EPA Agreement requires DVLRL, and its successors and assigns, to maintain records of the environmental abatement work, to provide EPA with reasonable access to common areas of the Resort during performance of the environmental work, and to exercise due care and cooperate with EPA to prevent future environmental impacts. In exchange, EPA granted DVLRL and its successors and assigns relief from Superfund liability with respect to the Resort Land. DVLRL and its successors will continue to treat stormwater flowing across the Resort Land to minimize impacts to waterways down the mountain. DVLRL's obligations are described in further detail in the EPA Agreement, including in Section VI (Work to be Performed), Section VIII (Access/Conveyance of Property/Notice to Successors in Interest), Section IX (Due Care/Cooperation), and Section XVII (Document Retention).

5. Information for Unit Owners. As expressly provided in the EPA Agreement, owners of individual residential condominium units at the Resort do not share responsibility for the DVLRL's environmental obligations under the EPA Agreement. The EPA Agreement does not require individual residential condominium unit owners to allow the EPA access to their units. DVLRL and its successors as the owner of the hotel that is part of the Resort, are solely responsible for performance of DVLRL's obligations under the EPA Agreement.

6. Additional Information. Additional information regarding the Empire Canyon area and the cleanup activities at the Resort Land is available. DVLR has additional documents available for review in Park City via arrangement with the General Manager identified below. The documents available include the EPA Agreement, the Construction Work Plan, and the EPA Action Memorandum Amendment. EPA Region 8 also maintains a file on the Empire Canyon Site. EPA Region 8 is located at 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-6312.

Representatives of the parties under the EPA Agreement are:

For EPA:

Kathryn Hernandez
EPA Project Coordinator (8EPR-SR)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129
(303) 312-6101

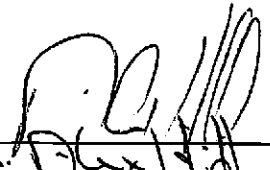
For DVLR:

General Manager
The Hotel & Residences at Empire Canyon Resort
9100 Marsac Avenue
P.O. Box 4680
Park City, Utah 84060

IN WITNESS WHEREOF, DVLR has executed this disclosure document as of the 19th day of October 2009.

DV LUXURY RESORT LLC,
a Delaware limited liability company

By: Ohana DV LLC, a Delaware limited liability
company, its Manager

By: 
Name: _____
Title: Gen. Mgr.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

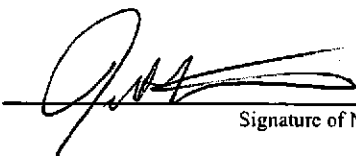
State of California)
County of San Diego)

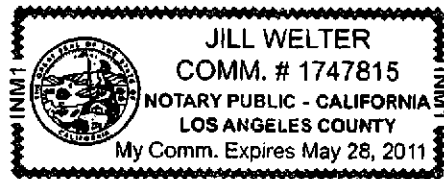
On October 19, 2009 before me, Jill Welte, Notary Public
(here insert name and title of the officer)

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.


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.

- 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 corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

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DESCRIPTION OF THE ATTACHED DOCUMENT

Disclosure of Emission Conditions
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER


- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

STATE OF California)
COUNTY OF San Diego) :ss.

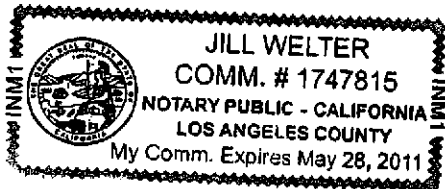
The foregoing instrument was acknowledged before me on October 19, 2009, by Alex Hill, as Vice President of Ohana DV LLC, a Delaware limited liability company, Vice President of DV Luxury Resort LLC, a Delaware limited liability company.



Notary Public

My Commission Expires:

May 28, 2011
(SEAL)



**EXHIBIT A TO DISCLOSURE OF ENVIRONMENTAL CONDITIONS AND
SETTLEMENT AGREEMENT BETWEEN UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY AND DV LUXURY RESORT LLC**

Legal Description of Resort Land

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

Excepting therefrom all minerals 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.

Easement 1:

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.