

1       **B. DEFENDANTS' MOTION TO DISMISS SHOULD BE DENIED BECAUSE**  
2       **PLAINTIFF HAS STATED A CLAIM UPON WHICH RELIEF CAN BE GRANTED**  
3       **AS THE PARENT COMPANY CAN BE HELD LIABLE FOR ACTS OF ITS**  
4       **SUBSIDIARIES.**

5       In considering a motion to dismiss, this Court "must construe the pleading liberally and draw  
6       every fair intendment in favor of the [non-moving party]." Squires v. Sierra Nev. Educational Found.,  
7       107 Nev. 902, 905, 823 P. 2d 256, 257 (1991) (citations omitted). All factual allegations of the  
8       complaint must be accepted as true. Capital Mort. Holding v. Hahn, 101 Nev. 314, 315, 705 P.2d 126,  
9       126 (1985). Nevada adheres to the traditional rule that an action may not be dismissed at the pleading  
10      stage for failure to state a claim "unless it appears beyond a doubt that the plaintiff could prove no set  
11      of facts which, if accepted by the trier of fact, would entitle him [or her] to relief." Edgar v. Wagner,  
12      101 Nev. 226, 228, 699 P.2d 110, 112 (1985); Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart  
13      Venture, LLC, 129 Nev., Adv. Op. 18, 300 P. 3d 124, 128 (2013) (internal quotations omitted)..

14      "The test for determining whether the allegations of a complaint are sufficient to assert a claim  
15      for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim  
16      and the relief requested." Vacation Vill., Inc. v. Hitachi Am., Ltd., 110 Nev. 481, 484, 874 P. 2d 744,  
17      746 (1994).

18      A parent corporation "can be liable for its subsidiary's acts under the ... agency theory, [if] it  
19      exercises control to the extent the subsidiary manifests no separate corporate interests of its own and  
20      functions solely to achieve the purposes of the dominant corporation." Viega GmbH v. Eighth Jud. Dist.  
21      CL, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1159 (2014) (internal quotation marks and citations  
22      omitted)).

23      Generally, an agency relationship is formed when one person has the right to control the  
24      performance of another. Id. (citing Trump v. Eighth Judicial Dist. Court of State of Nev. In & For Cty.  
25      of Clark, 109 Nev. 687, 695 n. 3, 857 P. 2d, 740, 745 n. 3 (1993); Restatement (Second) of Agency §  
26      14 (1958) (providing that an agency relationship exists when the principal possesses the right to control  
27      28

1 the agent's conduct)). In the corporate context, however, the relationship between a parent company and  
2 its wholly owned subsidiary necessarily includes some elements of control. Id. citing Sonora Diamond  
3 Corp., v. Superior Court 83 Cal.App.4th 523, 99 Cal.Rptr.2d 824, 838 (2000) ( "The relationship of  
4 owner to owned contemplates a close financial connection between parent and subsidiary and a certain  
5 degree of direction and management exercised by the former over the latter." ).

6 Here, taking the allegations in the complaint as true, Plaintiff has stated a cause of action against  
7 Defendants MGM Resorts International and MGM Grand Condominiums, LLC. Specifically, Plaintiff  
8 alleges that MGM Resorts International and MGM Grand Condominiums are the owners and operators  
9 of the condominium/hotel called the Signature at MGM Grand located at 145 E Harmon Ave, Las  
10 Vegas, Nevada 89109 where the Property is located. See Complaint at 2:15-22. This Court must take  
11 these allegations as true.  
12

13 While Defendants argue that the true owner of the Signature at MGM Grand is the "Signature  
14 Tower I, LLC", the entity "Signature Tower I, LLC" is nowhere to be found on the Signature at MGM  
15 Grand's website. Instead, the only entity found on the Signature at MGM Grand's website that could  
16 potentially own the Signature at MGM Grand is "MGM Resorts International." Upon information and  
17 belief, it is the MGM Resorts International's staff that is providing services to guests at the Signature at  
18 MGM Grand. In fact, MGM Resorts International even provided its own attorney William Martin, Esq.  
19 to handle this case pre litigation of behalf of the Signature at MGM Grand. Thus, contrary to  
20 Defendants' argument that "Signature Tower I, LLC" is clearly the true owner of the Signature at  
21 MGM Grand, at this juncture, it is unclear who the proper entity that owns the Signature at MGM  
22 Grand really is.  
23

24 In fact, according to MGM Resorts International's filings with the United States Securities and  
25 Exchange Commission dated December 31, 2015, "the Signature Tower I, LLC" is a subsidiary of "the  
26 Signature Condominiums, LLC" which is also a subsidiary of "MGM Resorts International." See  
27 Exhibit 3 at page 5 of 5 which is a copy of the true and correct of MGM Resorts International's filings  
28

1 with the United States Securities and Exchange Commission. MGM Resorts International owns 100%  
2 of The Signature Condominiums, LLC and the Signature Tower I, LLC.<sup>2</sup> Thus, even if the Signature  
3 Tower I, LLC is the entity that owns the condominium, because Defendant MGM Resorts International  
4 is the parent company with 100% ownership, and because the parent company can be liable for its  
5 subsidiary's acts under the agency theory, Plaintiff properly named Defendant MGM Resorts  
6 International as the Defendant.<sup>3</sup> Viega GmbH, 130 Nev. Adv. Op. 40, 328 P.3d at 1159.

7  
8 Accordingly, at this juncture, Plaintiff requests that this case be allowed to continue so that  
9 Plaintiff can have a chance to conduct some discovery to determine the true entity that owns the  
10 Signature at MGM Grand and the true relationship between the "Signature Tower I, LLC," the  
11 "Signature Condominiums, LLC" and "MGM Resorts International." Plaintiff will then amend the  
12 Complaint to name any additional defendants as necessary.

13 **C. DEFENDANTS' MOTION TO DISMISS SHOULD BE DENIED BECAUSE THE**  
14 **SIGNATURE IS NOT A NECESSARY AND INDISPENSABLE PARTY UNDER**  
15 **NRCP 19 AS THE PARENT COMPANY CAN BE HELD LIABLE FOR ACTS OF**  
16 **ITS SUBSIDIARIES.**

17 NRCP 19(a) provides that a person must be joined in an action if that person is necessary to the  
18 action. Humphries v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 85, 312 P.3d 484, 487 (2013). A person  
19 is necessary to the action if (1) in his absence, the court cannot accord complete relief among the  
20 existing parties; or (2) he has an interest in the action and his absence will impair his ability to protect  
21 his interest or subject one of the existing parties to inconsistent obligations. NRCP 19(a)(1)-(2). If that  
22 person is not a party to the action, the court must order that person be made a party, if feasible. NRCP  
23 19(a).

24 Here, the Signature Tower I, LLC is not a necessary party. As previously discussed, upon  
25 information and belief, the Signature Tower I, LLC is simply a subsidiary of its parent company

26 <sup>2</sup> MGM Resorts International's filings with the Securities and Exchange Commission are public  
27 documents.

28 <sup>3</sup> According to the Securities and Exchange Commission filings, MGM Grand Condominiums LLC is  
also a subsidiary of MGM Resorts International.

1 Defendant MGM Resorts International. The parent company can be liable for the actions of its  
2 subsidiaries if the parents exercises control over the subsidiaries. Viega GmbH, 130 Nev. Adv. Op. 40,  
3 328 P.3d at 1159. As is alleged in the Complaint, Defendants MGM Resorts International is the owner  
4 and operator of the Signature at MGM Grand. See Complaint at 2:15-20. The Complaint also alleges  
5 that the MGM Defendants including Defendant MGM Resorts International owns the Signature at  
6 MGM Grand, maintains the Signature at MGM Grand, and hires employees for the Signature at MGM  
7 Grand. Taking the allegations in the Complaint as true, Plaintiff has alleged that Defendants including  
8 MGM Resorts International and Defendant MGM Grand Condominiums, LLC has exercised sufficient  
9 control over the Signature at MGM Grand. In addition, MGM Resorts International's filings with the  
10 Securities and Exchange Commission show that it owns 100% of The Signature Condominiums, LLC  
11 and The Signature Tower I, LLC. See Exhibit 3 at page 5 of 5. Thus, Defendants MGM Resorts  
12 International and MGM Grand Condominiums, LLC can be held liable for the actions of the Signature  
13 Tower I, LLC without the Signature Tower I, LLC being named as a defendant in the Complaint.  
14

15 However, even if this Court rules that the Signature Tower I, LLC is an indispensable party,  
16 pursuant to NRCP 19(a), this Court should not dismiss Plaintiff's Complaint, but instead, simply order  
17 that The Signature Tower I, LLC be named as a party.  
18

19 **D. IN THE ALTERNATIVE, IF THIS COURT GRANTS DEFENDANTS' MOTION TO**  
20 **DISMISS, THIS COURT SHOULD ALSO GRANT PLAINTIFF LEAVE TO**  
21 **AMEND THE COMPLAINT.**

22 NRCP 15(a) recites that when a party seeks leave to amend a pleading after the initial  
23 responsive pleadings have been served, "leave shall be freely given when justice so requires." The  
24 Nevada Supreme Court has held that "in the absence of any apparent or declared reason—such as  
25 undue delay, bad faith or dilatory motive on the part of the movant—the leave sought should be freely  
26 given." Stephens v. S. Nev. Music Co., 89 Nev. 104, 105–06, 507 P.2d 138, 139 (1973). Thus, NRCP  
27 15(a) contemplates the liberal amendment of pleadings, which in colloquial terms means that most such  
28



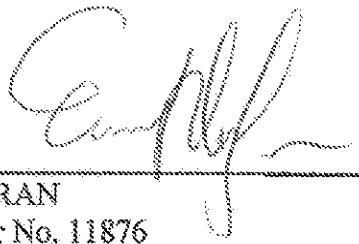
1 motions ought to be granted unless a strong reason exists not to do so, such as prejudice to the opponent  
2 or lack of good faith by the moving party. Id. at 105, 507 P.2d at 139.

3 Plaintiff believes that the Complaint is sufficient to defeat Defendants' Motion to Dismiss.  
4 However, in the event this Court is inclined to grant Defendants' Motion to Dismiss, Plaintiff  
5 respectfully requests that this Court grant Plaintiff leave to Amend the Complaint. Here, there has been  
6 no bad faith on the part of Plaintiff. Likewise, because this case is still in its infancy, there would be no  
7 prejudice to Defendants. A proposed Amended Complaint is attached hereto as Exhibit 4.

#### 8 IV. CONCLUSION

9  
10 Plaintiff 145 East Harmon Trust is the proper party in interest as NRCP 17(a) does not prevent  
11 Plaintiff from bringing forth this legal action. Plaintiff has also stated a claim for which relief can be  
12 granted as Defendant MGM Resorts International is the parent company of its subsidiaries and can be  
13 named as a Defendant. Likewise the Signature Tower I, LLC is not a necessary or indispensable party  
14 as complete relief can be granted by merely naming Defendant MGM Resorts International as the  
15 parent company. Even if the Signature Tower I, LLC is a necessary and indispensable party, this Court  
16 should not dismiss Plaintiff's Complaint, but instead, simply order that the Signature Tower I, LLC be  
17 named as an additional Defendant. In the alternative, if this Court is inclined to grant Defendants'  
18 Motion to Dismiss, this Court should allow Plaintiff leave to amend its Complaint.

19  
20 DATED this 19th day of May, 2016.

21  
22   
23 By: /s/  
24 ERIC N. TRAN  
25 Nevada Bar No. 11876  
26 5538 S. Eastern Ave  
27 Las Vegas, Nevada 89173  
28 Telephone: (702) 948-9770, Ext. 2033  
Fax: (815) 550-2830  
E-Mail: Eric.Tran@StoAmigo.com  
Attorney for Plaintiffs

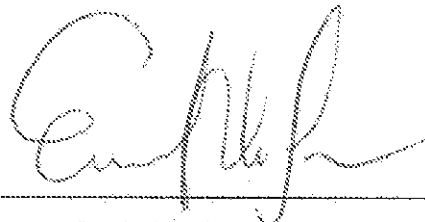
CERTIFICATE OF MAILING

I hereby certify that on the 19th day of May, 2016, I caused service of the foregoing:

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, OR IN THE  
ALTERNATIVE, MOTION TO AMEND THE COMPLAINT**

to be made by electronically filing with the Clerk of the Court using the Wiznet Electronic Service System and by depositing a true and correct copy of the same in the United States Mail, postage fully prepaid, addressed to the following:

Elisa Wyatt  
Woods Smith Henning & Berman, LLP  
7674 West Lake Mead Blvd., Suite 150  
Las Vegas, Nevada 89128  
*Attorneys of Defendants MGM Grand Condominiums, LLC  
and MGM Resorts International*



An employee of Eric N. Tran, Attorney at Law

# EXHIBIT 1

# EXHIBIT 1

Created Thu May 19 2016 13:19:12 GMT-0700 (Pacific Daylight Time)

## Email Message

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**From:** Randy Creighton <randy.creighton@stoamigo.com>  
**To:** eric.tran@stoamigo.com  
**Date:** 03-01-2016 10:17  
**Subject:** FWD: Pricing

Randy M. Creighton

This message is confidential. It may also be privileged or otherwise protected by work product immunity or other legal rules. If you have received it by mistake, please let us know by e-mail reply (info@stoamigo.com) and delete it from your system; you may not copy this message or disclose its contents to anyone. The integrity and security of this message cannot be guaranteed on the Internet. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company.

----- Forwarded message -----

**Date:** Wed, 13 Jan 2016 18:00:55  
**From:** "Martin, Will" <WMartin@mgmresorts.com>  
**To:** "Randy Creighton (randy.creighton@stoamigo.com)" <randy.creighton@stoamigo.com>  
**Subject:** Pricing

Randy:

The following is what I received as prices for the items shown in the pictures you sent. I am told item K-C is not currently available and there is a 20 week lead time.

Image A: \$576.00 roll

Image B: 576.00 roll

Image C: \$250 for door, I don't know what 6 inches width is regarding. We only have one type of bathroom door.

Image D: \$60 per linear foot.

Image E: \$20 per linear foot.

Image F: \$513.41 the picture shown is a powder room frame for a one bedroom.

Image G: \$729.10

Image H-I: \$36

Image J: \$31

Image k-A: \$74.55

ImageK-B: \$63.00

Image K-C: \$78.00

Image K-D: \$90.72

Image K-E: \$112.72

Image K-F: \$69.55

Image K-G: \$73.60

Image K-H: \$95.00

Carpet: not installed \$1,000, installed \$1,538.

**William T. Martin, Esq.**

Vice President and Deputy General Counsel

Risk Management

MGM Resorts International®

71 East Harmon Avenue, Las Vegas, NV 89109

Office: 702-692-9558

Cell: 702-373-7704

[wmartin@mgmresorts.com](mailto:wmartin@mgmresorts.com)

----- End forwarded message -----

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# EXHIBIT 2

# EXHIBIT 2

February 3, 2016

MGM Grand Condominiums, LLC  
Attn: William Martin, Esq.  
145 E. Harmon Ave  
Las Vegas, Nevada 89109  
Wmartin@mgmresorts.com

RE: Final Settlement Demand relating to 145 E. Harmon Ave. Unit #25619,  
Las Vegas, Nevada 89109 (the "Property")

Mr. Martin,

My Client, 145 East Harmon II Trust, has authorized me to accept a settlement in the amount of \$75,000 ("Settlement Amount") in exchange for a full and complete release of all claims (the "Claims") it has against MGM Grand Condominiums, LLC ("MGM"). If MGM does not accept this settlement offer, be advised my Client will initiate legal action against MGM and seek full recovery of its damages.

Further, in litigation my Client intends to seek all discoverable information relating to MGM and its employees' access to my Client's Property, as well as other units within the condominium complex. My Client has information to believe there is frightening widespread issue of MGM employees routinely accessing unoccupied units for their own personal use. If this proves to be true, MGM will have a much larger problem on its hands than just dealing with my Client's Claims.

My Client has also filed a police report with the Las Vegas Metropolitan Police Department. If my Client's Claims are not settled my Client intends to aggressively pursue the criminal charges to ensure the person(s) responsible for the damage to his Property will be brought to justice.

If the Settlement Amount is not received by February 18, 2016 my Client will have no option but to initiate legal action against MGM. My Client does not wish to go down the legal route, a route that will be far more embarrassing and expensive for MGM than an amicable resolution. However, you should not underestimate my Client's resolve or ability to prosecute this matter to its fullest. Be guided accordingly.

Thanks

/s/ Randy Creighton

Randy Creighton, Esq.  
Nevada Bar No. 11095  
5538 S. Eastern Avenue  
Las Vegas, Nevada 89119  
702-948-9770, ext. 2030  
Randy.creighton@stoarnigo.com



ERIC N. TRAN  
ATTORNEY AT LAW  
5538 S. EASTERN AVE  
LAS VEGAS, NEVADA 89119  
(702) 948-9770 EXT 2033  
Eric.Tran@stosmigo.com

Sent via US Mail and email to [William.Martin@mgmresorts.com](mailto:William.Martin@mgmresorts.com)

March 21, 2016

MGM Grand Condominiums, LLC  
ATT: William Martin, Esq.  
145 E. Harmon Ave  
Las Vegas, Nevada 89109

Re: Complaint against MGM

Mr. Martin,

Since you have failed to respond to my colleague, Randy Creighton's February 3, 2016 settlement demand, I have filed a Complaint against MGM and have attached a copy of the Complaint for your review. Your client's failure to accept responsibility for their negligent actions is simply despicable. If you are interested in discussing our settlement offer, then please contact me within 7 days of the date of this letter. If we do not hear back from you by March 28, 2016, we will assume that you do not want to engage in any settlement discussions and we will proceed with serving the Complaint against the MGM Defendants.

In this regard, and consistent with Mr. Creighton's January 6, 2016 evidence preservation letter, we will be seeking all electronic data stored on the MGM's hotel key access card system showing who entered the Property. In addition, as you are aware, there is a security camera directly outside the Property that monitors who enters the Property and also monitors the hallway and corridor directly outside the Property. We will be demanding video footage from that camera as well.

While this should have already been done by MGM, we are demanding that you preserve evidence and halt any business practices that have the potential of destroying potential evidence. Specifically, we are demanding that you stop any server backup tape rotation, electronic data shredding, scheduled destruction of back up media, reimaging of drives, drive hardware exchanges, destruction of computer systems, disk defragmentation, and any other maintenance routines that has the potential of destroying information stored in the hotel key access system of the Property and security video of the Property.

Respectfully,



Eric N. Tran, Esq.

ERIC N. TRAN  
ATTORNEY AT LAW  
5538 S. EASTERN AVE  
LAS VEGAS, NEVADA 89119  
(702) 948-9770 EXT 2033  
Eric.Tran@stoamigo.com

Sent via US Mail and email to [Wmartin@mgmresorts.com](mailto:Wmartin@mgmresorts.com)

March 21, 2016

William Martin, Esq.  
MGM Resorts International Operations, Inc.  
71 East Harmon Ave  
Las Vegas, Nevada 89109

Re: Complaint against MGM

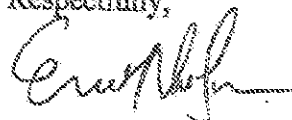
Mr. Martin,

Since you have failed to respond to my colleague, Randy Creighton's February 3, 2016 settlement demand, I have filed a Complaint against MGM and have attached a copy of the Complaint for your review. Your client's failure to accept responsibility for their negligent actions is simply despicable. If you are interested in discussing our settlement offer, then please contact me within 7 days of the date of this letter. If we do not hear back from you by March 28, 2016, we will assume that you do not want to engage in any settlement discussions and we will proceed with serving the Complaint against the MGM Defendants.

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While this should have already been done by MGM, we are demanding that you preserve evidence and halt any business practices that have the potential of destroying potential evidence. Specifically, we are demanding that you stop any server backup tape rotation, electronic data shredding, scheduled destruction of back up media, reimaging of drives, drive hardware exchanges, destruction of computer systems, disk defragmentation, and any other maintenance routines that has the potential of destroying information stored in the hotel key access system of the Property and security video of the Property.

Respectfully,



Eric N. Tran, Esq.

# EXHIBIT 3

# EXHIBIT 3

EX-21 4 mgm-ex21\_272.htm EX-21

Exhibit 21

## Subsidiaries of MGM Resorts International

Listed below are the majority-owned subsidiaries of MGM Resorts International as of December 31, 2015.

Subsidiary	Jurisdiction of Incorporation	Percentage Ownership
Blue Tap reDevelopment, LLC	Massachusetts	(1)
MGM Springfield reDevelopment, LLC	Massachusetts	100%
Destron, Inc.	Nevada	100%
MGM Grand (International), Pte Ltd.	Singapore	100%
MGM Resorts International Marketing, Inc.	Nevada	100%
MGM Resorts International Marketing, Ltd.	Hong Kong	100%
Las Vegas Arena Management, LLC	Nevada	100%
Mandalay Resort Group	Nevada	100%
550 Leasing Company I, LLC	Nevada	100%
550 Leasing Company II, LLC	Nevada	100%
Circus Circus Casinos, Inc.	Nevada	100%
Diamond Gold, Inc.	Nevada	100%
MGM Elgin Sub, Inc.	Nevada	100%
MGM Resorts Aircraft Holdings, LLC	Nevada	100%
Galleon, Inc.	Nevada	100%
Mandalay Corp.	Nevada	100%
Mandalay Employment, LLC	Nevada	100%
Mandalay Place	Nevada	100%
MGM Resorts Festival Grounds, LLC	Nevada	100%
MGM Resorts Festival Grounds II, LLC	Nevada	100%
MGM Resorts Mississippi, Inc.	Mississippi	100%
M.S.E. Investments, Incorporated ("MSE")	Nevada	100%
Nevada Landing Partnership	Illinois	(2)
Gold Strike L.V.	Nevada	(3)
Victoria Partners	Nevada	(4)
Arena Land Holdings, LLC	Nevada	100%
New York-New York Tower, LLC	Nevada	100%
Park District Holdings, LLC	Nevada	100%
New Castle Corp.	Nevada	100%
Ramparts, Inc.	Nevada	100%
Vintage Land Holdings, LLC	Nevada	100%
Merger Sub Beau, LLC	Mississippi	100%
Metropolitan Marketing, LLC	Nevada	100%
MMNY Land Company, Inc.	New York	100%
MGM Grand Detroit, Inc.	Delaware	100%
MGM Grand Detroit, LLC	Delaware	(5)
MGM Grand Hotel, LLC	Nevada	100%
Grand Laundry, Inc.	Nevada	100%
MGM Grand Condominiums, LLC	Nevada	100%
MGM Grand Condominiums II, LLC	Nevada	100%
MGM Grand Condominiums III, LLC	Nevada	100%
Tower B, LLC	Nevada	100%
Tower C, LLC	Nevada	100%
MGM Growth Properties LLC	Delaware	100%
MGM Hospitality, LLC	Nevada	100%
MGM Hospitality Global, LLC	Nevada	100%

MGM Hospitality International, LP	Cayman Islands	100%
MGM Hospitality International, GP, Ltd.	Cayman Islands	100%
MGM Hospitality Holdings, LLC	Dubai	100%
MGM Hospitality Development, LLC	Dubai	100%
MGM Hospitality International Holdings, Ltd.	Isle of Man	100%

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Subsidiary	Jurisdiction of Incorporation	Percentage Ownership
MGM Asia Pacific Limited (f/k/a MGM Resorts China Holdings Limited)	Hong Kong	100%
MGM (Beijing) Hospitality Services, Ltd.	Beijing	100%
MGM Hospitality India Private, Ltd.	India	100%
MGM International, LLC	Nevada	100%
MGM Resorts International Holdings, Ltd.	Isle of Man	100%
MGM China Holdings, Ltd.	Cayman Islands	(6)
MGM Resorts Club Holdings, Ltd.	Hong Kong	100%
MGM Resorts Japan, LLC	Japan	100%
MGM Resorts West Japan, LLC	Japan	100%
MGM National Harbor, LLC	Nevada	100%
MGM Resorts Advertising, Inc.	Nevada	100%
VidiAd	Nevada	100%
MGM Resorts Arena Holdings, LLC	Nevada	100%
MGM Resorts Canada, Inc.	NB, Canada	100%
MGM Resorts Development, LLC	Nevada	100%
MGM Resorts International Global Gaming Development, LLC	Nevada	100%
MGM Resorts International Operations, Inc.	Nevada	100%
MGM Resorts Land Holdings, LLC	Nevada	100%
MGM Resorts Macao, LLC	Nevada	100%
MGM Grand (Macao) Limited	Macau	100%
MGM Resorts Limited, LLC	Nevada	100%
MGM Resorts Management and Technical Services, LLC	Nevada	100%
MGM Resorts Interactive, LLC	Nevada	100%
MGM Resorts Regional Operations, LLC	Nevada	100%
MGM Resorts Retail	Nevada	100%
OE Pub, LLC	Nevada	100%
MGM Resorts Sub 1, LLC	Nevada	100%
MGM Resorts Sub 2, LLC	Nevada	100%
MGM Resorts Sub 3, LLC	Nevada	100%
Grand Garden Arena Management, LLC	Nevada	100%
MGM Resorts Venue Management, LLC	Nevada	100%
MGM Springfield, LLC	Massachusetts	100%
MGMM Insurance Company	Nevada (insurance)	100%
Mirage Resorts, Incorporated	Nevada	100%
AC Holding Corp.	Nevada	100%
AC Holding Corp. II	Nevada	100%
Beau Rivage Resorts, Inc.	Mississippi	100%
Bellagio, LLC	Nevada	100%
Bungalow, Inc.	Mississippi	100%
LV Concrete Corp.	Nevada	100%
MAC, CORP.	New Jersey	100%
MGM Resorts Aviation Corp.	Nevada	100%
MGM Resorts Corporate Services	Nevada	100%
MGM Resorts International Design	Nevada	100%
MGM Resorts Manufacturing Corp.	Nevada	100%
MH, Inc.	Nevada	100%
M.I.R. Travel	Nevada	100%
The Mirage Casino-Hotel	Nevada	100%
Mirage Laundry Services Corp.	Nevada	100%
350 Leasing Company I, LLC	Nevada	100%
350 Leasing Company II, LLC	Nevada	100%
450 Leasing Company I, LLC	Nevada	100%
MRGS, LLC	Nevada	100%
Project CC, LLC	Nevada	100%

MGM CC, LLC	Nevada	100%
Aria Resort & Casino, LLC	Nevada	100%
CityCenter Facilities Management, LLC	Nevada	100%
CityCenter Realty Corporation	Nevada	100%
The Crystals at CityCenter Management, LLC	Nevada	100%
Vdara Condo Hotel, LLC	Nevada	100%
New York-New York Hotel & Casino, LLC	Nevada	100%

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Subsidiary	Jurisdiction of Incorporation	Percentage Ownership
Vintage Land Holdings II, LLC	Nevada	100%
PRMA, LLC	Nevada	100%
PRMA Land Development Company	Nevada	100%
The Mirage Casino-Hotel, LLC	Nevada	100%
The Signature Condominiums, LLC	Nevada	100%
Signature Tower I, LLC	Nevada	100%
Signature Tower 2, LLC	Nevada	100%
Signature Tower 3, LLC	Nevada	100%
Vendido, LLC	Nevada	100%

- (1) 99% of the voting securities are owned by MGM Resorts International and 1% is owned by an unrelated third party.
- (2) The partnership interests are owned 85% by MSE and 15% by Diamond Gold, Inc.
- (3) The partnership interests are owned 97.5% by MSE and 2.5% by Diamond Gold, Inc.
- (4) The partnership interests are owned 50% by Gold Strike L.V. and 50% by MRGS, LLC.
- (5) Approximately 97% of the voting securities are owned by MGM Grand Detroit, Inc. and 3% are owned by unrelated third parties.
- (6) The company interests are owned 51% by MGM Resorts International Holdings, Ltd. and 49% owned by unrelated third parties.



**EXHIBIT 4**

**EXHIBIT 4**

1 **FAC**  
2 ERIC N. TRAN, Esq.  
3 Nevada Bar No. 11876  
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9 Attorney for Plaintiffs

10  
11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 145 EAST HARMON II TRUST, ANTHONY  
14 TAN AS TRUSTEE OF THE 145 EAST  
15 HARMON II TRUST.

16 Plaintiffs,

17 v.

18 MGM RESORTS INTERNATIONAL; MGM  
19 GRAND CONDOMINIUMS, LLC; THE  
20 SIGNATURE CONDOMINIUMS, LLC; THE  
21 SIGNATURE TOWER I, LLC; THE  
22 RESIDENCES AT THE MGM GRAND -  
23 TOWER A, OWNERS' ASSOCIATION; and  
24 DOES I-X.

25 Defendants.

Case No. : A-16-733764-C  
Dept. No.: XI

**PROPOSED FIRST AMENDED COMPLAINT**

26 Plaintiffs 145 East Harmon II Trust, and Anthony Tan as Trustee of the 145 East Harmon II  
27 Trust, by and through their attorney of record, ERIC N. TRAN, ESQ., for their Complaint against  
28 Defendants MGM Resorts International; MGM Grand Condominiums, LLC; The Signature  
29 Condominiums, LLC; The Signature Tower I, LLC; The Residences at MGM Grand Tower A -  
30 Owners' Association (collectively referred to as the "MGM Defendants"); and Does I-X, states,  
31 asserts, and alleges as follows:

## THE PARTIES

1  
2 1. At all times relevant herein, Plaintiff 145 East Harmon II Trust ("the Trust") is the owner  
3 of a condominium located at 145 E. Harmon Ave, Unit # 25619 Las Vegas, Nevada 89109 (" the  
4 Property").

5 2. At all times relevant herein, Plaintiff Anthony Tan is the Trustee of the Trust.

6 3. At all times relevant herein, Defendant MGM Resorts International is a Delaware  
7 corporation that was licensed to do business and actually doing business in Clark County, Nevada.  
8 Based upon information and belief, Defendant MGM Resorts International is also the owner and  
9 operator of the condominium/hotel called the Signature at MGM Grand located at 145 E. Harmon Ave  
10 Las Vegas, Nevada 89109 where the Property is located.

11 4. At all times relevant herein, Defendant MGM Grand Condominiums, LLC was a  
12 limited liability company organized and existing under the laws of the State of Nevada with its  
13 principal place of business in Clark County, Nevada. Based upon information and belief, MGM Grand  
14 Condominiums, LLC is also the owner and operator of the condominium/hotel called the Signature at  
15 MGM Grand located at 145 E. Harmon Ave Las Vegas, Nevada 89109 where the Property is located.  
16 Based upon information and belief, Defendant MGM Grand Condominiums, LLC is a subsidiary of the  
17 parent company Defendant MGM Resorts International.

18 5. At all times relevant herein, Defendant The Signature Condominiums, LLC was a limited  
19 liability company organized and existing under the laws of the State of Nevada with its principal place  
20 of business in Clark County, Nevada. In addition, The Signature Condominiums, LLC is the owner and  
21 operator of the condominium/hotel called the Signature at MGM Grand located at 145 E. Harmon Ave  
22 Las Vegas, Nevada 89109 where the Property is located. Based upon information and belief, Defendant  
23 The Signature Condominiums, LLC is a subsidiary of the parent company Defendant MGM Resorts  
24 International.

25 6. At all times relevant herein, Defendant The Signature Tower I, LLC was a limited  
26  
27  
28

1 liability company organized and existing under the laws of the State of Nevada with its principal place  
2 of business in Clark County, Nevada. In addition, The Signature Tower I, LLC is the owner and  
3 operator of the condominium/hotel called the Signature at MGM Grand located at 145 E. Harmon Ave  
4 Las Vegas, Nevada 89109 where the Property is located. Based upon information and belief, Defendant  
5 The Signature Tower I, LLC is a subsidiary of the parent company Defendant MGM Resorts  
6 International.

7  
8 7. Based upon information and belief, Defendant MGM Resorts International exercises  
9 complete control over all of its subsidiaries.

10 8. At all times relevant herein, The Residences at MGM Grand Tower A- Owners' Association  
11 was a limited liability company organized and existing under the laws of the State of Nevada with its  
12 principal place of business in Clark County, Nevada. Based upon information and belief, Defendant  
13 The Residences at MGM Grand Tower A- Owners Association is also the owner and operator of the  
14 condominium/hotel called the Signature at MGM Grand located at 145 E. Harmon Ave Las Vegas,  
15 Nevada 89109 where the Property is located.

16  
17 9. The true names, identities, and capacities, whether individual, corporate, associate, or  
18 otherwise, of DOES I through X, inclusive, are unknown to Plaintiffs, who therefore sue said  
19 Defendants by such fictitious names. Plaintiffs are informed and believe and upon that basis allege that  
20 each of the Defendants designated herein as a DOE Defendants are responsible in some manner for  
21 events and happenings herein referred to and caused damages proximately thereby to Plaintiffs as  
22 herein alleged. Plaintiffs further allege that it will ask leave of this Court to amend this Complaint to  
23 insert the true names, identities, and capacities of said DOES I through X, inclusive, when the same  
24 have been ascertained by Plaintiffs, together with appropriate charging allegations.

25  
26 10. Upon information and belief, Does I- X are employees and/ or agents of the MGM  
27 Defendants.  
28

## STATEMENT OF FACTS

1  
2 11. On or about November 11, 2015, Plaintiffs attempted to enter the Property. However,  
3 Plaintiffs could not enter the Property as the electronic key card entry system malfunctioned. Plaintiffs  
4 then reported the electronic key card system malfunction to the MGM Defendants. Later that day, the  
5 MGM Defendants sent their employees and staff to fix the electronic key card system on the Property.

6 12. Prior to November 11, 2015, there was no damage to the interior of the Property, the  
7 bathroom shower in the Property was also completely shut off, there were no leaks coming from the  
8 bathroom shower, and the shower valve was not broken. Plaintiffs did not give access or authorization  
9 to any persons or party to enter the Property for any reason. Prior to November 11, 2015, the "Do Not  
10 Disturb" notification on the electronic key card entry system was turned on which signals to all  
11 employees, staff, personnel of the MGM Defendants, and all other visitors to not enter the Property.

12 13. On or about December 3, 2015, Plaintiffs re-entered the Property for the first time since  
13 attempting to enter the Property on November 11, 2015 and discovered that the bathroom shower was  
14 fully turned on to the hottest temperature and the highest pressure; and that the Property was filled with  
15 steam. The steam and moisture from the bathroom shower caused significant damage to the interior of  
16 the Property including, but not limited to, mold damage.

17 14. To enter or gain access to the Property, a person must first insert an electronic key card  
18 specific to the Property through a double door entry, then the person must insert the same electronic key  
19 card specific to the Property through a second single door to the Property. The only persons who had  
20 access to the electronic key card to enter the Property were Plaintiffs; and the MGM Defendants, their  
21 employees and staff.

22 15. Upon information and belief, the MGM Defendants maintain records of the use of the  
23 electronic key cards system which records entries to the Property. There is also a security camera  
24 directly outside the front door of the Property which records who enters the Property. The security  
25 camera also shows who walks up and down the hallways and corridors of the Property.  
26  
27  
28

1 16. Thereafter, Plaintiffs contacted the MGM Defendants to report the incident and damage to  
2 the Property. Plaintiffs authorized and demanded that the MGM Defendants retrieve and review the  
3 records of the hotel electronic key card access system to determine the individual(s) that entered the  
4 Property and caused damage to the Property.

5 17. On or about December 11, 2015, the MGM Defendants visited the Property to retrieve and  
6 download the data from the hotel key access card information system. The MGM Defendants also  
7 conducted an investigation of the incident.

8 18. On or about December 29, 2015, Plaintiffs discovered through the MGM Defendants that  
9 the hotel key access card system indicated that on or about November 26, 2015, an employee of the  
10 MGM Defendants entered the Property without authorization. The MGM Defendants do not refute that  
11 an employee or employees entered the Property on November 26, 2015. However, the MGM  
12 Defendants refused to disclose the name of the employee or employees who entered the Property, and  
13 refused to turn over the data from the hotel key access card system showing all entries into the Property  
14 up to December 3, 2015 which was promised to Plaintiffs prior to the Plaintiffs authorizing the  
15 download.  
16

17 19. Upon information and belief, the MGM Defendants and their employees used an electronic  
18 key card to enter Plaintiffs' Property knowing that Plaintiffs were not in the Property. The MGM  
19 Defendants and their employees entered the Property illegally and without authorization in violation of  
20 NRS 205.900. The MGM Defendants and their employees used the Property for their own benefit  
21 without Plaintiffs' authorization including using the shower at the Property.  
22

23 20. After using the shower, the MGM Defendants and their employees did not turn off the  
24 water and instead, left the shower running on its highest temperature and highest pressure. As a result of  
25 the MGM Defendants and their employee's illegal entry into the Property and failure to turn off the  
26 shower, this resulted in significant damage to the Property.  
27

28 21. Thereafter, the MGM Defendants opened a claim with their insurer Fireman's

1 Fund Insurance Company ("FFIC"). Both MGM and FFIC have refused to conduct any repairs to  
2 Plaintiffs' Property.

3 22. FFIC informed Plaintiffs that because there is mold damage, that the claim was not covered  
4 under FFIC's insurance policy.

5 23. Upon information and belief, there are widespread incidents of the MGM Defendants and  
6 their employees illegally entering the Property and other similar units at 145 E. Harmon Ave Las  
7 Vegas, Nevada 89109, and using the Property and other units for their own benefits without  
8 authorization while the owners are away.

9 24. Upon information and believe, the MGM Defendants and their employees illegally entered  
10 the Property on numerous other occasions and used the Property for their benefit while Plaintiffs were  
11 not at the Property.

12 25. Upon information and belief, there is widespread mold damage of a different species  
13 throughout the entire floor in which the Property is located. The MGM Defendants have failed to  
14 maintain the hotel/condominium by cleaning the mold.

15 FIRST CLAIM FOR RELIEF

16 *(Negligence against all Defendants)*

17 26. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 25 as  
18 though fully set forth herein.

19 27. All Defendants owe a duty of reasonable care to Plaintiffs not to enter the Property  
20 without authorization.

21 28. Defendants breached this duty of care when they entered the Property on or about November  
22 26, 2015 and other occasions and used the Property for their own personal benefit without Plaintiffs'  
23 authorization.

24 29. As a direct and proximate result of Defendants' negligent actions, Plaintiffs sustained  
25 damage to Plaintiffs' Property in the amount in excess of \$10,000.00.  
26  
27  
28

SECOND CLAIM FOR RELIEF

*(Negligence Per Se against all Defendants)*

30. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 29 as though fully set forth herein.

31. In Barnes v. Delta Lines, Inc., 99 Nev. 688, 690, 669 P.2d 709, 710 (1983), the Nevada Supreme Court held that "when a defendant violates a statute which was designed to protect a class of persons to which the plaintiff belongs, and thereby proximately causes injury to the plaintiff, such a violation constitutes negligence per se."

32. NRS 205.900 prohibits the unlawful use of hotel rooms keys to gain entrance into a hotel room under circumstances which demonstrate the person's intent to use or to allow the use of the device in the commission of a crime.

33. NRS 207.200 prohibits the unlawful trespass upon land or building of another with intent to commit an unlawful act.

34. Plaintiffs are the class of persons to which NRS 205.900 and NRS 2007.200 was designed to protect.

35. The MGM Defendants owed a duty of safety and security to Plaintiffs by preventing the unauthorized and illegal use of the electronic key access card, and by preventing the unauthorized and illegal entry by the MGM Defendants and their employees into Plaintiffs' Property to commit a crime.

36. The MGM Defendants and their employees breached this duty and committed a crime when they illegally entered Plaintiffs' Property to use the Property for their own benefit.

37. The MGM Defendants' failure to implement strategies, policies, and procedures to prevent their employees and others from gaining illegal access to the Property amounts to *negligence per se*.

THIRD CLAIM FOR RELIEF

*(Respondeat Superior against all Defendants)*

38. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 37 as



1 though fully set forth herein.

2 39. The MGM Defendants owed a fiduciary duty to Plaintiffs to, among other things, hire, train,  
3 and supervise employees so as to protect Plaintiffs' interests.

4 40. The MGM Defendants had a duty to use reasonable care in the training, supervision, and  
5 retention of its employees to make sure that the employees were fit for their respective positions and  
6 roles.

7 41. The MGM Defendants were required to supervise the actions of its employees, agents, and  
8 representatives, including Does I-X employees to ensure that these employees protect the interest of  
9 MGM's residents including Plaintiffs.

10 42. The MGM Defendants breached its duty of supervision over its employees, agents, and  
11 representatives to Plaintiffs by failing to provide the necessary training regarding protecting the safety,  
12 security, and Property interest of residents of MGM's condominiums.

13 43. The MGM Defendants' failure to train, supervise, hire and/or require the training of  
14 MGM employees, failure to review associated policies, failure to enforce statutory and hotel/  
15 condominium policies related to securing a safe living environment resulted in injuries to Plaintiffs.  
16

17 FOURTH CLAIM FOR RELIEF

18 *(Conversion against all Defendants)*

19 20 44. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 43 as  
21 though fully set forth herein.

22 45. The MGM Defendants and their employees intentionally and wrongfully exerted control  
23 and/or dominion over Plaintiffs' Property when they illegally entered Plaintiffs' Property.

24 46. The MGM Defendants and their employees intentionally and wrongfully denied Plaintiff's  
25 rightful use and enjoyment of the Property.

26 47. The MGM Defendants and their employees' actions caused damage to Plaintiff's Property in  
27 excess of \$10,000.00.  
28

FIFTH CLAIM FOR RELIEF

*(Trespass against all Defendants)*

48. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 47 as though fully set forth herein.

49. The MGM Defendants and their employees intentionally and wrongfully entered Plaintiffs' Property with intent to commit a crime when they illegally entered Plaintiffs' Property on or about November 26, 2015 and other occasions with the intent to use the Property for their own benefit.

50. The MGM Defendants and their employees intentionally and wrongfully entered the Property and remained on the Property despite not having authorization from Plaintiffs and despite the "Do Not Disturb" sign being illuminated from the electronic panel.

SIXTH CLAIM FOR RELIEF

*(Breach of Contract against all Defendants)*

51. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 50 as though fully set forth herein.

52. A contract existed between Plaintiffs and the MGM Defendants on the date of the incident described herein in the form of a Covenant, Conditions, and Restriction ("CCR").

53. The MGM Defendants owed contractual duties to Plaintiffs including a duty that the MGM Defendants would be provided limited access to the Property for legal purposes. The MGM Defendants breached their duties by allowing their employees Does I-X to enter the Property for illegal purposes.

54. The MGM Defendants owed contractual duties to maintain and repair the common areas where the Property is located including, but not limited to, keeping the common areas free of mold. The MGM Defendants breached this duty of failing to clean and repair the existing mold on the entire floor where the Property is located.

55. As a result thereof, Plaintiffs have been damaged in an amount in excess of \$10,000.00.

56. Plaintiffs have been compelled to retain the services of an attorney to prosecute this action

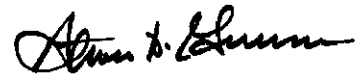
1 and are therefore entitled to reasonable attorney's fees and costs incurred herein.

2 WHEREFORE, Plaintiffs pray for judgment against all Defendants, on all claims for relief as  
3 follows:

- 4 1. General damages in excess of \$10,000.00;
- 5 2. Special damages in excess of \$10,000.00;
- 6 3. Costs of suit incurred including reasonable attorney's fees; and
- 7 4. For such other relief as the Court deems just and proper.

8 DATED this 19th day of May, 2016.

9  
10 By: /s/  
11 ERIC N. TRAN  
12 Nevada Bar No. 11876  
13 5538 S. Eastern Ave  
14 Las Vegas, Nevada 89119  
15 Telephone: (702) 948-9770, Ext. 2033  
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18 *Attorney for Plaintiffs*



CLERK OF THE COURT

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9 Attorney for Plaintiffs

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 145 EAST HARMON II TRUST

13 Plaintiff,

14 v.

15 TURNBERRY/MGM GRAND TOWERS, LLC  
16 MGM RESORTS INTERNATIONAL, THE  
17 RESIDENCES AT MGM GRAND TOWER A,  
18 LLC; MGM GRAND CONDOMINIUMS, LLC;  
19 JOHN DOES I-X.

20 Defendants.

Case No. : A-16-733764-C  
Dept. No.: XI

21 **SUPPLEMENT TO PLAINTIFF'S OPPOSITION**  
22 **TO DEFENDANTS' MOTION TO DISMISS;**  
23 **AND REPLY IN SUPPORT OF PLAINTIFF'S**  
24 **MOTION TO AMEND THE COMPLAINT**

25 Plaintiff 145 East Harmon II Trust, by and through its attorney of record, Eric N. Tran, Esq.  
26 hereby submits this Supplement to Plaintiff's Opposition to Defendants' Motion to Dismiss; and Reply  
27 in Support of Plaintiff's Motion to Amend the Complaint.

28 **MEMORANDUM OF POINTS AND AUTHORITIES**

In Defendants' Reply brief, Defendants maintain that there should be no dispute as to the owners of the Signature at MGM Grand located at 145 East Harmon Ave, Las Vegas Nevada, where Plaintiff's condominium unit is located because public record shows that it is owned by the "Signature Tower I, LLC." Plaintiff has now acquired additional evidence demonstrating the complexity in which

1 these MGM entities are structured which shows that no reasonable litigant would be expected to know  
2 the true owners of the Signature at MGM Grand without first conducting some discovery.

3 Contrary to Defendants' allegations that the "Signature Tower I, LLC" is the only entity that  
4 owns the Signature at MGM Grand, an introduction letter from Frederic Luvisutto, executive director of  
5 the Signature at MGM Grand to Plaintiff was written on "MGM Grand" letterhead. See Plaintiff's  
6 **Exhibit 5** which is a true and correct copy of the introduction letter. Id. Likewise, a welcome letter  
7 containing the Rental Management Agreement from Frederic Luvisutto to Plaintiff shows that the letter  
8 is written on behalf of "The Signature at MGM Grand" and on "The Signature at MGM Grand"  
9 letterhead. See Plaintiff's **Exhibit 6** which is a true and correct copy of a welcome letter from Frederic  
10 Luvisutto to Anthony Tan. Nowhere in these letters does it mention "the Signature Tower I, LLC." The  
11 current Rental Management Agreement, which is for owners who choose to rent out their units to third  
12 parties, states in relevant part as follows:  
13

14 **THIS RENTAL AGREEMENT** (this "*Agreement*") is made this \_\_\_\_  
15 day of \_\_\_\_, 20\_\_ (the "*Commencement Date*") by and among  
16 **THE SIGNATURE CONDOMINIUMS, LLC**, a Nevada limited  
17 liability company ("*Manager*"); and jointly and severally, if applicable,  
each of the parties set forth on the signature page of this Agreement and  
signing this Agreement as the "Owner" (collectively, the "*Owner*").

18 See **Exhibit 7** which is a true and correct copy of the Hotel Condominium Rental Management  
19 Agreement.

20 Thus, the Rental Management Agreement states that the owner of the Signature at MGM Grand  
21 is "the Signature Condominiums, LLC." The Rental Management Agreement does not state that the  
22 owner of the Signature at MGM Grand is "the Signature Tower I, LLC."

23  
24 The Public Offering Statement states in relevant part as follows:

- 25 1. *The Declarant.* Turnberry/MGM Grad Towers, LLC . . . is engaged in  
26 the development of a condominium hotel called "the Residences at MGM  
Grand- Tower A" . . .

27 . . .

2. *The Condominium.* The Condominium Project will consist of approximately 577 units, with 576 residential units and one (1) hotel unit. . . . Those areas typically described as "common elements" in a condominium common-interest community are described herein as "shared components" (the "shared Components") to be owned by the hotel unit owner, which shall be MGM Grand Condominiums, LLC, a Nevada limited liability company . . .

See Plaintiff's **Exhibit 8** (bold and underline emphasis added) which is a true and correct copy of the Public Offering Statement. Clearly, the Public Offering Statement states that the owner of the hotel/condominium is "MGM Grand Condominiums, LLC." Nowhere is "the Signature Tower I, LLC" found in the Public Offering Statement.

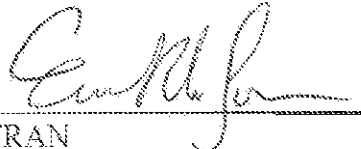
Similarly, the Declarations of Conditions, Covenants, and Restrictions states that the Hotel Unit Owner is MGM Grand Condominiums, LLC. See Defendants' **Exhibit D** at page 5 defining "Hotel Unit Owner." The Declarations of Conditions, Covenants, and Restrictions was never amended to name the "Signature Tower I, LLC."

Further, in Defendants' Reply Brief, Defendants argue that the Signature Tower I, LLC and Defendants MGM Resorts International and MGM Grand Condominiums, LLC are presumed to be separate entities. See Defendants' Reply Brief at 5:9-10. However, a review of their filings with the Nevada Secretary of State shows that the Signature Tower I, LLC and Defendants MGM Resorts International are essentially the same company. For example, a business entity search with the Nevada Secretary of State shows that the Signature Tower I, LLC's Managers are James J. Murren and Corey Sanders with a business address as 3600 Las Vegas Blvd. South Las Vegas Nevada 89109. See Plaintiff's **Exhibit 9** which is a true and correct copy of the Nevada Secretary of State Business search for Signature Tower I, LLC. The Signature Condominiums, LLC is also managed by James J. Murren and Corey Sanders with a business address as 3600 Las Vegas Blvd. South Las Vegas Nevada 89109. See Plaintiff's **Exhibit 10** which is a true and correct copy of the Nevada Secretary of State Business search for The Signature Condominiums, LLC. MGM Grand Condominium, LLC is also managed by

Corey Sanders whose business address is also listed as 3600 Las Vegas Blvd. South Las Vegas Nevada 89109. See Plaintiff's **Exhibit 11** which is a true and correct copy of the Nevada Secretary of State Business search for MGM Grand Condominiums, LLC. Likewise, MGM Resorts International's Director is also James J. Murren and its business address is also listed as 3600 Las Vegas Blvd. South Las Vegas Nevada 89109. See Plaintiff's **Exhibit 12** which is a true and correct copy of the Nevada Secretary of State Business search for MGM Resorts International. Indeed, all four entities have the same officers and are located at the same address. Notably, James J. Murren is the Chairman and Chief Executive Officer of MGM Resorts International.

In sum, there is simply no consistency in any communication or any documents provided by these MGM entities that would allow a litigant to know which entity truly owns the Signature at MGM Grand. While Defendant alleges that Plaintiff's refusal to amend its Complaint to only name the Signature Tower I, LLC as the sole defendant shows bad faith and dilatory motive, ironically, Defendants know that the way the MGM entities are structured, is almost impossible for any potential plaintiff to know exactly which MGM entity truly owns the Signature at MGM Grand. Thus, Defendants' absurd suggestion that Plaintiff should amend its complaint to only name the Signature Tower I, LLC show that Defendants are acting in bad faith and have dilatory motives.

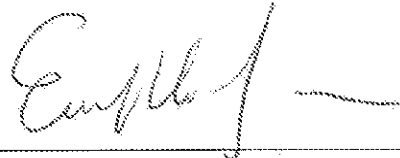
DATED this 7 th day of JUNE, 2016

By:   
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*Attorney for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2016, I caused service of:  
**SUPPLEMENT TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS;  
AND REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND THE COMPLAINT,** to  
be made electronically in accord with the E-Service List as follows:

Contact:	Email
Woods Smith Henning & Berman, LLP	
Elisa Wyatt	ewyatt@wshblaw.com
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<i>Attorneys of Defendants MGM Grand Condominiums, LLC and MGM Grand Resorts International</i>	
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<i>Attorney for Defendant Turnberry/MGM Grand Towers, LLC</i>	

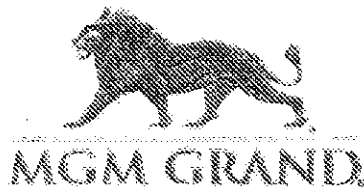


An employee of Eric N. Tran, Attorney at Law



**EXHIBIT 5**

**EXHIBIT 5**



Dear Mr. Anthony J. Tan:

It is with great pleasure that I introduce myself as the Executive Director of your hotel/condominium project at MGM Grand. I am very excited to be a part of such an unbelievable development in Las Vegas. You can look forward to receiving updates about the project from me on a regular basis.

We have reviewed many aspects of the project in anticipation of the commencement of hotel operations later this spring. This process has resulted in a number of changes and improvements that we believe will create an extraordinary guest experience and a seamless hotel operation.

Among the changes, we have decided to rename the development "The Signature at MGM Grand". Following exhaustive market research and consultation with the best marketing minds, both within our organization and our outside consulting firms, we have determined that this name presents the correct brand message to the marketplace and will position us for success as an exclusive, luxury hotel operation.

The Signature at MGM Grand brand will define the new luxury, all-suite hotel accommodations at MGM Grand. The Signature at MGM Grand will combine the best of both worlds: the privacy, service, and amenities of an upscale hotel along with the excitement of all that MGM Grand has to offer.

You will now begin to see and hear press releases, advertisements, and other marketing related material for The Signature at MGM Grand. We wanted to make certain that you heard about the name change and the excitement of the new brand from us first. As occupancy is only a few months away, The Signature at MGM Grand will begin taking reservations during the first part of February for May 2006 occupancy.

The Residences at MGM Grand will continue to represent the real estate offering for the next several months until the project is 100% sold. Your closing information will refer back to this name.

You can anticipate receiving communications concerning the rental program shortly. We look forward to partnering with you on this new business venture and to defining The Signature at MGM Grand as the best new hotel product in Las Vegas. Please do not hesitate to contact us at (877) 717-7771 if you have any questions.

Best regards,

Frederic Luvisutto  
Executive Director  
The Signature at MGM Grand

# EXHIBIT 6

# EXHIBIT 6



Dear Mr. Anthony J. Tan :

It gives me great pleasure to introduce the Rental Program for The Signature at MGM Grand. Please find the enclosed copies of the Rental Management Agreement for your review and execution. I also have enclosed information concerning a customized insurance program being offered by Fireman's Fund for your convenience. There is no obligation to use Fireman's Fund and you are free to obtain required insurance coverage from any company you choose.

With the opening of Tower One just a few weeks away, I am very excited about the opportunity ahead of us. Over the past few months, I have been working diligently with the management team to position The Signature as the best hotel in Las Vegas.

The Signature at MGM Grand will be the only luxury hotel that is adjacent to a dynamic hotel entertainment complex, yet offering the comfortable counterpoint of an exclusive, serene environment with an emphasis on personal service. No other accommodations in Las Vegas will combine the personalized service and intimacy of The Signature at MGM Grand with the excitement and vitality of a "Maximum Vegas" experience.

The project has accomplished many milestones in the past few months – our reservations process and website ([www.signaturemgmgrand.com](http://www.signaturemgmgrand.com)) both launched in February, and our sales managers are currently traveling around the country soliciting group business. The feedback we have heard from potential guests is that The Signature will offer leisure and business travelers a unique and distinct experience within Las Vegas. As a non-gaming and non-smoking property focused on delivering personalized service, The Signature will set itself apart from all other Las Vegas hotels.

As Executive Director for The Signature at MGM Grand, I look forward to having a large enrollment in the Rental Program. Please let us know if we can assist you with anything prior to closing on your unit. Our Residential Services representatives are available to assist you seven days a week at (877) 717-7771 from 8 am to 6 pm (PST).

You will be receiving information in the coming weeks from Turnberry Ltd. regarding the dates that you will close on your unit. I look forward to welcoming you as an owner with The Signature at MGM Grand and as a participant in our Rental Program.

Sincerely,

Frederic Luvisutto  
Executive Director, The Signature at MGM Grand

**EXHIBIT 7**

**EXHIBIT 7**

# THE SIGNATURE AT MGM GRAND - TOWER A HOTEL CONDOMINIUM RENTAL MANAGEMENT AGREEMENT

THIS RENTAL MANAGEMENT AGREEMENT (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Commencement Date") by and among THE SIGNATURE CONDOMINIUMS, LLC, a Nevada limited liability company ("Manager"); and, jointly and severally, if applicable, each of the parties set forth on the signature page of this Agreement and signing this Agreement as the "Owner" (collectively, the "Owner").

## RECITALS

A. Manager operates a condominium/hotel known as The Signature at MGM Grand - Tower A (the "Hotel"), located at 145 East Harmon Avenue, Las Vegas, Nevada. Owner is the owner of Unit No. \_\_\_\_\_ (the "Subject Unit").

B. Owner desires to participate in the Hotel's unit rental management program (the "Rental Program"), pursuant to which Manager will (i) rent and operate the Subject Unit as part of the Hotel, and (ii) use commercially reasonable efforts to rent the Subject Unit to guests or potential guests of the Hotel (individually, a "Hotel Guest" and collectively, the "Hotel Guests"), all on the terms and conditions set forth in this Agreement.

C. Manager shall administer, operate and manage the Rental Program for the Owner and all other owners of residential units in the Hotel who then have, from time to time, elected to participate in the Rental Program (collectively, the "Participants") using the personnel and facilities of the Hotel.

D. Capitalized terms used, but not specifically defined herein, shall have the meaning given such terms in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Residences at MGM Grand - Tower A, as recorded in the official records of the Clark County Recorder's office (the "Declaration").

## AGREEMENT

In consideration of the covenants and agreements set forth in this Agreement, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

## ARTICLE 1

### PRELIMINARY MATTERS AND SCHEDULES

1.1. **The Property.** The Hotel Unit, the Residential Units and Common Elements (each as defined in the Declaration) are sometimes referred to in this Agreement collectively as the "Condominium Property". The Condominium Property contains approximately 576 Residential Units (each, a "Unit" and collectively, the "Units"). The Condominium Property is and shall be subject to the following: (a) the Declaration; (b) the laws of the State of Nevada set forth in Nevada Revised Statutes Chapter 116 ("NRS 116"); (c) the final map recorded in Clark County for the Condominium Property (the "Final Map"); (d) the Property Report for the Condominium relating to the Condominium Property (the "Property Report"); and (e) such other declarations, easements and other agreements with respect to the Condominium Property as may be recorded from time to time in the records of the Clark County Recorder's office ("Other Agreements"). The Declaration, NRS 116, the Final Map, the Property Report and the Other Agreements are sometimes collectively referred to herein as the "Condominium Documents".

1.2. **Authority to Act.** If the Subject Unit is owned by an entity or more than one individual, the Owner shall designate, on a form provided by Manager (the "Designation Form"), an individual who shall act as the primary contact ("Owner of Record") and who shall have the authority to act on behalf of Owner (and Owner shall provide any and all required authorizations to the Owner of Record to act on its behalf) for all matters governed by or requiring Owner action under this Agreement. Manager may rely on any communications or representations from the Owner of Record and the same shall be binding upon the Owner. To change the Owner of Record, the Owner shall deliver written notice to Manager as required by the Designation Form.

1.3. **Schedules.** The following schedules are attached hereto and incorporated in this Agreement:

Schedule A - Hotel Guest Services Schedule  
Schedule B - Unit Maintenance Schedule  
Schedule C - Example of Distribution of Rental Income for a Unit  
Schedule D - Insurance Requirements

## ARTICLE 2

### TERM

2.1. **Term.** The initial term of this Agreement (the "Initial Term") shall commence on the Commencement Date and, unless otherwise terminated as provided elsewhere in this Agreement, shall expire at 11:59 p.m. Las Vegas, Nevada time on the first (1st) anniversary of the Commencement Date (the expiration of such Initial Term or any Renewal Period [as defined below] being referred to herein as the "Expiration Date"). This Agreement shall automatically renew for successive two (2) year periods (each, a "Renewal Period" and collectively, the "Renewal Periods") unless either the Manager or the Owner elects to terminate this Agreement pursuant to Section 2.2 or as otherwise permitted under this Agreement. The Initial Term and any Renewal Period shall hereinafter sometimes be collectively referred to as the "Term."

2.2. **Termination Rights.** In addition to the termination rights granted to Manager pursuant to Articles 6 and 7, at any time during the Initial Term or any Renewal Period, either Manager or Owner may elect to terminate this Agreement by delivering to the other party at least sixty (60) days' prior written notice of such election to terminate (the "Termination Notice"), and, subject to the terms of this Article 2, this Agreement shall terminate and the Subject Unit shall be removed from the Rental Program as of the date which is sixty (60) days following the non-terminating party's receipt of such Termination Notice (the "Termination Date"). Notwithstanding the foregoing, if the Owner exercises its termination rights under this Section 2.2, Owner shall be obligated to honor any reservations assigned to the Subject Unit following such Termination Date, *provided* such reservations were made by Manager prior to Manager's receipt of the Termination Notice. Following receipt of the Termination Notice, Manager shall notify Owner of those dates following the Termination Date that Owner shall be required to make the Subject Unit available for an existing reservation (the "Post Termination Reservations") and Owner shall comply with the terms of this Agreement with respect to the Post Termination Reservation(s) until after the final Post Termination Reservation is honored. If any Termination Notice is received less than sixty (60) days prior to an Expiration Date, then this Agreement shall automatically renew as provided in Section 2.1, but such termination shall still be

**EXHIBIT 8**

**EXHIBIT 8**

## PUBLIC OFFERING STATEMENT

### THE RESIDENCES AT MGM GRAND - TOWER A

#### A HOTEL CONDOMINIUM LOCATED WITHIN THE RESIDENCES AT MGM GRAND, A PLANNED CONDOMINIUM HOTEL COMMUNITY

1. *The Declarant.* Turnberry/MGM Grand Towers, LLC, a Nevada limited liability company (the "*Declarant*"), is engaged in the development of a condominium hotel called "The Residences at MGM Grand - Tower A," a common-interest community (the "*Condominium Project*") in Clark County, Nevada. The Condominium Project will be situated within The Residences at MGM Grand, a planned condominium hotel community ("*The Residences*") located on Audrie Lane, adjacent to the MGM Grand Hotel/Casino. The Declarant's principal address is 19501 Biscayne Boulevard, Suite 400, Aventura, Florida 33180.

2. *The Condominium.* The Condominium Project will consist of approximately 577 units, with 576 residential units and one (1) hotel unit. The units will be situated in a 38-story building. It is anticipated that there will be two (2) unit sizes: a larger one-bedroom unit and a smaller studio suite. Those areas typically described as "common elements" in a condominium common-interest community are described herein as "shared components" (the "*Shared Components*") to be owned by the hotel unit owner, which shall initially be MGM Grand Condominiums, LLC, a Nevada limited liability company, and, thereafter, the Owners from time to time of the hotel unit (the "*Hotel Unit Owner*"). The Shared Components in the Condominium Project are anticipated to include all portions of the Condominium Project not contained within the residential units, including, without limitation, landscaped areas within the Condominium Project, utility systems, parking areas, a fitness center, a specialty outlet, and an owners' lounge. The Shared Components shall exclude any portion of the property on which the Condominium Project is to be situated above elevation 2,516.75 N.A.V.D. and below the lowest support structure of the building, which shall be common elements (the "*Common Elements*"). The Common Elements shall consist solely of the airspace rights above the Condominium Project and subsurface rights below the lowest support structure of the Condominium Project. The residential unit owners may be offered additional amenities and services provided by or on behalf of the Hotel Unit Owner, including, without limitation, housekeeping and laundry services. Each residential unit owner shall pay a respective portion of the cost to operate and maintain the Shared Components (the "*Shared Costs*"). Any services offered or provided to residential unit owners are subject to change or elimination in the sole discretion of Hotel Unit Owner and will be available for an additional fee not included in Association (as defined below) assessments or Shared Costs.

3. *The Residences.* The Residences, if fully developed, is anticipated to consist of six (6) condominium common-interest communities with approximately five hundred eighty (580) condominium units each. However, no assurances exist that any of the six condominium common-interest communities containing such units, any Common Elements or the Shared Components will be built.



**EXHIBIT 9**

**EXHIBIT 9**

# SIGNATURE TOWER I, LLC

## Business Entity Information

Status:	Active	File Date:	4/21/2006
Type:	Domestic Limited Liability Company	Entity Number:	E0305142006-4
Qualifying State:	NV	List of Officers Due:	4/30/2017
Managed By:	Managers	Expiration Date:	
NV Business ID:	NV20061859053	Business License Exp:	4/30/2017

## Additional Information

Central Index Key:	
--------------------	--

## Registered Agent Information

Name:	CSC SERVICES OF NEVADA, INC.	Address 1:	2215-B RENAISSANCE DR
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89119
Filing:		FSA:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

## Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

## ☒ Officers ☐ Include Inactive Officers

### Manager - JAMES J MURREN

Address 1:	3600 LAS VEGAS BLVD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	

### Manager - COREY SANDERS

Address 1:	3600 LAS VEGAS BOULEVARD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	

**EXHIBIT 10**

**EXHIBIT 10**

# THE SIGNATURE CONDOMINIUMS, LLC

## Business Entity Information

Status:	Active	File Date:	12/30/2005
Type:	Domestic Limited-Liability Company	Entity Number:	E0897202005-6
Qualifying State:	NV	List of Officers Due:	12/31/2016
Managed By:	Managers	Expiration Date:	
NV Business ID:	NV20051805217	Business License Exp:	12/31/2016

## Additional Information

Central Index Key:	
--------------------	--

## Registered Agent Information

Name:	CSC SERVICES OF NEVADA, INC.	Address 1:	2215-B RENAISSANCE DR
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89119
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

## Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

## — Officers

☐ Include Inactive Officers

### Manager - JAMES J MURREN

Address 1:	3600 LAS VEGAS BOULEVARD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	

### Manager - COREY SANDERS

Address 1:	3600 LAS VEGAS BOULEVARD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	

# EXHIBIT 11

# EXHIBIT 11

# MGM GRAND CONDOMINIUMS. LLC

## Business Entity Information

Status:	Active	File Date:	10/28/2002
Type:	Domestic Limited-Liability Company	Entity Number:	LLC13292-2002
Qualifying State:	NV	List of Officers Due:	10/31/2016
Managed By:	Managers	Expiration Date:	10/28/2502
NV Business ID:	NV20021134556	Business License Exp:	10/31/2016

## Additional Information

Central Index Key:	
--------------------	--

## Registered Agent Information

Name:	CSC SERVICES OF NEVADA, INC.	Address 1:	2215-B RENAISSANCE DR
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89119
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

## Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

## Officers

☒ Include Inactive Officers

### Manager - COREY SANDERS

Address 1:	3600 LAS VEGAS BOULEVARD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	

### Manager - SCOTT SIBELLA

Address 1:	3799 LAS VEGAS BOULEVARD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	

TRUST193

# EXHIBIT 12

# EXHIBIT 12

# MGM RESORTS INTERNATIONAL

## Business Entity Information

Status:	Active	File Date:	1/13/1987
Type:	Foreign Corporation	Entity Number:	C250-1987
Qualifying State:	DE	List of Officers Due:	1/31/2017
Managed By:		Expiration Date:	
NV Business ID:	NV19871014404	Business License Exp:	1/31/2017

## Additional Information

Central Index Key:	
--------------------	--

## Registered Agent Information

Name:	CSC SERVICES OF NEVADA, INC.	Address 1:	2215-B RENAISSANCE DR
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89119
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

## Financial Information

No Par Share Count:	0	Capital Amount:	\$ 6,000,000.00
Par Share Count:	600,000,000.00	Par Share Value:	\$ 0.01

## Officers

☐ Include Inactive Officers

### Treasurer - DANIEL J D'ARRIGO

Address 1:	3600 LAS VEGAS BOULEVARD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	

### President - WILLIAM J HORNBuckle

Address 1:	3600 LAS VEGAS BOULEVARD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	



**Secretary - JOHN M MCMANUS**

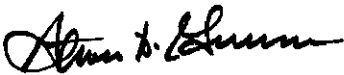
Address 1:	3600 LAS VEGAS BOULEVARD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	

<b>Director - JAMES J MURREN</b>			
Address 1:	3600 LAS VEGAS BOULEVARD SOUTH	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89109	Country:	USA
Status:	Active	Email:	

**Actions/Amendments**

Action Type:	Foreign Qualification		
Document Number:	C250-1987-001	# of Pages:	2
File Date:	1/12/1987	Effective Date:	
(No notes for this action)			
Action Type:	Miscellaneous		
Document Number:	00004012171-56	# of Pages:	1
File Date:	1/13/1987	Effective Date:	
DE CERT OF GOOD STANDING			
Action Type:	Amendment		
Document Number:	C250-1987-003	# of Pages:	4
File Date:	1/5/1988	Effective Date:	
ADDING ARTICLE XI-DIRECTORS LIABILITY			
MGM GRAND HOTELS COMPANY R.I. 001			
Action Type:	Registered Agent Change		
Document Number:	C250-1987-004	# of Pages:	1
File Date:	9/25/1992	Effective Date:	
LIONEL SAWYER & COLLINS 1700 VALLEY BANK PLZ			
300 SOUTH FOURTH STREET LAS VEGAS NV 89101 TCH			
Action Type:	Registered Agent Address Change		
Document Number:	C250-1987-005	# of Pages:	1
File Date:	6/6/1995	Effective Date:	
K. EUGENE SHUTLER P.O.BOX 98655 M K			
3455 HARMON AVE LAS VEGAS NV 89103 M K			
Action Type:	Registered Agent Change		
Document Number:	C250-1987-006	# of Pages:	1
File Date:	12/26/1995	Effective Date:	
K. EUGENE SHUTLER			

  
CLERK OF THE COURT

1 FAC  
2 ERIC N. TRAN, Esq.  
3 Nevada Bar No. 11876  
4 5538 S. Eastern Ave  
5 Las Vegas, Nevada 89119  
6 Telephone: (702) 948-9770, Ext. 2033  
7 Fax: (815) 550-2830  
8 E-Mail: Eric.Tran@StoAmigo.com  
9 Attorney for Plaintiffs  
10

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA  
13

14 145 EAST HARMON II TRUST, ANTHONY  
15 TAN AS TRUSTEE OF THE 145 EAST  
16 HARMON II TRUST.  
17

Case No. : A-16-733764-C  
Dept. No.: XI

18 Plaintiffs,  
19

FIRST AMENDED COMPLAINT

20 v.  
21

22 MGM RESORTS INTERNATIONAL; MGM  
23 GRAND CONDOMINIUMS, LLC; THE  
24 SIGNATURE CONDOMINIUMS, LLC;  
25 SIGNATURE TOWER I, LLC; THE  
26 RESIDENCES AT MGM GRAND -TOWER A  
27 OWNERS' ASSOCIATION; and DOES I-X.  
28

Defendants.

21 Plaintiffs 145 East Harmon II Trust, and Anthony Tan as Trustee of the 145 East Harmon II  
22 Trust, by and through their attorney of record, ERIC N. TRAN, ESQ., for their Complaint against  
23 Defendants MGM Resorts International; MGM Grand Condominiums, LLC; The Signature  
24 Condominiums, LLC; Signature Tower I, LLC; The Residences at MGM Grand Tower A - Owners'  
25 Association (collectively referred to as the "MGM Defendants"); and Does I-X, states, asserts, and  
26 alleges as follows:  
27  
28

## THE PARTIES

1  
2 1. At all times relevant herein, Plaintiff 145 East Harmon II Trust ("the Trust") is the owner  
3 of a condominium unit located at 145 E. Harmon Ave, Unit # 25619 Las Vegas, Nevada 89109 (" the  
4 Unit").

5 2. At all times relevant herein, Plaintiff Anthony Tan is the Trustee of the Trust.

6 3. At all times relevant herein, Defendant MGM Resorts International is a Delaware  
7 corporation that was licensed to do business and actually doing business in Clark County, Nevada.  
8 Based upon information and belief, Defendant MGM Resorts International is also the owner and  
9 operator of the condominium/hotel called the Signature at MGM Grand located at 145 E. Harmon Ave  
10 Las Vegas, Nevada 89109 where the Unit is located.

11 4. At all times relevant herein, Defendant MGM Grand Condominiums, LLC was a  
12 limited liability company organized and existing under the laws of the State of Nevada with its  
13 principal place of business in Clark County, Nevada. Based upon information and belief, MGM Grand  
14 Condominiums, LLC is also the owner and operator of the condominium/hotel called the Signature at  
15 MGM Grand located at 145 E. Harmon Ave Las Vegas, Nevada 89109 where the Unit is located.  
16 Based upon information and belief, Defendant MGM Grand Condominiums, LLC is a subsidiary of the  
17 parent company Defendant MGM Resorts International.

18 5. At all times relevant herein, Defendant The Signature Condominiums, LLC was a limited  
19 liability company organized and existing under the laws of the State of Nevada with its principal place  
20 of business in Clark County, Nevada. In addition, The Signature Condominiums, LLC is the owner and  
21 operator of the condominium/hotel called the Signature at MGM Grand located at 145 E. Harmon Ave  
22 Las Vegas, Nevada 89109 where the Unit is located. Based upon information and belief, Defendant The  
23 Signature Condominiums, LLC is a subsidiary of the parent company Defendant MGM Resorts  
24 International.

25 6. At all times relevant herein, Defendant Signature Tower I, LLC was a limited liability  
26  
27  
28

1 company organized and existing under the laws of the State of Nevada with its principal place of  
2 business in Clark County, Nevada. In addition, Signature Tower I, LLC is the owner and operator of the  
3 condominium/hotel called the Signature at MGM Grand located at 145 E. Harmon Ave Las Vegas,  
4 Nevada 89109 where the Unit is located. Based upon information and belief, Defendant Signature  
5 Tower I, LLC is a subsidiary of the parent company Defendant MGM Resorts International.

6 7. Based upon information and belief, Defendant MGM Resorts International exercises  
7 complete control over all of its subsidiaries.

8 8. At all times relevant herein, The Residences at MGM Grand Tower A- Owners' Association  
9 was a limited liability company organized and existing under the laws of the State of Nevada with its  
10 principal place of business in Clark County, Nevada. Based upon information and belief, Defendant  
11 The Residences at MGM Grand Tower A- Owners Association is also the owner and operator of the  
12 condominium/hotel called the Signature at MGM Grand located at 145 E. Harmon Ave Las Vegas,  
13 Nevada 89109 where the Unit is located.

14 9. The true names, identities, and capacities, whether individual, corporate, associate, or  
15 otherwise, of DOES I through X, inclusive, are unknown to Plaintiffs, who therefore sue said  
16 Defendants by such fictitious names. Plaintiffs are informed and believe and upon that basis allege that  
17 each of the Defendants designated herein as a DOE Defendants are responsible in some manner for  
18 events and happenings herein referred to and caused damages proximately thereby to Plaintiffs as  
19 herein alleged. Plaintiffs further allege that it will ask leave of this Court to amend this Complaint to  
20 insert the true names, identities, and capacities of said DOES I through X, inclusive, when the same  
21 have been ascertained by Plaintiffs, together with appropriate charging allegations.

22 10. Upon information and belief, Does I- X are employees and/ or agents of the MGM  
23 Defendants.

STATEMENT OF FACTS

1  
2 11. On or about November 11, 2015, Plaintiffs attempted to enter the Unit. However,  
3 Plaintiffs could not enter the Unit as the electronic key card entry system malfunctioned. Plaintiffs then  
4 reported the electronic key card system malfunction to the MGM Defendants. Later that day, the MGM  
5 Defendants sent their employees and staff to fix the electronic key card system on the Unit.

6 12. Prior to November 11, 2015, there was no damage to the interior of the Unit, the  
7 bathroom shower in the Unit was also completely shut off, there were no leaks coming from the  
8 bathroom shower, and the shower valve was not broken. Plaintiffs did not give access or authorization  
9 to any persons or party to enter the Unit for any reason. Prior to November 11, 2015, the "Do Not  
10 Disturb" notification on the electronic key card entry system was turned on which signals to all  
11 employees, staff, personnel of the MGM Defendants, and all other visitors to not enter the Unit.

12 13. On or about December 3, 2015, Plaintiffs re-entered the Unit for the first time since  
13 attempting to enter the Unit on November 11, 2015 and discovered that the bathroom shower was fully  
14 turned on to the hottest temperature and the highest pressure; and that the Unit was filled with steam.  
15 The steam and moisture from the bathroom shower caused significant damage to the interior of the Unit  
16 including, but not limited to, mold damage.

17 14. To enter or gain access to the Unit, a person must first insert an electronic key card  
18 specific to the Unit through a double door entry, then the person must insert the same electronic key  
19 card specific to the Unit through a second single door to the Unit. The only persons who had access to  
20 the electronic key card to enter the Unit were Plaintiffs; and the MGM Defendants, their employees and  
21 staff.

22 15. Upon information and belief, the MGM Defendants maintain records of the use of the  
23 electronic key cards system which records entries to the Unit. There is also a security camera directly  
24 outside the front door of the Unit which records who enters the Unit. The security camera also shows  
25 who walks up and down the hallways and corridors of the Unit.  
26  
27  
28

1 16. Thereafter, Plaintiffs contacted the MGM Defendants to report the incident and damage to  
2 the Unit. Plaintiffs authorized and demanded that the MGM Defendants retrieve and review the records  
3 of the hotel electronic key card access system to determine the individual(s) that entered the Unit and  
4 caused damage to the Unit.

5 17. On or about December 11, 2015, the MGM Defendants visited the Unit to retrieve and  
6 download the data from the hotel key access card information system. The MGM Defendants also  
7 conducted an investigation of the incident.

8 18. On or about December 29, 2015, Plaintiffs discovered through the MGM Defendants that  
9 the hotel key access card system indicated that on or about November 26, 2015, an employee of the  
10 MGM Defendants entered the Unit without authorization. The MGM Defendants do not refute that an  
11 employee or employees entered the Unit on November 26, 2015. However, the MGM Defendants  
12 refused to disclose the name of the employee or employees who entered the Unit, and refused to turn  
13 over the data from the hotel key access card system showing all entries into the Unit up to December 3,  
14 2015 which was promised to Plaintiffs prior to Plaintiffs authorizing the download.

15 19. Upon information and belief, the MGM Defendants and their employees used an electronic  
16 key card to enter Plaintiffs' Unit knowing that Plaintiffs were not in the Unit. The MGM Defendants  
17 and their employees entered the Unit illegally and without authorization in violation of NRS 205.900.  
18 The MGM Defendants and their employees used the Unit for their own benefit without Plaintiffs'  
19 authorization including using the shower at the Unit.

20 20. After using the shower, the MGM Defendants and their employees did not turn off the  
21 water and instead, left the shower running on its hottest temperature and highest pressure. As a result of  
22 the MGM Defendants and their employee's illegal entry into the Unit and failure to turn off the shower,  
23 this resulted in significant damage to the Unit.

24 21. Thereafter, the MGM Defendants opened a claim with their insurer Fireman's  
25  
26  
27  
28

1 Fund Insurance Company ("FFIC"). Both the MGM Defendants and FFIC have refused to conduct any  
2 repairs to Plaintiffs' Unit.

3 22. FFIC informed Plaintiffs that because there is mold damage, that the claim was not covered  
4 under FFIC's insurance policy.

5 23. Upon information and belief, there are widespread incidents of the MGM Defendants and  
6 their employees illegally entering the Unit and other similar units at 145 E. Harmon Ave Las Vegas,  
7 Nevada 89109, and using the Unit and other units for their own benefits without authorization while  
8 the owners are away.

9 24. Upon information and belief, the MGM Defendants and their employees illegally entered  
10 the Unit on numerous other occasions and used the Unit for their benefit while Plaintiffs were not at the  
11 Unit.

12 25. Upon information and belief, there is widespread mold damage of a different species  
13 throughout the entire floor in which the Unit is located. The MGM Defendants have failed to maintain  
14 the hotel/condominium by cleaning the mold.  
15

16 FIRST CLAIM FOR RELIEF

17 *(Negligence against all Defendants)*

18 26. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 25 as  
19 though fully set forth herein.  
20

21 27. All Defendants owe a duty of reasonable care to Plaintiffs not to enter the Unit  
22 without authorization.

23 28. Defendants breached this duty of care when they entered the Unit on or about November  
24 26, 2015 and other occasions and used the Unit for their own personal benefit without Plaintiffs'  
25 authorization.  
26

27 29. As a direct and proximate result of Defendants' negligent actions, Plaintiffs sustained  
28 damage to Plaintiffs' Unit in the amount in excess of \$10,000.00.

SECOND CLAIM FOR RELIEF

*(Negligence Per Se against all Defendants)*

30. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 29 as though fully set forth herein.

31. In Barnes v. Delta Lines, Inc., 99 Nev. 688, 690, 669 P.2d 709, 710 (1983), the Nevada Supreme Court held that "when a defendant violates a statute which was designed to protect a class of persons to which the plaintiff belongs, and thereby proximately causes injury to the plaintiff, such a violation constitutes negligence per se."

32. NRS 205.900 prohibits the unlawful use of hotel rooms keys to gain entrance into a hotel room under circumstances which demonstrate the person's intent to use or to allow the use of the device in the commission of a crime.

33. NRS 207.200 prohibits the unlawful trespass upon land or building of another with intent to commit an unlawful act.

34. Plaintiffs are the class of persons to which NRS 205.900 and NRS 2007.200 was designed to protect.

35. The MGM Defendants owed a duty of safety and security to Plaintiffs by preventing the unauthorized and illegal use of the electronic key access card, and by preventing the unauthorized and illegal entry by the MGM Defendants and their employees into Plaintiffs' Unit to commit a crime.

36. The MGM Defendants and their employees breached this duty and committed a crime when they illegally entered Plaintiffs' Unit to use the Unit for their own benefit.

37. The MGM Defendants' failure to implement strategies, policies, and procedures to prevent their employees and others from gaining illegal access to the Unit amounts to *negligence per se*.

THIRD CLAIM FOR RELIEF

*(Respondeat Superior against all Defendants)*

38. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 37 as



1 though fully set forth herein.

2 39. The MGM Defendants owed a fiduciary duty to Plaintiffs to, among other things, hire, train,  
3 and supervise employees so as to protect Plaintiffs' interests.

4 40. The MGM Defendants had a duty to use reasonable care in the training, supervision, and  
5 retention of its employees to make sure that the employees were fit for their respective positions and  
6 roles.

7 41. The MGM Defendants were required to supervise the actions of its employees, agents, and  
8 representatives, including Does I-X employees to ensure that these employees protect the interest of  
9 MGM's residents including Plaintiffs.

10 42. The MGM Defendants breached its duty of supervision over its employees, agents, and  
11 representatives to Plaintiffs by failing to provide the necessary training regarding protecting the safety,  
12 security, and Unit interest of residents of MGM's condominiums.

13 43. The MGM Defendants' failure to train, supervise, hire and/or require the training of  
14 MGM employees, failure to review associated policies, failure to enforce statutory and hotel/  
15 condominium policies related to securing a safe living environment resulted in injuries to Plaintiffs.  
16

17 FOURTH CLAIM FOR RELIEF

18 *(Conversion against all Defendants)*

19 20 44. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 43 as  
21 though fully set forth herein.

22 45. The MGM Defendants and their employees intentionally and wrongfully exerted control  
23 and/or dominion over Plaintiffs' Unit when they illegally entered Plaintiffs' Unit.

24 46. The MGM Defendants and their employees intentionally and wrongfully denied Plaintiff's  
25 rightful use and enjoyment of the Unit.

26 47. The MGM Defendants and their employees' actions caused damage to Plaintiff's Unit in  
27 excess of \$10,000.00.  
28

FIFTH CLAIM FOR RELIEF

*(Trespass against all Defendants)*

48. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 47 as though fully set forth herein.

49. The MGM Defendants and their employees intentionally and wrongfully entered Plaintiffs' Unit with intent to commit a crime when they illegally entered Plaintiffs' Unit on or about November 26, 2015 and other occasions with the intent to use the Unit for their own benefit.

50. The MGM Defendants and their employees intentionally and wrongfully entered the Unit and remained on the Unit despite not having authorization from Plaintiffs and despite the "Do Not Disturb" sign being illuminated from the electronic panel.

SIXTH CLAIM FOR RELIEF

*(Breach of Contract against all Defendants)*

51. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 50 as though fully set forth herein.

52. A contract existed between Plaintiffs and the MGM Defendants on the date of the incident described herein in the form of a Covenant, Conditions, and Restriction ("CCR").

53. The MGM Defendants owed contractual duties to Plaintiffs including a duty that the MGM Defendants would be provided limited access to the Unit for legal purposes. The MGM Defendants breached their duties by allowing their employees Does I-X to enter the Unit for illegal purposes.

54. The MGM Defendants owed contractual duties to maintain and repair the common areas where the Unit is located including, but not limited to, keeping the common areas free of mold. The MGM Defendants breached this duty of failing to clean and repair the existing mold on the entire floor where the Unit is located.

55. As a result thereof, Plaintiffs have been damaged in an amount in excess of \$10,000.00.

56. Plaintiffs have been compelled to retain the services of an attorney to prosecute this action

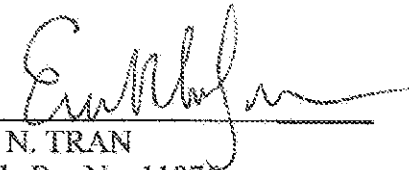
1 and are therefore entitled to reasonable attorney's fees and costs incurred herein.

2 WHEREFORE, Plaintiffs pray for judgment against all Defendants, on all claims for relief as  
3 follows:

- 4 1. General damages in excess of \$10,000.00;  
5 2. Special damages in excess of \$10,000.00;  
6 3. Costs of suit incurred including reasonable attorney's fees; and  
7 4. For such other relief as the Court deems just and proper.

8 DATED this 10th day of June, 2016.

9  
10 By: /s/

  
ERIC N. TRAN

Nevada Bar No. 11876

5538 S. Eastern Ave

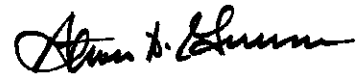
Las Vegas, Nevada 89119

Telephone: (702) 948-9770, Ext. 2033

Fax: (815) 550-2830

E-Mail: [Eric.Tran@StoAmigo.com](mailto:Eric.Tran@StoAmigo.com)

*Attorney for Plaintiffs*



CLERK OF THE COURT

SUMM

DISTRICT COURT

CLARK COUNTY, NEVADA

145 EAST HARMON II TRUST, ANTHONY TAN  
AS TRUSTEE OF THE 145 EAST HARMON II  
TRUST.

Plaintiff,

Case No.: A-16-733764-C

Dept. No.: XI

vs.

S U M M O N S

MGM RESORTS INTERNATIONAL; MGM  
GRAND CONDOMINIUMS, LLC; THE  
SIGNATURE CONDOMINIUMS, LLC;  
SIGNATURE TOWER I, LLC; THE  
RESIDENCES AT MGM GRAND- TOWER A  
OWNERS ASSOCIATION, LLC; DOES I -X.

Defendants.

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR  
BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

SIGNATURE TOWER I, LLC

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff against you for the  
relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you,  
exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written  
response to the Complaint in accordance with the rules of the Court, with the appropriate  
filing fee.

b. Serve a copy of your response upon the attorney whose name and address is shown  
below.

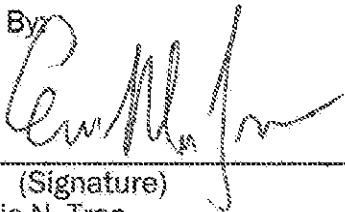
2. Unless you respond, your default will be entered upon application of the Plaintiff and this  
Court may enter a judgment against you for the relief demanded in the Complaint, which  
could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly

so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted By:



(Signature)

Name: Eric N. Tran

Address: 5538 S Eastern Ave

City/State/Zip: Las Vegas, Nevada 89119

Telephone: (702) 948-9770, ext 2033

Attorney for: Plaintiff

STEVEN D. GRIERSON  
CLERK OF COURT

By:

Deputy Clerk

Date

Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

JUN 13 2016

DISTRICT COURT  
CLARK COUNTY, STATE OF NEVADA

145 EAST HARMON II TRUST,  
ANTHONY TAN AS TRUSTEE OF THE  
145 EAST HARMON II TRUST

Plaintiff,

vs.

MGM RESORTS INTERNATIONAL ;  
MGM GRAND CONDOMINIUMS, LLC;  
THE SIGNATURE CONDOMINIUMS, LLC;  
SIGNATURE TOWER I, LLC  
THE RESIDENCE AT MGM GRAND TOWER  
A OWNERS ASSOCIATION, LLC: DOES I-X  
Defendant(s)

AMENDED  
AFFIDAVIT OF SERVICE

Case No. A-16-733764-C  
Dept. XI

MARTIN DRUCKMAN ID 1139578, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made.

That affiant received 1 Summons and Complaint for The Signature Tower I, LLC, on the 13<sup>th</sup> day of June, 2016 and served the same on the 14<sup>th</sup> day of June, 2016 by delivering and leaving a copy with Francis Garcia, the Office Manager of CSC Services of Nevada, Inc. the resident agent for the above company, and authorized to accept service for The Signature Tower I, LLC. at 2215-B Renaissance Dr. Las Vegas, Nevada 89119 at 2:38 pm.



MARTIN DRUCKMAN  
PROCESS SERVERS, INC.  
1736 E. Charleston Blvd. #333  
(702) 643-2280  
NV State License No. 174/174a

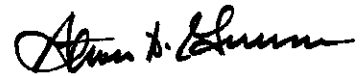
Per NRS 53.045

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

(Date) June 15, 2016



Martin Druckman



CLERK OF THE COURT

SUMM

DISTRICT COURT

CLARK COUNTY, NEVADA

145 EAST HARMON II TRUST, ANTHONY TAN  
AS TRUSTEE OF THE 145 EAST HARMON II  
TRUST.

Plaintiff,

Case No.: A-16-733764-C

Dept. No.: XI

vs.

SUMMONS

MGM RESORTS INTERNATIONAL; MGM  
GRAND CONDOMINIUMS, LLC; THE  
SIGNATURE CONDOMINIUMS, LLC;  
SIGNATURE TOWER I, LLC; THE  
RESIDENCES AT MGM GRAND- TOWER A  
OWNERS ASSOCIATION, LLC; DOES I -X.

Defendants.

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR  
BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

THE SIGNATURE CONDOMINIUM, LLC

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff against you for the  
relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you,  
exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written  
response to the Complaint in accordance with the rules of the Court, with the appropriate  
filing fee.

b. Serve a copy of your response upon the attorney whose name and address is shown  
below.

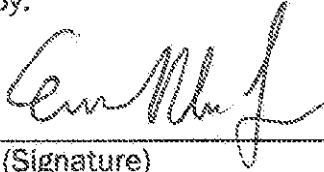
2. Unless you respond, your default will be entered upon application of the Plaintiff and this  
Court may enter a judgment against you for the relief demanded in the Complaint, which  
could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly

so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted By:



(Signature)

Name: Eric N. Tran

Address: 5538 S Eastern Ave

City/State/Zip: Las Vegas, Nevada 89119

Telephone: (702) 948-9770, ext 2033

Attorney for: Plaintiff

STEVEN D. GRIERSON  
CLERK OF COURT CLERK OF THE COURT

By:



Deputy Clerk

Date

Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

VIVIANA A. CANELA

JUN 13 2016



DISTRICT COURT  
CLARK COUNTY, STATE OF NEVADA

145 EAST HARMON II TRUST,  
ANTHONY TAN AS TRUSTEE OF THE  
145 EAST HARMON II TRUST

Plaintiff,

vs.

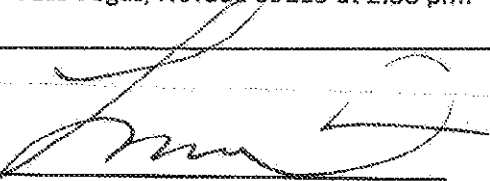
MGM RESORTS INTERNATIONAL ;  
MGM GRAND CONDOMINIUMS, LLC;  
THE SIGNATURE CONDOMINIUMS, LLC;  
SIGNATURE TOWER I, LLC  
THE RESIDENCE AT MGM GRAND TOWER  
A OWNERS ASSOCIATION, LLC: DOES I-X  
Defendant(s)

**AMENDED**  
**AFFIDAVIT OF SERVICE**

Case No. A-16-733764-C  
Dept. XI

MARTIN DRUCKMAN ID 1139578, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made.

That affiant received 1 Summons and Complaint for The Signature Condominium, LLC, on the 13<sup>th</sup> day of June, 2016 and served the same on the 14<sup>th</sup> day of June, 2016 by delivering and leaving a copy with Francis Garcia, the Office Manager of CSC Services of Nevada, Inc. the resident agent for the above company, and authorized to accept service for The Signature Condominium, LLC. at 2215-B Renaissance Dr. Las Vegas, Nevada 89119 at 2:38 pm.

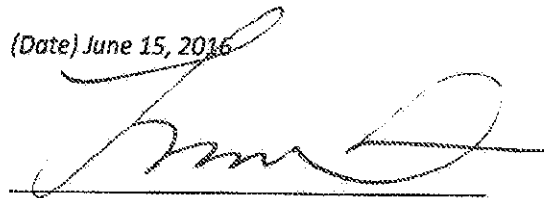


MARTIN DRUCKMAN  
PROCESS SERVERS, INC.  
1736 E. Charleston Blvd. #333  
(702) 643-2280  
NV State License No. 174/174a

Per NRS 53.045

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

(Date) June 15, 2016



Martin Druckman



CLERK OF THE COURT

1 ANAC  
Janice M. Michaels  
2 Nevada Bar No. 6062  
jmichaels@wshblaw.com  
3 Elisa L. Wyatt  
Nevada Bar No. 13034  
4 ewyatt@wshblaw.com  
Wood, Smith, Henning & Berman LLP  
5 7674 West Lake Mead Boulevard, Suite 150  
Las Vegas, Nevada 89128-6644  
6 Telephone: 702 251 4100  
Facsimile: 702 251 5405

7 Attorneys for Defendants, MGM Resorts  
8 International and MGM Grand Condominiums,  
LLC  
9

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 145 EAST HARMON II TRUST, ANTHONY  
TAN AS TRUSTEE OF THE 145 EAST  
13 HARMON II TRUST,

14 Plaintiffs,

15 v.

16 MGM RESORTS INTERNATIONAL; MGM  
GRAND CONDOMINIUMS, LLC; THE  
17 SIGNATURE CONDOMINIUMS, LLC;  
SIGNATURE TOWER I, LLC; THE  
18 RESIDENCES AT MGM GRAND - TOWER A  
OWNERS' ASSOCIATION; and DOES I-X,

19 Defendants.  
20

Case No. A-16-733764-C  
Dept. No.: XI

**MGM RESORTS INTERNATIONAL AND**  
**MGM GRAND CONDOMINIUMS, LLC'S**  
**ANSWER TO PLAINTIFFS' FIRST**  
**AMENDED COMPLAINT**

21 COMES NOW, Defendants, MGM RESORTS INTERNATIONAL and MGM GRAND  
22 CONDOMINIUMS, LLC (collectively, hereinafter "Defendants") by and through their counsel, the  
23 law firm of WOOD, SMITH, HENNING & BERMAN, LLP, and hereby answer and respond to  
24 Plaintiffs' First Amended Complaint, as follows:

25 **THE PARTIES**

26 1. Answering Paragraphs 1, 2, 8 and 9 of Plaintiffs' First Amended Complaint, the  
27 averments contained therein do not assert claims against Defendants; therefore no response is  
28 required. To the extent said Paragraphs are determined to contain factual allegations made against

WOOD, SMITH, HENNING & BERMAN LLP  
Attorneys at Law  
7674 WEST LAKE MEAD BOULEVARD, SUITE 150  
LAS VEGAS, NEVADA 89128-6644  
TELEPHONE 702 251 4100 • FAX 702 251 5405

1 Defendants, Defendants are without sufficient knowledge or information to form a belief as to the  
2 truth of the allegations therein, and therefore, deny each and every allegation contained therein.

3 2. Answering Paragraph 3 of Plaintiffs' First Amended Complaint, Defendant MGM  
4 Resorts International admits that it is a Delaware foreign corporation licensed in the State of Nevada.  
5 As to the remaining allegations, Defendant MGM Resorts International is without sufficient  
6 knowledge or information to form a belief as to the truth of the allegations therein, and therefore,  
7 denies each and every allegation contained therein. Further, the averments contained therein do not  
8 assert claims against Defendant MGM Grand Condominiums, LLC; therefore no response is required  
9 from Defendant MGM Grand Condominiums, LLC. To the extent said Paragraph is determined to  
10 contain factual allegations made against Defendant MGM Grand Condominiums, LLC, Defendant  
11 MGM Grand Condominiums, LLC is without sufficient knowledge or information to form a belief as  
12 to the truth of the allegations therein, and therefore, denies each and every allegation contained  
13 therein.

14 3. Answering Paragraph 4 of Plaintiffs' First Amended Complaint, Defendant MGM  
15 Grand Condominiums, LLC admits that it is a domestic limited liability company licensed in the State  
16 of Nevada and Defendant MGM Resorts International is the ultimate parent corporation of Defendant  
17 MGM Grand Condominiums, LLC. Further, Defendant MGM Resorts International admits that it is  
18 the ultimate parent corporation of Defendant MGM Grand Condominiums, LLC. As to the remaining  
19 allegations, Defendants are without sufficient knowledge or information to form a belief as to the truth  
20 of the allegations therein, and therefore, deny each and every allegation contained therein.

21 4. Answering Paragraph 5 of Plaintiffs' First Amended Complaint, Defendant MGM  
22 Resorts International admits that it is the ultimate parent corporation of The Signature Condominiums,  
23 LLC. As to the remaining allegations, Defendant MGM Resorts International is without sufficient  
24 knowledge or information to form a belief as to the truth of the allegations therein, and therefore,  
25 denies each and every allegation contained therein. Further, the averments contained therein do not  
26 assert claims against Defendant MGM Grand Condominiums, LLC; therefore no response is required  
27 from Defendant MGM Grand Condominiums, LLC. To the extent said Paragraph is determined to  
28 contain factual allegations made against Defendant MGM Grand Condominiums, LLC, Defendant

1 MGM Grand Condominiums, LLC is without sufficient knowledge or information to form a belief as  
2 to the truth of the allegations therein, and therefore, denies each and every allegation contained  
3 therein.

4 5. Answering Paragraph 6 of Plaintiffs' First Amended Complaint, Defendant MGM  
5 Resorts International admits that it is the ultimate parent corporation of Signature Tower I, LLC. As to  
6 the remaining allegations, Defendant MGM Resorts International is without sufficient knowledge or  
7 information to form a belief as to the truth of the allegations therein, and therefore, denies each and  
8 every allegation contained therein. Further, the averments contained therein do not assert claims  
9 against Defendant MGM Grand Condominiums, LLC; therefore no response is required from  
10 Defendant MGM Grand Condominiums, LLC. To the extent said Paragraph is determined to contain  
11 factual allegations made against Defendant MGM Grand Condominiums, LLC, Defendant MGM  
12 Grand Condominiums, LLC is without sufficient knowledge or information to form a belief as to the  
13 truth of the allegations therein, and therefore, denies each and every allegation contained therein.

14 6. Answering Paragraph 7 of Plaintiffs' First Amended Complaint, Defendant MGM  
15 Resorts International is without sufficient knowledge or information to form a belief as to the truth of  
16 the allegations therein, and therefore, denies each and every allegation contained therein. Further, the  
17 averments contained therein do not assert claims against Defendant MGM Grand Condominiums,  
18 LLC; therefore no response is required from Defendant MGM Grand Condominiums, LLC. To the  
19 extent said Paragraph is determined to contain factual allegations made against Defendant MGM  
20 Grand Condominiums, LLC, Defendant MGM Grand Condominiums, LLC is without sufficient  
21 knowledge or information to form a belief as to the truth of the allegations therein, and therefore,  
22 denies each and every allegation contained therein.

23 7. Answering Paragraph 10 of Plaintiffs' First Amended Complaint, Defendants are  
24 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,  
25 and therefore, deny each and every allegation contained therein.

26 ///

27 ///

28 ///

1 **STATEMENT OF FACTS**

2 8. Answering Paragraphs 11, 14, 15, 16, 17, 18, 21 and 25 of Plaintiffs' First Amended  
3 Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth  
4 of the allegations therein, and therefore, deny each and every allegation contained therein.

5 9. Answering Paragraphs 12, 13 and 22 of Plaintiffs' First Amended Complaint, the  
6 averments contained therein do not assert claims against Defendants; therefore no response is  
7 required. To the extent said Paragraphs are determined to contain factual allegations made against  
8 Defendants, Defendants are without sufficient knowledge or information to form a belief as to the  
9 truth of the allegations therein, and therefore, deny each and every allegation contained therein.

10 10. Answering Paragraphs 19, 20, 23 and 24 of Plaintiffs' First Amended Complaint,  
11 Defendants state that these Paragraphs contain purported legal conclusions and/or statements or  
12 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said  
13 Paragraphs are determined to contain factual allegations made against Defendants, Defendants are  
14 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,  
15 and therefore, deny each and every allegation contained therein.

16 **FIRST CLAIM FOR RELIEF**

17 **(Negligence against all Defendants)**

18 11. Answering Paragraph 26 of Plaintiffs' First Amended Complaint, Defendants repeat  
19 and reallege their answers to Paragraphs 1 through 25 of Plaintiffs' First Amended as if fully set forth  
20 and incorporated herein.

21 12. Answering Paragraphs 27, 28 and 29 of Plaintiffs' First Amended Complaint,  
22 Defendants state that these Paragraphs contain purported legal conclusions and/or statements or  
23 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said  
24 Paragraphs are determined to contain factual allegations made against Defendants, Defendants are  
25 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,  
26 and therefore, deny each and every allegation contained therein.

27 ///

28 ///

1 **SECOND CLAIM FOR RELIEF**

2 **(Negligence Per Se against all Defendants)**

3 13. Answering Paragraph 30 of Plaintiffs' First Amended Complaint, Defendants repeat  
4 and reallege their answers to Paragraphs 1 through 29 of Plaintiffs' First Amended as if fully set forth  
5 and incorporated herein.

6 14. Answering Paragraphs 31, 32, 33, 34, 35, 36 and 37 of Plaintiffs' First Amended  
7 Complaint, Defendants state that these Paragraphs contain purported legal conclusions and/or  
8 statements or recitations of law, rather than allegations, and as such, no response is necessary. To the  
9 extent said Paragraphs are determined to contain factual allegations made against Defendants,  
10 Defendants are without sufficient knowledge or information to form a belief as to the truth of the  
11 allegations therein, and therefore, deny each and every allegation contained therein.

12 **THIRD CLAIM FOR RELIEF**

13 **(Respondeat Superior against all Defendants)**

14 15. Answering Paragraph 38 of Plaintiffs' First Amended Complaint, Defendants repeat  
15 and reallege their answers to Paragraphs 1 through 37 of Plaintiffs' First Amended as if fully set forth  
16 and incorporated herein.

17 16. Answering Paragraphs 39, 40, 41, 42 and 43 of Plaintiffs' First Amended Complaint,  
18 Defendants state that these Paragraphs contain purported legal conclusions and/or statements or  
19 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said  
20 Paragraphs are determined to contain factual allegations made against Defendants, Defendants are  
21 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,  
22 and therefore, deny each and every allegation contained therein.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Conversion against all Defendants)**

25 17. Answering Paragraph 44 of Plaintiffs' First Amended Complaint, Defendants repeat  
26 and reallege their answers to Paragraphs 1 through 43 of Plaintiffs' First Amended as if fully set forth  
27 and incorporated herein.

28 ///



1 18. Answering Paragraphs 45, 46 and 47 of Plaintiffs' First Amended Complaint,  
2 Defendants state that these Paragraphs contain purported legal conclusions and/or statements or  
3 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said  
4 Paragraphs are determined to contain factual allegations made against Defendants, Defendants are  
5 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,  
6 and therefore, deny each and every allegation contained therein.

7 **FIFTH CLAIM FOR RELIEF**

8 **(Trespass against all Defendants)**

9 19. Answering Paragraph 48 of Plaintiffs' First Amended Complaint, Defendants repeat  
10 and reallege their answers to Paragraphs 1 through 47 of Plaintiffs' First Amended as if fully set forth  
11 and incorporated herein.

12 20. Answering Paragraphs 49 and 50 of Plaintiffs' First Amended Complaint, Defendants  
13 state that these Paragraphs contain purported legal conclusions and/or statements or recitations of law,  
14 rather than allegations, and as such, no response is necessary. To the extent said Paragraphs are  
15 determined to contain factual allegations made against Defendants, Defendants are without sufficient  
16 knowledge or information to form a belief as to the truth of the allegations therein, and therefore, deny  
17 each and every allegation contained therein.

18 **SIXTH CLAIM FOR RELIEF**

19 **(Breach of Contract against all Defendants)**

20 21. Answering Paragraph 51 of Plaintiffs' First Amended Complaint, Defendants repeat  
21 and reallege their answers to Paragraphs 1 through 50 of Plaintiffs' First Amended as if fully set forth  
22 and incorporated herein.

23 22. Answering Paragraphs 52, 53, 54, 55 and 56 of Plaintiffs' First Amended Complaint,  
24 Defendants state that these Paragraphs contain purported legal conclusions and/or statements or  
25 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said  
26 Paragraphs are determined to contain factual allegations made against Defendants, Defendants are  
27 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,  
28 and therefore, deny each and every allegation contained therein.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The First Amended Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs, by the exercise of reasonable effort and/or care, could have mitigated the amount of damages alleged to have been suffered, but that Plaintiffs failed, neglected and refused, and continues to fail and refuse to exercise a reasonable effort to mitigate their alleged damages.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs have suffered no damages.

**FOURTH AFFIRMATIVE DEFENSE**

The relief sought by Plaintiffs is barred by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are not well grounded in fact and are not warranted by existing law or good faith argument for the extension or modification of existing law but pursued only for the purpose of harassment, unnecessary delay and the incurrence of needless cost of litigation to Defendants.

**SIXTH AFFIRMATIVE DEFENSE**

At all times relevant to the First Amended Complaint, Defendants acted in a commercially reasonable manner, dealing fairly and in good-faith, and acted without intent to inflict harm or damage.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendants are not legally responsible for the acts and/or omissions of those parties named herein as fictitious DOES or named as any other entity.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendants' actions in no way caused or contributed to the Plaintiffs' injuries and/or damages.

**NINTH AFFIRMATIVE DEFENSE**

Any damages which the Plaintiffs may have sustained by reason of the allegations contained in the First Amended Complaint were proximately caused by the acts of persons other than Defendants and, therefore, Plaintiffs are not entitled to any relief from Defendants.



**TENTH AFFIRMATIVE DEFENSE**

Any damages suffered by the Plaintiffs were caused by an independent, superseding cause or causes over which Defendants had no control or authority.

**ELEVENTH AFFIRMATIVE DEFENSE**

At all times relevant to the First Amended Complaint, Defendants acted pursuant to all of their obligations, if any, and were justified or privileged in their actions.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs' acts, omissions, negligence, and/or intentional misconduct made it impossible for Defendants to perform their obligation, if any.

**THIRTEENTH AFFIRMATIVE DEFENSE**

If Plaintiffs suffered or sustained any loss, injury, damage or detriment, the same was directly and proximately caused and contributed to by the conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiffs, thereby completely or partially barring Plaintiffs' recovery herein.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Any and all events, happenings, injuries, and damages alleged by Plaintiffs are the result of force majeure.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to join all necessary and indispensable parties to this lawsuit.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred as a result of their prior wrongful conduct.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have waived any rights they may have had to seek relief in this action.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The First Amended Complaint, and each and every claim for relief contained therein, is barred by the applicable Statutes of Repose.

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**NINETEENTH AFFIRMATIVE DEFENSE**

The First Amended Complaint, and each and every claim for relief contained therein, is barred by the applicable Statutes of Limitations.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' unreasonable delay in advising Defendants of any claims Plaintiffs had in this action bars and/or diminishes Plaintiffs' recovery herein under the doctrines of estoppel, waiver, and/or laches.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiffs or other unknown third-persons or entities modified or altered the subject property, without the knowledge or consent of Defendants, and such modification or alteration directly and proximately caused the damages suffered by Plaintiffs, if any, thus barring Plaintiffs from any recovery against Defendants.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

The First Amended Complaint, and each and every claim for relief contained therein, is barred by the Statute of Frauds.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Any contracts, obligations or agreements as alleged in Plaintiffs' First Amended Complaint have been entered into, any duty or performance owed or due by Defendants are excused by reason of failure of consideration, waiver, breach of condition precedent, breach by Plaintiffs, impossibility of performance, prevention by Plaintiffs, frustration of purpose and/or acceptance by Plaintiffs.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Any delay in performance of any contract, obligation or agreement was caused by the interference, action and/or inaction of Plaintiffs which bars Plaintiffs' claim for damages and/or liquidated damages.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Defendants allege that Plaintiffs have waived their right to the relief sought in Plaintiffs' First Amended Complaint by virtue of their acts, conduct, representations and omissions which constituted a breach of contract by Plaintiffs.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Defendants have performed any and all obligations required by it pursuant to any agreements with Plaintiffs.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to satisfy one or more express or implied condition precedent to any obligations allegedly owed to Defendants.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Defendants have been required to retain the services of Wood Smith Henning & Berman, LLP, to defend this action, and reasonable attorneys' fees and costs of suit herein incurred should be awarded therefore.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Pursuant to Rule 11 of NRCP as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry from the filing of Plaintiffs' Amended Complaint. In the event further investigation or discovery in this case reveals the applicability of any additional affirmative defenses, including but not limited to those affirmative defenses enumerated to NRCP 8(c), Defendants reserve the right to specifically assert any such defenses. The defenses contained in NRCP 8(c) are incorporated herein by reference for the specific purpose of not waiving any such defenses.

**WHEREFORE**, Defendants pray as follows:

1. That Plaintiffs take nothing by their First Amended Complaint;
2. That Plaintiffs' First Amended Complaint be dismissed, in its entirety, with prejudice;
3. That Defendants be awarded their costs of suit incurred in defense of this action;
4. That Defendants be awarded their reasonable attorneys' fees as provided by the applicable statute and/or rule; and

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1 5. For such other relief as this Court deems proper.

2 June 27, 2016

3 WOOD, SMITH, HENNING & BERMAN LLP  
4 Attorneys at Law

5  
6 By 

JANICE M. MICHAELS

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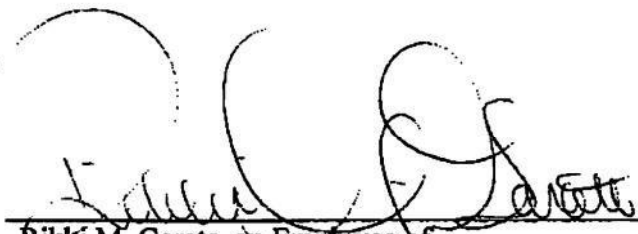
Tel. 702 251 4100

11 Attorneys for Defendants, MGM Resorts  
12 International and MGM Grand Condominiums,  
13 LLC  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of June, 2016, a true and correct copy of MGM RESORTS INTERNATIONAL AND MGM GRAND CONDOMINIUMS, LLC'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

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By   
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and insurance of the Shared Components, all such charges to be fixed, established and collected from time to time as herein provided. The Annual Charge, Transient Rental Fees, if any, Capital Improvement Charge and Special Charge shall be a charge on the Residential Units and shall be a continuing lien upon the Residential Unit against which each such charge is made and upon all improvements thereon, from time to time existing. Each such charge, together with such interest, costs and reasonable attorneys' fees for the collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Residential Unit at the time when the charge fell due and all subsequent Owners of that Unit until paid, except as provided in Section 8.6 below. Reference herein to charges shall be understood to include reference to any and all of said charges whether or not specifically mentioned. Each Unit shall be assessed the fractional share of the Hotel Shared Costs as is set forth on Exhibit "I" attached hereto. Hotel Shared Costs for each Residential Unit Owner shall be equal to a fraction, whose numerator will be one (1) for all Studio Suite Units and two (2) for all Single-Bedroom Units and whose denominator will be seven hundred fifty-six (756). In addition to the Annual Charge, Transient Rental Fees, if any, and Capital Improvement Charges which are or may be levied hereunder, the Hotel Unit Owner shall have the right to collect reasonable reserves for the replacement of the Shared Components and the furnishings and finishings thereof and to levy Special Charges against an Owner(s) to the exclusion of other Owners for the repair or replacement of damage to any portion of the Hotel Unit (including, without limitation, improvements, furnishings and finishings therein) caused by the misuse, negligence or other action or inaction of a Residential Unit Owner or his, her or its Family, agents, Transient Guests, Long-Term Guests and other occupants of such Residential Unit Owner's Unit. Any such Special Charge shall be subject to all of the applicable provisions of this section, including, without limitation, lien filing and late charges and interest and, if allowed by law, foreclosure proceedings. Any Special Charge levied hereunder shall be due within the time specified by the Hotel Unit Owner in the action imposing such charge.

8.4. *Commencement of Charges.* The Annual Charge provided for in this section shall commence on the Residential Units as determined by the Hotel Unit Owner in its sole discretion, and for such subsequent year shall be imposed on a calendar year basis. The Annual Charge shall be payable in advance in monthly installments, or in annual, semi- or quarter-annual installments if so determined by the Hotel Unit Owner (absent which determination they shall be payable monthly). The charge amount (and applicable installments) may be changed at any time by the Hotel Unit Owner from that originally stipulated or from any other charge that is in the future adopted by the Hotel Unit Owner. The original charge for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, at any appropriate time during the year), but the amount of any revised charge to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year. The Hotel Unit Owner shall fix the date of commencement and the amount of the charge against the Residential Units for each charge period, to the extent practicable, at least twenty (20) days in advance of such date or period, and shall, at that time, prepare a roster of the Residential Units and charges applicable thereto which shall be kept in the office of the Hotel Unit Owner and shall be open to inspection by any Owner. Written notice of the charge shall thereafter be sent to every Residential Unit Owner twenty (20) days prior to payment of the first installment thereof, except as to Special Charges. In the event no such notice of the charges for a new charge period is given, the amount

payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

8.5. *Transient Rental Fees.* As stated in Section 8.3 above, each Residential Unit Owner, by acceptance of a deed to a Unit, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Hotel Unit Owner all Transient Rental Fees, if any, described in this Section 8.5. The Hotel Unit Owner may, in its sole discretion, charge each Residential Unit Owner who permits the Transient Rental of such Owner's Residential Unit the fees set forth in Section 8.5(a) and 8.5(b) of this Declaration (collectively, "*Transient Rental Fees*").

(a) *Monthly Transient Rental Fee.* In furtherance of the rights of the Hotel Unit Owner to establish mandatory check-in procedures and other rules and regulations to integrate Residential Unit Owners and their Transient Guests with the Hotel Unit and, among other things, in order to offset the economic burden to be incurred by the Hotel Unit Owner in permitting usage of the Hotel Unit by Transient Guests and the establishment of such procedures, each Residential Unit Owner who permits a Transient Rental of that Owner's Unit shall be charged a monthly fee (the "*Monthly Transient Rental Fee*") currently estimated at (i) Two Hundred Dollars (\$200.00) per month for each Studio Unit rented to a Transient Guest, and (ii) Two Hundred Fifty Dollars (\$250.00) per month for each Single Bedroom Unit rented to a Transient Guest. No later than fourteen (14) days prior to the beginning of each calendar quarter, each Residential Unit Owner desiring to permit Transient Rentals in his, her or its Unit at any time during such calendar quarter shall inform the Hotel Unit Owner on a form provided by the Hotel Unit Owner of the anticipated Transient Rental use and remit the applicable monthly Transient Rental Fee in advance for each of the three (3) months in the current calendar quarter. If a Residential Unit Owner desires to permit a Transient Rental but failed to inform the Hotel Unit Owner of such anticipated use prior to the beginning of the current calendar quarter, the Residential Unit Owner may permit Transient Rentals if, and only if, (A) the Residential Unit Owner informs the Hotel Unit Owner of the Transient Rental not less than five (5) days prior to the occupancy of the Transient Guest, and (B) remits the applicable Monthly Transient Rental Fee for each of the three (3) months in the current calendar quarter, regardless of how much time remains in the current calendar quarter. Payment of the Monthly Transient Rental Fee shall be a precondition to use of a Residential Unit for Transient Rental purposes, use of any other portion of the Condominium Property by any Transient Guests, and access to any Hotel Related Services by any Transient Guest. The Monthly Transient Rental Fee may be changed by the Hotel Unit Owner from time to time, in its sole discretion.

(b) *Daily Transient Rental Fee.* The Hotel Unit Owner may require in the Rules and Regulations that any Residential Unit Owner engaging in Transient Rentals allow the Hotel Unit Owner to service his, her or its Unit for each day that the Unit is used as a Transient Rental. The services provided by the Hotel Unit Owner may include housekeeping, linen and other in-room services that are commonly furnished by a hotel. The Hotel Unit Owner shall require that the Residential Unit Owner pay a fee for these services currently estimated at \$50 for a Studio Unit and \$75 for a Single Bedroom Unit, for each day a Residential Unit is used as a Transient Rental, which fee may be changed by the Hotel Unit Owner, in its sole discretion (the "*Daily Transient Rental Fee*").

8.6. *Effect of Non-Payment of Charge; the Personal Obligation; the Lien; Remedies of the Hotel Unit Owner.* If the charges (or installments) provided for in this Section 8 are not paid on the due date(s), then such charges (or installments) shall become delinquent and shall, together with late charges, interest and the reasonable cost of collection (including attorneys' fees) shall constitute a lien on the Residential Unit and all improvements thereon. Except as provided in Section 8.7 to the contrary, the personal obligation of an Owner to pay such charge shall pass to such Owner's successors in title and recourse may be had against either or both. If any installment of a charge is not paid within fifteen (15) days after the due date, at the option of the Hotel Unit Owner, a late charge not greater than the amount of such unpaid installment may be imposed and the Hotel Unit Owner may bring an action at law against the Owner(s) personally obligated to pay the same, may Record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Residential Unit and all improvements thereon, may foreclose the lien against the applicable Residential Unit and all improvements thereon, or may pursue one or more of such remedies at the same time or successively, together with interest, late charges and attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint, and prosecuting same. In the event a judgment is obtained, such judgment shall include all such sums as above provided and attorneys' fees actually incurred together with the costs of the action, through all applicable appellate levels. Failure of the Hotel Unit Owner (or any collecting entity) to send or deliver bills or notices of charges shall not relieve Owners from their obligations hereunder. The Hotel Unit Owner shall have such other remedies for collection and enforcement of charges as may be permitted by applicable law. All remedies are intended to be, and shall be, cumulative.

8.7. *Subordination of the Hotel Unit Owner's Lien.* The lien of the charges provided for in this section shall be subordinate to (i) liens and encumbrances Recorded before the Recordation of this Declaration, and (ii) a Mortgagee in a first lien position on a Unit Recorded before the charge sought to be enforced becomes delinquent; *provided, however*, that any such Mortgage lender when in possession, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such Mortgage lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or Mortgage lender, shall hold title subject to the liability and lien of any charge coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid charge which cannot be collected as a lien against any Residential Unit by reason of the provisions of this section shall be deemed to be a charge divided equally among, payable by and a lien against all Residential Units, including the Residential Units as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

8.8. *Curative Right.* In the event (and only in the event) that the Hotel Unit Owner fails to maintain the Shared Components as required under this Declaration, the Association shall have the right to perform such duties; *provided, however*, that the Association may only perform such duty after thirty (30) days' prior written notice to the Hotel Unit Owner and provided that the Hotel Unit Owner has not effected curative action within said thirty (30) day period (or if the curative action cannot reasonably be completed within said thirty (30) day period, provided only that the Hotel Unit Owner has not commenced curative actions within said thirty (30) day period and thereafter diligently pursued same to completion). To the extent that the Association must undertake maintenance responsibilities as a result of the Hotel Unit Owner's failure to perform same, then in such event, but only for such remedial actions as may be necessary, the Association shall be deemed vested with the charge rights of the Hotel Unit



Owner hereunder for the limited purpose of obtaining reimbursement from the Hotel Unit Owner for the costs of performing such remedial work.

8.9. *Financial Records.* The Hotel Unit Owner shall maintain financial books and records showing its actual receipts and expenditures with respect to the maintenance, operation, repair, replacement, alteration and insurance of the Shared Components, including the then current budget and any then proposed budget (the "*Shared Components Records*"). The Shared Components Records need not be audited or reviewed by a Certified Public Accountant. The Shared Components Records shall at all times, during reasonable business hours, be subject to the inspection of any Member of the Association.

8.10. *Hotel Unit Owner Consent; Conflict.* The provisions of this Section 8 shall not be amended, modified or in any manner impaired and/or diminished, directly or indirectly, without the written consent of the Hotel Unit Owner. In the event of any conflict between the provisions of this Section 8, and the provisions of any other Section of this Declaration, the provisions of this Section 8 shall prevail and govern.

9. *Use Restrictions.* All of the Condominium Property shall be held, used and enjoyed subject to the following limitations and restrictions and the exemptions of the Declarant set forth in this Declaration.

9.1. *Occupancy.* Each Residential Unit shall be used as a residence only, whether for permanent, temporary or transient use, except as otherwise herein expressly provided, and in accordance with all applicable county and state codes, ordinances and regulations. The Hotel Unit may be used for any lawful purpose. The provisions of this Section 9.1 shall not be applicable to Units used by the Declarant for model apartments, sales or resales offices or management or administrative services. The rights of Residential Unit Owners to use the Hotel Unit shall be limited to the extent granted in, and subject to the restrictions of, Section 3.10(a), and the obligation for payment of the Assessments as set forth in Sections 7 and 8. It is contemplated (but without creating an obligation whatsoever) that in addition to use as a typical hallway for pedestrian passage, the Hotel Unit will be utilized by the Hotel Unit Owner in such a manner as to provide hotel features for the Condominium, which may include (again without obligation, and without limitation) housekeeping, room service, personal services, etc.

9.2. *Parking.* All vehicle parking shall be by valet only and subject to any procedures, rules and regulations adopted from time to time pursuant to this Declaration or the Reciprocal Easement Agreement. One valet parking space will be available for each Residential Unit within the Condominium Property or within another parking facility located near the Condominium Property. Parking spaces will not be assigned to a particular Residential Unit. Any spaces in addition to the one valet parking space available to each Residential Unit will be on a "first come" basis.

9.3. *Nuisances.* No nuisances (as defined by the Hotel Unit Owner or Association, as applicable) shall be allowed on the Shared Components, Common Elements or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Shared Components, Common Elements and/or Association Property by its residents, occupants or

Members. No activity specifically permitted by this Declaration, including, without limitation, activities or businesses conducted from the Hotel Unit, shall be deemed a nuisance. Noises and uses which are typically encountered in a hotel setting, including, but not limited to (i) transient noise and guest or Owner traffic from passage through hallways; (ii) transient noise from other Units; (iii) opening and closing of doors; (iv) cleaning and/or provision of other Hotel Related Services; and (iv) special events taking place in the Hotel Unit Shared Components or the MGM Grand Hotel shall not be deemed a nuisance, as such noises and/or uses are deemed to be common and accepted occurrences in a hotel setting. In addition, any noises and uses associated with the use or operation of the monorail adjacent to the Condominium Property shall not be deemed a nuisance. Normal construction activities shall not be considered to violate the terms and conditions of this Section 9.3. By accepting a deed to a Residential Unit, a Residential Unit Owner acknowledges that the Condominium Property is adjacent to a hotel/casino and that noise, lights and odors common to commercial activities, as well as construction activities, may exist on or near the Condominium Property, at any time and from time to time. New hotel/casino developments may be constructed and existing hotels and casinos may undergo reconstruction from time to time, and such work may cause periods of extra noise, earth vibration and dust, as well as reconfiguration of landscaping, parking and other developments.

9.4. *Weight and Sound Restriction.* Subject to Section 9.20 of this Declaration, hard and/or heavy surface floor coverings, including, without limitation, tile, marble, wood or the like, may not be installed in any part of a Residential Unit without the consent of the Hotel Unit Owner. Furthermore, the Residential Unit Owner must ensure that a sound control underlayment system is used, which system must be approved by the Hotel Unit Owner. The installation of the foregoing insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the building structure, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Residential Unit being occupied. Also, the installation of any improvement or heavy object must be submitted to and approved by the Hotel Unit Owner, and be compatible with the overall structural design of the building. The Hotel Unit Owner may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Hotel Unit Owner has the right to require immediate removal of violations. Each Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a high-rise building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and or mechanical equipment can often be heard in another Unit. The Declarant does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Unit Owner hereby waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.

9.5. *Signs.* Except as provided to the Declarant under this Declaration, no sign, poster, billboard, advertising device or other display of any kind shall be displayed without the pre-approval of the Hotel Unit Owner.

9.6. *Antennas, Satellite Dishes.* To the extent permitted by applicable law, no Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or

upon his, her or its Unit (and/or areas appurtenant thereto), without the prior written consent of the Hotel Unit Owner.

9.7. *Unsightly Articles.* No unsightly articles shall be permitted to remain upon or within any Unit, Shared Component or Common Elements so as to be visible from any other portion of the Condominium Property.

9.8. *Pets.* Except for fish, there shall be allowed no more than two (2) household pets in a Residential Unit with an aggregate weight not to exceed eighty (80) pounds; *provided, however*, that said pets may consist only of dogs, cats, fish and/or birds and may not be kept, bred, or maintained for any commercial purpose and do not become a nuisance or annoyance to neighbors. All pets must be registered and approved in writing by the Hotel Unit Owner, which Hotel Unit Owner's approval may be given or withheld in the sole discretion of the Hotel Unit Owner. Residential Unit Owners must immediately pick up all solid waste of their pets and dispose of such waste appropriately. All individual pets, including cats, must be leashed at all times when outside a Unit. No pets may be kept on patio areas or on balconies of any Residential Units when the Residential Unit Owner is not in his, her or its Residential Unit. No reptiles or other forms of wildlife shall be kept in or on the Condominium Property (including Residential Units). Violations of the provisions of this Section 9.8 shall entitle the Hotel Unit Owner to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. Notwithstanding the foregoing, prior to the installation of a fish tank exceeding fifty-five (55) gallons, a Residential Unit Owner must deliver plans for such tank to the Hotel Unit Owner for its written approval, which approval may be withheld in the Hotel Unit Owner's sole discretion.

9.9. *Hotel Related Service.* The Hotel Unit Owner shall have the exclusive right (but not the obligation) to provide Hotel Related Services for a fee to be determined from time to time in the Hotel Unit Owner's sole discretion. In the event the Hotel Unit Owner or an Affiliate of the Hotel Unit Owner does not provide a Hotel Related Service, Unit Owner may obtain such services from a party unrelated to Hotel Unit Owner or an Affiliate of Hotel Unit Owner; *provided, however*, that all unrelated parties providing such services must comply with any rules and regulations set by the Hotel Unit Owner and all applicable federal, state and local laws.

9.10. *No Improper Uses.* No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of the Governing Documents, the Association and the Hotel Unit Owner shall not be liable to any person(s) for its failure to enforce the provisions of this Section 9.10. No activity specifically permitted by this Declaration shall be deemed to be a violation of this section.

9.11. *Transient Rentals or Long-Term Rental.* It is intended that the Units may be used for Transient Rentals and Long-Term Rentals. As such, the rental of Units or portions thereof shall not be subject to the approval of the Association and/or any other limitations, other than as expressly provided herein. Each occupant of a Residential Unit, including, without limitation, a Transient Guest or Long-Term Guest shall comply with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto) and with any and all rules and regulations adopted by the Hotel Unit Owner and/or Association, as applicable, from time to time, including, without limitation, any and all regulations and/or procedures adopted by the Hotel Unit Owner regarding mandatory check-in for Owners, Transient Guests, Long-Term Guests, or other occupants of a Residential Unit, as applicable, coordination of charging privileges and other matters reasonably necessary to allow Owners, Transient Guests, Long-Term Guests, or other occupants of a Residential Unit, as applicable, to be well integrated into a unified structure and operation. The Unit Owner will be jointly and severally liable with the Association and/or the Hotel Unit Owner for any amount which is required by the Association and/or the Hotel Unit Owner to repair any damage to the Common Elements, the Hotel Unit and/or the Shared Components resulting from acts or omissions of Transient Guests, Long-Term Guests, or other occupants of a Residential Unit, as applicable (as determined in the sole discretion of (i) the Association as to Common Elements or (ii) the Hotel Unit Owner as to the Hotel Unit or Shared Components) and to pay any claim for injury or damage to property caused by the negligence of the Transient Guests, Long-Term Guests, or other occupants of a Residential Unit, as applicable, and Special Charges or Assessments may be levied against the Unit therefor. All rentals are hereby made subordinate to any lien filed by the Association or the Hotel Unit Owner, whether prior or subsequent to such lease. Notwithstanding the foregoing, all Transient Rentals shall be subject to the terms and conditions of Section 8 of this Declaration.

9.12. *Exterior Improvements.* Without limiting the generality of Section 9.20 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Hotel Unit Owner.

9.13. *Hotel Unit Owner Access to Units.* In order to facilitate access to Units by the Hotel Unit Owner for the purposes enumerated in Section 3.10 and 4.3 hereof, it shall be the responsibility of all Residential Unit Owners to deliver a set of keys (or access card or code, as may be applicable) to their respective Residential Units to the Hotel Unit Owner to use in the performance of its functions. No Residential Unit Owner shall change or modify in any way the locks to his, her or its Residential Unit under any circumstances. The Hotel Unit Owner shall have the right to adopt reasonable regulations from time to time regarding access control and check-in, check-out procedures which shall be applicable to Residential Unit Owners, their Families, agents, Transient Guests, Long-Term Guests, and other occupants of their Residential Units.

9.14. *Storage on Balconies/Terraces.* No equipment, materials or other items shall be kept or stored on any balcony or terrace area of the Condominium, including but not limited to towels, clothing, bicycles. The foregoing shall not prevent, however, placing and using patio-type furniture in such areas if same are normally and customarily used for a

residential balcony or terrace area, but all such patio furniture, planters and others must be reasonably acceptable to the Hotel Unit Owner. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Hotel Unit Owner shall be final and dispositive. In no event shall any barbeque or other cooking devices be utilized on any balcony or terrace area of the Condominium.

9.15. *Effect on Declarant.* Subject to the following exceptions, the restrictions and limitations set forth in this Section 9 shall not apply to the Declarant nor to Units owned by the Declarant.

9.16. *No Further Subdivision; Timesharing; Exchange Programs.* No non-Declarant Owner may further subdivide a Unit without the prior written approval of the Hotel Unit Owner; *provided, however,* that nothing in this Section 9 shall be deemed to prevent an Owner from, or require the approval of the Hotel Unit Owner for (i) selling a Unit; or (ii) transferring or selling any Unit to more than one (1) Person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property; or (iii) the leasing or renting by any Owner of all of such Owner's Unit in accordance with the provisions of the Governing Documents. The Declarant hereby expressly reserves the right to replat or subdivide any Unit or Units owned by the Declarant. No Unit shall be made subject to any type of timesharing, fraction sharing, exchange program or other similar program whereby the right to exclusive use of the Unit rotates among other Owners or members of the program on a fixed or floating time schedule over a period of time.

9.17. *Air Conditioning Units.* No window air conditioning unit may be installed in a Unit.

9.18. *Relief; Warranties.* The Hotel Unit Owner and/or the Association shall have the power, but not the obligation, to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 9 for good cause. APPLICABLE WARRANTIES OF THE DECLARANT, IF ANY, MAY BE VOIDED BY VIOLATION OF THESE RESTRICTIONS.

9.19. *Sale of Unit to Prospective Purchaser.* Upon entering into an agreement for the sale of a Unit, a non-Declarant Owner shall provide written notice to the Board and the Hotel Unit Owner, or such party's respective designees, of the sale agreement and furnish the names of the prospective purchaser and both parties' real estate brokers and/or agents, including the brokers and/or agents' telephone numbers. Within five (5) business days of receipt of a prospective Purchaser's name and address, the Association, or its designee, shall either deliver in person or forward, by certified, registered mail to the prospective Purchaser, a copy of the Governing Documents, a receipt for the Governing Documents (in a form to be determined by the Association), and a return envelope, postage pre-paid, for return of the receipt. Furthermore, a non-Declarant Owner shall inform, and shall cause the Purchaser to inform, the Hotel Unit Owner and the Board when the parties have closed the sale of the Unit. The Hotel Unit Owner and the Board shall have the right to charge a non-Declarant Owner a reasonable fee for the processing of sales of Units, including, but not limited to, the costs associated with the copying and delivery of the Governing Documents to a prospective Purchaser.

9.20. *Additions, Alterations of Improvements by Residential Unit Owners.*

(a) *General.* Subject to Section 8.5 hereof, if a Residential Unit Owner selects the standard decorations and improvement package (the "Standard Package") offered by the Declarant at the time of purchase, the Residential Unit Owner will be eligible to use his, her or its Residential Unit as a Transient Rental. If a Residential Unit Owner satisfies the conditions described above, in order to maintain eligibility, a Residential Unit Owner shall make no addition, alteration or improvement to the Unit, including, but not limited to, painting, decorating of any nature, installation of floor coverings, planters, electrical wiring, machinery, air conditioning units or installation of fixtures of personal property of any kind which, in the sole and exclusive determination of the Hotel Unit Owner, cause the Unit's appearance to differ from those Units with the Standard Package, in which no additions, alterations or improvements have been made.

(b) *Consent of the Board of Directors and Hotel Unit.* No Residential Unit Owner (other than the Declarant) shall make any addition, alteration or improvement in or to the Common Elements or the Association Property, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer, in writing, any written request by a Residential Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work. The proposed additions, alterations and improvements by the Residential Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Further, no alteration, addition or improvement may be made to the Shared Components by any Residential Unit Owner which in any manner affects the Hotel Unit without the prior written consent the Hotel Unit Owner (which consent may be withheld in its sole discretion). A Residential Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Declarant, the Hotel Unit Owner and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property, Association Property, the Hotel Unit and/or the Shared Components and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof. The rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association and the Hotel Unit Owner. Neither the Declarant, the Association, the Hotel Unit Owner, nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Declarant, the Association and/or the Hotel Unit Owner arising out of the Association's or Hotel Unit Owner's review of any plans hereunder. Without limiting the generality of the

foregoing, the Association and Hotel Unit Owner shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Declarant, the Association and the Hotel Unit Owner harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans hereunder. The foregoing provisions requiring approval shall not be applicable to the Hotel Unit and/or to any Unit owned by the Declarant.

(c) *Improvements, Additions or Alterations by Declarant or the Hotel Unit Owner.* Anything to the contrary notwithstanding, the foregoing restrictions of this Section 9.20 shall not apply to Declarant-owned Units, nor to the Hotel Unit. The Declarant shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, but without obligation, to (i) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), and (ii) expand, alter or add to all or any part of the recreational facilities. Similarly, the Hotel Unit Owner shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, but without obligation, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon the Hotel Unit (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), and to expand, alter or add to all or any part of the recreational facilities contained within the Hotel Unit. Any amendment to this Declaration required by a change made pursuant to this Section 9.20 shall be adopted in accordance with Section 14.1(c); *provided, however*, that the exercise of any right by the Declarant pursuant to clause (ii) of this Section 9.20(c) shall not be deemed to be a material amendment.

9.21. *Open Flame Prohibition.* Any open flames within a Residential Unit or on the balconies or terraces adjacent to Residential Units are expressly prohibited.

## 10. *Insurance.*

### 10.1. *Policies to be Obtained by Residential Unit Owners.*

(a) *Required Policies.* Not later than the time of the conveyance of a Residential Unit to a Residential Unit Owner, such Residential Unit Owner shall be responsible to maintain, to the extent reasonably available, insurance coverage for the property lying within the boundaries of the Residential Unit, including, but not limited to, insurance covering the Improvements and the Owners' personal liability, and for any other risks not otherwise insured in accordance herewith. Each Residential Unit Owner shall, throughout the term of this Declaration, maintain at its sole expense a policy or policies of liability insurance with limits of not less than One Million Dollars (\$1,000,000) combined single limit for injury or death to person or damage to property accruing in the Residential Unit Owner's Unit. Except as specifically provided herein, the Hotel Unit Owner shall not be responsible to Residential Unit

Owners to obtain insurance coverage upon the property lying within the boundaries of their Residential Unit.

(b) *Named Insured.* The Hotel Unit Owner, the Association, and the holders of any Mortgage on a Unit (or any leasehold interest therein) shall be deemed additional insureds on the policies of any Residential Unit Owner.

(c) *Copies to Hotel Unit Owners.* One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished to the Hotel Unit Owner. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

10.2. *Policies to be Obtained by the Hotel Unit Owner.* The Hotel Unit Owner shall maintain insurance covering the following:

(a) *Casualty.* The Shared Components, together with all fixtures, building service equipment, personal property and supplies constituting the Shared Components (collectively, the "*Insured Property*"), shall be insured in an amount not less than 80% of the actual cash value at the time the insurance is purchased and at each renewal date after application of any deductible, excluding foundation and excavation costs. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude, the Residential Units, the portions of the Hotel Unit which are not part of the Shared Components, if any, and all furniture, furnishings, Unit floor coverings, wall coverings and ceiling coverings, other personal property owned, supplied or installed by Residential Unit Owners or other occupants of a Residential Unit, and all electrical fixtures, appliances, air conditioning and heating equipment and water heaters to the extent not part of the Shared Components. Such policies may contain reasonable deductible provisions as determined by the Hotel Unit Owner. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) *Liability.* Comprehensive liability coverage, including death, bodily injury and property damage, general public liability and automobile liability insurance, including insurance for medical payments, arising out of or in connection with the use, ownership and maintenance of the Insured Property, with such coverage as shall be required by the Hotel Unit Owner, and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa.

(c) *Worker's Compensation.* Worker's Compensation and other mandatory insurance, when applicable, to the extent applicable to the maintenance, operation, repair or replacement of the Shared Components.

(d) *Additional Insurance.* Such other insurance shall be obtained as the Hotel Unit Owner shall determine from time to time to be desirable in connection with the Shared Components.



When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) as to property insurance policies, subrogation against the Hotel Unit Owner, the Association and against the Owners individually and as a group; (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk; and (iii) avoid liability for a loss that is caused by an act of the Hotel Unit Owner (or any of its employees, contractors and/or agents), one or more Owners or as a result of contractual undertakings. Additionally, and each policy shall provide that the insurance provided shall not be prejudiced by any act or omissions of individual Owners that are not under the control of the Hotel Unit Owner. Each policy shall also provide, to the extent reasonably available, that such policy maintained by a Residential Unit Owner, the Hotel Unit Owner or the Association (as applicable) provides primary coverage in the event such party has a policy covering the same risk.

10.3. *Additional Provisions.* All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all Mortgagees. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Hotel Unit Owner may obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this section. The insurance coverage requirements set forth in this Section 10 provide the minimum level of acceptable coverage. Residential Unit Owners, the Hotel Unit Owner or the Association (if applicable) may obtain coverage above the minimum requirements as such parties may determine necessary. Declarant makes no representation or warranty that the minimum amount of insurance required pursuant to this Declaration will be sufficient to protect any Residential Unit Owner, the Hotel Owner or the Association (if applicable) from any liabilities in excess of policy limits.

10.4. *Premiums.* Premiums upon insurance policies purchased by the Hotel Unit Owner pursuant to this Section 10 shall be among the costs assessed against the Residential Unit Owners in accordance with the provisions of Section 8. Premiums may be financed in such manner as the Hotel Unit Owner deems appropriate.

10.5. *Share of Proceeds.* All insurance policies obtained by or on behalf of the Hotel Unit Owner pursuant to this Section 10 shall be for the benefit of the Hotel Unit Owner, the Association, the Owners and the holders of any Mortgage on a Unit (or any leasehold interest therein), as their respective interests may appear. The duty of the Hotel Unit Owner shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Owners and the holders of any Mortgage on the subject Unit(s) (or any leasehold interest therein) in accordance with the Allocated Interest attributable thereto.

10.6. *Distribution of Proceeds.* Proceeds of insurance policies required to be maintained by the Hotel Unit Owner pursuant to this Section 10 shall be distributed to or for the benefit of the beneficial owners thereof in the following manner: If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying

such costs shall be distributed to the Owners, remittances to Owners and their Mortgagees being payable jointly to them.

10.7. *Hotel Unit Owner as Agent.* The Hotel Unit Owner is hereby irrevocably appointed as agent and attorney-in-fact for the Association and each Owner and for each owner of a Mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Hotel Unit Owner and to execute and deliver releases upon the payment of claims.

10.8. *Owners' Personal Coverage.* The insurance required to be purchased by the Hotel Unit Owner pursuant to this Section 10 shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Owner to purchase and pay for insurance as to all such and other risks not covered by insurance required to be carried by the Hotel Unit Owner hereunder.

10.9. *Effect on Association.* The Association shall only maintain such insurance as is expressly required to be maintained by the Association pursuant to NRS Chapter 116, it being the express intent of the Declarant, as the Owner of each and every of the Units upon the Recordation hereof, for itself and its successors and assigns, that the Association not be required to maintain insurance hereunder. To the extent that the Association is required to maintain insurance pursuant to the express requirements of NRS Chapter 116, then (a) as to any insurance required to be maintained by the Association, the Hotel Unit Owner shall be relieved and released of its obligation hereunder to maintain same, and (b) all of the provisions hereof regarding said insurance, any claims thereunder and the distribution and application of proceeds thereunder shall be governed in accordance with the terms of this Declaration governing the insurance required to be maintained by the Hotel Unit Owner as if the references herein to the Hotel Unit Owner were references to the Association.

10.10. *Benefit of Mortgagees.* Certain provisions in this Section 10 entitled "Insurance" are for the benefit of Mortgagees of Units and may be enforced by such Mortgagees.

11. *Determination to Reconstruct or Repair.*

11.1. *Determination to Reconstruct or Repair.* Subject to the immediately following paragraph, with respect to any determination as to repair or replacement after fire or other casualty, Hotel Unit Owner shall make all determination with respect to the Insured Property and the Members of the Association shall make all determination with respect to the Common Elements. If a determination is made to effect restoration, the Hotel Unit Owner shall disburse the proceeds of all insurance policies required to be maintained by it under Section 10 to the contractors engaged in such repair and restoration in appropriate progress payments. In the event the Hotel Unit Owner determines not to effect restoration to the Shared Components, the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Owners in proportion to their Allocated Interests; *provided, however*, that no payment shall be made to an Owner until there has first been paid out of his share of such fund all Mortgages and liens on his Unit in the order of priority of such Mortgages and liens.

11.2. *Destruction of Common Elements.* In the event of any destruction of any portion of the Common Elements, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Section 11 of this Declaration for reconstruction or repair of the Common Elements shall be used for such purpose, unless (i) the Condominium Project is terminated; (ii) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety; or (iii) Owners holding at least eighty percent (80%) of the voting interest in the Association vote not to rebuild. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. With respect to the Common Elements, any remaining insurance proceeds shall be distributed to Owners holding an interest in such Common Elements in proportion to the interest held.

11.3. *Plans and Specifications.* Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes. With respect to the Insured Property, if the reconstruction or repair is not made in accordance with the original plans and specifications and the building code in effect at the time of the original construction, such reconstruction or repair must be made in accordance with the plans and specifications approved by the Hotel Unit Owner; *provided, however*, that if any reconstruction is undertaken, same shall be undertaken in such a manner to restore the Residential Units to substantially the same condition they were in prior to the occurrence of the casualty. With respect to the Common Elements, any reconstruction not made in accordance with the original plans and specification and the then applicable code must be recommended by the Board and approved in writing by Owners holding at least sixty-seven percent (67%) of the voting interest of the Association.

11.4. *Capital Improvement Charges.* If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Hotel Unit Owner or Association, as applicable, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Capital Improvement Charges shall be made against the Owners by the Hotel Unit Owner or Association, as applicable (which shall be deemed to be assessments made in accordance with, and secured by the lien rights contained in, Sections 8 and 7.6 above, as applicable) in sufficient amounts to provide funds for the payment of such costs. With respect to the Insured Property, Capital Improvement Charges on account of damage to the Insured Property shall be in proportion to all of the Owners' respective Allocated Interests.

11.5. *Benefit of Mortgagees.* Certain provisions in this Section 11 are for the benefit of Mortgagees of Units and may be enforced by any of them.

## 12. *Condemnation.*

12.1. *Deposit of Awards.* The taking of portions of the Shared Components by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Hotel Unit Owner. Even though the awards may be payable to Owners, the Owners shall deposit the awards with the Hotel Unit Owner; and in the event of failure to do so,

in the discretion of the Hotel Unit Owner, a Special Charge shall be made against a defaulting Owner in the amount of his, her or its award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

12.2. *Determination Whether to Continue Condominium.* Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

12.3. *Disbursement of Funds.* If the Condominium is terminated after condemnation, the proceeds of the awards and Special Charges will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty.

12.4. *Taking of Shared Components.* Awards for the taking of Shared Components shall be used to render the remaining portion of the Shared Components usable in the manner approved by the Hotel Unit Owner; *provided, however*, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for Capital Improvements to the Shared Components. The balance of the awards for the taking of Shared Components, if any, shall be distributed to the Owners in accordance with their Allocated Interests, if any. Notwithstanding the foregoing, in the event that the costs of restoration resulting from any taking exceed One Million Dollars (\$1,000,000), then the Hotel Unit Owner shall have the sole right to determine whether or not to repair and/or restore in the same manner as is provided in Section 11.1 above with respect to a casualty loss. If there is a Mortgage on a Unit, the distribution shall be paid jointly to the Owner and the said Mortgagees.

12.5. *Condemnation of Common Elements.* If there is a taking of all or any portion of the Common Elements, or any interest therein, then the award in condemnation shall be paid to the Association and deposited in Association Maintenance Fund Accounts.

### 13. *Additional Rights of Mortgagees and Others.*

13.1. *Availability of Governing Documents.* The Association shall have current and updated copies of the Governing Documents, as well as the books, records and financial statements of the Association.

13.2. *Notices.* Any Eligible Mortgagee shall have, if first requested in writing, the right to timely written notice of:

(a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected Mortgaged Unit;

(b) a sixty (60) day delinquency in the payment of the Assessments on a Mortgaged Unit;

(c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) any proposed action which requires the consent of a specified number of Mortgage holders.

13.3. *Additional Rights.* Eligible Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.

14. *Amendment and Termination of Declaration.*

14.1. *Amendment to Declaration.*

(a) *Amendment by the Declarant.* To the extent allowed by NRS Chapter 116: (i) at any time prior to the first Close of Escrow, the Declarant may unilaterally amend or terminate this Declaration without any vote or prior notice to the Owners, and (ii) when the Declarant exercises any of its Developmental Rights, the Declarant may unilaterally amend this Declaration as provided in NRS Section 116.2117.

(b) *Amendments by the Owners Not Affecting Hotel Unit.* The Board may propose an amendment to this Declaration that does not affect the Hotel Unit upon its own initiative via a majority vote of the Board or upon request of the Owners of not less than ten percent (10%) of the Units. The notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting at which a proposed amendment that does not affect the Hotel Unit is to be considered. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than sixty-seven percent (67%) of the voting power of the Association; *provided, however*, that the specified percentage of the voting power of the Association necessary to amend a specified section or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that section or provision. The Owner approval described in this Section 14.1(b) shall not be required for amendments that may be executed by the Declarant under NRS Sections 116.2109 and 116.211, by the Association under NRS Sections 116.1107 and 116.2108(3) or by certain Owners under NRS Sections 116.2108(2), 116.2112 and 116.2118.

(c) *Amendments Affecting Hotel Unit.* Notwithstanding the provisions of Paragraphs (a) and (b) of Section 14 of this Declaration, the provisions of Sections 3.10, 4.3, 5.5, 5.6, 5.7, 5.8, 8, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.20, 10, 11, 12, 13, 14.1(c), 14.1(d) and 14.3 shall not be amended, modified or in any manner impaired and/or diminished, directly or indirectly, without the prior written consent of sixty-seven percent (67%) of the Class A Members and all of the Class B Members; *provided, however*, that the specified percentage of the voting power of Class A and Class B Membership necessary to amend a specified section or provision set forth in this Section 14 shall not be less than the percentage of affirmative votes prescribed for action to be taken under that section or provision.

(d) *Consent of Eligible Mortgagees.* No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of Eligible Mortgagees in each instance; nor shall an amendment make any change in Sections 10, 11, 12, 13, 14(d) or 14.3 unless Eligible Mortgagees shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.

14.2. *Recordation of Amendment.* A copy of each amendment shall be certified by the president or any officer of the Association so designated, and the amendment shall be effective when Recorded.

14.3. *Termination of Declaration.* Except in the case of a taking of all of the Units by eminent domain, termination of this Declaration shall require approval by the Owners representing at least eighty percent (80%) of the Class A Members and all of the Class B Members. No such termination shall be effective unless it is also approved in advance either by fifty-one percent (51%) of the Eligible Mortgagees (if said termination is proposed by reason of the substantial destruction or condemnation of the Condominium Property) or by sixty-seven percent (67%) of such Eligible Mortgagees (if said termination is for reasons other than such substantial destruction or condemnation of the Condominium Property). An agreement to terminate this Declaration must be evidenced by the execution of an agreement to terminate in the same manner as a deed by the requisite number of Owners. The agreement to terminate must specify a date after which the agreement will be void unless it is Recorded.

14.4. *Protection of Declarant.* The prior written approval of the Declarant shall be required before any amendment which would impair or diminish the rights of the Declarant to complete the Condominium Property or sell or lease Units therein shall become effective. Notwithstanding any other provisions of the Governing Documents, until such time as (i) the Declarant is no longer entitled to exercise its rights under Section 16 of this Declaration, or (ii) the Declarant no longer owns any Units in the Condominium Property, whichever occurs last, the following actions, before being undertaken by the Association, shall first be approved in writing by the Declarant:

(a) the proposal of any amendment of this Declaration or other action requiring the approval of Eligible Mortgagees pursuant to this Declaration, including without limitation, all amendments and actions specified in Section 14.1(d) of this Declaration;

(b) the annexation to the Condominium Property of real property other than the Annexable Area pursuant to Section 16.2 of this Declaration; or

(c) any significant reduction of Association maintenance or other services.

15. *Declarant's Rights and Reservations.* Nothing in the Governing Documents shall limit, and neither Owner nor the Association shall do anything to interfere with, the right of the

Declarant to subdivide or resubdivide any portion of the Condominium Property, or to complete Improvements to and on the Common Elements, the Shared Components or any portion of the Condominium Property owned solely or partially by the Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as the Declarant deems advisable in the course of development of the Condominium Property so long as any Unit remains unsold by the Declarant. The rights of the Declarant hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary for the conduct of its business of completing construction of the Improvements and disposing of the Units by sale, resale, lease or otherwise. The Declarant further reserves the right to avail itself of all the rights of a Residential Unit Owner until such time it no longer owns any Residential Units. Each Owner by accepting a deed to a Unit hereby acknowledges that the activities of the Declarant may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance until such time as the Declarant or any successor-in-interest of the Declarant ceases to own any portion of the Condominium Property or the Annexable Area. This Declaration and/or its agents shall not limit the right of the Declarant at any time prior to acquisition of title to a Unit by a Purchaser from the Declarant to establish on the Condominium Property additional licenses, easements, reservations and right-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Condominium Property. The Declarant may use any Units owned or leased by the Declarant in the Condominium Property as model home complexes or real estate sales or leasing offices. The Declarant need not seek or obtain Board approval of any Improvement constructed or placed on any portion of the Condominium Property by the Declarant. The rights of the Declarant under Governing Documents may be assigned by the Declarant to any successor-in-interest as such rights may relate to any portion of the Declarant's interest in any portion of the Condominium Property by a written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of the Declarant, as developer of the Condominium Property, will be required before any amendment of this Section 15 shall be effective. Each Owner hereby grants, upon acceptance of a deed to such Owner's Unit, an irrevocable, special power of attorney to the Declarant to execute and Record all documents and maps necessary to allow the Declarant to exercise its rights under this Section 15. The Declarant, its agents and prospective Purchasers shall be entitled to the nonexclusive use of the Common Elements without further cost for access, ingress, egress, use or enjoyment, in order to show the Condominium Property to prospective Purchasers, to dispose of the Condominium Property as provided herein, and to develop and sell the Annexable Area. The Association shall provide the Declarant with all notices and other documents to which an Owner or Eligible Mortgagee is entitled pursuant to this Declaration, provided that the Declarant shall be provided such notices and other documents without making written request therefor.

16. *Developmental Rights of Declarant.*

16.1. *Developmental Rights.* The Declarant hereby reserves each and every one of the following "*Developmental Rights*": (i) to add real estate, including the Annexable Area, to the Condominium Property; (ii) to create Units or Common Elements; (iii) to create and remove Units, to subdivide Units or to convert Units into Common Elements; and (iv) to withdraw real estate from the Annexable Area or the Condominium Property. The Declarant must exercise the

Developmental Rights within ninety-nine (99) years following the Recordation of this Declaration. The Developmental Rights may be exercised with respect to different parcels of real estate at different times. The Declarant makes no assurances regarding the boundaries of those parcels of real estate to which the Developmental Rights may apply or the order in which those parcels may be subjected to the Developmental Rights. If any Developmental Right is exercised in any portion of the real estate subject to that Developmental Right, the Developmental Right need not be exercised in all or any other portion of the remainder to that real estate.

16.2. *Additions by the Declarant.* The Declarant or its successors or assigns shall have the right from time to time to add to the Condominium Property any of the real property within the Annexable Area or other property owned by the Declarant and to bring such real estate within the general plan and scheme of this Declaration without the approval of the Association, the Board or Owners. As certain real estate owned by the Declarant or the Annexable Area is developed, the Declarant may, with respect thereto, (i) comply with the provisions of NRS Section 116.2109 and (ii) Record a Notice of Addition which shall have the effect of causing the real estate that is the subject of such Notice of Addition to become subject to each and every covenant, condition, restriction and easement contained within this Declaration and the rights, powers and responsibilities of the owners, lessees and occupants of Units within such added property, as well as within the property originally subject to this Declaration, shall be the same as if the added property were originally covered by this Declaration. Furthermore, the Declarant may supplement this Declaration with such additional covenants, conditions, restrictions, reservations and easements as the Declarant may deem appropriate for that Phase. From the date upon which the Declarant provides written notice, the Owners located in the added property shall share in the payment of Assessments or Hotel Shared Costs to the Association or the Hotel Unit Owner to meet Common Expenses or Hotel Shared Costs of the entire Condominium Property. Voting rights attributable to the Owners for the added property shall not vest until Annual Assessments have commenced as to such Phase. The Declarant makes no assurances regarding the order in which any real property will be added to the Condominium Property or whether such real estate will be added to the Condominium Property at all.

16.3. *Notice of Addition of Territory.* The additions authorized under Section 16.2 of this Declaration shall be made by Recording a Notice of Addition and complying with the provisions of NRS Section 116.2109 with respect to the added real estate which shall extend the general plan and scheme of this Declaration to such added property. Any such Notice of Addition shall constitute an amendment to this Declaration as described in NRS Section 116.211. The Notice of Addition for any addition under Section 16.2 of this Declaration shall be signed by the Declarant. The Recordation of said Notice of Addition shall constitute and effectuate the annexation of the added property described therein and thereupon said added property shall become and constitute a part of the Condominium Property, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association and the Owners shall automatically become Members of the Association. Such Notice of Addition may contain a supplemental declaration with such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, or as the Declarant may deem appropriate in



the development of the added property, and as are not inconsistent with the general plan and scheme of this Declaration.

16.4. *Deannexation and Amendment.* The Declarant may amend a Notice of Addition or delete all or a portion of a Phase from coverage of this Declaration and the jurisdiction of the Association, so long as the Declarant is the owner of all such Phase and provided that (i) an amending instrument or a notice of deletion, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded and the Declarant complies with the provisions of NRS Section 116.2109, (ii) the Declarant has not exercised any Association vote with respect to any portion of such Phase, (iii) Assessments have not yet commenced with respect to any portion of such Phase, (iv) Close of Escrow has not occurred for the sale of any Unit in such Phase, and (v) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase. Such amending instrument or notice of deletion shall constitute an amendment to this Declaration as described in NRS Section 116.211.

16.5. *Subdivision of Units.* The Declarant may subdivide any Unit owned by the Declarant into two (2) or more additional Units or into Common Elements. An amending instrument or notice of subdivision shall be Recorded in the same manner as a Notice of Addition, which instrument or notice shall constitute an amendment to this Declaration as described in NRS Section 116.211.

16.6. *Maximum Number of Units.* The Declarant hereby reserves the right to create a maximum of four thousand nine hundred (4,900) Units throughout the Condominium Property.

17. *Reservation of Special Rights.* In addition to the other rights contained in this Declaration, the Declarant reserves the following special rights, on the terms and conditions and subject to the expiration deadlines set forth below:

17.1. *Right to Complete Improvements and Construction Easement.* The Declarant reserves the right, for a period of sixty (60) months following the Recordation of this Declaration, to complete the construction of Improvements on the Condominium Property, and an easement over the Condominium Property for the purpose of doing so. Any damage caused to a Unit, or the Common Elements or the Shared Components by the Declarant or its agents in the use or exercise of said right and/or easement shall be repaired by and at the expense of the Declarant.

17.2. *Exercise of Developmental Rights.* The Declarant reserves the right to exercise its Developmental Rights including the right to annex the Annexable Area to the Condominium Property pursuant to the provisions of Sections 16.1 and 16.2 of this Declaration.

17.3. *Offices and Promotional Signs.* The Declarant reserves the right to maintain offices for sales and management models and signs on the Condominium Property for so long as the Declarant owns any Unit. The Declarant further reserves the right of unlimited access to such offices for sale and management and to the models and to signs on the Condominium Property during the same time period.

17.4. *Merger; Consolidation.* The Declarant reserves the right during the Declarant's Period of Control to merge or consolidate the Condominium Property into another Condominium.

17.5. *Appointment and Removal of Directors.* The Declarant reserves the right to appoint and remove the officers of the Association and members of the Board, as set forth in Section 5.7 of this Declaration, for the time period set forth therein.

18. *Security Disclaimer.* The Association and/or the Hotel Unit Owner may, but shall not be obligated to, maintain or support certain activities within the Condominium Property designed to make the Condominium Property safer than it might otherwise be.

NEITHER THE ASSOCIATION, THE HOTEL UNIT OWNER NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROJECT, AND NEITHER THE ASSOCIATION, THE HOTEL UNIT OWNER NOR THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE SECURITY OR THE INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, THE BOARD AND THE HOTEL UNIT OWNER, THE DECLARANT OR ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED OR INSTALLED ACCORDING TO THE GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, HIS, HER OR ITS FAMILY, AGENTS, TRANSIENT GUESTS, LONG-TERM GUESTS, OR OTHER OCCUPANTS OF ANY UNIT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE HOTEL UNIT OWNER, THE ASSOCIATION, ITS BOARD AND COMMITTEES, THE DECLARANT, ANY OTHER SUCCESSOR DECLARANT AND/OR THE HOTEL UNIT OWNER IS NOT INSURER AND THAT EACH OWNER, HIS, HER OR ITS FAMILY, AGENTS, TRANSIENT GUESTS, LONG-TERM GUESTS, OR OTHER OCCUPANTS OF A UNIT ASSUME ALL RISK FOR LOSS OR DAMAGE TO PERSONS, UNITS AND THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE HOTEL UNIT OWNER, THE ASSOCIATION, ITS BOARD AND COMMITTEES, THE DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, HIS, HER OR ITS FAMILY, AGENTS, TRANSIENT GUESTS, LONG TERM GUESTS, OR OTHER OCCUPANTS OF A UNIT RELIED UPON ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY TO FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

19. *Violations.*

19.1. *Limitation on Expenditures.* The Association shall not incur litigation expenses, including, without limitation, attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the Class A Members and a majority of the Class B Members, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the Governing Documents, or (ii) collect any unpaid Assessments levied pursuant to this Declaration.

19.2. *Schedule of Fines.* The Board may adopt a schedule of reasonable fines or penalties and a policy of administering such fines or penalties which fines or penalties, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, invitees, tenants, guests or Family of such Owner, to comply with any provisions of the Governing Documents. Such fines or penalties may only be assessed by the Board, against the Owner and the Unit of the violating Owner, after Notice and Hearing.

19.3. *Right to Enforce.* The Board, any Owner and, as applicable, the Hotel Unit Owner (not at the time in default hereunder), or the Declarant (so long as the Declarant is an Owner) shall be entitled to enforce the Governing Documents. Each Owner shall have a right of action against the Association for the Association's failure to comply with the Governing Documents. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

20. *General Provisions.*

20.1. *No Waiver.* Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision, or any other provision of this Declaration.

20.2. *Attorneys' Fees.* Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and costs of court.

20.3. *Severability.* The provisions of this Declaration shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions of this Declaration.

20.4. *Interpretation.* The Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the other, unless the context dictates otherwise.

20.5. *No Public Right or Dedication.* Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Condominium Property to the public, or for any public use.

20.6. *No Representations or Warranties.* No representations or warranties of any kind, express or implied, have been given or made by the Declarant or its agents or employees in connection with the Condominium Property or any portion thereof, or any Improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a Condominium Property, except as specifically and expressly set forth in this Declaration and except as may be filed by the Declarant from time to time with any governmental authority.

20.7. *Nonliability and Indemnification.*

(a) *General Limitation.* Except as specifically provided in the Governing Documents or as required by law, no right, power, or responsibility conferred on the Board or the Hotel Unit Owner by the Governing Documents shall be construed as a duty, obligation or disability charged upon the Hotel Unit Owner or any of its agents or employees, the Board, any member of the Board or any other officer, employee, agent or committee member of the Association. The Association, its Members, directors, officers, agents and committee members, and the Board are subject to the insulation from liability provided for directors of corporations by the laws of the State of Nevada to the fullest extent provided by such laws. Members of the Board are not personally liable to the victims of crimes occurring on the Condominium Property.

(b) *Indemnification of Association.* When liability is sought to be imposed on a member of the Board, an officer, committee member, employee or agent of the Association, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, unless and until it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense due to the willful or wanton misfeasance or gross negligence of such Person indemnified by the Association, the Association may recover indemnification costs expended from the individual who so acted. Punitive damages may not be recovered against the Association, but may be recovered from Persons whose activity gave rise to the damages. This Section 20.7(b) shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

(c) *Indemnification of Hotel Unit Owner.* Notwithstanding anything to the contrary contained herein, a Residential Unit Owner agrees to defend, indemnify and hold harmless Hotel Unit Owner, and its respective officers, directors, employees and agents, from and against, and properly reimburse it for, any and all liability, loss, cost, damages, expense or deficiency resulting from, arising out of, or in connection with the negligent actions of such Residential Unit Owner.

20.8. *Nonliability for Square Footage Calculation.* Each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Residential Unit, and that depending on the method of calculation, the quoted square footage of the Residential Unit may vary by more than a nominal amount. Additionally, as a result of in the field construction, other permitted changes to the Residential Unit, and settling and shifting of improvements, actual square footage of a Residential Unit may also be affected. By accepting title to a Residential Unit, the applicable Residential Unit Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Residential Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Declarant's promotional materials or otherwise. Without limiting the generality of this section, Declarant does not make any representation or warranty as to the actual size, dimensions (including ceiling heights) or square footage of any Residential Unit, and each Residential Unit Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage of the Residential Unit.

20.9. *Nonliability for Mold Development.* Molds, mildew, toxins and fungi may exist and/or develop within the Unit and/or Condominium Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released the Declarant and Hotel Unit Owner from any and all liability resulting from same.

20.10. *Disclaimer of Warranties.* Declarant hereby disclaims any and all and each and every express or implied warranties, whether established by statutory, common, case law or otherwise, as to the design, construction, continuation of any particular view (it being understood and agreed that construction on any adjacent properties may obstruct such view), sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Condominium Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute (to the extent permitted by law) and all other express and implied warranties of any kind or character.

20.11. *Notices.* Except as otherwise provided in this Declaration, notice to be given to an Owner shall be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more Co-owners of a Condominium or to any general partner of a partnership or manager of a limited liability company owning a Condominium shall be deemed delivery to all Co-owners, to the partnership or the limited liability company, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing (and unless the provisions of Nevada law, including without limitation the provisions of NRS Section 116.31162 require delivery by registered or certified mail), such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association and the Hotel Unit or, if no such address shall have been furnished, to the street address of such Owner's Unit. Such notice shall be deemed

delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board in which case the notice provisions of the Bylaws shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

20.12. *Priorities and Inconsistencies.* If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail over the Articles and Bylaws; and the terms and provisions of the Articles shall control over the Bylaws.

20.13. *Constructive Notice and Acceptance.* Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Condominium Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Condominium Property, or any portion thereof.

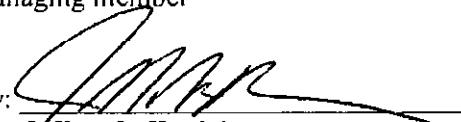
**[signatures appear on following page]**

Each Owner (by virtue of his acceptance of title to his Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Hotel Unit Owner arising from or connected with any matter for which the liability of the Hotel Unit Owner has been disclaimed hereby.

DECLARANT:

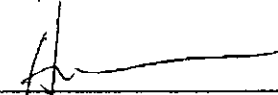
Turnberry/MGM Grand Towers, LLC,  
a Nevada limited liability company

By: Turnberry/Harmon Ave., LLC,  
a Nevada limited liability company,  
managing member

By:   
Jeffrey Soffer, Manager

STATE OF Nevada )  
 ) ss.  
COUNTY OF Clark )

This instrument was acknowledged before me on December 9, 2003, by  
Jeffrey Soffer, as Manager of  
Turnberry / MGM Grand Towers, LLC.

  
Notary Public

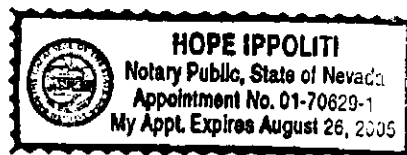


EXHIBIT A

**LEGAL DESCRIPTION**



09801  
HMH119-03  
NOVEMBER 5, 2003  
DGB/???  
APN 162-21-401-008

**EXPLANATION:** THIS LEGAL DESCRIBES A PARCEL OF LAND FOR "THE RESIDENCES AT M.G.M. GRAND, TOWERS A", LYING SOUTH OF HARMON AVENUE AND EAST OF LAS VEGAS BOULEVARD.

### **LEGAL DESCRIPTION**

THAT PORTION OF PARCEL 2 AS SHOWN BY MAP THEREOF ON FILE IN FILE 105, PAGE 99 OF PARCEL MAPS IN THE CLARK COUNTY RECORDER'S OFFICE CLARK COUNTY, NEVADA, LYING WITH THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHWEST CORNER OF SAID PARCEL 2;  
THENCE NORTH 00804'09" EAST ALONG THE WEST LINE THEREOF, 494.89 FEET;  
THENCE NORTH 89856'24" EAST, 46.00 FEET;  
THENCE SOUTH 00804'09" WEST, 70.83 FEET;  
THENCE SOUTH 90800'00" EAST, 108.24 FEET;  
THENCE SOUTH 00800'00" EAST, 83.67 FEET;  
THENCE SOUTH 90800'00" EAST, 257.91 FEET;  
THENCE SOUTH 00803'36" EAST, 177.30 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF SAID PARCEL 2;  
THENCE ALONG SAID SOUTHERLY BOUNDARY THE FOLLOWING THREE (3) COURSES:

- (1) CONTINUING SOUTH 00803'36" EAST, 74.51 FEET;
- (2) SOUTH 44856'24" WEST, 124.74 FEET;
- (3) SOUTH 89856'24" WEST, 324.81 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 3.50 ACRES, MORE OR LESS.

NOTE: THIS LEGAL DESCRIPTION IS PROVIDED AS A CONVENIENCE AND IS NOT INTENDED FOR THE PURPOSE OF SUBDIVIDING LAND NOT IN CONFORMANCE WITH NEVADA REVISED STATUTES.

EXHIBIT B  
ALLOCATED INTERESTS

Type of Unit	Fractional Allocation	Total Shares
Studio Suite (396)	1	396
Single-Bedroom (180)	2	360
Hotel Unit	744	744
<b>Total</b>	<b>-</b>	<b>1,500</b>

EXHIBIT C  
ANNEXABLE AREA

09801  
HMH121-03  
NOVEMBER 12, 2003  
DGB/DMF  
PT. APN 162-21-401-008

**EXPLANATION:** THIS LEGAL DESCRIBES THE REMAINDER OF A PARCEL OF LAND  
EXCEPTING "THE RESIDENCES AT M.G.M. GRAND, TOWERS A", AT  
THE SOUTHWEST CORNER OF HARMON AVENUE AND KOVAL LANE.

### **LEGAL DESCRIPTION**

PARCEL 2 AS SHOWN BY MAP THEREOF ON FILE IN FILE 105, PAGE 99 OF PARCEL MAPS IN  
THE CLARK COUNTY RECORDER'S OFFICE CLARK COUNTY, NEVADA, LYING WITHIN THE  
SOUTHWEST QUARTER (SW 1/4) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST,  
M.D.M., CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

**BEGINNING** AT THE SOUTHWEST CORNER OF SAID PARCEL 2;  
THENCE NORTH 00804'09" EAST ALONG THE WEST LINE THEREOF, 494.89 FEET;  
THENCE NORTH 89856'24" EAST, 46.00 FEET;  
THENCE SOUTH 00804'09" WEST, 70.83 FEET;  
THENCE SOUTH 90800'00" EAST, 108.24 FEET;  
THENCE SOUTH 00800'00" EAST, 83.67 FEET;  
THENCE SOUTH 90800'00" EAST, 257.91 FEET;  
THENCE SOUTH 00803'36" EAST, 177.30 FEET TO A POINT ON THE SOUTHERLY BOUNDARY  
OF SAID PARCEL 2;  
THENCE ALONG SAID SOUTHERLY BOUNDARY THE FOLLOWING THREE (3) COURSES:

- (1) CONTINUING SOUTH 00803'36" EAST, 74.51 FEET;
- (2) SOUTH 44856'24" WEST, 124.74 FEET;
- (3) SOUTH 89856'24" WEST, 324.81 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 15.59 ACRES, MORE OR LESS.

NOTE: THIS LEGAL DESCRIPTION IS PROVIDED AS A CONVENIENCE AND IS NOT INTENDED  
FOR THE PURPOSE OF SUBDIVIDING LAND NOT IN CONFORMANCE WITH NEVADA REVISED  
STATUTES.

## EXHIBIT D

### UNIT BOUNDARIES

Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:

1. *Boundaries of Residential Units.* The upper and lower boundaries of each Residential Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(a) *Upper Boundaries.* The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the upper story if the Unit is a multi-story Residential Unit, provided that in multi-story Residential Units where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling).

(b) *Lower Boundaries.* The horizontal plane of the unfinished upper surface of the floor of the Residential Unit (which will be deemed to be the floor of the first story if the Unit is a multi-story Residential Unit, provided that in multi-story Residential Units where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor).

(c) *Interior Divisions.* Except as provided in subsections 1(a) and 1(b) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, in all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Residential Unit.

(d) *Perimetrical Boundaries.* The perimetrical boundaries of the Residential Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries. Notwithstanding the foregoing, as to walls shared by a Residential Unit and the Hotel Unit, the perimetrical boundary of the Hotel Unit at such shared wall shall be coextensive to the perimetrical boundary of the adjoining Residential Unit (so that the shared wall and all installations therein -which are deemed part of the Shared Components - shall be part of the Hotel Unit rather than the Common Elements and therefore the perimetrical boundary of the Hotel Unit shall extend to the unfinished interior surface of any walls bounding a Residential Unit).

2. *Boundaries of Hotel Unit.* The Hotel Unit shall consist of all of the Condominium Property, including, without limitation, any and all Improvements now or hereafter constructed thereon, less and except only the following: (i) the Residential Units, and (ii) the portion of the Condominium Property above elevation 2,516.75 N.A.V.D and below the lowest support structure of the Building. Said portion of the Condominium Property lying above

elevation 2,516.75 N.A.V.D and below the lowest support structure of the Building shall be deemed Common Elements hereunder.

3. *Apertures.* Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, all of same shall be deemed part of the Shared Components, and as such, part of the Hotel Unit.

4. *Exceptions.* In cases not specifically covered above, and/or in any case of conflict or ambiguity, the description of the Units set forth on the Map shall control in determining the boundaries of a Unit, except that the provisions of Section 2 above shall control unless specifically depicted and labeled otherwise on such Map.

EXHIBIT E

**DESIGNATION OF UNITS**

THE RESIDENCES AT MGM GRAND  
 BUILDING A  
 396 Suites  
 180 One Bedrooms  
 Page 1 of 2

Room	1 BED CORNER	SUITE	SUITE	SUITE	SUITE	SUITE	SUITE	SUITE	SUITE
Equipment Rooms									
Level 38	3801	B	3803	3805	B	3807	B	3809	B
Level 37	3701	B	3703	3705	B	3707	B	3709	B
Level 36	3601	B	3603	3605	B	3607	B	3609	B
Level 35	3501	B	3503	3505	B	3507	B	3509	B
Level 34	3401	B	3403	3405	B	3407	B	3409	B
Level 33	3301	B	3303	3305	B	3307	B	3309	B
Level 32	3201	B	3203	3205	B	3207	B	3209	B
Level 31	3101	B	3103	3105	B	3107	B	3109	B
Level 30	3001	B	3003	3005	B	3007	B	3009	B
Level 29	2901	B	2903	2905	B	2907	B	2909	B
Level 28	2801	B	2803	2805	B	2807	B	2809	B
Level 27	2701	B	2703	2705	B	2707	B	2709	B
Level 26	2601	B	2603	2605	B	2607	B	2609	B
Level 25	2501	B	2503	2505	B	2507	B	2509	B
Level 24	2401	B	2403	2405	B	2407	B	2409	B
Level 23	2301	B	2303	2305	B	2307	B	2309	B
Level 22	2201	B	2203	2205	B	2207	B	2209	B
Level 21	2101	B	2103	2105	B	2107	B	2109	B
Level 20	2001	B	2003	2005	B	2007	B	2009	B
Level 19	1901	B	1903	1905	B	1907	B	1909	B
Level 18	1801	B	1803	1805	B	1807	B	1809	B
Level 17	1701	B	1703	1705	B	1707	B	1709	B
Level 16	1601	B	1603	1605	B	1607	B	1609	B
Level 15	1501	B	1503	1505	B	1507	B	1509	B
Level 14	1401	B	1403	1405	B	1407	B	1409	B
Level 13	1301	B	1303	1305	B	1307	B	1309	B
Level 12	1201	B	1203	1205	B	1207	B	1209	B
Level 11	1101	B	1103	1105	B	1107	B	1109	B
Level 10	1001	B	1003	1005	B	1007	B	1009	B
Level 9	901	B	903	905	B	907	B	909	B
Level 8	801	B	803	805	B	807	B	809	B
Level 7	701	B	703	705	B	707	B	709	B
Level 6	601	B	603	605	B	607	B	609	B
Level 5	501	B	503	505	B	507	B	509	B
Level 4	401	B	403	405	B	407	B	409	B
Level 3	301	B	303	305	B	307	B	309	B
Level 2	201	B	203	205	B	207	B	209	B
Lobby Level									
Parking Garage Level									

Odd # units face NW (strip view). Even # units face SE (mountain/airport view). B-Unit with balconies.  
 All units have "A" prefix



THE RESIDENCES AT MGM GRAND

BUILDING A

396 Suites

180 One Bedrooms

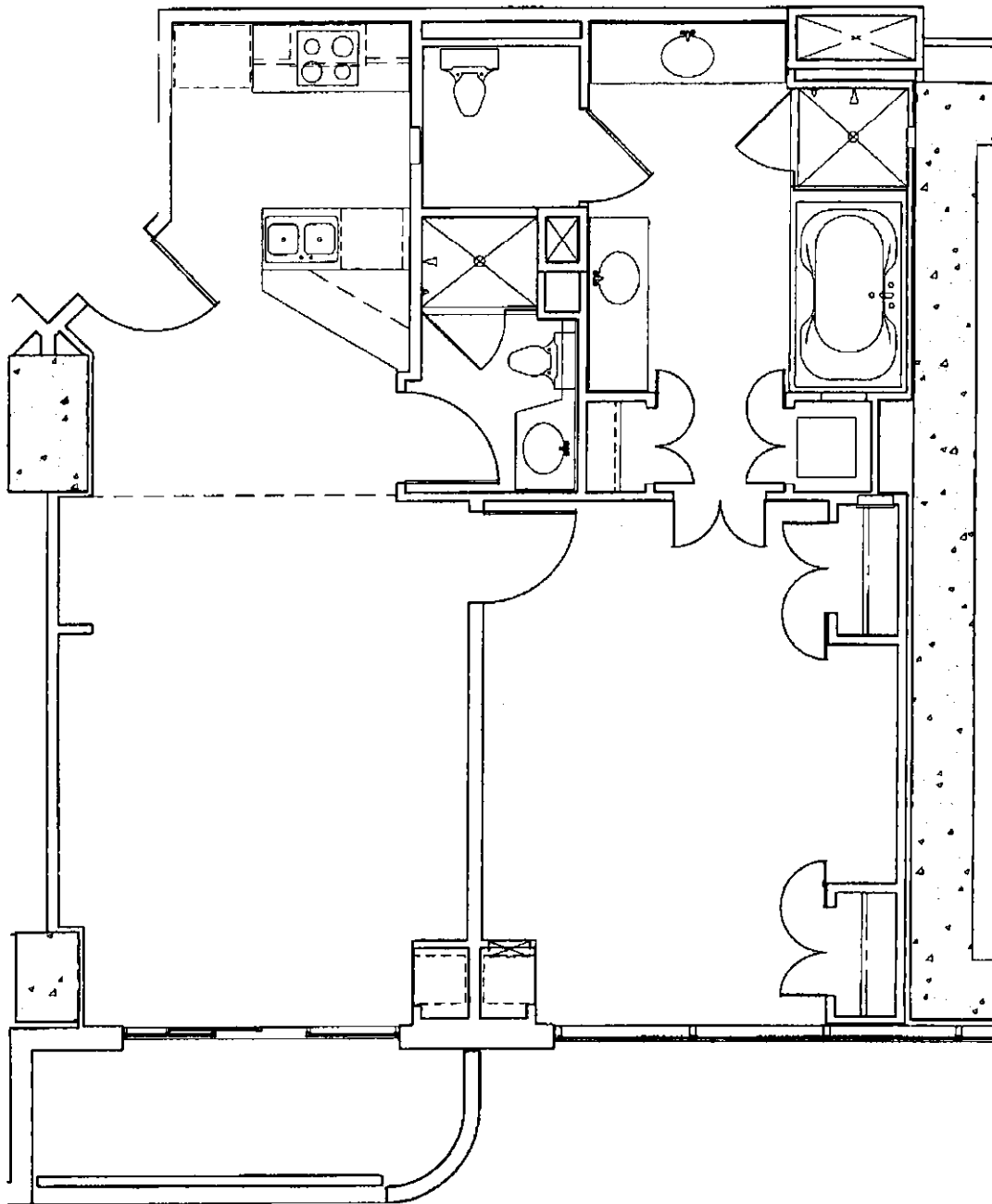
Page 2 of 2

Room	SUITE	1 BED CORNER	1 BED CORNER	SUITE	1 BED CORNER	1 BED CORNER	SUITE	1 BED	SUITE	1 BED CORNER	1 BED CORNER	SUITE	1 BED	SUITE	1 BED CORNER
Equipment Rooms															
Level 38	3819	3821	3821	B	3802	3802	B	3804	3806	3806	3808	B	3818	3820	B
Level 37	3719	3721	3721	B	3702	3702	B	3704	3706	3706	3708	B	3718	3720	B
Level 36	3619	3621	3621	B	3602	3602	B	3604	3606	3606	3608	B	3618	3620	B
Level 35	3519	3521	3521	B	3502	3502	B	3504	3506	3506	3508	B	3518	3520	B
Level 34	3419	3421	3421	B	3402	3402	B	3404	3406	3406	3408	B	3418	3420	B
Level 33	3319	3321	3321	B	3302	3302	B	3304	3306	3306	3308	B	3318	3320	B
Level 32	3219	3221	3221	B	3202	3202	B	3204	3206	3206	3208	B	3218	3220	B
Level 31	3119	3121	3121	B	3102	3102	B	3104	3106	3106	3108	B	3118	3120	B
Level 30	3019	3021	3021	B	3002	3002	B	3004	3006	3006	3008	B	3018	3020	B
Level 29	2919	2921	2921	B	2902	2902	B	2904	2906	2906	2908	B	2918	2920	B
Level 28	2819	2821	2821	B	2802	2802	B	2804	2806	2806	2808	B	2818	2820	B
Level 27	2719	2721	2721	B	2702	2702	B	2704	2706	2706	2708	B	2718	2720	B
Level 26	2619	2621	2621	B	2602	2602	B	2604	2606	2606	2608	B	2618	2620	B
Level 25	2519	2521	2521	B	2502	2502	B	2504	2506	2506	2508	B	2518	2520	B
Level 24	2419	2421	2421	B	2402	2402	B	2404	2406	2406	2408	B	2418	2420	B
Level 23	2319	2321	2321	B	2302	2302	B	2304	2306	2306	2308	B	2318	2320	B
Level 22	2219	2221	2221	B	2202	2202	B	2204	2206	2206	2208	B	2218	2220	B
Level 21	2119	2121	2121	B	2102	2102	B	2104	2106	2106	2108	B	2118	2120	B
Level 20	2019	2021	2021	B	2002	2002	B	2004	2006	2006	2008	B	2018	2020	B
Level 19	1919	1921	1921	B	1902	1902	B	1904	1906	1906	1908	B	1918	1920	B
Level 18	1819	1821	1821	B	1802	1802	B	1804	1806	1806	1808	B	1818	1820	B
Level 17	1719	1721	1721	B	1702	1702	B	1704	1706	1706	1708	B	1718	1720	B
Level 16	1619	1621	1621	B	1602	1602	B	1604	1606	1606	1608	B	1618	1620	B
Level 15	1519	1521	1521	B	1502	1502	B	1504	1506	1506	1508	B	1518	1520	B
Level 14	1419	1421	1421	B	1402	1402	B	1404	1406	1406	1408	B	1418	1420	B
Level 12	1219	1221	1221	B	1202	1202	B	1204	1206	1206	1208	B	1218	1220	B
Level 11	1119	1121	1121	B	1102	1102	B	1104	1106	1106	1108	B	1118	1120	B
Level 10	1019	1021	1021	B	1002	1002	B	1004	1006	1006	1008	B	1018	1020	B
Level 9	919	921	921	B	902	902	B	904	906	906	908	B	918	920	B
Level 8	819	821	821	B	802	802	B	804	806	806	808	B	818	820	B
Level 7	719	721	721	B	702	702	B	704	706	706	708	B	718	720	B
Level 6	619	621	621	B	602	602	B	604	606	606	608	B	618	620	B
Level 5	519	521	521	B	502	502	B	504	506	506	508	B	518	520	B
Level 4	419	421	421	B	402	402	B	404	406	406	408	B	418	420	B
Level 3	319	321	321	B	302	302	B	304	306	306	308	B	318	320	B
Level 2	219	221	221	B	202	202	B	204	206	206	208	B	218	220	B
Lobby Level															
Parking Garage Level															

Odd # units face NW (strip view). Even # units face SE (mountain/airport view). B-Unit with balconies.  
All units have "A" prefix

EXHIBIT F

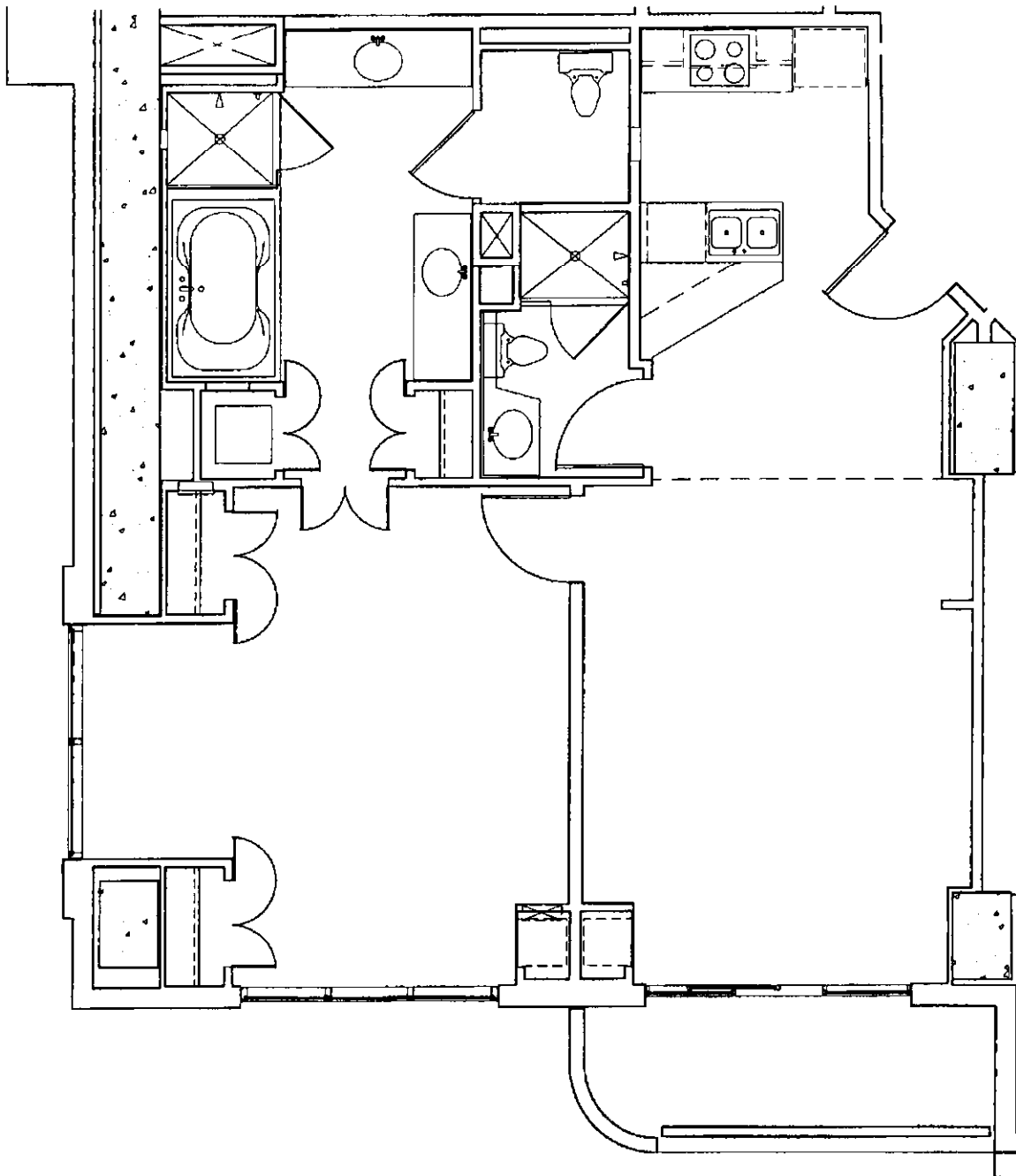
**SINGLE-BEDROOM UNIT FLOORPLAN**



## ONE BEDROOM NEXT TO ELEV

(TYP. LEVEL 2 - 27)

3/16" = 1'-0"



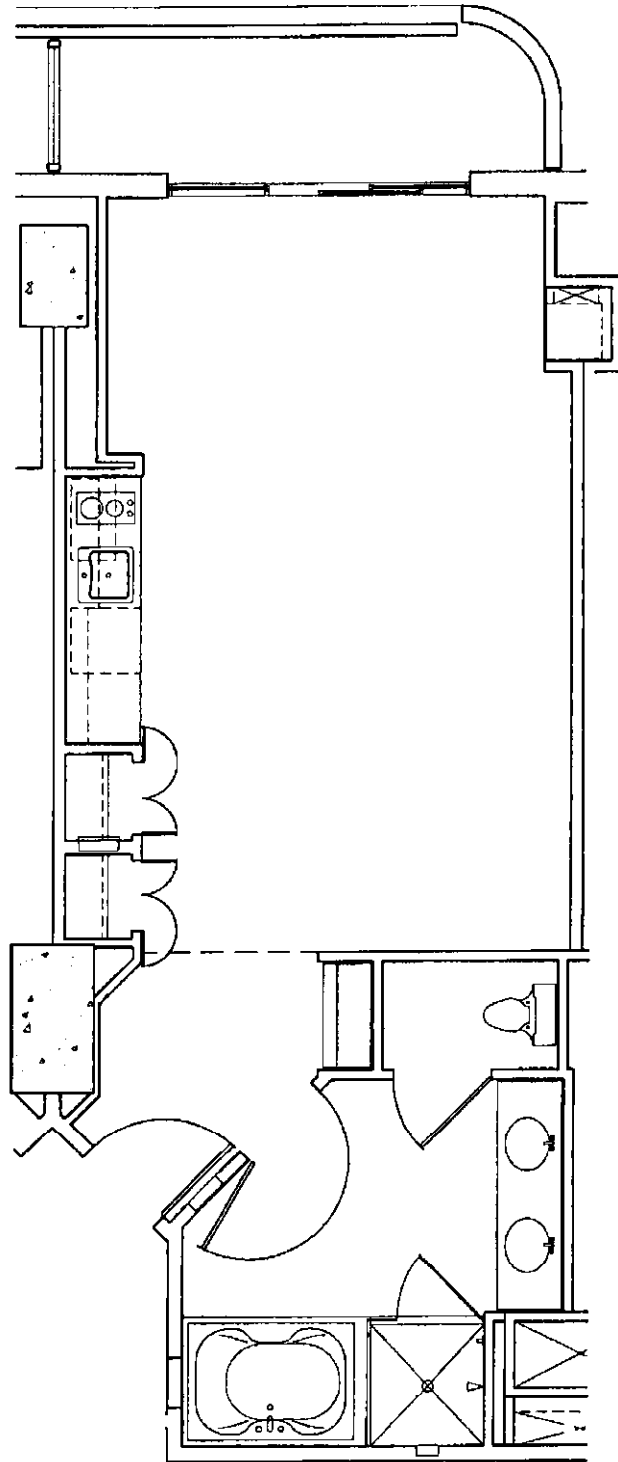
## ONE BEDROOM – TYP. CORNER UNIT

(TYP. LEVEL 2 – 37)

3/16" = 1'-0"

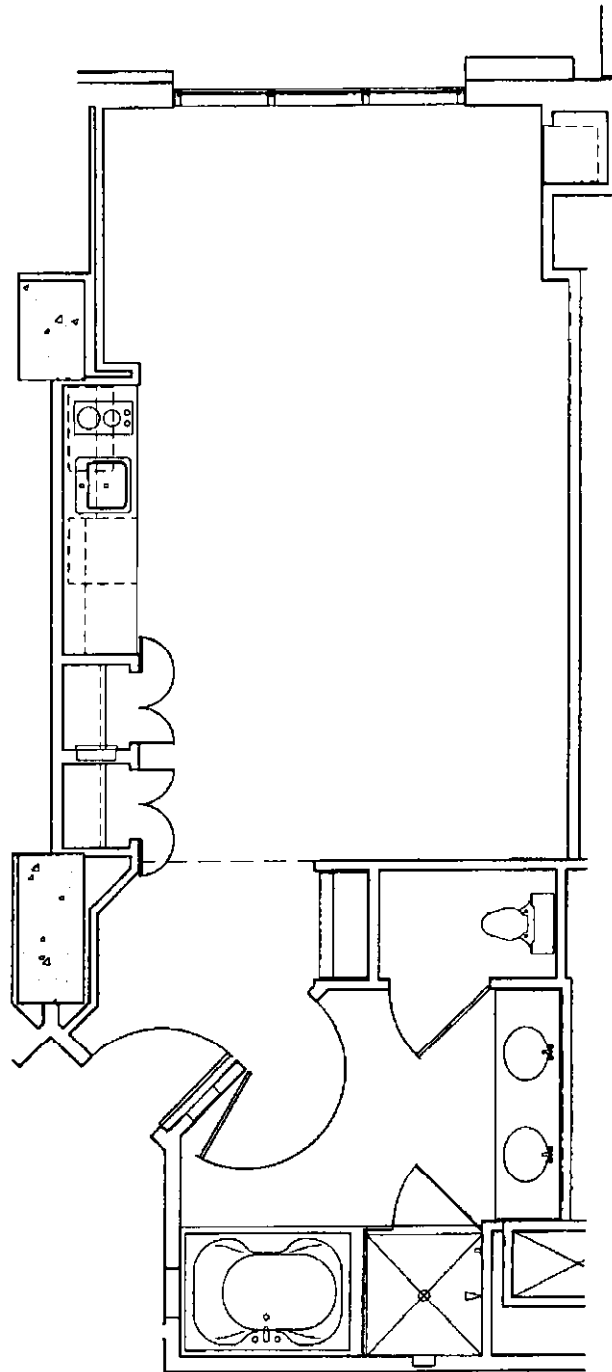
EXHIBIT G

**STUDIO SUITE UNIT FLOORPLAN**



TYP. STUDIO — W/ BALCONY

3/16" = 1'-0"



TYP. STUDIO

3/16" = 1'-0"

EXHIBIT H

**EXCLUSIVE EASEMENTS APPURTENANT TO UNITS**



**THE RESIDENCES AT MGM GRAND  
BUILDING A**

**EXCLUSIVE EASEMENTS**

LEVEL DESIGNATION	DESCRIPTION
Level 2	A balcony area will be an exclusive easement of units
Level 3	A balcony area will be an exclusive easement of units
Level 4	A balcony area will be an exclusive easement of units
Level 5	A balcony area will be an exclusive easement of units
Level 6	A balcony area will be an exclusive easement of units
Level 7	A balcony area will be an exclusive easement of units
Level 8	A balcony area will be an exclusive easement of units
Level 9	A balcony area will be an exclusive easement of units
Level 10	A balcony area will be an exclusive easement of units
Level 11	A balcony area will be an exclusive easement of units
Level 12	A balcony area will be an exclusive easement of units
Level 14	A balcony area will be an exclusive easement of units
Level 15	A balcony area will be an exclusive easement of units
Level 16	A balcony area will be an exclusive easement of units
Level 17	A balcony area will be an exclusive easement of units
Level 18	A balcony area will be an exclusive easement of units
Level 19	A balcony area will be an exclusive easement of units
Level 20	A balcony area will be an exclusive easement of units
Level 21	A balcony area will be an exclusive easement of units
Level 22	A balcony area will be an exclusive easement of units
Level 23	A balcony area will be an exclusive easement of units
Level 24	A balcony area will be an exclusive easement of units
Level 25	A balcony area will be an exclusive easement of units
Level 26	A balcony area will be an exclusive easement of units
Level 27	A balcony area will be an exclusive easement of units
Level 28	A balcony area will be an exclusive easement of units
Level 29	A balcony area will be an exclusive easement of units
Level 30	A balcony area will be an exclusive easement of units
Level 31	A balcony area will be an exclusive easement of units
Level 32	A balcony area will be an exclusive easement of units
Level 33	A balcony area will be an exclusive easement of units
Level 34	A balcony area will be an exclusive easement of units
Level 35	A balcony area will be an exclusive easement of units
Level 36	A balcony area will be an exclusive easement of units
Level 37	A balcony area will be an exclusive easement of units
Level 38	A balcony area will be an exclusive easement of units

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EXHIBIT I

RESIDENTIAL UNITS ALLOCATED SHARE

Type of Unit	Fractional Allocation	Total Shares
Studio Suite (396)	1	396
Single-Bedroom (180)	2	360
<b>Total</b>	<b>-</b>	<b>756</b>

20060510-0004008

APNs: 162-21-315-001 through 577

Recording Requested by and  
When Recorded Mail to:

Snell & Wilmer L.L.P.  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NV 89109  
Attn.: Jim Mace, Esq.

C-15

14

Fee: \$28.00  
N/C Fee: \$25.00

05/10/2006 14:17:00  
T20060082761

Requestor:  
NEVADA TITLE COMPANY

Frances Deane DBX  
Clark County Recorder Pgs: 15

**FIRST AMENDMENT TO  
THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND  
RESERVATION OF EASEMENTS  
FOR  
THE RESIDENCES AT MGM GRAND – TOWER A**

This FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE RESIDENCES AT MGM GRAND – TOWER A (this “*Amendment*”) is made as of this 10<sup>th</sup> day of May, 2006 by Turnberry/MGM Grand Towers, LLC, a Nevada limited-liability company (the “*Declarant*”).

**PRELIMINARY STATEMENTS**

The Declarant is the owner of certain real property located in Clark County, Nevada, more particularly described on Exhibit “A” attached hereto (the “*Real Property*” and, as improved, the “*Condominium Property*”).

The Declarant executed a certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Residences at MGM Grand – Tower A, on December 9, 2003, (the “*Declaration*”). Defined terms used herein and not otherwise defined shall have the meanings set forth in the Declaration.

The Declarant represents not less than sixty-seven percent (67%) of the voting power of the Association, sixty-seven percent (67%) of the voting power of the Class A Members and all of the voting power of the Class B Members. Additionally, as the Close of Escrow has not occurred for any Unit, the Declarant is entitled to unilaterally amend the Declaration and record this Amendment pursuant to Section 14.1(a) of the Declaration.

The Declarant desires to amend the Declaration as set forth below to conform to the recent revisions to NRS Chapter 116.

## AMENDMENTS

The Declarant amends the Declaration as follows:

1. Amendment to the Preamble. The Preamble is deleted in its entirety and restated as follows:

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Residences at MGM Grand - Tower A (this "*Declaration*"), is dated for reference purposes only as of December 9, 2003 and is made by Turnberry/MGM Grand Towers LLC, a Nevada limited-liability company (the "*Declarant*").

2. Amendment to Recital B. The reference to "NRS Section 116.110323" in Recital B is deleted in its entirety and restated as "NRS Section 116.021."

3. Amendment to Recital B. The reference to "NRS Section 116.110325" in Recital B is deleted in its entirety and restated as "NRS Section 116.027."

4. Amendment to Recital C. Recital C is deleted in its entirety and restated as follows:

It is contemplated that the Condominium Property will be benefited and burdened by (i) an Easement Agreement between MGM Grand Hotel, LLC, a Nevada limited liability company ("*MGM Grand*"), the Declarant, and Turnberry/MGM Grand Tower B, LLC ("*Tower B*"); (ii) an Amended and Restated Declaration of Permanent Easements and Covenants between MGM Grand, the Declarant, and Tower B; and (iii) a Declaration of Restrictions, Grant of Reciprocal Easements and Shared Area Maintenance Agreement between MGM Grand, the Declarant, and Tower B (collectively, the "*Reciprocal Easement Agreement*"), which, among other things, will grant certain rights to the Owners over and upon the adjoining properties.

5. Amendment to Recital E. Recital E is deleted in its entirety and restated as follows:

The Declarant, its successors, assigns and grantees, covenant and agree that the undivided interest in the Common Elements, the Membership, any easements conveyed therewith and the fee title to each respective Unit conveyed therewith shall not be separated or separately conveyed, and each such undivided interest in the Common Elements, Membership and easements shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any conveyance by an Owner of a Unit, or any portion thereof, shall be presumed to convey the entire Unit, together with the Allocated Interest and Membership.

6. Amendment to Section 1. Section 1 is hereby amended to add to Section 1 the following definitions so that the alphabetical order of defined terms in Section 1 is preserved:

*"Daily Transient Rental Fee"* shall have the meaning set forth in Section 8.5(b) of this Declaration.

*"Member"* means every person or entity including the Declarant who holds a membership in the Association pursuant to the provisions of this Declaration, the Articles and the Bylaws.

*"MGM Grand"* shall have the meaning set forth in Preliminary Statement C of this Declaration.

*"Monthly Transient Rental Fee"* shall have the meaning set forth in Section 8.5(a) of this Declaration.

*"Notice of Sale"* shall have the meaning set forth in Section 7.6(b)(vi)(A) of this Declaration.

*"Ombudsman"* shall have the meaning set forth in Section 7.6(b)(vi)(B)(iii) of this Declaration.

*"Tower B"* shall have the meaning set forth in Preliminary Statement C of this Declaration.

7. Amendment to Section 1.2. Section 1.2 is deleted in its entirety and restated as follows:

*"Allocated Interest"* shall mean and refer to the interest allocated to each Unit for (i) an undivided interest in Common Elements, easements and licenses within the Condominium Property; (ii) liability for Common Expenses; and (iii) Membership rights in the Association, including, without limitation, voting rights in the Association. Each owner's undivided fractional interest in the Common Elements and the fractional share of the Common Elements is set forth on Exhibit "B" attached hereto. Except for the voting rights set forth in Section 5.6 of this Declaration, the remaining Allocated Interest of each Unit in the Common Elements, easements and licenses with the Condominium Property and liability for Common Expenses shall be equal to a fraction whose numerator will be the Unit Allocation of the Unit and whose denominator will be one thousand five hundred (1,500).

8. Amendment to Section 1.12. The reference to "NRS Section 116.110345" in Section 1.12 is deleted in its entirety and restated as "NRS Section 116.045."

9. Amendment to Section 1.23. The reference to "NRS Section 116.110318" in Section 1.23 is deleted in its entirety and restated as "NRS Section 116.017."

10. Amendment to Section 1.25. The reference to "NRS Section 116.110325" in Section 1.25 is deleted in its entirety and restated as "NRS Section 116.027."

11. Amendment to Section 1.25. The reference to "NRS Section 116.110323" in Section 1.25 is deleted in its entirety and restated as "NRS Section 116.021."

12. Amendment to Former Section 1.36. Former Section 1.36 is deleted in its entirety and restated as follows:

*"Governing Documents"* shall mean this Declaration, the Bylaws, the Articles, the Rules and Regulations and other documents that govern the organization or operation of the Association and the operation of the Condominium Property, as may be amended from time to time.

13. Amendment to Former Section 1.50. Former Section 1.50 is deleted in its entirety and restated as follows:

*"Notice of Addition"* shall mean a document Recorded pursuant to Section 16.3 of this Declaration by which real estate is added to the Condominium Property.

14. Amendment to Former Section 1.67. Former Section 1.67 is deleted in its entirety and restated as follows:

*"Shared Components"* shall mean all portions of the Condominium Property, excluding the Residential Units and the Common Elements, including, but not limited to, the following components or Improvements: any and all structural components of the Improvements, including, without limitation, all exterior block walls and all finishes (paint, stucco etc) and balconies, terraces and/or facades attached or affixed thereto; the roof; all roof trusses, roof support elements and roofing insulation; the building envelope; exterior insulation and finish system; all utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems, including, without limitation, all wires, conduits, pipes, ducts, transformers, cables and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, electrical, plumbing and/or other services; all heating, ventilating and air conditioning systems, including, without limitation, compressors, air handlers, ducts, chillers, water towers and other apparatus used in the delivery of HVAC services; all elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment used in the operation of the elevators transversing the Condominium Property; and all trash rooms, trash chutes and any and all trash collection and/or disposal systems. In addition, the Shared Components include the following areas and/or facilities contained within the Condominium Property (together with a license for reasonable pedestrian access thereto, as determined by the Hotel Unit Owner): any

parking structures or parking areas; the pool and pool deck; the fitness center, if any, which may be located from time to time within the improvements constructed upon the Hotel Unit, and cabanas, if any, which may be located from time to time within the improvements constructed upon the Hotel Unit and any landscape areas. Notwithstanding anything to the contrary contained herein or in any of the exhibits hereto, the Shared Components shall be deemed part of the Hotel Unit. The Hotel Unit Owner shall have the right (but not the obligation), by supplemental declaration executed by the Hotel Unit Owner alone, to designate additional portions of the Hotel Unit as Shared Components hereunder. Notwithstanding the designation of the Shared Components, the Hotel Unit Owner shall have the right, from time to time, to expand, alter, relocate and or eliminate the portions of the Hotel Unit deemed Shared Components (provided that expansion shall not be beyond the Hotel Unit), without requiring the consent or approval of the Association or any Owner, provided that any portions withdrawn are not, in the reasonable opinion of the Hotel Unit Owner essential to the structural integrity of the Residential Units, the provision of utilities and utility services to the Residential Units and/or the provision of legal access. In furtherance of the foregoing, the Hotel Unit Owner also reserves the absolute right at any time, and from time to time, to construct additional facilities upon the Hotel Unit and to determine whether same shall be deemed Shared Components. Further, notwithstanding their designation as Shared Components, subject to the right of the Hotel Unit Owner to regulate their uses, the balconies, lanais and/or rooftop terraces directly serving a Unit shall be for the exclusive use of the Unit afforded direct access thereto and that exclusive use right shall be an appurtenance which passes with title to the Unit. It is expressly contemplated that persons other than Owners shall be granted use rights in and to certain of the facilities of the Hotel Unit (such determination to be made in the sole and absolute discretion of the Hotel Unit Owner). The Hotel Unit Owner may, in its sole discretion, offer food and beverage service and/or other services commonly associated with a hotel, but is under no obligation to do so.

15. Amendment to Former Section 1.75. Former Section 1.75 is deleted in its entirety and restated as follows:

*"Transient Rental"* shall mean the rental, for monetary or other consideration, of a Residential Unit for a period of thirty (30) consecutive calendar days or less.

16. Amendment to Former Section 1.77. The reference to "NRS Section 116.11039" in Section 1.77 is deleted in its entirety and restated as "NRS Section 116.093."

17. Amendment to Section 4.1. Section 4.1 is deleted in its entirety and restated as follows:

*Residential Units.* All maintenance, repairs and replacements of, in or to any Residential Unit, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Owner of such Residential Unit at the Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. Except as otherwise

provided in this Declaration, the obligation to perform or provide such maintenance, repairs and/or replacement shall extend to the boundaries of the respective Residential Units only, as defined in Exhibit D hereof, and shall not extend to maintenance, repairs or replacement outside of such boundaries. In the event that maintenance, repairs or replacement of or to Shared Components adjacent to the boundaries of a Residential Unit become necessary due to a Residential Unit Owner's negligent act or omission, such Residential Unit Owner shall be responsible for payment of all costs related to said maintenance, repairs or replacement as an additional charge to the Residential Unit Owner as provided in Article 8 hereof.

18. Amendment to Section 5.2. The reference to "NRS Section 116.11315" in Section 5.2 is deleted in its entirety and restated as "NRS Section 116.011."

19. Addition of Section 6.1. The following provision shall be added as Section 6.1:

*Generally.* The Budget shall comply with and contain the information required by NRS Sections 116.31151(1)(a) and (b).

20. Renumbering of Former Section 6.1. Former Section 6.1 is renumbered as Section 6.2.

21. Amendment to Former Section 6.2. Former Section 6.2 is renumbered as Section 6.3 and restated as follows:

*Subsequent Fiscal Years.* The Board shall, not less than thirty (30) nor more than sixty (60) days before the beginning of the Fiscal Year, prepare and distribute to the Owners a summary of the Budget for the upcoming Fiscal Year, accompanied by a written notice that: (i) the Budget is available for review at the business office of the Association or some other suitable location within Clark County; and (ii) copies of the Budget will be provided upon request. Within sixty (60) days after adoption of any proposed Budget, the Board shall provide a summary of the proposed Budget to each Owner and shall set a date for a meeting of Owners to consider ratification of the proposed Budget not less than fourteen (14) days or more than thirty (30) days after the mailing of the summaries. Unless at that meeting a majority of all Owners reject the proposed Budget, the proposed Budget is ratified, whether or not a quorum is present. If the proposed Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent Budget proposed by the Board. If during such upcoming Fiscal Year the Board determines that the Annual Assessment should be increased above the amount reflected in the Budget then in effect for such Fiscal Year, the Board shall provide a copy or a summary of the increased Budget, accompanied by a written notice of where the Budget is available for review and that copies of the Budget may be obtained upon request, to all Owners and the provisions set forth above concerning a meeting of the Owners to ratify a new Budget shall be applicable to such proposed increase. The Budget, as ratified, shall be binding on all Owners.



22. Amendments to Subsection 7.6(b) through 7.6(b)(iii). Subsections 7.6(b) through 7.6(b)(iii) are deleted in their entirety and restated as follows:

(b) *Enforcement of Liens.*

(i) The Association may foreclose its lien by sale after all of the following occur:

(A) The Association has mailed or caused to be mailed by certified or registered mail, return receipt requested, to the Owner or the Owner's successor-in-interest, at the Owner's last known address and the address of the Unit, a Notice of Delinquent Assessment (a "*Notice of Delinquency*") which states (i) the amount of the Assessment and other sums which are due in accordance with NRS Section 116.3116(1); (ii) a sufficient description of the Unit(s) against which the lien is imposed; and (iii) the name of the record Owner(s) of the Unit(s);

(B) Not less than thirty (30) days after mailing the Notice of Delinquency, the Association or other Persons conducting the sale has executed and caused to be Recorded with the Clark County Recorder a Notice of Default and Election to Sell (a "*Notice of Default*") the Unit(s) to satisfy the lien, signed by any officer or authorized agent of the Association, which must contain the same information as the Notice of Delinquency and which must also comply with the following:

(i) Describe the deficiency in payment;

(ii) State the name and address of the person authorized by the Association to enforce the lien by sale;

(iii) Contain, in 14-point bold type, the following warning:

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**

(C) The Owner or the Owner's successor-in-interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for ninety (90) days following the date of recording of the Notice of Default.

(ii) The Notice of Default must be signed by the person designated herein or by the Association for that purpose or, if no one is designated, by the president of the Association.

(iii) The ninety (90) day period referenced in subsection (b)(i)(C) above begins on the first day following the later of:

(A) The date on which the Notice of Default is recorded; or

(B) The date on which a copy of the Notice of Default is mailed by certified or registered mail, return receipt requested, to the Unit's Owner or the Owner's successor-in-interest at such Person's address, if known, and at the address of the Unit.

(iv) The Association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the Association unless:

(A) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the Owners or residents of the Condominium; or

(B) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS Section 116.310305.

(v) The Association or other Person conducting the sale shall also mail, within ten (10) days after the Notice of Default is recorded, a copy of the notice by first class mail to:

(A) Each Person who has requested notice pursuant to NRS Sections 107.090 or 116.31168;

(B) Any holder of a recorded security interest encumbering the Owner's interest in the Unit who has notified the Association, thirty (30) days before the recordation of the Notice of Default, of the existence of the security interest; and

(C) A Purchaser of the Unit, if the Owner has notified the Association, thirty (30) days before the recordation of the Notice of Default, that the Unit is the subject of a contract of sale and the Association has been requested to furnish the certificate required by NRS Section 116.4109.

(vi) The Association or other Person conducting the sale shall also, after the expiration of the ninety (90) day period referenced in subsection (b)(i)(C) above and before selling the Unit:

(A) Give notice of the time and place of the sale (the "*Notice of Sale*") in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS Section 21.130, service must be made on the Unit's Owner as follows:

(i) A copy of the Notice of Sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the Unit's Owner or the Owner's successor-in-interest at the Owner's address, if known, and to the address of the Unit; and

(ii) A copy of the Notice of Sale must be served, on or before the date of first publication or posting, in the manner set forth in Section 7.6(b)(v).

(B) Mail, on or before the date of first publication or posting, a copy of the Notice of Sale by first-class mail to:

(i) Each Person entitled to receive a copy of the Notice of Default under NRS Section 116.31163;

(ii) The holder of a recorded security interest or the purchaser of the Unit, if either of them has notified the Association, before the mailing of the Notice of Sale, of the existence of the security interest, lease or contract of sale, as applicable; and

(iii) The office of the Ombudsman for Owners in Common Interest Communities (the "*Ombudsman*").

(vii) In addition to the requirements set forth above, a copy of the Notice of Sale must be served:

(A) By a person who is eighteen (18) years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the Notice of Sale to an occupant of the Unit who is of suitable age; or

(B) By posting a copy of the Notice of Sale in a conspicuous place on the Unit.

(viii) Any copy of the Notice of Sale required to be served must include:

(A) The amount necessary to satisfy the lien as of the date of the proposed sale; and

(B) The following warning in 14-point bold type:

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE**

**DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the Association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (877) 829-9907 IMMEDIATELY.**

(ix) Proof of service of any copy of the Notice of Sale required to be served pursuant to this section must consist of:

(A) A certificate of mailing which evidences that the Notice of Sale was mailed through the United States Postal Service; or

(B) An affidavit of service signed by the person who served the Notice of Sale stating:

(i) The time of service, manner of service and location of service; and

(ii) The name of the person served or, if the Notice of Sale was not served on a person, a description of the location where the Notice of Sale was posted on the Unit.

23. Amendment to Section 9.2. Section 9.2 is deleted in its entirety and restated as follows:

*Parking.* All vehicle parking shall be by valet only and subject to any procedures, rules and regulations adopted from time to time pursuant to this Declaration or the Reciprocal Easement Agreement. One valet parking space will be available for each Residential Unit within the Condominium Property or within another parking facility located near the Condominium Property. Parking spaces will not be assigned to a particular Residential Unit. Any spaces in addition to the one valet parking space available to each Residential Unit and will be on a "first come" basis. If a vehicle is parked in violation of any of the provisions of the Governing Documents, in addition to complying with the requirements of NRS Section 487.038, the Association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least forty-eight (48) hours before the Association may direct the removal of the vehicle, unless the vehicle: (a) is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or (b) poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the Owners or residents of the Units.

24. Amendment to Section 9.5. Section 9.5 is deleted in its entirety and restated as follows:

*Signs.* Except as provided to the Declarant under this Declaration, no sign, poster, billboard, advertising device or other display of any kind shall be displayed without the pre-approval of the Hotel Unit Owner. Notwithstanding the foregoing, an Owner or occupant may display a political sign within the Unit measuring no larger than twenty-four (24) inches by thirty-six (36) inches. A political sign is a sign which expresses support for or opposition to a candidate, political party or ballot question.

25. Amendment to Section 10.8. The word "claims" in Section 10.8 is deleted in its entirety and restated as "liabilities."

26. Amendment to Section 11.2. The term "Condominium Project" in Section 11.2 is deleted in its entirety and restated as "Condominium."

27. Amendments to Section 19.2 through 19.2(b). The following provisions shall be added as Sections 19.2 through 19.2(b):

*Fines and Penalties.* For any violation of the Governing Documents, the Board may:

(a) Prohibit, for a reasonable time, an Owner or an Owner's Family, Transient Guests, Long-Term Guests, employees, agents, or invitees from:

(i) Voting on matters related to the Condominium,

(ii) Using the Shared Components; provided, however, an Owner or an Owner's Family, Transient Guests, Long-Term Guests, employees, agents, or invitees shall not be prohibited from using any vehicular or pedestrian ingress or egress to go to or from that Owner's Unit, including any area used for parking.

(b) Impose a fine against an Owner or an Owner's Family, Transient Guests, Long-Term Guests, employees, agents, or invitees for each violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS Section 116.310305. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the Owners or residents of the Condominium, the amount of the fine must be commensurate with the severity of the violation and must be determined by the Board in accordance with the Governing Documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the Owners or residents of the Condominium, the amount of the fine must be commensurate with the severity of the violation and must be determined by the Board in accordance with the Governing Documents, but the amount of the fine must not exceed One Hundred Dollars (\$100.00) for each violation or a total amount of One Thousand Dollars (\$1,000.00), whichever is less. The limitations on the amount of the fine do not apply to interest, charges or costs that may be collected by the Association pursuant to this Section 19.2(b).

28. Renumbering of Former Section 19.2. Former Section 19.2 is renumbered as Section 19.3.

29. Amendment to Section 19.4. The following provisions shall be added as Section 19.4:

*Past Due Fines.* Past due fines shall be imposed and collected in accordance with the provisions of NRS Section 116.31031. Any past due fines shall bear interest commencing thirty (30) days after the due date until paid at the rate of eighteen percent (18%) per annum, but in no event more than the maximum rate permitted by law. The Board shall establish a rate for any costs of collecting past due fines in accordance with NRS Section 116.31031(8).

30. Renumbering of Former Section 19.4. Former Section 19.4 is renumbered as Section 19.5.

31. To the extent required by this Amendment, all article and section headings shall be renumbered as necessary.

32. Except as expressly amended herein, all terms and conditions of the Declaration will continue in full force and effect.

*[Signature page to follow]*

IN WITNESS WHEREOF, the Declarant has executed this Amendment as of the date first written above.

Turnberry/MGM Grand Towers, LLC,  
a Nevada limited-liability company

By: Turnberry/Harmon Ave., LLC,  
a Nevada limited-liability company,  
its Manager

By: Turnberry Residential Holding, L.P.,  
a Delaware limited partnership,  
its Manager

By: Turnberry Subsidiary GP, LLC,  
a Delaware limited liability company,  
its General Partner

By: Turnberry Residential Developers, L.P.,  
a Delaware limited partnership,  
its Managing Member

By: Turnberry Residential GP, LLC,  
a Delaware limited liability company,  
its General Partner

By:   
Jeffrey Soffer, Managing Member

STATE OF Florida )  
 ) ss.  
COUNTY OF Miami-Dade )

This instrument was acknowledged before me on May 2, 2006, by Jeffrey Soffer as Managing Member of Turnberry Residential GP, LLC, the General Partner of Turnberry Residential Developers, L.P., the Managing Member of Turnberry Subsidiary GP, LLC, the General Partner of Turnberry Residential Holding, L.P., the Manager of Turnberry/Harmon Ave., LLC, the Manager of Turnberry/MGM Grand Towers, LLC.

My Commission Expires: \_\_\_\_\_

  
NOTARY PUBLIC

Signature page to First Amendment to The Declaration of Covenants,  
Conditions and Restrictions and Reservation of Easement for  
The Residences at MGM Grand - Tower A

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Signature page to First Amendment to The Declaration of Covenants,  
Conditions and Restrictions and Reservation of Easements for  
The Residences at MCM Grand Tower A



09801  
HMH119-03  
NOVEMBER 5, 2003  
DGB/???  
APN 162-21-401-008

**EXPLANATION:** THIS LEGAL DESCRIBES A PARCEL OF LAND FOR "THE RESIDENCES AT M.G.M. GRAND, TOWERS A", LYING SOUTH OF HARMON AVENUE AND EAST OF LAS VEGAS BOULEVARD.

### **LEGAL DESCRIPTION**

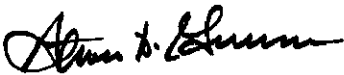
THAT PORTION OF PARCEL 2 AS SHOWN BY MAP THEREOF ON FILE IN FILE 105, PAGE 99 OF PARCEL MAPS IN THE CLARK COUNTY RECORDER'S OFFICE CLARK COUNTY, NEVADA, LYING WITH THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

**BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 2;**  
THENCE NORTH 00804'09" EAST ALONG THE WEST LINE THEREOF, 494.89 FEET;  
THENCE NORTH 89856'24" EAST, 46.00 FEET;  
THENCE SOUTH 00804'09" WEST, 70.83 FEET;  
THENCE SOUTH 90800'00" EAST, 108.24 FEET;  
THENCE SOUTH 00800'00" EAST, 83.67 FEET;  
THENCE SOUTH 90800'00" EAST, 257.91 FEET;  
THENCE SOUTH 00803'36" EAST, 177.30 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF SAID PARCEL 2;  
THENCE ALONG SAID SOUTHERLY BOUNDARY THE FOLLOWING THREE (3) COURSES:

- (1) CONTINUING SOUTH 00803'36" EAST, 74.51 FEET;
- (2) SOUTH 44856'24" WEST, 124.74 FEET;
- (3) SOUTH 89856'24" WEST, 324.81 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.50 ACRES, MORE OR LESS.

NOTE: THIS LEGAL DESCRIPTION IS PROVIDED AS A CONVENIENCE AND IS NOT INTENDED FOR THE PURPOSE OF SUBDIVIDING LAND NOT IN CONFORMANCE WITH NEVADA REVISED STATUES.

  
CLERK OF THE COURT

GARMAN TURNER GORDON LLP  
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Nevada Bar No. 6654  
Email: ggarman@gtg.legal  
ERIC R. OLSEN  
Nevada Bar No. 3127  
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Tel: (725) 777-3000  
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*Attorneys for Defendant,*  
*TURNBERRY/MGM GRAND TOWERS, LLC*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

145 EAST HARMON II TRUST,

Plaintiff,

vs.

TURNBERRY/MGM GRAND TOWERS, LLC;  
MGM RESORTS INTERNATIONAL, LLC;  
THE RESIDENCES AT THE MGM GRAND  
TOWER A, LLC; MGM GRAND  
CONDOMINIUMS, LLC; and DOES I-X,

Defendants.

Case No. A-16-733764-C  
Dept. No. XI

**DEFENDANT, TURNBERRY/MGM  
GRAND TOWERS, LLC'S JOINDER AND  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Date of Hearing: June 9, 2016  
Time of Hearing: 8:30 a.m.

Defendant Turnberry/MGM Grand Towers, LLC, a Nevada limited liability company ("Grand Tower A"), by and through its counsel, the law firm of Garman Turner Gordon LLP, hereby files this joinder to *Defendants' Motion to Dismiss Plaintiff's Complaint* (the "Motion to Dismiss") filed by Defendants MGM Grand Resorts International, LLC and MGM Grand Condominium, LLC (together, the "MGM Defendants") on May 9, 2016.

To avoid duplication, Grand Tower A hereby incorporates and adopts the MGM Defendants' facts and arguments as though fully set forth herein. Grand Tower A further moves

1 for dismissal of Defendant Grand Tower A for the reasons set forth herein.

2 DATED this 16th day of May, 2016.

3 GARMAN TURNER GORDON LLP

4 By: Gabriel A. Hamm

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15 Las Vegas, Nevada 89119

16 Tel: (725) 777-3000

17 Fax: (725) 777-3112

18 Attorneys for Defendant,

19 TURNBERRY/MGM GRAND TOWERS, LLC

20 **POINTS AND AUTHORITIES**

21 **I.**

22 **STATEMENT OF FACTS**

23 1. Grand Tower A is a debtor and debtor-in-possession in a case pending under  
24 Chapter 11 of Title 11 of the United States Code, pending in the United States Bankruptcy Court  
25 for the District of Nevada and entitled *In re Turnberry/MGM Grand Towers, LLC, et. al.*, Case  
26 No. BK-S-15-13706-abl, *et. al.* (collectively with the jointly-administered cases of  
27 Turnberry/MGM Grand Towers B, LLC and Turnberry/MGM Grand Towers C, LLC, the  
28 "Chapter 11 Cases").

2. The Chapter 11 Cases were commenced on June 26, 2015. Case No. BK-S-15-  
13706-abl, ECF No. 1 (Voluntary Petition of Grand Tower A).

3. From 2004 through the early part of 2006, Grand Tower A developed,  
constructed, and sold the condominium tower now known as "Tower A" of The Signature at  
MGM Grand (the "Property"). Following the sale of all of the condominium units in the

1 Property, Grand Tower A sold all of its remaining interest in the Property, including all real  
2 property and “all and singular tenements, hereditaments, and appurtenances thereunto belonging  
3 or in anywise appertaining” to Signature Tower 1, LLC, a Nevada limited liability company, on  
4 May 2, 2006, retaining no interest in the Property, including any real property. (See Exhibit C to  
5 MGM Defendants’ Motion to Dismiss, Grant, Bargain, Sale Deed.)<sup>1</sup>

## 6 II. 7 LEGAL ARGUMENT

### 8 A. Standard for Determining a Motion Under NRCP 12(b)(5).

9 The standard for consideration of a motion to dismiss is familiar. When considering a  
10 motion to dismiss under NRCP 12(b)(5), the court accepts the factual allegations within the  
11 complaint as true and draws all inferences in the plaintiff’s favor. Buzz Stew, LLC v. City of N.  
12 Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008); Sanchez ex rel. Sanchez v. Wal-Mart  
13 Stores, Inc., 221 P.3d 1276, 1280 (Nev. 2009). However, nothing in NRCP 12(b)(5) or Nevada’s  
14 numerous decisions under NRCP 12(b)(5) suggests that the court is required to accept as true  
15 allegations which are conclusively controverted by public records of which the Court may take  
16 judicial notice, such as the Grand, Bargain, Sale Deed from Grand Tower A to Signature Tower  
17 1, LLC. See Niles v. Nat’l Default Servicing Corp., 126 Nev. 742, 367 P.3d 804 (2010) (holding  
18 that “a court may take judicial notice of matters of public record”) (citing Lee v. City of Los  
19 Angeles, 250 F.3d 668, 689 (9th Cir. 2001) (internal quotations omitted)).

20 If “it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if  
21 true, would entitle [the plaintiff] to relief,” then the court must dismiss the complaint. Buzz  
22 Stew, 124 Nev. at 228; Simpson v. Mars, Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997)  
23 (citing Vacation Village v. Hitachi America, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)).  
24 Stated another way, “[t]o survive dismissal, a complaint must contain some ‘set of facts, which,  
25 if true, would entitle [the plaintiff] to relief.’” In re Amerco Derivative Litig., 127 Nev. Adv.  
26 Op. 17, 252 P.3d 681, 692 (2011) (quoting Buzz Stew, 124 Nev. at 228, 181 P.3d at 672).

27 <sup>1</sup> “[T]he court may take into account matters of public record, orders, items present in the record of the  
28 case, and any exhibits attached to the complaint...” in ruling on a motion to dismiss. Brelant v. Preferred  
Equities Corp., 109 Nev. 842, 847 (1993).

1     **B. All Claims Against Grand Tower A Must Be Dismissed.**

2             Plaintiff has asserted no facts from which the Court can infer that Defendant Grand  
3     Tower A had anything to do with the alleged damage to Plaintiff's unit. Even if every allegation  
4     in Plaintiff's Complaint was true, Plaintiff has failed to allege that Grand Tower A owed the  
5     Plaintiff any duty or that Grand Tower A engaged in any act or omission which caused Plaintiff's  
6     alleged damages.

7             Plaintiff does not assert any set of facts sufficient to infer that Defendant Grand Tower A  
8     owned the Property at any time relevant to the Complaint, as public records conclusively  
9     controvert such allegations. See G.K. Las Vegas Ltd. P'ship v. Simon Prop. Grp., Inc., 460 F.  
10    Supp. 2d 1246, 1261 (D. Nev. 2006) ("plaintiff cannot insulate a complaint from dismissal by  
11    relying upon inferences that are unreasonable or unwarranted in the context of the complaint  
12    itself") (citing Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001) (holding  
13    that a court is not required to accept allegations that are "merely conclusory, unwarranted  
14    deductions of fact, or unreasonable inferences.")).

15            The Grant, Bargain, Sale Deed from Grand Tower A to Signature Tower 1, LLC,  
16    attached as Exhibit C to the MGM Defendant's Motion to Dismiss, establishes that Grand Tower  
17    A had no ownership interest in the Property after May 2, 2006. Plaintiff alleges no facts from  
18    which the Court could infer liability by Grand Tower A for acts or omissions occurring more  
19    than nine years after it sold its interest in the Property. That Grand Tower A owned the Property  
20    in the distant past, without more, does not give rise to a claim.

21            Further, even if Plaintiff had properly alleged that Grand Tower A owned the Property at  
22    any relevant point in time, Plaintiff has pleaded nothing more than Grand Tower A's bare  
23    ownership. Plaintiff pleads no facts from which the Court could infer that Grand Tower A owed  
24    any duty to Plaintiff whatsoever by virtue of bare ownership of the land upon which the Property  
25    sits or some residual interest in the structure. Plaintiff alleges no contractual duty owed by  
26    Grand Tower A, nor does it allege that any employee of Grand Tower A, as opposed to some  
27    other Defendant (or unnamed party), was responsible for Plaintiff's alleged damages. As Grand  
28

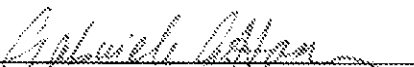
1 Tower A is not alleged to have any duty to Plaintiff, it cannot have breached that duty as a matter  
2 of law.

3  
4 **III.**  
**CONCLUSION**

5 Plaintiff has failed to state a claim upon which relief may be granted under NRCP  
6 12(b)(5) against Turnberry/MGM Grand Towers, LLC, an entity which sold its interest in the  
7 Property almost a decade ago. For this reason, and for the reasons set forth in the MGM  
8 Defendants' Motion to Dismiss, dismissal of the Complaint is appropriate. Based on the  
9 foregoing, Defendant Turnberry/MGM Grand Towers, LLC respectfully requests that all causes  
10 of action against it be dismissed, and that the Court dismiss this action in its entirety.

11 DATED this 16th day of May, 2016.

12 GARMAN TURNER GORDON LLP

13 By: 

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27 *Attorneys for Defendant,*

28 *TURNBERRY/MGM GRAND TOWERS, LLC*

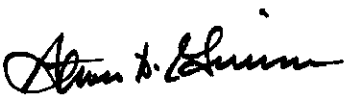
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ERIC TRAN, ATTORNEY AT LAW

Wood Smith Henning & Berman

Wood Smith Henning & Berman

/s/ Patty Pierson  
Patty Pierson, an employee of  
GARMAN TURNER GORDON

  
CLERK OF THE COURT

1 OMD

2 ERIC N. TRAN, Esq.  
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6 Telephone: (702) 948-9770, Ext. 2033  
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8 E-Mail: [Eric.Tran@StoAmigo.com](mailto:Eric.Tran@StoAmigo.com)  
9 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 145 EAST HARMON II TRUST  
11  
12 Plaintiff,

13 v.

14 TURNBERRY/MGM GRAND TOWERS, LLC;  
15 MGM RESORTS INTERNATIONAL; THE  
16 RESIDENCES AT MGM GRAND TOWER A,  
17 LLC; MGM GRAND CONDOMINIUMS, LLC;  
18 JOHN DOES I-X.

19 Defendants.

Case No. : A-16-733764-C  
Dept. No.: XI

PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS, OR IN  
THE ALTERNATIVE, MOTION TO AMEND  
THE COMPLAINT

20 Plaintiff 145 East Harmon II Trust, by and through its attorney of record, Eric N. Tran, Esq.  
21 hereby submits this Opposition to Defendants MGM Resorts International and MGM Grand  
22 Condominiums, LLC's Motion to Dismiss, or in the Alternative, Motion to Amend the Complaint.

23 ///

24 ///

25 ///

26 ///

27 ///



1 This Opposition and Motion is made and based on the following Memorandum of Points and  
2 Authorities, the Declaration of Eric N. Tran, all exhibits attached hereto, the pleadings and paper this  
3 Court has on file, and any oral arguments that may be entertained by this Court.

4 DATED this 19th day of May, 2016.

5 By: /s/ Eric N. Tran  
6 ERIC N. TRAN  
7 Nevada Bar No. 11876  
8 5538 S. Eastern Ave  
9 Las Vegas, Nevada 89173  
10 Telephone: (702) 948-9770, Ext. 2033  
11 Fax: (815) 550-2830  
12 E-Mail: [Eric.Tran@StoAmigo.com](mailto:Eric.Tran@StoAmigo.com)  
13 *Attorney for Plaintiffs*

ERIC N. TRAN  
ATTORNEY AT LAW  
5538 Eastern Ave Las Vegas, Nevada 89119  
Telephone : (702) 948-9770 ext. 2033 Fax (815) 550-2830

1       **DECLARATION OF ERIC N. TRAN IN SUPPORT OF PLAINTIFF'S OPPOSITION TO**  
2       **DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION TO AMEND**  
3       **THE COMPLAINT**

4       I Eric N. Tran, hereby declare the following:

- 5       1. I am an attorney duly licensed in the State of Nevada and I am the attorney of record for  
6       Plaintiff 145 East Harmon II Trust.
- 7       2. I know the following facts to be true of my own knowledge, and if called to testify, I could  
8       competently do so.
- 9       3. I make this declaration in compliance with EDCR 2.21. This declaration pertains to Plaintiff's  
10      Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint, or in the alternative, Motion to  
11      Amend the Complaint.
- 12      4. From about December 2015 to March 2016, Plaintiff and its attorneys have been in contact with  
13      representatives from The Signature at MGM Grand including William Martin, Esq., the attorney  
14      assigned to this case pre-litigation.
- 15      5. On numerous occasions from December 2015 to March 2016, Plaintiff asked Mr. Martin for the  
16      name of the entity or entities that owns The Signature at MGM Grand. From the very beginning, Mr.  
17      Martin has been evasive and unwilling to provide Plaintiff with the name of the entity or entities that  
18      owns The Signature at MGM Grand. Instead, at every turn, Mr. Martin has vaguely replied that he  
19      owns The Signature at MGM Grand. Instead, at every turn, Mr. Martin has vaguely replied that he  
20      represented the "MGM." On one occasion, Mr. Martin stated that he was counsel for "Signature." In  
21      fact, in previous communications with Mr. Martin, Mr. Martin's signature block stated that he was Vice  
22      President and Deputy Attorney General Counsel of "MGM Resorts International." See Exhibit 1 which  
23      is a true and correct copy of an email sent by Mr. Martin to Plaintiff dated January 13, 2016.
- 24      6. Even when Plaintiff specifically asked Mr. Martin who the defendant(s) should be in the event  
25      Plaintiff needs to file a lawsuit, Mr. Martin vaguely replied "MGM."
- 26      7. Prior to the filing of this lawsuit, Plaintiff drafted numerous letters to Mr. Martin addressing  
27      28

1 the potential defendant(s) as "MGM Grand Condominiums, LLC," and "MGM Resorts International  
2 Operations Inc." Not once did Mr. Martin ever correct Plaintiff regarding who the proper defendant(s)  
3 should be. See Exhibit 2 which are true and correct copies of letters sent to William Martin dated  
4 February 3, 2016 and March 21, 2016.

5 8. Prior to the filing of this lawsuit, I also drafted a demand letter to Mr. Martin addressing the  
6 potential defendants as "MGM Grand Condominiums LLC," and "MGM Resorts International  
7 Operations Inc." See Id. Mr. Martin did not even have the courtesy to respond to my letter.

8 9. After the filing and service of the Complaint, on or about April 22, 2016, I had a telephone  
9 conference with Elisa Wyatt, Esq. At the very beginning of the telephone conference, I asked Ms.  
10 Wyatt who she represented in this matter as there were numerous defendants. Ms. Wyatt stated that she  
11 represented "MGM." Because I viewed "MGM" as a vague answer as there are multiple defendants that  
12 could be considered "MGM," I asked Ms. Wyatt to clarify which MGM defendant specifically named  
13 in this lawsuit she represented. Ms. Wyatt replied "that is hard for me to answer." Because Ms. Wyatt  
14 could not (or refused to) provide me with a specific answer, I had to ask her additional follow up  
15 questions to determine which specific defendant in this matter she actually represented. I then  
16 proceeded to ask her how she obtained a copy of the Complaint. She responded that she received the  
17 Complaint from the insurance carrier. I then asked her "who is named in the Summons that should be  
18 with the Complaint." Ms. Wyatt then looked through her file and said that MGM Grand  
19 Condominiums, LLC and MGM Resorts International are named in the Summons that she received  
20 from the insurance carrier. I then asked her "so you represent MGM Grand Condominiums, LLC and  
21 MGM Resorts International?" Finally, Ms. Wyatt confirmed over the phone that she represented MGM  
22 Grand Condominiums, LLC and MGM Resorts International.

23 10. During the conference, Ms. Wyatt asked me if I was willing to file an amended complaint only  
24 naming "The Signature" because according to Ms. Wyatt, "The Signature" was the real owner of The  
25 Signature at MGM Grand. I then told Ms. Wyatt that this was the first time I had ever heard that an  
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1 entity name "The Signature" was the owner of the Signature at MGM Grand. I also told Ms. Wyatt that  
2 I was reluctant to amend the complaint as I don't have any evidence suggesting that "The Signature"  
3 was the true defendant as the name of the condominium is "The Signature at MGM Grand."

4 11. On April 29, 2015, I had another telephone conference where Ms. Wyatt again requested that  
5 I file an amended complaint only naming "The Signature." I explained to Ms. Wyatt that I was reluctant  
6 to do so because prior to the filing of this lawsuit, Plaintiff was communicating with William Martin,  
7 Esq., the previous attorney from "MGM" assigned to handle this case. During Plaintiff's entire previous  
8 communications with Mr. Martin, Mr. Martin never stated that the owner of the condominium was  
9 "The Signature." In fact, I informed Ms. Wyatt that during Plaintiff's previous conversation with Mr.  
10 Martin where Plaintiff specifically asked him who he represented and who the defendant should be in  
11 the event there is a lawsuit, Mr. Martin vaguely asserted that he represented "MGM" and that the  
12 defendant should be "MGM."

13  
14 12. Ms. Wyatt then suggested, among other things, that I file an amended complaint only naming  
15 The Signature but with a reservation of rights that Plaintiff could amend the Complaint in the future to  
16 name other defendants should discovery reveal other defendants are responsible for the torts alleged in  
17 the Complaint.

18  
19 13. After my discussions with Ms. Wyatt, I once again revisited my research regarding the potential  
20 defendants in this case. I again did a business entity search on the Nevada Secretary of State's website.  
21 According to the Nevada Secretary of State's website, there is no entity by the name of "The  
22 Signature." Instead, the only entity that could potentially own The Signature at MGM Grand and that  
23 was listed as "the Signature" according to my search results was "the Signature Condominiums, LLC."

24 14. On May 2, 2016, I held another telephone conference with Ms. Wyatt where I informed her that  
25 my clients were not willing to amend the Complaint due to MGM's evasive conduct in failing to even  
26 state who the owner of the condominium in this matter is, and because at this juncture we don't have  
27 enough evidence to conclusively show that "The Signature" owns the condominium.  
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1  
2 15. On May 5, 2016, Defendants MGM Resorts International and MGM Grand Condominiums,  
3 LLC filed their Motion to Dismiss. In their Motion to Dismiss, Defendants allege that the owner of the  
4 condominium is "the Signature Tower I, LLC." This was the first time "the Signature Tower I, LLC"  
5 was ever brought to my attention by Defendants and their representatives.

6 I, Eric N. Tran, declare under penalty of perjury under the laws of the State of Nevada,  
7 that the foregoing is true and correct.

8 Executed this 19<sup>th</sup> day of May, 2016  
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ERIC N. TRAN

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Contrary to Defendants' assertion that it is easy to ascertain the identity of the true owner of the condominium/hotel called the "Signature at MGM Grand" located at 145 East Harmon Ave, Las Vegas, Nevada 89109, the reality is that based on the complexity in which these "MGM" entities are structured with various subsidiaries and parent company, it is extremely difficult to ascertain the real entity or entities that own the Signature at MGM Grand. From the very beginning when Plaintiff reported the damage to Plaintiff's condominium unit to the management at the Signature at MGM Grand, Defendants and their representatives including William Martin, Esq., an attorney for MGM Resorts International assigned to this matter pre litigation, have been completely evasive about the true identity of the owner of the Signature at MGM Grand in order to obstruct Plaintiff's ability to file this lawsuit.

Plaintiff, in an act of caution, named every defendant that potentially owned the Signature at MGM Grand and that could be held liable to Plaintiff including Defendant MGM Resorts International who upon information and belief is the parent company of all the "MGM" defendants. Defendants now assert that Plaintiff named the wrong Defendant in this matter as the true identity of the entity that owns the Signature at MGM Grand is "The Signature Tower I, LLC." However, even when Plaintiff wrote letters to Defendants identifying the potential defendants as "MGM Grand Condominiums, LLC" and "MGM Resorts International Operations Inc.," Defendants and their representatives failed to correct Plaintiff or even mention that "the Signature Tower I, LLC" was the true owner of the condominium. See Declaration of Eric N. Tran at ¶s 7-8. Irrespective of Defendants' assertion as to the true identity of the owner of the Signature at MGM Grand, at this juncture, this case is still in its infancy and as such, it is too early to determine the true owner(s) of the Signature at MGM Grand. Thus, this Court should deny Defendants' Motion to Dismiss and allow this case to proceed so that Plaintiff can at least do some discovery in order to ascertain any other entities who own the Signature at MGM Grand.

## II. STATEMENT OF FACTS

Plaintiff is the owner of condominium unit # 25619 located in a condominium/hotel called the Signature at MGM Grand at 145 East Harmon Ave, Las Vegas, Nevada 89109. On March 21, 2016, Plaintiff filed a Complaint against, among other defendants, Defendants MGM Resorts International and MGM Grand Condominiums, LLC asserting claims for (1) Negligence; (2) Negligence per se; (3) Respondeat Superior; (4) Conversion; (5) Trespass; and (6) Breach of Contract. See Complaint attached as Exhibit A to Defendants' Motion to Dismiss. Plaintiff's Complaint arises from Defendants and their employees illegally entering Plaintiff's condominium Unit while Plaintiff was away and unlawfully using Plaintiff's Unit for their own benefit which resulted in substantial property damage to Plaintiff's Unit. Id. The Complaint also alleges that Defendants failed to repair the widespread mold damage throughout the entire floor where Plaintiff's Unit is located. Id.

On May 9, 2016, Defendants MGM Resorts International and MGM Grand Condominiums, LLC filed their Motion to Dismiss the Complaint. In Defendants' Motion to Dismiss, Defendants argue that Plaintiff is not the real party in interest, and that Plaintiff has not named the proper entity that actually owns the Signature at MGM Grand and thus, Plaintiff's Complaint should be dismissed. Plaintiff now submits this Opposition to Defendants' Motion to Dismiss, or in the alternative, Motion to Amend the Complaint.

## III. LEGAL ARGUMENT

### A. DEFENDANTS' MOTION TO DISMISS SHOULD BE DENIED BECAUSE PLAINTIFF 145 EAST HARMON II TRUST IS THE REAL PARTY IN INTEREST.

NRCP 17(a), which governs real parties in interest, provides as follows:

Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit

1 the action is brought; and when a statute so provides, an action for the use or benefit of  
2 another shall be brought in the name of the State.

3 NRCP 17(a) (bold and underlined emphasis added)

4 A real party in interest "is one who possesses the right to enforce the claim and has a significant  
5 interest in the litigation." Arguello v. Sunset Station, Inc., 127 Nev. Adv. Op. 29, 252 P.3d 206, 208  
6 (2011) (citing Szilagyi v. Testa, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983)).

7 As emphasized above, and contrary to Defendants' assertions, NRCP 17 (a) does not define a  
8 real party in interest solely as "an executor, administrator, guardian, trustee of an express trust, a party  
9 with whom or in whose name a contract has been made for the benefit of another, or a party authorized  
10 by statute." Instead, NRCP 17(a) states that these parties "may sue in his own name without joining  
11 with him the party for whose benefit the action is brought." Simply put, only "[a]n executor,  
12 administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a  
13 contract has been made for the benefit of another, or a party authorized by statute" is permitted to bring  
14 a suit without joining the real party in interest which is the Executor. NRCP 17(a).

15 Here, the 145 East Harmon II Trust is the party that owns the condominium unit and who has a  
16 significant interest in the litigation. Contrary to Defendants' assertion, nothing in the plain language of  
17 NRCP 17 (a) prevents the Trust itself from bringing forth this lawsuit. While the Trustee of the Trust,  
18 under NRCP 17(a) may bring forth this suit in his own name without naming the Trust, who will  
19 ultimately benefit from this action, based on the plain language of NRCP 17(a), this does not prevent  
20 the Trust itself from bringing forth this action in its own name.<sup>1</sup>

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24 <sup>1</sup> Defendants cite to Causey v. Carpenters S. Nevada Vacation Trust, 95 Nev. 609, 600 P.2d 244, (1979)  
25 and argue that only the Trustee of a Trust has capacity to sue. Even the Court in Causey contemplated  
26 that the plaintiff in that case would be allowed to file an Amended Complaint. Thus, if this Court rules  
27 that the 143 East Harmon II Trust does not have capacity to sue, then Plaintiff request this Court allow  
28 Plaintiff to file an Amended Complaint naming the Trustee of the 143 East Harmon II Trust as  
plaintiffs.



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

\*\*\*\*

145 EAST HARMON II TRUST,  
ANTHONY TAN AS TRUSTEE OF  
THE 145 EAST HARMON II  
TRUST,

Appellants,

vs.

THE RESIDENCES AT MGM  
GRAND – TOWER A OWNERS'  
ASSOCIATION,

Respondent.

Electronically Filed  
Jan 30 2019 08:04 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**No. 75920**

**APPEAL FROM POST-STIPULATION OF DISMISSAL ORDER  
AWARDING ATTORNEY'S FEES AND COSTS;  
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA;  
HONORABLE MARK B. BAILUS**

\*\*\*\*

**APPELLANTS' APPENDIX VOLUME I**

DAVID J. KAPLAN (Bar No. 14022)  
5538 S. Eastern Avenue  
Las Vegas, Nevada 89119  
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Email: [djkaplan5@gmail.com](mailto:djkaplan5@gmail.com)

Attorney for Appellants 145 EAST  
HARMON II TRUST and ANTHONY  
TAN AS TRUSTEE OF THE 145 EAST  
HARMON II TRUST

**Alphabetical Index of Appendix for 145 East Harmon II Trust *et al.* v.  
The Residences at MGM Grand – Tower A Owners’ Association**

<b><u>No.</u></b>	<b><u>Date</u></b>	<b><u>Title</u></b>	<b><u>Vol No.</u></b>	<b><u>Appendix Page Nos.</u></b>
1.	August 16, 2016	Affidavit of Service (Association)	<b>Vol II</b>	<b>TRUST248-249</b>
2.	April 14, 2016	Affidavit of Service (MGM Grand)	<b>Vol I</b>	<b>TRUST011</b>
3.	April 14, 2016	Affidavit of Service (MGM Resorts)	<b>Vol I</b>	<b>TRUST012</b>
4.	June 21, 2016	Affidavit of Service (Signature Condominiums)	<b>Vol I</b>	<b>TRUST210-212</b>
5.	June 21, 2016	Affidavit of Service (Signature Tower I)	<b>Vol I</b>	<b>TRUST207-209</b>
6.	April 21, 2016	Affidavit of Service (Turnberry)	<b>Vol I</b>	<b>TRUST013</b>
7.	May 18, 2017	Association’s Motion for Attorney Fees	<b>Vol II</b>	<b>TRUST297-370</b>
8.	March 15, 2017	Association’s Motion to Dismiss or in the Alternative for Summary Judgment	<b>Vol II</b>	<b>TRUST271-294</b>
9.	July 10, 2017	Association’s Reply in Support of Its Motion for Attorney Fees	<b>Vol II</b>	<b>TRUST386-427</b>
10.	March 21, 2016	Complaint	<b>Vol I</b>	<b>TRUST001-010</b>

<b><u>No.</u></b>	<b><u>Date</u></b>	<b><u>Title</u></b>	<b><u>Vol No.</u></b>	<b><u>Appendix Page Nos.</u></b>
11.	August 30, 2016	Entry of Order Denying Motion to Dismiss and Granting Motion to Amend	<b>Vol II</b>	<b>TRUST250-254</b>
12.	October 11, 2016	Entry of Order of Dismissal of Turnberry	<b>Vol II</b>	<b>TRUST255-258</b>
13.	June 10, 2016	First Amended Complaint	<b>Vol I</b>	<b>TRUST197-206</b>
14.	December 5, 2016	Joint Case Conference Report	<b>Vol II</b>	<b>TRUST259-267</b>
15.	January 23, 2017	MGM and Signature Defendants' Offer of Judgment	<b>Vol II</b>	<b>TRUST268-270</b>
16.	June 27, 2016	MGM Defendants' Answer to First Amended Complaint	<b>Vol I</b>	<b>TRUST213-224</b>
17.	May 9, 2016	MGM Defendants' Motion to Dismiss	<b>Vol I</b>	<b>TRUST014-128</b>
18.	April 16, 2018	Notice of Entry of Order Granting Association Attorney Fees and Costs	<b>Vol II</b>	<b>TRUST439-443</b>
19.	September 15, 2017	Notice of Entry of Order of Dismissal of MGM and Signature Defendants	<b>Vol II</b>	<b>TRUST432-438</b>
20.	July 5, 2016	Signature Condominiums' Answer to First Amended Complaint	<b>Vol II</b>	<b>TRUST236-247</b>

<b><u>No.</u></b>	<b><u>Date</u></b>	<b><u>Title</u></b>	<b><u>Vol No.</u></b>	<b><u>Appendix Page Nos.</u></b>
21.	July 5, 2016	Signature Tower I's Answer to First Amended Complaint	<b>Vol II</b>	<b>TRUST225-235</b>
22.	April 27, 2017	Stipulation and Order of Dismissal of Association	<b>Vol II</b>	<b>TRUST295-296</b>
23.	August 15, 2017	Transcript of Decision Hearing for Association's Motion for Attorney Fees	<b>Vol II</b>	<b>TRUST428-431</b>
24.	May 30, 2018	Trust's Amended Certificate of Service for Notice of Appeal	<b>Vol II</b>	<b>TRUST447-449</b>
25.	May 16, 2018	Trust's Notice of Appeal	<b>Vol II</b>	<b>TRUST444-446</b>
26.	June 5, 2017	Trust's Opposition to Association's Motion for Attorney Fees	<b>Vol II</b>	<b>TRUST371-385</b>
27.	May 19, 2016	Trust's Opposition to MGM Defendants' Motion to Dismiss	<b>Vol I</b>	<b>TRUST135-174</b>
28.	June 7, 2016	Trust's Supplement to Opposition to Motion to Dismiss	<b>Vol I</b>	<b>TRUST175-196</b>
29.	May 16, 2016	Turnberry's Motion to Dismiss	<b>Vol I</b>	<b>TRUST129-134</b>

**Chronological Index of Appendix for 145 East Harmon II Trust *et al.* v.  
The Residences at MGM Grand – Tower A Owners’ Association**

<b><u>No.</u></b>	<b><u>Date</u></b>	<b><u>Title</u></b>	<b><u>Vol No.</u></b>	<b><u>Appendix Page Nos.</u></b>
1.	March 21, 2016	Complaint	<b>Vol I</b>	<b>TRUST001-010</b>
2.	April 14, 2016	Affidavit of Service (MGM Grand)	<b>Vol I</b>	<b>TRUST011</b>
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29.	May 30, 2018	Trust's Amended Certificate of Service for Notice of Appeal	<b>Vol II</b>	<b>TRUST447-449</b>

## DISTRICT COURT CIVIL COVER SHEET

A-16-733764-C

County, Nevada

Case No.

(Assigned by Clerk's Office)

XI

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

145 East Harmon Trust

Defendant(s) (name/address/phone):

Turnberry/MGM Grand Towers, LLC;

MGM Resorts International; MGM Grand Tower A, LLC;

MGM Grand Condominiums, LLC; Does I-X

Attorney (name/address/phone):

Eric N. Tran, Esq.

5538 S. Eastern Ave

Las Vegas, Nevada 89119

Attorney (name/address/phone):

unknown

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input checked="" type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

March 18, 2016

Date

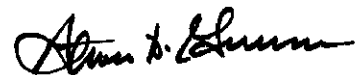
Signature of initiating party or representative

See other side for family-related case filings.



1 **COMP**

2 ERIC N. TRAN, Esq.  
3 Nevada Bar No. 11876  
4 5538 S. Eastern Ave  
5 Las Vegas, Nevada 89173  
6 Telephone: (702) 948-9770, Ext. 2033  
7 Fax: (815) 550-2830  
8 E-Mail: Eric.Tran@StoAmigo.com  
9 Attorney for Plaintiff



CLERK OF THE COURT

10 **DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

1 145 EAST HARMON II TRUST

2 Plaintiff,

3 v.

4 TURNBERRY/MGM GRAND TOWERS, LLC;  
5 MGM RESORTS INTERNATIONAL, LLC;  
6 THE RESIDENCES AT THE MGM GRAND  
TOWER A, LLC; MGM GRAND  
CONDOMINIUMS, LLC; and DOES I-X.

17 Defendants.

Case No. : A - 1 6 - 7 3 3 7 6 4 - C

Dept. No.: X I

**COMPLAINT**

Date of Hearing: N/A

Time of Hearing: N/A

19 Plaintiff 145 East Harmon II Trust, by and through its attorney of record, ERIC N. TRAN,  
20 ESQ., for its Complaint against Defendants Turnberry/MGM Grand Towers, LLC; MGM Resorts  
21 International; The Residences at the MGM Grand Tower A, LLC; MGM Grand Condominiums, LLC  
22 (collectively referred to as the "MGM Defendants"); and Does I-X, states, asserts, and alleges as  
23 follows:  
24

25 **THE PARTIES**

26 1. At all times relevant herein, Plaintiff 145 East Harmon II Trust ("The Trust") is the owner  
27  
28

1 of a condominium located at 145 E. Harmon Ave, Unit # 25619 Las Vegas, Nevada 89109 (" the  
2 Property").

3 2. At all times relevant herein, Defendant Turnberry/MGM Grand Towers, LLC was a limited  
4 liability company organized and existing under the laws of the State of Nevada with its principal place  
5 of business in Clark County, Nevada. In addition, Turnberry/MGM Grand Towers, LLC is the owner  
6 and operator of the condominium/hotel called MGM Signature located at 145 E. Harmon Ave Las  
7 Vegas, Nevada 89109 where the Property is located.

8  
9 3. At all times relevant herein, Defendant The Residences at MGM Grand Tower A, LLC  
10 was a limited liability company organized and existing under the laws of the State of Nevada with its  
11 principal place of business in Clark County, Nevada. Based upon information and belief, Defendant  
12 The Residences at MGM Grand Tower A, LLC is also the owner and operator of the  
13 condominium/hotel called MGM Signature located at 145 E. Harmon Ave Las Vegas, Nevada 89109  
14 where the Property is located.

15 4. At all times relevant herein, Defendant MGM Resorts International is a Delaware  
16 corporation that was licensed to do business and actually doing business in Clark County, Nevada.  
17 Based upon information and belief, Defendant MGM Resorts International is also the owner and  
18 operator of the condominium/hotel called MGM Signature located at 145 E. Harmon Ave Las Vegas,  
19 Nevada 89109 where the Property is located.

20  
21 5. At all times relevant herein, Defendant MGM Grand Condominiums, LLC was a  
22 limited liability company organized and existing under the laws of the State of Nevada with its  
23 principal place of business in Clark County, Nevada. Based upon information and belief, MGM Grand  
24 Condominiums, LLC is also the owner and operator of the condominium/hotel called MGM Signature  
25 located at 145 E. Harmon Ave Las Vegas, Nevada 89109 where the Property is located.

26  
27 6. The true names, identities, and capacities, whether individual, corporate, associate, or  
28

1 otherwise, of DOES I through X, inclusive, are unknown to Plaintiff, who therefore sue said Defendants  
2 by such fictitious names. Plaintiff is informed and believes and upon that basis alleges that each of the  
3 Defendants designated herein as a DOE Defendants are responsible in some manner for events and  
4 happenings herein referred to and caused damages proximately thereby to Plaintiff as herein alleged.  
5 Plaintiff further alleges that it will ask leave of this Court to amend this Complaint to insert the true  
6 names, identities, and capacities of said DOES I through X, inclusive, when the same have been  
7 ascertained by Plaintiff, together with appropriate charging allegations.

8  
9 7. Upon information and belief, Does I- X are employees and/ or agents of the MGM  
10 Defendants.

### 1 STATEMENT OF FACTS

2 8. On or about November 11, 2015, Plaintiff attempted to enter the Property. However,  
3 Plaintiff could not enter the Property as the electronic key card entry system malfunctioned. Plaintiff  
4 then reported the electronic key card system malfunction to the MGM Defendants. Later that day, the  
5 MGM Defendants sent their employees and staff to fix the electronic key card system on the Property.

6  
7 9. Prior to November 11, 2015, there was no damage to the interior of the Property, the  
8 bathroom shower in the Property was also completely shut off, there were no leaks coming from the  
9 bathroom shower, and the shower valve was not broken. Plaintiff did not give access or authorization to  
10 any persons or party to enter the Property for any reason. Prior to November 11, 2015, the "Do Not  
11 Disturb" notification on the electronic key card entry system was turned on which signals to all  
12 employees, staff, personnel of the MGM Defendants, and all other visitors to not enter the Property.

13  
14 10. On or about December 3, 2015, Plaintiff re-entered the Property for the first time since  
15 attempting to enter the Property on November 11, 2015 and discovered that the bathroom shower was  
16 fully turned on to the hottest temperature and the highest pressure; and that the Property was filled with  
17 steam. The steam and moisture from the bathroom shower caused significant damage to the interior of  
18 the Property including, but not limited to, mold damage.

1 11. To enter or gain access to the Property, a person must first insert an electronic key card  
2 specific to the Property through a double door entry, then the person must insert the same electronic key  
3 card specific to the Property through a second single door to the Property. The only persons who had  
4 access to the electronic key card to enter the Property were Plaintiff; and the MGM Defendants, their  
5 employees and staff.

6 12. Upon information and belief, the MGM Defendants maintain records of the use of the  
7 electronic key cards system which records entries to the Property. There is also a security camera  
8 directly outside the front door of the Property which records who enters the Property. The security  
9 camera also shows who walks up and down the hallways and corridors of the Property.  
10

1 13. Thereafter, Plaintiff contacted the MGM Defendants to report the incident and damage to  
2 the Property. Plaintiff authorized and demanded that the MGM Defendants retrieve and review the  
3 records of the hotel electronic key card access system to determine the individual(s) that entered the  
4 Property and caused damage to the Property.

5 14. On or about December 11, 2015, the MGM Defendants visited the Property to retrieve and  
6 download the data from the hotel key access card information system. The MGM Defendants also  
17 conducted an investigation of the incident.  
18

19 15. On or about December 29, 2015, Plaintiff discovered through the MGM Defendants that the  
20 hotel key access card system indicated that on or about November 26, 2015, an employee of the MGM  
21 Defendants entered the Property without authorization. The MGM Defendants do not refute that an  
22 employee or employees entered the Property on November 26, 2015. However, the MGM Defendants  
23 refused to disclose the name of the employee or employees who entered the Property, and refused to  
24 turn over the data from the hotel key access card system showing all entries into the Property up to  
25 December 3, 2015 which was promised to the Plaintiff prior to the Plaintiff authorizing the download.  
26

27 16. Upon information and belief, the MGM Defendants and their employees used an electronic  
28

1 key card to enter Plaintiff's Property knowing that Plaintiff was not in the Property. The MGM  
2 Defendants and their employees entered the Property illegally and without authorization in violation of  
3 NRS 205.900. The MGM Defendants and their employees used the Property for their own benefit  
4 without Plaintiff's authorization including using the shower at the Property.

5 17. After using the shower, the MGM Defendants and their employees did not turn off the  
6 water and instead, left the shower running on its highest temperature and highest pressure. As a result of  
7 the MGM Defendants and their employee's illegal entry into the Property and failure to turn off the  
8 shower, this resulted in significant damage to the Property.

9 18. Thereafter, the MGM Defendants opened a claim with their insurer Fireman's  
10 Fund Insurance Company ("FFIC"). Both MGM and FFIC have refused to conduct any repairs to  
1 Plaintiff's Property.

2 19. FFIC informed Plaintiff that because there is mold damage, that the claim was not covered  
3 under FFIC's insurance policy.

4 20. Upon information and belief, there is widespread incidents of the MGM Defendants and  
5 their employees illegally entering the Property and other similar units at 145 E. Harmon Ave Las  
6 Vegas, Nevada 89109, and using the Property and other units for their own benefits without  
7 authorization while the owners are away.

8 21. Upon information and believe, the MGM Defendants and their employees illegally entered  
9 the Property on numerous other occasions and used the Property for their benefit while Plaintiff was not  
10 at the Property.

11 22. Upon information and belief, there is widespread mold damage of a different species  
12 throughout the entire floor in which the Property is located. The MGM Defendants have failed to  
13 maintain the hotel/condominium by cleaning the mold.

FIRST CLAIM FOR RELIEF

*(Negligence against all Defendants)*

23. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 22 as though fully set forth herein.

24. All Defendants owe a duty of reasonable care to Plaintiff for not entering the Property without authorization.

25. Defendants breached this duty of care when they entered the Property on or about November 26, 2015 and other occasions and used the Property for their own personal benefit without Plaintiff's authorization.

26. As a direct and proximate result of Defendants' negligent actions, Plaintiff sustained damage to Plaintiff's Property in the amount in excess of \$10,000.00.

SECOND CLAIM FOR RELIEF

*(Negligence Per Se against all Defendants)*

27. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 26 as though fully set forth herein.

28. In Barnes v. Delta Lines, Inc., 99 Nev. 688, 690, 669 P.2d 709, 710 (1983), the Nevada Supreme Court held that "when a defendant violates a statute which was designed to protect a class of persons to which the plaintiff belongs, and thereby proximately causes injury to the plaintiff, such a violation constitutes negligence per se."

29. NRS 205.900 prohibits the unlawful use of hotel rooms keys to gain entrance into a hotel room under circumstances which demonstrate the person's intent to use or to allow the use of the device in the commission of a crime.

30. NRS 207.200 prohibits the unlawful trespass upon land or building of another with intent to commit an unlawful act.

31. Plaintiff is the class of persons to which NRS 205.900 and NRS 2007.200 was designed to

1 protect.

2 32. The MGM Defendants owed a duty of safety and security to Plaintiff by preventing the  
3 unauthorized and illegal use of the electronic key access card, and by preventing the unauthorized and  
4 illegal entry by the MGM Defendants and their employees into Plaintiff's Property to commit a crime.

5 33. The MGM Defendants and their employees breached this duty and committed a crime when  
6 they illegally entered Plaintiff's Property to use the Property for their own benefit.

7 34. The MGM Defendants' failure to implement strategies, policies, and procedures to prevent  
8 their employees and others from gaining illegal access to the Property amounts to *negligence per se*.

9  
10 THIRD CLAIM FOR RELIEF

11 *(Respondeat Superior against the MGM Defendants)*

12 35. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 34 as  
13 though fully set forth herein.

14 36. The MGM Defendants owed a fiduciary duty to Plaintiff to, among other things, hire, train,  
15 and supervise employees so as to protect Plaintiff's interests.

16 37. The MGM Defendants had a duty to use reasonable care in the training, supervision, and  
17 retention of its employees to make sure that the employees were fit for their respective positions and  
18 roles.

19 38. The MGM Defendants were required to supervise the actions of its employees, agents, and  
20 representatives, including Does I-X employees to ensure that these employees protect the interest of  
21 MGM's residents including Plaintiff.

22 39. The MGM Defendants breached its duty of supervision over its employees, agents, and  
23 representatives to Plaintiff by failing to provide the necessary training regarding protecting the safety,  
24 security, and Property interest of residents of MGM's condominiums.

25 40. The MGM Defendants' failure to train, supervise, hire and/or require the training of  
26  
27  
28

1 MGM employees, failure to review associated policies, failure to enforce statutory and hotel/  
2 condominium policies related to securing a safe living environment resulted in injuries to Plaintiff.

3 FOURTH CLAIM FOR RELIEF

4 *(Conversion against all Defendants)*

5 41. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 40 as  
6 though fully set forth herein.

7 42. The MGM Defendants and their employees intentionally and wrongfully exerted control  
8 and/or dominion over Plaintiff's Property when they illegally entered Plaintiff's Property.

9 43. The MGM Defendants and their employees intentionally and wrongfully denied Plaintiff's  
10 rightful use and enjoyment of the Property.

1 44. The MGM Defendants and their employees' actions caused damage to Plaintiff's Property in  
2 excess of \$10,000.00.

3 FIFTH CLAIM FOR RELIEF

4 *(Trespass against all Defendants)*

5 45. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 44 as  
6 though fully set forth herein.

7 46. The MGM Defendants and their employees intentionally and wrongfully entered Plaintiff's  
8 Property with intent to commit a crime when they illegally entered Plaintiff's Property on or about  
9 November 26, 2015 and other occasions with the intent to use the Property for their own benefit.

10 47. The MGM Defendants and their employees intentionally and wrongfully entered the  
11 Property and remained on the Property despite not having authorization from Plaintiff and despite the  
12 "Do Not Disturb" sign being illuminated from the electronic panel.

13 SIXTH CLAIM FOR RELIEF

14 *(Breach of Contract against the MGM Defendants)*

15 48. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 47 as



1 though fully set forth herein.

2 49. A contract existed between Plaintiff and the MGM Defendants on the date of the  
3 incident described herein in the form of a Covenant, Conditions, and Restriction ("CCR").

4 50. The MGM Defendants owed contractual duties to Plaintiff including a duty that the MGM  
5 Defendants would be provided limited access to the Property for legal purposes. The MGM Defendants  
6 breached their duties by allowing their employees Does I-X to enter the Property for illegal purposes.

7 51. The MGM Defendants owed contractual duties to maintain and repair the common areas  
8 where the Property is located including, but not limited to, keeping the common areas free of mold. The  
9 MGM Defendants breached this duty of failing to clean and repair the existing mold on the entire floor  
10 where the Property is located.

1 52. As a result thereof, Plaintiff has been damaged in an amount in excess of \$10,000.00.

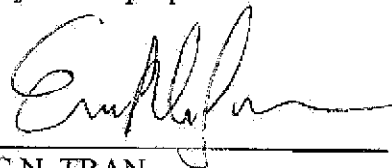
2 53. Plaintiff has been compelled to retain the services of an attorney to prosecute this action and  
3 are therefore entitled to reasonable attorney's fees and costs incurred herein.

4 WHEREFORE, Plaintiff prays for judgment against all Defendants, on all claims for relief as  
5 follows:  
6

- 7 1. General damages in excess of \$10,000.00;  
8 2. Special damages in excess of \$10,000.00;  
9 3. Costs of suit incurred including reasonable attorney's fees; and  
10 4. For such other relief as the Court deems just and proper.

11 DATED this 18th day of March, 2016.

12 By: /s/



13 ERIC N. TRAN  
14 Nevada Bar No. 11876  
15 5538 S. Eastern Ave  
16 Las Vegas, Nevada 89173  
17 Telephone: (702) 948-9770, Ext. 2033  
18 Fax: (815) 550-2830  
19 E-Mail: [Eric.Tran@StoAmigo.com](mailto:Eric.Tran@StoAmigo.com)  
20 Attorney for Plaintiff

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, STATE OF NEVADA

145 EAST HARMON TRUST

Plaintiff,

vs.

TURNBERRY / MGM TOWERS, LLC; MGM  
RESORTS INTERNATIONAL; THE  
RESIDENCES AT THE MGM GRAND TOWER  
A, LLC; MGM GRAND CONDOMINIUMS,  
LLC; DOES I-X;

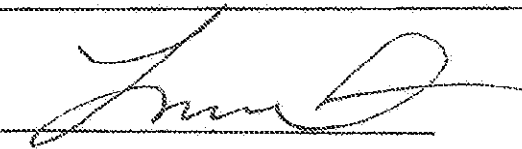
Defendant(s)

AFFIDAVIT OF SERVICE

Case No. A-16-733764-C  
Dept: XI

MARTIN DRUCKMAN ID 1139578, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made.

That affiant received 1 copy of Civil Cover Sheet, Complaint, and Summons to be served on MGM Grand Condominiums on the 6<sup>th</sup> day of April, 2016 and served the same upon The Resident Agent by leaving a true copy with Frances Gutierrez, a person of Suitable age and discretion and the person authorized by the Resident Agent to accept service of process at the most recent street address of the Registered Agent shown on the information filed with the Secretary of State at 2215-B Renaissance Dr. Las Vegas, Nevada 89119 on the 8<sup>th</sup> day of April, 2016 at 3:13 pm.

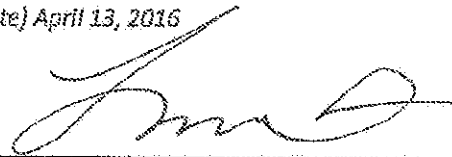


MARTIN DRUCKMAN  
PROCESS SERVERS, INC.  
1736 E. Charleston Blvd. #333  
(702) 643-2280  
NV State License No. 174/174a

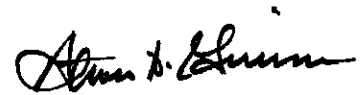
Per NRS 53.045

I declare under penalty of perjury under the law of  
the State of Nevada that the foregoing is true and  
correct.

(Date) April 13, 2016



Martin Druckman

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, STATE OF NEVADA

145 EAST HARMON TRUST

Plaintiff,

vs.

TURNBERRY / MGM TOWERS, LLC; MGM  
RESORTS INTERNATIONAL; THE  
RESIDENCES AT THE MGM GRAND TOWER  
A, LLC; MGM GRAND CONDOMINIUMS,  
LLC; DOES I-X;

Defendant(s)

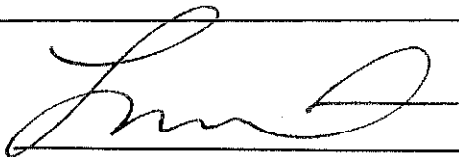
**AFFIDAVIT OF SERVICE**

Case No. A-16-733764-C

Dept: XI

MARTIN DRUCKMAN ID 1139578, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made.

That affiant received 1 Civil Cover Sheet, Complaint, and Summons on the 6<sup>th</sup> day of April, 2016 to be served on MGM Resorts International and served the same on the 8<sup>th</sup> day of April, 2016 by delivering and leaving a copy with Frances Gutierrez, of CSC Services of Nevada, the Resident Agent and the Person Authorized to accept service for MGM Resort International at 2215-B Renaissance Dr. Las Vegas, Nevada 89119 at 3:13 pm.

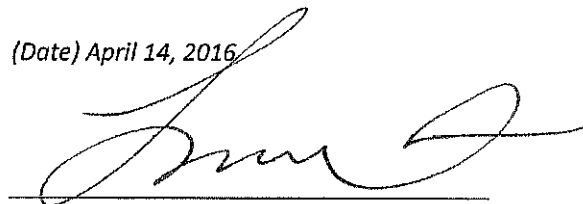


MARTIN DRUCKMAN  
PROCESS SERVERS, INC.  
1736 E. Charleston Blvd. #333  
(702) 643-2280  
NV State License No. 174/174a

Per NRS 53.045

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

(Date) April 14, 2016



Martin Druckman

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, STATE OF NEVADA

145 EAST HARMON TRUST

Plaintiff,

vs.

TURNBERRY / MGM TOWERS, LLC; MGM  
RESORTS INTERNATIONAL; THE  
RESIDENCES AT THE MGM GRAND TOWER  
A, LLC; MGM GRAND CONDOMINIUMS,  
LLC; DOES I-X;

Defendant(s)

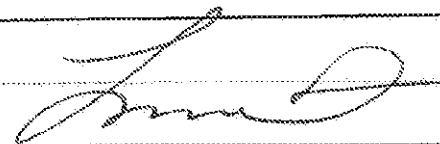
**AFFIDAVIT OF SERVICE**

Case No. A-16-733764-C

Dept: XI

MARTIN DRUCKMAN ID 1139578, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made.

That affiant received 1 Civil Cover Sheet, Complaint, and Summons on the 6<sup>th</sup> day of April, 2016 to be served on Turnberry/MGM Towers, LLC. and served the same on the 15<sup>th</sup> day of April, 2016 by delivering and leaving a copy with Akke Levin Esq., of the Morris Law Group, the Resident Agent and the Person Authorized to accept service for Turnberry/MGM Towers, LLC. at 300 South 4<sup>th</sup> Street, Las Vegas, Nevada 89101 at 3:20 pm.

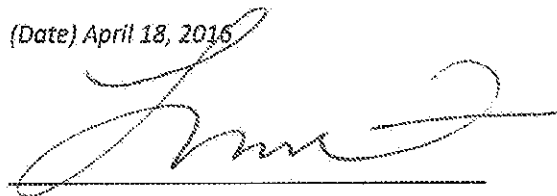


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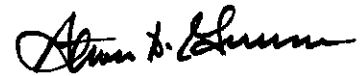
Per NRS 53.045

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

(Date) April 18, 2016



Martin Druckman



CLERK OF THE COURT

**MDSM**

Janice M. Michaels  
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jmichaels@wshblaw.com

Elisa L. Wyatt  
Nevada Bar No. 13034  
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Telephone: 702 251 4100  
Facsimile: 702 251 5405

Attorneys for Defendants MGM RESORTS  
INTERNATIONAL, LLC and MGM GRAND  
CONDOMINIUMS, LLC

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

145 EAST HARMON II TRUST,

Plaintiff,

v.

TURNBERRY/MGM GRAND TOWERS,  
LLC; MGM RESORTS INTERNATIONAL,  
LLC; THE RESIDENCES AT THE MGM  
GRAND TOWER A, LLC; MGM GRAND  
CONDOMINIUMS, LLC; and DOES 1-X,

Defendants.

Case No. A-16-733764-C  
Dept. No.: XI

**DEFENDANTS' MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT**

COMES NOW Defendants, MGM Grand Resorts International, LLC and MGM Grand  
Condominium, LLC, by and through its attorneys of record, the law of Wood, Smith, Henning &  
Berman, LLP, hereby submits this Motion to Dismiss Plaintiff's Complaint in its entirety.

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///

1 This Motion is brought under NRCP 17, NRCP 12(b)(5), NRCP 19, the accompanying  
2 Memorandum of Points and Authorities, the Declaration of Elisa L. Wyatt, all exhibits attached  
3 hereto, and any such oral argument as this Court may entertain at the time of the hearing.

4 May \_\_\_, 2016

5 WOOD, SMITH, HENNING & BERMAN LLP  
6 Attorneys at Law

7  
8 By

JANICE M. MICHAELS

Nevada Bar No. 6062

ELISA L. WYATT

Nevada Bar No. 13034

7674 West Lake Mead Boulevard, Suite 150

Las Vegas, Nevada 89128-6644

Tel. 702 251 4100

11 Attorneys for Defendants MGM RESORTS  
12 INTERNATIONAL, LLC and MGM GRAND  
13 CONDOMINIUMS, LLC  
14  
15  
16

17 ///

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that the undersigned counsel will appear at the Clark County Courthouse, Eighth Judicial District Court, Las Vegas, Nevada, on the 09 day of June, 2016 at 8 : 3 0 A.m. in Department XI, or as soon thereafter as counsel may be heard, to bring **DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT** on for hearing.

May \_\_, 2016

WOOD, SMITH, HENNING & BERMAN LLP  
Attorneys at Law

By



JANICE M. MICHAELS

Nevada Bar No. 6062

ELISA L. WYATT

Nevada Bar No. 13034

7674 West Lake Mead Boulevard, Suite 150

Las Vegas, Nevada 89128-6644

Tel. 702 251 4100

Attorneys for Defendants MGM RESORTS  
INTERNATIONAL, LLC and MGM GRAND  
CONDOMINIUMS, LLC

**DECLARATION OF ELISA L. WYATT, ESQ.**

I, Elisa L. Wyatt, do hereby declare the following:

1. I am an attorney at law, duly licensed before all of the courts of Nevada, and am an attorney with the law firm of WOOD, SMITH, HENNING & BERMAN, LLP, attorneys of record for Defendants MGM Grand Resorts International, LLC and MGM Grand Condominium, LLC. I know the following facts to be true of my own knowledge, and if called to testify, I could competently do so.

2. I make this Declaration in compliance with EDCR 2.21. This Declaration pertains to Defendants' Motion to Dismiss Plaintiff's Complaint.

3. A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit A.

4. A true and correct copy of the Grant, Bargain, Sale Deed recorded May 30, 2006 and Quitclaim Deed recorded July 17, 2012, retrieved from the Clark County Nevada Assessor's website, are attached hereto as Exhibit B.

5. A true and correct copy of the Grant, Bargain, Sale Deed recorded November 3, 2006, retrieved from the Clark County Nevada Assessor's website, is attached hereto as Exhibit C.

6. A true and correct copy of the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Residences at MGM Grand – Tower A and First Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Residences at MGM Grand – Tower A recorded May 10, 2006, retrieved from the Clark County Nevada Public Recorder's office, are attached hereto as Exhibit D.

7. On or about April 15, 2016, I contacted counsel for Plaintiff, Eric Tran, to discuss amending the Complaint to name the proper owner of the property located 145 E. Harmon Ave., Las Vegas, Nevada.

8. Between, April 15, 2016 and May 2, 2016, I had several discussions with counsel for Plaintiff, Eric Tran, to discuss various alternatives for amending the Complaint to name the correct owner of the property located 145 E. Harmon Ave., Las Vegas, Nevada.

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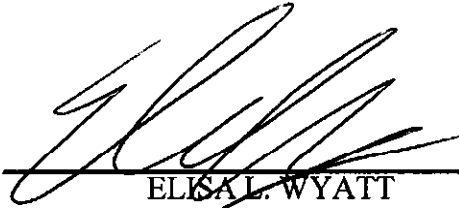
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1           9.       On May 2, 2016, counsel for Plaintiff, Eric Tran, informed me Plaintiff was not willing  
2 to amend the Complaint in any manner.

3           I, Elisa L. Wyatt, declare under penalty of perjury that the foregoing is true and correct.

4           Executed this 5<sup>th</sup> day of May, 2016.

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ELISA L. WYATT

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Plaintiff, 145 East Harmon II Trust (hereinafter "Plaintiff") named four (4) entities in its Complaint as defendants<sup>1</sup>, including Defendants MGM Resorts International, LLC and MGM Grand Condominiums, LLC (hereinafter "Defendants"). (See Exhibit A, Complaint). The allegations center around an incident that occurred in a condominium located within 145 E. Harmon Avenue, Las Vegas, Nevada 89109 (hereinafter the "Property"). Amongst the allegations, Plaintiff contends that damage occurred to its unit within the Property due to steam and moisture from the bathroom shower being left on. However, taking every factual allegation as true, Plaintiff's Complaint should be dismissed in its entirety because Plaintiff (1) is not the real party in interest, (2) does not state a claim upon which relief can be granted, and (3) failed to join a necessary and indispensable party.

### **II. STATEMENT OF FACTS**

Plaintiff is alleging damage to Unit 25619 (hereinafter the "Unit") located within The Signature Condominiums located at 145 E. Harmon Ave., Las Vegas, Nevada (hereinafter "The Signature"). The Unit, located in Tower I of the Signature, was originally conveyed to Brian Elliott as Trustee of the 145 East Harmon Trust and was subsequently conveyed to Plaintiff, the current owner. (See Exhibit B, Quitclaim Deeds). Tower I of the Signature, where the Unit is located, was previously owned by Turnberry/MGM Grand Towers, LLC but was conveyed to Signature Tower I, LLC, the current owner. (See Exhibit C, Grant, Bargain, Sale Deed). As a condominium community, there are Covenants, Conditions and Restrictions (hereinafter "CC&Rs") that apply to the Property. The Declarant for the CC&Rs, Turnberry/MGM Grand Towers, LLC, recorded the CC&Rs, and amendment thereto, with the Clark County Nevada Public Recorder. (See Exhibit D, Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Residences at MGM Grand – Tower A and First Amendment thereto). Defendants and moving parties, MGM Resorts International, LLC and MGM Grand Condominiums, LLC do not own or maintain the Property.

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<sup>1</sup> Upon information and belief, the arguments contained herein also apply to Defendant Turnberry/MGM Grand Towers, LLC and Defendant The Residences at the MGM Grand Tower A, LLC, however, we are only appearing on behalf of Defendants MGM Resorts International, LLC and MGM Grand Condominiums, LLC.

After service of the Complaint on Defendants, counsel for Defendants contacted counsel for Plaintiff to discuss the failure to name the correct owner of the Property as a defendant and inclusion of improper parties as Defendants. Counsel for both parties discussed various alternatives for amending the Complaint to include the owner of the property as a defendant. However, Plaintiff refused to amend the Complaint and claimed it was unable to ascertain the owner to the Property, despite the information being available in the public records. (See Declaration of Elisa L. Wyatt, Esq.) Accordingly, the refusal of Plaintiff to amend the Complaint has necessitated filing this motion.

## II. LEGAL ARGUMENT

### A. The Court Should Dismiss the Complaint Because Plaintiff is not the Real Party in Interest Pursuant to NRCP 17.

An action must be commenced by the real party in interest, i.e., "one who possesses the right to enforce the claim and has a significant interest in the litigation." *Szilagyi v. Testa*, 99 Nev. 834, 838, (1983). Specifically, a real party in interest is "[a]n executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute..." NRCP 17(a). In *Causey v. Carpenters S. Nevada Vacation Trust*, the Court invalidated judgment in favor of a trust fund because it was neither a natural or artificial person, and as such could not properly be a party to litigation. 95 Nev. 609, 610 (1979). In doing so, the Court found that only "the trustee, or trustees, rather than the trust itself is entitled to bring suit." *Id.*

Here, Plaintiff is not a real party in interest because it is a trust and not the trustee of the trust. As a trust is not a natural or artificial person, it cannot bring the instant action and the Court cannot afford relief to a trust. Therefore, this Court should dismiss Plaintiff's Complaint because Plaintiff is not the real party in interest; instead, the actual individual trustee of the 145 East Harmon II Trust would be the real party in interest.

### B. The Court Should Dismiss Plaintiff's Complaint in its Entirety Because it Fails to State a Claim Upon Which Relief can Be Granted.

Nevada Rule of Civil Procedure Rule 12(b) states in pertinent part as follows:

///

(b) Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

...

(5) Failure to state a claim upon which relief can be granted. . . .

When considering a motion to dismiss under NRCP 12(b)(5), the court accepts the factual allegations within the complaint as true and draws all inferences in plaintiff's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008); *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 221 P.3d 1276, 1280 (Nev. 2009). Generally, when ruling on the motion to dismiss, a court may not look to documents outside of the pleadings, however, "the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint..." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847 (1993). If "it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief," then the court must dismiss the complaint. *Buzz Stew, LLC*, 124 Nev. at 228; *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997) (citing *Vacation Village v. Hitachi America*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)).

In this case, Plaintiff has not stated a claim upon which relief can be granted because named Defendants do not own the Property. Plaintiff asserts claims for Negligence, Negligence Per Se, Respondent Superior, Conversion, Trespass, and Breach of Contract. (See Exhibit A). These claims all center around the allegation that an employee entered the Unit without authorization. Since The Signature maintains the Property, including employing individuals to work at the Property, it is the entity that can provide Plaintiff relief for its claims. Defendants do not own the Property, do not maintain the property, and do not hire employees for the Property. Plaintiff has failed to state a claim against Defendants because the incident occurred on property that is owned and operated by The Signature. And as such, if Plaintiff is entitled to relief, The Signature is the entity that could provide it.

This Court should dismiss the Complaint in its entirety because Plaintiff has failed to state a claim against Defendants upon which relief can be granted.

///

1           **C.       The Court Should Further Dismiss the Complaint Because Plaintiff has Failed to**  
2                   **Join The Signature as a Necessary and Indispensable Party under NRCP 19.**

3           Nevada Rule of Civil Procedure 12(b) provides that a party may file a motion to dismiss based  
4 on a variety of reasons, including for "failure to join a party under Rule 19." Nev.R.Civ.P. 12(b)(6).  
5 Nevada Rule of Civil Procedure 19 provides:

6           (a)       **Persons to Be Joined if Feasible.** A person who is subject to service of  
7 process and whose joinder will not deprive the court of jurisdiction over the subject  
matter of the action shall be joined as a party in the action if:

8           (1)       *in the person's absence complete relief cannot be accorded among those*  
9 *already parties. . . .*

10          If the person has not been so joined, the court shall order that the person be made a  
party. . . .

11          Thus, a party "is necessary to the action if in his absence, the court cannot accord complete relief  
12 among the existing parties . . . ." *Humphries v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. 85, 312 P.3d  
13 484, 487 (2013). Moreover, "[i]f that person is not a party to the action, the court must order that  
14 person be made a party, if feasible. If joinder is not feasible, the court must determine, in equity and  
15 good conscience, whether the action should proceed or be dismissed." *Id.*; *Potts v. Vokits*, 101 Nev.  
16 90, 92 (1985).

17          In this case, The Signature is a necessary and indispensable party to the present litigation  
18 because complete relief cannot be afforded between the existing parties absent The Signature's  
19 joinder. The Signature's presence in this litigation is vital to complete adjudication of the issues. If, as  
20 alleged, a problem occurred on the Property, and employees on the Property were involved, The  
21 Signature would be the proper party to afford Plaintiff relief, as it is the owner of the Property and has  
22 exclusive control over its employees. Indeed, Plaintiff's entire Complaint revolves around allegations  
23 pertaining to the damages that occurred to the Unit located within the Property. Accordingly,  
24 absolutely no relief can or should be afforded to Plaintiff without The Signature's presence because it  
25 is a necessary party to this litigation.

26          Further, Defendants having knowledge that The Signature is the owner of the Property, and in  
27 an effort to save the Court's time and resources, requested that Plaintiff amend the Complaint to  
28 dismiss Defendants and to include The Signature, but Plaintiff simply refused. Since Plaintiff has

1 refused to join The Signature, it is an indispensable party to this litigation and the Court cannot  
2 proceed in equity and good conscience without it. Therefore, Plaintiff's Complaint should be  
3 dismissed for failure to name a necessary and indispensable party.

4 **III. CONCLUSION**

5 Plaintiff cannot bring this action before the Court because it is not the real party in interest. A  
6 real party in interest must be a natural or artificial person, and a trust is neither. Further, Plaintiff has  
7 not stated a claim upon which relief can be granted because the named defendants are not the proper  
8 parties that can afford Plaintiff relief, and thus, this Court should dismiss the Complaint. Similarly,  
9 the party that can afford relief, the current owner of the Property, is not named as a defendant, and  
10 Plaintiff refuses to name it as a party. Due to Plaintiff's failure (and refusal) to join The Signature this  
11 Court should dismiss the Complaint. For these reasons, dismissal of the Complaint is proper.

12 Based on the foregoing, Defendants respectfully requests that this Court dismiss the action in  
13 its entirety.

14 May \_\_, 2016

15 WOOD, SMITH, HENNING & BERMAN LLP  
16 Attorneys at Law

17  
18 By

JANICE M. MICHAELS

Nevada Bar No. 6062

ELISA L. WYATT

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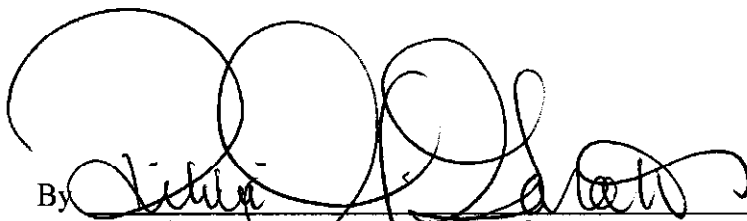
Tel. 702 251 4100

23 Attorneys for Defendants MGM RESORTS  
24 INTERNATIONAL, LLC and MGM GRAND  
25 CONDOMINIUMS, LLC  
26  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of May, 2016, a true and correct copy of **DEFENDANTS'**  
**MOTION TO DISMISS PLAINTIFF'S COMPLAINT** was served by electronically filing with the  
Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-  
address on record, who have agreed to receive Electronic Service in this action.

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**Attorney for Plaintiff**

By   
Rikki M. Garate, an Employee of  
WOOD, SMITH, HENNING & BERMAN LLP

# EXHIBIT A



  
CLERK OF THE COURT

**COMP**

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Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

145 EAST HARMON II TRUST

Plaintiff,

v.

TURNBERRY/MGM GRAND TOWERS, LLC;  
MGM RESORTS INTERNATIONAL, LLC;  
THE RESIDENCES AT THE MGM GRAND  
TOWER A, LLC; MGM GRAND  
CONDOMINIUMS, LLC; and DOES I-X.

Defendants.

Case No.: A-16-733764-C  
Dept. No.: XI

**COMPLAINT**

Date of Hearing: N/A  
Time of Hearing: N/A

Plaintiff 145 East Harmon II Trust, by and through its attorney of record, ERIC N. TRAN, ESQ., for its Complaint against Defendants Turnberry/MGM Grand Towers, LLC; MGM Resorts International; The Residences at the MGM Grand Tower A, LLC; MGM Grand Condominiums, LLC (collectively referred to as the "MGM Defendants"); and Does I-X, states, asserts, and alleges as follows:

**THE PARTIES**

1. At all times relevant herein, Plaintiff 145 East Harmon II Trust ("The Trust") is the owner

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1 of a condominium located at 145 E. Harmon Ave, Unit # 25619 Las Vegas, Nevada 89109 (" the  
2 Property").

3 2. At all times relevant herein, Defendant Turnberry/MGM Grand Towers, LLC was a limited  
4 liability company organized and existing under the laws of the State of Nevada with its principal place  
5 of business in Clark County, Nevada. In addition, Turnberry/MGM Grand Towers, LLC is the owner  
6 and operator of the condominium/hotel called MGM Signature located at 145 E. Harmon Ave Las  
7 Vegas, Nevada 89109 where the Property is located.  
8

9 3. At all times relevant herein, Defendant The Residences at MGM Grand Tower A, LLC  
10 was a limited liability company organized and existing under the laws of the State of Nevada with its  
1 principal place of business in Clark County, Nevada. Based upon information and belief, Defendant  
2 The Residences at MGM Grand Tower A, LLC is also the owner and operator of the  
3 condominium/hotel called MGM Signature located at 145 E. Harmon Ave Las Vegas, Nevada 89109  
4 where the Property is located.  
5

6 4. At all times relevant herein, Defendant MGM Resorts International is a Delaware  
7 corporation that was licensed to do business and actually doing business in Clark County, Nevada.  
8 Based upon information and belief, Defendant MGM Resorts International is also the owner and  
9 operator of the condominium/hotel called MGM Signature located at 145 E. Harmon Ave Las Vegas,  
10 Nevada 89109 where the Property is located.  
11

12 5. At all times relevant herein, Defendant MGM Grand Condominiums, LLC was a  
13 limited liability company organized and existing under the laws of the State of Nevada with its  
14 principal place of business in Clark County, Nevada. Based upon information and belief, MGM Grand  
15 Condominiums, LLC is also the owner and operator of the condominium/hotel called MGM Signature  
16 located at 145 E. Harmon Ave Las Vegas, Nevada 89109 where the Property is located.  
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18 6. The true names, identities, and capacities, whether individual, corporate, associate, or  
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1 otherwise, of DOES I through X, inclusive, are unknown to Plaintiff, who therefore sue said Defendants  
2 by such fictitious names. Plaintiff is informed and believes and upon that basis alleges that each of the  
3 Defendants designated herein as a DOE Defendants are responsible in some manner for events and  
4 happenings herein referred to and caused damages proximately thereby to Plaintiff as herein alleged.  
5 Plaintiff further alleges that it will ask leave of this Court to amend this Complaint to insert the true  
6 names, identities, and capacities of said DOES I through X, inclusive, when the same have been  
7 ascertained by Plaintiff, together with appropriate charging allegations.  
8

9 7. Upon information and belief, Does I- X are employees and/ or agents of the MGM  
10 Defendants.

### 1 STATEMENT OF FACTS

2 8. On or about November 11, 2015, Plaintiff attempted to enter the Property. However,  
3 Plaintiff could not enter the Property as the electronic key card entry system malfunctioned. Plaintiff  
4 then reported the electronic key card system malfunction to the MGM Defendants. Later that day, the  
5 MGM Defendants sent their employees and staff to fix the electronic key card system on the Property.  
6

7 9. Prior to November 11, 2015, there was no damage to the interior of the Property, the  
8 bathroom shower in the Property was also completely shut off, there were no leaks coming from the  
9 bathroom shower, and the shower valve was not broken. Plaintiff did not give access or authorization to  
10 any persons or party to enter the Property for any reason. Prior to November 11, 2015, the "Do Not  
11 Disturb" notification on the electronic key card entry system was turned on which signals to all  
12 employees, staff, personnel of the MGM Defendants, and all other visitors to not enter the Property.  
13

14 10. On or about December 3, 2015, Plaintiff re-entered the Property for the first time since  
15 attempting to enter the Property on November 11, 2015 and discovered that the bathroom shower was  
16 fully turned on to the hottest temperature and the highest pressure; and that the Property was filled with  
17 steam. The steam and moisture from the bathroom shower caused significant damage to the interior of  
18 the Property including, but not limited to, mold damage.  
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1 11. To enter or gain access to the Property, a person must first insert an electronic key card  
2 specific to the Property through a double door entry, then the person must insert the same electronic key  
3 card specific to the Property through a second single door to the Property. The only persons who had  
4 access to the electronic key card to enter the Property were Plaintiff; and the MGM Defendants, their  
5 employees and staff.

6 12. Upon information and belief, the MGM Defendants maintain records of the use of the  
7 electronic key cards system which records entries to the Property. There is also a security camera  
8 directly outside the front door of the Property which records who enters the Property. The security  
9 camera also shows who walks up and down the hallways and corridors of the Property.  
10

1 13. Thereafter, Plaintiff contacted the MGM Defendants to report the incident and damage to  
2 the Property. Plaintiff authorized and demanded that the MGM Defendants retrieve and review the  
3 records of the hotel electronic key card access system to determine the individual(s) that entered the  
4 Property and caused damage to the Property.  
5

6 14. On or about December 11, 2015, the MGM Defendants visited the Property to retrieve and  
7 download the data from the hotel key access card information system. The MGM Defendants also  
17 conducted an investigation of the incident.  
18

19 15. On or about December 29, 2015, Plaintiff discovered through the MGM Defendants that the  
20 hotel key access card system indicated that on or about November 26, 2015, an employee of the MGM  
21 Defendants entered the Property without authorization. The MGM Defendants do not refute that an  
22 employee or employees entered the Property on November 26, 2015. However, the MGM Defendants  
23 refused to disclose the name of the employee or employees who entered the Property, and refused to  
24 turn over the data from the hotel key access card system showing all entries into the Property up to  
25 December 3, 2015 which was promised to the Plaintiff prior to the Plaintiff authorizing the download.  
26

27 16. Upon information and belief, the MGM Defendants and their employees used an electronic  
28

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1 key card to enter Plaintiff's Property knowing that Plaintiff was not in the Property. The MGM  
2 Defendants and their employees entered the Property illegally and without authorization in violation of  
3 NRS 205.900. The MGM Defendants and their employees used the Property for their own benefit  
4 without Plaintiff's authorization including using the shower at the Property.

5 17. After using the shower, the MGM Defendants and their employees did not turn off the  
6 water and instead, left the shower running on its highest temperature and highest pressure. As a result of  
7 the MGM Defendants and their employee's illegal entry into the Property and failure to turn off the  
8 shower, this resulted in significant damage to the Property.  
9

10 18. Thereafter, the MGM Defendants opened a claim with their insurer Fireman's  
1 Fund Insurance Company ("FFIC"). Both MGM and FFIC have refused to conduct any repairs to  
2 Plaintiff's Property.

3 19. FFIC informed Plaintiff that because there is mold damage, that the claim was not covered  
4 under FFIC's insurance policy.

5 20. Upon information and belief, there is widespread incidents of the MGM Defendants and  
6 their employees illegally entering the Property and other similar units at 145 E. Harmon Ave Las  
17 Vegas, Nevada 89109, and using the Property and other units for their own benefits without  
18 authorization while the owners are away.  
19

20 21. Upon information and believe, the MGM Defendants and their employees illegally entered  
21 the Property on numerous other occasions and used the Property for their benefit while Plaintiff was not  
22 at the Property.

23 22. Upon information and belief, there is widespread mold damage of a different species  
24 throughout the entire floor in which the Property is located. The MGM Defendants have failed to  
25 maintain the hotel/condominium by cleaning the mold.  
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FIRST CLAIM FOR RELIEF

*(Negligence against all Defendants)*

23. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 22 as though fully set forth herein.

24. All Defendants owe a duty of reasonable care to Plaintiff for not entering the Property without authorization.

25. Defendants breached this duty of care when they entered the Property on or about November 26, 2015 and other occasions and used the Property for their own personal benefit without Plaintiff's authorization.

26. As a direct and proximate result of Defendants' negligent actions, Plaintiff sustained damage to Plaintiff's Property in the amount in excess of \$10,000.00.

SECOND CLAIM FOR RELIEF

*(Negligence Per Se against all Defendants)*

27. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 26 as though fully set forth herein.

28. In Barnes v. Delta Lines, Inc., 99 Nev. 688, 690, 669 P.2d 709, 710 (1983), the Nevada Supreme Court held that "when a defendant violates a statute which was designed to protect a class of persons to which the plaintiff belongs, and thereby proximately causes injury to the plaintiff, such a violation constitutes negligence per se."

29. NRS 205.900 prohibits the unlawful use of hotel rooms keys to gain entrance into a hotel room under circumstances which demonstrate the person's intent to use or to allow the use of the device in the commission of a crime.

30. NRS 207.200 prohibits the unlawful trespass upon land or building of another with intent to commit an unlawful act.

31. Plaintiff is the class of persons to which NRS 205.900 and NRS 2007.200 was designed to

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1 protect.

2 32. The MGM Defendants owed a duty of safety and security to Plaintiff by preventing the  
3 unauthorized and illegal use of the electronic key access card, and by preventing the unauthorized and  
4 illegal entry by the MGM Defendants and their employees into Plaintiff's Property to commit a crime.

5 33. The MGM Defendants and their employees breached this duty and committed a crime when  
6 they illegally entered Plaintiff's Property to use the Property for their own benefit.

7 34. The MGM Defendants' failure to implement strategies, policies, and procedures to prevent  
8 their employees and others from gaining illegal access to the Property amounts to *negligence per se*.  
9

10 THIRD CLAIM FOR RELIEF

11 *(Respondeat Superior against the MGM Defendants)*

12 35. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 34 as  
13 though fully set forth herein.

14 36. The MGM Defendants owed a fiduciary duty to Plaintiff to, among other things, hire, train,  
15 and supervise employees so as to protect Plaintiff's interests.

16 37. The MGM Defendants had a duty to use reasonable care in the training, supervision, and  
17 retention of its employees to make sure that the employees were fit for their respective positions and  
18 roles.  
19

20 38. The MGM Defendants were required to supervise the actions of its employees, agents, and  
21 representatives, including Does I-X employees to ensure that these employees protect the interest of  
22 MGM's residents including Plaintiff.

23 39. The MGM Defendants breached its duty of supervision over its employees, agents, and  
24 representatives to Plaintiff by failing to provide the necessary training regarding protecting the safety,  
25 security, and Property interest of residents of MGM's condominiums.

26 40. The MGM Defendants' failure to train, supervise, hire and/or require the training of  
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28

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1 MGM employees, failure to review associated policies, failure to enforce statutory and hotel/  
2 condominium policies related to securing a safe living environment resulted in injuries to Plaintiff.

3 FOURTH CLAIM FOR RELIEF

4 *(Conversion against all Defendants)*

5 41. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 40 as  
6 though fully set forth herein.

7 42. The MGM Defendants and their employees intentionally and wrongfully exerted control  
8 and/or dominion over Plaintiff's Property when they illegally entered Plaintiff's Property.

9 43. The MGM Defendants and their employees intentionally and wrongfully denied Plaintiff's  
10 1 rightful use and enjoyment of the Property.

2 44. The MGM Defendants and their employees' actions caused damage to Plaintiff's Property in  
3 excess of \$10,000.00.

4 FIFTH CLAIM FOR RELIEF

5 *(Trespass against all Defendants)*

6 45. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 44 as  
17 though fully set forth herein.

18 46. The MGM Defendants and their employees intentionally and wrongfully entered Plaintiff's  
19 20 Property with intent to commit a crime when they illegally entered Plaintiff's Property on or about  
21 November 26, 2015 and other occasions with the intent to use the Property for their own benefit.

22 47. The MGM Defendants and their employees intentionally and wrongfully entered the  
23 24 Property and remained on the Property despite not having authorization from Plaintiff and despite the  
25 "Do Not Disturb" sign being illuminated from the electronic panel.

26 SIXTH CLAIM FOR RELIEF

27 *(Breach of Contract against the MGM Defendants)*

28 48. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 47 as



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1 though fully set forth herein.

2 49. A contract existed between Plaintiff and the MGM Defendants on the date of the  
3 incident described herein in the form of a Covenant, Conditions, and Restriction ("CCR").

4 50. The MGM Defendants owed contractual duties to Plaintiff including a duty that the MGM  
5 Defendants would be provided limited access to the Property for legal purposes. The MGM Defendants  
6 breached their duties by allowing their employees Does I-X to enter the Property for illegal purposes.

7 51. The MGM Defendants owed contractual duties to maintain and repair the common areas  
8 where the Property is located including, but not limited to, keeping the common areas free of mold. The  
9 MGM Defendants breached this duty of failing to clean and repair the existing mold on the entire floor  
10 where the Property is located.

1 52. As a result thereof, Plaintiff has been damaged in an amount in excess of \$10,000.00.

2 53. Plaintiff has been compelled to retain the services of an attorney to prosecute this action and  
3 are therefore entitled to reasonable attorney's fees and costs incurred herein.

4 WHEREFORE, Plaintiff prays for judgment against all Defendants, on all claims for relief as  
5 follows:

- 6  
7  
8 1. General damages in excess of \$10,000.00;  
9 2. Special damages in excess of \$10,000.00;  
10 3. Costs of suit incurred including reasonable attorney's fees; and  
11 4. For such other relief as the Court deems just and proper.

12 DATED this 18th day of March, 2016.

13 By: /s/ 

14 ERIC N. TRAN  
15 Nevada Bar No. 11876  
16 5538 S. Eastern Ave  
17 Las Vegas, Nevada 89173  
18 Telephone: (702) 948-9770, Ext. 2033  
19 Fax: (815) 550-2830  
20 E-Mail: [Eric.Tran@StoAmigo.com](mailto:Eric.Tran@StoAmigo.com)  
21 Attorney for Plaintiff

# EXHIBIT B

4

20060530-0003701

A.P. N.: 162-21-315-366, 162-21-315-368  
R.P.T.T.: \$7,216.50

Escrow #04-02-1715-RP

Mail tax bill to and  
When recorded mail to:  
Brian Elliott, Trustee  
PO Box 19463  
Las Vegas, NV 89132

Fee: \$16.00 RPTT: \$7,216.50  
N/C Fee: \$0.00

05/30/2006 14:03:15  
T20060095034

Requestor:  
NEVADA TITLE COMPANY

Frances Deane JKA  
Clark County Recorder Pas: 4

47

## GRANT, BARGAIN, SALE DEED

**THIS INDENTURE WITNESSETH,** That **Turnberry/MGM Grand Towers, LLC, a Nevada limited liability company,** for a valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to **Brian Elliott, Trustee of the 145 East Harmon Trust Dated May 25, 2006,** all that real property situated in the County of **Clark, State of Nevada,** bounded and described as follows:

**SEE LEGAL DESCRIPTION ATTACHED HERETO  
AND MADE A PART HEREOF AS EXHIBIT "A".**

### SUBJECT TO:

1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any;
2. Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.

**TOGETHER WITH** all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

IN WITNESS WHEREOF, this instrument has been executed this 30 day of May, 2006

Turnberry/MGM Grand Towers, LLC  
a Nevada limited liability company

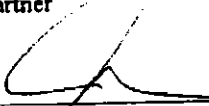
By: Turnberry/Harmon Ave., LLC  
A Nevada limited liability company  
Its managing member

By: Turnberry Residential Holding, L.P.  
A Delaware limited partnership  
Its managing member

By: Turnberry Subsidiary GP, LLC  
A Delaware limited liability company  
Its general partner

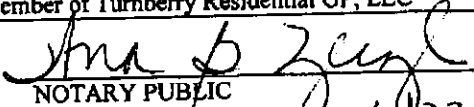
By: Turnberry Residential Developers, LP  
A Delaware limited partnership  
Its managing member

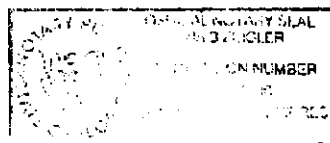
By: Turnberry Residential GP, LLC  
A Delaware limited liability company  
Its general partner

  
By: Jeffrey Soffer, Its managing member

State of Florida }  
County of Miami-Dade } ss

This instrument was acknowledge before me on May 9, 2006  
by Jeffrey Soffer, managing member of Turnberry Residential GP, LLC

  
NOTARY PUBLIC  
My Commission Expires: 6/23/06



**EXHIBIT "A"**

**PARCEL ONE (1):**

LIVING UNITS 2519 AND 2521 IN BUILDING A OF FINAL MAP OF TURNBERRY/M.G.M. GRAND TOWERS, LLC, TOWER A, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 118 OF PLATS, PAGE 16, AND AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS (THE "DECLARATION") FOR THE RESIDENCES AT MGM GRAND-TOWER A, RECORDED MAY 10, 2006 IN BOOK 20060510 AS DOCUMENT NO. 04007, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL TWO (2):**

AN ALLOCATED INTEREST AS A TENANT-IN-COMMON IN THE COMMON ELEMENTS OF TURNBERRY/M.G.M. GRAND TOWERS, LLC, TOWER A (INCLUDING ANY ANNEXATIONS THERETO), AS SHOWN BY MAP THEREOF ON FILE IN BOOK 118 OF PLATS, PAGE 16, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, AND AS SET FORTH IN THE DECLARATION.

RESERVING THEREFROM FOR THE BENEFIT OF OWNERS IN FUTURE DEVELOPMENT, NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS, USE, ENJOYMENT AND OTHER PURPOSES, ALL AS DESCRIBED IN THE DECLARATION, AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL THREE (3):**

AN EXCLUSIVE EASEMENT APPURTENANT TO THE UNIT REFERENCED ABOVE, OVER THE COMPONENTS SPECIFICALLY ALLOCATED TO SUCH UNIT AS SHOWN ON EXHIBIT "H" IN THE DECLARATION.

**PARCEL FOUR (4):**

A NON-EXCLUSIVE EASEMENT FOR ACCESS, INGRESS, EGRESS, USE, ENJOYMENT AND OTHER PURPOSES ALL AS DESCRIBED IN THE DECLARATION.

# State of Nevada

## Declaration of Value

### 1. Assessor Parcel Number(s)

- a) 1102-21-315-366  
b) 1102-21-315-368  
c) \_\_\_\_\_  
d) \_\_\_\_\_

47

### 2. Type of Property:

- ☐ a) Vacant Land ☐ b) Sgl. Fam. Residence  
☒ c) Condo/Twnhse ☐ d) 2-4 Plex  
☐ e) Apt. Bldg. ☐ f) Comm'l/Ind'l  
☐ g) Agricultural ☐ h) Mobile Home  
☐ i) Other \_\_\_\_\_

FOR RECORDER'S OPTIONAL USE ONLY	
Document/Instrument #	_____
Book: _____	Page: <u>11</u>
Date of Recording: _____	_____
Notes: _____	_____

### 3. Total Value/Sales Price of Property

\$1,415,000.00

Deed in Lieu of Foreclosure Only (value of property)

Transfer Tax Value:

\$1,415,000.00

Real Property Transfer Tax Due

\$7216.50

### 4. If Exemption Claimed:

- a. Transfer Tax Exemption, per NRS 375.090, Section: \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

### 5. Partial Interest: Percentage being transferred: 100 %

The undersigned declare(s) and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: \_\_\_\_\_ Capacity: GRANTOR/SELLER

Signature: \_\_\_\_\_ Capacity: GRANTEE/BUYER

### SELLER (GRANTOR) INFORMATION (REQUIRED)

### BUYER (GRANTEE) INFORMATION (REQUIRED)

Print Name: Turnberry/MGM Grand Towers, LLC

Print Name: Brian Elliott, Trustee of The 145 East Harmon Trust

Address: 19950 W. Country Club Dr. 10<sup>th</sup> Floor

Address: PO Box 194163

City/State/Zip: Aventura, FL 33180

City/State/Zip: Las Vegas, NV 89132

### COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Nevada Title Company

Esc. #: 04-02-1715-RP

Address: 9500 Hillwood Drive, #110

City: Las Vegas State: NV Zip: 89134

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

3701

Inst #: 201207170001305

Fees: \$18.00 N/C Fee: \$25.00

RPTT: \$0.00 Ex: #007

07/17/2012 10:55:14 AM

Receipt #: 1236472

Requestor:

145 EAST HARMON II TRUST

Recorded By: CDE Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 162-21-315-366, 162-21-315-368

WHEN RECORDED MAIL TO:

145 EAST HARMON II TRUST  
P.O. Box 30961  
Las Vegas, NV 89173

MAIL TAX STATEMENT TO:  
Address Above

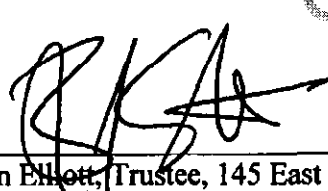
### QUITCLAIM DEED

145 EAST HARMON TRUST, GRANTOR as sole owner do hereby quitclaim to 145 EAST HARMON II TRUST all of GRANTOR'S right, title and interest in and to the real property situated in the County of Clark, State of Nevada, commonly referred to as 145 East Harmon Unit #2519 and Unit #2521 Bldg A, Las Vegas, Nevada and more particularly described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

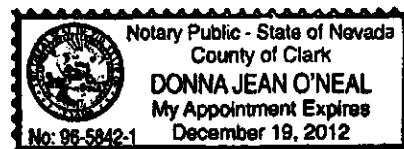
WITNESS my hand on July 13, 2012.

  
Brian Elliott, Trustee, 145 East Harmon Trust

STATE OF NEVADA  
COUNTY OF CLARK

This instrument was acknowledged before me on July 13, 2012 by Brian Elliott.

  
Notary Public



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL ONE (1):**

LIVING UNITS 2519 AND 2521 IN BUILDING A OF FINAL MAP OF TURNBERRY/M.G.M. GRAND TOWERS, LLC, TOWER A, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 118 OF PLATS, PAGE 16, AND AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS (THE "DECLARATION") FOR THE RESIDENCES AT MGM GRAND-TOWER A, RECORDED MAY 10, 2006 IN BOOK 20060510 AS DOCUMENT NO. 04007, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL TWO (2):**

AN ALLOCATED INTEREST AS A TENANT-IN-COMMON IN THE COMMON ELEMENTS OF TURNBERRY/M.G.M. GRAND TOWERS, LLC, TOWER A (INCLUDING ANY ANNEXATIONS THERETO), AS SHOWN BY MAP THEREOF ON FILE IN BOOK 118 OF PLATS, PAGE 16 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND AS SET FORTH IN THE DECLARATION.

RESERVING THEREFROM FOR THE BENEFIT OF OWNERS IN FUTURE DEVELOPMENT, NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS, USE, ENJOYMENT AND OTHER PURPOSES, ALL AS DESCRIBED IN THE DECLARATION, AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL THREE (3):**

AN EXCLUSIVE EASEMENT APPURTENANT TO THE UNIT REFERENCED ABOVE, OVER THE COMPONENTS SPECIFICALLY ALLOCATED TO SUCH UNIT AS SHOWN ON EXHIBIT "H" IN THE DECLARATION.

**PARCEL FOUR (4):**

A NON-EXCLUSIVE EASEMENT FOR ACCESS, INGRESS, EGRESS, USE, ENJOYMENT AND OTHER PURPOSES ALL AS DESCRIBED IN THE DECLARATION.



**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

a) 162-21-315-366

b) 162-21-315-368

c) \_\_\_\_\_

d) \_\_\_\_\_

**2. Type of Property:**

a) ☐ Vacant Land

c) ☐ Condo/Twnhse

e) ☐ Apt. Bldg

g) ☐ Agricultural

☐ Other \_\_\_\_\_

b) ☐ Single Fam. Res.

d) ☐ 2-4 Plex

f) ☐ Comm'l/Ind'l

h) ☐ Mobile Home

FOR RECORDER'S OPTIONAL USE ONLY

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

**3. Total Value/Sales Price of Property**

\$ 0.00

Deed in Lieu of Foreclosure Only (value of property) \_\_\_\_\_

Transfer Tax Value: \_\_\_\_\_

\$ 0.00

Real Property Transfer Tax Due \_\_\_\_\_

\$ 0.00

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 07

b. Explain Reason for Exemption: Transfer without consideration to a Trust

**5. Partial Interest: Percentage being transferred: 100 %**

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature \_\_\_\_\_ Capacity Grantor

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

Print Name: 145 East Harmon Trust

Address: 145 East Harmon, Unit 2519, Bldg A

City: Las Vegas

State: NV

Zip: 89109

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: 145 East Harmon II Trust

Address: 145 East Harmon, Unit 2519, Bldg A

City: Las Vegas

State: NV

Zip: 89109

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Print Name: \_\_\_\_\_ Escrow #: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# EXHIBIT C

③  
-1

20061103-0001352

APN: 162-21-315-001

Fee: \$15.00 RPTT: EX#009  
N/C Fee: \$25.00

Recording Requested by and,  
When Recorded Mail to:

11/03/2006 09:08:07  
T20060194810

Snell & Wilmer, LLP  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NV 89109  
Attn.: James Mace, Esq.

Requestor:  
SNELL & WILMER LLP

Charles Harvey RMS  
Clark County Recorder Pgs: 3

Mail Tax Statements to:

Signature Tower 1, LLC  
3950 Las Vegas Boulevard South  
Las Vegas, NV 89119  
Attn: John McManus, Esq.

---

**GRANT, BARGAIN, SALE DEED**

TURNBERRY/MGM GRAND TOWERS, LLC, a Nevada limited liability company ("Grantor"), for valuable consideration, the receipt of which is hereby acknowledged does hereby grant, bargain, sell and convey to Signature Tower 1, LLC, a Nevada limited liability company, all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

**THE HOTEL UNIT AS IDENTIFIED ON THE FINAL MAP OF  
TURNBERRY/MGM GRAND TOWERS, LLC TOWER A, A CONDOMINIUM,  
FILED IN BOOK 118 OF PLATS, PAGE 16 IN THE OFFICE OF THE COUNTY  
RECORDER OF CLARK COUNTY, NEVADA INCLUDING ALL  
IMPROVEMENTS THERETO.**

TOGETHER WITH all and singular tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this instrument has been executed this 2 day of May, 2006.

TURNBERRY/MGM GRAND TOWERS, LLC,  
a Nevada limited-liability company

By: Turnberry/Harmon Ave., LLC,  
a Nevada limited-liability company,  
its Manager

By: Turnberry Residential Holding, L.P.,  
a Delaware limited partnership,  
its Manager

By: Turnberry Subsidiary GP, LLC,  
a Delaware limited liability company,  
its General Partner

By: Turnberry Residential Developers, L.P.,  
a Delaware limited partnership,  
its Managing Member

By: Turnberry Residential GP, LLC,  
a Delaware limited liability company,  
its General Partner

By:   
Jeffrey Soffer, Managing Member

STATE OF Florida )  
 ) ss.  
COUNTY OF Miami-Dade )

This instrument was acknowledged before me on May 2, 2006, by Jeffrey Soffer as Managing Member of Turnberry Residential GP, LLC, the General Partner of Turnberry Residential Developers, L.P., the Managing Member of Turnberry Subsidiary GP, LLC, the General Partner of Turnberry Residential Holding, L.P., the Manager of Turnberry/Harmon Ave., LLC, the Manager of Turnberry/MGM Grand Towers, LLC.

My Commission Expires: \_\_\_\_\_

  
NOTARY PUBLIC

**STATE OF NEVADA  
DECLARATION OF VALUE**

**1. Assessor Parcel Number(s)**

- a) 162-21-315-001  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

**2. Type of Property:**

- |  |                     |
|--|---------------------|
| a) Vacant Land                               | b) Single Fam. Res. |
| c) <input checked="" type="checkbox"/> Condo | d) 2-4 Plex         |
| e) Apt. Bldg                                 | f) Comm'l/Ind'l     |
| g) Agricultural                              | h) Mobile Home      |
| i) Other                                     |                     |

**FOR RECORDERS OPTIONAL USE ONLY**

Book \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: Op. Agree. All

**3. Total Value/Sales Price of Property:**

Deed in Lieu of Foreclosure Only (value of property):

Transfer Tax Value:

Real Property Transfer Tax Due:

\$ 0  
\$ N/A  
\$ 0  
\$ 0

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 9

b. Explain Reason for Exemption: Grantee is 100% Owned by Grantor.

**5. Partial Interest: Percentage being transferred: 100 %**

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110 that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: [Signature]

Capacity: Grantor

Signature: \_\_\_\_\_

Capacity: Grantee

**SELLER (GRANTOR) INFORMATION  
(REQUIRED)**

Print Name: Turnberry/MGM Grand Towers, LLC  
Address: 6725 Via Austi Parkway, Suite 380  
City: Las Vegas  
State: NV Zip: 89119

**BUYER (GRANTEE) INFORMATION  
(REQUIRED)**

Print Name: Signature Tower 1, LLC  
Address: 3950 Las Vegas Boulevard South  
City: Las Vegas  
State: NV Zip: 89119

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Print Name: Snell & Wilmer LLP Escrow #: NA  
Address: 3800 Howard Hughes Parkway, Suite 1000  
City: Las Vegas, NV 89169

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# EXHIBIT D

20060510-0004007

Fee: \$79.00  
N/C Fee: \$25.00

05/10/2006 14:17:00  
T20060082761

Requestor:  
NEVADA TITLE COMPANY

Frances Deane DBX  
Clark County Recorder Pgs: 66

APN# 162-21-315-001 through 577

RETURN TO:

NEVADA TITLE COMPANY  
2500 N. BUFFALO DR. #150  
LAS VEGAS, NV 89128

13  
c 66

Name of Document: DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND RESERVATION OF  
EASEMENTS FOR THE RESIDENCES AT MGM GRAND –  
TOWER A

This page added to provide additional information required by  
NRS 111.312 Sectins 1-2 (Additional recording fee applies).

This cover page must be typed or printed clearly in black ink only.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
THE RESIDENCES AT MGM GRAND -TOWER A**

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Residences at MGM Grand - Tower A, a Nevada limited liability company (this "*Declaration*"), is dated for reference purposes only as of December 4, 2003 and is made by Turnberry/MGM Grand Towers LLC, a Nevada limited liability company (the "*Declarant*").

**PRELIMINARY STATEMENTS**

A. The Declarant is in the process of acquiring certain real property located in Clark County, Nevada, more particularly described on Exhibit "A" attached hereto (the "*Real Property*") and, as improved, the "*Condominium Property*").

B. It is the desire and intention of the Declarant through this Declaration to create a "common interest community" as defined in NRS Section 116.110323 which will be a "condominium" as defined in NRS Section 116.110325, and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all property made subject to this Declaration.

C. It is contemplated that the Condominium Property will be benefited and burdened by a reciprocal easement agreement between MGM Grand Hotel, LLC, a Nevada limited liability company and the Declarant (the "*Reciprocal Easement Agreement*"), which, among other things, will grant certain rights to the Owners over and upon the adjoining properties.

D. The Declarant hereby declares that all of the Condominium Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, maintenance, improvement and sale of Units for the purpose of enhancing the value, desirability and attractiveness of the Condominium Property. All provisions of this Declaration including, without limitation, the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Condominium Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden the Condominium Property and all Persons having or acquiring any right, title or interest in the Condominium Property, or any part thereof, and their successive owners and assigns.

E. The Declarant, its successors, assigns and grantees, covenant and agree that the undivided interest in the Common Elements, the Membership, any easements conveyed therewith and the fee title to each respective Unit conveyed therewith shall not be separated or separately conveyed, and each such undivided interest, Membership and easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in



the instrument of conveyance or encumbrance may refer only to the Unit. Any conveyance by an Owner of a Unit, or any portion thereof, shall be presumed to convey the entire Unit, together with the Allocated Interest and Membership.

## DECLARATION

1. *Definitions.* Unless otherwise expressly provided, the following words and phrases when used herein shall have the following specified meanings.

1.1. "*Affiliate*" shall mean any Person who, directly or indirectly, controls, is controlled by, or is under common control with any Person.

1.2. "*Allocated Interest*" shall mean and refer to the interest allocated to each Unit for (i) an undivided interest in Common Elements, easements and licenses within the Condominium Property; (ii) liability for Common Expenses; and (iii) membership rights in the Association, including, without limitation, voting rights in the Membership. Each owner's undivided fractional interest in the Common Elements and the fractional share of the Common Elements is set forth on Exhibit "B" attached hereto. Except for the voting rights set forth in the preceding sentence, the remaining Allocated Interest of each Unit in the Common Elements, easements and licenses with the Condominium Property and liability for Common Expenses shall be equal to a fraction whose numerator will be the Unit Allocation of the Unit and whose denominator will be one thousand five hundred (1,500).

1.3. "*Annexable Area*" shall mean the area set forth in Exhibit "C" attached hereto and any other property which is hereinafter owned by the Declarant and adjacent to the property set forth in Exhibit "C," all or any portion of which property may from time to time be made subject to this Declaration pursuant to the provisions of Section 16.2 of this Declaration.

1.4. "*Annual Assessment*" shall mean a charge against a particular Owner and Unit representing a portion of the Common Expenses which are to be levied as and when determined by the Declarant in its sole discretion among all Owners and their Units in the manner and proportions provided in this Declaration.

1.5. "*Annual Charge*" shall mean a charge against a particular Residential Unit Owner and Residential Unit representing a portion of the Hotel Shared Costs which are to be levied as and when determined by the Hotel Unit Owner on all Residential Unit Owners and their Units in the manner and proportions provided in this Declaration.

1.6. "*Articles*" shall mean the Articles of Incorporation of the Association as filed or to be filed in the office of the Secretary of State of the State of Nevada, as such Articles may be amended from time to time.

1.7. "*Assessments*" shall mean Annual Assessments, Capital Improvement Assessments, and any other assessments which may be properly levied by the Association pursuant to the Governing Documents.

1.8. "*Association*" shall mean The Residences at MGM Grand - Tower A, a Nevada nonprofit corporation, its successors and assigns. The Association is an "association" as defined in NRS Section 116.110315.

1.9. "*Association Maintenance Funds*" shall mean the accounts created for receipts and disbursements of the Association pursuant to Section 7.1 of this Declaration.

1.10. "*Association Property*" shall mean that property, real and personal, if any, which is owned or leased by or is dedicated by a recorded map or plat to the Association for the use and benefit of its members.

1.11. "*Beneficiary*" shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgage or Beneficiary.

1.12. "*Board*" shall mean the board of directors of the Association. The Board is an "executive board" as defined in NRS Section 116.110345.

1.13. "*Budget*" shall mean a written, itemized budget for the operation of the Association.

1.14. "*Building*" shall mean the structure(s) in which the Units and Shared Components are located, regardless of the number of such structures, which are located on the Condominium Property.

1.15. "*Bylaws*" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

1.16. "*Capital Improvement Assessment*" shall mean a charge which the Board may from time to time levy against Owners for capital improvements on any of the Common Elements.

1.17. "*Capital Improvement Charge*" shall mean a charge which the Hotel Unit Owner may from time to time levy against the Residential Unit Owners for capital improvements on any of the Shared Components.

1.18. "*Class A Member*" shall mean any member of the Association who is an Owner of a Residential Unit.

1.19. "*Class A Membership*" shall mean the voting rights and privileges of a Class A Member as provided in this Declaration, together with the correlative rights and obligations contained in the Governing Documents.

1.20. "*Class B Member*" shall mean any member of the Association who is an Owner of the Hotel Unit.

1.21. "*Class B Membership*" shall mean the voting rights and privileges of a Class B Member as provided in this Declaration, together with the correlative rights and obligations contained in the Governing Documents.

1.22. "*Close of Escrow*" shall mean the date on which a deed is Recorded conveying a Unit from the Declarant to a person other than the Declarant.

1.23. "*Common Elements*" shall mean and include all parts of the Condominium Property, other than the Units, and any other part of the Condominium Property designated as a common element in NRS Section 116.110318, unless otherwise provided herein. The Condominium has been established in such a manner to minimize the Common Elements. Most components which are typical "common elements" of a condominium have instead been designated herein as part of the Shared Components of the Hotel Unit.

1.24. "*Common Expenses*" shall mean those expenses for which the Association is responsible under this Declaration, including, but not limited to, the actual and estimated costs of (i) unpaid Assessments; (ii) the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; (iii) the costs of fire, casualty and liability insurance, workers' compensation insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Condominium Property and the Board and the officers and agents of the Association, if necessary; (iv) the costs of bonding of the members of the Board; (v) taxes paid by the Association; (vi) judgments against the Association; (vii) the costs associated with any litigation to which the Association is a party; (viii) amounts paid by the Association for discharge of any lien or encumbrance levied against the Condominium Property, or portions thereof; (ix) any unpaid share of Common Expenses extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure.

1.25. "*Condominium*" shall have the meaning set forth in NRS Section 116.110325. The Condominium is a "common-interest community" as defined in NRS Section 116.110323.

1.26. "*Condominium Property*" shall mean the Real Property and the Improvements thereon, subject to the limitations and exclusions described herein, including, without limitation, the rights set forth in the Reciprocal Easement Agreement, if any.

1.27. "*Co-owners*" shall have the meaning set forth in Section 5.6 of this Declaration.

1.28. "*Declarant*" shall mean Turnberry/MGM Grand Towers, LLC, a Nevada limited liability company, its successors, and any Person to which it shall have assigned any of its rights hereunder by an express written assignment.

1.29. "*Declarant's Period of Control*" shall mean that period of time set forth in Section 5.7 of this Declaration during which the Declarant has the right to appoint and remove officers of the Association or members of the Board, whether or not the Declarant exercises such right.

1.30. "*Declaration*" shall mean this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Residences at MGM Grand - Tower A, as may be amended from time to time.

- 1.31. “*Deed of Trust*” shall mean a Mortgage.
- 1.32. “*Developmental Rights*” shall have the meaning set forth in Section 16.1 of this Declaration.
- 1.33. “*Eligible Mortgagee*” shall mean the Beneficiary of a Deed of Trust or Mortgagee of a Mortgage on a Unit in first lien position, which has requested notification pursuant to the provisions of Section 13.2 of this Declaration.
- 1.34. “*Family*” shall mean one or more natural Persons related to each other by blood, marriage or adoption, or one or more natural Persons not all so related, but who maintain a common household in a Unit.
- 1.35. “*Fiscal Year*” shall mean the fiscal accounting and reporting period of the Association as determined by the Board from time to time.
- 1.36. “*Governing Documents*” shall mean this Declaration, the Bylaws, the Articles, the Rules and Regulations and other documents that govern the operation of the Association, as may be amended from time to time.
- 1.37. “*Hotel Related Services*” shall have the meaning set forth in Section 3.10 of this Declaration.
- 1.38. “*Hotel Shared Costs*” shall have the meaning set forth in Section 8.1 of this Declaration. The Hotel Shared Costs are not Common Expenses.
- 1.39. “*Hotel Unit*” means and refers to the “Hotel Unit,” the boundaries of which are identified on Exhibit “D” attached hereto, which includes the Shared Components and the Hotel Unit’s Allocated Interest. References herein to “Units” shall include the Hotel Unit unless the context would prohibit it or it is otherwise expressly provided.
- 1.40. “*Hotel Unit Owner*” shall mean initially MGM Grand Condominiums, LLC, a Nevada limited liability company, and thereafter the owners from time to time of the Hotel Unit. Nothing herein shall preclude the Hotel Unit Owner from assigning or delegating any of its rights and/or obligations hereunder, whether in part or in whole.
- 1.41. “*Improvement*” shall mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property, including, but not limited to, the Building.
- 1.42. “*Insured Property*” shall have the meaning set forth in Section 10.2 of this Declaration.
- 1.43. “*Long-Term Guest*” shall mean a Person who is an occupant of a Residential Unit pursuant to a Long-Term Rental.
- 1.44. “*Long-Term Rental*” shall mean the rental of a Residential Unit for a period of more than thirty (30) consecutive calendar days.

1.45. "*Map*" shall mean a map or plat covering all or any portion of the Condominium Property which may be Recorded, and any subsequent amendment or modification thereof.

1.46. "*Membership*" shall mean the property, voting and other rights and privileges of Owners as members of the Association as provided in this Declaration, together with the correlative duties and obligations contained in the Governing Documents.

1.47. "*Mortgage*" shall mean any Recorded mortgage or deed of trust relating to one or more Units to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "*Mortgage*" shall not include any judgment lien, mechanic's lien, tax lien or other similarly involuntary lien or encumbrance on a Unit.

1.48. "*Mortgagee*" shall mean a Person to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust.

1.49. "*Notice and Hearing*" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel, at the Owners' expense, in the manner further provided in the Bylaws.

1.50. "*Notice of Addition*" shall mean a document Recorded pursuant to Section 16.3 of this Declaration by which real estate is added to the Condominium Project.

1.51. "*Notice of Default*" shall have the meaning ascribed to such term in Section 7.6(b)(ii) of this Declaration.

1.52. "*Notice of Delinquency*" shall have the meaning set forth in Section 7.6(b)(i) of this Declaration.

1.53. "*Notice of Release*" shall have the meaning set forth in Section 7.6(c) of this Declaration.

1.54. "*NRS*" shall mean the Nevada Revised Statutes, as may be amended from time to time.

1.55. "*Owner*" shall mean the Person or Persons, including the Declarant, holding fee simple interest to a Unit. This term shall also include a seller under an executory contract of sale but shall exclude Mortgagees.

1.56. "*Person*" shall mean a natural individual or any form of entity.

1.57. "*Phase*" shall mean that portion of the Annexable Area or other real estate owned by the Declarant including any Unit and any Common Elements covered by a Notice of Addition Recorded pursuant to Section 16.3 of this Declaration.

1.58. "*Purchaser*" shall mean a Person who purchases fee interest of a Unit from an Owner.

1.59. "*Real Property*" shall have the meaning set forth in Preliminary Statement A of this Declaration.

1.60. "*Reciprocal Easement Agreement*" shall have the meaning set forth in Preliminary Statement C of this Declaration.

1.61. "*Record, Recorded, Recordation*" shall mean, with respect to any document, the recordation or filing of such document in the Office of the County Recorder, Clark County, Nevada.

1.62. "*Reserve Fund*" shall mean a fund for capital improvements, replacements, restoration, painting and repairs of the Common Elements (which cannot normally be expected to occur on an annual or more frequent basis).

1.63. "*Residential Unit*" means and refers to each of the Units, other than the Hotel Unit, set forth on Exhibit "E" attached hereto. References to "Units" shall include Residential Units unless context prohibits it or it is otherwise expressly provided.

1.64. "*Residential Unit Owner*" shall mean the person or persons, including the Declarant, holding fee simple interest to a Unit.

1.65. "*Residential Units Allocated Share*" shall have the meaning set forth in Section 8.3 of this Declaration.

1.66. "*Rules and Regulations*" shall mean the rules and regulations adopted by the Board pursuant to this Declaration or the Bylaws, as such Rules and Regulations may be amended from time to time.

1.67. "*Shared Components*" shall mean all portions of the Condominium Property, excluding the Residential Units and the Common Elements, including, but not limited to, the following components or Improvements: any and all structural components of the Improvements, including, without limitation, all exterior block walls and all finishes (paint, stucco etc) and balconies, terraces and/or facades attached or affixed thereto; the roof; all roof trusses, roof support elements and roofing insulation; all utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems, including, without limitation, all wires, conduits, pipes, ducts, transformers, cables and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, electrical, plumbing and/or other services; all heating, ventilating and air conditioning systems, including, without limitation, compressors, air handlers, ducts, chillers, water towers and other apparatus used in the delivery of HVAC services; all elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment used in the operation of the elevators transversing the Condominium Property; and all trash rooms, trash chutes and any and all trash collection and/or disposal systems. In addition, the Shared Components include the following areas and/or facilities contained within the Condominium Property (together with a license for reasonable pedestrian access thereto, as determined by the Hotel Unit Owner): any parking structures or parking areas; the pool and pool deck; the fitness center, if any, which may be located from time to time within the improvements constructed upon the Hotel Unit, and cabanas, if any, which may be located from time to time within the improvements constructed upon the Hotel Unit and any landscape areas. Notwithstanding

anything to the contrary contained herein or in any of the exhibits hereto, the Shared Components shall be deemed part of the Hotel Unit. The Hotel Unit Owner shall have the right (but not the obligation), by supplemental declaration executed by the Hotel Unit Owner alone, to designate additional portions of the Hotel Unit as Shared Components hereunder. Notwithstanding the designation of the Shared Components, the Hotel Unit Owner shall have the right, from time to time, to expand, alter, relocate and or eliminate the portions of the Hotel Unit deemed Shared Components (provided that expansion shall not be beyond the Hotel Unit), without requiring the consent or approval of the Association or any Owner, provided that any portions withdrawn are not, in the reasonable opinion of the Hotel Unit Owner essential to the structural integrity of the Residential Units, the provision of utilities and utility services to the Residential Units and/or the provision of legal access. In furtherance of the foregoing, the Hotel Unit Owner also reserves the absolute right at any time, and from time to time, to construct additional facilities upon the Hotel Unit and to determine whether same shall be deemed Shared Components. Further, notwithstanding their designation as Shared Components, subject to the right of the Hotel Unit Owner to regulate their uses, the balconies, lanais and/or rooftop terraces directly serving a Unit shall be for the exclusive use of the Unit afforded direct access thereto and that exclusive use right shall be an appurtenance which passes with title to the Unit. It is expressly contemplated that persons other than Owners shall be granted use rights in and to certain of the facilities of the Hotel Unit (such determination to be made in the sole and absolute discretion of the Hotel Unit Owner). The Hotel Unit Owner may, in its sole discretion, offer food and beverage service and/or other services commonly associated with a hotel, but is under no obligation to do so.

1.68. "*Shared Components Records*" shall have the meaning set forth in Section 8.9 of this Declaration.

1.69. "*Single-Bedroom Unit*" shall mean a Residential Unit with a floorplan that is substantially similar to and/or the reverse image of the floorplan attached hereto as Exhibit "F."

1.70. "*Special Assessment*" shall mean a charge against a particular Owner, levied by the Board after Notice and Hearing, which is directly attributable to, or reimbursable by that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Board, in accordance with NRS Section 116.31031, plus interest and other related charges on such Special Assessments as provided for in this Declaration.

1.71. "*Special Charge*" shall mean a charge against a particular Residential Unit Owner which is directly attributable to or reimbursable by that Owner, equal to the cost incurred by the Hotel Unit for the repair or replacement of damage to any portion of the Hotel Unit (including, without limitation, improvements, furnishing and finishings thereon) caused by the misuse, negligence or any other action or inaction of a Residential Unit Owner or his, her or its Family, agents, Transient Guests, Long-Term Guests, or other occupants of a Residential Unit.

1.72. "*Standard Package*" shall have the meaning set forth in Section 9.20 of this Declaration.

1.73. "*Studio Suite*" shall mean a Residential Unit with a floorplan that is substantially similar to and/or the reverse image of the floorplan attached hereto as Exhibit "G."

1.74. "*Transient Guest*" shall mean a Person who is an occupant of a Residential Unit pursuant to a Transient Rental.

1.75. "*Transient Rental*" shall mean the rental of a Residential Unit for a period of thirty (30) consecutive calendar days or less.

1.76. "*Transient Rental Fees*" shall have the meaning set forth in Section 8.5 of this Declaration.

1.77. "*Unit*" shall mean "unit" as defined in NRS Section 116.11039 which is a part of the Condominium Property and all appurtenances thereto. The boundaries of a Unit shall be as set forth on Exhibit "D" attached hereto. Each Unit shall be a separate freehold estate, as separately shown, numbered and designated, for illustrative purposes only, on Exhibit "E" attached hereto. This definition shall be deemed to include Residential Units and the Hotel Unit, except where specifically excluded or the context otherwise requires. In interpreting deeds, declarations and Maps, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in substantial accordance with the applicable Map and the original plans thereof, if such plans are available, shall be the walls, floors, ceilings, windows and doors as they actually exist rather than the description expressed in the deed, Map or Declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the applicable Map or defined in the deed and Declaration, and the boundaries of a building as constructed or reconstructed; *provided, however*, that, as to the Hotel Unit, the provisions of Exhibit "D" shall control unless specifically depicted or labeled otherwise on the Map.

1.78. "*Unit Allocation*" shall mean the allocation given to each type of Unit in the following manner:

- (a) Each Single-Bedroom unit shall receive two (2) allocated interests;
- (b) Each Studio Suite shall receive one (1) allocated interest; and
- (c) the Hotel Unit shall receive seven hundred forty-four (744) allocated interests.

## 2. *Condominium/Owners' Property Rights.*

2.1. *Description of Condominium/Owners' Property Rights.* The Condominium Property consists of the Building, which contains five hundred seventy-seven (577) Units consisting of five hundred seventy-six (576) Residential Units and one (1) Hotel Unit. The designation of the Units is set forth on Exhibit "E" attached hereto.

2.2. *Legal Description of Real Estate.* The components of the real estate owned by each Owner shall be substantially as follows:



Parcel No. 1: Fee title to the applicable Unit described in accordance with NRS Section 116.2104.

Parcel No. 2: An Allocated Interest in the Common Elements.

Parcel No. 3: An exclusive easement appurtenant to the Unit over the Shared Components specifically allocated to such Unit as shown on Exhibit "H."

Parcel No. 4: Non-exclusive easements for access, ingress, egress, use, enjoyment, and other purposes, all as described in this Declaration and in any applicable Notice of Addition.

2.3. *Partition.* As provided in NRS Section 116.2107(6), there shall be no judicial partition of the Common Elements, or any part thereof, nor shall the Declarant, any Owner or any other Person acquiring any interest in any Unit seek any such judicial partition. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

3. *Easements.* The following easements are hereby created in addition to any easement created under NRS Chapter 116, the Reciprocal Easement Agreement and any easements which are or may be Recorded against the Condominium Property.

3.1. *Easements of the Association and Hotel Unit Owner.* The Hotel Unit Owner shall have an easement over the Condominium Property for performing its duties and exercising its powers described in this Declaration. The Association shall have an easement over the Common Elements, if any, for performing its duties and exercising its powers, as described in the Declaration.

3.2. *Construction; Maintenance.* The Declarant, its designees, successors and assigns, employees and agents, and the Hotel Unit Owner shall have the right, in its and their sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction of any and all Improvements upon any portion of the Condominium Property, and for repair, replacement and maintenance or warranty purposes or where the Declarant and/or Hotel Unit Owner, in its or their sole discretion, determines that it is required or desires to do so.

3.3. *Sales Activity.* For as long as there are any Units owned by the Declarant and/or the Declarant has any ownership interest in the Hotel Unit, the Declarant, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property for guest accommodations, model apartments and sales, leasing and construction offices relating to the Condominium, to show model Units and the Common Elements to prospective purchasers and tenants of Units, and to erect on the Condominium Property signs and other promotional material to advertise or otherwise market the Units, and/or any facilities built or to be constructed upon any portion of the Condominium Property for sale, lease or occupancy.

3.4. *Support of Adjacent Structures.* In the event that any structure(s) is constructed so as to be connected in any manner to a building, then there shall be an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjacent structure which are necessarily or conveniently located within the Condominium Property.

3.5. *Warranty.* For as long as any Declarant remains liable under any warranty, whether statutory, express or implied, for any act or omission of the Declarant in the design, development, construction, sale and marketing of the Condominium Property or any part thereof, then the Declarant and its contractors, agents and designees shall have the right, in the Declarant's sole discretion and from time to time, to enter the Condominium Property for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that the Declarant can fulfill any of its warranty obligations. Nothing contained in this Section 3.5 shall be deemed or construed as the Declarant making or offering any warranty.

3.6. *Support.* Each Unit, Building and Improvement constructed on the Condominium Property and the Common Elements shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements, and any other structure or Improvement which abuts any Unit, Building or any Improvement.

3.7. *Utility and Other Services; Drainage.* Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and monitoring systems, and other services and drainage in order to serve the Condominium and/or Members of the Association. An Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Hotel Unit Owner shall have a right of access to each Unit to maintain, repair or replace any Shared Component pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, hot water heaters, service and drainage facilities, and Shared Components contained in the Unit or elsewhere in or around the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; *provided, however*, such right of access, except in the event of an emergency, shall not unreasonably interfere with the Owners' permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days notice (which notice shall not, however, be required if the Owner is absent when the giving of notice is attempted).

3.8. *Additional Easements.* The Association, through its Board, on the Association's behalf and on behalf of all Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Common Elements and/or Association Property, and to grant access easements or relocate any existing access easements in any portion

of the Common Elements and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Owners and/or Members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for their intended purposes; and *provided, further*, that if any such easement is to traverse the Hotel Unit or the Shared Components, the joinder of the Hotel Unit Owner must be obtained, which joinder shall be in the Hotel Unit Owner's sole discretion.

3.9. *Encroachments.* If (i) any portion of the Common Elements and/or Shared Components encroaches upon any Unit; (ii) any Unit encroaches upon any other Unit or upon any portion of the Common Elements and/or Shared Components; or (iii) any encroachment shall hereafter occur as a result of (1) construction of the Improvements; (2) settling or shifting of the Improvements; (3) any alteration or repair to the Common Elements (or the Shared Components) made by or with the consent of the Association, the Declarant or the Hotel Unit Owner, as appropriate; or (4) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements or the Shared Components, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.

3.10. *Owners' Easement.*

(a) *Access.* A non-exclusive easement in favor of each Residential Unit Owner and such Residential Unit Owner's Family, agents, Transient Guests, Long-Term Guests, or other occupants of such Residential Unit Owner's Unit, for each member of the Association (and its and their guests, tenants and invitees) shall exist for (i) pedestrian traffic over, through and across such portions of the Hotel Unit as are designated from time to time by the Hotel Unit Owner and intended to provide direct pedestrian access to and from the applicable Residential Unit, and (ii) use and enjoyment of the Shared Components, subject to rules and regulations as may be established from time to time by the Hotel Unit Owner. Notwithstanding the foregoing, the aforesaid easement over the Hotel Unit is limited and solely for use of the named beneficiaries obtaining access to and from their Residential Unit and shall not be used for the provision of any services, including, without limitation, any hotel related services including, but not limited to, solicitation and/or provision of housekeeping, personal services (i.e., massage, personal training, dry cleaning, etc.) and/or food and beverage service (collectively, "*Hotel Related Services*"), it being understood and agreed by all Owners that any such services may only be provided by the Hotel Unit Owner; *provided, however*, that the easement over the Hotel Unit may be used only for provision of Hotel Related Services by parties unrelated to the Hotel Unit Owner or an Affiliate of the Hotel Unit Owner if the Hotel Unit Owner or its affiliates do not offer such services to Residential Unit Owners. The Hotel Unit Owner and/or an Affiliate of the Hotel Unit Owner may, in its sole and absolute discretion, offer Hotel Related Services, but is under no obligation to do so.

(b) *Common Elements.* Subject to the provisions of this Declaration, each Owner and such Owner's Family, agents, Transient Guests, Long-Term Guests, or other occupants of such Owner's Unit, shall have a non-exclusive easement of access, ingress, egress,

use and enjoyment of, in and to the Common Elements, and such easements shall be appurtenant to and shall pass with title to each Unit.

4. *Maintenance and Repairs.*

4.1. *Residential Units.* All maintenance, repairs and replacements of, in or to any Residential Unit, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance, repair and replacement of windows, window coverings, interior nonstructural walls, the interior side of the entrance door and all other doors within or affording access to a Residential Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Residential Unit lying within the boundaries of the Residential Unit or other property belonging to the Owner, including any furniture, fixtures and equipment, shall be performed by the Owner of such Residential Unit at the Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

4.2. *Common Elements and Association Property.* Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements and Association Property shall be performed by the Association and the cost and expense thereof shall be charged to all Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Owners, in which case such cost and expense shall be charged to such Owners as a Special Assessment.

4.3. *Hotel Unit.* The Hotel Unit Owner, from time to time, shall be responsible for the repair, replacement, improvement, maintenance, management, operation, and insurance of the Hotel Unit, which shall be performed in a commercially reasonable manner in the determination of the Hotel Unit Owner (which determination shall be binding). In consideration of the reservation and grant of easement over certain portions of the Hotel Unit, as provided in Section 3.10(a) above, each Residential Unit Owner shall be obligated for payment of the expenses incurred by the Hotel Unit Owner in connection with such maintenance, repair, replacement, improvement, management, operation, and insurance, all as more particularly provided in Section 8.3 below.

4.4. *Specific Owner Responsibility.* The obligation to maintain and repair any air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Residential Unit and not any other Residential Unit shall, to the extent not part of the Shared Components and otherwise part of the Condominium, be the responsibility of the applicable Residential Unit Owner, individually, without regard to whether such items are included within the boundaries of the Residential Units.

5. *The Association.*

5.1. *Organization of the Association.* The Association is or shall be, no later than the Close of Escrow on the first Unit, incorporated under the name of The Residences at

MGM Grand – Tower A Owners' Association as a nonprofit corporation organized under the provisions of NRS Chapter 82.

5.2. *Duties and Powers of the Association.* The duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws, together with the general and implied powers of an "association" (as defined in NRS Section 116.110315) and a nonprofit corporation generally, to do any and all things that such a corporation may lawfully do which are necessary or proper, in operating for the general welfare of the Owners with respect to the Common Elements and only the Common Elements, subject to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration, and under no circumstances shall the Association have any control over the Hotel Unit or any part of the Shared Components.

5.3. *Membership in the Association.* Every Owner, upon becoming the Owner of a Unit, shall automatically become a Member of the Association and shall remain a Member in the Association until such Person is no longer an Owner, at which time such Membership shall automatically cease. Ownership of a Unit shall be the sole qualification for Membership in the Association. Membership shall not be assignable except to the Person to which title to the Unit has been transferred, and every Membership shall be appurtenant to and may not be separated from the fee ownership of such Unit. The rights, duties, privileges and obligations of all Owners shall be as provided in the Governing Documents.

5.4. *Transfer of Membership.* The Membership shall not be transferred, pledged or alienated in any way, except upon the sale of a Unit, and then only to the Purchaser. A prohibited transfer is void and will not be reflected upon the books and records of the Association. An Owner who has entered into an executory contract to sell a Unit shall be entitled to delegate to the prospective Purchaser the Membership rights in the Association appurtenant to such Unit. The delegation shall be in writing and shall be delivered to the Board before the prospective Purchaser may vote. However, the Owner shall remain liable for all charges and Assessments, including Hotel Shared Costs, attributable to the Unit until fee title to the Unit is transferred. If the Owner fails or refuses to transfer Membership to the Purchaser of the Unit upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer has been presented to the Board, the Purchaser shall not be entitled to vote at meetings of the Association. The Association may levy a transfer fee of an amount not to exceed Twenty-five Dollars (\$25.00) against a Purchaser and his, her or its Unit (which fee shall be added to the Annual Assessment chargeable to such Purchaser) to reimburse the Association for the administrative cost of transferring the Membership to the Purchaser on the records of the Association provided such fee does not exceed the Association's actual cost involved in changing its records of ownership. Such transfer shall not be applicable to any sale from the Declarant or an Affiliate of the Declarant, as Owner of the Unit, to a Purchaser.

5.5. *Classes of Membership.* The Association shall have two (2) classes of voting Membership.

(a) *Class A Membership.* Each Class A Member shall be entitled to one (1) vote for each Residential Unit in which they hold the interest required for Class A Membership.

(b) *Class B Membership.* Each Class B Member shall be entitled to one (1) vote for the Hotel Unit in which they hold the interest required for Class B Membership.

(c) *Limitation on Class A and Class B Memberships.* Notwithstanding paragraph (a) or (b) of this Section 5.5, the Class A and Class B Members shall only exercise their respective Class A and Class B Membership voting rights and privileges where specifically set forth in this Declaration.

5.6. *Voting Rights.* All voting rights shall be subject to the Governing Documents. Owners shall be entitled to one (1) vote for each Unit in which they hold the interest required for Membership. When more than one (1) Person holds such interest or interests in any Unit ("Co-owners"), all such Co-owners shall be Members of the Association and may attend any meeting of the Association, but only one (1) such Co-owner shall be entitled to exercise the single vote on each item brought before the Membership to which the Unit is entitled. If only one (1) of several Co-owners of a Unit is present at a meeting of the Association, that Co-owner is entitled to cast the one (1) vote allocated to that Unit. Co-owners owning the majority interests in a Unit may from time to time designate in writing to the Association one (1) Co-owner to vote. Fractional voting shall not be allowed, and the vote for each Unit shall be exercised, if at all, as a unit. Where no voting Co-owner is designated or if the designation has been revoked, the vote for the Unit shall be exercised as the Co-owners owning the majority interests in the Unit mutually agree. Unless the Board receives a written objection in advance from an absent Co-owner, it shall be conclusively presumed that the corresponding voting Co-owner is acting with the consent of all Co-owners. No vote shall be cast for any Unit if the Co-owners present in person or by proxy owning the majority interests in such Unit cannot agree to said vote or other action. The nonvoting Co-owner or Co-owners shall be jointly and severally liable for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners (including all Co-owners), their successors and assigns.

5.7. *Declarant's Period of Control.* Notwithstanding anything contained in this Declaration to the contrary, the Declarant shall have the right to appoint and remove officers of the Association and members of the Board until the first to occur of the following events:

(a) sixty (60) days after the Close of Escrow of seventy-five percent (75%) of the Units that may be created by the Declarant, as set forth in Section 16.6 of this Declaration;

(b) five (5) years after the Declarant has ceased to offer Units for sale in the ordinary course of business; or

(c) five (5) years after any right to add new Units was last exercised by the Declarant.

The Declarant, in its sole and absolute discretion, may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before any of the events enumerated above occur and upon doing so the Declarant may require, for the duration of the Declarant's Period of Control, that specified actions of the Association or the Board as described in a Recorded instrument executed by the Declarant be approved by the Declarant before they become effective. Notwithstanding the foregoing, no later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units that may be created by the Declarant as set forth in Section 16.6 of this Declaration to Owners other than the Declarant, at least one member of the Board and not less than twenty-five percent (25%) of the Board must be elected by Owners other than the Declarant and that no later than sixty (60) days after the conveyance of fifty percent (50%) of the Units that may be created by the Declarant as set forth in Section 16.6 of this Declaration to Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Owners other than the Declarant.

5.8. *Limitation on Liability of Association and Hotel Unit Owner.* Notwithstanding the duty of the Association and the Hotel Unit Owner to maintain and repair portions of the Condominium Property, neither the Association nor the Hotel Unit Owner shall be liable to Residential Unit Owners, their Families, agents, Transient Guests, Long-Term Guests, or other occupants of their Residential Units for injury or damage caused by any latent condition of the Condominium Property. Furthermore, neither the Association nor the Hotel Unit Owner shall be liable for any injury or damage caused by defects in design or workmanship or any reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Owner regardless of whether or not any such additions, alterations or improvements shall have been approved by the Association or the Hotel Unit Owner pursuant to the terms of this Declaration. The Association and the Hotel Unit Owner also shall not be liable to any Residential Unit Owner, Family member, agent, Transient Guest, Long-Term Guest, or other occupant of a Residential Unit for any property damage, personal injury, death or other liability on the grounds that the Association or the Hotel Unit Owner did not obtain or maintain insurance (or carry insurance with a particular deductible amount) to any particular matter where such insurance is not required hereby or the Association or the Hotel Unit Owner could not obtain such insurance at reasonable costs or upon reasonable terms.

## 6. *Budget.*

6.1. *Initial Year of Operations.* The Annual Assessment for each Unit for the first Fiscal Year of the Association shall be as set forth in the initial Budget adopted by the Board. If, during the first Fiscal Year of the Association, the Board determines that the Annual Assessment should be increased, the Board shall provide a summary of the increased Budget to all Owners and shall call a meeting of the Owners to consider ratification of the increased Budget. The date of such meeting shall be not less than fourteen (14) nor more than thirty (30) days after the date of mailing of the increased Budget summary. Unless Owners controlling a majority of the voting power of the Association reject the increase, the increase shall be deemed

ratified, whether or not a quorum is present at said meeting. The Budget, as ratified, shall be binding on all Owners.

6.2. *Subsequent Fiscal Years.* The Board shall annually prepare and distribute to the Owners not less than thirty (30) nor more than sixty (60) days prior to the expiration of the current Fiscal Year, a proposed Budget or summary thereof for the upcoming Fiscal Year. Within thirty (30) days after the adoption of the Budget, the Board shall provide a copy of the Budget or a summary of the Budget, accompanied by a written notice of where the Budget is available for review and that copies of the Budget may be obtained upon request, to all Owners and shall call a meeting of the Owners to consider ratification of the Budget. The date of such meeting shall be not less than fourteen (14) nor more than thirty (30) days after the date of mailing of the Budget summary. Unless Owners controlling a majority of the voting power of the Association reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present at said meeting. If the Budget is rejected, then the Budget last ratified shall be continued until such time as a new proposed Budget is ratified. If during such upcoming Fiscal Year the Board determines that the Annual Assessment should be increased above the amount reflected in the Budget then in effect for such Fiscal Year, the Board shall provide a copy or a summary, accompanied by a written notice of where the Budget is available for review and that copies of the Budget may be obtained upon request, of the increased Budget to all Owners and the provisions set forth above concerning a meeting of the Owners to ratify a new Budget shall be applicable to such proposed increase. The Budget, as ratified, shall be binding on all Owners.

## 7. *Assessments; Liens.*

7.1. *Association Maintenance Funds.* The Board shall establish Association Maintenance Fund accounts, into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves or any other fund established by the Board must be paid to the Owners in proportion to their liability for Common Expenses or credited to them in proportion to their liability for Common Expenses to reduce their future Assessments for Common Expenses.

7.2. *Purpose of Assessments.* The Assessments levied by the Association shall be used to promote the recreation and welfare of the Owners and for the operation, replacement, improvement and maintenance of the Common Elements, and to discharge any other obligations of the Association under this Declaration.

7.3. *Personal Obligation of Assessments.* Each Owner, by acceptance of a deed to a Unit, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments to be established and collected as provided in this Declaration. All Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Unit against which such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of the Unit at the time when the Assessment fell due. This personal obligation cannot be avoided by abandonment of the Unit or by an offer to waive use of the Common Elements. The personal obligation for delinquent



Assessments shall not pass to any Purchaser unless expressly assumed by the Purchaser; *provided, however*, that the delinquent Assessment shall still remain a charge against the Purchaser's Unit.

7.4. *Annual Assessments; Commencement; Collection.* Annual Assessments shall commence on all Units in a Phase as determined by the Declarant at its sole discretion. Until the Association makes an Annual Assessment, the Declarant shall pay all Common Expenses. All Annual Assessments shall be assessed against the Owners and their Units based upon their Allocated Interest.

7.5. *Delinquency.* Any installment of an Assessment provided for in this Declaration shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. Upon such delinquency, the full amount of the Assessment remaining in any given year (i.e., not simply the delinquent installment) shall become due and payable. The Board shall be authorized to adopt a system pursuant to which the full amount of any Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges as provided herein, shall bear interest commencing thirty (30) days from the due date until paid at the rate of up to eighteen percent (18%) per annum, but in no event more than the maximum rate permitted by law. The Board may also require the delinquent Owner to pay a late charge. The Association need not accept any tender of a partial payment of an installment of an Assessment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter.

7.6. *Liens.*

(a) *Creation of Lien.* All sums assessed and fines imposed in accordance with the provisions of this Declaration shall constitute a lien upon each Unit (except for those Units owned by the Declarant) from the time such sums become due, prior and superior to all other liens and encumbrances thereon except (i) liens and encumbrances Recorded before Recordation of this Declaration; (ii) a Mortgage in first lien position on a Unit Recorded before the date on which the Assessment sought to be enforced becomes delinquent, except a lien imposed by the Association in accordance with this Declaration shall have priority for six (6) months' of Assessments pursuant to NRS Section 116.3116(2); and (iii) liens for real estate taxes and other governmental assessments or charges against all Units except those Units owned by the Declarant.

(b) *Enforcement of Liens.* The Association may enforce a lien upon a Unit after:

(i) the Association has mailed or caused to be mailed by certified or registered mail, return receipt requested, to the Owner or the Owner's successor-in-interest, at the Owner's last known address and the address of the Unit, a Notice of Delinquent Assessment (a "*Notice of Delinquency*") which states (A) the amount of the Assessment and other authorized charges and interest; (B) a sufficient description of the Unit(s) against which such charges have been assessed; and (C) the name of the Owner(s) thereof;

(ii) the Association or other Persons conducting the sale has caused to be Recorded a Notice of Default and Election to Sell (a "*Notice of Default*") the Unit(s) to satisfy the lien, signed by any officer or authorized agent of the Association, which contains the same information as the Notice of Delinquency plus a description of the deficiency in payment and the name and address of the Person authorized to enforce the lien by sale and has mailed the Notice of Default in accordance with NRS Section 116.31163; and

(iii) the Owner or the Owner's successor-in-interest has failed to pay the amount of the lien (including costs, fees and expenses incidental to the enforcement of the lien) for ninety (90) days following the later of (A) the date of which the Notice of Default is Recorded, or (B) the day on which a copy of the Notice of Default is mailed by certified or registered mail, return receipt requested, to the Owner or the Owner's successor-in-interest at the address of such Person, if known; and to the address of the Unit.

The Association or other Person conducting the sale shall also, after the expiration of said ninety (90) day period and before selling the Unit, give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the Owner or the Owner's successor-in-interest at the address of such Person, if known, and to the address of the Unit and to the other Persons as required by NRS Section 116.31162(1). The lien shall relate only to the Unit against which the Assessment was levied and not to the Condominium Property as a whole.

(c) *Release of Lien.* Upon payment to the Association of the full amount claimed in the Notice of Delinquency, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien (a "*Notice of Release*") stating the satisfaction and release of the amount claimed. The Board may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and Recordation of the Notice of Release as a condition to Recording the Notice of Release. Any Purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Delinquency. A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessment becomes due.

(d) *Sale of Property.* It shall be the duty of the Board to enforce the collection of any amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration or in any other matter permitted by law. The lien on the Unit may be enforced by sale, in the county in which the Unit is situated, by the Association, the Association's attorneys, any title insurance company authorized to do business in Nevada, or other persons authorized to conduct the sale as a trustee, or in any other manner permitted by law, after failure of the Owner to pay any Assessments, or installments thereof, as provided herein. The sale shall be conducted in accordance with the provisions of NRS Chapter 116, or in any other manner permitted by law. The Association, through its agents, shall have the power to enter a credit bid on the Unit at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any

institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section 7.6 may include reasonable attorneys' fees as fixed by the court.

7.7. *Waiver of Use.* No Owner may be exempt from personal liability for Assessments duly levied by the Association, or effect the release of such Owner's Unit from the liens and charges thereof, by waiving or delegating use and enjoyment of the Common Elements as set forth in this Declaration or by abandoning such Owner's Unit.

8. *Obligation for Expenses Relating to Hotel Unit.*

8.1. *Maintenance.* As provided in Sections 3.1 and 3.10 above, the Hotel Unit Owner has granted easements with respect to certain portions of the Hotel Unit and agreed to repair, replace, improve, maintain, manage, operate, and insure the Hotel Unit, all to be done as determined and ordered by the Hotel Unit Owner, or otherwise as provided in Section 4.3. In consideration of the foregoing, each Residential Unit Owner, by acceptance of a deed or other conveyance of a Residential Unit, and whether or not expressly stated, shall be deemed to agree that the costs incurred by the Hotel Unit Owner in (or reasonably allocated to) the repair, replacement, improvement, maintenance, management, operation, tax obligations and insurance of the Shared Components (including reasonable reserves if established by the Hotel Unit Owner, collectively, the "*Hotel Shared Costs*") shall be paid for in part through charges (either Annual Charges, Capital Improvement Charges or Special Charges) imposed against the Residential Units in accordance with the terms hereof. No Owner may waive or otherwise escape liability for charges for the Hotel Shared Costs by non-use (whether voluntary or involuntary) of the Hotel Unit or abandonment of the right to use same. Notwithstanding anything herein contained to the contrary, the Hotel Unit Owner shall be excused and relieved from any and all maintenance, repair and/or replacement obligations with respect to the Hotel Unit to the extent that the funds necessary to perform same, to the extent the obligation of the Residential Unit Owners, are not available through the charges imposed and actually collected. The Hotel Unit Owner shall have no obligation to fund and/or advance any deficit or shortfall in funds which were the obligation of the Residential Unit Owners in order to properly perform the operation, maintenance, repair and/or replacement obligations described herein.

8.2. *Easement.* An easement is hereby reserved and created in favor of the Hotel Unit Owner, and its designees over the Condominium Property for the purpose of entering onto the Condominium Property for the performance of the maintenance, repair and replacement obligations herein described.

8.3. *Charge to Residential Unit Owners; Lien; Personal Obligation.* Each Residential Unit Owner, by acceptance of a deed to a Unit, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Hotel Unit Owner all Annual Charges for the operation and insurance of, and for payment of one hundred percent (100%) of the Hotel Shared Costs (the "*Residential Units Allocated Share*"), the establishment of reasonable reserves for the replacement of the Shared Components and the furnishings and finishings thereof, Transient Rental Fees, if any, Capital Improvement Charges, Special Charges and all other charges hereinafter referred to or lawfully imposed by the Hotel Unit Owner in connection with the repair, replacement, improvement, maintenance, management, operation,