IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability Company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company; AM-GSR HOLDINGS, LLC, a Nevada Limited Liability Company,

Appellants,

vs.

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, as Trustee of the STEVEN W. TAKAKI & FRANCES S. LEE REVOCABLE TRUSTEE AGREEMENT, UTD

Supreme Court No. 86092
District Court Case No. CV12-02222

JANUARY 11, 2000; FARAD TORABKHAN, individually; SAHAR TAVAKOLI, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; USHA RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; LORI K. TOKUTOMI, individually; GARRET TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; ANITA TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN, individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDERICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, as Manager of Condotel 1906 LLC; MAY ANNE HOM, as Trustee of the MAY ANNE HOM TRUST;

MICHAEL HURLEY, individually; DUANE WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; MARILYN WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLEEN LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISTINE MECHAM, individually; KWANG SOON SON, individually; SOO YEU MOON, individually; JOHNSON AKINBODUNSE, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; JAMES TAYLOR, individually; RYAN TAYLOR, individually; KI NAM CHOI, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUN (CONNIE) YOO, individually; SANG SOON (MIKE) YOO, individually; BRETT MENMUIR, as Manager of CARRERA PROPERTIES, LLC; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDRES MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, as Trustee of the RIOPELLE FAMILY TRUST; PATRICIA M. MOLL, individually; DANIEL MOLL, individually,

Respondents.

APPENDIX TO RESPONDENTS' OPPOSITION TO EMERGENCY MOTION UNDER NRAP 27(e) TO STAY ORDERS AND ENFORCE NRCP 62(d)'S AUTOMATIC SUPERSEDEAS BOND STAY

VOLUME 1 OF 3

Submitted for all respondents by:

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ATTORNEYS FOR RESPONDENTS ALBERT THOMAS, et al.

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CODE: 3245
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FILED
JAN - 7 2015
JACQUELINE BRYANT, CLERK
By: D. Marshall
DEPUTY CLERK

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC, a Nevada Limited Liability Company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

Case No. CV12-02222
Dept. No. 10

ORDER APPOINTING RECEIVER AND DIRECTING DEFENDANTS' COMPLIANCE

This Court having examined Plaintiffs' Motion for Appointment of Receiver ("Motion"), the related opposition and reply, and with *good* cause appearing finds that Plaintiffs have submitted the credentials of a candidate to be appointed as Receiver of the assets, properties. books and records, and other items of Defendants as defined herein below and have advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court.

IT IS HEREBY ORDERED that, pursuant to this Court's October 3, 2014 Order, and N.R.S. § 32.010(1), (3) and (6), effective as of the date of this Order, James S. Proctor, CPA, CFE, CVA and CFF ("Receiver") shall be and is hereby appointed Receiver over Defendant Grand Sierra Resort Unit Owners' Association, A Nevada Non-Profit Corporation ("GSRUOA").

The Receiver is appointed for the purpose of implementing compliance, among all condominium units, including units owned by any Defendant in this action (collectively, "the

Property"), with the Covenants Codes and Restrictions recorded against the condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements ("Governing Documents"). (See, Exhibits 1, 2 and 3.)

The Receiver is charged with accounting for all income and expenses associated with the compliance with the Governing Documents from forty-five (45) days from the date of entry of this Order until discharged.

All funds collected and/or exchanged under the Governing Documents, including those collected from Defendants, shall be distributed, utilized, or, held as reserves in accordance with the Governing Documents.

IT IS FURTHER ORDERED that the Receiver shall conduct itself as a neutral agent, of this court and not as an agent of any party.

IT IS FURTHER ORDERED that the Receiver is appointed without the need of filing or posting of a bond.

IT IS FURTHER ORDERED that Defendants MEI-GSR Holdings, LLC and Gage Village Commercial shall cooperate with the Receiver in accomplishing the terms described in this Order.

IT IS FURTHER ORDERED that, to enforce compliance with the Governing Documents the Receiver shall have the following powers, and responsibilities, and shall be authorized and empowered to:

1. ***General***

a. To review and/or take control of:

i. all the records, correspondence, insurance policies, books and accounts of or relating to the Property which refer to the Property, any ongoing construction and improvements on the Property, the rent or liabilities pertaining to the Property.

ii. all office equipment used by Defendants in connection with development; improvement, leasing, sales, marketing and/or conveyance of the Property and the buildings thereon; including all computer equipment, all software programs and

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passwords, and any other information, data, equipment or items necessary for the operations with respect to the Property, whether in the possession and control of Defendants or its principals, agents, servants or employees; provided, however that such books, records, and office equipment shall be made available for the use of the agents, servants and employees of Defendants in the normal course of the performance of their duties not involving the Property.

iii. all deposits relating to the Property, regardless of when received, together with all books, records, deposit books, checks and checkbooks, together with names, addresses, contact names, telephone and facsimile numbers where any and all deposits are held, plus all account numbers.

iv. all accounting records, accounting software, computers, laptops, passwords, books of account, general ledgers, accounts receivable records, accounts payable records, cash receipts records, checkbooks, accounts, passbooks, and all other accounting documents relating, to the Property.

v. all accounts receivable, payments, rents, including all statements and records of deposits, advances, and prepaid contracts or rents, if applicable, including, any deposits with utilities and/or government entities relating to the Property.

vi. all insurance policies relating to the Property.

vii. all documents relating to repairs of the Property, including all estimated costs or repair.

viii. documents reasonably requested by Receiver.

b. To use or collect:

i. The Receiver may use any federal taxpayer identification number relating to the Property for any lawful purpose.

ii. The Receiver is authorized and directed to collect and; open all mail of GSRUOA relating to the Property.

c. The Receiver shall not become personally liable for environmental contamination or health and safety violations.

d. The Receiver is an officer and master of the Court and, is entitled to effectuate the Receiver's duties conferred by this Order, including the authority to communicate *ex.parte* on the record with the Court when in the opinion of the Receiver, emergency judicial action is necessary.

e. All persons and entities owing, any money to GSRUOA directly or indirectly relating to the Property shall pay the same directly to the Receiver. Without limiting the generality of the foregoing; upon presentation of a conformed copy of this order, any financial institution holding deposit accounts, funds or property of GSRUOA turnover to the Receiver such funds at the request of the Receiver.

2. Employment

To hire, employ, and retain attorneys, certified public accountants; investigators, security guards, consultants, property management companies, brokers, appraisers, title companies, licensed construction control companies, and any other personnel or employees which the Receiver deems necessary to assist it in the discharge of his duties.

3. Insurance

a. To maintain adequate insurance for the Property to the same extent and, in the same manner as, it has heretofore been insured, or as in the judgment of the Receiver may seem fit and proper, and to request all presently existing policies to be amended by adding the Receiver and the receivership estate as an additional insured within 10-days of the entry of the order appointing the Receiver. If there is inadequate insurance or if there are insufficient funds in the receivership estate to procure adequate insurance, the Receiver is directed to immediately petition the court for instructions. The Receiver may, in his discretion, apply for any bond or insurance providing coverage for the Receiver's conduct and operations of the property, which shall be an expense of the Property, during the period in which the Property is uninsured or underinsured. Receiver shall not be personally responsible for any claims arising therefore.

b. To pay all necessary insurance premiums for such insurance and all taxes and assessments levied on the Property during the receivership.

4. ***Treatment of Contracts***

a. To continue in effect any contracts presently existing and not in default relating to the Property.

b. To negotiate, enter into and modify contracts affecting any part or all of the Property.

c. The Receiver shall not be bound by any contract between Defendants and any third party that the Receiver does not expressly assume in writing, including any portion of any lease that constitutes the personal obligation of Defendants, but which does not affect a tenant's quiet enjoyment of its leasehold estate.

d. To notify all local, state and federal governmental agencies, all vendors and suppliers, and any and all others who provide goods or services to the Property of his appointment-as Receiver of GSRUOA.

e. No insurance company may cancel its existing current-paid policy as a result of the appointment of the Receiver, without prior order of this Court.

5. ***Collection***

To demand, collect and receive all dues, fees, reserves, rents and revenues derived from the Property.

6. ***Litigation***

a. To bring and prosecute all proper actions for (i) the collection of rents or any other income derived from the Property, (ii) the removal from the Property of persons not entitled to entry thereon, (iii) the protection of the Property, (iv) damage caused to the Property; and (v) the recovery of possession of the Property.

b. To settle and resolve any actual or potential litigation, whether or not an action has been commenced, in a manner which, in the exercise of the Receiver's judgment is most beneficial to the receivership estate.

7. ***Reporting***

a. The Receiver shall prepare on a monthly basis. commencing the month ending 30 days after his appointment, and by the last day of each month thereafter, so long as the Property shall remain in his possession or care, reports listing any Receiver fees (as described herein below), receipts and disbursements, and any other significant operational issues that have occurred during the preceding month. The Receiver is directed to file such reports with this Court. The Receiver shall serve a copy of this report on the attorneys of record for the parties to this action.

b. The Receiver shall not be responsible for the preparation and filing of tax returns on behalf of the parties.

8. ***Receivership Funds /Payments/ Disbursements***

a. To pay and discharge out of the Property's rents and/or GSRUOA monthly dues collections all the reasonable and necessary expenses of the receivership and the costs and expenses of operation and maintenance of the Property, including all of the Receiver's and related fees, taxes, governmental assessments and charges and the nature thereof lawfully imposed upon the Property.

b. To expend funds to purchase merchandise, materials, supplies and services as the Receiver deems necessary and advisable to assist him in performing his duties hereunder and to pay therefore the ordinary and usual rates and prices out of the funds that may come into the possession of the Receiver.

c. To apply, obtain and pay any reasonable fees for any lawful license permit or other governmental approval relating to the Property or the operation thereof, confirm the existence of and, to the extent, permitted by law, exercise the privilege of any existing license or permit or the operation thereof, and do all things necessary to protect and maintain such licenses, permits and approvals.

d. To open and utilize bank accounts for receivership funds.

e. To present for payment any checks, money orders or other forms of payment which constitute the rents and revenues of the Property, endorse same and collect the proceeds thereof.

9. ***Administrative Fees and Costs***

a. The Receiver shall be compensated at a rate that is commensurate with industry standards. As detailed below, a monthly report will be created by the Receiver describing the fee, and work performed. In addition, the Receiver shall be reimbursed for all expenses incurred by the Receiver on behalf of the Property.

b. The Receiver, his consultants, agents, employees, legal counsel, and professionals shall be paid on an interim monthly basis. To be paid on a monthly basis, the Receiver must serve, a statement of account on all parties each month for the time and expense incurred in the preceding calendar month. If no objection thereto is filed with the Court and served on the attorneys of record for the parties to this action on or within ten (10) days following service thereof, such statement of account may be paid by the Receiver. If an objection is timely filed and served, such statement of account shall not be paid absent further order of the Court. In the event objections are timely made to fees and expenses, the portion of the fees and expenses as to which no objection has been interposed may be paid immediately following the expiration of the ten-day objection period: The portion of fees and expenses to which: an objection has been timely interposed may be paid within ten (10) days of an agreement among the parties or entry of a Court order adjudicating the matter.

c. Despite the periodic payment of Receiver's fees and administrative expenses, such fees and expenses shall be submitted to the Court for final approval and confirmation in the form of either, a stipulation among the parties or the, Receiver's final account and report.

d. To generally do such other things as may be necessary or incidental to the foregoing specific powers directions and general authorities and take actions relating to the Property beyond the scope contemplated by the provisions set forth above, provided the Receiver obtains prior court approval for any actions beyond the scope contemplated herein.

10. ***Order in Aid of Receiver***

IT IS FURTHER ORDERED Defendants, and their agents, servants and employees, and those acting in concert with them, and each of them, shall not engage in or perform directly or indirectly, any or all of the following acts:

a. Interfering with the Receiver, directly or indirectly; in the management and operation of the Property.

b. Transferring, concealing, destroying, defacing or altering any of the instruments, documents, ledger cards, books, records, printouts or other writings relating to the Property, or any portion thereof.

c. Doing any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Property or the interest of Plaintiffs in the Property.

d. Filing suit against the Receiver or taking other action against the Receiver without an order of this Court permitting the suit or action; provided, however, that no prior court order is required to file a motion in this action to enforce the provisions of the Order or any other order of this Court in this action.

IT IS FURTHER ORDERED that Defendants and any other person or entity who may have possession, custody or control of any Property, including any of their agents, representatives, assignees, and employees shall do the following:

a. Turn over to the Receiver all documents which constitute or pertain to all licenses, permits or, governmental approvals relating to the Property.

b. Turn over to the Receiver all documents which constitute or pertain to insurance policies, whether currently in effect or lapsed which relate to the Property.

c. Turn over to the Receiver all contracts, leases and subleases, royalty agreements, licenses, assignments or other agreements of any kind whatsoever, whether currently in effect or lapsed, which relate to .any interest in the Property.

d. Turn over to the Receiver all documents pertaining to past, present or future construction of any type with respect to all or any part of the Property.

e. Turn over to the Receiver all rents, dues, reserves and revenues derived from the Property wherever and in whatsoever mode maintained.

f. Nothing in the Order shall be intended to, nor shall be construed to, require the Defendants to turn over any documents protected from disclosure by either the attorney-client privilege or the attorney work product privilege.

g. Immediately advise the Receiver about the nature and extent of insurance coverage on the Property.

h. Immediately name the Receiver as an additional insured on each insurance policy on the Property.

i. DO NOT cancel, reduce, or modify the insurance coverage.

IT IS FURTHER ORDERED that nothing contained herein, nor any powers conferred on the Receiver pursuant to this Order, shall in any manner delegate, confer, empower or grant to the Receiver any interest in the management of the gaming assets of the property, or confer any rights to share in the management or the profit or loss of the casino operations, nor in any manner manage any portion of the Property not specifically included in this order.

IT IS FURTHER ORDERED that the Receiver shall promptly, if requested to do so, execute any further additional documents reasonably requested by Defendants' lenders or others to confirm that other than as set forth herein, no transference, sale, hypothecation, or other encumbrance has resulted which would create a change in ownership or management of MEI-GSR.

DATED this 6 day of Jan, ~~2014.~~ 2015

DISTRICT ~~COURT~~ JUDGE

Submitted by:

/s/ Jarrad C. Miller
Jarrad C. Miller, Esq.
Attorney for Plaintiffs

Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501

Index of Exhibits

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2	Unit Maintenance Agreements	17
3	Unit Rental Agreements	17

EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

DOC # 3548504
06/27/2007 02:44:03 PM
Requested By
GRAND SIERRA RESORT
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: $147.00 RPTT: $0.00
Page 1 of 109

WHEN RECORDED RETURN TO:

R. Shawn Oliphant, Esq.
Fahrendorf, Viloria, Oliphant & Oster, LLP
327 California Avenue
Reno, Nevada 89509
(775) 348-9999

(Space above line for Recorder's use only)

SEVENTH AMENDMENT TO CONDOMINIUM DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS OF EASEMENTS FOR

HOTEL-CONDOMINIUMS AT GRAND SIERRA RESORT

(A Nevada Common-Interest Community)

EXHIBIT
1
8/22/13 MT

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ARTICLE **Page**

THIS DECLARATION is made and entered into by Grand Sierra Operating Corp., a Nevada corporation (the "Declarant");

WITNESSETH:

WHEREAS, the Declarant holds legal title to the parcel of real estate situated in the City of Reno, County of Washoe, Nevada (hereinafter called the "Parcel") and legally described on Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, the Declarant desires and intends by this Declaration to submit the Property, as hereinafter defined, to the provisions of the Uniform Common-Interest Ownership Act of the State of Nevada, as amended from time to time (hereinafter called the "Act"), as a Condominium within the meaning of the Act, situated within the County of Washoe; and is further desirous of establishing, for its own benefit and that of all future owners or occupants of the Property, and each part thereof, certain easements and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the use and maintenance thereof; and

WHEREAS, the Declarant desires and intends for the Condominium to be owned and operated as a mixed use hotel condominium property; and

WHEREAS, the Declarant reserves various developmental rights and special Declarant's rights, as set forth below in detail, including the right to annex additional mixed use real estate into the Condominium, which may include additional buildings or portions thereof containing any combination of Unit types described herein, and if such additional mixed use elements are annexed, Declarant reserves the right to restrict voting rights appurtenant to the Units to matters involving the building or buildings containing said units and/or to issues of concern to particular Unit types.

WHEREAS, the Common Elements of the Condominium will not include exterior wall facades and finishes, the Building roof(s), lobby space, front desk areas, office space, housekeeping closets, elevators, stairways or corridors, or portions of certain mechanical and operating systems which serve the Condominium Property. Such facilities are located within the "Shared Facilities Unit" (defined below) or within the remainder portion of the Parcel (defined below), which Shared Facilities Unit and remainder parcel and the additions, alterations, betterments and improvements thereto initially shall be owned, operated, decorated, maintained, repaired and replaced by the Declarant, and each Unit Owner shall pay directly to the Declarant their respective pro-rata share of certain costs of such ownership, operation, decoration, maintenance, repair and replacement, as more fully provided herein. The Declarant also will make certain portions of the Shared Facilities Unit defined herein as the "Public Shared Facilities" available to the Unit Owners for use in day-to-day Hotel operations as more fully provided herein; and

WHEREAS, the name of the Condominium shall be the "Hotel-Condominiums at Grand Sierra Resort "; and

WHEREAS, the Declarant desires and intends that the several owners, mortgagees, occupants, and other persons acquiring any interest in the Property shall at all times enjoy the

benefits of, and shall at all times hold their interests subject to, the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of ownership and to facilitate the proper administration of such Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration shall run with and burden the Parcel and all Persons having or acquiring any right, title or interest in the Parcel, or any part thereof, and their successive owners, heirs, successors, and assigns, and shall be enforceable as covenants running with the land and/or equitable servitudes.

NOW, THEREFORE, the Declarant, as the legal title holder of the Parcel, and for the purposes above set forth; DECLARES AS FOLLOWS:

ARTICLE 1

DEFINITIONS

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

Association. Grand Sierra Resort Unit-Owners' Association, a Nevada nonprofit corporation.

Additional Parcel. All or any portion of the Future Expansion Parcel, as designated on the Plat, that hereafter may be submitted to the Act pursuant to the provisions of Article 11 of this Declaration, including the New Construction Units.

Allocated Interests. The undivided interests in the common elements, the liabilities for common expenses, and votes in the Association.

Board. The persons determined pursuant to the Bylaws and Article 5 hereof who are vested with the authority and responsibility of administering the Association.

Building. The existing building located on the Parcel that will contain certain Units, as shown by the survey depicting the respective floors of the Building.

Bylaws. The provisions for the administration of the Association, as the same may be from time to time duly amended.

Commercial Unit. The Units designated as Commercial Units on the Plat (or any amendment thereto), as a part of the Property, and any additional Commercial Units established pursuant to this Declaration, not to exceed 1,000 total Commercial Units. Subject to the conversion right set forth in Section 7.1(n) below, the term "Commercial Unit" shall specifically exclude the Hotel Units, Residential Units, and Shared Facilities Units.

Commercial Unit Owner. The Unit Owner or Owners, from time to time, of the Commercial Units.

Common Elements. All portions of the Condominium Property except the Units, more specifically described in Section 3.1 hereof. The Shared Facilities Unit is a Unit and shall not constitute a portion of the Common Elements. The Condominium has been established in such a manner as to minimize Common Elements. There are no limited common elements within the Property.

Common Expenses. Expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves. The Common Expenses are distinct from and are in addition to the Shared Facility Expenses and the Hotel Expenses.

Condominium Property. A portion of the real property and space within the Parcel, the improvements and structures erected, constructed or contained therein, thereon or thereunder, the easements, rights and appurtenances belonging thereto, and the fixtures, intended for the mutual use, benefit or enjoyment of the Owners, that is hereby or hereafter submitted and subjected to the provisions of this Declaration and to the Act from time to time.

Declarant. Grand Sierra Operating Corp., a Nevada corporation, and its successors and assigns.

Declaration. This instrument, by which the Property is submitted to the provisions of the Act, including such amendments, if any, to this instrument as may from time to time be adopted pursuant to the terms hereof.

FF&E. As defined in Section 4.5(b)(i) below, and in each Purchase and Sale Agreement.

Future Expansion Parcel. The parcel and tract of real estate legally described on Exhibit C attached hereto and made a part hereof.

Hotel. The existing hotel formerly known as the Reno Hilton®, consisting of approximately 1995 guest rooms, ten restaurants, a casino, spa, approximately 200,000 square feet of meeting and convention space, and related facilities and out parcels. Hilton® is a registered trademark of Hilton Hospitality, Inc., an affiliate of Hilton Hotels Corporation. The Declarant and Hilton have not, and do not intend to, negotiate a management agreement to manage the Hotel or the Property.

Hotel Expenses. As defined in Section 6.10 below. The Hotel Expenses include the Hotel Reserve, and are distinct from and in addition to the Shared Facilities Expenses and the Common Expenses.

Hotel Reserve. As defined in Section 6.10(b) below.

Hotel Guest. A transient guest of the Hotel, which may include Unit Owners of Hotel Units.

Hotel Management Company. The management company, its successors in interest or assigns, engaged by the Declarant in its sole and absolute discretion, to manage the day-to-day operations of the Hotel and perform such other functions as may be specified in the management agreement between the Declarant and such Hotel Management Company.

Hotel Unit. A part of the Property more specifically described in Article 2, designed and furnished for use as a full-service hotel room which may be occupied by the Unit Owner or, in the sole discretion of the Unit Owner, which may be used from time to time by the Unit Owner and other Occupants, as transient guests, as more fully described in Section 7.1(a), or such other uses permitted by this Declaration if the Unit is an Unsold Unit; but specifically excluding any Commercial Unit, Residential Unit, and Shared Facilities Unit. The Declarant reserves the right to create a maximum of 8,000 Hotel Units pursuant to the provisions of this Declaration.

Hotel Unit Maintenance Program. The mandatory program pursuant to which the Hotel Management Company provides certain services (including, without limitation, reception desk staffing, in-room services, guest processing services, housekeeping services, Hotel Unit inspection, repair and maintenance services, and other services), all as more particularly described in the Unit Maintenance Agreement between each Unit Owner of a Hotel Unit and the Hotel Management Company.

Majority of the Unit Owners. Those Unit Owners, without regard to their number, who own more than fifty percent (50%) in the aggregate of the entire undivided ownership interest in the Common Elements. Any specified percentage of the Unit Owners shall mean those Unit Owners who, in the aggregate, own such specified percentage of the entire undivided ownership interest in the Common Elements.

New Construction Units. Those certain new mixed-use construction condominium units the Declarant may construct, as designated on the Plat, which may consist of additional Commercial Units, Hotel Units, Residential Units, Shared Facilities Units, or any combination thereof, and that, if constructed, the Declarant intends to restrict voting rights pertaining thereto as provided herein, and intends to submit such Units to the Act as a part of the Future Expansion Parcel upon completion of construction of such Units.

Occupant. Person or Persons, other than a Unit Owner, in possession of a Unit, including, without limitation, transient Hotel Guests.

Parcel. The entire tract of real estate described in the first Recital of this Declaration.

Parking Area. That part of the project consisting of parking spaces and elements appurtenant thereto provided for parking passenger vehicles, and not comprising any portion of the Property.

Person. A natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

Plat. The plats of survey of the Parcel, and all of the Units in the Property submitted to the provisions of the Act, said Plat being attached hereto as Exhibit A and made a part hereof and recorded as part of this Declaration, and as amended from time to time in accordance with the provisions of Article 11 of this Declaration.

Private Shared Facilities. Those portions of the Shared Facilities Unit that are reserved for exclusive use and access by the Shared Facilities Unit Owner, the Hotel Management Company (to the extent authorized by the Shared Facilities Unit Owner) and their respective

permittees, and which are not subject to the Public Shared Facilities Easement. The Private Shared Facilities shall include, without limitation, any and all of the following components to the extent located within the Condominium Property: (i) structural components, including without limitation, any and all exterior walls and finishes, roof trusses, roof support elements, and insulation; (ii) utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems, including, without limitation, wires, conduits, pipes, ducts, panels, pumps, antennae, satellite dishes, transformers, computers, controls, control centers, cables, mechanical equipment areas, utility rooms, water heaters, and other apparatus used in the delivery of utility, mechanical, telephonic, telecommunications, television, internet, electrical, plumbing and/or other services; (iii) heating, ventilating and air conditioning systems, including, without limitation, air handlers, ducts, condensers, fans, water towers and other apparatus used in the delivery of HVAC services; (iv) passenger and freight elevator motors and cables, systems and/or equipment used in the operation of the passenger and freight elevators (but not including the space contained within the passenger elevator shafts and cars used solely for service to the Condominium Property, which shall be part of the Common Elements); (v) trash rooms, trash chutes and any and all trash collection and/or disposal systems; (vi) housekeeping closets and facilities; (vii) Building security and life safety systems and monitoring systems; and (xi) any other portion of the Shared Facilities Unit not expressly made a part of the Public Shared Facilities or not expressly made subject to the Public Shared Facilities Easement.

Project. The larger mixed-use, mixed-ownership complex of which the Property is a part, including the balance of the Hotel, the Retail Property, the Public Parking Property, the out parcels and all other property comprising a portion of the Building or the larger mixed-use Parcel of which the Property is a part.

Property. Those portions of the land, property and space contained within the Parcel, the improvements and structures erected, constructed or contained therein or thereon (including portions of the Building), and the easements, rights and appurtenances belonging thereto, and the fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, as hereinafter defined and as described on Exhibit A attached hereto, comprising the Condominium, and submitted to the provisions of the Act pursuant to this Declaration. The Property shall include such portions of the Future Expansion Parcel as may from time to time be included within the Condominium and submitted to the provisions of the Act in accordance with the provisions of this Declaration, but only upon such submission.

Public Parking Property. That portion of the above-ground parking facilities located adjacent to the Building that is open to the general public for the parking of passenger vehicles, together with certain entrance and exit ramps, gates, driveways, and other related facilities. The Public Parking Property is located within the Project but does not comprise any portion of the Property.

Public Shared Facilities. That portion of the Shared Facilities Unit, located within the Condominium Property, that is subject to the Public Shared Facilities Easement for access and use by the Hotel Management Company and the Unit Owners.

Public Shared Facilities Easement. The easement rights over the Public Shared Facilities and Future Expansion Parcel granted to the Declarant, the Association, the Hotel

Management Company, and the Unit Owners, as more fully described in Section 4.3(c) below. The Public Shared Facilities Easement shall include, without limitation, use of (i) certain stairways, corridors, hallways, entrances and exits; and (ii) all passenger elevator cabs servicing the Condominium Property.

Residential Unit. A part of the Property more specifically described in Article 2, designed, constructed and furnished for use as a residential condominium, and not necessarily available for use by transient guests or bearing the appearance of a hotel room; but specifically excluding any Commercial Unit, Hotel Unit, and Shared Facilities Unit. The Declarant reserves to right to create a maximum of 8,000 Residential Units pursuant to the provisions of this Declaration.

Retail Property. The existing retail concourse located within the Building, and certain ancillary facilities related thereto. The Retail Property is located within the Project, and in general is subject to developmental rights as more particularly described on the plan of development, but does not comprise any portion of the Property unless and until an amended declaration is recorded by the Declarant incorporating all or any portion of the Retail Property within the Condominium Property.

Shared Facilities Expenses. As defined in Section 6.9 below. The Shared Facilities Expenses include the Shared Facilities Reserve, and are distinct from and in addition to the Hotel Expenses and the Common Expenses.

Shared Facilities Reserve. As defined in Section 6.9(b) below.

Shared Facilities Unit. All portions of the Property identified on the Plat attached hereto as Exhibit A, labeled as a portion of a "Shared Facilities Unit," and all portions of the Property identified in Section 2.1(b) of this Declaration as being a part of a "Shared Facilities Unit," including all additions, alterations, betterments and improvements thereto, thereupon or thereunder, including, without limitation, the following components to the extent located within the Condominium Property: (i) exterior and interior wall finishes, the Building facade, roof trusses, roof support elements, and insulation; (ii) stairways, entrances and exits; (iii) utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems, including, without limitation, wires, conduits, pipes, ducts, panels, pumps, antennae, satellite dishes, transformers, computers, controls, control centers, cables, mechanical equipment areas, utility rooms, water heaters serving multiple units and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, television, Internet, electrical, plumbing and/or other services; (iv) heating, ventilating and air conditioning systems, including, without limitation, air handlers, flues, ducts, shafts, conduits, condensers, fans, generators, water towers and other apparatus used in the delivery of HVAC services; (v) all passenger and freight elevator shaft components, elevator cabs, elevator motors and cables, systems and/or equipment used in the operation of the passenger and freight elevators (but not including the space contained within the passenger elevator shafts and cars used solely for service to the Condominium Property, which shall be part of the Common Elements); (vi) trash rooms, trash chutes and any and all trash collection and/or disposal systems; (vii) any desk areas, office space, concierge areas, bell desks and other Hotel operations areas located within the Condominium Property; (viii) housekeeping closets and facilities; and (ix) Building security and life safety systems and

monitoring systems. The Initial Shared Facilities Unit is comprised of both the Public Shared Facilities (which are shared and used by all Unit Owners and Hotel Guests, and subject to certain easement rights in the Declarant, the Association, the Hotel Management Company, and the Unit Owners) and the Private Shared Facilities, which are used exclusively by the Owner of the Shared Facilities Unit, the Hotel Management Company (to the extent authorized by the Owner of the Shared Facilities Unit) and their respective permittees. The existing Shared Facilities Unit will be owned initially by the Declarant, and may be transferred or conveyed by Declarant to any Person, including, without limitation, any affiliate, parent or subsidiary of Declarant. The Declarant reserves the right to create a maximum of 100 Shared Facilities Units pursuant to the provisions of this Declaration.

Unit. A part of the Property more specifically described in Article 2. Except as otherwise provided herein, the term "Unit" shall be deemed to include a Hotel Unit, a Residential Unit, a Shared Facilities Unit or a Commercial Unit, as the case may be, designated for use by the Unit Owner and Occupants of such Unit.

Unit Maintenance Agreement. The agreement that each Unit Owner of a Hotel Unit must enter into with the Hotel Management Company (and to which each Unit Owner of a Hotel Unit must remain a party) for so long as such Unit Owner owns a Hotel Unit in the Condominium, in the then-current form promulgated from time to time by the Hotel Management Company. By entering into the Unit Maintenance Agreement, the Unit Owner enrolls such Unit Owner's Hotel Unit in the Hotel Unit Maintenance Program, establishing the terms and conditions for the participation of a Unit Owner and Hotel Unit in the Hotel Unit Maintenance Program, and the services which will be provided to the Unit Owner by the Hotel Management Company.

Unit Owner. The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit Ownership.

Unit Ownership. A part of the Property consisting of one Unit and its undivided interest in the Common Elements and other allocated interests appurtenant thereto.

Unsold Unit. Those Units initially offered for sale by Declarant which are owned by Declarant and have not yet been sold, and legal title has not yet been conveyed, to an unrelated Person.

Voting Member. One person with respect to each Unit Ownership, designated pursuant to Section 5.3, who shall be entitled to vote at any meeting or in any election.

ARTICLE 2

UNITS

2.1 Description and Ownership.

(a) All Units are delineated on the Plat and listed on Exhibit B.

(b) The Hotel Units consist of the space enclosed and bounded by the horizontal and vertical planes set forth in the delineation thereof on Exhibit A, and exclude the following: all physical real property, including fixtures, located within such horizontal and vertical planes, including but not limited to walls, floors, ceilings, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof, all interior partitions, bearing walls, bearing columns, and doors, all shutters, awnings, window boxes, doorsteps, stoops, pads and mounts for heating and air conditioning systems, pipes, ducts, flues, chutes, conduits, wires, and other utility, heating, cooling or ventilation systems or equipment located within such Unit (anything herein to the contrary notwithstanding). The Hotel Units also do not include structural components of the Building, the term "structural components" including structural columns or pipes, wires, conduits, ducts, flues, shafts, and private or public utility lines running through the Unit and forming a part of any system serving the Unit or more than the Unit, or any components of communication or cable television systems, if any, located in the Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit, or within the horizontal and vertical planes set forth in the description of any Unit on Exhibit A. The description of each Unit within this Declaration shall consist of the identifying number or symbol of such Unit as shown on Exhibit A. Every deed, lease, mortgage or other instrument may legally describe a Unit by the name of the common-interest community, the file number and book or other information to show where the Declaration is recorded, the county in which the common-interest community is located, and the identifying number or symbol of the Unit as shown on Exhibit A, and every such description shall be deemed good and sufficient for all purposes. All tangible real property excluded from the Hotel Units under this subsection, and contained within the Property, shall be included within the Shared Facilities Unit.

(c) Except as provided by the Act or as provided elsewhere herein, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause such Unit Owner's Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit A. Notwithstanding the foregoing, and notwithstanding anything else to the contrary contained in this Declaration, in accordance with and pursuant to Nevada Revised Statutes "NRS" 116.2111(1)(c), 116.2112 and 116.2113, Residential Unit Owners may, at their own expense, subdivide or combine Units owned by such Residential Unit Owners and locate or relocate Common Elements affected or required thereby, subject to approval by the Board (which approval shall not be unreasonably withheld, conditioned or delayed) all as more fully described below. In accordance with the Act, in connection with such subdivision or combination of such Unit(s), the Allocated Interests allocated to such Unit(s) may be re-allocated or adjusted by amendment to this Declaration in the manner specified in the Act. Any Residential Unit Owner desiring to combine or subdivide Unit(s) in accordance herewith shall make written application to the Board with accompanying drawings identifying the proposed subdivision or combination of Units. Such drawings shall be prepared by an architectural or surveying firm selected by or reasonably acceptable to the Board. The Board shall have a period of thirty (30) days from the date of such submission to consider the proposed subdivision or combination of Unit(s), at which time the Board shall render its approval or disapproval of such proposal. If the Board approves such proposal, upon the Board rendering such approval either the Unit Owner or the Board (at the Board's sole discretion, and in either case at the Residential Unit Owner's sole cost and expense) shall cause to be prepared a proposed form of amendment to this Declaration with a proposed amendment to the Plat attached hereto (amending those Plat

sheets identifying the Units and Common Elements affected by such proposed subdivision or combination of Units) prepared by a licensed Nevada land surveyor in accordance with the Plat requirements set forth in the Act and consistent with the Plat appended to the recorded Declaration. Within thirty (30) days after the Board's receipt of such proposed form of amendment to this Declaration and proposed amendment to the Plat, the Board shall deliver to such Unit Owner its proposed revisions to the proposed amendment to this Declaration and the Plat, if any. Upon the Board's review and approval of a satisfactory amendment to this Declaration and the Plat pursuant to this subsection, the Board shall execute and deliver for recordation (at such Unit Owner's sole cost and expense) such amendment and amended Plat sheets, and such documents shall be executed and recorded in accordance with NRS 116.2112 or 116.2113.

(d) Reserved.

(e) Reserved.

2.2 Certain Structures Not Constituting Part of a Unit. Except as a tenant in common with all other Unit Owners, and except for the Unit Owner of the Shared Facilities Unit, no Unit Owner shall own any structural components of the Building, including structural columns or pipes, wires, conduits, ducts, flues, shafts, or public utility lines running through that Unit Owner's Unit and forming a part of any system serving that Unit or any other Unit Owner's Unit, or any components of communication systems or cable television systems, if any, located in that Unit Owner's Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit, or within the horizontal and vertical planes set forth in the description of such Unit on Exhibit A.

2.3 Shared Facilities Unit. The Shared Facilities Unit includes both the Public Shared Facilities (to which the Unit Owners of the Hotel Units and the Commercial Units, the Association and the Hotel Guests have certain ingress, egress, access and other easement rights as more particularly described in Section 4.3(e) below) and the Private Shared Facilities, which are reserved for the exclusive use and access by the Owner of the Shared Facilities Unit, the Hotel Management Company (to the extent authorized by the Owner of the Shared Facilities Unit) and their respective permittees. In consideration of the various easement and other rights being granted to the Unit Owners of the Hotel Units, the Unit Owners of the Residential Units, the Unit Owners of the Commercial Units, the Association, and the Hotel Guests, and in consideration of the functional importance of the Shared Facilities Unit in connection with the operation of the Hotel, all Unit Owners other than the Unit Owner of the Shared Facilities Unit shall be obligated to pay to the Unit Owner of the Shared Facilities Unit each Unit Owner's proportionate share of the Shared Facilities Expenses as and when described in Section 6.9 below. The Declarant, as Owner of the Shared Facilities Unit, or the successor Unit Owner of the Shared Facilities Unit, shall have the right, from time to time, to expand, alter, relocate, withdraw and/or eliminate portions of the Shared Facilities Unit, create additional Shared Facilities Units, subdivide any Shared Facilities Unit, and reallocate the Allocated Interests to conform to any such changes, without obtaining the consent or approval of the Association, the Board, any Unit Owner or the Hotel Management Company, and to record any and all amendments to this Declaration to effectuate such expansion, alteration, relocation, withdrawal and/or elimination; provided, however, that in the reasonable opinion of the Declarant or any

successor Unit Owner of the Shared Facilities Unit any portions of the Shared Facilities Unit withdrawn shall not materially adversely affect the Unit Owners or Hotel Guests with respect to pedestrian ingress, egress and access to and from the Condominium Property, the adjoining public street, the Hotel Units, the Residential Units, and the Commercial Units, or otherwise materially adversely affect business operations in the Hotel. In furtherance of the foregoing, the Declarant, as the initial Unit Owner of the Shared Facilities Unit, also reserves the absolute right at any time, and from time to time, for itself and any successor Unit Owner of the Shared Facilities Unit, to construct additional facilities upon the Property and to determine whether same shall be deemed a portion of the Shared Facilities Unit. In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, and its respective successors, assigns, agents and designees, and each of them singly without the other's concurrence, as attorney-in-fact to do or cause the foregoing to be done. The acceptance of each deed, mortgage, trust deed or other instrument with respect to a Unit Ownership shall be deemed a grant of such power to each of said attorneys-in-fact, an acknowledgment of a consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to record any and all such supplements. This power granted to said attorneys-in-fact shall run with and burden the Parcel and all Persons having or acquiring any right, title or interest in the Parcel, or any part thereof, and their successive owners and assigns, and shall be enforceable as a covenant running with the land and/or equitable servitude.

2.4 **Real Estate Taxes**. It is understood that real estate taxes are to be separately taxed to each Unit Owner for that Unit Owner's Unit and its corresponding percentage of ownership in the Common Elements as provided in the Act.

ARTICLE 3

COMMON ELEMENTS

3.1 **Description**. The Condominium has been established in such a manner as to minimize Common Elements. There are no limited common elements within the Property. The Common Elements shall consist of the space contained within the passenger elevator shafts and cars exclusively servicing the Condominium Property, and a portion of the space contained within the hallways of the Condominium Property, as described on Exhibit A.

3.2 **Ownership of Common Elements**. Each Unit Owner shall be entitled to the percentage of ownership in the Common Elements and Common Expenses allocated to the respective Unit owned by such Unit Owner, as set forth in Exhibit B attached hereto. The percentages of ownership interests set forth in Exhibit B have been computed and determined in accordance with the Act, and shall remain constant and shall not be changed, except as specifically permitted under the Act and this Declaration, without unanimous written consent of all Unit Owners and all First Mortgagees (as hereinafter defined in Section 10.1 hereof). Said ownership interest in the Common Elements and other Allocated Interests shall be an undivided interest, and the Common Elements and other Allocated Interests shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separately from the percentage of ownership in the Common Elements and other Allocated Interests corresponding to said Unit. The undivided percentage of ownership in the Common Elements and other Allocated Interests

corresponding to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to that Unit.

ARTICLE 4

GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

4.1 **Submission of Property to the Act**. The Property is hereby submitted to the provisions of the Uniform Common-Interest Ownership Act of the State of Nevada.

4.2 **No Severance of Ownership**. No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to such Unit Owner's Unit Ownership without including therein both such Unit Owner's interest in the Unit and such Unit Owner's corresponding percentage of ownership in the Common Elements and other Allocated Interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to convey a Unit Owner's interest in the Unit without conveying the Unit Owner's percentage of ownership in the Common Elements and other Allocated Interests shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein. Any such deed, mortgage, lease or other instrument purporting to convey a Unit Owner's percentage of ownership in any Allocated Interest without conveying the Unit Owner's interest in the Unit is void.

4.3 **Easements**.

(a) **Encroachments**. In the event that (i) by reason of the construction, repair, settlement or shifting of the Building or any other improvements, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or any other Unit; or (ii) by reason of the design or construction of any Unit, it shall be necessary or advantageous to a Unit Owner to use or occupy any portion of the Common Elements for any reasonable use appurtenant to said Unit, which will not unreasonably interfere with the use or enjoyment of the Common Elements by any other Unit Owner; or (iii) by reason of the design or construction of utility and ventilation systems, any mains, pipes, ducts or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any Unit; then in any such case, valid easements for maintenance of such encroachment and for such use of the Common Elements hereby are established and shall exist for the benefit of such Unit, or the Common Elements, as the case may be, so long as such reason for use exists and as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Elements be created in favor of any Unit Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by any other Unit Owner or has been created by the Unit Owner or such Unit Owner's agent through intentional or willful conduct.

(b) **Easements for Utilities and Commercial Entertainment**. SBC, AT&T, Sierra Pacific Power Company, the City of Reno, Truckee Meadows Water Authority, and all other existing and future suppliers of utilities serving the Property and any person providing cable

television or other similar entertainment services to any Unit Owners or to the Property, are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace, conduits, cables, pipes and wires and other equipment into, over, under, along and on any portion of the Common Elements and any Unit for the purpose of providing the Property, any Additional Parcel or the Future Expansion Parcel with utility, cable television and entertainment services, together with the reasonable right of ingress to and egress from the Property for said purpose; and the Declarant, Board or Association may hereafter grant other or additional easements for utility, cable television or entertainment purposes (which may include premium movie channels and pay-per-view service) and for other purposes including such easements as the Declarant or Owner of the Shared Facilities Unit may from time to time request including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Common Elements and the Public Shared Facilities, for the benefit of the Property, over, under, along and on any portion of said Common Elements and the Public Shared Facilities, and each Unit Owner hereby grants the Board, Shared Facilities Unit Owner, or Declarant, as appropriate, an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing (provided that with respect to all easements granted hereby or pursuant hereto, no Unit Owner shall be deprived of, or be subjected to material interference with, the use of such Unit Owner's Unit, other than reasonably and temporarily). Each mortgagee of a Unit shall be deemed to consent to and be subordinate to any easement granted herein and also grants such power of attorney to the Board, Shared Facilities Unit Owner, or Declarant, as appropriate, to effectuate the foregoing. Easements are also hereby declared and granted to the Declarant, Board and Association and to the suppliers of utilities or cable television or entertainment lines described above in this paragraph to install, lay, operate, maintain, repair and replace any pipes, wire, ducts, conduits, cables, public utility lines, entertainment lines, components of the communications systems, if any, or structural components, which may run through the walls forming the outer boarder of a Unit and which constitute portions of the Shared Facilities Unit.

The Declarant hereby reserves to itself and the Association, and their respective successors and assigns, the right, without notice to, or the consent of, any Unit Owner or mortgagee of a Unit Ownership: (i) to record a supplement to the Plat showing the location of any or all of such utility or commercial entertainment conduits, pipes, electrical wiring, transformers and switching apparatus and other equipment (or such other equipment and facilities described in subparagraphs (iv) and (v) of Section 4.3(c) below) "as built," and (ii) to record, from time to time, additional supplements, showing additions, modifications and deletions to any or all of such conduits, pipes, electrical wiring, transformers and switching apparatus and other equipment. When the location of the easement to any such utility or other entity is shown by any supplement or additional supplement to the Plat as aforesaid, the easement granted by this Section 4.3(b) to such utility or other entity shall be limited to the area or areas located within ten (10) feet on either side of the equipment of such utility or other entity shown on such supplement or additional supplement or such other area designated in the supplement by the Declarant or Association. A power coupled with an interest is hereby granted to the Declarant and the Association, acting by and through their respective duly authorized officers, their respective successors, assigns, agents and designees, and each of them singly without the other's concurrence, as attorney-in-fact to do or cause the foregoing to be done. The acceptance of each deed, mortgage, trust deed or other instrument with respect to a Unit Ownership shall be deemed a grant of such power to each of said attorneys-in-fact, an

acknowledgment of a consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to record any and all such supplements.

(c) **Blanket Easement in Favor of Declarant and Other Parties.** The right of the Unit Owners to use and possess the Common Elements as set forth in Section 4.4(a) hereof shall be subject to a blanket easement over the Common Elements (including those now or hereafter located on any Additional Parcel) in favor of the Declarant, the Shared Facilities Unit Owner, and their respective representatives (including the Hotel Management Company), agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purpose of (i) access and ingress to and egress from the Property, the Shared Facilities Unit, the New Construction Units and the Future Expansion Parcel, or any part thereof, (ii) construction, installation, repair, replacement and restoration of utilities, buildings, landscaping and any other improvements on the Parcel, the Shared Facilities Unit, the New Construction Units and the Future Expansion Parcel, or any part thereof, including the right to restrict and regulate access to the Common Elements and the Shared Facilities Unit for the purposes of completing construction of the Building, Common Elements or Units in the Building, and performing any and all construction activities in combining, subdividing, altering and/or modifying any Unsold Unit, (iii) the installation and maintenance of signs advertising the Units on the Parcel and the Future Expansion Parcel or any part thereof, as well as signs advertising and/or providing directions to the Spa, the Retail Property, meeting facilities, the casino, the restaurants and any other portion of the Building having the right to place signage on the Property pursuant to and in accordance with this Declaration and signs directing potential purchasers to the sales office and models erected in connection with such Units and other components of the Project and for such purposes as described in Section 7.1(k) hereof, (iv) the construction, installation, maintenance, repair, replacement, refurbishment and restoration of the Shared Facilities Unit (or any portion thereof) and the Units; (v) the construction, installation, maintenance, repair, replacement and restoration of internet, fiber optic, high speed data transmission and other telecommunication facilities, and all such power supplies and equipment related thereto, and the installation, maintenance, repair, replacement and restoration of all necessary wires, cables, ducts and other ancillary facilities related thereto; and (vi) any other construction, installation, maintenance, repair, replacement, refurbishment, restoration or other activities related to the development of the Future Expansion Parcel or any part thereof. The foregoing easements in favor of the Declarant and the Shared Facilities Unit Owner shall continue until such time as the rights of Declarant to submit Additional Parcels to the Act have expired and the Declarant no longer holds legal title to, or the beneficial interest in any trust holding legal title to, any Unit Ownerships, at which time such easements shall cease and be of no further force and effect without the necessity of any further action. With respect to the easement rights reserved in subparagraphs (iv), (v) and (vi) above, all as more particularly described in this Declaration, Declarant reserves such perpetual easement rights for itself, the Shared Facilities Unit Owner, and their respective successors and assigns, and such easements shall remain in full force and effect at all times during which this Declaration is in force and effect.

(d) **Easement in Favor of Association and Hotel Management Company.** A blanket easement over the Property, and for maintenance of the FF&E installed in any Unit, is hereby granted in favor of the Association, the Hotel Management Company and the manager or managing agent for the Property and the Project for the purpose of exercising its rights and performing its duties under this Declaration. This easement is also intended to benefit the

employees of the Hotel Management Company and of the service companies engaged by the Hotel Management Company to perform services necessary or desirable in connection with the Unit Maintenance Agreement or any of the services described in this Declaration required for the use, occupancy and maintenance of a Unit or the Common Elements. The authorized representatives of the Declarant, Association, or Board, or of the Hotel Management Company or the manager or managing agent for the Property and the Project, and any suppliers of services or utilities or water to the Property, shall be entitled to reasonable access to, over and through the individual Units as may be required in connection with the operation, maintenance, repairs, or replacements of or to the Common Elements, the Shared Facilities Unit or any FF&E, appliances, equipment, facilities or fixtures affecting or serving any Unit or the Common Elements, or to service and take readings of any utility meters located within or serving a Unit.

(e) **Public Shared Facilities Easement**. Subject to the restrictions and conditions contained in this Declaration, the Hotel Management Company, the Association, the Unit Owners of the Hotel Units, Residential Units, and the Commercial Units, shall have the following perpetual easements over, across, upon and through the Shared Facilities Unit, the Common Elements, and the Future Expansion Parcel (and Occupants and Hotel Guests shall have a corresponding revocable license to use the Public Shared Facilities to the extent of the following easements), subject to the right reserved by the Declarant for the benefit of itself, the Owner of the Shared Facilities Unit, the Hotel Management Company and their successors and assigns to modify the following components, and designate and modify from time to time the locations in ways that do not permanently adversely affect the easement rights granted in this subsection:

(i) A non-exclusive easement for reasonable ingress, egress and access over and across, without limitation, walkways, hallways, corridors, the Hotel lobby, elevators and stairways which provide access to and from the Hotel Units, the Residential Units, and the Commercial Units, including an easement for reasonable pedestrian access on, over, upon, and across those pedestrian accessways located outside the Hotel Building that Declarant designates from time to time as being for the use of the Condominium Property. Declarant reserves the right to designate and relocate such pedestrian accessways, so long as any designation or relocation provides the Condominium Property with reasonable access to and from one or more of the public roads and/or sidewalks adjacent to the Parcel. Declarant also reserves the right to grant easements to others to use the same pedestrian accessways for the benefit of other portions of the Parcel.

(ii) A non-exclusive easement for the continued existence of and service from any of the following components or facilities which are located within the Shared Facilities Unit and/or Parcel, and which serve the Common Elements, the Hotel Units, the Residential Units, or the Commercial Units, or existence of and service from reasonably equivalent components or facilities:

(A) utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems, including, without limitation, all wires, conduits, pipes, ducts, panels, pumps, antennae, satellite dishes, transformers, computers, controls, control centers, cables, mechanical equipment areas, utility rooms, water heaters serving multiple units and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, television, internet, electrical, plumbing and/or other services to the Condominium Property;

(B) any and all structural components of the improvements, including without limitation, all footings, foundations, exterior walls and finishes, roof, roof trusses, roof support elements, and insulation; and

(C) all heating, ventilating, and air conditioning systems, including, without limitation, risers, compressors, air handlers, ducts, condensers; fans, generators, chillers, water towers and other apparatus used in the delivery of HVAC services to the Condominium Property.

(iii) A non-exclusive easement to use the loading area and to have access between the loading area and the Hotel Units, Residential Units, and Commercial Units; subject at all times to such rules and regulations, restrictions, scheduling requirements, fees, costs and use charges as may be adopted or imposed from time to time by the Declarant, or by the Shared Facilities Unit Owner if such areas hereafter are made part of the Shared Facilities Unit.

(iv) A non-exclusive easement to use and enjoy portions of the Shared Facilities Unit which from time to time are made available by the Owner of the Shared Facilities Unit for use by the Unit Owners of the Hotel Units, Residential Units and Commercial Units and the Hotel Guests, subject to such rules and regulations, restrictions, scheduling requirements, fees, costs and use charges as may be adopted or imposed from time to time by the Shared Facilities Unit Owner, including, without limitation, each Unit Owner's proportionate share of the Shared Facilities Expenses as more particularly described in Section 6.9 below.

(f) **Declarant's Right to Enter.** The Declarant hereby reserves to itself, the Owner of the Shared Facilities Unit, the Hotel Management Company, their respective successors and assigns, and any of their agents or permitees, the right to enter upon any portion of the Property for purposes of: (i) abating any nuisance; (ii) carrying out the rights of the Declarant, the Owner of the Shared Facilities Unit, or the Hotel Management Company to perform maintenance, repairs or other acts; and (iii) exercising any of the rights reserved to or

conferred upon the Declarant, the Owner of the Shared Facilities Unit, or the Hotel Management Company, hereunder, or under applicable laws.

(g) **Easements to Run with Land.** All easements and rights described in this Declaration are easements running with the land and, so long as the Property is subject to the provisions of this Declaration, such easements shall be perpetual in nature, shall remain in full force and effect (except where early termination is otherwise provided in this Declaration) and shall inure to the benefit of and be binding on Declarant and its respective successors and assigns, and any Unit Owner, purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof, and their respective successors and assigns. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to respective grantees, mortgagees and trustees of such Unit Ownerships as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

4.4 **Use of the Common Elements and Public Shared Facilities.**

(a) **General.** Subject to the provisions of this Declaration, each Unit Owner shall have the nonexclusive right to use the Common Elements and the Public Shared Facilities in common with the other Unit Owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of, the respective Unit Ownership owned by such Unit Owner, and such other incidental uses as are permitted by this Declaration. Such rights to use the Common Elements, and the Public Shared Facilities, shall be subject to and be governed by the provisions of the Act, this Declaration, and any rules and regulations adopted by the Association, the Shared Facilities Unit Owner, or the Declarant. In addition, the Association shall have the authority to lease, grant licenses or concessions, or grant easements with respect to parts of the Common Elements, subject to the provisions of this Declaration and the Bylaws and any rights reserved to Declarant hereunder. All income derived by the Association from leases, licenses, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

(b) **Disclaimer of Bailee Liability.** Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association, any Unit Owner, the Declarant, the Hotel Management Company nor their respective members, managers, officers, directors, agents, employees or representatives shall be considered a bailee of any personal property stored in the Common Elements or Shared Facilities Unit, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

4.5 **Maintenance, Repairs and Replacements.**

(a) **By the Association.** The cost of maintenance, repairs, and replacements of the Common Elements, shall be provided by the Association acting by and through the Board as part of the Common Expenses, subject to the Bylaws or rules and regulations of the Association.

(b) **By the Unit Owner.** Except as otherwise provided in paragraph (a) above or paragraph (c) below, each Unit Owner (except for the Unit Owner of the Shared Facilities Unit) shall be responsible for, at his or her own expense, all costs and expenses associated with all of the following items, to be installed and maintained as provided in this Declaration or the Unit Maintenance Agreement:

(i) To the extent not provided as part of the services pursuant to the Unit Maintenance Agreement described in Section 7.1(a) below, all of the furnishing, decorating and equipping of such Unit Owner's Unit in a manner suitable to meet the standard established by the Hotel Management Company for Hotel accommodations, including furniture, decor items, towels, linens, color televisions, clocks, radio, drapes, other entertainment or electrical equipment, and other window treatments and decorative accessories (collectively, the "FF&E"). In order to maintain the standards of the Property, the quality of the decor, furniture, furnishings and maintenance of Hotel Units are subject to ongoing review by the Declarant and the Hotel Management Company. Unit Owners will not be permitted to vary, add to, remove or change the FF&E in a Hotel Unit. All FF&E installed in a Unit, subject to replacement of such FF&E as otherwise expressly provided, shall be conveyed along with the Unit upon any subsequent sale or transfer of the Unit. The FF&E shall be installed initially in each Hotel Unit by the Declarant in accordance with each Unit Owner's Purchase Agreement with the Declarant and any existing or new FF&E must be replaced, repaired or refurbished as deemed necessary by the Declarant or the Hotel Management Company, as the case maybe, from time to time, at the expense of such Unit Owner. In each instance that the Declarant or the Hotel Management Company, as the case may be, makes a determination that the FF&E is in need of replacement (for purposes of replacing FF&E due to wear and tear, age or to perform general refurbishment or renovation of the Units), each Unit Owner of a Hotel Unit will be required to participate in each such FF&E replacement program and to pay for such Unit Owner's share of the costs of such FF&E replacement program, the costs for which will be assessed against each Hotel Unit based on either a unit-by-unit actual cost basis, a percentage interest basis, a square footage basis or such other reasonable cost allocation as the Declarant or the Hotel Management Company, as the case may be, shall determine. If a Hotel Unit does not comply with the Hotel Management Company's standards, and the Unit Owner does not perform the work or purchase the items recommended or required by the Hotel Management Company with reasonable promptness under the circumstances, the Declarant or the Hotel Management Company may perform such work or purchase such items at the expense of such Unit Owner. The Declarant or the Hotel Management Company may also perform

such work or purchase such items at the expense of the Unit Owner owning such Hotel Unit without any prior notice to the Unit Owner in the event of an emergency, or at any time if requested by any Unit Owner for such Unit Owner's Hotel Unit. The decision of the Declarant or the Hotel Management Company, as the case may be, as it relates to compliance or non-compliance with the above FF&E provisions, shall be conclusive and binding upon Unit Owners. In the event of a dispute concerning the compliance or non-compliance of a Hotel Unit or its decor, adornment, furnishings or FF&E with the standards of the Hotel or the need for repair or replacement, the decision of the Declarant shall be binding upon all parties to the dispute.

(ii) Subject to compliance with the obligations set forth in Section 4.5(b)(i) above, and, to the extent not provided as part of the services pursuant to the Unit Maintenance Agreement described in Section 7.1(a) below, all of the maintenance, repairs and replacements within a Unit Owner's Unit, all interior and exterior doors appurtenant thereto (including, without limitation, hallway doors and locking mechanisms and components), all screens, if any, and all internal installations of such Unit such as lighting fixtures and other electrical fixtures and plumbing and any portion of any other utility service facilities located within the Unit.

(iii) Subject to compliance with the obligations set forth in Section 4.5(b)(i) above, and, to the extent not provided as part of the services pursuant to the Unit Maintenance Agreement described in Section 7.1(a) below, all of the decorating associated with such Unit Owner's Unit (initially and thereafter from time to time), including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating (including the FF&E). Each Unit Owner shall maintain the interior surfaces of the common walls and the interior surfaces of the vertical perimeter walls, floors and ceiling of such Unit Owner's Unit in good condition at his or her sole expense as may be required from time to time. The interior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed by and at the expense of each respective Unit Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades, or other items visible on the exterior of the Building, shall be subject to the FF&E requirements of the Declarant and the Hotel Management Company as may be imposed or Amended from time to time.

(c) First-Class Hotel Condition. Each Unit and all portions of the Common Elements shall be maintained (a) at a level of service and quality generally considered to be first

class and equal to or better than the level of service and quality prevailing from time to time at other full-service hotels in Northern Nevada, taking into account the size, location and character of the Property, and (b) shall be managed in a prudent and efficient manner reasonably calculated to protect and preserve the assets that comprise the Hotel, within the discretion of Declarant. In addition, the public areas of the Project and those areas which are exposed to public view shall be kept in good appearance, in conformity with the dignity and character of the Project, by: (A) the Association, with respect to such parts of the Project required to be maintained by it; (B) the Hotel Management Company, on behalf of each Unit Owner, with respect to the windows and shades, Venetian or other blinds, drapes, curtains or other window decorations in or appurtenant to such Unit Owner's Unit; and (C) the Shared Facilities Unit Owner and its successors and assigns as to the Public Shared Facilities. To promote a consistent appearance of the Hotel from the outside, the Hotel Management Company, on behalf of each Unit Owner, will install and maintain in such Unit Owner's Unit window treatments and backings which conform to any specifications (including color) promulgated by the Hotel Management Company. As with the decision to replace or refurbish FF&E located within individual Units in accordance with Section 4.5(b)(i) above, furnishings, fixtures, equipment and facilities adorning or servicing the Public Shared Facilities or property outside of the Condominium Property (including, without limitation: lobby and front desk/concierge/reception area furnishings, fixtures, equipment and facilities; corridor and hallway furnishings, fixtures, equipment and facilities; elevator furnishings, fixtures, equipment and facilities; flooring materials; wallpaper; paint; furniture; carpeting; fixtures; lighting; equipment; and decor items; and any portion of the Building becoming a portion of the Public Shared Facilities pursuant to Declarant's right to annex all or a portion of the Future Expansion Parcel under Article 11 hereof) (collectively, the "Building FF&E") must be replaced, repaired or refurbished as deemed necessary by the Declarant or the Hotel Management Company, as the case may be, at the expense of the Unit Owners, and in each instance that the Declarant or the Hotel Management Company, as the case may be, makes a determination that such Building FF&E is in need of replacement (for purposes of replacing Building FF&E due to wear and tear, age or to perform general refurbishment or renovation of the Condominium), each Unit Owner will be required to participate in each such Building FF&E replacement program and to pay for such Unit Owner's share of the costs of such Building FF&E replacement program, the costs for which will be assessed against each Hotel Unit based on either a unit-by-unit actual cost basis, a percentage interest basis, a square footage basis or such other reasonable cost allocation as the Declarant or the Hotel Management Company, as the case may be, shall determine. The decision of the Declarant or the Hotel Management Company, as the case may be, as it relates to the above Building FF&E replacement provisions, shall be conclusive and binding on Unit Owners. In the event of a dispute concerning the replacement or refurbishment of the Building FF&E, the decision of the Declarant shall be binding upon all parties to the dispute.

(d) **Insurance Proceeds**. In the event that any repair or replacement to the Common Elements is made necessary by reason of any act or occurrence for which insurance is maintained by the Board pursuant to Section 5.7 hereof and for which insurance proceeds are available as provided in Section 8.1 hereof, the Association, at its expense to the extent of such proceeds, and subject to Section 4.6 hereof, shall be responsible for the repair or replacement of such Common Elements, which repair may be effected by the Hotel Management Company on its behalf.

(e) **Nature of Obligation**. Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement of the Common Elements or the Units or any portion or parts thereof. Likewise, nothing contained herein shall be construed to impose a contractual liability upon the Declarant, Shared Facilities Unit Owner, or Hotel Management Company for maintenance, repair and replacement of the Shared Facilities Unit, or any portion thereof or of property outside of the Condominium Property. The respective obligations of the Association and Unit Owners set forth in this Declaration shall not be limited, discharged or postponed by reason of the fact that any such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the refurbishment of the Project, nor because they may become entitled to proceeds under policies of insurance. In addition, and notwithstanding anything hereinabove to the contrary, no Unit Owner shall have a claim against the Declarant, Shared Facilities Unit Owner, Hotel Management Company, Board or Association for any work ordinarily the responsibility of a Person other than the Unit Owner, but which the Unit Owner himself has performed or paid for, unless the same shall have been agreed to in advance by the Board, Association, Shared Facilities Unit Owner, Hotel Management Company, or the Declarant.

(f) **Declarant's Lien Rights**. In the event that the Declarant or the Hotel Management Company performs any of the work required to be performed by a Unit Owner in accordance with this Section 4.5 as a result of the Unit Owner's failure to comply with the requirements of this Declaration or other governing documents, and the Unit Owner fails to promptly reimburse the Declarant or the Hotel Management Company, as the case may be, for the costs of performing such work, the Declarant or the Hotel Management Company (as the case may be) shall impose a charge on such Unit Owner in the maximum amount of any sums due from such Unit Owner, including the amount of any attorney's fees & costs incurred in enforcing the obligations contained herein, which sum shall be a lien upon the Unit Ownership of the defaulting Unit Owner, subject to the recordation of a notice of lien, and foreclosure of such lien by sale of the Unit Ownership under substantially the same procedure provided to the Association in NRS Chapter 116 for the foreclosure of liens for assessments; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner. Except as hereinafter provided, the lien provided for in this Section 4.5(f) shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure, such transfer of title shall, to the extent permitted by law, extinguish the lien described in this Section 4.5(f) for any sums which became due prior to (i) the date of the transfer of title or (ii) the date on which the transferee comes into possession of the Unit Ownership, whichever occurs first.

4.6 **Negligence of Unit Owner**. If, due to the willful misconduct or negligent act or omission of a Unit Owner, or of a member of such Unit Owner's family or of a guest or other authorized occupant, tenant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit, or maintenance, repairs or replacements shall be required which would otherwise be charged as a Common Expense, Shared Facilities Expense, or maintenance expense, then such Unit Owner shall pay an assessment in the amount required to repair such damage and perform such maintenance and replacements as may be determined by the Shared Facilities Unit Owner, as it relates solely to damage or maintenance to the Shared Facilities Unit or FF&E, or giving rise to a Shared Facilities Expense, or otherwise as may be determined by the

Board, and such assessment shall be a lien upon the Unit Ownership of the Unit Owner, subject to foreclosure pursuant to the provisions of Section 4.5(f) or as otherwise permitted by law.

4.7 Joint Facilities. To the extent that equipment, facilities and fixtures within any Unit or Units shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or the Common Elements, then the use thereof by the individual Unit Owner shall be in all respects reasonable as it affects the other Unit Owners.

4.8 Additions, Alterations or Improvements.

(a) The Board may authorize and assess as a Common Expense the cost of the additions, alterations, or improvements to the Common Elements. The cost of any such work to the Common Elements may be paid out of a special assessment.

(b) Except as otherwise provided in Section 7.1(a) hereof, no additions, alterations or improvements shall be made by a Unit Owner other than the Owner of the Shared Facilities Unit (1) to any part of the Common Elements; (2) to any Hotel Unit, to any Residential Unit, or the Shared Facilities Unit (except for such additions, alterations or improvements made by the Unit Owner of the Shared Facilities Unit); and (3) to such Unit Owner's own Unit where such work alters the wall or partition, configuration, ceiling, perimeter doors or windows, floor load or otherwise affects the structure or finishes surrounding the Hotel Unit or increases the cost of insurance required to be carried by the Board or Declarant hereunder, or violates any provision of this Declaration or the Unit Maintenance Agreement for such Hotel Unit regarding the appearance, furnishing or decor of a Hotel Unit in conformity with the first-class hotel aesthetic requirements promulgated by the Hotel Management Company from time to time, without the prior written consent of the Hotel Management Company, or as to the Common Elements, the Board. Any addition, alteration or improvement of a Unit by the Unit Owner, other than the owner of the Shared Facilities Unit, which shall affect the structure of the Unit or the Common Elements shall, further, conform with structural or engineering drawings prepared or reviewed and approved by an architectural or engineering firm selected by the Hotel Management Company, as to Units, or by the Board, as to Common Elements. The cost of such drawings or review and approval shall be paid by the Unit Owner. The Board (or, as it relates to a Unit, the Hotel Management Company) may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement by a Unit Owner under this Section 4.8(b) upon the Unit Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board (or, as it relates to a Unit, the Hotel Management Company) may from time to time set, or (ii) to pay to the Association (or, as it relates to a Unit, the Hotel Management Company) from time to time the additional costs of maintenance or insurance as a result of the addition, alteration or improvement. If an addition, alteration or improvement is made by a Unit Owner, other than the Owner of the Shared Facilities Unit, without the prior written consent of the Board (or, as it relates to a Unit, the Hotel Management Company), then the Board or Hotel Management Company, as appropriate, may, in its discretion, take any of the following actions, which actions shall not be exclusive of any other remedies available to the Board:

(1) Require the Unit Owner to remove the addition, alteration or improvement and restore the property to its original condition, all at the Unit Owner's expense; or

(2) If the Unit Owner refuses or fails to properly perform the work required under (1), the Board (or, as it relates to a Unit, the Hotel Management Company) may cause such work to be done and may charge the Unit Owner for the cost thereof as determined by the Board (or, as it relates to a Unit, the Hotel Management Company); or

(3) Ratify the action taken by the Unit Owner, and the Board (or, as it relates to a Unit, the Hotel Management Company) may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section.

(c) Except to the extent prohibited by law, Declarant or its Designee and the respective successors in interest or assigns of Declarant or its Designee (the term "Designee" refers to any affiliate of Declarant or the Hotel Management Company) shall have the right, at any time and from time to time, without prior notice and without the vote or consent of the Board or any other Unit Owner or any mortgagee, to: (i) make alterations, additions or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon the Unsold Units and the Shared Facilities Unit (including changing furnishings, decor and FF&E therein); (ii) change the layout of, or number of rooms in, any Unsold Unit from time to time; (iii) change the size and/or number of Unsold Units by subdividing one or more such Units into two or more separate Units, combining separate Unsold Units (including those resulting from a subdivision or combination or otherwise) into one or more Units, and/or altering any boundary walls between any Unsold Units; (iv) if appropriate, reapportion among the Unsold Units affected by any such change in size or number pursuant to the preceding clause (iii), their percentage interests in the Allocated Interests; provided, however, that any such alteration, addition, improvement, change, reapportionment or redesignation shall not cause the Property or any portion thereof to not comply with any laws, ordinances and regulations of any governmental authorities having jurisdiction (including, without limitation, building codes, zoning ordinances and regulations of the City of Reno). The provisions of this Article 4 may not be added to, amended, modified or deleted without the prior written consent of Declarant or its Designees, or their respective successors in interest or assigns.

4.9 Cable Television System. Each Hotel Unit has been equipped with at least one outlet activated for connection to the cable television system serving the Project, which outlet and systems are integral parts of the Shared Facilities Unit. Additional outlets for connection to the cable television system are obtainable only from the Hotel Management Company and may be installed only by the firm or individual authorized by the Hotel Management Company to make such installation, with the prior approval of the Hotel Management Company and the payment of any required additional fees. Unit Owners and Occupants are prohibited from making any modifications to or tampering with said outlet and from making any connections to the cable television system, and the Hotel Management Company may charge any Unit Owner with the cost of locating and removing any unauthorized connections thereto and of repairing any modifications thereto. Notwithstanding anything to the contrary contained herein, the Declarant

hereby expressly reserves the right (for itself and for the Hotel Management Company) to charge any Unit Owner who wishes to subscribe to premium programming or pay-per-view service provided through such cable television system a usage charge based on such rates as Declarant or the Hotel Management Company, as the case may be, may promulgate from time to time. To the extent permitted by applicable law, Declarant's (and the Hotel Management Company's) right to impose such charges shall continue until Declarant no longer owns title to any Unit and, thereafter, the assignee of Declarant's interests in the Shared Facilities Unit (or the Hotel Management Company at the direction of such assignee) shall have any rights of the Declarant with regard to the imposition and collection of any such use charges.

4.10 Street and Utilities Dedication. At a meeting called for such purpose, two-thirds (2/3) or more of the Unit Owners may elect to dedicate a portion of the Common Elements to a public body for use as, or in connection with, a street or utility.

4.11 Parking Area. The Parking Area includes all surface parking spaces in the Project and certain elements appurtenant thereto. The Parking Area is located within the Project but does not comprise any portion of the Condominium Property. The Declarant may allocate or assign for use, spaces owned or controlled by it. Further the Declarant may prescribe such rules and regulations with respect to the Parking Area as it may deem fit. The Declarant may in its sole discretion elect to sell, assign, transfer or otherwise hypothecate any or all of the Parking Area and the spaces contained therein to any third party, and no other Unit Owner shall have any claim any proceeds of any such transaction.

ARTICLE 5

ADMINISTRATION

5.1 Administration of Association. The direction and administration of the Association shall be vested in a board of directors (herein sometimes referred to as the "Board"). The Board initially shall consist of one (1) person, and the Declarant shall have the right to designate and select the person who shall serve as the sole member of the Board (herein sometimes referred to as "Board Member"), or to exercise the powers of the Board itself, as provided in the Act. Except for Board Members designated by the Declarant, each Member of the Board shall be one of the Unit Owners, or in the event a Unit Owner is not a natural person, a representative of a Unit Owner as provided in the Bylaws and in the Act. If a director fails to meet such qualifications during such director's term, he or she shall thereupon cease to be a director, and his or her place on the Board shall be deemed vacant.

5.2 Association. The Association has been, or will be, formed as a nonprofit corporation under Chapter 82 of the Nevada Revised Statutes, and for the purposes and having the powers prescribed in the Act; and having the name GRAND SIERRA RESORT UNIT-OWNERS' ASSOCIATION, and shall be the governing body for all of the Unit Owners for the maintenance, repair, replacement, administration and operation of the Common Elements. The Board shall be deemed to be the "Executive Board" for the Unit Owners referred to in the Act. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners in accordance with the provisions contained herein. Each Unit Owner shall be a member of the

Association so long as he or she shall be a Unit Owner, and such membership shall automatically terminate when he or she ceases to be a Unit Owner, and upon the voluntary or involuntary transfer of his or her ownership interest the transferee thereof shall likewise succeed to such membership in the Association. The Association shall have one class of membership.

5.3 Voting Rights.

(a) There shall be one Voting Member for each Unit Ownership, including the Commercial Units, Residential Units and Shared Facilities Unit. Such Voting Member may be the Unit Owner or one of the group composed of all the owners of a Unit Ownership, or be some person designated by such Unit Owner or Unit Owners or such Unit Owner's or Unit Owners' duly authorized attorney-in-fact to act as proxy on his, her or their behalf, as provided in the Bylaws. Subject to the Declarant's special Declarant's rights reserved herein, any or all such Unit Owners may be present at any open meeting and, furthermore, may vote or take any other action as a Voting Member to the extent provided in Section 5.3(b) hereof. The person(s) designated by the Declarant with respect to any Unit Ownership owned by the Declarant shall also have the right to vote at any meetings of the Association or Board for so long as the Declarant shall own one or more Units. The total number of votes of all Voting Members shall be one hundred (100). Subject to the Declarant's special Declarant's rights reserved herein, in all elections for members of the Board and in all other actions requiring a vote of the members of the Association, each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Elements applicable to his, hers or their Unit Ownership as set forth in Exhibit B.

(b) In the event the Voting Member is other than the Unit Owner, is not present at a meeting of the Association and has not voted by proxy, then if the Unit Owner is present at a meeting of the Association, such Owner shall be entitled to cast all of the votes allocated to the Unit. In the event the ownership of a Unit is composed of multiple owners and the Voting Member is not present and has not voted by proxy, then if only one of the multiple owners of a Unit is present, such owner shall be entitled to cast all of the votes allocated to that Unit Ownership. In the event more than one owner of a Unit Ownership is present, but not the Voting Member, who has not voted by proxy, the votes allocated to that Unit Ownership may be cast only in accordance with the agreement of a majority in interest of the group of owners comprising the Unit Owner who are present. Majority agreement shall be deemed to have occurred if any one of the multiple owners casts the votes allocated to that Unit Ownership without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit Ownership.

5.4 Meetings. Meetings of the Unit Owners and of the Board shall be held at the Property or at such other place in the City of Reno, Nevada, as may be designated from time to time by the Board.

5.5 Board of Directors. The initial Board designated by the Declarant pursuant to Section 5.1 hereof shall consist of one (1) director. The Declarant shall have the right to designate and replace the person who shall serve as the sole member of the Board, or to exercise the powers of the Board itself, as provided in the Act. Within sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created from time to time, a Board

member shall be elected by Unit Owners other than the Declarant, pursuant to the procedure for electing Directors set forth in the Bylaws. Upon election of the first Board member not designated by the Declarant, the number of Board positions shall increase to three (3), and the remaining two (2) positions on the new Board shall be designated by the Declarant. Prior to the date on which the period of Declarant's control of the Association terminates, the Declarant shall have the right to designate and replace the two persons designated by the Declarant to serve on the Board. Not later than the date on which the period of Declarant's control of the Association terminates, all three Board members shall be elected by the Unit Owners pursuant to the procedure for electing directors set forth in the Bylaws. In all elections for Members of the Board, votes shall be tabulated pursuant to Section 5.3(a) above, and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Any candidate for election to the Board, and such candidate's representative, shall have the right to be present at the counting of ballots at such election. All elected members of the Board shall be elected at large. At a meeting to be held no later than sixty (60) days after the date the Declarant has sold and delivered its deed for at least seventy-five percent (75%) of the Unit Ownerships, secret ballots for the election of all three (3) members of the Board from among the Unit Owners shall be opened and counted. All elected Board members shall serve for a term of one (1) year each. The Unit Owners owning at least two-thirds (2/3) of the Unit Ownerships may from time to time at any annual or special meeting increase or decrease the term of office of Board members, provided that the terms of at least one-third (1/3) of the persons on the Board shall expire annually. Except as otherwise provided in this Declaration, the Board shall act by majority vote of those present at its meetings when a quorum exists. A majority of the total number of Members on the Board shall constitute a quorum. Any member of the Board may succeed himself or herself.

(a) The Declarant may appoint all officers during the period of Declarant's control. The term of office for each officer shall be until such officer's successor shall be duly elected or appointed and qualified, pursuant hereto and pursuant to the Bylaws. Officers shall serve at the will of the Board. Any officer may succeed himself or herself.

(b) Within sixty (60) days after the date the Declarant has sold and delivered its deed for at least seventy-five percent (75%) of the Unit Ownerships, the Declarant shall deliver to the Board the following:

(1) All original documents as recorded or filed pertaining to the Property, its administration, and the Association, such as this Declaration, Articles of Incorporation for the Association, other condominium instruments, annual reports, a minute book containing the minutes of any meetings held by the Association and any rules and regulations governing the Property, contracts, leases, or other agreements entered into by the Association. If any original documents are unavailable, copies may be provided if certified by affidavit of the Declarant, or an officer or agent of the Declarant, as being a complete copy of the actual document recorded or filed;

(2) A detailed accounting by the Declarant, setting forth the source and nature of receipts and expenditures in connection with the management,

maintenance and operation of the Property and copies of all insurance policies and a list of any loans or advances to the Association which are outstanding;

(3) Any Association funds on hand, or control of the accounts containing such funds, which shall have been at all times segregated from any other funds of the Declarant;

(4) A schedule of all real or personal property, equipment and fixtures owned by the Association, including documents such as invoices or bills of sale, if available, evidencing transfer of title to such property, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills;

(5) A list of all litigation, administrative actions and arbitrations involving the Association, any notices of governmental bodies involving actions taken or which may be taken by the Association, engineering and architectural drawings and specifications as approved by any governmental authority, all other documents filed with any other governmental authority, all governmental certificates, correspondence involving enforcement of any Association requirements, copies of any documents relating to disputes involving Unit Owners and originals of all documents relating to everything listed in this subparagraph; and

(6) All other materials and information prescribed by the Act.

5.6 General Powers of the Board. The Board shall have the following general powers:

(a) The Board or its agents, upon reasonable notice, may enter any Unit when necessary in connection with any maintenance, repair or replacement or construction for which the Board is responsible or to make emergency repairs as may be necessary to prevent damage to the Common Elements.

(b) The Board shall have the power and duty to provide for the designation, hiring, and removal of employees and other personnel, including lawyers and accountants, engineers or architects, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the Common Elements, and to delegate any such powers to a manager or managing agent (and any such employees or other personnel as may be employees of the managing agent).

(c) The Board shall have the power to exercise all other powers and duties of the Board or Unit Owners as a group referred to in this Declaration or the Act. More specifically, the Board shall exercise for the Association all powers, duties and authority vested in it by law or this Declaration except for such powers, duties and authority reserved thereby to the members of the Association. The powers and duties of the Board shall include, but shall not be limited to, the following matters:

(i) Operation, care, upkeep, maintenance, replacement and improvement of the Common Elements in a neat and orderly manner and as necessary or desirable for the operation of the Condominium as a first-class hotel condominium as determined by the First-Class hotel standard established by the Declarant and the Hotel Management Company;

(ii) Preparation, adoption and distribution of the annual budget for the Association;

(iii) Levying of assessments for Common Expenses and collection thereof from Unit Owners and expenditure of amounts collected;

(iv) Borrowing funds;

(v) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements;

(vi) Obtaining adequate and appropriate kinds of insurance;

(vii) Purchasing and receiving conveyances of Unit Ownerships and owning, conveying, mortgaging, encumbering, leasing and otherwise dealing with Unit Ownerships conveyed to or purchased by it;

(viii) Promulgation and amendment of rules and regulations covering the details of the operation and use of the Common Elements;

(ix) Keeping of detailed, accurate records of the receipts and expenditures affecting the use of the Common Elements and operation of the Association;

(x) To have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements therein or accessible therefrom, or for making repairs therein necessary to prevent damage to the Common Elements;

(xi) Pay real property taxes, special assessments, and any other special taxes or charges of the State of Nevada or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized, by law to be assessed and levied upon the real property of the Condominium and are not payable by Unit Owners directly;

(xii) Impose charges for late payments of a Unit Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of this Declaration and rules and

regulations of the Association, pursuant to the procedures prescribed by the Act;

(xiii) By a majority vote of the entire Board, assign the Association's right to future income from Common Expenses or other sources, and mortgage or pledge substantially all of the remaining assets of the Association;

(xiv) Record the granting of an easement pursuant to the provisions of Section 4.3 hereof and any instruments required elsewhere in this Declaration; and

(xv) Except to the extent limited by this Declaration and the Act, the Board shall have the power and duty to exercise the rights of, and perform all of the covenants and obligations imposed upon, the Association or the Unit Owners and to execute any and all instruments required pursuant thereto.

(d) Subject to the provisions of Section 4.6 and Section 6.8 hereof, the Board, for the benefit of all the Unit Owners, shall acquire and shall pay as Common Expenses, the following:

(i) Operating expenses of the Common Elements, including utility services to the extent not separately metered or charged as Shared Facilities Expenses or Hotel Expenses;

(ii) Services of any person or firm to act on behalf of the Unit Owners in connection with real estate taxes and special assessments on the Unit Ownerships, and in connection with any other matter where the respective interests of the Unit Owners are deemed by the Board to be similar and nonadverse to each other;

(iii) Maintenance, repair, and replacement of the Common Elements;

(iv) Any other materials, supplies, utilities, equipment, labor, services, maintenance, repairs or structural alterations which the Board is required to secure or pay for pursuant to the terms of this Declaration or the Bylaws;

(v) Any amount necessary to discharge or bond around any mechanics' lien or other encumbrance levied against the Common Elements. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it or bonding around said lien, in the discretion of the Board, and any costs incurred by the Board by reason of said lien or liens shall be specifically assessed to said Unit Owners.

(e) Prior to the election by the Voting Members of the first elected member of the Board, the Declarant shall, subject to the terms of this Declaration and the Act, have the

authority to lease or to grant licenses, concessions, easements, leases and contracts with respect to any part of the Common Elements, all upon such terms as the Declarant deems appropriate. Upon election of the first elected member of the Board, and thereafter, the Board by a vote of at least two-thirds (2/3) of the persons on the Board shall have the same authority as aforesaid.

(f) The Board shall have the power to bid for and purchase any Unit Ownership at a sale pursuant to a mortgage foreclosure, or a foreclosure of a lien for Common Expenses under the Act, or at a sale pursuant to an order of direction of a court, or other involuntary sale, upon the prior consent or approval of Voting Members representing not less than two-thirds (2/3) of the total votes.

(g) The Association shall have no authority to forebear the payment of assessments by any Unit Owner, except as part of the settlement of an arbitration or court action.

5.7 Insurance.

(a) The Board shall have the authority to and shall obtain not later than the time of the first conveyance of a Unit to a person other than a Declarant, and maintain insurance for the Association and/or Property as follows:

(i) Commercial General Liability insurance insuring against claims and liabilities arising in connection with the ownership, existence, use or management of the Property, hazards of premises/operation, products and completed operations, contractual liability, personal injury liability, independent contractors and other extensions as deemed necessary by the Board. Such insurance shall provide limits of liability as deemed desirable by the Board, but in no event for less than One Million Dollars ($1,000,000.00) with respect to each occurrence and Five Million Dollars ($5,000,000) in aggregate coverage. Such policy shall be endorsed to cover cross-liability claims of one insured against the other, and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner on account of the negligent acts of the Association or another Unit Owner. Such insurance coverage shall insure the Board, the Association, the management agent, and their respective directors, officers, managers, members, partners, employees and agents and all persons acting as agents. The Declarant must be included as an additional insured in its capacity as a Unit Owner, manager, Board member or officer. The Unit Owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Shared Facilities Unit, their Units and the Common Elements. The insurance must include coverage for medical payments.

(ii) A crime policy, with fidelity bond, insuring the Association, the Board, the Unit Owners, the management agent, if any, and its employees who control or disburse funds of the Association, and the Declarant in its capacity as a Unit Owner and Board member, against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management company or of any other person handling the funds of the Association, the Board or the Unit Owners in such amounts as the Board shall deem necessary but not less than Five Hundred Thousand Dollars ($500,000). Such policy shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such policy and bond shall provide that they may not be canceled for non-payment of any premiums without at least ten (10) days' prior written notice to the Board.

(iii) Directors and Officers Liability insurance in such amounts as the Board shall determine to be reasonable. Directors and Officers Liability coverage must cover actions taken by the Board and officers in their official capacity as Directors and officers, for liability asserted against them whether or not the Association has the authority to indemnify them against such liability and expenses, provided that no financial arrangement made may provide protection for a person adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for intentional misconduct, fraud or a knowing violation of law, except with respect to advancement of expenses or indemnification ordered by a court, or as otherwise provided by this Declaration or the Bylaws of the Association.

(iv) As a separate physical damage insurance policy for the Condominium is not reasonably available, the Association, and all Unit Owners by category, shall be named as additional insureds on a physical damage insurance policy for the Building that shall be maintained by the Declarant. Such policy shall provide for insurance, after application of any deductibles, in an amount not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. The Association and all Unit Owners shall reimburse the Declarant for a portion of the costs of such policy, pursuant to the formula set forth in Exhibit B. Any deductible under such policy, payable for a loss related to the Condominium, shall be paid by the Association as a Common Expense in the proportion that the loss of Condominium property bears to the total loss.

(v) Such other insurance in such forms and amounts as the Board shall deem desirable.

The premiums for this insurance and bond, except as otherwise provided in this Section 5.7, shall be Common Expenses. The Board may, in the case of a claim for damage to a Unit or the Common Elements, (x) pay the deductible amount as a Common Expense, (y) after notice and an opportunity for a hearing, assess the deductible amount against the Unit Owners who caused the damage or from whose Units the damage or cause of loss originated, or (z) require the Unit Owners of the Units affected to pay the deductible amount.

(b) All insurance provided for in this Section 5.7 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Nevada, or authorized surplus lines carriers, and holding a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A-/VIII according to Best's Insurance Reports - International Edition or a substantially equivalent rating from a nationally-recognized insurance rating service, or such lower rating as may be prudent given the cost and availability of insurance coverages at a given time. All such policies shall provide a minimum of ten (10) days advance written notice to the Board (on behalf of the Association) if such policy is to be canceled or not renewed.

(c) All policies of insurance of the character described in Section 5.7(a)(i): (i) shall be without contribution as respects other such policies of insurance carried individually by the Unit Owners, whether such other insurance covers their respective Units or the additions and improvements made by such Unit Owners to their respective Unit; (ii) shall provide that no act or omission by any Unit's owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; (iii) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days' prior written notice to the Board. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described in Section 5.7(a)(i), any losses under such policy shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed, in accordance with the provisions of this Declaration.

(d) Insurance Policies carried pursuant to this Section 5.7 shall include each of the following provisions: (1) each Unit Owner, and secured party (including, without limitation, any First Mortgagee), if applicable is an insured person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association; (2) the insurer waives its right to subrogation under the policy against any Unit Owner or members of the Unit Owner's household or other Occupants; the Association; members of the Board; the Declarant; the management company and their respective employees and agents; and (3) the Unit Owner waives his or her right to subrogation against the Association and the Board.

(e) The Association, for the benefit of the Unit Owners and the First Mortgagee of each Unit Ownership, shall pay the premiums and obtain a binder on the policies of insurance described in Sections 5.7(a)(i), (ii), (iii), and (v), at least fifteen (15) days prior to the expiration

date of the respective policies, and upon written request therefor, shall notify the First Mortgagee of each Unit Ownership of such payment within ten (10) days after the date on which payment is made.

(f) As specified in Sections 5.7(a)(i) and (iv), the Association will obtain a policy of commercial general liability insurance, and the Declarant will obtain a policy of physical damage insurance, in which the Unit Owners by category are named as additional insureds with respect to their Units, the Shared Facilities Unit, and the Common Elements, and the Unit Owners will be required to pay assessments to the Association and reimburse the Declarant for their proportionate share of the coverage provided under such policies of insurance. The policies obtained by the Association and/or the Declarant covering the Unit Owners will be upon such terms, including deductibles and retentions, covered losses and exclusions, term and price, as the Association and/or the Declarant shall determine, in their sole discretion. Any Unit Owner who desires additional coverage for their Unit, including reduced deductibles or increased retentions or additional covered losses, shall be required to obtain his or her own policy of insurance. The Association and/or the Declarant will annually provide to the Unit Owners a description of insurance coverage applicable to the Unit Owners, and will provide a copy of such insurance policies upon request. If the Association or the Declarant determines that it will modify the terms of the coverage of Unit Owners on any policy of commercial general liability or physical damage insurance, the Association or the Declarant will provide at least thirty (30) days' prior written notice to each Unit Owner in order to allow such Unit Owner to obtain additional coverage. Except as otherwise procured by the Association pursuant to Section 5.7, each Unit Owner shall be responsible for physical damage insurance on any additions, alterations, improvements and betterments to such Unit Owner's Unit (whether installed by such Unit Owner or any prior Unit Owner or whether originally in such Unit) to the extent not covered by the policies of insurance obtained by the Declarant for the benefit of all Unit Owners. Any policy of insurance carried by a Unit Owner shall be without contribution with respect to the policies of insurance obtained by the Association or Declarant for the benefit of all of the Unit Owners.

(g) The Board shall not be responsible for obtaining physical damage insurance on any additions, alterations, improvements and betterments to a Unit or any personal property of a Unit Owner or any other insurance for which a Unit Owner is responsible pursuant to Section 5.7(g). In the event the Board does carry such insurance, and the premium therefor is increased due to additions, alterations, improvements and betterments of a Unit Owner, then the Board may assess against such Unit Owner such increased premium.

(h) Each Unit Owner hereby waives and releases any and all claims which such Unit Owner may have against any other Unit Owner, the Association, its officers, members of the Board, Declarant, the Hotel Management Company, and their respective members, managers, partners, officers, directors, employees and agents, for any damage to the Common Elements, the Units, or to any personal property located in any Unit or Common Elements caused by fire or other casualty to the extent that such damage is covered by fire or other form of casualty insurance or would be covered by insurance for which such Unit Owner is responsible pursuant to Section 5.7(f).

(i) The Board shall have the right to select substantial deductibles to the insurance coverages required or permitted under this Section 5.7 if the economic savings justifies the

additional risk and if permitted by law. Expenses included within the deductible amount arising from insurable loss or damage shall be treated as Common Expenses.

5.8 Liability of the Board of Directors and Officers of the Association. Neither the members of the Board, the officers of the Association, the Declarant, the Hotel Management Company or any members of their respective managers, partners, officers, directors or employees (collectively, the "Indemnified Parties") shall be liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such members, officers, directors, or employees, as the case may be, except for any acts or omissions finally adjudged by a court to constitute intentional misconduct, fraud, or knowing violation of the law. The Unit Owners (including the members of the Board and the officers of the Association in their capacity as Unit Owners) shall defend, indemnify and hold harmless each of the Indemnified Parties against all contractual and other liabilities to others arising out of contracts made by or other acts of the Indemnified Parties on behalf of the Unit Owners or arising out of their status as Board members or officers of the Association, or officers, directors or employees of the Hotel Management Company, as the case may be, unless any such contract or act shall have been finally adjudged by a court to have been made fraudulently or with knowing violation of the law. It is intended that the foregoing indemnification shall include indemnification against, and payment of, all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the Indemnified Parties may be involved by virtue of such persons being or having been such member, officer, director or employee; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for intentional misconduct, fraud, or knowing violation of the law in the performance of his or her duties as such member, officer, director or employee; or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for intentional misconduct, fraud, or knowing violation of the law in the performance of his or her duties as such member, officer, director or employee. It is also intended that the liability of any Unit Owner arising out of any contract made by or other acts of any of the Indemnified Parties, or out of the aforesaid indemnity in favor of the members of any of the Indemnified Parties, shall be limited to such proportion of the total liability hereunder as such Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Every agreement made by the Board on behalf of the Unit Owners shall be deemed to provide that the members of the Board are acting only as agents for the Unit Owners, and shall have no personal liability thereunder (except as Unit Owners) and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as such Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements.

5.9 Resale of Units. In the event of a resale (i.e., any sale made after the initial sale) of any Unit Ownership by a Unit Owner other than the Declarant, and within ten (10) days after the written request by such Unit Owner, the Board shall deliver a certificate to such Unit Owner sufficient to enable the Unit's Owner to comply with NRS 116.4109(1), or any other requirements of the Act.

ARTICLE 6

COMMON EXPENSES & OTHER CHARGES

6.1 **Preparation of Annual Budget.** On or before November 1 of each calendar year, the Board shall cause to be prepared a detailed proposed budget for the ensuing calendar year. Such budget shall take into account the estimated annual Common Expenses and cash requirements for the year, including wages, materials, insurance, services, supplies and all other Common Expenses, together with a reasonable amount considered by the Board to be necessary for adequate reserves, including, without limitation, amounts to maintain a Capital Reserve (as hereinafter defined in Section 6.2). The annual budget shall also take into account the estimated net available cash income for the year from the operation or use of the Common Elements and, to the extent that the assessments and other cash income collected from the Unit Owners during the preceding year are more or less than the expenses for the preceding year, the surplus or deficit shall also be taken into account. On or before November 15 of each year, the Board shall notify each Unit Owner in writing as to the proposed annual budget, with reasonable itemization thereof, including those portions intended for capital expenditures or repairs or payment of real estate taxes and containing each Unit Owner's respective assessment; provided, however, that such proposed annual budget shall be furnished to each Unit Owner at least thirty (30) days prior to its adoption by the Board. On or before January 1 of the ensuing calendar year, and the first day of each and every month of said year, each Unit Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board (or as it may direct) one-twelfth (1/12) of such Unit Owner's proportionate share of the Common Expenses for each year as shown by the annual budget. Such proportionate share for each Unit Owner shall be in accordance with such Unit Owner's respective percentage of ownership in the Common Elements as set forth in Exhibit B attached hereto. On or before April 1 of each calendar year following the initial meeting of the Unit Owners, the Board shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenses plus reserves. Such accounting shall, upon the written request of any Unit Owner, be prepared by a certified public accountant, in which event such accounting shall be due as soon as reasonably possible after such request. Any net shortage or excess shall be applied as an adjustment to the installments due under the current year's estimate in the succeeding six (6) months after rendering of the accounting, subject, however, to the provisions of Section 6.2 hereof.

6.2 **Capital Reserve; Supplemental Budget.** The Association shall segregate and maintain a special reserve account to be used solely for the repair, replacement and restoration of the major components of the Common Elements (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the reserve study required by the Act, and upon a review of the useful life of improvements to the Common Elements and equipment owned by the Association as well as periodic projections of the cost of anticipated major repairs or improvements, repairs and replacements necessary to the Common Elements or the purchase of equipment to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the annual assessment which shall be added to the Capital Reserve and each Unit Owner shall be deemed to make a capital contribution to the Association equal to such percentage multiplied by each installment of the

annual assessment paid by such Unit Owner. Expenditures for the repair, replacement and restoration of the major components of the Common Elements which may become necessary during the year shall be charged first against the Capital Reserve. If the estimated Common Expenses contained in the budget prove inadequate for any reason or in the event a nonrecurring Common Expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or nonrecurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a special or separate assessment shall be made to each Unit Owner for such Unit Owner's proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount, and such adjusted amount shall be a lien upon applicable Units at such time as the adjusted monthly assessment becomes due. In addition to the foregoing, any Common Expense not set forth in the annual budget or any increase in assessments over the amount set forth in the adopted annual budget shall be separately assessed against all Unit Owners. The Board may adopt special or separate assessments payable over more than one fiscal year.

6.3 Initial Budget. The Board shall determine and adopt, prior to the conveyance of the first Unit Ownership hereunder, an initial budget commencing with the first day of the month in which the sale of the first Unit Ownership is closed and ending on December 31 of the calendar year in which such sale occurs, and shall continue to determine the proposed annual budget for each succeeding calendar year, and which may include such sums as collected from time to time at the closing of the sale of each Unit Ownership. Assessments shall be levied against the Unit Owners during said period as provided in Section 6.1 of this Article and in the Act, except that if the closing of the sale of the first Unit Ownership is not on January 1, monthly assessments to be paid by Unit Owners shall be based upon the amount of the budget and the number of months and days remaining in such calendar year.

6.4 Failure to Prepare Annual Budget. The failure or delay of the Board to give notice to each Unit Owner of the annual budget shall not constitute a waiver or release in any manner of such Unit Owner's obligation to pay such Unit Owner's respective monthly assessment, as herein provided, whenever the same shall be determined, and in the absence of the annual or adjusted budget, the Unit Owner shall continue to pay monthly assessments at the then existing monthly rate established for the previous period until the monthly assessment is given of such new annual budget.

6.5 Records of the Association.

(a) The management company or the Board shall maintain the following records of the Association available for inspection, examination and copying during normal business hours by the Unit Owners, First Mortgagees, Insurers and Guarantors, and their duly authorized agents or attorneys:

(i) Copies of this Declaration, the Bylaws, and any amendments, Articles of Incorporation of the Association, annual reports, and any current rules and regulations adopted by the Association or its Board, and the Association's books, records and financial statements.

(ii) Detailed accurate records in chronological order of the receipts and expenditures affecting the Common Elements and Common Expenses, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expense incurred, and copies of all contracts, leases, or other agreements entered into by the Association.

(iii) The minutes of all meetings of the Association and the Board. The Association shall maintain these minutes until the common-interest community is terminated.

(iv) Ballots and proxies relating thereto for all elections to the Board and for any other matters voted on by the Unit Owners shall be maintained for a period of not less than ten (10) years; provided that, unless directed by court order, only the voting ballot excluding a Unit number or symbol shall be subject to inspection and copying.

(v) Such other records of the Association as are available for inspection pursuant to NRS 116.31175, 116.31177, and 116. 3118, as amended, or otherwise subject to inspection by law.

(b) A reasonable fee not to exceed the maximum amounts established in the Act may be charged by the Board for the cost of copying.

(c) Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of such Unit Owner's account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

6.6 **Status of Collected Funds**. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments or user charges) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages set forth in Exhibit B.

6.7 **User Charges**. The Board, or the Declarant acting pursuant to Article 5 hereof, may establish, and each Unit Owner shall pay, user charges to defray the expense of providing services, facilities, or benefits which may not be used equally or proportionately by all of the Unit Owners or which, in the judgment of the Board, should not be charged to every Unit Owner. Such expense may include such services and facilities provided to Unit Owners which the Board determines should not be allocated among all of the Unit Owners in the same manner as the Common Expenses. Such user charges may be billed separately to each Unit Owner benefited thereby, or may be added to such Unit Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing herein shall require the establishment of user charges pursuant to this Section 6.7, and subject to the requirements of the Act, the Board or the Declarant may elect to treat all or any portion thereof as Common Expenses.

6.8 Non-Use and Abandonment. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his, her or their Units.

6.9 Shared Facilities Expenses. In addition to the budget and assessment procedures related to the Common Elements as described in Sections 6.1 through 6.8 above, and in addition to the Hotel Expenses described in Section 6.10 below and other charges or assessments set forth in the governing documents, in connection with the ownership, operation, use, maintenance, repair, replacement and refurbishment of the Shared Facilities Unit, and for the purpose of reimbursing the Shared Facilities Unit Owner for all general and special condominium assessments, use charges, utility costs, insurance costs, real estate taxes and other fees, costs, charges or expenses incurred by the Shared Facilities Unit Owner in connection with the ownership, use, maintenance, operation, repair and replacement of the Shared Facilities Unit and all improvements and personalty located within or upon the Shared Facilities Unit, each Unit Owner other than the owner of the Shared Facilities Unit also shall be bound by and shall comply with the following budget, assessment, reserve and collection requirements regarding the Shared Facilities Expenses (as defined below):

(a) Preparation of Annual Budget for Shared Facilities Unit. On or before November 1 of each calendar year, the Owner of the Shared Facilities Unit shall cause to be prepared a detailed proposed budget (the "Shared Facilities Budget") for the ensuing calendar year regarding the costs of ownership, operation, use, maintenance, repair, replacement and refurbishment of the Shared Facilities Unit and all improvements and personalty located within or upon the Shared Facilities Unit, all as more particularly described below. The Shared Facilities Budget shall take into account (i) the estimated annual expenses for the ownership, operation, use, maintenance, repair, replacement and refurbishment of the Shared Facilities Unit, (ii) cash requirements for the year, including wages, materials, insurance, services, supplies and all other expenses related to the Shared Facilities Unit, (iii) all costs to reimburse the Owner of the Shared Facilities Unit for all general and special condominium assessments and use charges incurred by the Shared Facilities Unit in accordance with Sections 6.1 to 6.8 above, utility costs for the Shared Facilities Unit, real estate taxes for the Shared Facilities Unit and other fees, costs, charges or expenses incurred by the Owner of the Shared Facilities Unit in connection with the ownership, use, maintenance, operation, repair and replacement of the Shared Facilities Unit and all improvements located within or upon the Shared Facilities Unit, and (iv) a reasonable amount considered by the Owner of the Shared Facilities Unit based on an independent Reserve Study of certain major components of the Shared Facilities Unit to be necessary for adequate reserves, including, without limitation, amounts to maintain the Shared Facilities Reserve (subparagraphs (i) through (iv) above being collectively referred to herein as the "Shared Facilities Expenses"). The Shared Facilities Budget shall also take into account the estimated net available cash income for the year from the operation or use of the Shared Facilities Unit and, to the extent that the assessments and other cash income, if any, collected from the Unit Owners during the preceding year are more or less than the expenses for the preceding year, the surplus or deficit shall also be taken into account. On or before November 15 of each year, the Owner of the Shared Facilities Unit shall notify each other Unit Owner in writing as to the proposed annual Shared Facilities Budget, with reasonable itemization thereof, including those portions intended for capital expenditures or repairs or payment of real estate taxes relating to the Shared Facilities Unit and containing each Unit Owner's respective assessment; provided, however, that such proposed

annual Shared Facilities Budget shall be furnished to each Unit Owner at least thirty (30) days prior to its adoption by the owner of the Shared Facilities Unit. On or before January 1 of the ensuing calendar year, and the first day of each and every month of said year, each Unit Owner, jointly and severally, shall be personally liable for and obligated to pay to the Owner of the Shared Facilities Unit (or as it may direct) one-twelfth (1/12) of such Unit Owner's proportionate share of the Shared Facilities Expenses for each year as shown by the Shared Facilities Budget for such year. Such proportionate share for each Unit Owner shall be in accordance with such Unit Owner's respective percentage of obligation as set forth in Exhibit D attached hereto. On or before April 1 of each calendar year following the initial meeting of the Unit Owners, the Owner of the Shared Facilities Unit shall supply to all Unit Owners an itemized accounting of the Shared Facilities Expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual Shared Facilities Expenses plus reserves. Such accounting shall, upon the written request of any Unit Owner, be prepared by a certified public accountant, in which event such accounting shall be due as soon as reasonably possible after such request. Any net shortage or excess shall be applied as an adjustment to the installments due under the current year's estimate in the succeeding six (6) months after rendering of the accounting, subject, however, to the provisions of Section 6.9(b) hereof.

(b) **Shared Facilities Reserve; Supplemental Shared Facilities Budget**. The Owner of the Shared Facilities Unit shall segregate and maintain a special reserve account to be used solely for making capital expenditures and paying for the costs of deferred maintenance in connection with the Shared Facilities Unit (the "Shared Facilities Reserve"). One of the primary purposes of the Shared Facilities Reserve is to reserve funds for the periodic repair, replacement, refurbishment, enhancement and update of the Shared Facilities Unit, as may be performed from time to time in the sole and absolute discretion of the Owner of the Shared Facilities Unit, and at the sole cost and expense of the Unit Owners. The Owner of the Shared Facilities Unit shall determine the appropriate level of the Shared Facilities Reserve based on a periodic review of the useful life of improvements to the Shared Facilities Unit and equipment owned by the owner of the Shared Facilities Unit for use in the Shared Facilities Unit and Hotel Units, as well as periodic projections of the cost of anticipated major repairs, improvements, and replacements necessary to the Shared Facilities Unit, or the purchase of equipment to be used by the Owner of the Shared Facilities Unit, in connection with the Shared Facilities Unit or Hotel Units. In performing this periodic review, the Owner of the Shared Facilities Unit shall cause to be prepared at least once every five (5) years, and shall review annually, an independent Reserve Study. Each Shared Facilities Budget shall disclose that percentage of the annual assessment which shall be added to the Shared Facilities Reserve, and each Unit Owner shall be deemed to make a capital contribution to the Owner of the Shared Facilities Unit equal to such percentage multiplied by each installment of the annual Shared Facilities Expenses assessment paid by such Unit Owner. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portions of any specific contingency reserve or the Shared Facilities Reserve, as applicable, which remains unallocated. If the estimated Shared Facilities Expenses contained in the Shared Facilities Budget prove inadequate for any reason or in the event a nonrecurring Shared Facilities Expense is anticipated for any year, then the owner of the Shared Facilities Unit may prepare and approve a supplemental Shared Facilities Budget covering the estimated deficiency or nonrecurring expense for the remainder of such year, copies of which supplemental Shared Facilities Budget

shall be furnished to each Unit Owner, and thereupon a special or separate assessment shall be made to each Unit Owner for such Unit Owner's proportionate share of such supplemental Shared Facilities Budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount. In addition to the foregoing, any Shared Facilities Expense not set forth in the annual Shared Facilities Budget or any increase in assessments over the amount set forth in the adopted annual Shared Facilities Budget shall be separately assessed against all Unit Owners. Assessments for additions and alterations to, or refurbishment, rehabilitation or enhancement of, the Shared Facilities Unit shall be either included in the above assessment process or separately assessed against all Unit Owners. Notwithstanding anything to the contrary contained herein, the owner of the Shared Facilities Unit shall have the right, in its sole and absolute discretion, to waive the right to collect reserves at any time and from time to time, provided that such waiver is exercised in a non-discriminatory fashion.

(c) **Initial Shared Facilities Budget**. The Owner of the Shared Facilities Unit shall determine and adopt, prior to the conveyance of the first Unit Ownership hereunder, an initial Shared Facilities Budget commencing with the first day of the month in which the sale of the first Unit Ownership is closed and ending on December 31 of the calendar year in which such sale occurs, and shall continue to determine the proposed annual Shared Facilities Budget for each succeeding calendar year, and which may include such sums as collected from time to time at the closing of the sale of each Unit Ownership. Assessments for Shared Facilities Expenses shall be levied against the Unit Owners during said period as provided in Section 6.9(a) of this Article, except that if the closing of the sale of the first Unit Ownership is not on January 1, monthly assessments for Shared Facilities Expenses to be paid, by Unit Owners shall be based upon the amount of the Shared Facilities Budget and the number of months and days remaining in such calendar year.

(d) **Failure to Prepare Annual Shared Facilities Budget**. The failure or delay of the Owner of the Shared Facilities Unit to give notice to each Unit Owner of the annual Shared Facilities Budget shall not constitute a waiver or release in any manner of such Unit Owner's obligation to pay such Unit Owner's respective monthly assessment for Shared Facilities Expenses, as herein provided, whenever the same shall be determined, and in the absence of the annual or adjusted Shared Facilities Budget, the Unit Owner shall continue to pay monthly assessments for the Shared Facilities Expenses at the then-existing monthly rate established for the previous period until the monthly assessment for Shared Facilities Expenses, which is due more than ten (10) days after notice is given of such new annual Shared Facilities Budget.

(e) **Status of Collected Funds**. All funds collected under this Section 6.9 shall be held and expended for the purposes designated herein.

(f) **Shared Facilities Unit Owner's Lien Rights**. In the event any other Unit Owner fails to promptly pay or reimburse the Shared Facilities Unit Owner, the Declarant or the Hotel Management Company, as the case may be, in accordance with this Section 6.9, the Shared Facilities Unit Owner, the Declarant or the Hotel Management Company (as the case may be) shall impose a charge upon such Unit Owner in the maximum amount of any sums due from such Unit Owner, including the amount of any attorney's fees & costs incurred in enforcing the obligations contained herein, which sum shall be a lien upon the Unit Ownership of the defaulting Unit Owner, subject to the recordation of a notice of lien, and foreclosure of such lien

by sale of the Unit Ownership under substantially the same procedure provided to the Association in NRS Chapter 116 for the foreclosure of liens for assessments; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner. Except as hereinafter provided, the lien provided for in this Section 6.9(f) shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure, such transfer of title shall, to the extent permitted by law, extinguish the lien described in this Section 6.9(f) for any sums which became due prior to (i) the date of the transfer of title or (ii) the date on which the transferee comes into possession of the Unit Ownership, whichever occurs first.

6.10 Hotel Expenses. In addition to the budget and assessment procedures related to the Common Elements and Shared Facilities Unit as described in Sections 6.1 through 6.9 above, and in addition to other charges or assessments set forth in the governing documents, in connection with the ownership, operation, use, maintenance, repair, replacement and refurbishment of certain components of the Building outside of the Condominium, which necessarily benefit in part the Unit Owners, and in part private operations and facilities outside of the Condominium Property, Declarant hereby identifies specific utility and structural components and insurance coverages, as detailed in Exhibit E (which is attached hereto and incorporated herein), an allocated portion of the expenses and fees of which shall be paid initially by the Declarant and reimbursed to the Declarant by the Unit Owners as more fully set forth herein. For the purpose of reimbursing the Declarant for an allocated share of all such utility use, maintenance, repair and replacement costs, structural maintenance, repair and replacement costs, insurance fees, and related charges or expenses, including reserve expenses, incurred by Declarant in connection with the ownership, use, maintenance, operation, repair and replacement of the components specified in Exhibit E, each Unit Owner other than the Owner of the Shared Facilities Unit also shall be bound by and shall comply with the following assessment, reserve and collection requirements:

(a) Preparation of Annual Estimate of the Hotel Expenses. On or before November 1 of each calendar year (other than the year preceding the first closing of the sale of a Unit), the Declarant shall cause to be prepared a detailed estimate of the Hotel Expenses that will be incurred in the ensuing calendar year for the utility use, maintenance, repair and replacement costs, structural maintenance, repair and replacement costs, insurance fees, and associated charges or expenses, including reserve expenses, relating to the components identified on Exhibit E (hereafter "Hotel Expenses Estimate"). The Hotel Expenses Estimate shall take into account (i) the estimated annual use charges for the utilities identified in Exhibit E, (ii) the estimated maintenance, repair and replacement expenses relating to the utility and structural components identified on Exhibit E, (iii) certain overhead costs related to the maintenance, repair and replacement of the utility and structural components identified on Exhibit E, including wages, payroll expenses, materials, insurance, and supplies, and (iv) a reasonable amount considered by the Declarant, based upon an independent Reserve Study of the components listed on Exhibit E, to be necessary for adequate reserves for the future replacement or refurbishment of certain components, including, without limitation, amounts to maintain the Hotel Reserve. The Declarant shall apply the expense allocation formulas set forth in Exhibit D to the Hotel Expenses Estimate, and thereby shall compute the portion of the total expenses described in the Hotel Expenses Estimate to be assessed to Unit Owners during the ensuing year (hereafter "Hotel

Expenses"). On or before November 15 of each year (other than the year preceding the first closing of the sale of a Unit), the Declarant shall notify each Unit Owner in writing as to the Hotel Expenses, with reasonable itemization thereof, including those portions intended for capital expenditures or repairs, and containing each Unit Owner's respective assessment. On or before January 1 of the ensuing calendar year, and the first day of each and every month of said year, each Unit Owner, jointly and severally, shall be personally liable for and obligated to pay to the Declarant (or as it may direct) one-twelfth (1/12) of such Unit Owner's proportionate share of the Hotel Expenses for each year as shown by the notification of Hotel Expenses for such year. On or before April 1 of each calendar year following the initial meeting of the Unit Owners, the Declarant shall supply to all Unit Owners an itemized accounting of the Hotel Expenses for the preceding calendar year actually incurred and/or paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the Hotel Expenses, including reserves. Such accounting shall be prepared by a certified public accountant. Any net shortage or excess shall be applied as an adjustment to the installments due under the current year's Hotel Expenses in the succeeding six (6) months after rendering of the accounting, subject, however, to the provisions of Section 6.10(b) hereof.

(b) **Hotel Reserve; Supplemental Hotel Expenses**. The Declarant shall segregate and maintain a special reserve account to be used solely for making capital expenditures and paying for the costs of deferred maintenance in connection with the components listed on Exhibit E (the "Hotel Reserve"). One of the primary purposes of the Hotel Reserve is to reserve funds for a portion of the costs of the periodic repair, replacement, refurbishment, enhancement and update of such components, as may be performed from time to time in the sole and absolute discretion of the Declarant. The Declarant shall determine the appropriate level of the Hotel Reserve based upon a periodic review of the useful life of improvements to the Shared Facilities Unit and equipment owned by the Owner of the Shared Facilities Unit for use in the Shared Facilities Unit and Hotel Units, as well as periodic projections of the cost of anticipated major repairs or improvements, repairs and replacements necessary to the Shared Facilities Unit, or the purchase of equipment to be used by the Owner of the Shared Facilities Unit, in connection with the Shared Facilities Unit or Hotel Units. In performing this periodic review, the Declarant shall cause to be prepared at least once every five (5) years, and shall review annually, an independent Reserve Study. Each notification of Hotel Expenses shall disclose that percentage of the annual assessment which shall be added to the Hotel Reserve, and each Unit Owner shall be deemed to make a capital contribution to the Owner of the Shared Facilities Unit equal to such percentage multiplied by each installment of the annual Hotel Expenses assessment paid by such Unit Owner. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portions of any specific contingency reserve or the Hotel Reserve, as applicable, which remains unallocated. If the Hotel Expenses prove inadequate for any reason or in the event a nonrecurring Hotel Expense is anticipated for any year, then the Declarant may prepare and approve a supplemental notification of Hotel Expenses covering the estimated deficiency or nonrecurring expense for the remainder of such year, copies of which supplemental notification of Hotel Expenses shall be furnished to each Unit Owner, and thereupon a special or separate assessment shall be made to each Unit Owner for such Unit Owner's proportionate share of such supplemental notification of Hotel Expenses. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount. In addition to the foregoing, any Hotel Expenses not set forth in the annual notification of Hotel Expenses, or any increase in assessments over the amount set forth

in the adopted annual notification of Hotel Expenses shall be separately assessed against all Unit Owners. Assessments for additions and alterations to, or refurbishment, rehabilitation or enhancement of, the components listed on Exhibit E shall be either included in the above assessment process or separately assessed against all Unit Owners. Notwithstanding anything to the contrary contained herein, the Declarant shall have the right, in its sole and absolute discretion, to waive the right to collect reserves at any time and from time to time, provided that such waiver is exercised in a non-discriminatory fashion.

(c) **Initial Notification of Hotel Expenses**. The Declarant shall determine and adopt, prior to the conveyance of the first Unit Ownership hereunder, an initial notification of Hotel Expenses commencing with the first day of the month in which the sale of the first Unit Ownership is closed and ending on December 31 of the calendar year in which such sale occurs, and shall continue to determine the annual Hotel Expenses for each succeeding calendar year, and which may include such sums as collected from time to time at the closing of the sale of each Unit Ownership. Assessments for Hotel Expenses shall be levied against the Unit Owners during said period as provided in Section 6.10(a) of this Article, except that if the closing of the sale of the first Unit Ownership is not on January 1, monthly assessments for Hotel Expenses to be paid by Unit Owners shall be based upon the amount of the notification of Hotel Expenses and the number of months and days remaining in such calendar year.

(d) **Failure to Prepare Notification of Hotel Expenses**. The failure or delay of the Declarant to give notice to each Unit Owner of the annual Hotel Expenses shall not constitute a waiver or release in any manner of such Unit Owner's obligation to pay such Unit Owner's respective monthly assessment for Hotel Expenses, as herein provided, whenever the same shall be determined, and in the absence of the annual or adjusted notification of Hotel Expenses, the Unit Owner shall continue to pay monthly assessments for the Hotel Expenses at the then-existing monthly rate established for the previous period until the monthly assessment for Hotel Expenses, which is due more than ten (10) days after notice is given of such new annual Hotel Expenses.

(e) **Status of Collected Funds**. All funds collected under this Section 6.10 shall be held and expended for the purposes designated herein.

(f) **Declarant's Lien Rights**. In the event any Unit Owner fails to promptly pay or reimburse the Declarant or the Hotel Management Company, as the case may be, in accordance with this Section 6.10, the Declarant or the Hotel Management Company (as the case may be) shall impose a charge upon such Unit Owner in the maximum amount of any sums due from such Unit Owner, including the amount of any attorney's fees & costs incurred in enforcing the obligations contained herein, which sum shall be a lien upon the Unit Ownership of the defaulting Unit Owner, subject to the recordation of a notice of lien, and foreclosure of such lien by sale of the Unit Ownership under substantially the same procedure provided to the Association in NRS Chapter 116 for the foreclosure of liens for assessments; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner. Except as hereinafter provided, the lien provided for in this Section 6.10(f) shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure, such transfer of title shall, to the extent permitted by law, extinguish the lien

described in this Section 6.10(f) for any sums which became due prior to (i) the date of the transfer of title or (ii) the date on which the transferee comes into possession of the Unit Ownership, whichever occurs first.

ARTICLE 7

HOTEL COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

7.1 **Covenants and Restrictions as to Use, Occupancy and Maintenance.** The Property shall be occupied and used as follows:

(a) Each Hotel Unit shall be used for short-term transient occupancy or, if permitted by law, for longer-term occupancy. The Private Shared Facilities shall be used by the Shared Facilities Unit Owner and, to the extent authorized by the Shared Facilities Unit Owner, the Hotel Management Company, for use as office space, storage space, housekeeping space and any other purposes for which such space is necessary, appropriate or desirable in the operation of a condominium hotel consistent with the standard set forth in Section 4.5(c) hereof. The Public Shared Facilities shall be used by Declarant, the Hotel Management Company, the Association, Unit Owners, Occupants, Hotel Guests and their respective invitees and permittees as common hallways, elevators, stairwells, corridors, entrances, exits and such other purposes for which such Public Shared Facilities are designed for the smooth and efficient operation of the Property. The Commercial Units shall be used for the purposes contemplated in this Declaration. A Hotel Unit may be made available to the public for rental when not occupied by the Unit Owner thereof or individuals designated by such Unit Owner. Unit Owners must comply with all of the provisions of this Declaration and of the Bylaws and rules and regulations with respect to hotel operation. All Unit Owners of Hotel Units are required to enter into a Unit Maintenance Agreement with the Hotel Management Company (in the form then in use by the Hotel Management Company) and each Unit Owner of a Hotel Unit will be required to be a party to such Unit Maintenance Agreement for so long as such Unit Owner owns a Hotel Unit in the Condominium, and no Unit Owner of a Hotel Unit shall have the right to opt out of receiving the services to be provided pursuant to the Unit Maintenance Agreement or the fees, costs or charges to be paid for such services. This obligation to enter into and comply with all provisions of such Unit Maintenance Agreement shall run with and burden each Hotel Unit, and all Persons having or acquiring any right, title or interest in each Unit, or any part thereof, and their successive owners, successors and assigns, and shall be enforceable as covenants running with the land and/or equitable servitudes. All Unit Owners of a Hotel Unit will receive the services specified in the Unit Maintenance Agreement at the costs and upon the other terms and conditions set forth therein, and all costs to provide such services shall be paid by the Unit Owner of a Hotel Unit to the Hotel Management Company as and when due pursuant to the terms and conditions of the Unit Maintenance Agreement. The costs to provide such services are in addition to the Common Expenses, Shared Facilities Expenses and Hotel Expenses hereunder. Notwithstanding the foregoing or anything contained in the Bylaws or the rules and regulations to the contrary, Declarant or its Designee (or their respective successors in interest and assigns) may, without the permission of the Board: (a) use or grant permission for the use of any Unsold Unit for any purpose, including but not limited to use as a model or sales office, subject only to compliance with applicable governmental laws and regulations, and (b) lease Unsold Units to any party(ies), whether on a transient, short-term, long-term or other basis.

(b) There shall be no obstruction of the Common Elements or the Public Shared Facilities nor shall anything be stored in the Common Elements (except in areas designed for such purpose) or the Public Shared Facilities, without the prior consent of the Board (or, as it relates to the Pubic Shared Facilities, the Owner of the Shared Facilities Unit), or except as hereinafter expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair such Unit Owner's own Unit.

(c) Nothing shall be done or kept in any Unit, or in the Common Elements serving the Units, or in the Pubic Shared Facilities which will increase the rate of insurance on the Building, Parcel, Property, Common Elements, or contents thereof without the prior written consent of the Owner of the Shared Facilities Unit and the Declarant. In any case, the Unit Owner shall be responsible for payment of any such increase. No Unit Owner shall permit anything to be done or kept in such Unit Owner's Unit, in the Common Elements or the Public Shared Facilities which will result in the cancellation of any insurance, or which would be in violation of any law. No waste shall be committed in the Common Elements or the Public Shared Facilities.

(d) In order to enhance the sound conditioning of the Building, the floor covering for all occupied Units shall meet the minimum standard as may be specified by the Hotel Management Company; provided, however, that the floor covering existing in any Unit as of the date of the recording of this Declaration shall be deemed in compliance with any such rules and regulations.

(e) No household pets or reptiles shall be raised, bred or kept in any Unit (including, without limitation, the Shared Facilities Unit) or the Common Elements; provided, however, that household pets may be kept in Hotel Units with the prior permission of, and in accordance with rules established by, the Hotel Management Company, and household pets may be kept in Residential Units with the prior permission of, and in accordance with rules established by, the Board.

(f) No noxious, unlawful or offensive activity shall be carried on in any Unit (including the Shared Facilities Unit) or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants or which shall in the judgment of the Board or the Hotel Management Company cause unreasonable noise or disturbance to others.

(g) Nothing shall be done in any Unit or in, on or to the Common Elements or the Public Shared Facilities which will impair the structural integrity of the Building, or which would structurally change the Building, except as is otherwise provided herein. No Unit Owner shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board or the Hotel Management Company, an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior written consent of the Board or the Hotel Management Company. No Unit Owner shall overload the floors of any Unit. Any furnishings which may cause floor overloads shall not be placed, kept or used in any Unit except only in accordance with advance written Board approval and Hotel Management Company approval.

(h) No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles, or any signage (including, without limitation, any "For Sale", "For Rent" or similar signage, or any other signage), outside such Unit Owner's Unit, in the Shared Facilities Unit, in the Common Elements or which may be visible from the outside of such Unit Owner's Unit (other than draperies, curtains or shades of a customary nature and appearance, subject to the rules and regulations of the Board and criteria established by the Hotel Management Company), or paint or decorate or adorn the outside or inside of such Unit Owner's Unit, or install outside such Unit Owner's Unit any canopy or awning, or outside radio or television antenna, dish or other receptive or transmitting device, or other equipment, fixtures or items of any kind, without the prior written permission of the Board and the Hotel Management Company; provided, however, that the foregoing shall not apply to the Declarant as to advertising activities or as to the exercise of other developmental rights or special Declarant's rights reserved herein. Unit Owners may display the Flag of the United States of America in their Unit, only if affixed to a freestanding flagpole and located in a corner of the Unit so as not to obstruct the use of the Unit, and otherwise displayed and maintained in compliance with federal and Nevada law. Final size and placement of the Flag within the Unit shall be approved by the Hotel Management Company.

(i) Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or kept in any area constituting part of the Common Elements or the Public Shared Facilities.

(j) No use of a Unit or the Public Shared Facilities shall be conducted, maintained or permitted to the extent same is in violation of the uses permitted hereunder or under any applicable laws, statutes, codes, regulations or ordinances governing the Property from time to time (including, without limitation, the relevant provisions of City of Reno ordinances).

(k) During the period that the Declarant, or its respective agents, successors or assigns, are engaged in the marketing, sales or leasing of Units (including Units in any Additional Parcel) or the sales or leasing of any portion of the Building, or performing work in or about the Building, Declarant and its respective agents, employees, successors, assigns, contractors, subcontractors, brokers, licensees and invitees (and each of them) shall be entitled to (i) have access, ingress and egress to and from the Building and Common Elements and use such portion of the Building, Common Elements or the Shared Facilities Unit as may be necessary or desirable in connection with such marketing, sales, leasing of Units or performance of work; (ii) use or show one or more Unsold Units or portion or portions of the Common Elements or Shared Facilities Unit as a model Unit or Units for sale, or lease, sales office, construction, or refurbishment office or administrative or management office or for such other purposes deemed necessary or desirable in connection with such construction, refurbishment, administration, marketing, sales or leasing of Units or performing work in or about the Building; (iii) post and maintain such signs, banners and flags, or other advertising material in, on or about the Building, Common Elements and the Shared Facilities Unit in such form as deemed desirable by Declarant, and as may be deemed necessary or desirable in connection with the marketing, sales, leasing or management of Units or the sales, leasing or advertising

of any portion of the Building, or performing work in or about the Building or in connection with (i) and (ii) above; and (iv) complete or correct construction of, or make alterations of and additions and improvements to, the Units (including, without limitation, the New Construction Units or any elements of the Future Expansion Parcel), the Common Elements and the Shared Facilities Unit in connection with any of the Declarant's activities in connection with the construction, promotion, marketing, sales or leasing of the Units or performing work in or about the Building. The foregoing are in addition to and not in limitation of the rights granted under Section 4.3(e) hereof. The foregoing and the rights granted under Section 4.3(e) hereof shall not be amended or modified in any manner without the express written consent of the Declarant or its successors or assigns.

(l) Except for the Unit Owner of a Commercial Unit, Residential Unit, or the Shared Facilities Unit, Unit Owners will be obligated to furnish, decorate and equip their Units at their expense in the manner directed by the Owner of the Shared Facilities Unit or Hotel Management Company, including furnishing, decorating and equipping their Units with the FF&E prescribed by the Hotel Management Company from time to time. In addition, all Unit Owners shall be required to comply with the FF&E obligations set forth in Section 4.5(b)(i) hereof.

(m) The provisions of the Act, this Declaration and rules and regulations that relate to the use of the individual Unit or the Common Elements shall be applicable to any person leasing a Unit Ownership and shall be deemed to be incorporated in any lease executed in connection with a Unit Ownership. The Board may bring any appropriate legal action against a tenant, for any breach by a tenant of any covenants, rules, regulations or bylaws, without excluding any other rights or remedies.

(n) Notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply to the Commercial Units: (a) Unit Owners, Occupants, and tenants of any Commercial Unit and their customers, employees, and invitees shall not be restricted by any amendments to this Declaration or the Bylaws, or by any rules or regulations adopted by the Board (including, without limitation, rules or regulations relating to hours of use), in their reasonable use of any Commercial Unit in conformity with state and local law and their reasonable use of the Common Elements and the Public Shared Facilities (including lobby areas, halls, corridors, and other facilities) in the ordinary course of the commercial activities for which a Commercial Unit is used; (b) the Declarant reserves the right to make such improvements or alterations to any such Commercial Unit and to locate and relocate Common Elements from time to time as the Declarant may deem necessary or desirable for the purpose of improving the operation of and access to any such Commercial Unit, and the Declarant reserves the right to install such utility lines in the Common Elements for the purpose of providing utility service to any such Commercial Unit; (c) there shall be no obstruction of any lobby entrances, passageways, corridors, or other portions of the Common Elements or the Public Shared Facilities which serve a Commercial Unit during hours when such Commercial Unit is in operation; (d) the Unit Owner of a Commercial Unit shall have the right to install and maintain signs within such Commercial Unit and, subject to reasonable restrictions imposed by the Hotel Management Company designed to protect the luxury hotel

character of the Condominium, exterior signs, awnings, and canopies in and on the Building; (e) the Unit Owner of a Commercial Unit shall be eligible to be a member of the Board, and no residency requirement for Board membership shall be applicable to the Unit Owner of such Commercial Unit; (f) no special user or service charges for the use of Common Elements, which are not similarly assessed against other Unit Owners, shall be assessed against the Unit Owner of a Commercial Unit; and (g) the Declarant, as the initial Unit Owner of the Commercial Units, shall have the right to convert (at any time) the Commercial Units into Hotel Units or into part of the Shared Facilities Unit, or to combine or subdivide Commercial Units and reallocate their Allocated Interests, to be determined by Declarant in its sole and absolute discretion, and Declarant shall not require the consent of the Association or any Unit Owner in connection with such conversion, combination or subdivision. Neither this Section 7.1(g) nor Section 7.1(a) above or Section 7.1(o) below as it applies to any Commercial Unit shall be amended or rescinded except upon the approval by a vote of all of the Unit Owners.

(o) Notwithstanding anything to the contrary contained herein, in no event shall Declarant be obligated to operate, or cause any third party to operate, a restaurant or spa facility within the Condominium.

(p) The Shared Facilities Unit Owner shall have the right to impose, from time to time, rules, regulations and restrictions on the use of the Public Shared Facilities, so long as such rules, regulations and restrictions do not materially adversely affect the right of the Unit Owners, Occupants, Hotel Guests and the Association to use and occupy the Property for the purposes described herein.

ARTICLE 8

DAMAGE, DESTRUCTION, CONDEMNATION AND RESTORATION OF BUILDING

8.1 Application of Insurance Proceeds. In the event the improvements forming a part of the Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus Capital Reserves, shall be sufficient to pay the cost of repair, restoration or reconstruction, then such restoration, repair, replacement or reconstruction shall be undertaken and the insurance proceeds and, if necessary, the Capital Reserve shall be applied by the payee of such insurance proceeds in payment therefor; provided, however, that in the event (a) the common-interest community is terminated; (b) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (c) one hundred percent (100%) of the Voting Members vote not to rebuild, repair, or replace; or (d) within one hundred eighty (180) days after said damage or destruction, all of the Unit Owners elect either to sell the Property as hereinafter provided in Article 9 or to withdraw the Property from the provisions of this Declaration and from the provisions of the Act as therein provided, then such restoration, repair, replacement, or reconstruction shall not be undertaken. If the entire damaged Property is not restored, repaired, replaced or reconstructed, the proceeds attributable to the damaged Common Elements must be used to restore the damaged Common

Elements to a condition compatible with the remainder of the Common Elements. The proceeds attributable to Units that are not restored, repaired, replaced, or reconstructed must be distributed to the owners of those Units, or to First Mortgagees, as their interests may appear; and the remainder of the proceeds must be distributed to all the Units' owners or First Mortgagees, as their interests may appear in proportion to the interests of all the Units in the Common Elements as shown on Exhibit B. If the Unit's owners vote not to restore, repair, replace, or reconstruct any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

8.2 Eminent Domain

In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal of the portions so taken from the provisions of the Act may be made by the Board. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of Allocated Interests appurtenant to such Unit or portion so withdrawn shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit, and the Association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the Association. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease. The Association shall represent the Unit Owners, other than the Shared Facilities Unit Owner, in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Elements or any part thereof, and the Association is hereby appointed as attorney-in-fact for such Unit Owners to represent the Unit Owners in any condemnation proceedings, or in negotiations, settlements and agreements with the condemning authority relating to such acquisitions of the Common Elements or any part thereof.

8.3 **Repair, Restoration or Reconstruction of the Improvements**. As used in this Article, "restoration, repair, replacement or reconstruction" of improvements means restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and Common Element having the same vertical and horizontal boundaries as before, unless, if allowed by the Act, other action is approved by the Voting Members representing at least eighty percent (80%) of the votes in the Association. Any repair, restoration or reconstruction shall be in accordance with law and this Declaration.

ARTICLE 9

SALE OF THE PROPERTY

9.1 **Sale**. At a meeting duly called for such purpose and open to attendance by all Unit Owners, the Unit Owners by affirmative vote of Unit Owners who own eighty percent (80%) or more in the aggregate of the entire percentage ownership interest in the Common Elements may elect to sell the Property as a whole. Within ten (10) days after the date of the

meeting at which such sale is approved, the Board shall give written notice of such action to each First Mortgagee. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale.

ARTICLE 10

MISCELLANEOUS PROVISIONS RESPECTING MORTGAGES

10.1 Mortgages. The following provisions are intended for the benefit of each holder of a recorded first mortgage or trust deed encumbering a Unit Ownership ("First Mortgagee") and to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

(a) Upon request in writing to the Association identifying the name and address of the First Mortgagee, or the insurer or guarantor of a recorded first mortgage or trust deed on a Unit ("Insurer or Guarantor") and the Unit number, the Association shall furnish each First Mortgagee, Insurer or Guarantor a written notice of any default by a Unit Owner of that Unit Owner's obligations under this Declaration which is not cured within thirty (30) days. Any First Mortgagee of a Unit, as well as any other holder of a prior recorded mortgage on a Unit Ownership, who comes into possession of the Unit Ownership pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Unit Ownership which become due prior to (i) the date of the transfer of title or (ii) the date on which the holder comes into possession of the Unit Ownership, whichever occurs first (except for any sums which are reallocated among the Unit Owners pursuant Article 11 hereof).

(b) Upon request in writing, each First Mortgagee, Insurer or Guarantor shall have the right:

(i) to examine current copies of this Declaration, the By Laws, the Articles of Incorporation of the Association, current rules and regulations and the books, records and financial statements of the Association, by prior appointment, during normal business hours;

(ii) to receive, without charge and within a reasonable time after such request, an audited financial statement for the Association for the preceding fiscal year, and an audited financial statement for each fiscal year must be available within one hundred twenty (120) days after the end of such fiscal year;

(iii) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

(iv) to receive written notice of any decision by the Unit Owners to make a material amendment to this Declaration, the Bylaws, or Articles of Incorporation;

(v) to receive written notice of any lapse, cancellation or modification of any insurance policy or fidelity bond maintained by or on behalf of the Association; and

(vi) to receive written notice of any action which would require the consent of a specified percentage of First Mortgagees.

(c) No provision of this Declaration or the Articles of Incorporation of the Association or any similar instrument pertaining to the Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over the rights of the First Mortgagees pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, or the Common Elements, or any portion thereof or interest therein. In such event, the First Mortgagees, Insurers or Guarantors of the Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

(d) Unless the First Mortgagees of all of the Unit Ownerships which are a part of the Property have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to:

(i) by act or omission seek to abandon or terminate the condominium regime, except for abandonment provided by the Act in case of substantial loss to or condemnation of the Units or the Common Elements; or

(ii) change the pro rata interest or obligations of any Unit Owner for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(e) Unless at least sixty-seven percent (67%) of the First Mortgagees, based on one vote per Unit, have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to do or permit to be done any of the following:

(i) Adopt an amendment to this Declaration which (aa) changes Article 11 hereof, (bb) changes Article 10 or any other provision of this Declaration which specifically grants rights to First Mortgagees, (cc) changes insurance and fidelity bond requirements, (dd) imposes a right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey such Unit Owner's Unit Ownership materially different from that presently contained in this Declaration, or (ee) changes any provisions of this Declaration concerning repair, restoration, or reconstruction of the Building;

(ii) Sell the Property as a whole; or

(iii) Remove all or a portion of the Property from the provisions of the Act and this Declaration;

(f) Upon specific written request to the Association, each First Mortgagee, Insurer or Guarantor of a Unit Ownership shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Elements or the Unit Ownership that is subject to such First Mortgagee's, Insurer's or Guarantor's mortgage.

(g) If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the First Mortgagee, insurer or Guarantor of the Unit Ownership involved will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition, and no provision of any document will entitle the Owner of a Unit Ownership or other party to priority over such First Mortgagee with respect to the distribution of the proceeds of any award or settlement.

(h) Whenever required, the consent of a First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the First Mortgagee within thirty (30) days after making the request for consent, provided such request was delivered by certified or registered mail, return receipt requested.

ARTICLE 11

ANNEXING ADDITIONAL PROPERTY

11.1 **Additional Parcel.** The Declarant, and its successors and assigns, hereby reserves the right and option, at any time and from time to time, within 20 years from the date of the recording of this Declaration in the Office of the Washoe County Recorder, to add-on and annex to the Property, from time to time, all or any portion of the property described on Exhibit C attached hereto and incorporated herein by reference ("Future Expansion Parcel"), and in connection therewith to create Units and/or Common Elements within such annexed property and reallocate percentage interests in the Allocated Interests as hereinafter described, by recording an amendment or amendments to this Declaration executed by the Declarant (every such instrument being hereinafter referred to as an "Amendment to Condominium Declaration") which shall set forth the legal description of the additional parcel or parcels within the Future Expansion Parcel to be annexed to the Property and which shall otherwise be in compliance with the requirements of the Act. Upon the recording of every such Amendment to Condominium Declaration, the Additional Parcel described therein shall be deemed submitted to the Act and governed in all respects by the provisions of the Declaration as amended, and shall thereupon become part of the Property. No portion or portions of the Future Expansion Parcel shall be subject to any of the provisions of this Declaration unless and until an Amendment to Condominium Declaration is recorded annexing such portion or portions to the Property as aforesaid. The Unit Owners shall have no rights whatsoever in or to any portion of the Future

Expansion Parcel, unless and until an Amendment to Condominium Declaration is recorded annexing such portion to the Property as aforesaid, and then, only as set forth in the Amendment. Upon expiration of said period of developmental or special declarant's rights, no portion of the Future Expansion Parcel which has not theretofore been made part of or annexed to the Property shall thereafter be annexed to the Property. No portion of the Future Expansion Parcel must be built or added to the Property. Portions of the Future Expansion Parcel may be added to the Property at different times within such developmental period. Except as may be required by applicable laws and ordinances, there shall be no limitations (i) on the order in which portions of the Future Expansion Parcel may be added to the Property, (ii) fixing the boundaries of these portions, or (iii) on the location of improvements which may be made on the Future Expansion Parcel. The maximum number of Units which may be created on the Future Expansion Parcel is 15,000, which does not include any New Construction Units. The maximum number of Units which may be created within the Future Expansion Parcel added to the Property, including the New Construction Units is 20,000. Structures, improvements, buildings and units to be constructed on portions of the Future Expansion Parcel which are added to the Property need not, except to the extent required by applicable laws and ordinances, be compatible with the configuration of the Property in relation to density, use, construction and architectural style; provided, however, that such structures, improvements, buildings and units shall be generally consistent in terms of quality of construction with those currently existing on the Property.

If all or any portion of the Future Expansion Parcel is annexed, the Declarant reserves developmental rights and/or special Declarant's rights with respect to the Future Expansion Parcel, as follows:

(a) The Declarant reserves the right to annex additional mixed use real estate, which may include additional buildings or portions thereof containing any combination of Unit types described herein, and if such additional mixed use elements are annexed, Declarant reserves the right to restrict voting rights appurtenant to a Unit to matters involving the building or buildings containing said Units;

(b) The Declarant reserves the right to make this common-interest community subject to a master association that may include all or any portion of the real estate comprising the Future Expansion Parcel, described on Exhibit C;

(c) The Declarant reserves the right to merge or consolidate this common-interest community with another common-interest community that may include all or any portion of the real estate comprising the Future Expansion Parcel, described on Exhibit C; and

(d) The Declarant reserves the right to take any other action with respect to the Future Expansion Parcel that is reserved herein with respect to the Property, and reserves the right to advertise the sale of any units in the Future Expansion Parcel at any location within the Property on which advertising activity with respect to the sale of Units in the Property is permitted herein.

11.2 **Amendments to Condominium Declaration**. Every such Amendment to this Declaration shall include:

(a) The legal description of the portion or portions of the Future Expansion Parcel which shall be added to the legal description of the Property;

(b) An amendment to the Plat which shall show the boundaries of the portion or portions of the Future Expansion Parcel annexed to the Property, and delineating and describing the Units of the annexed Future Expansion Parcel; and

(c) Amendments to Exhibits B and D attached hereto. The amended Exhibit B shall set forth the amended percentages of interest in the Allocated Interests, including the Common Elements, attributable to those portions of the Future Expansion Parcel annexed to the Property and including all existing Units and additional Units, if any, added by such Amendment to Condominium Declaration.

11.3 **Determination of Amendments to Percentages of Ownership Interest in the Allocated Interests.** The percentages of ownership interest in the Allocated Interests allocable to every Unit, as amended by each Amendment to Condominium Declaration, shall be determined as follows:

(a) The Allocated Interests, as amended by such Amendment to Condominium Declaration, shall be deemed to consist of the Allocated Interests as existing immediately prior to the recording of such Amendment to Condominium Declaration (the "Existing Allocated Interests"), as set forth in Exhibit B prior to recordation of an Amendment to Condominium Declaration, and the Allocated Interests added by such Amendment to Condominium Declaration (the "Added Allocated Interests");

(b) The Units, as amended by such Amendment to Condominium Declaration, shall be deemed to consist of the Units as existing immediately prior to the recording of such Amendment to Condominium Declaration (the "Existing Units"), as set forth in Exhibit B prior to recordation of an Amendment to Condominium Declaration, and the Units added by such Amendment to Condominium Declaration (the "Added Units");

(c) The initial Allocated Interests shall be as set forth in Exhibit B. Prior to the date of recording of every Amendment to Condominium Declaration, the Declarant shall determine the Added Units and Added Allocated Interests for such Amendment in accordance with the Unit names and corresponding Unit quantities and square footages as set forth in Exhibit F, for the Units added to the Property, and such determination shall be unconditionally binding and conclusive for all purposes notwithstanding the market values or actual or surveyed square footages of any Unit or Units. The Declarant shall amend Exhibit B, in accordance with its determination, prior to recordation of each Amendment;

(d) The Units shall be entitled to their respective percentages of ownership interest in the Allocated Interests, as set forth in Exhibit B to such Amendment to Condominium Declaration, subject to any further amendments;

(e) All of the provisions of this Declaration, as amended by every successive Amendment to Condominium Declaration, shall be deemed to apply to all of the Units (both the Added Units and the Existing Units) and to all of the Allocated Interests (both the Added Allocated Interests and the Existing Allocated Interests); and

(f) The recording of an Amendment to Condominium Declaration shall not alter or affect the amount of any lien for Common Expenses due from the Owner of any Existing Unit prior to such recording, nor the respective amounts theretofore assessed to or due from the Owner or Owners of Existing Units for Common Expenses or other assessments.

11.4 **Determination of Amendments to duties to pay Shared Facilities Expenses and Hotel Expenses**. The respective duties to pay Shared Facilities Expenses and Hotel Expenses (as set forth in Sections 6.9 and 6.10, and as otherwise provided in this Declaration) allocable to every Unit, as amended by each Amendment to Condominium Declaration, shall be determined as follows:

(a) The duties of Unit Owners to pay Shared Facilities Expenses and Hotel Expenses shall be reflected as a percentage of the entire Shared Facilities Expenses and Hotel Expenses, as set forth on Exhibit D, subject to amendment by each Amendment to Condominium Declaration;

(b) Prior to the date of recording of every Amendment to Condominium Declaration, the Declarant shall calculate amended and new percentages of the duties of all Unit Owners, as a result of the Amendment, to pay Shared Facilities Expenses and Hotel Expenses, in accordance with the Unit names and corresponding Unit quantities and square footages as set forth in Exhibit G. for the Units added to the Property, and such determination shall be unconditionally binding and conclusive for all purposes notwithstanding the market values or actual or surveyed square footages of any Unit or Units. The Declarant shall amend Exhibit D, in accordance with its determination, prior to recordation of each Amendment;

(c) The Units shall pay their respective percentages of Shared Facilities Expenses and Hotel Expenses, as set forth in Exhibit D to such Amendment to Condominium Declaration, subject to any further amendments;

(d) All of the provisions of this Declaration, as amended by every successive Amendment to Condominium Declaration, shall be deemed to apply to the payment of Shared Facilities Expenses and Hotel Expenses; and

(e) The recording of an Amendment to Condominium Declaration shall not alter or affect the amount of any lien for Shared Facilities Expenses or Hotel Expenses due from the Owner of any Existing Unit prior to such recording, nor the respective amounts theretofore assessed to or due from the Owner or Owners of Existing Units for Shared Facilities Expenses and Hotel Expenses or other assessments.

11.5 **Existing Mortgages**. Upon recording of every Amendment to Condominium Declaration, the lien of every mortgage encumbering an Existing Unit, together with its appurtenant percentage of ownership interest in the Existing Allocated Interests, shall automatically be deemed to be adjusted and amended to encumber such Unit and the respective percentage of ownership interest in the Allocated Interests for such Existing Unit as set forth in such Amendment to Condominium Declaration, and the lien of such mortgage shall automatically attach to such percentage interest in the Added Allocated Interests.

11.6 **Binding Effect**. Every Unit Owner and every mortgagee, grantee, heir, administrator, executor, legal representative, successor and assign of such Unit Owner, by such

person's or entity's acceptance of any deed or mortgage or other interest in or with respect to any Unit Ownership, shall be deemed to have expressly agreed and consented to (i) each and all of the provisions of Articles 11 and 12; (ii) the recording of every Amendment to the Declaration which may amend and adjust such person's or entity's respective percentage of ownership interest in the Allocated Interests including the Existing Allocated Interests and the Added Allocated Interests from time to time as provided in this Article 11; and (iii) all of the provisions of every Amendment to the Declaration which may hereafter be recorded in accordance with the provisions of this Article 11. A power coupled with an interest is hereby granted to the Declarant as attorney-in-fact to amend and adjust the percentages of undivided ownership interest in the Allocated Interests from time to time in accordance with every such Amendment, to Condominium Declaration recorded pursuant hereto. The acceptance by any persons or entities of any deed, mortgage or other instrument with respect to any Unit Ownership, in addition to the foregoing, shall be deemed to constitute a consent and agreement to and acceptance and confirmation by such person or entity of such power to such attorney-in-fact and of each of the following provisions as though fully set forth in such deed, mortgage or other instrument:

(a) The percentage of ownership interest in the Allocated Interests appurtenant to such Unit shall automatically be deemed reconveyed effective upon the recording of every Amendment to Condominium Declaration and reallocated among the respective Unit Owners in accordance with the amended and adjusted percentages set forth in every such Amendment;

(b) Such deed, mortgage or other instrument shall be deemed given upon a conditional limitation to the effect that the percentage of ownership interest in the Allocated Interests appurtenant to such Unit shall be deemed divested pro tanto upon the recording of every such Amendment to Condominium Declaration and revested and reallocated among the respective Unit Owners in accordance with the amended and adjusted percentages set forth in every such Amendment to Condominium Declaration;

(c) To the extent required for the purposes of so amending and adjusting such percentages of ownership interest in the Allocated Interests as aforesaid, a right of revocation shall be deemed reserved by the grantor of such deed, mortgage or other instrument with respect to such percentage of ownership interest in the Allocated Interests granted therein;

(d) Such adjustments in the percentages of ownership interest in the Allocated Interests as set forth in every such Amendment to Condominium Declaration, shall be deemed to be made by agreement of all Unit Owners and other persons having any interest in the Property, and shall also be deemed to be an agreement of all Unit Owners and such other persons to such changes within the contemplation of the Act; and

(e) Every Unit Owner, by acceptance of the deed conveying such Unit Owner's Unit Ownership, agrees for himself or herself and all those claiming under such Unit Owner, including mortgagees, that this Declaration, and every Amendment to Condominium Declaration, is and shall be deemed to be in accordance with the Act.

ARTICLE 12

TRANSFER OF A UNIT, DECLARANT'S RIGHT OF REPURCHASE

12.1 Unrestricted Transfers. Subject to Section 12.2 hereof, a Unit Owner may, without restriction under this Declaration, sell, give, devise, convey, mortgage, lease or otherwise transfer such Unit Owner's entire Unit. Notice of such transfer shall be given to the Board, in the manner provided herein for the giving of notices, within five (5) days following consummation of such transfer.

12.2 Declarant's Right of Repurchase. The following provisions of this Section 12.2 shall apply to all Hotel Unit Owners, and shall take effect after the "Closing Date" of each Hotel Unit, as that term is defined in the Purchase and Sale Agreement.

(a) Each Hotel Unit Owner, on behalf of himself and all of his heirs, successors and assigns in the Unit Ownership, by accepting the initial conveyance of a Unit within the Hotel-Condominiums at Grand Sierra Resort, grants Declarant and all of its successors and assigns a perpetual right to repurchase the Unit and all FF&E acquired with the Unit, on the terms and conditions hereinafter set forth. Each Hotel Unit Owner shall notify Declarant in writing that it has received an offer to purchase the Unit Ownership and the FF&E which must be conveyed with the Unit pursuant to Section 4.5(b)(i), which notice shall contain the name and address of the proposed purchaser and shall contain a copy of the offer, including all of the terms and conditions of sale, signed by the proposed purchaser. Declarant shall have the right within ten (10) days after actual receipt of the copy of the offer within which to repurchase the Unit Ownership and the FF&E, which right shall be exercised by written notice to the Hotel Unit Owner within such ten (10) day time period, on the following terms:

(i) If on the day the Declarant actually receives a copy of the offer, the sale, from the Declarant to third parties, of less than 660 Hotel Units have closed, then (i) Declarant's price to purchase the Unit Ownership and FF&E shall be the Purchase Price, as set forth in Paragraph 1(a) of the Purchase and Sale Agreement for the Unit (plus the cost of any improvements or betterments made at the Unit Owner's expense in accordance with the terms and conditions of this Declaration or the Purchase and Sale Agreement, if any, which costs shall be established by copies of paid bills delivered to Declarant at the time of giving of the Unit Owner's ten (10) day notice to Declarant), plus or minus proration of general real estate taxes, prepaid insurance premiums, utility charges, monthly assessments and other similar proratable items; (ii) the Hotel Unit Owner shall convey good and marketable title to the Unit Ownership by special warranty deed to Declarant or its designee, and the FF&E by bill of sale with warranties of title, subject only to those Permitted Exceptions (excluding acts of Purchaser) existing at closing and any acts of Declarant; (iii) closing of the repurchase shall be effected through an escrow similar to that described in Paragraph 5(b) of the Purchase and Sale Agreement;

(iv) the Hotel Unit Owner shall bear all costs of the escrow and title insurance; and (v) any Nevada and Washoe County transfer taxes shall be paid by the Hotel Unit Owner, and any City of Reno real estate transaction tax shall be paid by Declarant.

(ii) If on the day the Declarant actually receives a copy of the offer, the sale, from the Declarant to third parties, of 660 Hotel Units or more have closed (i) the price of the Unit Ownership and FF&E shall be the price set forth in the copy of the offer conveyed to Declarant under this Section, plus or minus proration of general real estate taxes, prepaid insurance premiums, utility charges, monthly assessments and other similar proratable items; (ii) the Hotel Unit Owner shall convey good and marketable title to the Unit Ownership by special warranty deed to Declarant or its designee, and the FF&E by bill of sale with warranties of title, subject only to those Permitted Exceptions (excluding acts of Purchaser) existing at closing and any acts of Declarant; (iii) closing of the repurchase shall be effected through an escrow similar to that described in Paragraph 5(b) of the Purchase and Sale Agreement; (v) the Hotel Unit Owner and Declarant each shall bear one-half of the costs of the escrow; (vi) the Hotel Unit Owner shall bear the cost of title insurance in the amount of the offer price; and (vii) the Hotel Unit Owner and Declarant each shall bear one-half of the costs of any Nevada and Washoe County transfer taxes, and any City of Reno real estate transaction tax.

(b) If Declarant notifies the Hotel Unit Owner within said ten (10) day period of its election to repurchase the Unit Ownership and all FF&E, then such repurchase shall be closed and possession delivered to Declarant within thirty (30) days after the giving of Declarant's notice of such election. In the event of Declarant's repurchase of the Unit Ownership and all FF&E as provided herein, the Hotel Unit Owner agrees to reconvey the Unit Ownership and FF&E to Declarant in the same physical condition as at closing, except for ordinary wear and tear.

(c) If Declarant gives written notice to the Hotel Unit Owner within said ten (10) day period that it does not elect to exercise said repurchase right, or if Declarant fails to give written notice to Purchaser during the ten (10) day period, then the Hotel Unit Owner may proceed to consummate the proposed sale; provided, however, that if the Hotel Unit Owner fails to close the proposed sale with the proposed purchaser at the purchase price and on the other terms and conditions contained in the aforesaid written notice to Declarant (except for extensions of the closing date collectively amounting to no more than four (4) months beyond the closing date contained in the offer), the right of repurchase granted to Declarant herein shall remain in effect and shall be applicable to the proposed sale as modified, and to any subsequent proposed sale by the Hotel Unit Owner of the Unit Ownership.

(d) Declarant shall have the right to execute and deliver to any one or more Hotel Unit Owners a release of Declarant's rights under this Section 12.2.

(e) Any purported sale of a Hotel Unit in violation of the provisions of this Section 12.2 shall be null and void and of no force and effect. The deed to be delivered by Declarant to each Hotel Unit Owner on the Closing Date, as defined in the Purchase and Sale Agreement, shall contain provisions incorporating the foregoing right of repurchase, and stipulating that it binds the grantee under the deed and its successors and assigns by acceptance of a deed.

(f) For purposes of this Section 12.2 "sell" or "sale" means: any sale, transfer or other voluntary conveyance of the Unit Ownership; lease with an option to purchase the Unit Ownership; any assignment (except for collateral purposes only) of all or any portion of the beneficial interest or power of direction under any trust which owns legal or beneficial title to the Unit Ownership for consideration; or sale or transfer of substantially all of the stock, partnership or membership interests of a corporation, partnership or limited liability company which owns legal or beneficial title to the Unit Ownership.

(g) Declarant's right of repurchase under this Section 12.2 shall be subordinate to the rights of the holder of any mortgage or trust deed hereafter placed upon the Unit Ownership.

12.3 **Financing of Purchase by Association**. The Board shall have authority to make such mortgage arrangements and other financing arrangements, and to authorize such special assessments proportionately among the respective Unit Owners, as the Board may deem desirable, in order to close and consummate the purchase or lease of a Unit Ownership, or interest therein, by the Association.

12.4 **Miscellaneous**.

(a) The Association shall hold title to or lease any Unit Ownership, pursuant to the terms hereof, in the name of the Association, or a nominee thereof delegated by the Board, for the sole benefit of all Unit Owners. The Board shall have the authority at any time to sell, mortgage, lease or sublease said Unit Ownership on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Unit be sold (other than pursuant to a foreclosure or deed in lieu of foreclosure) for less than the amount paid by the Association to purchase said Unit Ownership unless Unit Owners owning not less than seventy-five percent (75%) of the total ownership of the Common Elements first authorize the sale for such lesser amount. All of the net proceeds from such a sale, mortgage, lease or sublease shall be applied in such manner as the Board shall determine.

(b) The Board may adopt rules and regulations, from time to time, not inconsistent with the provisions of this Article 12, for the purpose of implementing and effectuating said provisions.

ARTICLE 13

GENERAL PROVISIONS

13.1 **Manner of Giving Notices**. Notices provided for in this Declaration and in the Act to be given to the Board or Association shall be in writing and addressed to the Unit address of each member of the Board or at such other address as otherwise provided herein. Notices provided for in this Declaration and in the Act to any Unit Owner shall be in writing and

addressed to the Unit address of said Unit Owner, or at such other address as otherwise provided in the Purchase and Sale Agreement or designated by the Unit Owner. Any Unit Owner may designate a different address or addresses for notices to such Unit Owner by giving written notice of his change of address to the Board or Association, and to the Declarant. Unless otherwise specifically provided herein, any notice shall be deemed received when delivered as it relates to personal delivery, nationally recognized overnight courier service or facsimile with proof of transmission (provided any such delivery or transmission must be received on or before 5:00 p.m. Nevada time on such date of delivery in order for such notice to be effective as of the date of delivery), and any notice mailed as aforesaid shall be deemed received three (3) business days after deposit in the United States mail. Notice of change of address for receipt of notices, demands or requests shall be sent in the manner set forth in this Section 13.1.

13.2 Notice to Mortgagees. Upon written request to the Board, notices shall be given to a First Mortgagee as required under Article 10.

13.3 Notices of Estate or Representatives. Notices required to be given any devisee, heir or personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his, her or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered.

13.4 Conveyance and Leases. Each grantee of the Declarant, each subsequent grantee by the acceptance of a deed of conveyance, and each tenant under a lease for a Unit Ownership, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and/or equitable servitudes and shall bind any person having at any time an interest or estate in the Property, and shall inure to the benefit of such Unit Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

13.5 No Waivers. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

13.6 Change, Modification or Rescission. No provision of this Declaration affecting the rights, privileges and duties of the Declarant may be modified without its written consent. Except as otherwise expressly provided herein, other provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission signed and acknowledged by the President or a Vice-President of the Association, and approved by the Unit Owners having, in the aggregate, at least seventy-five percent (75%) of the total vote, at a meeting called for that purpose; provided, however, that (i) all First Mortgagees have been notified by certified mail of any change, modification or rescission, (ii) an affidavit by the Secretary of the Association certifying to such mailing is made a part of such instrument and (iii) any provisions herein which specifically grant rights to First Mortgagees, Insurers or Guarantors may be amended only with the written consent of all such

First Mortgagees, Insurers or Guarantors, except in those instances in which the approval of less than all First Mortgagees is required. Any such change, modification or rescission shall be effective, upon recordation of such instrument in the Office of the County Recorder of Washoe County, Nevada; provided, however, that no such change, modification or rescission shall change the boundaries of any Unit, the allocation of percentages of ownership in the Common Elements and votes in the Association, quorum and voting requirements for action by the Association, or liability for Common Expenses assessed against any Unit, except to the extent authorized by other provisions of this Declaration or by the Act.

13.7 **Partial Invalidity**. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

13.8 **Perpetuities and Other Invalidity**. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provisions, (ii) the rule restricting restraints on alienation, or (iii) any statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Nevada Governor, Kenny Guinn.

13.9 **Liberal Construction**. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a hotel condominium development consistent with the standard set forth in Section 4.5(c) hereof.

13.10 **Ownership by Land Trustee**. In the event title to any Unit Ownership is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit Ownership remain vested in the trust beneficiary or beneficiaries, then the Unit Ownership under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit Ownership. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Unit Ownership and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title of such Unit Ownership.

13.11 **Special Amendment**. Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Department of Veteran's Affairs (formerly known as the Veteran's Administration), the American Land Title Association, or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Unit Ownerships, (iii) to bring this

Declaration into compliance with the Act, or (iv) to correct clerical or typographical or similar errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit Ownership, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds or controls title to a Unit Ownership.

13.12 **Assignments by Declarant.** All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

13.13 **Intellectual Property Rights.** At any time during which Grand Sierra Operating Corp. or any parent, subsidiary or affiliate thereof is engaged in the development, sale or management of the Condominium, the Identity (as such term is defined below) may be made available for use by the Condominium, the Association and the management company for the Condominium pursuant to a license agreement with the party or parties owning the rights to the use of the Identity; provided, however, that the terms of such use are at all times subject to the terms and conditions of, and the privileges established in, the license agreement granting such rights, which license may be revoked at any time. Neither the Association, the Board nor any Unit Owner (by virtue of any such Unit Owner's ownership interest in a Unit and such Unit Owner's percentage ownership interest in the Common Elements) shall have any right to the use of the Identity in any manner whatsoever by virtue of any such party's interest in the Condominium or otherwise. The "Identity" shall mean the name, likeness, image or indicia of "Grand Sierra Resort," or any variation thereof.

13.14 **Hotel Management Company.** The Declarant shall have the sole and absolute discretion to select, appoint, designate, terminate, renew and otherwise engage the Hotel Management Company, from time to time, on such terms and conditions as shall be determined, from time to time, by the Declarant and the Hotel Management Company. Neither the Association nor the Unit Owners shall have any right to determine which company the Declarant selects as the Hotel Management Company or the terms and conditions of such engagement, both of which shall be determined by the Declarant and the Hotel Management Company, in their sole and absolute discretion. The Declarant hereby reserves the right, in its sole discretion, to manage the Hotel or Property itself or to utilize a nationally branded hotel management company or a local management company that may or may not be an affiliate of the Declarant. The Declarant makes no representations as to the identity of the manager, and each purchaser of a Unit hereby

waives any and all claims of injury or default relating to the identity of any manager or future manager of the Hotel or the Property.

13.15 **Dispute Resolution Addendum Agreement, and Agreement to Modify Statutorily Implied Warranties of Quality, to Run with the Land.** The Dispute Resolution Addendum Agreement, and Agreement to Modify Statutorily Implied Warranties of Quality, attached to the Purchase and Sale Agreement for each Hotel Unit as Exhibits "I" and "J," respectively, shall run with and burden each Unit Ownership, and all Persons having or acquiring any right, title or interest in each Unit Ownership, or any part thereof, and their successive owners, heirs, successors, and assigns, and shall be enforceable as covenants running with the land and/or equitable servitudes.

IN WITNESS WHEREOF, Grand Sierra Operating Corp. has caused this Declaration to be signed this 8th day of June, 2007.

GRAND SIERRA OPERATING CORP., a Nevada Corporation

By: _____
Roberts H. Pace, Jr.
Executive Vice President &
Chief Operating Officer

STATE OF NEVADA)
) SS
COUNTY OF WASHOE)

I, Staci D Mitchell, a Notary Public in and for the County and State aforesaid, do hereby certify that Roberts H Pace Jr, as Executive Vice President & Chief Operating Officer of Grand Sierra Operating Corp., a Nevada corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act and the free and voluntary act of such company in his capacity as the Executive Vice President & Chief Operating Officer of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8th day of June, 2007.

STACI D. MITCHELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-86890-2 - Expires August 10, 2010

_____
Notary Public

My Commission Expires:
August 10, 2010

STACI D. MITCHELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-86890-2 - Expires August 10, 2010

CONSENT OF BENEFICIARY OF DEED OF TRUST

WELLS FARGO BANK, N.A., as trustee for the benefit of holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-FL2 and for the holders of the Non-Trust Partition Interests, as the legal owner and holder of the original promissory note(s) and all other indebtedness secured by the following described Deed of Trust:

TRUSTOR:	Grand Sierra Operating Corp., a Nevada Corporation
TRUSTEE:	Stewart Title of Northern Nevada, a Nevada Corporation
BENEFICIARY:	WELLS FARGO BANK, N.A., as trustee for the benefit of holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-FL2 and for the holders of the Non-Trust Partition Interests

recorded in the office of the County Recorder of Washoe County, Nevada, on June 23, 2006, in Book 1, as Document No. 3404772, hereby consents to the execution and recording of the within Declaration and agrees that said Deed of Trust is subject thereto and to the provisions of the Uniform Common-Interest Ownership Act of the State of Nevada.

IN WITNESS WHEREOF, WELLS FARGO BANK, N.A., as trustee for the benefit of holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-FL2 and for the holders of the Non-Trust Partition Interests, has caused this Consent of Beneficiary of Deed of Trust to be signed by its duly authorized officer on its behalf, this 13 day of June, 2007.

WELLS FARGO BANK, N.A., as trustee for the benefit of holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-FL2 and for the holders of the Non-Trust Partition Interests

By: WACHOVIA BANK, NATIONAL ASSOCIATION, solely in its capacity as Servicer, as authorized under that certain Pooling and Servicing Agreement dated as of November 1, 2006

By: _____
Name: Michael Farrell Title: Vice President

STATE OF NORTH CAROLINA)
) SS
COUNTY OF MECKLENBURG)

On this 7th day of June, 2007, personally appeared before me Michael Farrell, as Vice President of WACHOVIA BANK, NATIONAL ASSOCIATION, acting in its authorized capacity as Servicer for and on behalf of WELLS FARGO BANK, N.A., as trustee for the benefit of holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-FL2 and for the holders of the Non-Trust Partition Interests, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed and the free act and deed of said entities, before me. He/she is personally known to me or has produced a driver's license as identification.

_____
Notary Public

My commission expires: 10/26/2011

(Notary Seal)

B NICOLE HUNTER
NOTARY PUBLIC
MECKLENBURG COUNTY
NORTH CAROLINA
My Commission Expires October 26, 2011

LEGAL02/30395809v1

EXHIBIT A

LEGAL DESCRIPTIONS OF THE PROPERTY AND THE PARCEL,
AND
COPIES OF MAPS TO BE PROVIDED PRIOR TO RECORDING

LEGAL DESCRIPTION OF THE PROPERTY

Order No.: 50V198

LEGAL DESCRIPTION

The land referred to herein is situated in the State of Nevada, County of, described as follows:

PARCEL 1:

All that certain lot, piece or parcel of land situated in the City of Reno, County of Washoe, State of Nevada, Section Seven (7), Township Nineteen (19) North, Range Twenty (20) East, M.D.M.:

BEGINNING at the Northwest corner of Parcel Map No. 340, recorded November 10, 1976, Official Records, Washoe County, Nevada, said POINT OF BEGINNING being further described as lying on the Southerly right of way of Glendale Avenue;

THENCE North 88°15'47" East along said Southerly right of way 347.44 feet to a found 5/8" rebar with cap, stamped "Summit Engineers RLS 4787", said point also being the Northeast corner of Parcel 1 of Parcel Map 338, recorded November 10, 1976, Official Records, Washoe County, Nevada;

THENCE South 00°06'54" East along the East line of said Parcel 1, a distance of 208.59 feet;

THENCE South 89°53'06" West, 174.30 feet;

THENCE South 00°06'54" East, 158.86 feet to the South line of said Parcel 2;

THENCE North 89°23'54" West along said South line, a distance of 174.31 feet to a found 5/8" rebar, being the Southwest corner of said Parcel 1;

THENCE North 00°05'36" East along the West line of Parcel 1, a distance of 355.44 feet to the POINT OF BEGINNING.

Said parcel is also shown as Adjusted Parcel 2 on Record of Survey No. 3004.

APN: 012-211-24.

PARCEL 1-A:

A non-exclusive easement for the right, privilege and authority

Continued on next page

Order No. 507198

for the purpose only of ingress and egress of vehicles and/or persons in, upon and over the roadway and cuts, located on the land and premises, situated in the County of Washoe, State of Nevada, described as follows:

The following describes a parcel of ground located within the South 1/2 of Section 7, Township 19 North, Range 20 East, M.D.B.&M., County of Washoe, State of Nevada, and being more particularly described as follows:

BEGINNING at the Northeast corner of Parcel B, as shown on Parcel Map No. 227, filed in the office of the Washoe County Recorder on the 25th day of February, 1976, File No. 397925; thence South 89°23'54" East, 51.51 feet;

THENCE North 89°53'06" East, 10.00 feet to the true point of beginning; thence North 0°06'54" West, 29.91 feet, thence 15.71 feet on the arc of a tangent curve to the left, having a radius of 10.00 feet and a central angle of 90°00'00"; thence North 0°06'54" West, 60.00 feet; thence 15.71 feet on the arc of a curve to the left whose tangent bears North 89°53'06" East, having a radius of 10.00 feet and a central angle of 90°00'00"; thence North 0°06'54" West, 80.00 feet; thence 15.71 feet on the arc of a tangent curve to the left, having a radius of 10.00 feet and a central angle of 90°00'00";

THENCE North 0°06'54" West, 60.00 feet; thence 15.71 feet on the arc of a curve to the left, whose tangent bears North 89°53'06" East, having a radius of 10.00 feet and a central angle of 90°00'00"; thence North 0°06'54" West, 90.00 feet;

THENCE 15.65 feet on the arc of a tangent curve to the right, having a radius of 9.72 feet and a central angle of 91°37'19" to a point on the Southerly right of way of Glendale Avenue; thence along said Southerly right of way line North 88°15'47" East, 69.74 feet; thence departing said Southerly right of way line, 15.42 feet on the arc of a curve to the right, whose tangent bears South 85°15'47" West, having a radius of 10.00 feet and a central angle of 88°22'41"; thence South 0°06'54" East, 361.61 feet; thence South 89°53'06" West, 50.00 feet to the true point of beginning.

Continued on next page

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EXCEPT all that portion of said easement lying within the hereinabove described Parcel 1.

Document Number 2292338 is provided pursuant to the requirements of Section 1. NRS 111.312

PARCEL 2:

A portion of the North Half (N 1/2) of Section 18, Township 19 North, Range 20 East, M.D.M., more particularly described as follows:

COMMENCING at the Section corner common to Sections 7, 8, 17 and 18, Township 19 North, Range 20 East, M.D.M. and proceeding South 10°25'59" East, a distance of 99.98 feet to a 1/2 inch diameter pin, said pin being at the Northeast corner of that land conveyed from Matley, et al, to Lee Brothers, in a deed recorded as Document No. 306896 of the Official Records of Washoe County, Nevada; thence North 89°00'20" West, along the Northerly line of said Parcel, a distance of 563.20 feet to a 1/2 inch diameter iron pin; thence South 00°59'40" West, a distance of 187.77 feet to a 1/2 inch diameter iron pin; thence North 84°35'28" West, a distance of 24.46 feet to the TRUE POINT OF BEGINNING; thence North 84°35'28" West, a distance of 231.51 feet; thence South 00°54'52" West, a distance of 370.06 feet to a galvanized steel fence post; thence North 54°40'01" West, a distance of 356.84 feet to a point on the Southerly right of way line of Greg Street; thence along the Southerly right of way line of Greg Street the following four (4) courses and distances: 1) North 47°58'37" East, a distance of 233.02 feet; 2) from a tangent which bears the last named course, along a circular curve to the right with a radius of 760.00 feet and a central angle of 19°23'42", an arc length of 357.27 feet to a point of compound curvature; 3) along said compound circular curve to the right with a radius of 45.00 feet and central angle of 83°54'13", an arc length of 65.90 feet; 4) South 28°43'28" East a distance of 134.97 feet to the TRUE POINT OF BEGINNING, all as shown and set forth on that certain Record of Survey for MGM GRAND, filed in the office of the County Recorder of Washoe County, Nevada, on November 24, 1981, as File No. 769946.

APN: 012-231-29

Continued on next page

Order No. 507138

Document Number 2392338 is provided pursuant to the requirements of Section 1. NRS 111.312

PARCEL 3:

A parcel of land situate in Sections 7 & 18, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada, and more particularly described as follows:

Beginning at the intersection of the Northerly line of Mill Street with the Easterly line of U.S. Highway 395 as shown on Record of Survey Map Number 1518, File Number 759945 of the Official Records of Washoe County, Nevada, from which the Northeast corner of said Section 18 bears North 86°22'05" East a distance of 3260.13 feet;
thence along the Easterly line of Interstate 580 the following eight (8) courses and distances; 1) North 09°34'52" West, a distance of 352.44 feet; 2) North 03°28'08" West, a distance of 425.16 feet; 3) North 01°26'56" West, a distance of 498.41 feet; 4) North 01°24'09" West, a distance of 434.30 feet; 5) from a tangent which bears North 01°25'23" West, along a circular curve to the right with a radius of 858.06 feet and a central angle of 36°09'39", an arc length of 541.54 feet; 6) from an tangent which bears North 34°44'16" East along a circular curve to the left with a radius of 900.00 feet and a central angle of 28°28'08", an arc length of 447.19 feet; 7) North 06°16'08" East a distance of 117.19 feet; 8) from a tangent which bears the last named course, along a circular curve to the right with a radius of 61.15 feet and a central angle of 83°37'49", an arc length of 89.26 feet to a point on the Southerly line of Glendale Avenue; thence along the Southerly line of Glendale Avenue the following four (4) courses and distances; 1) North 89°53'57" East, a distance of 196.41 feet; 2) North 00°06'21" East, a distance of 4.00 feet; 3) North 89°53'57" East, a distance of 11.17 feet; 4) North 88°16'07" East, a distance of 30.83 feet to a point on the Westerly line of Watson and Meehan Corporation Property, said point being the Northeasterly corner of Parcel No. 1, as shown on the Parcel Map No. 340, filed in the Office of Washoe County Recorder on November 10, 1975 File No. 434453; thence along the Westerly, Southerly, and Easterly lines of said Watson and Meehan Corporation Property the following three (3) courses and distances: 1) South 00°05'56" West, a distance of 355.44 feet; 2) South

Continued on next page

89°23'34" East, a distance of 348.82 feet; 3) North 00°06'34" West, a distance of 369.63 feet to a point on the Southerly right of way line of Glendale Avenue, said point being the Northeasterly corner of Parcel No. 1, as shown on the Parcel Map No. 338, filed in the Office of Washoe County Recorder on November 10, 1976, File No. 434431; thence North 88°15'07" East, along the Southerly right of way Line of Glendale Avenue, a distance of 155.65 feet; thence South 02°12'06" East a distance of 4.24 feet to the Northeast corner of a concrete block wall, thence South 02°12'06" East, along Easterly face of said block wall, a distance of 13.05 feet to an angle point in said block wall; thence North 88°00'20" East, along the Northerly line of said block wall, a distance of 61.31 feet to a chain link fence; thence along said chain link fence the following seventeen (17) courses and distances; 1) South 68°11'19" East, a distance of 10.04 feet; 2) South 79°03'12" East, a distance of 10.54 feet; 3) South 70°04'24" East, a distance of 9.08 feet; 4) South 56°48'54" East, a distance of 10.33 feet; 5) South 52°50'24" East, a distance of 49.76 feet; 6) South 49°03'32" East, a distance of 10.57 feet; 7) South 38°43'47" East, a distance of 78.93 feet; 8) South 41°22'11" East, a distance of 10.14 feet; 9) South 48°20'20" East, a distance of 10.07 feet; 10) South 54°50'53" East, a distance of 10.04 feet, 11) South 59°44'13" East, a distance of 39.95 feet; 12) South 50°21'10" East, a distance of 10.37 feet; 13) South 39°50'28" East, a distance of 10.12 feet; 14) South 31°57'47" East, a distance of 105.60 feet; 15) South 20°08'38" East, a distance of 76.52 feet; 16) South 34°19'10" East, a distance of 265.32 feet; 17) South 14°17'50" East, a distance of 279.78 feet; thence along a line that is more or less coincident with said chain link fence the following fifteen (15) courses and distances: 1) South 06°44'16" East, a distance of 109.36 feet; 2) South 05°15'13" East, a distance of 158.53 feet; 3) South 27°57'06" East, a distance of 129.07 feet; 4) South 43°18'46" East, a distance of 228.10 feet; 5) South 44°58'46" East, a distance of 133.07 feet; 6) South 38°2'46" East, a distance of 64.06 feet; 7) South 47°15'56" East, a distance of 107.92 feet; 8) South 50°50'59" East, a distance of 489.05 feet; 9) South 55°41'02" East, a distance of 45.51 feet; 10) South 46°38'29" East, a distance of 98.99 feet; 11) South 63°53'42" East a distance of 151.28 feet; 12) South 52°31'06" East, a distance of 151.08 feet; 13)

Continued on next page

North 78°53'28" East, a distance of 75.55 feet; 14) South 73°46'40" East, a distance of 132.04 feet; 15) South 64°35'20" East, a distance of 98.69 feet to a point on the Northerly right of way line of Greg Street; thence along the Northerly right of way line of Greg Street the following ten (10) courses and distances: 1) South 20°40'40" West, a distance of 294.78 feet; 2) from a tangent which bears South 47°48'19" West, along a circular curve to the right with a radius of 750.00 feet and a central angle of 27°10'38", and arc length of 355.75 feet; 3) South 74°58'57" West, a distance of 120.67 feet; 4) from a tangent which bears the last named course, along a circular curve to the right with a radius of 36.00 feet an a central angle of 31°49'47", an arc length of 20.00 feet to a point of compound curvature; 5) along said compound circular curve to the right with a radius of 116.00 feet and a central angle of 32°40'13", an arc length of 66.14 feet; 6) South 71°14'17" West, a distance of 50.82 feet; 7) South 11°03'06" East, a distance of 8.54 feet; 8) from a tangent which bears the last named course, along a circular curve to the right with a radius of 36.00 feet and a central angle of 75°26'01", an arc length of 48.02 feet to a point of reverse curvature; 9) along said reverse circular curve to the left with a radius of 604.00 feet and a central angle of 17°23'58", an arc length of 183.42 feet; 10) South 47°58'57" West, a distance of 824.52 feet to the Northeast corner of parcel conveyed to Bruno Benna, et al, recorded as Document No. 88899, Official Records of Washoe County, Nevada; thence North 53°46'57" West along the Northerly line of said Benna Parcel, a distance of 1099.65 feet to the Northeasterly corner of Parcel B as shown on Parcel Map No. 341, filed in the office of Washoe County recorded on November 10, 1976, File No. 434464, thence South 26°13'03" West, along the Easterly line of said Parcel B, a distance of 266.37 feet; thence South 18°46'57" East and distance of 28.38 feet to a point on the Northerly right of way line of Mill Street; thence North 63°44'52" West, along said Northerly right of way line, a distance of 80.00 feet; thence North 26°25'03" East, a distance of 266.32 feet to the Northerly line of said Benna Parcel; thence from a tangent which bears North 63°43'05" East, along a circular curve to the left with a radius of 86.58 feet and a central angle of 81°31'28" an arc length of 123.19 feet; thence North 77°48'23" West a distance of 234.00 feet; thence South 26°13'03" West a distance of 380.15 feet to the

Continued on next page

Northerly line of Mill Street; thence North 63°44'52" West, along the Northerly line of Mill Street, a distance of 208.34 feet to the Point of Beginning.

said land is shown and delineated as Parcel A on Record of Survey Map No. 3804, recorded June 23, 2000 as Document No. 2458502, Official Records.

BASIS OF BEARINGS: Recorded of Survey Map Number 2775, File No. 1834848 of the Official Records of Washoe County, Nevada; NAD 83, Nevada West Zone.

APN: 012-211-26

Document Number 2456501 is provided pursuant to the requirements of Section 1, NRS 111.312

LEGAL DESCRIPTION OF THE PARCEL

LEGAL DESCRIPTION
HOTEL CONDOMINIUMS AT GRAND SIERRA RESORT
June 12, 2007

PHASE 1A:

A portion of Parcel A as shown on Record of Survey Map Number 3804, located between an elevation of 4630.80 and an elevation of 4642.05 within the following described parcel within Section 7, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada:

Beginning at a point from which the Southeast corner of said Section 7 bears South 72°02'35" East a distance of 2423.93 feet; thence South 83°13'24" West a distance of 67.50 feet; thence North 06°46'36" West a distance of 114.50 feet; thence South 83°13'24" West a distance of 162.67 feet; thence North 06°46'36" West a distance of 75.33 feet; thence North 83°13'24" East a distance of 162.67 feet; thence North 06°46'36" West a distance of 114.50 feet; thence North 83°13'24" East a distance of 67.50 feet; thence South 06°46'36" East a distance of 114.50 feet; thence North 83°13'24" East a distance of 328.83 feet; thence South 06°46'36" East a distance of 67.50 feet; thence South 83°13'24" West a distance of 138.33 feet; thence South 06°46'36" East a distance of 7.83 feet; thence South 83°13'24" West a distance of 190.50 feet; thence South 06°46'36" East a distance of 114.50 feet to the Point of Beginning.

PHASE 1B:

A portion of Parcel A as shown on Record of Survey Map Number 3804, located between an elevation of 4642.05 and an elevation of 4653.30 within the following described parcel within Section 7, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada:

Beginning at a point from which the Southeast corner of said Section 7 bears South 72°02'35" East a distance of 2423.93 feet; thence South 83°13'24" West a distance of 67.50 feet; thence North 06°46'36" West a distance of 114.50 feet; thence South 83°13'24" West a distance of 162.67 feet; thence North 06°46'36" West a distance of 75.33 feet; thence North 83°13'24" East a distance of 162.67 feet; thence North 06°46'36" West a distance of 114.50 feet; thence North 83°13'24" East a distance of 67.50 feet; thence South 06°46'36" East a distance of 114.50 feet; thence North 83°13'24" East a distance of 328.83 feet; thence South 06°46'36" East a distance of 67.50 feet; thence South 83°13'24" West a distance of 138.33 feet; thence South 06°46'36" East a distance of 7.83 feet; thence South 83°13'24" West a distance of 190.50 feet; thence South 06°46'36" East a distance of 114.50 feet to the Point of Beginning.

PHASE 2:

A portion of Parcel A as shown on Record of Survey Map Number 3804, located between an elevation of 4653.30 and an elevation of 4664.55 within the following described parcel within Section 7, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada:

Beginning at a point from which the Southeast corner of said Section 7 bears South 72°02'35" East a distance of 2423.93 feet; thence South 83°13'24" West a distance of 67.50 feet; thence North 06°46'36" West a distance of 114.50 feet; thence South 83°13'24" West a distance of 162.67 feet; thence North 06°46'36" West a distance of 75.33 feet; thence North 83°13'24" East a distance of 162.67 feet; thence North 06°46'36" West a distance of 114.50 feet; thence North 83°13'24" East a distance of 67.50 feet; thence South 06°46'36" East a distance of 114.50 feet; thence North 83°13'24" East a distance of 320.83 feet; thence South 06°46'36" East a distance of 67.50 feet; thence South 83°13'24" West a distance of 138.33 feet; thence South 06°46'36" East a distance of 7.83 feet; thence South 83°13'24" West a distance of 190.50 feet; thence South 06°46'36" East a distance of 114.50 feet to the Point of Beginning.

PHASE 3:

A portion of Parcel A as shown on Record of Survey Map Number 3804, located between an elevation of 4664.55 and an elevation of 4675.80 within the following described parcel within Section 7, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada:

Beginning at a point from which the Southeast corner of said Section 7 bears South 72°02'35" East a distance of 2423.93 feet; thence South 83°13'24" West a distance of 67.50 feet; thence North 06°46'36" West a distance of 114.50 feet; thence South 83°13'24" West a distance of 162.67 feet; thence North 06°46'36" West a distance of 75.33 feet; thence North 83°13'24" East a distance of 162.67 feet; thence North 06°46'36" West a distance of 114.50 feet; thence North 83°13'24" East a distance of 67.50 feet; thence South 06°46'36" East a distance of 114.50 feet; thence North 83°13'24" East a distance of 320.83 feet; thence South 06°46'36" East a distance of 67.50 feet; thence South 83°13'24" West a distance of 138.33 feet; thence South 06°46'36" East a distance of 7.83 feet; thence South 83°13'24" West a distance of 190.50 feet; thence South 06°46'36" East a distance of 114.50 feet to the Point of Beginning.

PHASE 4:

A portion of Parcel A as shown on Record of Survey Map Number 3804, located between an elevation of 4675.80 and an elevation of 4687.05 within the following described parcel within Section 7, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada:

Beginning at a point from which the Southeast corner of said Section 7 bears South 72°02'35" East a distance of 2423.93 feet; thence South 83°13'24" West a distance of 67.50 feet; thence North 06°46'36" West a distance of 114.50 feet; thence South 83°13'24" West a distance of 162.67 feet; thence North 06°46'36" West a distance of 75.33 feet; thence North 83°13'24" East a distance of 162.67 feet; thence North 06°46'36" West a distance of 114.50 feet; thence North 83°13'24" East a distance of 67.50 feet; thence South 06°46'36" East a distance of 114.50 feet; thence North 83°13'24" East a distance of 328.83 feet; thence South 06°46'36" East a distance of 67.50 feet; thence South 83°13'24" West a distance of 138.33 feet; thence South 06°46'36" East a distance of 7.83 feet; thence South 83°13'24" West a distance of 190.50 feet; thence South 06°46'36" East a distance of 114.50 feet to the Point of Beginning.

PHASE 5:

A portion of Parcel A as shown on Record of Survey Map Number 3804, located between an elevation of 4687.05 and an elevation of 4698.30 within the following described parcel within Section 7, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada:

Beginning at a point from which the Southeast corner of said Section 7 bears South 72°02'35" East a distance of 2423.93 feet; thence South 83°13'24" West a distance of 67.50 feet; thence North 06°46'36" West a distance of 114.50 feet; thence South 83°13'24" West a distance of 162.67 feet; thence North 06°46'36" West a distance of 75.33 feet; thence North 83°13'24" East a distance of 162.67 feet; thence North 06°46'36" West a distance of 114.50 feet; thence North 83°13'24" East a distance of 67.50 feet; thence South 06°46'36" East a distance of 114.50 feet; thence North 83°13'24" East a distance of 328.83 feet; thence South 06°46'36" East a distance of 67.50 feet; thence South 83°13'24" West a distance of 138.33 feet; thence South 06°46'36" East a distance of 7.83 feet; thence South 83°13'24" West a distance of 190.50 feet; thence South 06°46'36" East a distance of 114.50 feet to the Point of Beginning.

PHASE 6:

A portion of Parcel B as shown on Tract Map 4760, located between an elevation of 4698.30 and an elevation of 4709.55 within the following described parcel within Section 7, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada:

Beginning at a point from which the Southeast corner of said Section 7 bears South 72°02'35" East a distance of 2423.93 feet; thence South 83°13'24" West a distance of 67.50 feet; thence North 06°46'36" West a distance of 114.50 feet; thence South 83°13'24" West a distance of 162.67 feet; thence North 06°46'36" West a distance of 75.33 feet; thence North 83°13'24" East a distance of 162.67 feet; thence North 06°46'36" West a distance of 114.50 feet; thence North 83°13'24" East a distance of 67.50 feet; thence South 06°46'36" East a distance of 114.50 feet; thence North 83°13'24" East a distance of 328.83 feet; thence South 06°46'36" East a distance of 67.50 feet; thence South 83°13'24" West a distance of 138.33 feet; thence South 06°46'36" East a distance of 7.83 feet; thence South 83°13'24" West a distance of 190.50 feet; thence South 06°46'36" East a distance of 114.50 feet to the Point of Beginning.

PHASE 7:

A portion of Parcel B as shown on Tract Map 4760, located between an elevation of 4709.55 and an elevation of 4722.80 within the following described parcel within Section 7, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada:

Beginning at a point from which the Southeast corner of said Section 7 bears South 72°02'35" East a distance of 2423.93 feet; thence South 83°13'24" West a distance of 67.50 feet; thence North 06°46'36" West a distance of 114.50 feet; thence South 83°13'24" West a distance of 162.67 feet; thence North 06°46'36" West a distance of 75.33 feet; thence North 83°13'24" East a distance of 162.67 feet; thence North 06°46'36" West a distance of 114.50 feet; thence North 83°13'24" East a distance of 67.50 feet; thence South 06°46'36" East a distance of 114.50 feet; thence North 83°13'24" East a distance of 328.83 feet; thence South 06°46'36" East a distance of 67.50 feet; thence South 83°13'24" West a distance of 138.33 feet; thence South 06°46'36" East a distance of 7.83 feet; thence South 83°13'24" West a distance of 190.50 feet; thence South 06°46'36" East a distance of 114.50 feet to the Point of Beginning.

BASIS OF BEARINGS: Nevada State Plane Coordinate System, West Zone (NAD 83/94).

BASIS OF ELEVATIONS: NGVD 1988.

Description Prepared By:
Don M. McHarg P.L.S. 4787
Summit Engineering Corporation
5405 Mae Anne Avenue
Reno, Nevada 89523

6-13-07

J:\WPDATA\LEGALS\GSRPH7.DOC

[COPIES OF MAPS TO BE PROVIDED PRIOR TO RECORDING]

OFFICIAL PLAT OF

HOTEL CONDOMINIUMS AT GRAND SIERRA RESORT PHASE 7

(TENTATIVE MAP ENTITLED GRAND SIERRA CONDOMINIUMS)

OWNER'S CERTIFICATE

[illegible]

CITY ENGINEER'S CERTIFICATE

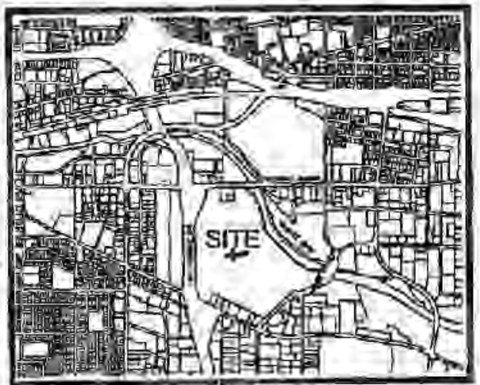
[illegible]

DIVISION OF WATER RESOURCES CERTIFICATE

[illegible]

UTILITY COMPANIES CERTIFICATE

[illegible]



VICINITY MAP

NO SCALE

SHEET INDEX

[illegible]

TAX CERTIFICATE

[illegible]

CITY CERTIFICATE

[illegible]

TITLE COMPANY CERTIFICATE

[illegible]

RENO CITY PLANNING CERTIFICATE

[illegible]

DISTRICT BOARD OF HEALTH CERTIFICATE

[illegible]

SURVEYOR'S CERTIFICATE

[illegible]

OFFICIAL PLAT OF HOTEL CONDOMINIUMS AT GRAND SIERRA RESORT PHASE 7

SUMMIT

SHEET 1 OF 10

NOTES:

BUILDING DETAIL
AT FINISH FLOOR ELEV. = 4709.55
1"=100'

SECURITY INTEREST HOLDERS CERTIFICATE:

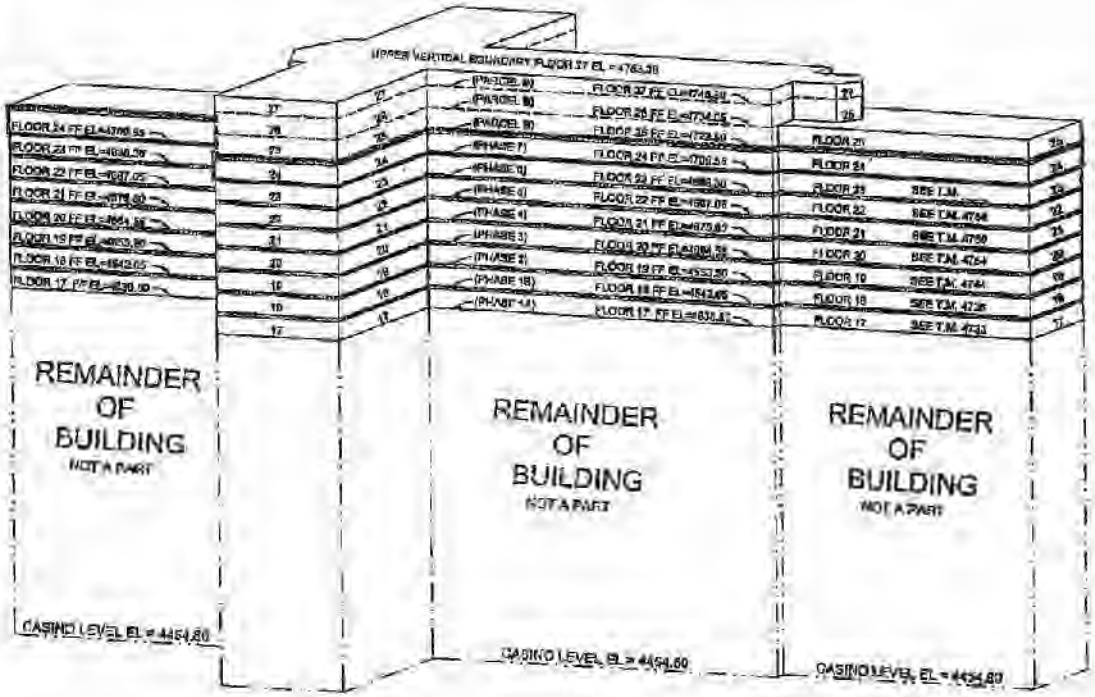
THIS IS TO CERTIFY THAT THE FOLLOWING HAS CONSENTED TO THE PREPARATION AND RECORDATION OF THIS PLAT BY SEPARATE DOCUMENT.

1) WELLS FARGO BANK, N.A., as trustee for the benefit of holders of CD_ Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-FL2 and for the holders of the Non-Total Pavilion Interests

BY DOCUMENT NO. _____, OFFICIAL RECORDS OF WASHOE COUNTY, NEVADA.

BASIS OF BEARINGS AND COORDINATES:

BASIS OF ELEVATIONS:



ISOMETRIC VIEW OF BUILDING PARCELS

FLOORS 26, 27
UPPER VERTICAL BOUNDARY = 4755.00
LOWER VERTICAL BOUNDARY = 4734.00

FLOOR 25
UPPER VERTICAL BOUNDARY = 4734.00
LOWER VERTICAL BOUNDARY = 4722.80

PLAN VIEW OF PARCEL B

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SEE SHEET 6

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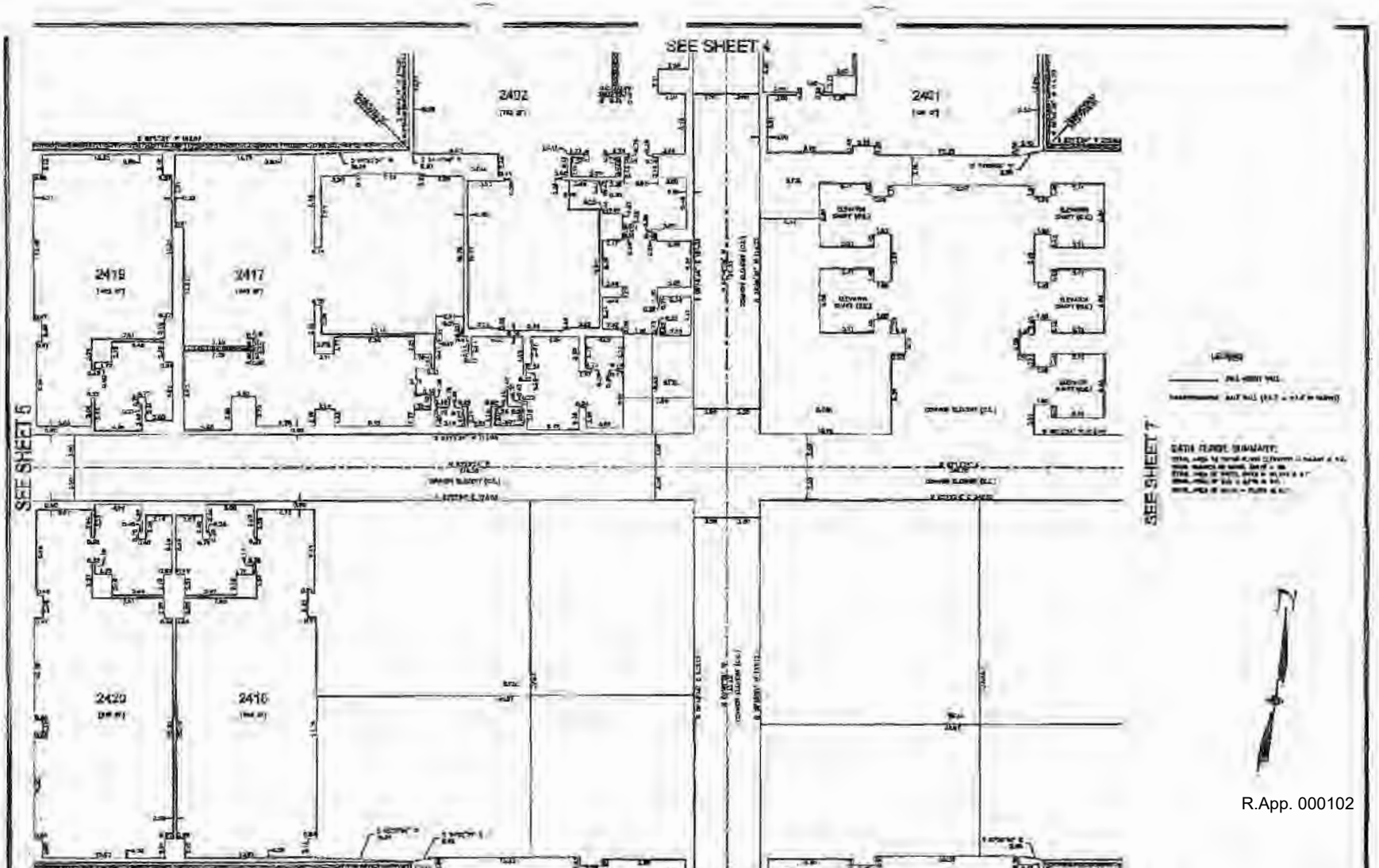
SEE SHEET 8


SEE SHEET 4
SEE SHEET 6
SEE SHEET 7
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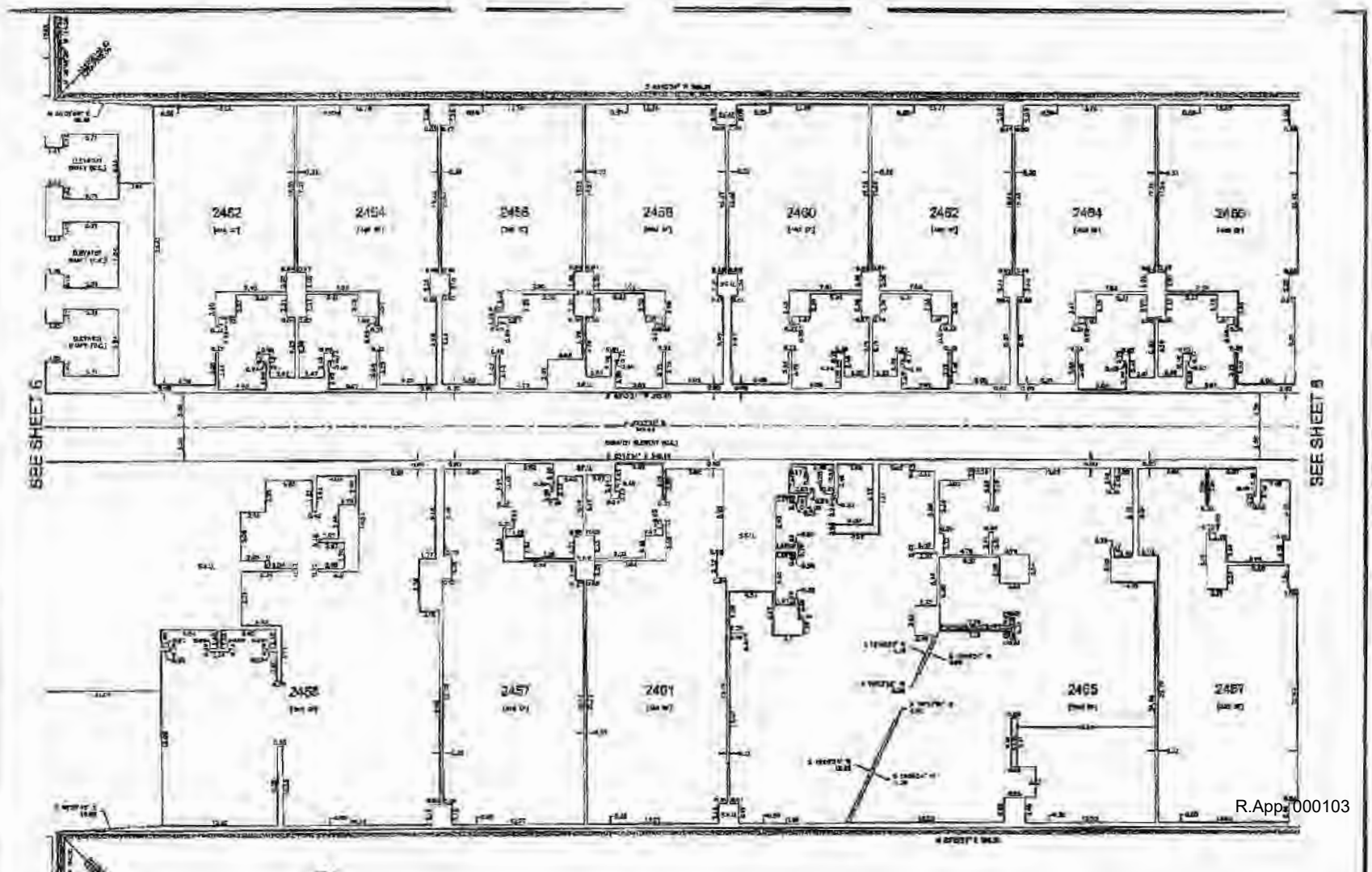
SEE SHEET 6
SEE SHEET 8
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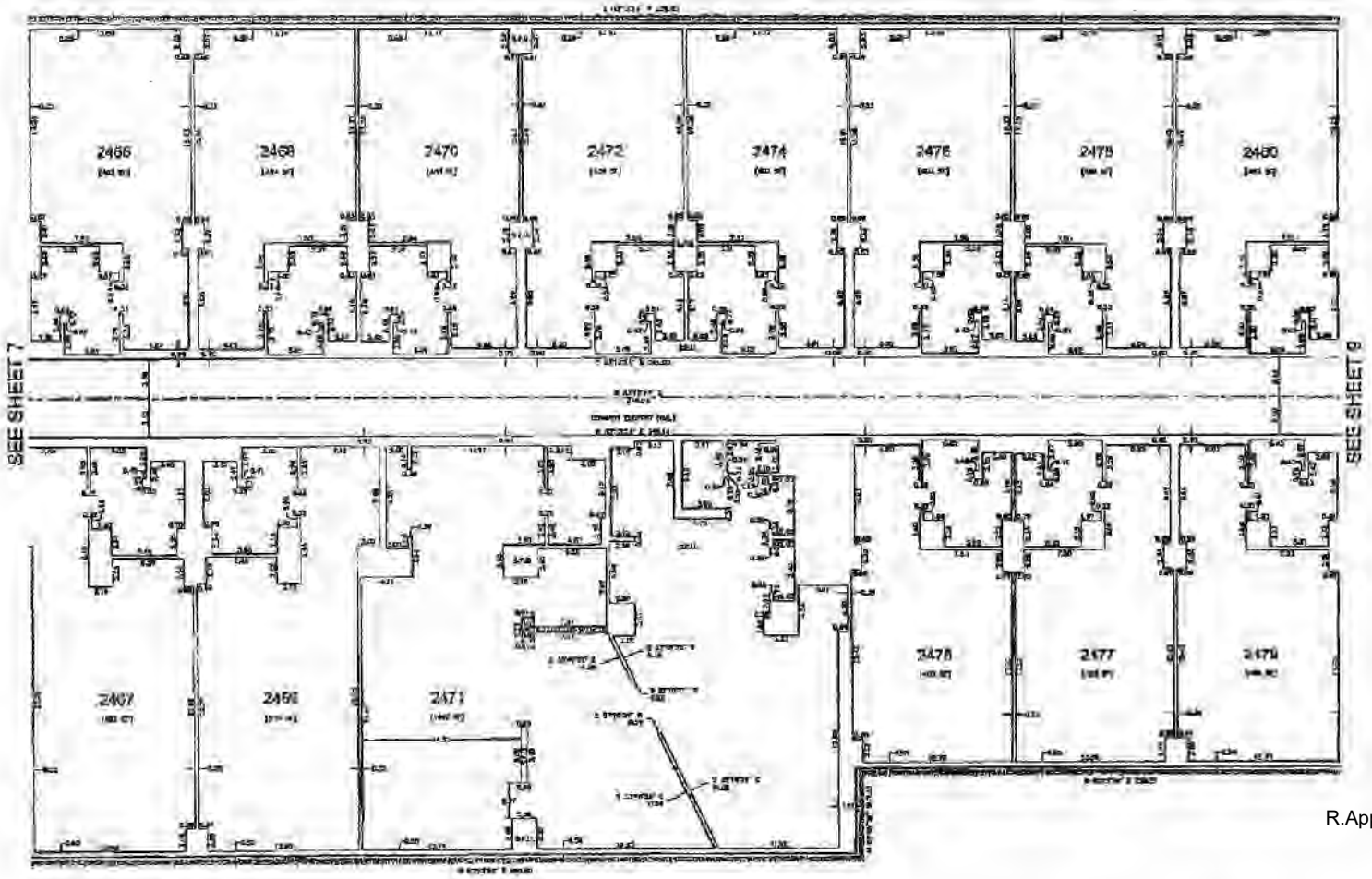
SEE SHEET 7
SEE SHEET 9
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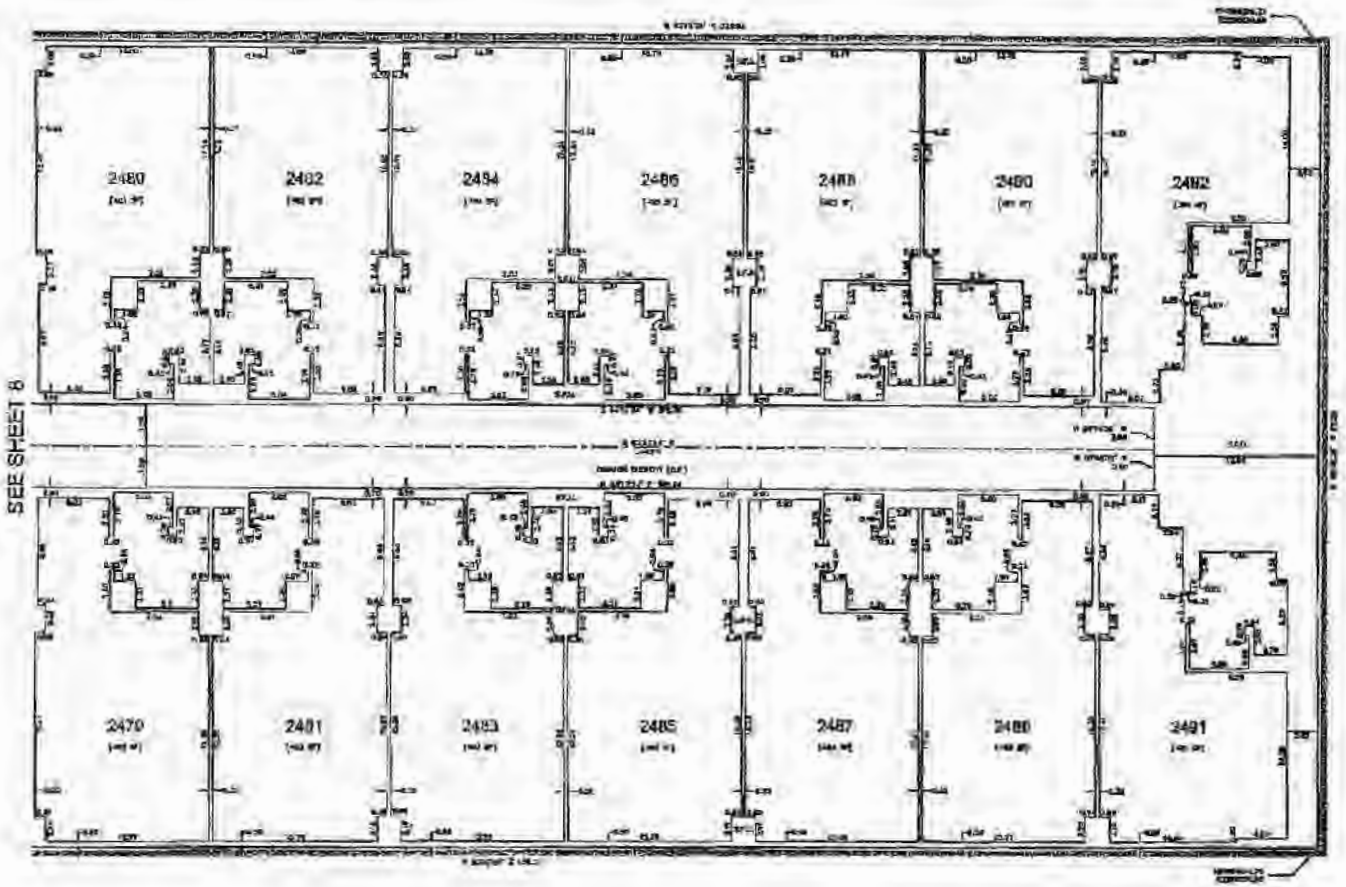
SEE SHEET 8
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SEE SHEET 6
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EXHIBIT B

ALLOCATION OF ALLOCATED INTERESTS

Hotel-Condominiums at Grand Sierra Resort

Allocation of Allocated Interests - Floors 17, 18, 19, 20, 21, 22, 23 & 24 Only

Unit Code	Units	Unit Sq. Ft.	% of Ownership	Total Unit Sq. Ft.	Total % of Ownership
The Imperial Suite	16	1,340	0.394%	21,440	6.305%
The DMD Suite	6	2,101	0.618%	12,606	3.707%
The Loft (1)	8	922	0.271%	7,376	2.169%
The Loft (2)	4	1,006	0.296%	4,024	1.183%
The Loft (3)	4	856	0.252%	3,424	1.007%
The Presidential Suite	2	1,552	0.456%	3,104	0.913%
The Grand Suite (A)	64	558	0.164%	35,712	10.502%
The Grand Suite (B)	75	552	0.162%	41,400	12.174%
The Grand^2 (A)	250	427	0.126%	106,750	31.391%
The Grand^2 (B)	223	420	0.124%	93,660	27.542%
The Grand^2 (C) / The Flat	2	436	0.128%	872	0.256%
The Grand^2 (D) / The Flat	14	434	0.128%	6,076	1.787%
Delux Parlor Combined	2	1,600	0.470%	3,200	0.941%
SFU	1	420	0.124%	420	0.124%
	671			340,064	100.000%

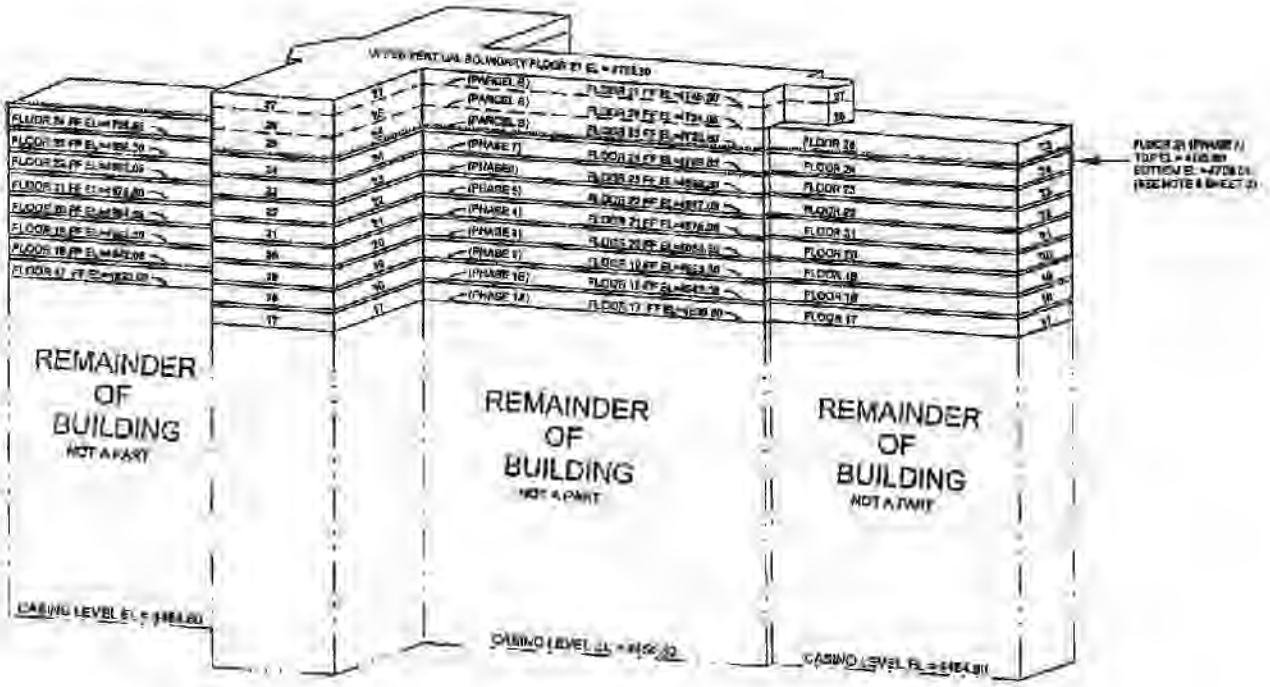
IUO-GSR 002537

R.App. 000109

SUMMIT
SEE SHEET 6
SEE SHEET 7
FINISH FLOOR ELEV.=4709.66

EXHIBIT C

FUTURE EXPANSION PARCEL MAP
[TO BE PROVIDED PRIOR TO RECORDING]



* NOTE

- PARCEL B IS THE FUTURE EXPANSION PARCEL. ANY AND ALL PORTIONS OF THE FUTURE EXPANSION PARCEL NEED NOT BE BUILT.

- ALL PORTIONS OF THE FUTURE EXPANSION PARCEL ARE SUBJECT TO DEVELOPMENTAL RIGHTS AS DESCRIBED IN THE DECLARATION.

- ALL REAL ESTATE SHOWN ON THE OFFICIAL PLAT OF HOTEL CONDOMINIUMS AT GRAND SIERRA RESORT PHASE 1A, CONDOMINIUM TRACT MAP #4733, FILED ON THE 10TH DAY OF DECEMBER, 2008, AS FILE NUMBER 3475704, AND LABELED "NOT A PART", IS NOT SUBJECT TO DEVELOPMENTAL RIGHTS AS PART OF THIS COMMON INTEREST COMMUNITY, BUT MAY BE DEVELOPED BY THE DECLARANT OR OTHERS AS PART OF ONE OR MORE SEPARATE COMMON INTEREST COMMUNITIES.

Plan of Development
Exhibit C to CC&R Document

S.F.U. BETWEEN CEILING AND FINISH FLOOR/ROOF ABOVE (HEIGHT VARIES)
SEE NOTE 5 ON PAGE 2

GRAND SIERRA OPERATING CORP.,
a Nevada Corporation

By: _____
Roberta H. Faca, or
Executive Vice President &
Chief Operating Officer

STATE OF NEVADA)
) SS
COUNTY OF WASHOE)

Staci D. Mitchell, a Notary Public in and for the County and State aforesaid, do hereby certify that Roberta H. Faca, as Executive Vice President & Chief Operating Officer of Grand Sierra Operating Corp., a Nevada corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act of such company in his capacity, as the Executive Vice President & Chief Operating Officer of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8 day of June, 2007.

Staci D. Mitchell
Notary Public

My Commission expires:
August 10, 2010

STACI D. MITCHELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 96-30690-2 - Expires August 10, 2010

SEE SHEET 8
FINISH FLOOR ELEV.=4709.55
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OFFICIAL PLAT OF
HOTEL CONDOMINIUMS AT GRAND
SIERRA RESORT PHASE 7
SUMMIT
SHEET
19
OF
10

EXHIBIT D

ALLOCATION OF SFU AND HOTEL EXPENSES

Hotel-Condominiums at Grand Sierra Resort

Allocation of SFU and Hotel Expenses - Floors 17, 18, 19, 20, 21, 22, 23 & 24 Only

Unit Model	Unit Qty	Unit Sq Ft	% of Ownership	Total Unit Sq Ft	Total % of Ownership
The Imperial Suite	16	1,340	0.395%	21,440	6.312%
The DMD Suite	6	2,101	0.619%	12,606	3.712%
The Loft (1)	8	922	0.271%	7,376	2.172%
The Loft (2)	4	1,006	0.296%	4,024	1.185%
The Loft (3)	4	856	0.252%	3,424	1.008%
The Presidential Suite	2	1,552	0.457%	3,104	0.914%
The Grand Suite (A)	64	558	0.164%	35,712	10.515%
The Grand Suite (B)	75	552	0.163%	41,400	12.189%
The Grand^2 (A)	250	427	0.126%	106,750	31.430%
The Grand^2 (B)	223	420	0.124%	93,660	27.576%
The Grand^2 (C) / The Flat	2	436	0.128%	872	0.257%
The Grand^2 (D) / The Flat	14	434	0.128%	6,076	1.789%
Delux Parlor Combined	2	1,600	0.471%	3,200	0.942%
	670			339,644	100.000%

EXHIBIT E

LIST OF STRUCTURAL AND UTILITY COMPONENTS

GRAND SIERRA COMPONENT LIST

1. Walls, Stucco, Paint Finishes and Repairs (Incl. Caulk)
2. Windows, (Phased Replacement) (Incl. Spandrel Panels)
3. Elevator Cab Finishes, Passenger
4. Fan Coil Units, (Phased Replacements)
5. Floor Coverings, Carpet, Hallways, (Phased Replacements)
6. Light Fixtures, Emergency and Exit
7. Paint Finishes, Hallways, Ceilings and Doors, Phased
8. Paint Finishes, Stairwells
9. Renovations, Units (excludes FF&E)
10. Wall Coverings, (Phased Replacements)
11. Roofs, Modified Bitumen
12. Air Handling Units, Capital Repairs
13. Boilers, 5,680-MBH, (Phased Replacement)
14. Boilers, Deaeration Tank and Boiler Feed System
15. Chillers, 1,500- to 1,900-Tons, (Phased Replacements)
16. Condensate Return Tanks and Pumps, East Wing Building Heat
17. Cooling Towers, 665 Tons, (Phased Replacement)
18. Elevators, Controls and Motors, Passenger
19. Elevators, Controls and Motors, Service
20. Exhaust Fans, Hallways, (Phased Replacement)
21. Exhaust Fan, Passenger Elevator Room
22. Exhaust Fan, Service Elevator Room
23. Fire Detection System
24. Generator, Emergency, Tower Only, 350-KW
25. Generators, Emergency, Entire Building (Serves Tower Fire Pumps), 1,000-KW
26. Heat Exchangers, Building Heat
27. Heat Exchangers, Domestic Water
28. Heat Exchangers, Lake Free-Cooling System
29. Pumps, Building Heat (North, South and West Wings), 7.5-HP, (Phased Replacements)
30. Pumps, Building Heat (East Wing), 30-HP, (Phased Replacements)
31. Pumps, Chilled Water, 100-HP, (Phased Replacements) (Incl. VFD Controls)
32. Pumps, Domestic Water, 20-HP, (Phased Replacements) (Incl. VFD Controls)
33. Pumps, Fire Suppression, Electric, 150-HP (Incl. Jockey Pumps, 10-HP)
34. Pump, Fire Suppression, Diesel, 230-HP
35. Pumps, Lake Free Cooling-System, 60-HP
36. Stairwell Pressurization Systems, (Phased Replacement)
37. Riser Sections, Building Heating and Cooling, (Partial Replacements)
38. Riser Sections, Domestic Water, (Partial Replacements)

EXHIBIT F

FORMULA FOR ALLOCATION OF ALLOCATED INTERESTS

Hotel-Condominiums at Grand Sierra Resort
Formula for Allocation of Allocated Interests

Unit Model	Unit Qty	Unit Sq Ft	% of Ownership	Total Unit Sq Ft	Total % of Ownership
The Imperial Suite	22	1,340	0.316%	29,480	6.960%
The DMD Suite	6	2,101	0.496%	12,606	2.976%
The Loft (1)	11	922	0.218%	10,142	2.395%
The Loft (2)	4	1,006	0.238%	4,024	0.950%
The Loft (3)	6	856	0.202%	5,136	1.213%
The Presidential Suite	8	1,552	0.366%	12,416	2.931%
The Solarium Suite	2	1,218	0.288%	2,436	0.575%
The Grand Suite (A)	64	558	0.132%	35,712	8.432%
The Grand Suite (B)	87	552	0.130%	48,024	11.338%
The Grand^2 (A)	320	427	0.101%	136,640	32.261%
The Grand^2 (B)	275	420	0.099%	115,500	27.269%
The Grand^2 (C)	2	436	0.103%	872	0.206%
The Grand^2 (D)	16	434	0.102%	6,944	1.639%
Delux Parlor Combined	2	1,600	0.378%	3,200	0.756%
SFU	1	420	0.099%	420	0.099%
	826			423,552	100.000%

EXHIBIT G

FORMULA FOR ALLOCATION OF SFU AND HOTEL EXPENSES

Hotel-Condominiums at Grand Sierra Resort
Formula for Allocation of SFU and Hotel Expenses

Unit Model	Unit Qty	Unit Sq. Ft.	% of Ownership	Total Unit Sq. Ft.	Total % of Ownership
The Imperial Suite	22	1,340	0.317%	29,480	6.967%
The DMD Suite	6	2,101	0.497%	12,606	2.979%
The Loft (1)	11	922	0.218%	10,142	2.397%
The Loft (2)	4	1,006	0.238%	4,024	0.951%
The Loft (3)	6	856	0.202%	5,136	1.214%
The Presidential Suite	8	1,552	0.367%	12,416	2.934%
The Solarium Suite	2	1,218	0.288%	2,436	0.576%
The Grand Suite (A)	64	558	0.132%	35,712	8.440%
The Grand Suite (B)	87	552	0.130%	48,024	11.350%
The Grand^2 (A)	320	427	0.101%	136,640	32.293%
The Grand^2 (B)	275	420	0.099%	115,500	27.296%
The Grand^2 (C)	2	436	0.103%	872	0.206%
The Grand^2 (D)	16	434	0.103%	6,944	1.641%
Delux Parlor Combined	2	1,600	0.378%	3,200	0.756%
	825			423,132	100.000%

WASHOE COUNTY
RECORDER

OFFICE OF THE RECORDER
KATHRYN L. BURKE, RECORDER

1001 E. NINTH STREET
POST OFFICE BOX 11130
RENO, NEVADA 89520-0027
PHONE (775) 328-3661
FAX (775) 325-8010

LEGIBILITY NOTICE

The Washoe County Recorder's Office has determined that the attached document may not be suitable for recording by the method used by the Recorder to preserve the Recorder's records. The customer was advised that copies reproduced from the recorded document would not be legible. However, the customer demanded that the document be recorded without delay as the parties rights may be adversely affected because of a delay in recording. Therefore, pursuant to NRS 247.120 (3), the County Recorder accepted the document conditionally, based on the undersigned's representation (1) that a suitable copy will be submitted at a later date (2) it is impossible or impracticable to submit a more suitable copy.

By my signing below, I acknowledge that I have been advised that once the document has been microfilmed it may not reproduce a legible copy.

Signature

6-27-07
Date

DON M. McHARG
Printed Name

EXHIBIT "2"

EXHIBIT "2"

EXHIBIT "2"

GRAND SIERRA RESORT
UNIT MAINTENANCE AGREEMENT

This UNIT MAINTENANCE AGREEMENT ("Agreement") is made and entered into this September 25, 2007 (the "Effective Date") by and between GRAND SIERRA OPERATING CORP., a Nevada corporation, (the "Company") and [illegible] (collectively and jointly and severally referred to in this Agreement as "Owner"), whose address is 9875 Green Climb Court, Reno, NV 89521.

Office Phone: 322-5050
E-Mail Address: MYAE@CHARTER.NET

Home Phone #: 853-2585
Fax #: 322-6198
Owner's Designate: [illegible]

A. Owner has, concurrently herewith, purchased Hotel Unit # 1021 (the "Unit") in the Hotel-Condominiums at Grand Sierra Resort (the "Hotel"), and desires to receive certain hotel services from the Company with respect to Owner's Unit and Owner's personal use of the Unit.

B. The Company, either directly or through a hotel management company engaged by the Company to manage the operations of the Hotel (the "Manager"), has agreed to provide Owner with the services described herein upon the terms and conditions set forth in this Agreement. All references to the Company in this Agreement refer to either the Company or the Manager, if any, appointed by the Company to provide the services described herein as agent of the Company.

NOW, THEREFORE, in consideration of the terms, conditions and the mutual covenants herein set forth, the parties agree as follows:

1. DEFINITIONS. Capitalized terms will have the meanings set forth below or are defined elsewhere in this Agreement.

(a) "**CC&Rs**" means the Declaration of Conditions, Covenants, Restrictions and Reservations of Easements for Grand Sierra Resort.

(b) "**Company**" means Grand Sierra Operating Corp. or any Manager that may be appointed by the Company to provide the services described herein as agent of the Company.

(c) "**Guest**" means any person or persons who rents the Unit, including complimentary Guests, but excluding Owner and Owner's immediate family.

(d) "**Owner**" means the owner of the Unit identified in the introductory paragraph of this Agreement and his or her immediate family, the term "**Owner**" excludes all other persons who may use and occupy the Unit, all of whom are referred to as "**Guests**" herein.

(e) "**Unit**" means the Unit identified in Recitals.

Owner Initials
Owner Initials

2. UNIT MAINTENANCE SERVICES. During the term of this Agreement, the Company, either directly or through the Manager as the Company's agent, shall provide and/or make available to Owner for use as Owner requests, the following services:

(a) Reservation Services. Reservation services for scheduling Owner's and Guest's use of the Unit; provided, however, that the Company shall have no responsibility for collecting payment from any rental guests booked either through Owner or Owner's third party rental agent, which shall be the sole responsibility of Owner and/or Owner's third party rental agent unless otherwise agreed to between Owner and the Company under a separate Unit Rental Agreement;

(b) Registration Services. Registration of arrivals and departures by Owner and Guests, including verification of identity, preparation of electronic keys, and verification of arrivals and departures;

(c) Switchboard Operations. Routing of all inbound and outbound telephone calls to Owner's Unit through a central telephone system;

(d) Linen and Housekeeping Services. Linen service and housekeeping service during any period that the Unit is occupied either by Owner or Guests, in accordance with the standards in effect by the Company for the Hotel operations in general.

(e) Departure Cleaning. Upon check-out by Owner or a Guest of the Unit, Departure Cleaning of the Unit, sufficient to return it to a condition ready for rental or occupancy.

(f) Additional Housekeeping Services. Additional housekeeping or cleaning services, as requested by Owner or Guests.

(g) Annual Interior Deep Cleaning. An annual interior deep cleaning of the Unit including, but not limited to, carpet and upholstery steam cleaning, floor waxing, external window washing and other cleaning services as necessary to maintain the Unit in a first-class, occupiable condition suitable for rental;

(h) Routine Maintenance Services. Routine maintenance services which are, in the sole discretion of the Company, necessary to keep the Unit suitable for occupancy and in compliance with the Hotel's first class standards of operation. Such routine maintenance shall include, but not be limited to, tasks that are normally performed by property management and other semi-skilled personnel;

(i) Non-Routine Maintenance and Emergency Repairs. Non-routine and emergency maintenance or repair work as determined necessary in the sole discretion of the Company to keep the Unit suitable for occupancy and in compliance with the first-class operating standards of the Hotel or upon discovery of a condition in the Unit which, in the Company's sole discretion, requires immediate attention.

Owner Initials
Owner Initials

3. FEES FOR SERVICES. Owner agrees to pay to the Company fees for all services provided under this Agreement, in accordance with the Fee Schedule attached as SCHEDULE A hereto.

4. OWNER RESPONSIBILITIES. Owner shall be responsible for maintaining the following standards for the Unit during the Term of this Agreement:

(a) Unit Furnishings. ~~Owner shall, at Owner's sole expense, furnish and maintain the Unit in a first-class, occupiable condition, with complete furniture, fixtures, and equipment including, but not limited to, the minimum requirements for furniture, fixtures, and equipment specified by the Company for the Owner's Unit type.~~ Determinations of first-class, occupiable condition and the type, color and specifications of all furniture, fixtures, equipment and decorations shall be within the absolute discretion of the Company. Owner understands and agrees that the Unit shall be required to comply with the standards for uniform appearance of Hotel units, as required under the CC&Rs;

(b) Replacement of Furnishings. ~~Owner shall be responsible for the cost of replacing any item of furniture, fixtures and equipment required by the Company as necessary to maintain the Unit in a first-class, occupiable condition.~~ Owner shall not hold the Company or Manager responsible for repair, restoration, redecorating or other expenses arising as the result of the rental or use of the Unit including wear and tear, ~~and acknowledges that such expenditures are Owner's responsibility.~~ Owner further recognizes that rental occupancy will accelerate normal wear and tear. For the purpose of funding a periodic replacement of Unit Furnishings, the Company will charge Owner a monthly reserve (the "FF&E Reserve"), in accordance with SCHEDULE A hereto. All amounts in the FF&E Reserve maintained by the Company for all Unit Owners shall be held in a segregated account by the Company and used for the sole purpose of funding replacement furnishings, fixtures and equipment of the Unit. The Owner shall have no right to a refund of any amounts in the FF&E Reserve upon a sale or transfer of Owner's Unit, but the purchaser or transferee of the Unit shall receive the benefit of amounts held in the FF&E Reserve at the time or times that the Company determines to make replacements of furnishings, fixtures and equipment.

(c) Inspection of Unit. The Company shall, at least once annually, or more frequently as needed, inventory all furniture, fixtures, and equipment in the Unit, inspect the general condition of the Unit, and provide Owner with a written statement regarding the general condition of the Unit. Based upon such inspection, the Company shall assign an acceptable or unacceptable rating to the Unit. The term "acceptable" shall refer to those units which, in the sole judgment of the Company, meet the Company's rental standards and are in a first-class, occupiable condition. If the Company assigns an unacceptable rating to the Unit, the Company shall deliver to Owner a written statement detailing the Company's requirements to make the Unit acceptable. Owner hereby authorizes the Company to undertake such actions as are necessary to comply with the Company's requirements.

Owner Initials
Owner Initials

5. TERM. This Agreement shall be effective from the date that Owner purchases the Unit until the date that Owner sells or otherwise transfers the ownership of the Unit, or the date that Owner ceases to be the owner of the Unit, whether due to the destruction or condemnation of the Hotel or otherwise. Owner agrees that Owner will be subject to the terms of this Agreement for as long as Owner shall own the Unit.

6. INSURANCE. Pursuant to the terms of Section 5.7 of the CC&Rs, the Association and the Company will obtain and maintain commercial general liability and physical damage insurance in the amounts and on the terms disclosed from time to time by the Association and the Company to Owner. Owner shall be responsible for physical damage insurance on any additions, alterations, improvements and betterments to the Unit to the extent not covered by the policies of insurance obtained by the Company, and for insurance covering any personal belongings of the Owner located in the Unit.

7. OWNER'S USE OF THE UNIT. Owner and the Company agree that:

(a) Owner Usage Calendar. Owner may reserve the Unit for Owner's personal use at any time and from time to time during the term of this Agreement provided that: Owner makes an advance reservation by completing and submitting to the Company an Owner usage calendar (the "Owner Usage Calendar") no later than June 1 of each year showing all reservation dates for the subsequent twelve (12) month period provided, however, in the first year of ownership, Owner shall submit to the Company the Owner Usage Calendar on or before the closing of Owner's purchase of the Unit. Owner shall (i) comply with any reasonable reservation policies and procedures that the Company may adopt, and (ii) comply with the applicable ordinances adopted by the City of Reno with respect to the use of the Unit by Owner, Owner's family and Owner's non-rental guests. Owner acknowledges that the City of Reno does not permit the Unit to be used as a permanent residence, and that it may only be used for transient occupancy. If Owner fails to deliver the Owner Usage Calendar to the Company as required above, the Company may assume that the Unit is available for short-term occupancy for all dates during the subsequent twelve (12) month period. The Owner Usage Calendar shall include all dates when the Unit will be occupied by the Owner and non-paying Guests of owner, and all of such usage shall be deemed to be occupancy of Owner.

(b) Owner Use on Non-Calendared Date. Notwithstanding the reservation requirements in Section 7(a), if Owner desires to personally use the Unit on a date other than as set forth on the Owner Usage Calendar, Owner shall notify the Company of the desire to personally use the Unit. If the Company has not received a tentative or confirmed reservation for the Unit on the dates requested by Owner, the Company shall make every reasonable effort to accommodate such a request. If the Company has received a tentative or confirmed reservation for use of the Unit, the Company may deny such request and Owner shall have no right to personally use the Unit. the Company is under no obligation to inform Owner of any changes in availability based on cancellations, no-shows, change in dates, reduced blocks for group reservations, or any other similar circumstances.

Owner Initials
Owner Initials

(c) Registration, Check-In, Daily Use Fee and Additional Charges. Owner shall register at the front desk of the Hotel in order to receive a key to Owner's Unit. The Company shall charge a Daily Use Fee in the amount described in SCHEDULE A on a per night basis to Owner or any Guest of Owner who is to occupy the Unit. In addition, Owner and any Guest of Owner will pay the same fees and charges that are paid by other guests of the hotel for food and beverage, in-room entertainment, spa services, business services and/or any other services or products made available to the general public for sale by the Company, together with transient, sales, use or other taxes thereon.

(d) Arrival/Departure Requirements. Owner and Owner's Guests shall: (i) comply with any applicable arrival / departure requirements established by the Company for use of the Unit during holidays, special events, and peak occupancy periods; and (ii) comply with any established check-in and check-out procedures and times. Owner shall not enter the Unit, nor use any common areas or Shared Facilities Unit appurtenant to the Unit, nor permit any person, whether family member, repairman, or Owner's Guest to do so, other than during previously reserved dates of occupancy by Owner, without prior notification to, approval of, and coordination with the Company.

(e) Credit Card Authorization. In order to assure Owner's timely payment of amounts owed under this Agreement for Owner's personal use and the use of the Unit by Guests who are charged separately by Owner or Owner's rental agent, Owner agrees to maintain a valid credit card authorization on file with the Company's Finance Department at all times as a source of funds. This card will be used to pay all expenses owed that are past due by 30 days from the date of the statement. The Company will mail Owner a copy of the receipt within thirty (30) days of each charge. Owner hereby authorizes the Company and Manager to access the credit established in this paragraph in order to meet Owner's financial obligations under this Agreement.

(f) Alternative Accommodations. The Company may, in its sole discretion, provide Owner with accommodation in another Unit with similar features in the event that it determines that the Unit is not available for any reason for Owner's use.

8. RULES, REGULATIONS AND STANDARDS. Owner shall at all times abide by and comply with all rules and regulations established from time to time by the Company as necessary for the operation of the Hotel. Owner shall also ensure, at Owner's sole cost and expense, that the Unit shall at all times comply with all standards established from time to time by the Company and with all inspection reports and product improvement plans issued from time to time by the Company. Owner covenants and agrees not to interfere with, at any time, the employees, agents and/or contractors of the Company.

9. LIMITED POWER OF ATTORNEY. Owner does hereby irrevocably name, constitute and appoint the Company, its legal representatives, successors and assigns as Owner's attorney-in-fact for the term of this Agreement for the limited purposes of (i) providing Guests with full access to all common areas associated with the Unit, (ii) causing Unit maintenance activities required of the Company to be undertaken promptly, (iii) issuing and signing confirmed reservations for the Unit and (iv) taking any action, that may be lawfully permitted and required to evict any Guest.

Owner Initials
Owner Initials

10. (a) ASSIGNMENT BY THE COMPANY. The Company may assign this Agreement without Owner's consent to any affiliate of the Company or to any successor operator or Owner of the Hotel

(b) ASSIGNMENT BY OWNER. Owner may not assign this Agreement, in whole or in part, except in connection with the sale, assignment or other hypothecation of 100% of Owner's interest in the Unit, and any such assignment shall be subject to the proposed assignee's specific assumption of this Agreement and the rights, duties and obligations of Owner hereunder, or in the case of any mortgagee of Owner, be subject to a Subordination, Non-Disturbance and Attornment Agreement on such terms as the Company may require.

11. STORAGE OF PERSONAL PROPERTY. Owner shall not store or leave any property in the Unit and the Company shall have no liability for any lost or damaged items left in the Unit.

12. DEFAULT BY OWNER. If Owner shall default in the performance of Owner's obligations under this Agreement or fail to abide by the rules and regulations established from time to time by the Company and such default shall continue sixty (60) days after Owner's receipt of written notice from the Company detailing the default in question, the Company may exercise any all remedies available to it at law or in equity, including the remedies provided for in the CC&Rs.

13. DEFAULT BY THE COMPANY. If the Company shall default in the performance of its obligations under this Agreement and shall fail to cure such default within sixty (60) days after the Company's receipt of written notice from Owner detailing the default in question, Owner may, as its sole and exclusive remedy, seek monetary damages from the Company in an amount equal to Owner's actual losses incurred as a result of the Company's default. Owner shall have no right to receive damages for emotional distress, consequential, lost profits, punitive or any other damages other than compensatory damages. Owner and the Company agree that recoverable damages are limited to the reasonable cost of any expense incurred by Owner to receive any of the services required to be provided by the Company under this Agreement as a result of the Company's failure to provide such services or failure to provide such services in the manner required under this Agreement.

14. OWNER'S ACKNOWLEDGEMENTS.

A) OWNER UNDERSTANDS AND ACKNOWLEDGES THAT EXECUTION OF THIS AGREEMENT IS A MANDATORY REQUIREMENT OF OWNERSHIP OF THE UNIT. OWNER FURTHER ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT NEITHER THE COMPANY NOR MANAGER, OR ANY OF THEIR RESPECTIVE OFFICERS, REPRESENTATIVES, EMPLOYEES, AGENTS, SUBSIDIARIES, PARENT THE COMPANY AND AFFILIATES HAS (I) MADE ANY STATEMENTS OR REPRESENTATIONS WITH RESPECT TO THE ECONOMIC OR TAX BENEFITS OF OWNERSHIP OF THE UNIT, (II) EMPHASIZED THE ECONOMIC BENEFITS TO BE DERIVED FROM THE MANAGERIAL EFFORTS OF THE COMPANY OR MANAGER OR FROM PARTICIPATION IN THE UNIT MANAGEMENT PROGRAM, OR (III) MADE ANY SUGGESTION, IMPLICATION, STATEMENT OR REPRESENTATION, THAT OWNER IS NOT PERMITTED TO RENT THE UNIT DIRECTLY OR TO USE OTHER RESERVATIONS AGENTS TO RENT THE UNIT.

Owner Initials
Owner Initials

B) PURSUANT TO THE TERMS OF ANY HOTEL MANAGEMENT AGREEMENT THAT HAS BEEN OR MAY BE ENTERED INTO BY THE COMPANY WITH A MANAGER, EITHER THE COMPANY OR MANAGER MAY TERMINATE SAME IN ACCORDANCE WITH THE PROVISIONS THEREOF AND THEREFORE OWNER HEREBY ACKNOWLEDGES THAT THERE CAN BE NO GUARANTEE THAT MANAGER WILL OPERATE THE HOTEL THROUGHOUT THE TERM OF THIS AGREEMENT. THE EVENT OF A TERMINATION OF MANAGER AS THE OPERATOR SHALL NOT CONSTITUTE A DEFAULT UNDER THIS AGREEMENT AND THE COMPANY RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO REPLACE MANAGER WITH ANOTHER OPERATOR OF THE COMPANY'S CHOOSING.

15. OWNERSHIP OF MARKS. Owner acknowledges that the names "GRAND SIERRA RESORT" and the other Grand Sierra trademarks and service marks (collectively, "Marks") have acquired valuable secondary meanings and goodwill in the minds of the hospitality trade and the public and that services and products bearing the name "Grand Sierra" and/or any of the other Marks have acquired a reputation of the highest quality of hotel service. Without prejudice to this Agreement, Owner acknowledges that Owner has no claim to any right, title and interest in and to the Marks or any and all forms or embodiments thereof nor to the goodwill attached to the Marks in connection with the business, operations and goods in relation to which the same have been and may be used by Owner. The Company shall have the sole and exclusive right to use of the Marks for marketing and operation of the Hotel, and Owner shall have no right to use such Marks at any time during or after the term of this Agreement for any purpose except with the prior written consent of the Company. Owner will not at any time do or suffer to be done any act or thing which may, in any way, impair the rights of Manager in and to the Marks or which may affect the validity of the Marks or which may depreciate the value of the "GRAND SIERRA" names or any of the other Marks or the established prestige and goodwill connected with any of the same.

16. MISCELLANEOUS PROVISIONS. This Agreement shall be subject to and contingent upon the following:

(a) Limitation of Liability. Neither the Company nor Manager, nor any of their respective officers, representatives, employees, agents, subsidiaries, parent and affiliates shall be liable for any loss or damage to any person or property, including, but not limited to, Owner, the Guests, the Unit and its equipment, furnishings and appliances, of any nature resulting from any accident or occurrence in or upon the Unit, or the building in which the Unit is a part, including but not limited to, any and all claims, demands, damages, costs and expenses (including, without limitation, attorneys' fees, judgments, fines and amounts paid or to be paid in settlement) resulting from: (i) the acts or omissions of Guests; (ii) wind, rain or other elements; or (iii) theft, vandalism, fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions; war, rebellion, riots or other civil unrest; or any other similar event beyond the control of the Company or Manager.

(b) Entire Agreement, Amendments. The parties hereto agree and acknowledge that this Agreement, together with the CC&Rs and the Dispute Resolution Addendum attached hereto as Schedule B, constitutes the entire Agreement between the parties with respect to the operation and maintenance of the Unit, and there are no oral or written amendments, modifications, other agreements or representations. The Company may,

Owner Initials
Owner Initials

no more frequently than once each year, upon at least sixty (60) days prior written notice to Owner, modify the services to be provided by the Company and/or adjust the charges payable for services provided for herein to reflect additions or changes in services provided by the Company generally to all Hotel guests, and to reflect actual changes in the cost of providing services by the Company generally to all Hotel guests; provided that the Company shall not increase the Daily Use Fee by more than seven percent (7%) per year without Owner's written consent. Except for this annual adjustment to services and charges, this Agreement may not be amended, supplemented, terminated or modified except with the prior written agreement of Owner and the Company.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Nevada, without giving application to principles of conflicts of laws which shall control all matters relating to the execution, validity and enforcement of this Agreement.

(d) Alternative Dispute Resolution. The parties agree that any disputes arising out of or relating to this Agreement shall be resolved in accordance with the Dispute Resolution Addendum Agreement attached hereto as SCHEDULE B.

(e) Authority of Single Owner. Recognizing the fact that there may be several Owners of a single Unit, it is hereby agreed that Owner's designate, as listed on the front page of this Agreement, shall have the authority to issue any and all instructions to the Company, and the Company shall act in reliance thereon.

(f) Severability. If any clause or provision of this Agreement shall be held invalid or void for any reason, such invalid or void clause or provision shall not affect the whole of this Agreement and the balance of the provisions of this Agreement shall remain in full force and effect.

(g) Notices. Any notice or demand required under this Agreement or by law shall be in writing and shall be deemed effective upon receipt if sent by personal delivery, upon one (1) business day if sent by express overnight delivery with a nationally recognized courier service (such as Federal Express) or three (3) business days after having been sent by US mail, certified mail, return receipt requested and addressed to the parties at the addresses set forth above in the recitals of this Agreement. Either party may change such addresses with written notice to the other party.

(h) Authorization. Owner represents and warrants to the Company that Owner has the full authority to enter into this Agreement, and that there is no other party with an interest in the Unit whose joinder in this Agreement is necessary.

(i) Time of the Essence. For all purposes of this Agreement it shall be understood that time is of the essence.

(j) Binding on Assignees of Unit. This Agreement will run with the land and will be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of Owner. Owner covenants and agrees for itself and for its

Owner Initials _____
Owner Initials JAV

successors and assigns that the conveyance of any interest in the Unit to any other person or entity shall constitute an assumption by such successors, assigns or transferees of all of the duties and obligations arising under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

GRAND SIERRA RESORT	OWNER:
By: _____ Signature	_____ Signature
Print Name: _____	Print name: George Vagujhelyi
Title: _____	_____ Signature of Co-Owner (if any)
	Print name: Melissa Vagujhelyi
Dated signed: _____	Date signed: 4-11-11

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Owner Initials
Owner Initials MV

SCHEDULE A

PRICE AND FEE SCHEDULE

Daily Use Fee (charged for each night Unit is occupied by Owner or any Guest) (includes all housekeeping charges except Additional Housekeeping Services requested by Owner)	Per Night Per Unit Type: Less than 800 sq.ft.: 800 to 1500 sq. ft.: Over 1500 sq. ft:	 $20.92 $28.62 $36.33
Additional Housekeeping Services (charges will be disclosed prior to service requested)	(provided upon request)	
Annual Interior Deep Cleaning	$600.00 per year	
Routine Maintenance Services (included in Daily Use Fee)	0	
Non-Routine Maintenance and Emergency Services as determined necessary by Company at rates customary in the hotel industry in Reno, Nevada	(provided at time of service)	
FF&E Reserve	Per Month Per Unit Type:	
	The Imperial Suite	$406.69
	The DMD Suite (Dodd Mitchell Design)	$387.43
	The Loft (1)	$294.50
	The Loft (2)	$282.60
	The Loft (3)	$246.47
	The Presidential Suite	$395.31
	The Solarium Suite	$306.41
	The Grand Suite (A)	$183.64
	The Grand Suite (B)	$183.64
	The Grand^2 (A)	$164.51
	The Grand^2 (B)	$164.51
	The Grand^2 (C)	$164.51
	The Grand^2 (D)	$164.51
	Deluxe Parlor Combined	$379.96

SCHEDULE B

DISPUTE RESOLUTION ADDENDUM AGREEMENT

Grand Sierra Operating Corp. ("Grand Sierra") takes great pride in its Hotel-Condominium project, and seeks to prevent disputes if at all practical. However, if a dispute does arise, Grand Sierra believes that the best alternative to resolve the dispute is to enter into binding arbitration instead of entangling the parties in a lengthy and costly court battle. Grand Sierra therefore has established the sale prices of its Hotel-Condominium units based upon the assumption that arbitration will be used to settle any disputes, and that all court proceedings will be avoided as provided for herein.

Grand Sierra also believes that parties should agree ahead of time on the procedures to be used to resolve a dispute. Therefore, this document details the rights of Owner and Grand Sierra in the event that a dispute arises. *OWNER IS ENCOURAGED TO SEEK WHATEVER HELP OWNER DEEMS NECESSARY IN MAKING THIS DECISION, INCLUDING LEGAL ADVICE, SO THAT OWNER HAS THE BENEFIT OF ALL INFORMATION AND ADVICE OWNER DEEMS NECESSARY BEFORE SIGNING THIS IMPORTANT DOCUMENT.* All parties enter into this Agreement voluntarily and with full knowledge of the meaning and effect of the language contained herein.

OWNER AND GRAND SIERRA AGREE THAT

This addendum, when duly executed by both parties, will constitute a part of the "Unit Maintenance Agreement" dated 10/6/07, between George Vagyolyi & Helena Vagyolyi referred to as "Owner," and Grand Sierra Operating Corp., referred to as "Grand Sierra," covering Unit number 1821 located within the Hotel at 2500 East Second Street, Reno, Washoe County, Nevada.

I DEFINITIONS

(a) "Grand Sierra" shall mean Grand Sierra Operating Corp., a Nevada Corporation, the entity executing the Unit Maintenance Agreement as "Company," and its respective predecessors, successors, subsidiaries and/or affiliated corporations or other entities, parent companies, sister companies, divisions, partners, joint ventures, insurers, affiliates, owners, officers, directors, employees, shareholders, agents, and assigns.

(b) "Owner" shall mean the person or persons executing the Unit Maintenance Agreement as "Owner," and their successors, heirs, assigns, subsequent

Grand Sierra Initials _____ Owner Initials _____
Owner Initials _____

Owners, and any third party claiming any right or interest in the Unit through them; provided, however, that the term "Owner" does not include any lender, its successors, or assigns (collectively, a "Mortgagee") whose loan is secured by a deed of trust on the Unit and who may take title to the Unit through foreclosure of such deed of trust or through a deed in lieu of foreclosure. Any third party claiming any right or interest in the Unit through such a Mortgagee shall, however, be a "Owner" for purposes of this Dispute Resolution Addendum Agreement.

(c) "Unit" shall mean the Unit identified on page 1 of this Agreement as Owner's Unit.

(d) "Dispute(s)" shall mean any claim, cause of action (whether at law or in equity), demand or disagreement of any nature whatsoever ("Claim") arising from or in connection with the Unit Maintenance Agreement. The Disputes shall include, without limitation, claims and causes of action for real and personal property damage, breach of contract, breach of warranty (whether express, implied or by operation of law), tort, bodily injury or wrongful death, nondisclosure, misrepresentation, emotional distress, nuisance, compensatory or punitive damages, rescission of any agreement, enforceability of this Agreement, and/or specific performance. The following matters are excluded from the definition of a Dispute and are not subject to this Dispute Resolution Agreement:

1. Judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract;
2. An unlawful detainer action;
3. The filing or enforcement of a mechanic's lien or a lien for non-payment of assessments or fines;
4. Any matter which is within the jurisdiction of a probate court;
5. Any claim made by a Unit Owner's Association or Grand Sierra against Owner pursuant to Nevada Revised Statutes, Sections 38.300 to 38.360 inclusive to enforce any covenants, conditions or restrictions, bylaws or rules or regulations adopted by the association against the Owner, or to increase, decrease or impose additional assessments upon residential property against the Owner;
6. The filing of judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies;

Grand Sierra Initials _____

Owner Initials _____
Owner Initials _____

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II. SUBMISSION OF DISPUTES TO ARBITRATION

a. Owner and Grand Sierra agree to submit any and all Disputes between Grand Sierra and Owner and their respective successors-in-interest to final and binding arbitration, unless specified otherwise herein, under the following procedures.

b. Before any Dispute can be submitted to mediation or arbitration, the party wishing to submit the Dispute must first, at least sixty (60) days before filing a Demand for Arbitration, give written notice to the other party of the Dispute, and therein detail with reasonable specificity the actions to be taken to resolve the Dispute.

c. The responding party shall have ninety (90) days after receiving the notice to conduct any investigations needed to assess the nature of the Dispute and extent of any alleged damages, and shall have the right to resolve the Dispute by taking the actions requested by the other party in the notice, or by taking other actions which would effectively resolve the Dispute. The parties may extend this response time by agreement. Grand Sierra shall have the absolute right, but not the obligation, to investigate and resolve the Dispute within one-hundred and twenty (120) days from receipt of Owner's notice or as extended by the parties.

d. If the responding party fails to effectively resolve the Dispute within said time frame, or within an extended time frame agreed to by the parties, the demanding party may submit the Dispute to mediation or arbitration as set forth herein.

e. Owner and Grand Sierra agree to submit any Disputes where the value of the claim of damage or estimated cost of repair or replacement of the item(s) in dispute is $5,000 or less and which has not been resolved by the responding party, to the jurisdiction of the Small Claims Court for the City of Reno. Owner and Grand Sierra agree that neither mediation nor arbitration shall be applicable where the claim of damage is $5,000 or less, unless both Owner and Grand Sierra otherwise agree in writing.

f. Any Dispute between Owner and Grand Sierra where the claim of damage is more than $5,000, where the estimated cost of performance, repair or replacement of the item(s) in dispute is more than $5,000 and which is not resolved by the responding party, shall first be submitted to non-binding mediation. If such mediation is not successful in resolving the Dispute, either Owner or Grand Sierra may submit the Dispute to arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), unless both Owner and Grand Sierra otherwise agree in writing.

1. Arbitration shall be initiated by filing a written Demand for Arbitration with the American Arbitration Association, accompanied by the required filing fee, and concurrently mailing a copy of the demand to the other party. In the event of a demand for arbitration that would be heard by a panel,

Grand Sierra Initials _____ Owner Initials _____
Owner Initials _____

of three arbitrators pursuant to AAA rules, the parties shall each select an arbitrator and the two so selected shall in turn select a third, the three of whom shall act as an arbitration panel. The arbitration shall take place in the office of the American Arbitration Association nearest to the Unit, at such time and date selected by the arbitrator. Any Dispute regarding the scope of the arbitration or the procedures to be followed in the arbitration shall be resolved by the arbitrator or arbitration panel.

2. The combined cost (fee and expenses) of the mediator, AAA, and of the arbitrator shall be apportioned equally between Owner and Grand Sierra. Each party shall deposit $1,500 with the arbitration panel to be used as security for each party's share of arbitration expenses.

3. The award rendered by the arbitrator or panel must be accompanied by a written decision that contains written findings of fact and conclusions of law and, once so rendered, shall be binding and final, as to all parties in the arbitration to the fullest extent permitted by law. Judgment on the award rendered by the arbitrator may be entered in a court of competent jurisdiction. Except as otherwise expressly set forth in this Agreement, Nevada law shall apply to all Disputes.

g. Grand Sierra may, in its sole discretion, consolidate the Disputes of other Owner(s) in the event that such Disputes are similar in nature and, if the aggregate amount of damage claimed by such Owners exceeds $5,000, such Disputes will be addressed in the same manner as a single Dispute where the claim of damage is more than $5,000.

h. Each party may, prior to the arbitration hearing, conduct discovery as provided in the Nevada Rules of Civil Procedure.

i. All arbitration proceedings shall be confidential. Neither party shall disclose any evidence or information about the evidence produced by the other party in the arbitration proceedings except as compelled to do so in the course of a judicial, regulatory, or arbitration proceeding. Before making any disclosure permitted by the preceding sentence, a party shall give the other party reasonable advance written notice of the intended disclosure and an opportunity to prevent disclosure.

j. Grand Sierra, in its sole discretion, is entitled to require that any or all contractors, subcontractors, suppliers, consultants, partners, affiliates or agents of Grand Sierra who may have liability in connection with the Dispute be participants in the arbitration procedure described; provided, however, that Grand Sierra's failure or inability to require that such contractors, subcontractors or agents be parties to the following proceedings shall not affect the obligations and entitlements of Owner and Grand Sierra under this Agreement.

Grand Sierra Initials _____

Owner Initials _____
Owner Initials _____

III. LIMITATION OF AWARD AND LIABILITY

OWNER IS HEREBY ADVISED THAT THE LIMITATION OF AWARD AND LIABILITY SET FORTH BELOW MAY RESULT IN A WAIVER OF LIABILITY AND DAMAGES WHICH MAY OTHERWISE BE RECOVERABLE UNDER NEVADA LAW. OWNER IS ENCOURAGED TO SEEK WHATEVER HELP PURCHASER DEEMS NECESSARY IN MAKING THIS DECISION, INCLUDING LEGAL ADVICE, SO THAT PURCHASER HAS THE BENEFIT OF ALL INFORMATION AND ADVICE PURCHASER DEEMS NECESSARY BEFORE AGREEING TO THESE TERMS:

A. LIMITATION OF LIABILITY. IN ORDER TO OBTAIN THE BENEFITS OF A PURCHASE PRICE WHICH INCLUDES A LESSER ALLOWANCE FOR RISK FUNDING, THE RISKS HAVE BEEN ALLOCATED SUCH THAT OWNER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE RISKS AND LIABILITY OF GRAND SIERRA FOR ALL DISPUTES, CLAIMS, LOSSES, COSTS, DAMAGES OR EXPENSES OF ANY NATURE, INCLUDING ATTORNEY'S FEES, SUCH THAT THE TOTAL AGGREGATE LIABILITY OF GRAND SIERRA, ITS OWNERS, OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, CONTRACTORS, VENDORS, SUBCONSULTANTS, AND DESIGN PROFESSIONALS SHALL NOT EXCEED FIFTY THOUSAND DOLLARS ($50,000). IT IS INTENDED THAT THIS LIMITATION APPLY TO ANY AND ALL LIABILITY OR CAUSE OF ACTION AGAINST GRAND SIERRA HOWEVER ALLEGED OR ARISING, INCLUDING, WITHOUT LIMITATION, CLAIMS OF ERRORS OR OMISSIONS, NEGLIGENCE INCLUDING THE SOLE NEGLIGENCE OF GRAND SIERRA, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING, INDEMNITY AND/OR CONTRIBUTION OR ANY OTHER CAUSE OF ACTION OR CLAIM WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY, WARRANTY OR EQUITY.

B. WAIVER OF CONSEQUENTIAL DAMAGES - NOTWITHSTANDING ANYTHING HEREIN OR BY LAW TO THE CONTRARY, GRAND SIERRA SHALL NOT BE LIABLE TO OWNER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, ECONOMIC LOSSES, BUSINESS INTERRUPTION, DELAY COSTS, FINANCING AND INTEREST COSTS OR LOST PROFITS, WHETHER SUCH CLAIMS ARISE IN CONTRACT, TORT, STRICT LIABILITY, WARRANTY, EQUITY, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING, OR OTHERWISE.

Grand Sierra Initials _____

Owner Initials _____
Owner Initials _____

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C. **ATTORNEY'S FEES – EACH PARTY SHALL BEAR ITS OWN ATTORNEY'S FEES AND OTHER COSTS IN PROSECUTING OR DEFENDING THE DISPUTE, EXCEPT THAT IN THE EVENT ANY ACTION OR PROCEEDING IS BROUGHT BY ANY PARTY HERETO TO ENFORCE THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO REASONABLE ATTORNEY'S FEES AND COSTS IN ADDITION TO ALL OTHER RELIEF TO WHICH THAT PARTY OR THOSE PARTIES MAY BE ENTITLED.**

IV. MISCELLANEOUS

a. If any provision or aspect of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision or aspect of this Agreement is rendered unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect and continue to be binding.

b. If there is any conflict between this Dispute Resolution Addendum Agreement and the Unit Maintenance Agreement, the provisions of this Dispute Resolution Addendum Agreement shall control.

c. This Agreement shall not apply to a Mortgagee. However, any third party claiming any right or interest in the Unit through any Mortgagee shall be subject to this Agreement.

d. Each party has had the time to review this Agreement, negotiate any changes they deem necessary, and the opportunity to retain legal counsel to assist in its review and revision of this Agreement. As a result, Owner and Grand Sierra expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another, and shall be construed accordingly.

e. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, trustors, trustees, insurance carriers, beneficiaries, predecessors, successors, members and assigns.

f. This Dispute Resolution Addendum Agreement, along with the Unit Maintenance Agreement and attachments, contain the entire agreement of the parties with respect to matters described herein and in the Unit Maintenance Agreement. Any oral representations or modifications contrary to the terms of this Agreement or the other contract documents for the Unit shall be of no force and effect unless reduced to writing and signed by all parties hereto.

Grand Sierra Initials _____

Owner Initials _____
Owner Initials _____

BY SIGNING IN THE SPACE BELOW, GRAND SIERRA AND OWNER WAIVE ANY RIGHTS THEY MAY POSSESS TO HAVE ANY ABOVE-DEFINED DISPUTE LITIGATED IN A COURT OR HEARD BY A JURY, AND WAIVE THE RIGHT TO RECOVER DAMAGES NOT PROVIDED FOR IN THIS AGREEMENT FOR A COVERED DISPUTE. IF EITHER PARTY REFUSES TO COMPLY WITH THE TERMS CALLED FOR HEREIN, THE OTHER PARTY MAY APPLY TO AN APPROPRIATE NEVADA COURT TO COMPEL ARBITRATION AS PROVIDED HEREIN.

GRAND SIERRA RESORT	OWNER:
By: _____	_____
Signature	Signature
Print Name: _____	Print name: George Vagujhelyi
Title: _____	_____
	Signature of Co-Owner (if any)
	Print name: Melissa Vagujhelyi
Dated signed: _____	Date signed: 7-14-06

Grand Sierra Initials _____

Owner Initials _____
Owner Initials TMV

051806

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

GRAND SIERRA RESORT
UNIT RENTAL AGREEMENT

This UNIT RENTAL AGREEMENT ("**Agreement**") is made and entered into this 27 day of JANUARY, 2007 (the "**Effective Date**") by and between GRAND SIERRA OPERATING CORP., a Nevada corporation (the "**Company**"), and TIMOTHY D. KAPLAN (collectively referred to in this Agreement as "**Owner**"), whose address is 117 GLENBRIDGE CT., PLEASANT HILL CA 94523

Home Phone #: (925) 686-2830
Office Phone: _____ Fax #: _____
E-Mail Address: kaplan_tim@yahoo.com Owner's Designate: _____

A. Owner wishes to participate in the Company's voluntary rental program to offer Owner's Hotel Unit #1879 (the "**Unit**") in the Grand Sierra Hotel & Resort (the "**Hotel**") for rental under the terms and conditions set forth in this Agreement.

B. The Company plans to advertise and promote the rental of all rooms and suites in the Hotel (sometimes referred to collectively herein as "**Hotel Units**"), including those owned by individual owners of Hotel Units and those owned by the Company.

C. The Company may engage an affiliated or unaffiliated third party to manage the Hotel (the "**Manager**") and to include the Unit in the inventory of Hotel Rooms available for rental to guests of the Hotel ("**Guests**"). All references to the Company in this Agreement refer to either the Company or Manager, acting as agent of the Company.

NOW, THEREFORE, in consideration of the terms, conditions and the mutual covenants herein set forth, the parties agree as follows:

1 DEFINITIONS. Capitalized terms will have the meanings set forth below or are defined elsewhere in this Agreement.

(a) "**Association**" means the GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION.

(b) "**Association Management Agreement**" means the Association Management Agreement that has been or will be entered into between the Company, as initial owner of Units, and the Association Manager, pursuant to which Association Manager will manage the Association.

(c) "**Association Manager**" means the entity engaged by the company to manage the Association.

(d) **"Blackout Dates"** means the dates established annually by the Company in accordance with Section 10(c) hereof which will not be available for Owner use of the Unit in order that the Company may book group business on those dates.

(e) **"CC&Rs"** means the Covenants, Conditions, Restrictions and Reservations of Easements for the Hotel-Condominiums at Grand Sierra Resort, as may be amended from time to time.

(f) **"Daily Use Fees"** means the Daily Use Fees for unit maintenance services provided by the Company under the Unit Maintenance Agreement (other than the Annual Interior Deep Cleaning charge).

(g) **"FF&E Reserve"** means the reserve for periodic replacement of furniture, fixtures and equipment, as provided for in the Unit Maintenance Agreement.

(h) **"Furnishings Package"** means the furnishing, furniture, accessories, appliances, curtains, carpeting, wall coverings, kitchen, bath and bedding items and such other personal property initially purchased with the Unit from the Company, including, without limitation, linens, bedding and bath accessories.

(i) **"Guest"** means any person or persons who rents the Unit from the Company, including complimentary Guests, but excluding Owner, Owner's immediate family and other non-paying guests of Owner.

(j) **"Hotel Management Agreement"** means the agreement, if any, between the Company and any Manager engaged by the Company to act as manager of the Hotel. If the Company manages the Hotel directly, there will be no Hotel Management Agreement.

(k) **"Hotel Expenses"** means the expenses charged to Owner for certain Hotel costs, as described in the CC&Rs.

(l) **"Hotel Services"** means the services provided by the Company in connection with the operation, maintenance, repair and renovation of the Unit under the Unit Maintenance Agreement.

(m) **"Marketing Services"** means the brand and marketing services provided to the Hotel by the Company, such as marketing, reservations, guest frequency programs and related accounting services.

(n) "**Net Room Revenue**" means all revenue derived from the rental of the Unit (but not including food and beverage, in-room entertainment, parking, telephone, internet rental, spa revenue, retail space revenue, parking revenue or other incidental revenue sources of the Hotel or any state, local or other taxes paid by any guest in the Unit in respect of his or her occupancy), less the actual cost of commissions and/or other charges paid to third party travel arrangers (including travel agents, wholesalers, membership associations, online booking arrangers, global distribution or other central reservations services providers, and the like) as well as credit card adjustments, uncollected accounts receivable and walked guest expenses.

(o) "**Non-Routine Maintenance and Emergency Repairs Charges**" means the charges made by the Company for non-routine maintenance and emergency repairs to the Unit, in the amounts provided for in the Unit Maintenance Agreement.

(p) "**Owner**" means the owner of the Unit identified in the introductory paragraph of this Agreement and his or her immediate family, and any other guests of Owner whose reservation is made by Owner pursuant to Section 10.

(q) "**Rotation System**" means the unit management system used by the Company in order to ensure that in a manner determined in the Company's sole discretion, all of the Rental Units are fairly and equitably offered for rental. The Company may divide the Units into different groups based on factors such as size, location and rental rate.

(r) "**Shared Facilities Expenses**" means the expenses charged to Owner for the Shared Facilities Unit, as described in the CC&Rs.

(s) "**Unit**" means the Unit identified in Recitals.

(t) "**Unit Maintenance Agreement**" means that certain agreement between the Company and Owner executed and delivered at the time of the purchase by Owner of the Unit with respect to certain Hotel Services and the payment of expenses incurred in the provision of such services, all as described therein.

(u) "**Units**" means all of the hotel condominium units at the Hotel for which the Company serves as the exclusive rental agent.

2. EXCLUSIVE RENTAL. During the term of this Agreement, Owner agrees that the Company shall have the sole and exclusive right to rent the Unit to Guests, subject to the terms and conditions of this Agreement. Owner shall not lease or arrange for any short-term occupancy of the Unit other than by referral of prospective Guests to

the Company. In addition, Owner agrees not to accept any remuneration from any party other than the Company or Manager for rental of the Unit and agrees to refer to the Company or Manager all rental inquires during the term of the Agreement.

3. TERM. The initial term of this Agreement shall be for five (5) years, commencing as of the Effective Date and ending on December 31st of the fifth calendar year thereafter, unless terminated earlier as provided in this Agreement. Upon expiration of the initial term, this Agreement shall be automatically renewed for additional terms of five (5) years each unless Owner or the Company, at least ninety (90) days prior to the expiration date of this Agreement or of any renewal period as the case may be, shall give written notice to the other party of its desire not to renew this Agreement. Notwithstanding the foregoing, the Company shall have the right to terminate this Agreement, in its sole and absolute discretion, with or without cause, upon sixty (60) days prior written notice to Owner. After the third anniversary of this Agreement, Owner may terminate this Agreement upon not less than 180 days prior written notice to the Company and the one time payment to the Company of a termination fee as liquidated damages equal to the greater of ten percent (10%) of the total rental revenues generated from the Company's rental of the Unit for the three years prior to the date of termination or $2,000. If Owner, thereafter, wishes to reinstate this Agreement, Owner may request that the Company accept the Unit in the rental program, and the Company may, in its sole discretion, accept the Unit upon reinstatement of this Agreement, on the then current form of the Unit Rental Agreement offered by the Company to Unit Owners, and the payment to the Company of a reinstatement fee of $1,000. Upon any termination of this Agreement, the Company shall prepare a final reconciliation of accounts (including all sums owed under any provision of this Agreement) and a final settlement shall be accomplished between Owner and the Company within thirty (30) days of the Company's delivery to Owner of such final reconciliation.

4. RENTAL PROCEDURES. The Company shall use its good faith efforts to rent the Unit in accordance with the following provisions.

(a) Short Term Rentals. The Company agrees that it will offer the Unit for rent on any days not reserved by Owner on the Owner Usage Calendar. All rentals will be on a short-term basis, and the Unit shall not be rented to any one Rental Guest for a period of 28 or more days. Accordingly, all rentals shall be subject to transient occupancy taxes.

(b) Rental Rates. The Company has the exclusive right to establish and adjust, from time to time, the rental rates for the Unit without notice to Owner, and to rent the Unit for the rates that it considers appropriate, in its discretion, based upon occupancy levels, seasonal demand, changes in operating costs, rates of competitive properties, and other prevailing market conditions.

(c) Rotation System. During the term of this Agreement, Owner acknowledges that the Company intends to rent the Unit to Guests on a

transient basis. The Company will endeavor to rent the Unit in accordance with the Rotation System. However, the Company will rent out of order if a Guest specifically requests a particular Unit or a particular Unit type or location to the exclusion of others. In such cases, Owner agrees that such occupancy shall be in lieu of the next ensuing rental on the Rotation System; however, the skipped Unit shall be in line for any reservation that is appropriate to the next Guest request.

(d) Collection of Accounts. The Company shall collect rent from all Guests and shall provide all accounting services necessary for the collection of such rental revenue. The Company shall bear all in-house costs associated with the collection of outstanding amounts due from Guests. The Company shall provide Marketing Services that the Company determines to be appropriate for the Hotel. The Company shall also provide Hotel Services in accordance with the terms of the Unit Maintenance Agreement.

5 MAINTENANCE AND CLEANING OF UNIT.

(a) Unit Maintenance Standards. Throughout the term of this Agreement, Owner shall cause the Unit to be maintained, repaired and cleaned to a standard consistent with the other accommodations offered by the Company in the Hotel pursuant to the Unit Maintenance Agreement. The Company may refuse to rent the Unit if, in the Company's sole discretion, the Unit is not being maintained in a condition consistent with the accommodations offered by the Company in the Hotel. Owner shall be responsible for all costs associated with the maintenance, repair and cleaning of the Unit, in accordance with the terms of the Unit Maintenance Agreement.

(b) Linen and Housekeeping. The Company shall provide linen service and housekeeping service for all Guests of the Unit commensurate with levels of service in comparable condominium-hotel lodging establishments.

(c) Damage to Unit. Owner understands and agrees that as a result of rentals, damage to the Unit and its contents may occur, inadvertently or otherwise. The Company shall take reasonable steps to insure that Guests leave the Unit in the same condition as received, normal wear and tear excepted. In the event of damage, breakage or theft by Guests, the Company shall take reasonable steps to see that the Guests responsible restore the breakage or damage as necessary, in a timely manner. If the Company is unable to obtain restitution from the Guest, the Company may file a claim with the Hotel's property insurer on behalf of Owner or repair the damage and charge the cost of the repair to Shared Facilities Expenses. Owner will be responsible for the insurance deductible amount on the Association's or the Company's property insurance covering the damage to the Unit, unless

the Company or its employees or agents are directly responsible for the damage, in which case the Company will be responsible for the insurance deductible amount.

6. UNIT COSTS, EXPENSES AND ASSESSMENTS. Owner agrees to pay all monthly mortgage payments (if any), real estate taxes, insurance payments, monthly condominium fees, expenses charged pursuant to the Unit Maintenance Agreement and CC&Rs, and any condominium assessments promptly when due. Owner shall not allow title to the Unit to be encumbered by a lien for non-payment of fees or assessments due to the Association or the Company. In the event that any expenses, fees and/or assessments due pursuant to this Section 6 are not paid promptly when due, then the Company may, in its sole and absolute discretion and without notice or demand upon Owner, but shall not be obligated to, either: (i) withhold Owner's Rent (as hereinafter defined) until such funds are sufficient to bring the unpaid accounts current, and if and when sufficient funds are available, offset and apply Owner's Rent (as hereinafter defined) in the possession of the Company to the payment of any one or more of such unpaid accounts in such order as the Company in its sole and absolute discretion may elect; or (ii) terminate this Agreement upon five (5) days prior written notice to Owner. The Company's decision to apply all or any portion of Owner's Rent (as hereinafter defined) to the payment of any expenses, fees and/or assessments pursuant to this Section 6 shall be made in the Company's sole and absolute discretion. In no event whatsoever shall the Company be obligated to apply any Owner's Rent (as hereinafter defined) to the payment of any expenses, fees and/or assessments or to advance any of its own funds for such purposes.

7. FURNISHING, EQUIPPING, REFURBISHING AND UPGRADES.

(a) Furnishings Package. Owner is purchasing the Furnishings Package in connection with Owner's purchase of the Unit. Owner agrees that the Unit must at all times be consistent with the other accommodations offered by the Company in the Hotel in terms of quality and appearance. Owner agrees that Owner will not alter, modify add to remove or otherwise change the Furnishings Package except as directed by the Company. In addition, as determined from time to time by the Company, pursuant to the Unit Maintenance Agreement and the CC&Rs, Owner may be required at Owner's cost, to refurbish the Unit, including replacing, upgrading and/or augmenting furniture, accessories, appliances, curtains, carpeting, wall coverings and other items included in the Furnishings Package.

(b) Failure to Maintain Unit. In the event that Owner does not fund the purchase of the Furnishings Package, refurbishing, upgrading or modifying the Unit as required, or does not respond to the Company's request for funding within thirty (30) days after such request is made, the Company may, at its option, terminate this Agreement at any time thereafter without further notice. In the event of termination, the Company is only liable for Rent (as hereafter defined) due Owner up to the date of termination.

8 UNIT RENTAL. The Company and Owner agree to the following:

(a) Rotation System. The Company will establish the Rotation System for the purpose of renting all units in the Hotel on a rotating and equal basis. Owner acknowledges, however, that there can be no guarantee that either operation of the rotation system or hotel guest preference will not result in the Company's hotel rooms, or the units of other owners, being rented more often than Owner's Unit. Owner hereby waives any claim Owner may have for injury or damage under this Agreement arising from the rental of hotel rooms or units of other owners under the Rotation System.

(b) Discount Rates. The Company shall have the right, in its sole and absolute discretion, to grant Guests a discount of up to 100% of the daily gross rent in the event any repairs of the Unit are required during the period of occupancy or for other guest satisfaction issues. The Company shall also have the right, in its sole discretion, to transfer the Guest renting the Unit to another Unit in the event the rebate is unacceptable to the Guest; provided that Owner shall be paid a pro rata portion of any rent received by the Company for the period in which Guest occupied the Unit.

(c) Forfeited Deposits. All reservation deposits that are forfeited and captured, and all other related cancellation charges pursuant to the Company's cancellation policy shall be allocated first to any Daily Use Fees that apply to the Unit and then shared between Owner and the Company in the percentages provided in Section 9(b) hereof.

(d) Confirmed Reservations Valid Upon Termination. Termination of this Agreement for any reason shall not cancel any confirmed reservations for the Unit, and the reservations, if not actually transferred by the Company to another Unit, shall remain binding upon, Owner, Owner's heirs, executors, legal representatives and assigns after termination of this Agreement. In the event of a termination, the Company is entitled to any commissions, fees earned and/or expenses due as a result of the reservation made or for the Marketing Services provided during the term of this Agreement.

(e) Reservations. All reservations, including Owner referrals, must be made through the Company so that they may be coordinated with other confirmed reservations. Owner shall schedule personal use of the Unit with the Company in accordance with Section 10(a) and will register with the Company upon Owner's arrival. No notice of reservations secured by the Company for Guests will be provided to Owner, except by specific request. Owner will not be able to occupy, use or enter the Unit during periods of time when the Unit has been rented, and will not be able to schedule occupancy of the Unit during periods of time when the Unit has

been reserved unless the reservation can be moved to a similar Unit prior to the time of occupancy. IN ALL EVENTS, ACCESS TO THE UNIT SHALL BE COORDINATED BY THE COMPANY, INCLUDING ACCESS DURING OWNER'S USE OF THE UNIT.

(f) Photographs of Unit. Owner shall allow the Company to photograph the interior and/or exterior of the Unit for marketing purposes. Such photographs shall be the sole property of the Company and may be used for marketing purposes.

(g) Changes in Rules. The rules set forth in this Section may, at the discretion of the Company, be modified so long as reasonable notice of such changes is provided to Owner.

9. RENT. The Company shall pay Owner out of the Net Room Revenue of the Unit as follows.

(a) Monthly Profit and Loss. The Company will maintain a separate profit and loss statement for the Unit on a monthly and annually basis. The monthly and annual statements shall include calculation of Net Room Revenue, the Daily Use Fees, the amount of Rent, and any deductions from the Rent to pay amounts owed by Owner under this Agreement or under the Unit Maintenance Agreement and CC&Rs.

(b) Calculation of Rent. Within fifteen (15) days following the end of each calendar month during the term, the Company shall calculate rent to be paid to Owner for the prior month by:

i) Calculating Net Room Revenue;

ii) Deducting therefrom the Daily Use Fees for each night that a Guest uses the Unit;

iii) To the extent that there shall be a balance of Net Room Revenue available after the foregoing deductions, it shall be allocated fifty percent (50%) to the Company and fifty percent (50%) to Owner as rent ("Rent").

(c) Payment of Rent to Owner. The Owner's Rent, less the amounts payable by the Owner under the CC&Rs for Association assessments and assessments for Shared Facilities Expenses and Hotel Expenses, and under the Unit Maintenance Agreement for the FF&E Reserve and the Annual Interior Deep Cleaning charge and all transient rental taxes, and any Non-Routine Maintenance and Emergency Repairs Charges, shall be paid to Owner, except as otherwise provided in this Agreement, by check on or before the twentieth (20th) day of the month following the month for which rent is being paid. To the extent that the amount of Owner's Rent

for any month is insufficient to offset the amounts owed by Owner, the Company or the Association, as appropriate, shall send an invoice for the amount owed by Owner, and Owner shall pay all amounts owed within twenty (20) days of the date of the invoice.

(d) Limitation of Company Duties. Except as specifically provided herein, Owner acknowledges and agrees that the Company owes no duties of any kind to Owner, including, without limitation, duties of a fiduciary nature, and the Company's non-fiduciary duties shall be limited to the payment of Rent to the extent and as and when due, and the maintenance of accurate books of account with respect to Owner's Unit.

10. OWNER'S USE OF THE UNIT. Owner and the Company agree that:

(a) Owner Usage Calendar. Subject to the Company's right to impose up to twelve (12) blackout dates per year in accordance with paragraph (c) below, Owner may reserve the Unit for Owner's personal use at any time and from time to time during the term of this Agreement provided that: Owner makes an advanced reservation by completing and submitting to Manager an Owner usage calendar (the **"Owner Usage Calendar"**) no later than January 31 of each year showing all reservation dates for the subsequent twelve (12) month period; *provided, however*, in the first year, Owner shall submit to Manager the Owner Usage Calendar on or before the closing of Owner's purchase of the Unit. If Owner fails to deliver the Owner Usage Calendar to Manager as required above, Manager may assume that the Unit is available for short-term occupancy for all dates during the subsequent twelve (12) month period. The Owner Usage Calendar shall include all dates when the Unit will be occupied by the Owner, Owner's family, and Owner's non-rental guests, being those persons to whom the Owner intends to make the Unit available without charge.

(b) City of Reno Requirements. Owner shall comply with the applicable ordinances adopted by the City of Reno with respect to the use of the Unit by Owner, Owner's family and Owner's non-rental guests. Owner acknowledges that the City of Reno limits the use of the Unit by Owner as follows:

> "Hotel-condominium is a commercial condominium development for which the units are primarily used to derive commercial income from, or provide service to the public, and may not be used as a dwelling by an owner for 28 days or more within any 12 month period. Hotel-condominiums are subject to transient lodging standards and requirements. When hotel-condominiums are not occupied by the owner, owners shall make them available for transient rental lodging use through a hotel rental management program or otherwise."

(c) Owner Use on Non-Calendared Dates. Notwithstanding the reservation requirements in Section 10(a), if Owner desires to personally use the Unit on a date other than as set forth on the Owner Usage Calendar, Owner shall notify Manager of the desire to personally use the Unit. If Manager has not received a tentative or confirmed reservation for the Unit on the dates requested by Owner, Manager shall make every reasonable effort to accommodate such a request. If Manager has received a tentative or confirmed reservation for use of the Unit, Manager may deny such request and Owner shall have no right to personally use the Unit. Manager is under no obligation to inform Owner of any changes in availability based on cancellations, no-shows, change in dates, reduced blocks for group reservations, or any other similar circumstances.

(d) Blackout Dates. The Company shall have the right to establish, by annual written notice to Owner, up to twelve (12) dates per year that shall not be available for Owner usage of the Unit ("**Blackout Dates**"). Owner acknowledges that these Blackout Dates are necessary in order for the Company to book certain large convention and group business, and that these dates will vary from year to year. By December 1 of each year, the Company will provide notice to Owner of the Blackout Dates for the 12 month period beginning February 1 of each year. The Company agrees that Blackout Dates shall not include any of the following days: Christmas, New Year's, Memorial Day, July 4th, Labor Day, or any of the days designated by the City of Reno for the annual events known as "Hot August Nights," "National Air Races," or "Street Vibrations."

(e) Registration, Check in and Check-out Policies. Owner shall register at the front desk of the Hotel in order to receive a key to Owner's Unit. Owner and his or her personal guests shall: (i) comply with any applicable arrival/departure requirements established by Manager for use of the Unit during holidays, special events, and peak occupancy periods, and (ii) comply with any established check-in and check-out procedures and times. Owner shall not enter the Unit, nor use any common areas appurtenant to the Unit, nor permit any person, whether family member, repairman, or Owner's non-rental guest to do so, other than during previously reserved dates of occupancy by Owner, without prior notification to, approval of, and coordination with Manager.

(f) Hotel Services. For any day that Owner or Guests use the Unit, the Company will provide its standard daily housekeeping and cleaning service and supply the standard hotel amenities (such as soap, shampoo, coffee, etc), pursuant to the terms of the Unit Maintenance Agreement.

(g) Credit Card Authorization. In order to assure Owner's timely payment of funds, Owner agrees to maintain a valid credit card authorization on file

with Manager's Finance Department at all times as a source of funds. This card will be used to pay all expenses owed that are past due by 30 days from the date of the statement. The Company will mail Owner a copy of the receipt within thirty (30) days of each charge. Owner hereby authorizes the Company and Manager to access the credit established in this paragraph in order to meet Owner's financial obligations under this Agreement.

(h) Alternative Accommodations. The Company may, in its sole discretion, provide Owner with accommodation in another unit with similar features in the event that it determines that the Unit is not available for any reason for Owner's use.

11. COMPLIMENTARY USE OF UNIT. In an effort to continue to promote rental of the Unit and to familiarize representatives of corporate customers, travel agencies and promoters, airlines and other organizations with the Hotel, the Company may, for up to five (5) nights per year, provide complimentary use of the Unit, without charge or expense, to anyone who in its sole discretion, the Company believes will serve the long term best interests and goal of maximizing the value of the hotel and the Unit; provided, however, that the Company will use its best efforts to ensure that complimentary use does not displace paying Guests.

12 RULES, REGULATIONS AND STANDARDS. Owner shall at all times abide by and comply with all rules and regulations established from time to time by the Company and/or the Manager. Owner shall also ensure, at Owner's sole cost and expense, that the Unit shall at all times comply with all standards established from time to time by the Company and with all inspection reports and product improvement plans issued from time to time by the Company. Owner covenants and agrees not to interfere with, at any time, the employees, agents and/or contractors of the Company and/or Manager. Owner further agrees that, in order to maintain the uniform appearance of the Unit and maintain the quality standards of the Hotel, he or she will not display any signs that are visible to the public from the inside or outside of the Unit.

13. LIMITED POWER OF ATTORNEY. Owner does hereby irrevocably name, constitute and appoint the Company, its legal representatives, successors and assigns as Owner's attorney-in-fact for the term of this Agreement for the limited purposes of (i) providing Guests with full access to all areas associated with the Unit, (ii) causing Unit maintenance activities required of the Company to be undertaken promptly, (iii) issuing and signing confirmed reservations for the Unit and (iv) taking any action that may be lawfully permitted and required to evict any Guest.

14 (a) ASSIGNMENT BY THE COMPANY. The Company may assign this Agreement without Owner's consent to any affiliate of the Company or to any successor operator or Owner of the Hotel.

(b) ASSIGNMENT BY OWNER. Owner may not assign this Agreement, in whole or in part, except with the prior written consent of the Company. In the event of any sale, assignment or other hypothecation of 100% of Owner's interest in the Unit, this Agreement shall automatically terminate. The assignee of the Unit may, upon acceptance by the Company, enter into a Unit Rental Agreement with the Company in the form then offered by the Company to all Unit Owners. Notwithstanding that this Agreement shall terminate, the assignee of the Unit shall be subject to the obligation to make the Unit available for all tentative and confirmed reservations held by the Company as of the date of the sale, and the rental terms of Section 9 hereof shall apply with respect to any Rental Revenues earned in connection with the use of the Unit pursuant to such reservations. Owner shall be required to obtain the written agreement of any buyer that all confirmed or tentative reservations for the Unit existing as of the date of the sale will be honored. Owner shall coordinate times to show the Unit for purposes of a sale of the Unit with the Company. The Company shall attempt to accommodate such showings commensurate with Rental Guest use.

15. DEFAULT BY OWNER. If Owner shall default in the performance of Owner's obligations under this Agreement or fail to abide by the rules and regulations established from time to time by the Company and such default shall continue sixty (60) days after Owner's receipt of written notice from the Company detailing the default in question, the Company may, in addition to all other remedies available to the Company at law, terminate this Agreement and/or temporarily cease its efforts to rent the Unit pursuant to this Agreement until such time as Owner has cured the default or satisfied the deficiency; provided, however, if, as a result of such default, the Unit is not in a condition suitable for rental, the Company may immediately cease renting the Unit until such time as Owner's default is cured at Owner's expense.

16. DEFAULT BY THE COMPANY. If the Company shall default in the performance of its obligations under this Agreement and shall fail to cure such default within sixty (60) days after the Company's receipt of written notice from Owner detailing the default in question, Owner may, as its sole and exclusive remedy, terminate this Agreement by delivery to the Company of a written termination notice at any time prior to the date that the Company has cured the default in question.

17. MANAGEMENT AND OPERATION OF THE HOTEL. Owner acknowledges that the Company has entered into, or may enter into, a Hotel Management Agreement and Association Management Agreement. Owner hereby consents to and approves such agreements. Owner further acknowledges that the Company has expended substantial funds to purchase the equipment for the use of all owners and users of units in the Hotel. In consideration of, and as a material inducement for the Company's investment in such equipment and other matters relating to Hotel, Owner agrees, during the term of this Agreement, that Owner will not take any action to terminate, or cause the termination of the Hotel Management Agreement or the Association Management Agreement including, without limitation, taking any action pursuant to the Uniform Common Interest Ownership Act of the State of Nevada, as amended from time to time (hereinafter called the "Act"), and as to all matters and meetings relating to the Hotel in

which Owner has the right to consent to and/or to vote, Owner will, during the term of this Agreement, consent to and vote in favor of: (i) the Company's and/or Manager's management of the Hotel and the ratification and approval of the Association Management Agreement; (ii) the Company's and/or Manager's operation of the Hotel in accordance with the requirements of the Hotel Management Agreements; (iii) the Association's execution and delivery to the Company and/or the Manager of any guaranty agreement required pursuant to or in connection with the Hotel Management Agreement; and (iv) the Association's reimbursement to the Company of all penalties and charges incurred by the Company in connection with the Hotel Management Agreement or the Association Management Agreement.

18. NO GUARANTEED RENTAL. OWNER ACKNOWLEDGES THAT THERE ARE NO RENTAL INCOME GUARANTEES OF ANY NATURE, NO POOLING AGREEMENTS WHATSOEVER, AND NO REPRESENTATIONS OTHER THAN WHAT IS CONTAINED IN THIS AGREEMENT. NEITHER THE COMPANY NOR MANAGER GUARANTEES THAT OWNER WILL RECEIVE ANY MINIMUM PAYMENTS UNDER THIS AGREEMENT OR THAT OWNER WILL RECEIVE RENTAL INCOME EQUIVALENT TO THAT GENERATED BY ANY OTHER UNIT IN THE HOTEL.

19. OWNER'S ACKNOWLEDGEMENTS.

A) OWNER UNDERSTANDS AND ACKNOWLEDGES THAT EXECUTION OF THIS AGREEMENT AND PARTICIPATION IN THE UNIT RENTAL PROGRAM AT THE HOTEL IS VOLUNTARY, AT THE OPTION OF THE OWNER, AND IS NOT A REQUIREMENT OF OWNERSHIP OF THE UNIT. OWNER FURTHER ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT NEITHER THE COMPANY NOR MANAGER, OR ANY OF THEIR RESPECTIVE OFFICERS, REPRESENTATIVES, EMPLOYEES, AGENTS, SUBSIDIARIES, PARENT THE COMPANY AND AFFILIATES HAS (I) MADE ANY STATEMENTS OR REPRESENTATIONS WITH RESPECT TO THE ECONOMIC OR TAX BENEFITS OF OWNERSHIP OF THE UNIT; (II) EMPHASIZED THE ECONOMIC BENEFITS TO BE DERIVED FROM THE MANAGERIAL EFFORTS OF THE COMPANY OR MANAGER OR FROM PARTICIPATION IN THE UNIT MANAGEMENT PROGRAM; (III) MADE ANY SUGGESTION, IMPLICATION, STATEMENT OR REPRESENTATION, THAT ANY POOLING ARRANGEMENT WILL EXIST WITH PARTICIPANTS IN THIS PROGRAM OR THAT OWNER WILL SHARE IN ANY WAY IN THE RENTAL PROCEEDS OF OTHER UNIT OWNERS IN THE HOTEL; OR (IV) MADE ANY SUGGESTION, IMPLICATION, STATEMENT OR REPRESENTATION, THAT OWNER IS NOT PERMITTED TO RENT THE UNIT DIRECTLY OR TO USE OTHER RESERVATIONS AGENTS TO RENT THE UNIT.

B) PURSUANT TO THE TERMS OF ANY HOTEL MANAGEMENT AGREEMENT THAT HAS BEEN OR MAY BE ENTERED INTO BY THE COMPANY WITH A MANAGER, EITHER THE COMPANY OR MANAGER MAY

TERMINATE SAME IN ACCORDANCE WITH THE PROVISIONS THEREOF AND THEREFORE OWNER HEREBY ACKNOWLEDGES THAT THERE CAN BE NO GUARANTEE THAT MANAGER WILL OPERATE THE HOTEL THROUGHOUT THE TERM OF THIS AGREEMENT. THE EVENT OF A TERMINATION OF MANAGER AS THE OPERATOR SHALL NOT CONSTITUTE A DEFAULT UNDER THIS AGREEMENT AND THE COMPANY RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO REPLACE MANAGER WITH ANOTHER OPERATOR OF THE COMPANY'S CHOOSING.

20. OWNERSHIP OF MARKS. Owner acknowledges that the names "**GRAND SIERRA RESORT**" and the other Grand Sierra trademarks and service marks (collectively, "**Marks**") have acquired valuable secondary meanings and goodwill in the minds of the hospitality trade and the public and that services and products bearing the name "**Grand Sierra**" and/or any of the other Marks have acquired a reputation of the highest quality of hotel service. Without prejudice to this Agreement, Owner acknowledges that Owner has no claim to any right, title and interest in and to the Marks or any and all forms or embodiments thereof nor to the goodwill attached to the Marks in connection with the business, operations and goods in relation to which the same have been and may be used by Owner. The Company shall have the sole and exclusive right to use of the Marks for marketing and operation of the Hotel, and Owner shall have no right to use such Marks at any time during or after the term of this Agreement for any purpose except with the prior written consent of the Company. Owner will not at any time do or suffer to be done any act or thing which may, in any way, impair the rights of Manager in and to the Marks or which may affect the validity of the Marks or which may depreciate the value of the "**GRAND SIERRA**" names or any of the other Marks or the established prestige and goodwill connected with any of the same.

21. MISCELLANEOUS PROVISIONS. This Agreement shall be subject to and contingent upon the following:

(a) Limitation of Liability. Neither the Company nor Manager, nor any of their respective officers, representatives, employees, agents, subsidiaries, parent and affiliates shall be liable for any loss or damage to any person or property, including, but not limited to, Owner, the Guests, the Unit and its equipment, furnishings and appliances, of any nature resulting from any accident or occurrence in or upon the Unit, or the building in which the Unit is a part, including but not limited to, any and all claims, demands, damages, costs and expenses (including, without limitation, attorneys' fees, judgments, fines and amounts paid or to be paid in settlement) resulting from: (i) the acts or omissions of Guests; (ii) wind, rain or other elements; or (iii) theft, vandalism, fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions; war, rebellion, riots or other civil unrest; or any other similar event beyond the control of the Company or Manager.

(b) Entire Agreement; Amendments. The parties hereto agree and acknowledge that this Agreement, together with the Unit Maintenance Agreement, constitutes the entire Agreement between the parties with respect to the rental of the Unit, and there are no oral or written amendments, modifications, other agreements or representations. The Company may, no more frequently than once each year, upon at least sixty (60) days prior written notice to Owner, modify the services to be provided by the Company and/or adjust the charges payable for services provided for herein to reflect additions or changes in services provided by the Company generally to all Hotel guests, and to reflect actual changes in the cost of providing services by the Company generally to all Hotel guests; provided that the Company shall not increase the charges to Owner by more than seven percent (7%) per year without Owner's written consent. Except for this annual adjustment to services and charges, this Agreement may not be amended, supplemented, terminated or modified except with the prior written agreement of Owner and the Company.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Nevada, without giving application to principles of conflicts of laws which shall control all matters relating to the execution, validity and enforcement of this Agreement.

(d) Alternative Dispute Resolution. The parties agree that any disputes arising out of or relating to this Agreement shall be resolved in accordance with the Dispute Resolution Addendum Agreement attached to the Unit Maintenance Agreement as SCHEDULE B, and that all references to the Unit Maintenance Agreement in the Dispute Resolution Addendum Agreement shall be deemed to refer to this Agreement for purposes of the resolution of disputes arising out of or with respect to this Agreement.

(e) Authority of Single Owner. Recognizing the fact that there may be several Owners of a single Unit, it is hereby agreed that Owner's designate, as listed on the front page of this Agreement, shall have the authority to issue any and all instructions to the Company, and the Company shall act in reliance thereon.

(f) Severability. If any clause or provision of this Agreement shall be held invalid or void for any reason, such invalid or void clause or provision shall not affect the whole of this Agreement and the balance of the provisions of this Agreement shall remain in full force and effect.

(g) Notices. Any notice or demand required under this Agreement or by law shall be in writing and shall be deemed effective upon receipt if sent by personal delivery, upon one (1) business day if sent by express overnight delivery with a nationally recognized courier service (such as Federal Express) or three (3) business days after having been sent by US mail,

certified mail, return receipt requested and addressed to the parties at the addresses set forth above in the recitals of this Agreement. Either party may change such addresses with written notice to the other party.

(h) Authorization. Owner represents and warrants to the Company that Owner has the full authority to enter into this Agreement, and that there is no other party with an interest in the Unit whose joinder in this Agreement is necessary.

(i) Time of the Essence. For all purposes of this Agreement it shall be understood that time is of the essence.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

GRAND SIERRA OPERATING CORP.

By: _____
Signature

Print Name: DOUGLAS PENNINGTON

Title: DIR - COST. - SERV.

Print Name: _____

OWNER:

_____
Signature

Print name: TIMOTHY D. KAPLAN

_____
Signature of Co-Owner (if any)

Print name: _____

Dated signed: _____

Signed and delivered in the presence of:

Witness:

_____
[type: Name of Witness]

Witness:

_____
[type: Name of Witness]

Date signed: 2/5/07

Smoking / Non-smoking Unit Designation:

While managing and taking reservations for your unit, the Company would like to designate it as nonsmoking unless you request otherwise. Although the Company cannot guarantee that someone will not smoke in a non-smoking unit, it is the Company's experience that most people honor this request. Please initial below ONLY IF YOU WANT YOUR UNIT TO BE A SMOKING UNIT. OTHERWISE, IT WILL BE DESIGNATED A NON-SMOKING UNIT.

I would like to designate my Unit # _____ as a Smoking Unit

CODE: 3060

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

Case No. CV12-02222
Dept. No. OJ37

ORDER GRANTING PLAINTIFFS' MOTION FOR INSTRUCTIONS TO RECEIVER

Presently before the Court is Plaintiff's Motion for Instructions to Receiver, filed September 28, 2021 ("Motion"). Defendants filed Defendants' Opposition to Plaintiffs' Motion for Instructions to Receiver on October 12, 2021 ("Opposition"). Plaintiffs filed their Reply in Support of Motion for Instructions to Receiver on October 25, 2021. The Motion was submitted for consideration on October 25, 2021.

Case-concluding sanctions were entered against the Defendants for abuse of discovery and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,

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Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court ultimately entered a judgment in favor of the Plaintiffs for $8,318,215.55 in damages. (See Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

On January 7, 2015, the Court entered the Order Appointing Receiver and Directing Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"), the rental and other revenues from the condominiums, as well as other property of the non-GSRUOA Defendants. (See Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of implementing compliance, among all condominium units, including units owned by any Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

Among the Governing Documents with which the Receiver is ordered to implement compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort, recorded June 27, 2007 ("Seventh Amended CC&Rs"). Defendants, however, after representing to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort to overhaul the fees chargeable to the unit owners. ("Ninth Amended CC&Rs"). The Ninth Amended CC&Rs, according to Plaintiffs, substantially increase the expenses to be included in fees charged to Plaintiffs – thus making ownership of the units unviable. (Reply at 7:17-21.)

Additionally, the Defendants undertook to have a reserve study done by a third party, which was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs.

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Plaintiffs argue this reserve study was not only done without proper authority, but also that it was patently erroneous in that it includes a variety of expenses which are not chargeable to the Plaintiffs under the Seventh Amended CC&Rs. (Motion at 4:3-13.)

The Motion requests the Court instruct the Receiver to (1) determine that the amendment process was invalid and void actions improperly taken by the GSRUOA Board of Directors, (2) maintain the status quo by enforcing the Appointment Order and apply the Seventh Amended CC&Rs, and (3) disqualify the 2021 reserve study and prepare a new reserve study completed with the Receiver's direction and input. (Motion at 2:27-3:4, 4:12-13.)

As this Court has stated previously, "[a] receiver is appointed to maintain the status quo regarding the property in controversy and to safeguard said property from being dissipated while the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement, filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345 (Ohio Ct. App. 1994).) This Court reiterated this premise in a subsequent order, stating that "[o]ne of the purposes of the [Appointment] Order was to preserve the status quo of the parties during the pendency of the action. Another purpose was to enforce [the] agreements." (Order, filed November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a receiver is a "remedy used to preserve the value of assets pending outcome of the principal case" and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113, 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve the status quo).

In this case, the Receiver was specifically tasked with implementing compliance with the Governing Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-2:3.) Reading this obligation to implement compliance with the Seventh Amended CC&Rs with the obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs cannot be amended, repealed, nor replaced until the Receiver is relieved of his duties by the Court. The continuance of this specific Governing Document will ensure the status quo, as is the

purpose of a receivership and the Appointment Order. See Johnson, 100 Nev. at 183, 678 P.2d at 678; Dunphy, 50 Nev. 113, 252 P. at 944.

Furthermore, upon the appointment of the Receiver, all authority to manage and control the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers, officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc., 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct. App. Sept. 19, 2019) (noting that "[u]pon the receiver's appointment, [Defendant's] corporate officers and directors lost all authority to control the corporation"); First Sav. & Loan Ass'n v. First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a receiver is appointed for a corporation, the corporation's management loses the power to run its affairs and the receiver obtains all of the corporation's powers and assets."). "Simply put, corporate receivership is a court-mandated change in corporate management." Francis, 487 P.3d 1089 at 1092-93.

This automatic and immediate transfer of control over the GSRUOA to the Receiver therefore divested the GSRUOA's Board of Directors from any authority it had to propose, enact, and otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs are thus *void ab initio*, as they were enacted without proper authority.

Accordingly, the Ninth Amended CC&Rs are *void ab initio*, and even if they were not, the Ninth Amended CC&Rs would be improper and thus subject to rescission or cancellation.[1]

Next, Plaintiffs have moved the Court to instruct the Receiver to reject the reserve study completed by Defendants without any input from Receiver, and order and oversee a separate reserve study. (Motion at 11:25-14:19.) The Court has explicitly found that the Receiver "will determine a reasonable amount of FF&E, shared facilities and hotel reserve fees." (Findings of Fact, Conclusions of Law and Judgement, Filed October 9, 2015 at 22:25-26.) This implies that

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[1] Defendants argue any challenge to the Ninth Amended CC&Rs must be brought pursuant to the ADR provision therein. The Court rejects this argument *in toto* considering the Appointment Order, the purpose of the Appointment Order, and binding Nevada law which all dictate the receivership is intended to maintain the status quo – not allow for a key Governing Document to be unilaterally amended by Defendants. Further, the claim for a Receivership was brought in the Second Amended Complaint and the Nevada Supreme Court has already found that the District Court has subject matter jurisdiction over the action.

the Receiver will also be tasked with ordering and overseeing the reserve study – as that study will dictate the FF&E, shared facilities, and hotel reserve fees. Thus, the Receiver alone has the authority to direct and audit the reserve study, not the Defendants.

Moreover, the Defendants have acknowledged this reality to the Court:

> Mr. McElhinney: Are you instructing the receiver to use the 2016 reserve study in rendering his calculation? The Court: I think he can. Mr. McElhinney: Up to him? The Court: Yeah, it's up to him. If there's some reason that Mr. Teichner believes that the premise or the data that's collected therein is inappropriate, then obviously he can just go back to the 2014 study, but if he wants to use it and he believes that it's statistical or evidentiarily valid, then he can use that in making those determinations.

(Motion at Ex. 3 at 141:24-142:11.)

Plaintiffs further object to the Defendants' reserve study because it has included expenses which are clearly erroneous. (Motion at 4:6-13 (noting public pool expenses that were included while the Governing Documents and Court orders exclude any revenue-generating expenses).) The reserve study is to be limited as directed in previous Court orders and the Governing Documents. The reserve study provided by Defendants clearly shows at least one basic, elementary example of expenses which are included but should not be. (Id.) Accordingly, the Court finds the Defendants' reserve study to be flawed and untrustworthy, and finds the Receiver has the proper (and sole) authority to order, oversee, and implement a new reserve study.

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted.

IT IS FURTHER ORDERED that the Ninth Amended CC&Rs shall be withdrawn and the Seventh Amended CC&Rs shall be reinstated as though never superseded.

IT IS FURTHER ORDERED that Receiver shall not utilize the Defendants' reserve study in calculating those fees which are to be assessed to Plaintiffs. Instead, the Receiver shall order, oversee, and implement a new reserve study which is in accordance with the Governing Documents.

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IT IS SO ORDERED.

DATED 12-01-21.

SENIOR JUSTICE
Nancy Saitta

Submitted by:

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

/s/ Jarrad C. Miller
Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

FILED
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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

Case No. CV12-02222
Dept. No. OJ37

ORDER GRANTING RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS

Presently before the Court is the Receiver's Motion for Orders & Instructions, filed October 18, 2021 ("Motion"). Plaintiffs filed Plaintiffs' Joinder to Receiver's Motion for Orders & Instructions on October 22, 2021 ("Plaintiff's Joinder"). Defendants filed Defendants' Opposition to Receiver's Motion for Orders & Instructions on October 22, 2021 ("Defendants' Opposition"). The Receiver then filed Receiver's Reply in Support of Motion for Orders & Instructions on October 25, 2021 ("Receiver's Reply"). The Motion was submitted for consideration on October 25, 2021.

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Case-concluding sanctions were entered against the Defendants for abuse of discovery and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court ultimately entered a judgment in favor of the Plaintiffs for $8,318,215.55 in damages. See Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.

On January 7, 2015, the Court entered the Order Appointing Receiver and Directing Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of implementing compliance, among all condominium units, including units owned by any Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

In 2021, the Defendants undertook to have a reserve study done by a third party, which was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs (including the Daily Use Fees ("DUF"), Shared Facility Use Expenses ("SFUE"), and Hotel Expenses ("HE")). The Receiver states that various orders of this Court, including the Appointment Order, provide authority solely to Receiver to order and oversee any reserve studies done. (Reply at 2:27-3:5.) Defendants argue that no such orders nor the Governing Documents provide the Receiver with such authority. (Defendants' Opposition at 3:19-24.) Instead, Defendants argue that any attempt by the Receiver to order or oversee the reserve study would be an "impermissibl[e] expan[sion] of his authority." (Id. at 3:20.)

The Court issued its Findings of Fact, Conclusions of Law and Order granting in part Defendants' Motion for Leave to File Motion for Reconsideration of December 24, 2020 Order Granting Motion for Clarification and Request for Hearing, on September 29, 2021. Therein, the

Court struck the disgorgement order granted in the December 24, 2020 Order Granting Clarification ("December 24, 2020 Order"). Whereas the Court originally instructed that "[u]ntil the DUF, the [HE], and [SFUE] are recalculated by the Receiver, the fees calculated by the past receiver shall be applied," the revised order struck this reversion to the prior receiver's calculations. Thus, the Receiver states he is now without direction as to which calculations are to be applied until he is able to redo his own calculations. (See December 24, 2020 Order at 3:23-4:10 (where the Court informs the Receiver his calculations for 2020 are incorrect and invalid under the Governing Documents and they must be redone).) Defendants argue the Receiver's prior calculations, which were in place until the December 24, 2020 Order was issued, should be utilized. Notably, this directly contradicts the Court's December 24, 2020 Order, is inequitable, and thus is denied outright. (Id.)

The Appointment Order provides the Receiver authority to take control of "all accounts receivable, payments, rents, including all statements and records of deposits, advances, and prepaid contracts or rents . . . ." (Appointment Order at 3:15-18.) Defendants are also ordered to cooperate with the Receiver and not "[i]nterfer[e] with the Receiver, directly or indirectly." (Id. at 8:2-15.) The Receiver has informed the parties of his intent to open a separate account into which all rents and other proceeds from the units will be deposited, and now requests the Court's permission to open such an account. (Motion at 11:19; Motion to Stay Special Assessment, filed August 20, 2021 at Ex. 2.) Defendants have refused to cooperate with the Receiver's request to turnover various proceeds, in violation of the Appointment Order, and now object to Receiver's authority to open a separate account. (Appointment Order at 8:2-15; Defendant's Opposition at 6:14-7:21.)

Pursuant to the Governing Documents, Defendants have implemented a room rotation program whereunder bookings for the units owned by Plaintiffs and Defendants should be equally distributed such that Plaintiffs and Defendants, as individual unit owners, are earning roughly equal revenue. The Receiver contends this room rotation program is flawed and has resulted in a greater number of Defendants' units being rented than Plaintiffs' units during various periods through August 2021. (Motion at 14:14-17.)

Among the Governing Documents with which the Receiver is ordered to implement compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort, recorded June 27, 2007 ("Seventh Amended CC&Rs"). Defendants, however, after representing to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort ("Ninth Amended CC&Rs") to overhaul the fee structure and radically expand the fees chargeable to the Plaintiffs. The Ninth Amended CC&Rs, according to Plaintiffs, substantially increase the expenses to be included in fees charged to Plaintiffs – thus making ownership of the units unviable.

Finally, Defendants have communicated with Receiver *ex parte* through a variety of individuals. The Receiver now requests that all communications be funneled through a single individual: Reed Brady. (Motion at 17:4-8.)

The Motion requests the Court order (1) that the Notice of Special Assessments and the Reserve Studies sent to the unit owners by Defendants on August 24, 2021 be immediately withdrawn; (2) that the Defendants be ordered to send out a notice to all unit owners of said withdrawal; and (3) that this Court confirm the Receiver's authority over the Reserve Studies. (Motion at 3:11-14.) The Motion further requests the Court order that the Receiver is to recalculate the charges for the DUF, SFUE, and HE for 2020 based upon the same methodology as has been used in calculating the fee charges for 2021, once the Court approves that methodology. (Id. at 8:10-13.) The Motion further requests the Court approve the opening of an account for the Receivership, with the Receiver having sole signatory authority over the account, and order that all rents received by Defendants currently and in the future, generated from either all 670 condominium units or the Plaintiff-owned units, net of the total charges for the DUF, SFUE, and HE fees and for reserves combined, are to be deposited into the account, that the receiver be authorized to make the necessary disbursements to the relevant unit owners at three (3) month intervals, that any disgorgement amounts owed by Defendants be deposited into the

Receivership account to be distributed by the Receiver, and that, if the Court orders the current credit balances in the Plaintiffs' accounts are to be deposited in to the Receiver's bank account then, to the extent that such credit balances are to be disgorged, Defendants will pay such credit balances to the Receiver for deposit, and the Receiver will distribute such funds appropriately. (Id. at 11:21-12:13.) The Motion further requests the Court order Defendants to provide the Receiver with the information and documentation he has requested relating to the room rotation program within ten (10) days of this Order. (Id. at 14:20-24.) The Motion further requests the court expedite the determination of the Plaintiffs' Motion for Instructions, filed October 18, 2021 and submitted for consideration on October 25, 2021. (Id. at 17:1-3.) Finally, the Motion requests the Court instruct Defendants to funnel all communications to the Receiver through a single individual: Reed Brady. (Id. at 7:5-8.)

As this Court has stated previously, "[a] receiver is appointed to maintain the status quo regarding the property in controversy and to safeguard said property from being dissipated while the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement, filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345 (Ohio Ct. App. 1994).) This Court reiterated this premise in anotherorder, stating that "[o]ne of the purposes of the [Appointment] Order was to preserve the status quo of the parties during the pendency of the action. Another purpose was to enforce [the] agreements." (Order, filed November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a receiver is a "remedy used to preserve the value of assets pending outcome of the principal case" and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113, 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve the status quo).

Furthermore, upon the appointment of the Receiver, all authority to manage and control the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers, officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,

2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct. App. Sept. 19, 2019) (noting that "[u]pon the receiver's appointment, [Defendant's] corporate officers and directors lost all authority to control the corporation"); First Sav. & Loan Ass'n v. First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a receiver is appointed for a corporation, the corporation's management loses the power to run its affairs and the receiver obtains all of the corporation's powers and assets."). "Simply put, corporate receivership is a court-mandated change in corporate management." Francis, 487 P.3d 1089 at 1092-93.

Thus, upon appointment of the Receiver, the GSRUOA's Board of Directors was divested of the authority it has errantly exercised to issue that Notice of Special Assessment and the Reserve Studies which was sent to all unit owners on August 24, 2021. Accordingly, such Notice of Special Assessment and any actual imposition of special assessment is *void ab initio* and therefore invalid. Only the Receiver can impose special assessments.

Next, the Findings of Fact, Conclusions of Law and Judgement issued on October 9, 2015 ("FFCLJ"), explicitly ordered the Receiver to calculate "a reasonable amount of FF&E, shared facilities and hotel reserve fees" and other necessary fees to be assessed against Plaintiffs. (FFCLJ at 22:25-27.) Accordingly, the Receiver is to calculate the DUF, SFUE, and HE for 2020. Such calculations should be based upon the same methodology as used for the 2021 fees, once the Court has approved of such methodology.

The Appointment Order expressly allows for the Receiver to open an account for the Receivership. (Appointment Order at 6:26 (the Receiver is allowed to "open and utilize bank accounts for receivership funds").) Indeed, the Appointment Order also expressly calls for the Receiver to collect proceeds from the Property (defined as the 670 condominium units), including, but not limited to, rent earned therefrom. (Id. at 5:17-19.) It logically follows then that the Receiver may open a separate account for the Receivership in which it may hold all rents from the Property, as defined in the Receivership Order.

The Appointment Order also expressly calls for Defendants to cooperate with the Receiver and refrain from taking any actions which will interfere with the Receiver's ability to

perform his duties. (Id. at 8:2-15.) Accordingly, Defendants should supply the Receiver with all information, explanation, and documentation the Receiver may request regarding the room rotation program and apparent inadequacy thereof.

The Receiver was specifically tasked with implementing compliance with the Governing Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-2:3.) Reading this obligation to implement compliance with the Seventh Amended CC&Rs with the obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs cannot be amended, repealed, nor replaced until the Receiver is relieved of his duties by the Court. The continuance of this specific Governing Document will ensure the status quo, as is the purpose of a receivership. Johnson, 100 Nev. at 183, 678 P.2d at 678; Dunphy, 50 Nev. 113, 252 P. at 944. The automatic and immediate transfer of control over the GSRUOA to the Receiver therefore divested the GSRUOA's Board of Directors from any authority it had to propose, enact, and otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs are thus *void ab initio*, as they were enacted without proper authority. Accordingly, the Ninth Amended CC&Rs are *void ab initio*, and even if they were not, the Ninth Amended CC&Rs would be improper and thus subject to rescission or cancellation.

Finally, the Court finds it appropriate for Defendants to funnel all communication with the Receiver through a single individual. For the time being, such individual shall be Reed Brady. Mr. Brady may delegate tasks to others, however, only Mr. Brady should communicate answers, conclusions, or other findings to the Receiver.

IT IS HEREBY ORDERED that Receiver's Motion is granted **in full.**

IT IS FURTHER ORDERED (i) that the Notice of Special Assessments and the Reserve Studies sent to the unit owners by the Defendants on August 24, 2021 shall be immediately withdrawn; (ii) that the Defendants shall send out a notice to all unit owners of said withdrawal within ten (10) days of this Order; (iii) that any amounts paid by unit owners pursuant to the Notice of Special Assessment shall be refunded within ten (10) days of this Order; and (iv) that the Receiver has sole authority to order and oversee reserve studies related to Defendants' property and under the Governing Documents.

IT IS FURTHER ORDERED that the Receiver shall recalculate the DUF, SFUE, and HE based on the same methodology as has been used in calculating the fee charges for 2021, subject to Court approval of such methodology. Those fees in place prior to the Court's September 27, 2021 Order shall remain in place until the fees for 2020 are recalculated and approved by this Court such that only a single account adjustment will be necessary.

IT IS FURTHER ORDERED that the Receiver shall open a separate account on which Receiver has sole signatory authority, and into which all rents received by Defendants currently for all 670 condominium units, net of total charges for DUF, SFUE, and HE fees and reserves, are to be deposited. The Receiver shall disburse the revenue collected to the parties according to the Governing Documents. In the event the Court requires a disgorgement by Defendants to Plaintiffs, Receiver shall deposit such disgorgements into this separate account and disburse the same to Plaintiffs appropriately.

IT IS FURTHER ORDERED that Defendants shall provide Receiver with any information, explanation, and documentation he may request regarding the room rotation program and any perceived discrepancies therewith, until Receiver is either satisfied with the adequacy of the program or until Receiver deems it appropriate to seek judicial intervention.

IT IS FURTHER ORDERED that the Ninth CC&Rs are *void ab initio* and the Seventh CC&Rs are to be resurrected as though they had not been withdrawn or superseded.

IT IS FURTHER ORDERED that Defendants shall funnel all communication with the Receiver through Reed Brady. Defendants and Receiver may mutually agree to choose an alternative representative through which communication shall be directed. Mr. Brady, and any subsequent representative, may delegate requests, questions, or other tasks necessary to respond to Receiver's communications, but any answers, conclusions, or other results shall be communicated back to Receiver through only Mr. Brady and no other individual.

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IT IS SO ORDERED.

DATED 12-14-21.

SENIOR JUSTICE
Nancy Saitta

Submitted by:

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

/s/ Jarrad C. Miller
Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

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Alicia L. Lerud
Clerk of the Court
Transaction # 8825474

CODE: 2777

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

Case No. CV12-02222
Dept. No. OJ37

ORDER APPROVING RECEIVER'S REQUEST TO APPROVE UPDATED FEES

Before the Court is the Receiver's Receiver Analysis and Calculation of Daily Use Fee, Shared Facilities Unit Expense Fee and Hotel Expense Fee with Request to Approve updated Fees and for Court to Set Effective Date for New Fees, filed August 16, 2021 ("Receiver Analysis"). Defendants filed Defendants' Objection to Receiver's Analysis and Calculation of Daily Use Fee, Shared Facilities Unit Expense Fees and for Court to Set Effective Date for New Fees on September 17, 2021. Plaintiffs filed Plaintiffs' Response to Receiver Analysis and Calculation of Daily Use Fee, Shared Facilities Unit Expense Fee and Hotel Expense Fee with Request to Approve Updated Fees and for Court to Set Effective Date for New Fees on

Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501

September 17, 2021. The Receiver Analysis was submitted for consideration on September 22, 2021.

IT IS HEREBY ORDERED that (1) The Receiver's new fee calculations as submitted to the Court should immediately be applied retroactive to January 2020 and going forward until a subsequent order from the Court is issued; (2) the amounts owed to Plaintiffs under those fee calculations should be paid to Plaintiffs within thirty (30) days in accordance with the Governing Documents; (3) the Receiver should be permitted to calculate the 2020 fee calculation using the same methodology – and once those calculations are completed, the Receiver can reconcile the unit owner accounts to reflect the difference between the 2020 and 2021 fee calculations; and (4) after Defendants produce to Plaintiffs all actual documents that support the Receiver's 2020 and 2021 calculations, and depositions are taken (limited in scope) to verify that the calculations are based on actual expenses as provided for under the Governing Documents, the briefing on the issue of the accuracy of the fees should recommence. Any adjustments to the fees as a result of motion practice by the parties shall be credited or debited accordingly, but in the interim, rental revenue shall be calculated based upon the Receiver's 2021 calculations.

IT IS SO ORDERED.

DATED 12-21-21.

SENIOR JUSTICE
Nancy Saitta

Submitted by:

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

/s/ Jarrad C. Miller
Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al., Plaintiff, vs. MEI-GSR HOLDINGS, LLC., a Nevada Limited Liability Company, et al Defendant.	ORDER Case#: CV12-02222 Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on Defendants' Motion to Modify and Terminate Receivership ("Motion").[1] After consideration of the briefing, the Court denies the motion.

The Motion is premature given the status of Defendants compliance with the Court's prior order. The Court has overruled the Objection by order of this date and Defendants are to deposit funds consistent with the Order entered on January 26, 2023. Once those funds are deposited, the Receiver shall file a motion for payment of expenses including his fees and the fees of his attorney;

[1] The court has also reviewed the Opposition filed March 2, 2023, Notice of Errata filed March 3, 2023, and the Reply filed on March 10, 2023..

After payment of those funds, the Receiver shall provide accurate rental information[2] as well as the recalculated fees. Once that information is provided to Plaintiffs' counsel, Plaintiffs' have 30 days to provide their appraisal.

Defendants may file a subsequent motion once they have complied with the Court's prior orders.

Dated this 27th day March, 2023.

Hon. Elizabeth Gonzalez, (Ret.)
Sr. District Court Judge

[2] The Court notes that Defendants are in control of this information and there providing of this information to the Receiver may expedite the process. If Defendants do not cooperate with the Receiver in providing this information, the process may take much longer than necessary.

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

DALE KOTCHKA-ALANES
DANIEL POLSENBERG, ESQ.
DAVID MCELHINNEY, ESQ.
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JORDAN SMITH, ESQ.

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al., Plaintiff, vs. MEI-GSR HOLDINGS, LLC., a Nevada Limited Liability Company, et al Defendant.	ORDER Case#: CV12-02222 Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on MOTION FOR INSTRUCTIONS TO RECEIVER CONCERNING TERMINATION OF THE GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION AND RENTAL OF UNITS UNTIL TIME OF SALE filed on JANUARY 26, 2023 ("Motion for Instructions").[1] After consideration of the briefing, the Court grants the motion.

The limited definition of occupancy is not one the Court is inclined to adopt. Defendant's argument that the 670 former units of the GSRUOA can no longer be rented under the URA but only occupied would promote economic waste. The 670 former units represent about one third of the

[1] The court has also reviewed the, the Defendants' Opposition filed February 14, 2023 and the Reply filed on February, 24, 2023.

total units at the GSR and removing all of those units (including Defendant's) from availability for rental is nonsensical. The Receiver is instructed to continue to rent the former units under the URA.

Dated this 14th day March, 2023.

Hon. Elizabeth Gonzalez, (Ret.)
Sr. District Court Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 14th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

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Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al., Plaintiff, vs. MEI-GSR HOLDINGS, LLC., a Nevada Limited Liability Company, et al Defendant.	ORDER Case#: CV12-02222 Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on the:

RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS filed 12/1/23.[1] This motion is granted.

The Order Appointing Receiver was entered on January 17, 2015 (the "Appointment Order"). The Appointment Order appointed the Receiver over Grand Sierra Resort Unit Owners Association ("GSRUOA") including units owned by Defendants. The units owned by Defendants are

[1] The Court has also reviewed the Defendants' Opposition filed on 12/14/2022, Plaintiffs' Opposition filed on 12/14/2022, and the Receiver's Omnibus Reply filed 12/19/2022.

specifically included in the definition of "the Property" and fall within the scope of the Receiver's responsibilities. Appointment Order at page 1, line 27 to page 2, line 9.

The Appointment Order and its interpretation has been subject to motion practice as part of the tortured history of this matter. Pursuant to a Court order, the Receiver acts in place of the Board. Section 8a of the Appointment Order unambiguously provides the Receiver with the power to "pay and discharge out of the Property's rents and/or GSRUOA monthly dues collections all the reasonable and necessary expenses of the receivership . . . including all of the Receiver's and related fees".

Central to answering the inquiries posed by the Receiver is the scope of the Receiver's authority. Despite the arguments made by the Defendants, the Receiver is responsible over the entire GSRUOA. The GSRUOA includes not only units owned by Plaintiffs but also units owned by Defendants (collectively the "Parties"). While the Receiver is not to collect rent from the units of those who are not Parties to this action, the rent from the units owned by the Parties are to be paid to the Receiver and utilized for the purposes identified in the Appointment Order including payment of the Receiver's expenses. These expenses can only be paid from the rents which are earned by the units owned by the Parties to the action, i.e. the Plaintiffs and the Defendants units.

As such the Court responds to the inquiries posed by the Receiver as follows:

The Receiver's calculated Daily Use Fee (DUF), Shared Facilities Unit Expenses (SFUE), and Hotel Expense (HE) fees apply to both the Plaintiffs owned units and Defendants owned units. The rental income to be collected by the Receiver relates to units owned both by the Plaintiffs and Defendants.

The Court confirms that, "in accordance with the Governing Documents", including the "Findings of Fact, Conclusions of Law and Judgment, Filed October 9, 2015" that the Receiver has the authority to direct, audit, oversee, and implement the reserve study for all 670 condominium units.

Consistent with the Order entered on December 5, 2022 the Defendants are prevented from foreclosing upon any other units owned by Plaintiffs until further order of the Court. Defendants have indicated in their Opposition that they are in compliance with this Order.

The Receiver has not been paid. This is a result of the disagreements between the Parties as to the allocation of expenses and the inability, without clarification, for the Receiver to calculate the permissible expenses for Defendants to deduct from the revenue of the Parties units. The Court has recognized this as an issue which must be resolved and has addressed it in the Order entered on December 5, 2022.[2]

Attached as Exhibit 1 to the Receiver's Omnibus Reply is a spreadsheet with calculations based upon the various orders of the Court. The Court notes these calculations appear to include only units owned by Plaintiffs. If either Plaintiffs or Defendants object to the calculations contained in Exhibit 1, a written objection shall be filed within 15 judicial days of entry of this Order. If an objection is filed, the Receiver may file a response to the objection within 15 days of the filing of the objection. If no objection is filed, the Defendants shall make the deposits of rent listed in the column on the far right of each page of Exhibit 1 in the total amount of $1,103,950.99 into the Receiver's bank account within 25 judicial days of entry of this Order. Prior to making any disbursements, the Receiver shall file a motion with the Court outlining the funds received and the

[2] The language in the Order provides in part:

IT IS FURTHER ORDERED that prior to a sale of the Property as a whole, the Court shall enter an Order on motion to terminate and or modify the Receivership that addresses the issues of payment to the Receiver and his counsel, the scope of the wind up process of the GSRUOA to be overseen by the Receiver, as well as the responsibility for any amounts which are awarded as a result of the pending Applications for OSC.

Order dated December 5, 2022, p. 7 at line 13-18.

proposed distributions for the Receiver's fees and expenses as well as amounts set aside for reserve and any proposed distributions to the Parties.

Dated this 26th day January, 2023.

Hon. Elizabeth Gonzalez, (Ret.)
Sr. District Court Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 26th day of January, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

DALE KOTCHKA-ALANES

DANIEL POLSENBERG, ESQ.

DAVID MCELHINNEY, ESQ.

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ABRAN VIGIL, ESQ.

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G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.

Hailey W. Lange

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al., Plaintiff, vs. MEI-GSR HOLDINGS, LLC., a Nevada Limited Liability Company, et al Defendant.	ORDER Case#: CV12-02222 Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on DEFENDANTS' OBJECTION TO RECEIVER'S CALCULATIONS CONTAINED IN EXHIBIT 1 ATTACHED TO RECEIVER'S OMNIBUS REPLY TO PARTIES OPPOSITIONS TO THE RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS ("Objection").[1] After consideration of the briefing, the Court overrules the objection.

While the Court appreciates the arguments that are made in the Objection, these are the arguments which have been rejected by the Court and in large part will be addressed as part of the contempt hearing beginning on April 3, 2023. Defendant shall comply with the Order entered on January 26,

[1] The court has also reviewed the Receiver's response filed on February 24, 2023.

2023, including the deposits as directed in that Order within five (5) judicial days of entry of this Order.

Dated this 27th day March, 2023.

Hon. Elizabeth Gonzalez, (Ret.)
Sr. District Court Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

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JORDAN SMITH, ESQ.

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Transaction # 4636596

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC, a Nevada Limited Liability Company, et al,

Defendants.

/

Case No: CV12-02222

Dept. No: 10

ORDER GRANTING PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS

ALBERT THOMAS et al. ("the Plaintiffs") filed the PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS ("the Motion") on January 27, 2014. MEI-GSR Holdings, LLC ("the Defendants") filed the DEFENDANTS' OPPOSITION TO THE PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS ("the Opposition") on February 25, 2014.[1] The Plaintiffs filed the REPLY IN SUPPORT OF MOTION FOR CASE- TERMINATING SANCTIONS ("the Reply") on March 10, 2014. The Plaintiffs submitted the matter for decision on

[1] Pursuant to a stipulation of the parties, the Court entered the ORDER EXTENDING BRIEFING SCHEDULE on February 13, 2014. That order required the Defendants to file their opposition by the close of business February 24, 2014. This is yet one more example of the Defendants flaunting or disregarding rules of practice in this case. The Court has also had to hold counsel in contempt on two occasions: (1) continuous untimely filing on May 14, 2014; and (2) being one-half hour late to the hearing on August 1, 2014.

March 11, 2014. The Court held hearings on the Motion on August 1, 2014, and August 11, 2014.

The Plaintiffs previously filed a Motion for Case Concluding Sanctions on September 24, 2013. The Court held a three-day hearing October 21, 2013 to October 23, 2013 ("October 2013 hearing"). The Court struck the Defendants' counterclaims and ordered that the Defendants pay all attorney fees and costs associated with the three-day hearing. The Motion renews the Plaintiffs' request for case terminating sanctions and asks the Court to strike the Defendants' Answer. The Motion asserts that the Defendants' discovery conduct prior to October of 2013 was willful and did severely prejudice the Plaintiffs. The Motion argues that during the October 2013 hearing neither the Court nor the Plaintiffs had a complete understanding of the Defendants' discovery misconduct. The Motion argues that since October of 2013, the Defendants have continued to violate discovery orders and delay discovery.

The Opposition contends that the Defendants have engaged in no conduct warranting the imposition of case concluding sanctions. The Opposition argues the allegations made by the Plaintiffs pre-date the October 2013 hearing. The Opposition argues that no evidence has been lost or fabricated, and that the Defendants have not willfully obstructed the discovery process. The Defendants submit that they have cooperated with the Plaintiffs' effort to locate 224,000 e-mails that contain a word that might relate to the case even though the Defendants believe the vast majority of those e-mails to be irrelevant. The Opposition further argues that the Defendants have cooperated with the Plaintiffs' desire to run a "VB Script" on the Defendants' computer system that may have violated third-party copyrights but which ultimately located no additional e-mails. The Opposition argues that the e-mail production has been expedited but has taken time due to the volume of e-mails. The Opposition contends that the e-mail privilege log that the Defendants submitted

complied with case law of the Ninth Circuit and that they were not required to comply with the Discovery Commissioner's recommendation until the Court adopted the order. [2]

The Nevada Rules of Civil Procedure provide that a party who fails to comply with an order can be sanctioned for that failure. NRCP 37(b). Sanctions against a party are graduated in severity and can include: designation of facts to be taken as established; refusal to allow the disobedient party to support or oppose designated claims or defenses; prohibition of the offending party from introducing designated matters in evidence; an order striking out pleadings or parts thereof or dismissing the action; or rendering a judgment by default against the disobedient party. NRCP 37(b)(2). A disobedient party can also be required to pay the reasonable expenses, including attorney fees caused by the failure. NRCP 37(b)(2)(E).

Discovery sanctions are properly analyzed under Young v Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990). Young requires "every order of dismissal with prejudice as a discovery sanction be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors." Young, 106 Nev. at 93, 787 P.2d at 780. The Young factors are as follows: (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been irreparably lost; (5) the feasibility and fairness of less severe sanctions; (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney; and (8) the need to deter parties and future litigants from similar

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[2] The Court adopted the Discovery Commissioner's recommendation regarding the privilege log on March 13, 2014. The Court noted that the current discovery situation is a product of the Defendants' discovery failures. The Court further stated that any lack of time to prepare an adequate privilege log was a result of the Defendants' inaction and lack of participation in the discovery process.

abuses. Id. In discovery abuse situations where possible case-concluding sanctions are warranted, the trial judge has discretion in deciding which factors are to be considered. Bahena v. Goodyear Tire & Rubber Co., 126 Nev. Adv. Op. 57, 245 P.3d 1182 (2010). The Young factor list is not exhaustive and the Court is not required to find that all factors are present prior to making a finding. "Fundamental notions of fairness and due process require that discovery sanctions be just and . . . relate to the specific conduct at issue." GNLV Corp v. Service Control Corp, 111 Nev. 866, 870, 900 P.2d 323, 325 (1995).

The Court analyzed the Young factors at the October 2013 hearing and found: (1) the Defendants failed to comply with discovery orders and failed to meet the extended production deadlines; (2) the discovery failures were not willful; (3) lesser sanctions could be imposed, and such sanctions would not unduly cause the Plaintiffs prejudice; (4) the severity of the discovery failures did not warrant ending the case in favor of the Plaintiffs; (5) no evidence was presented that evidence had been irreparably lost; (6) any misconduct of the attorneys did not unfairly operate to penalize the Defendants; (7) there were alternatives to the requested case-concluding sanctions that could serve to deter a party from engaging in abusive discovery practices in the future; and (8) non-case concluding sanctions could be used to accomplish both the policy of adjudicating cases on the merits and the policy of deterring discovery abuses.

The Defendants have, to date, violated NRCP 33 and NRCP 34 (twice). The Defendants have violated three rulings of the Discovery Commissioner and three confirming orders. The Court is aware of four violations of its own orders. The information that has been provided to the Plaintiffs during discovery has been incomplete, disclosed only with a Court order, and often turned over very late with no legitimate explanation for the delays. The Plaintiffs have written dozens of letters and e-mails to the Defendants' counsel in an effort to facilitate discovery. The Plaintiffs have filed five

motions to compel and five motions for sanctions. The Court held multiple hearings on discovery matters including two extensive, multi-day hearings on case concluding sanctions. The Court is highly concerned about the Defendants' conduct during discovery and the resulting prejudice to the Plaintiffs. Based on the progress of discovery, the Defendants' ongoing discovery conduct, and the Plaintiffs' Motion the Court has chosen to revisit the Young factors and reassess the decision made at the October 2013 hearing.

The first factor of the Young analysis is willfulness. The Plaintiffs allege that the discovery failures in this case were deliberate and willful. Repeated discovery abuses and failure to comply with district court orders evidences willfulness. Foster v. Dingwall, 126 Nev. Op. 6, 227 P.3d 1042 (2010)(*citing*, Young, 106 Nev. at 93, 787 P.2d at 780). Willfulness may be found when a party fails to provide discovery and such failure is not due to an inability on the offending party's part. Havas v Bank of Nevada, 96 Nev. 567, 570, 613 P.2d 706, 708 (1980). The Nevada Supreme Court has not opined that it is necessary to establish wrongful intent to establish willfulness.

At the October 2013 hearing, the Defendants argued that they were substantially in compliance with the June 17, 2013, discovery request. The Defendants initially disclosed between 200-300 e-mails. The Defendants argued that the discovery dispute was only over a few irrelevant documents. Since the October 2013 hearing, additional e-mail searches have uncovered 224,226 e-mails not previously disclosed to the Plaintiffs. The Court now has serious doubt that the representations made by the Defendants at the October 2013 hearing were accurate and genuine.

The Defendants designated Caroline Rich, the Defendants' previous Controller, to gather the discovery information with assistance from their internet technology department ("IT"). The Court initially believed that Ms. Rich did her best to produce the discovery information (including e-mails) she felt was relevant. Ms. Rich did not have direct access to the IT system of the Defendants. Nor

did she have access to the e-mails of all staff members. For instance, she did not have access to the e-mails of those employees who outranked her. The Plaintiffs have subsequently discovered e-mails where Ms. Rich is a participant in e-mail correspondence that was directly relevant to the search. It would be excusable if Ms. Rich overlooked e-mail sent by other employees or did not have access to her superiors' e-mail accounts. However, it now appears that she did not disclose e-mails in which she was a participant in the correspondence. This calls into question her credibility.

The Court is further troubled by the representations of the Defendants' counsel, Sean Brohawn, that the volume of subsequent e-mails was going to be inconsequential and it would take minimal time for the Defendants to produce. The Court would have found the information that there were potentially hundreds of thousands of additional e-mails to be critical in reaching its October 2013, decision. The discrepancy between the 200-300 e-mails produced in the original discovery and the 224,226 subsequently identified is enormous. The Court cannot attribute this discrepancy to a good faith error. The discrepancy appears at best to be a failure of the Defendants to adequately search their e-mail system in response to the initial discovery requests. At worst, it is a deliberate failure to comply with the discovery rules.

The Defendants had an obligation to engage in an adequate search of the information requested in discovery, and to designate the appropriate party to testify regarding the discovery production. *See generally*, NRCP 16.1(b); NRCP 26(b); NRCP 26 (e). Defendants' counsel had the responsibility to oversee and supervise the collection of the discovery. *See*, NRCP 16.1(e)(3). Both the Defendants and the Defendants' counsel failed to meet their discovery obligations. That failure led to the Court being provided seriously inaccurate information at the October 2013 hearing.

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The Defendants have consistently violated Nevada Rules of Civil Procedure, orders compelling discovery, and the Court's directives. The Defendants have not proffered any legitimate or lawful explanation for their conduct. The Defendants have not objected to or requested clarification of discovery requests. Many times they have simply not responded. Other responses have been incomplete. Often, information was only produced after the Plaintiffs filed motions to compel. At various hearings and conferences the Defendants produced previously undisclosed discovery information that suddenly appeared. The Court reverses its earlier decision and finds that the Defendants discovery failures are in fact willful.

The Court next considered the second Young factor possible prejudice to the Plaintiffs if a lesser sanction were imposed. The Nevada Supreme Court has upheld entries of default where litigants engage in abusive litigation practices that cause interminable delays. Foster, 126 Nev. Op. 6, 227 P.3d at 1048 (*citing* Young, 106 Nev. at 93, 787 P.2d at 780). Willful and recalcitrant disregard of the judicial process presumably prejudices the non-offending party. Id. The discovery received by the Plaintiffs had to be forced from the Defendants, with multiple motions to compel, which has greatly increased the Plaintiffs' costs. The Plaintiffs have been hindered in developing their causes of action and preparing for trial. In reviewing the possible prejudice to the Plaintiffs, the Court finds that the Plaintiffs have been more prejudiced than was apparent at the time of the October 2013 hearing.

The Plaintiffs were not provided with 200,000 e-mails at the outset of discovery in accordance with their June 17, 2013, Request for Production. The Plaintiffs conducted their depositions prior to receiving the additional e-mail and financial information. The value of a deposition is significantly diminished if the deposing party does not have all the relevant information they need prior to the deposition. Given the new information, the Plaintiffs may need to re-depose

those individuals. The Plaintiffs discovered additional employees of the Defendants who would potentially have information and require deposition. The Plaintiffs estimated that after review of the e-mails, which was still ongoing at the time of the August hearings, that they would need another six to nine months to prepare the case for trial. That would result in trial almost a year and a half after the original trial date. As additional information has to come light, it has become apparent that the Defendants' discovery conduct has severely prejudiced the Plaintiffs' case.

Thirdly, the Court compared the severity of dismissal to the severity of the discovery abuse. "The dismissal of a case, based upon a discovery abuse . . . should be used only in extreme situations; if less drastic sanctions are available, they should be utilized." GNLV Corp., 111 Nev. at 870, 900 P.2d at 325 (*citing* Young, 106 Nev. at 92, 787 P.2d at 779-80). The Court is no longer persuaded that the effort of Ms. Rich was in good faith or that the Defendants designated the appropriate party to undertake the production of discovery. Ms. Rich was a relatively new employee, she did not have access to her superiors' e-mail and records, and she did not know the names and positions of other Defendants' employees. The Court is not convinced that the Defendants have properly made discovery disclosures such that the Plaintiffs have had a fair opportunity to develop their litigation plan. The Court is keenly aware that granting the Plaintiffs' motion would effectively end the case, leaving only the issue of damages to be decided. The Defendants have abused and manipulated the discovery rules and case-terminating sanctions is the option available to properly punish the Defendants' conduct.

In looking at the fourth factor in October 2013, the Court noted that there was no evidence presented at the hearing or raised by the moving papers that evidence had been irreparably lost. The Plaintiffs argue that information has been lost or destroyed. The fact that evidence had not been produced is not the same as the destruction or loss of evidence. There remains no evidence to

indicate that evidence has been lost or destroyed by the Defendants. This factor remains consistent in the reevaluation of the October 2013, decision.

Fifth, in October 2013, the Court found that there were many alternatives to the requested case-concluding sanctions that could serve to deter a party from engaging in abusive discovery practices in the future. The Defendants have received four sanctions for their discovery failures. The Defendants' conduct since the October 2013 hearing indicates that the previously imposed sanctions have not been sufficient to modify the Defendants' behavior. Time has shown that there are no effective alternatives to case concluding sanctions.

The Court considered two major policy factors together. Nevada has a strong policy, and the Court firmly believes, that cases should be adjudicated on their merits. *See*, Scrimer v. Dist. Court, 116 Nev. 507, 516-517, 998 P.2d 1190, 1196 (2000). *See also*, Kahn v. Orme, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992). Further, there is a need to deter litigants from abusing the discovery process established by Nevada law. When a party repeatedly and continuously engaged in discovery misconduct the policy of adjudicating cases on the merits is not furthered by a lesser sanction. Foster, 126 Nev. Op. 6, 227 P.3d at 1048. In revaluating the matter, the Court again considered the major policy that cases be adjudicated on their merits. The Court must balance that policy with the need to deter litigants from abusing the discovery process. The information provided at the October 2013 hearing was disingenuous. The Defendants' discovery abuse persisted after the October 2013 hearing despite the severity of the sanctions imposed. The Court is now convinced that the Defendants' actions warrant the imposition of case concluding sanctions. In light of Defendants' repeated and continued abuses, the policy of adjudicating cases on the merits is not furthered in this case. The ultimate sanctions are necessary to demonstrate to future litigants that they are not free to disregard and disrespect the Court's orders.

Lastly, the Court considered whether striking the Answer would unfairly operate to penalize the Defendants for the misconduct, if any, of their attorneys. As previously stated, there were failures to produce and abuses of discovery on behalf of the Defendants. The Court remains concerned that the attorneys for the Defendants did not adequately supervise discovery and misrepresented the number of e-mails at issue for disclosure. There remains no evidence to show that Defendants' counsel directed their client to hide or destroy evidence. Any misconduct on the part of the attorney does not unfairly operate to punish the Defendants.

The Nevada Supreme Court offered guidance as to how sanctions are to be imposed. "Fundamental notions of fairness and due process require that discovery sanctions be just and . . . relate to the specific conduct at issue." GNLV Corp., 111 Nev. at 870, 900 P.2d at 325 (*citing* Young, 106 Nev. at 92, 787 P.2d at 779-80). The Court recognizes that discovery sanctions should be related to the specific conduct at issue. The discovery abuse in this case is pervasive and colors the entirety of the case. The previous discovery sanctions have been unsuccessful in deterring the Defendants' behavior. Due to the severity and pattern of the Defendants' conduct there are no lesser sanctions that are suitable.

Despite the October 2013 hearing sanctions, the Defendants have continued their noncompliant discovery conduct. The stern sanctions which the Court imposed on the Defendants in October 2013, did not have the desired effect of bringing the Defendants' conduct in line with the discovery rules. After the October 2013 hearing, the Court identified that the major outstanding discovery issue between the parties was the Plaintiffs' access to Defendants' e-mail system. The parties were ordered to work together to develop terms to be used in the e-mail search. The Defendants were ordered to review the 224, 226 e-mails identified by November 25, 2013. The Defendants were ordered to deliver a privilege log for those e-mails the Defendants believed should

not be provided to the Plaintiffs. Further, the Defendants were ordered to provide a copy of withheld e-mails to the court with the privilege log for an in-camera review, and e-mail a copy of the privilege log to the Plaintiffs. The Plaintiffs were to be provided access to all the e-mails not designated in the privilege log beginning November 26, 2013. The Defendants failed to produce those e-mails by the Courts' deadline and the Plaintiffs moved for sanctions. The parties were ordered to submit the Defendants' November 25, 2013, privilege log to Discovery Commissioner, Wesley Ayres, with corresponding briefing. Commissioner Ayres determined that the privilege log was legally insufficient. The result was the Defendants waived any right to withhold e-mails identified in their privilege log and the Plaintiffs were entitled to all 78,473 e-mails containing the search term "condo" or "condominium". The Court adopted the recommendation of the Discovery Commissioner finding that the Defendants' objection to the recommendation based on shortage of time to review the privilege log was a result of the Defendants' inaction and lack of participation in the discovery process. The Defendants still did not release the e-mails and the Plaintiffs filed a motion to compel.

Nevada Rule of Civil Procedure 1 indicates that the rules of civil procedure are to be administered to secure the "just, speedy, and inexpensive determination of every action." It appears to the Court that the Defendants' focus in this case has been not to comply with NRCP 1. The Defendants' failures to comply with discovery rules have been numerous and pervasive throughout the case. The trial has been rescheduled multiple times resulting in a delay of over a year. The Defendants' failures have led to additional costs to the Plaintiffs and required the Plaintiffs to seek relief from the Court on multiple occasions. This has placed an undue burden on both the Plaintiffs and the Court. The Court has employed progressive sanctions to address discovery abuses. Those sanctions have not been adequate to curtail the Defendants' improper conduct. The Court has repeatedly warned the Defendants that if it found the information provided at the October 2013

hearing to be disingenuous, or if discovery abuses continued it would grant case terminating sanctions.

NOW, THEREFORE IT IS HEREBY ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERED, that the Defendants' Answer is stricken. The Parties are ORDERED to contact the Judicial Assistant for Department 10 within ten days from the date of this order to set a hearing to prove up damages.

DATED this 3 day of October, 2014.

ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF MAILING

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Jonathan Tew, Esq. for Cayenne Trust, et al
Jarrad Miller, Esq. for Cayenne Trust, et al
G. Robertson, Esq. for Cayenne Trust, et al
Sean Brohawn, Esq. for Grand Sierra Resort Unit-Owners Association, et al
Stan H. Johnson, Esq. for Grand Sierra Resort Unit-Owners Association, et al.

DATED this 3 day of October, 2014.

SHEILA MANSFIELD
Judicial Assistant

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2015-03-23 05:28:59 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4874454

CASE NO. CV12-02222 **ALBERT THOMAS ETAL VS. MEI-GSR HOLDINGS ETAL**

DATE, JUDGE OFFICERS OF COURT PRESENT — **PAGE 1** — APPEARANCES-HEARING

3/23/15
HONORABLE ELLIOTT A. SATTLER
DEPT. NO. 10
M. White (Clerk)
P. Hoogs

PROVE UP HEARING

3/19/15 at 2:00 p.m. – The Clerk met with counsel Miller and counsel Wray to mark exhibits. Counsel Wray advised the Clerk that he would like to lodge his objections to Plaintiffs' Exhibits 234, 236-244 & 246; and he further advised the Clerk that he would like to mark Exhibit 248 (which he provided to the Clerk) and Exhibits 249-302 (which were not provided to the Clerk and therefore not marked) for demonstrative purposes only. Counsel Miller objected to counsel Wray marking or offering any exhibits.

8:37 a.m. – Court convened.

Jarrad Miller, Esq., and Jonathan Tew, Esq., were present on behalf of the Plaintiffs.

H. Stan Johnson, Esq., Steven Cohen, Esq., and Mark Wray, Esq., were present on behalf of the Defendants.

COURT reviewed the recent procedural history of the case.

Counsel Miller called **Craig Greene**, who was sworn and direct examined.

(During the beginning of Mr. Greene's testimony, the Court went off the record twice to allow the Court Reporter time to fix the real-time connection problem.)

Witness was further direct examined; questioned by the Court; further direct examined.

Counsel Miller offered Exhibit 246; counsel Johnson objected; objection overruled and Exhibit 246 ordered ADMITTED into evidence.

Witness further direct examined.

Counsel Miller offered Exhibit 157; no objection; ordered ADMITTED into evidence.

COURT noted that prior to this hearing, Plaintiffs' counsel advised the Clerk that they were planning to mark approximately 28 binders of exhibits, however he directed the Clerk to direct their attention to NRS 52.275, and only mark those exhibits which they plan to offer into evidence.

Counsel Wray advised the Court that he requested to mark Exhibits 248-302, and he gave the Clerk a list reflecting those Exhibits, however the exhibit list he was provided with this morning does not reflect Exhibits 249-302; and he further indicated that he did not actually provide the Clerk with Exhibits 249-302 at the exhibit marking because those documents were with the Receiver at that time.

COURT noted that Defendants' Exhibit 248 was marked and is reflected on the Exhibit List, and Exhibits 249-302 were not provided to the Clerk at the exhibit marking on March 19, 2015.

Witness further direct examined.

Counsel Miller offered Exhibit 239; counsel Johnson objected; objection sustained.

COURT advised respective counsel that Exhibit 239 will not be admitted into evidence, however he will review page 20, lines 5-22.

Witness further direct examined.

10:13 a.m. – Court stood in recess.

10:31 a.m. – Court reconvened.

3/23/15
HONORABLE ELLIOTT A. SATTLER
DEPT. NO. 10
M. White (Clerk)
P. Hoogs

PROVE UP HEARING

Witness further direct examined.
Counsel Miller offered Exhibit 182; no objection; ordered ADMITTED into evidence.
Witness further direct examined.
Counsel Miller offered Exhibit 2; no objection; ordered ADMITTED into evidence.
Witness further direct examined.
Counsel Miller offered Exhibit 245; no objection; ordered ADMITTED into evidence.
Witness further direct examined.
Discussion ensued between the Court and counsel Miller regarding Exhibit 239; **COURT** noted that Exhibit 239 is still not admitted, however he will review pages 169 & 170.
Witness further direct examined; questioned by the Court; further direct examined.
Counsel Miller offered Exhibit 233; no objection; ordered ADMITTED into evidence.
Witness further direct examined.
Counsel Miller offered Exhibit 232; no objection; ordered ADMITTED into evidence.
Witness further direct examined.
Counsel Miller offered Exhibit 4; no objection; ordered ADMITTED into evidence.
Witness further direct examined.
Counsel Miller offered Exhibit 60; no objection; ordered ADMITTED into evidence.
Witness further direct examined.
12:01 p.m. – Court stood in recess for lunch.
1:17 p.m. – Court reconvened.
Witness further direct examined.
Counsel Miller offered Exhibit 6; counsel Johnson objected; objection overruled and Exhibit 6 ordered ADMITTED into evidence.
Witness further direct examined.
Counsel Miller offered Exhibit 1; no objection; ordered ADMITTED into evidence.
Witness further direct examined.
Discussion ensued between the Court and respective counsel regarding Exhibit 58.
COURT ORDERED: Exhibit 58 shall be ADMITTED into evidence under seal.
Witness further direct examined.
Counsel Miller offered Exhibit 11; no objection; ordered ADMITTED into evidence.
Witness further direct examined.
3:00 p.m. – Court stood in recess.
3:19 p.m. – Court reconvened.
Witness further direct examined.
COURT requested that counsel Miller provide him with a hard copy of Mr. Greene's power point presentation; counsel Miller indicated that he will bring a hard copy to the Court tomorrow morning.

CASE NO. CV12-02222 **ALBERT THOMAS ETAL VS. MEI-GSR HOLDINGS ETAL**

DATE, JUDGE OFFICERS OF COURT PRESENT | **PAGE 3** | APPEARANCES-HEARING

3/23/15
HONORABLE ELLIOTT A. SATTLER
DEPT. NO. 10
M. White (Clerk)
P. Hoogs

PROVE UP HEARING

Counsel Johnson requested that counsel Miller also provide him with a copy of Mr. Greene's power point presentation.

COURT directed counsel Miller to provide counsel Johnson with a copy of Mr. Greene's report.

Witness further direct examined.

Counsel Miller offered Exhibit 18; no objection; ordered ADMITTED into evidence.

Discussion ensued between the Court and counsel Miller regarding Exhibit 44.

Witness further direct examined.

Counsel Miller offered Exhibit 44; no objection; ordered ADMITTED into evidence.

Witness cross-examined by counsel Johnson.

4:45 p.m. – Court stood in recess for the evening, to reconvene tomorrow, March 24, 2015, at 8:30 a.m.

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2015-03-24 03:18:27 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4875984

CASE NO. CV12-02222 **ALBERT THOMAS ETAL VS. MEI-GSR HOLDINGS ETAL**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING
3/24/15 HONORABLE ELLIOTT A. SATTLER DEPT. NO. 10 M. White (Clerk) P. Hoogs	**ONGOING PROVE UP HEARING** *Prior to Court reconvening, counsel Miller provided the Clerk with a hard copy of Mr. Greene's power point presentation, and it was marked as Exhibit 249.* 8:35 a.m. – Court reconvened. Jarrad Miller, Esq., and Jonathan Tew, Esq., were present on behalf of the Plaintiffs. H. Stan Johnson, Esq., Steven Cohen, Esq., and Mark Wray, Esq., were present on behalf of the Defendants. Witness **Craig Greene** was reminded by the Court that he remained under oath; questioned by the Court; further cross examined by counsel Johnson. 8:50 a.m. – Court stood in recess. 8:55 a.m. – Court reconvened. Witness further cross examined. 10:15 a.m. – Court stood in recess. 10:35 a.m. – Court reconvened. Witness further cross examined. 12:02 p.m. – Court stood in recess for lunch. 1:20 p.m. – Court reconvened. Witness further cross examined; questioned by the Court; and excused. Counsel Miller advised the Court that he has no further witnesses, and he requested a brief recess to give him time to set up his technology equipment prior to closing arguments. Counsel Johnson requested that the Court allow closing arguments to begin in the morning to give him time to review the testimony, focus his arguments, and prepare a power point presentation. **COURT ORDERED:** Closing arguments will begin promptly at 8:30 a.m. tomorrow, March 25, 2015. **COURT** advised the parties that he will be taking this matter under advisement at the conclusion of closing arguments, and he may require additional briefing. Counsel Miller indicated that he will not be arguing the punitive damage portion of the case tomorrow. Discussion ensued between the Court, counsel Miller and counsel Tew regarding punitive damages. 1:44 p.m. – Court adjourned.

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2015-03-25 02:39:02 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4877854

CASE NO. CV12-02222 **ALBERT THOMAS ETAL VS. MEI-GSR HOLDINGS ETAL**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING
3/25/15	**ONGOING PROVE UP HEARING**
HONORABLE	8:36 a.m. – Court reconvened.
ELLIOTT A.	Jarrad Miller, Esq., and Jonathan Tew, Esq., were present on behalf of the Plaintiffs.
SATTLER	H. Stan Johnson, Esq., Steven Cohen, Esq., and Mark Wray, Esq., were present on behalf of
DEPT. NO. 10	the Defendants.
M. White	Counsel Cohen advised the Court that Mr. Alex Morello is present in the gallery.
(Clerk)	Counsel Miller presented closing arguments.
P. Hoogs	9:34 a.m. – Court stood in recess.
	During the recess, Plaintiffs' counsel marked a hard copy of their closing power point presentation as Exhibit 250; Defendants' counsel marked a hard copy of their closing power point presentation as Exhibit 251.
	9:45 a.m. – Court reconvened.
	Counsel Miller further presented closing arguments.
	Counsel Johnson presented closing arguments.
	11:10 a.m. – Court stood in recess.
	11:22 a.m. – Court reconvened.
	Counsel Johnson further presented closing arguments.
	Counsel Miller presented rebuttal closing arguments.
	COURT requested additional information from Plaintiffs' counsel; once the requested information is received by the Court, this matter will be taken under advisement.
	12:36 p.m. – Court adjourned.

Exhibits

Title: **ALBERT THOMAS, ETAL VS. MEI-GSR HOLDINGS, ETAL**
PLAINTIFF: **ALBERT THOMAS, ETAL** PATY: **JARRAD MILLER, ESQ.**
DEFENDANT: **MEI-GSR HOLDINGS, ETAL** DATY: **H. STAN JOHNSON, ESQ.**
Case No: **CV12-02222** Dept. No: **10** Clerk: **M. WHITE** Date: **3/23/15**

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	PLAINTIFFS	Deposition Exhibit 1 - Seventh Amendment to Condominium Declaration of CC&R and Reservations of Easements	3/19/15	No Obj.	3/23/15
2	PLAINTIFFS	Deposition Exhibit 2 - Grand Sierra Resort Unit Maintenance Agreement (Shepherd Mountain Investments)	3/19/15	No Obj.	3/23/15
3	PLAINTIFFS	INTENTIONALLY LEFT BLANK ("ILB")			
4	PLAINTIFFS	Deposition Exhibit 4 - April 20, 2011 letter from GSR to Shepherd Mountain Investments re: future plans for the property	3/19/15	No Obj.	3/23/15
5	PLAINTIFFS	Deposition Exhibit 5 - Grand Sierra Resort Unit Rental Agreement (blank form)	3/19/15		
6	PLAINTIFFS	Deposition Exhibit 6 - "Dear Program Member" letter from Kristopher Kent, dated September 11, 2012	3/19/15	Obj: overruled	3/23/15
7-10	PLAINTIFFS	ILB			
11	PLAINTIFFS	Deposition Exhibit 11 - Email dated April 5, 2012 between Tim Smith and Terry Vavra/Susie Ragusa re: Condo status as of 04-05-12	3/19/15	No Obj.	3/23/15
12-17	PLAINTIFFS	ILB			
18	PLAINTIFFS	Deposition Exhibit 18 - Email dated December 14, 2012 between Jennifer Campbell and Jennifer Campbell/Susie Ragusa re: GSR Rental Program and forwarding various attachments	3/19/15	No Obj.	3/23/15

Exhibits

Title: **ALBERT THOMAS, ETAL VS. MEI-GSR HOLDINGS, ETAL**
PLAINTIFF: **ALBERT THOMAS, ETAL** PATY: **JARRAD MILLER, ESQ.**
DEFENDANT: **MEI-GSR HOLDINGS, ETAL** DATY: **H. STAN JOHNSON, ESQ.**
Case No: **CV12-02222** Dept. No: **10** Clerk: **M. WHITE** Date: **3/23/15**

Exhibit No.	Party	Description	Marked	Offered	Admitted
19-43	PLAINTIFFS	ILB			
44	PLAINTIFFS	Deposition Exhibit 44 - Correspondence from Kent Vaughan of GSR to Valued Condo Owners, dated May 20, 2011	3/19/15	No Obj.	3/23/15
45-48	PLAINTIFFS	ILB			
49	PLAINTIFFS	Deposition Exhibit 49 - GSR Unit-Owners Association Estimated Operating Budget for 2012, dated November 7, 2011	3/19/15		
50-57	PLAINTIFFS	ILB			
58	PLAINTIFFS	Deposition Exhibit 58 - GSR Balance Sheet for the month ending December 31, 2012 ***SEALED EXHIBIT***	3/19/15	No Obj.	3/23/15 (UNDER SEAL)
59	PLAINTIFFS	ILB			
60	PLAINTIFFS	Deposition Exhibit 60 - Memo from Kristopher Kent, Broker/Owner of Renown Real Estate Services to GSR Condo Unit Owner, dated May 4, 2011	3/19/15	No Obj.	3/23/15
61-156	PLAINTIFFS	ILB			
157	PLAINTIFFS	Owner Account Statements for Plaintiff Chandler, Norman	3/19/15	No Obj.	3/23/15
158-181	PLAINTIFFS	ILB			
182	PLAINTIFFS	Owner Account Statements for Plaintiffs Moll, Daniel and Patricia	3/19/15	No Obj.	3/23/15
183-231	PLAINTIFFS	ILB			
232	PLAINTIFFS	Emails (Exhibit 76 to Renewed Motion for Case Terminating Sanctions)	3/19/15	No Obj.	3/23/15

Exhibits

Title: **ALBERT THOMAS, ETAL VS. MEI-GSR HOLDINGS, ETAL**
PLAINTIFF: **ALBERT THOMAS, ETAL** PATY: **JARRAD MILLER, ESQ.**
DEFENDANT: **MEI-GSR HOLDINGS, ETAL** DATY: **H. STAN JOHNSON, ESQ.**
Case No: **CV12-02222** Dept. No: **10** Clerk: **M. WHITE** Date: **3/23/15**

Exhibit No.	Party	Description	Marked	Offered	Admitted
233	PLAINTIFFS	IUO-GSR 004372 - IUO-GSR 004564 (E-mails) portion	3/19/15	No Obj.	3/23/15
234-238	PLAINTIFFS	ILB			
239	PLAINTIFFS	Deposition of Kent M. Vaughan	3/19/15	Obj; sustained	
240	PLAINTIFFS	Deposition of Terry Vavra	3/19/15		
241	PLAINTIFFS	Deposition of Melvin Cheah	3/19/15		
242-244	PLAINTIFFS	ILB			
245	PLAINTIFFS	Plaintiff Rental Agreements and Maintenance Agreements	3/19/15	No Obj.	3/23/15
246	PLAINTIFFS	McGovern & Greene LLP Expert Report (Provided to Defendants via ShareFile.com 1/30/15)	3/19/15	Obj; overruled	3/23/15
247	PLAINTIFFS	Deposition of Susan Ragusa	3/19/15		
248	DEFENSE	Amended Expert Report of Craig L. Greene, dated October 20, 2013	3/19/15		
249	PLAINTIFFS	Hard copy of Mr. Greene's power point presentation	3/24/15		
250	PLAINTIFFS	Hard copy of Plaintiffs' closing argument power point presentation	3/25/15		
251	DEFENSE	Hard copy of Defendants' closing argument power point presentation	3/25/15		

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC, a Nevada Limited Liability Company, et al,

Defendants.

_____/

Case No: CV12-02222

Dept. No: 10

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This action was commenced on August 27, 2012, with the filing of a COMPLAINT ("the Complaint"). The Complaint alleged twelve causes of action: 1) Petition for Appointment of a Receiver as to Defendant Grand Sierra Resort Unit-Owners' Association; 2) Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR; 3) Breach of Contract as to Defendant MEI-GSR; 4) Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR; 5) Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR; 6) Consumer Fraud/Nevada Deceptive Trade Practices Act Violations as to Defendant MEI-GSR; 7) Declaratory Relief as to Defendant MEI-GSR; 8) Conversion as to Defendant MEI-GSR; 9) Demand for an Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association; 10) Specific Performance Pursuant to NRS 116.122, Unconscionable Agreement; 11) Unjust Enrichment/Quantum Meruit against Defendant Gage Village Development; 12) Tortious Interference with Contract and/or Prospective Business Advantage against Defendants MEI-GSR

and Gage Development. The Plaintiffs (as more fully described *infra*) were individuals or other entities who had purchased condominiums in the Grand Sierra Resort ("GSR"). A FIRST AMENDED COMPLAINT ("the First Amended Complaint") was filed on September 10, 2012. The First Amended Complaint had the same causes of action as the Complaint.

The Defendants (as more fully described *infra*) filed an ANSWER AND COUNTERCLAIM ("the Answer") on November 21, 2012. The Answer denied the twelve causes of action; asserted eleven affirmative defenses; and alleged three Counterclaims. The Counterclaims were for: 1) Breach of Contract; 2) Declaratory Relief; 3) Injunctive Relief.

The Plaintiffs filed a SECOND AMENDED COMPLAINT ("the Second Amended Complaint") on March 26, 2013. The Second Amended Complaint had the same causes of action as the Complaint and the First Amended Complaint. The Defendants filed an ANSWER TO SECOND AMENDED COMPLAINT AND COUNTER CLAIM ("the Second Answer") on May 23, 2013. The Second Answer generally denied the allegations in the Second Amended Complaint and contained ten affirmative defenses. The Counterclaims mirrored the Counterclaims in the Answer.

The matter has been the subject of extensive motion practice. There were numerous allegations of discovery abuses by the Defendants. The record speaks for itself regarding the protracted nature of these proceedings and the systematic attempts at obfuscation and intentional deception on the part of the Defendants. Further, the Court has repeatedly had to address the lackadaisical and inappropriate approach the Defendants have exhibited toward the Nevada Rules of Civil Procedure, the District Court Rules, the Washoe District Court Rules, and the Court's orders. The Defendants have consistently, and repeatedly, chosen to follow their own course rather than respect the need for orderly process in this case. NRCP 1 states that the rules of civil procedure should be "construed and administered to secure the just, speedy, and inexpensive determination of every action." The Defendants have turned this directive on its head and done everything possible to make the proceedings unjust, dilatory, and costly.

The Court twice has addressed a request to impose case concluding sanctions against the Defendants because of their repeated discovery abuses. The Court denied a request for case concluding sanctions in its ORDER REGARDING ORIGINAL MOTION FOR CASE

CONCLUDING SANCTIONS filed December 18, 2013 ("the December Order"). The Court found that case concluding sanctions were not appropriate; however, the Court felt that some sanctions were warranted based on the Defendants' repeated discovery violations. The Court struck all of the Defendants' Counterclaims in the December Order and required the Defendants to pay for the costs of the Plaintiffs' representation in litigating that issue.

The parties continued to fight over discovery issues after the December Order. The Court was again required to address the issue of case concluding sanctions in January of 2014. It became clear that the Defendants were disingenuous with the Court and Plaintiffs' counsel when the first decision regarding case concluding sanctions was argued and resolved. Further, the Defendants continued to violate the rules of discovery and other court rules even after they had their Counterclaims struck in the December Order. The Court conducted a two day hearing regarding the renewed motion for case concluding sanctions. An ORDER GRANTING PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS was entered on October 3, 2014 ("the October Order"). The Defendants' Answer was stricken in the October Order. A DEFAULT was entered against the Defendants on November 26, 2014.

The Court conducted a "prove-up hearing" regarding the issue of damages from March 23 through March 25, 2015. The Court entered an ORDER on February 5, 2015 ("the February Order") establishing the framework of the prove-up hearing pursuant to *Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042 (2010). The February Order limited, but did not totally eliminate, the Defendants' ability to participate in the prove-up hearing. The Court heard expert testimony from Craig L. Greene, CPA/CFF, CFE, CCEP, MAFF ("Greene") at the prove-up hearing. Greene calculated the damages owed the Plaintiffs using information collected and provided by the Defendants. The Court finds Greene to be very credible and his methodology to be sound. Further, the Court notes that Greene attempted to be "conservative" in his calculations. Greene used variables and factors that would eliminate highly suspect and/or unreliable data. The Court has also received and reviewed supplemental information provided as a result of an inquiry made by the Court during the prove-up hearing.

The GSR is a high rise hotel/casino in Reno, Nevada. The GSR has approximately 2000 rooms. The Plaintiffs purchased individual rooms in the GSR as condominiums. It appears to the Court that the primary purpose of purchasing a condominium in the GSR would be as an investment and revenue generating proposition. The condominiums were the subject of statutory limitations on the number of days the owners could occupy them during the course of a calendar year. The owners would not be allowed to "live" in the condominium. When the owners were not in the rooms they could either be rented out or they had to remain empty.

As noted, *supra*, the Court stripped all of the Defendants general and affirmative defenses in the October Order. The Defendants stand before the Court having involuntarily conceded all of the allegations contained in the Second Amended Complaint. The Court makes the following findings of fact:

I. FINDINGS OF FACT

1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of California.

2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of California.

3. Plaintiff John Dunlap is a competent adult and is a resident of the State of California.

4. Plaintiff Barry Hay is a competent adult and is a resident of the State of California.

5. Plaintiff Marie-Annie Alexander, as Trustee of the Marie-Annie Alexander Living Trust, is a competent adult and is a resident of the State of California.

6. Plaintiff Melissa Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a resident of the State of Nevada.

7. Plaintiff George Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a resident of the State of Nevada.

8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of California.

9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of California.

10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of California.

11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the State of California.

12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of Minnesota.

13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990 Trust, is a competent adult and is a resident of the State of California.

14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990 Trust, is a competent adult and is a resident of the State of California.

15. Plaintiff Lori Ordover is a competent adult and is a resident of the State of Connecticut.

16. Plaintiff William A. Henderson is a competent adult and is a resident of the State of California.

17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State of California.

18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of Washington.

19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of Washington.

20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New York.

21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of California.

22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of New York.

23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New York.

24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its principal place of business in Nevada.

25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its principal place of business in Nevada.

26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of Minnesota.

27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of California.

28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of California.

29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of California.

30. Plaintiff Garett Tom is a competent adult and is a resident of the State of California.

31. Plaintiff Anita Tom is a competent adult and is a resident of the State of California.

32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of California.

33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of California.

34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a competent adult and is a resident of the State of California.

35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a competent adult and is a resident of the State of California.

36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.

37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of California.

38. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited Liability Company.

39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of Hawaii.

40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of Hawaii.

41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of Wisconsin.

42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of Wisconsin.

43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of Alabama.

44. Plaintiff Benton Wan is a competent adult and is a resident of the State of California.

45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of California.

46. Plaintiff Silkscape Inc. is a California Corporation.

47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of California.

48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of California.

49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of California.

50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.

51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of California.

52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of California.

53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of California.

54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of California.

55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.

56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of California.

57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of California.

58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of Minnesota.

59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.

60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of Minnesota.

61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of California.

62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent adult and is a resident of the State of California.

63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of Minnesota.

64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.

65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of Minnesota.

66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of Minnesota.

67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of California.

68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of California.

69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of California.

70. Plaintiff Garth Williams is a competent adult and is a resident of the State of California.

71. Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of California.

72. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of Minnesota.

73. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of Nevada.

74. Plaintiff Doug Mecham is a competent adult and is a resident of the State of Nevada.

75. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of Nevada.

76. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver, British Columbia.

77. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver, British Columbia.

78. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State of California.

79. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult and is a resident of the State of Texas.

80. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of California.

81. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.

82. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.

83. Plaintiff James Taylor is a competent adult and is a resident of the State of California.

84. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of California.

85. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.

86. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.

87. Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.

88. Plaintiff Kuk Hyung ("Connie") is a competent adult and is a resident of Coquitlam, B.C.

89. Plaintiff Sang ("Mike") Yoo is a competent adult and is a resident of Coquitlam, B.C.

90. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and is a resident of the State of Nevada.

91. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of California.

92. Plaintiff Chanh Truong is a competent adult and is a resident of the State of California.

93. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the State of California.

94. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its principal place of business in Texas.

95. Plaintiff Robert Brunner is a competent adult and is a resident of the State of Minnesota.

96. Plaintiff Amy Brunner is a competent adult and is a resident of the State of Minnesota.

97. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of California.

98. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of Illinois.

99. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.

100. The people and entities listed above represent their own individual interests. They are not suing on behalf of any entity including the Grand Sierra Unit Home Owner's Association. The people and entities listed above are jointly referred to herein as "the Plaintiffs".

101. Defendant MEI-GSR Holdings, LLC ("MEI-GSR") is a Nevada Limited Liability Company with its principal place of business in Nevada.

102. Defendant Gage Village Commercial Development, LLC ("Gage Village") is a Nevada Limited Liability Company with its principal place of business in Nevada.

103. Gage Village is related to, controlled by, affiliated with, and/or a subsidiary of MEI-GSR.

104. Defendant Grand Sierra Resort Unit Owners' Association ("the Unit Owners' Association") is a Nevada nonprofit corporation with its principal place of business in Nevada.

105. MEI-GSR transferred interest in one hundred forty-five (145) condominium units to AM-GSR Holdings, LLC ("AM-GSR") on December 22, 2014.

106. Defendants acknowledged to the Court on January 13, 2015, that AM-GSR would be added to these proceedings and subject to the same procedural posture as MEI-GSR. Further, the parties stipulated that AM-GSR would be added as a defendant in this action just as if AM-GSR was a named defendant in the Second Amended Complaint. Said stipulation occurring and being ordered on January 21, 2015.

107. MEI-GSR, Gage Village and the Unit Owner's Association are jointly referred to herein as "the Defendants".

108. The Grand Sierra Resort Condominium Units ("GSR Condo Units") are part of the Grand Sierra Unit Owners Association, which is an apartment style hotel condominium development of 670 units in one 27-story building. The GSR Condo Units occupy floors 17 through 24 of the Grand Sierra Resort and Casino, a large-scale hotel casino, located at 2500 East Second Street, Reno, Nevada.

109. All of the Individual Unit Owners: hold an interest in, own, or have owned, one or more GSR Condo Units.

110. Gage Village and MEI-GSR own multiple GSR Condo Units.

111. MEI-GSR owns the Grand Sierra Resort and Casino.

112. Under the Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs"), there is one voting member for each unit of ownership (thus, an owner with multiple units has multiple votes).

113. Because MEI-GSR and Gage Village control more units of ownership than any other person or entity, they effectively control the Unit Owners' Association by having the ability to elect MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

114. As a result of MEI-GSR and Gage Village controlling the Unit Owners' Association, the Individual Unit Owners effectively have no input or control over the management of the Unit Owners' Association.

115. MEI-GSR and Gage Village have used, and continue to use, their control over the Unit Owners' Association to advance MEI-GSR and Gage Villages' economic objectives to the detriment of the Individual Unit Owners.

116. MEI-GSR and Gage Villages' control of the Unit Owners' Association violates Nevada law as it defeats the purpose of forming and maintaining a homeowners' association.

117. Further, the Nevada Division of Real Estate requires a developer to sell off the units within 7 years, exit and turn over the control and management to the owners.

118. Under the CC&Rs, the Individual Unit Owners are required to enter into a "Unit Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein MEI-GSR provides certain services (including, without limitation, reception desk staffing, in-room services, guest processing services, housekeeping services, Hotel Unit inspection, repair and maintenance services, and other services).

119. The Unit Owners' Association maintains capital reserve accounts that are funded by the owners of GSR Condo Units. The Unit Owners' Association collects association dues of approximately $25 per month per unit, with some variation depending on a particular unit's square footage.

120. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes, deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance, utilities, etc.

121. MEI-GSR has systematically allocated and disproportionately charged capital reserve contributions to the Individual Unit Owners, so as to force the Individual Unit Owners to pay capital reserve contributions in excess of what should have been charged.

122. MEI-GSR and Gage Development have failed to pay proportionate capital reserve contribution payments in connection with their Condo Units.

123. MEI-GSR has failed to properly account for, or provide an accurate accounting for the collection and allocation of the collected capital reserve contributions.

124. The Individual Unit Owners also pay "Daily Use Fees" (a charge for each night a unit is occupied by any guest for housekeeping services, etc.).

125. MEI-GSR and Gage Village have failed to pay proportionate Daily Use Fees for the use of Defendants' GSR Condo Units.

126. MEI-GSR has failed to properly account for the contracted "Hotel Fees" and "Daily Use Fees."

127. Further, the Hotel Fees and Daily Use Fees are not included in the Unit Owners' Association's annual budget with other assessments that provide the Individual Unit Owners' the ability to reject assessment increases and proposed budget ratification.

128. MEI-GSR has systematically endeavored to increase the various fees that are charged in connection with the use of the GSR Condo Units in order to devalue the units owned by Individual Unit Owners.

129. The Individual Unit Owners' are required to abide by the unilateral demands of MEI-GSR, through its control of the Unit Owners' Association, or risk being considered in default under Section 12 of the Agreement, which provides lien and foreclosure rights pursuant to Section 6.10(f) of the CC&R's.

130. Defendants MEI-GSR and/or Gage Village have attempted to purchase, and purchased, units devalued by their own actions, at nominal, distressed prices when Individual Unit

Owners decide to, or are effectively forced to, sell their units because the units fail to generate sufficient revenue to cover expenses.

131. MEI-GSR and/or Gage Village have, in late 2011 and 2012, purchased such devalued units for $30,000 less than the amount they purchased units for in March of 2011.

132. The Individual Unit Owners effectively pay association dues to fund the Unit Owners' Association, which acts contrary to the best interests of the Individual Unit Owners.

133. MEI-GSR's interest in maximizing its profits is in conflict with the interest of the Individual Unit Owners. Accordingly, Defendant MEI-GSR's control of the Unit Owners' Association is a conflict of interest.

134. As part of MEI-GSR's Grand Sierra Resort and Casino business operations, it rents: (1) hotel rooms owned by MEI-GSR that are not condominium units; (2) GSR Condo Units owned by MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by the Individual Condo Unit Owners.

135. MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement with Individual Unit Owners.

136. MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by MEI-GSR; (2) GSR Condo Units owned by MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by Individual Condo Unit Owners so as to maximize MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Unit Owners.

137. MEI-GSR has rented the Individual Condo Units for as little as $0.00 to $25.00 a night.

138. Yet, MEI-GSR has charged "Daily Use Fees" of approximately $22.38, resulting in revenue to the Individual Unit Owners as low as $2.62 per night for the use of their GSR Condo Unit (when the unit was rented for a fee as opposed to being given away).

139. By functionally, and in some instances actually, giving away the use of units owned by the Individual Unit Owners, MEI-GSR has received a benefit because those who rent the

Individual Units frequently gamble and purchase food, beverages, merchandise, spa services and entertainment access from MEI-GSR.

140. MEI-GSR has rented Individual Condo Units to third parties without providing Individual Unit Owners with any notice or compensation for the use of their unit.

141. Further, MEI-GSR has systematically endeavored to place a priority on the rental of MEI-GSR's hotel rooms, MEI-GSR's GSR Condo Units, and Gage Village's Condo Units.

142. Such prioritization effectively devalues the units owned by the Individual Unit Owners.

143. MEI-GSR and Gage Village intend to purchase the devalued units at nominal, distressed prices when Individual Unit Owners decide to, or are effectively forced to, sell their units because the units fail to generate sufficient revenue to cover expenses and have no prospect of selling their persistently loss-making units to any other buyer.

144. Some of the Individual Unit Owners have retained the services of a third party to market and rent their GSR Condo Unit(s).

145. MEI-GSR has systematically thwarted the efforts of any third party to market and rent the GSR Units owned by the Individual Unit Owners.

146. MEI-GSR has breached the Grand Sierra Resort Unit Rental Agreement with Individual Condo Unit Owners by failing to follow its terms, including but not limited to, the failure to implement an equitable Rotational System as referenced in the agreement.

147. MEI-GSR has failed to act in good faith in exercising its duties under the Grand Sierra Resort Unit Rental Agreements with the Individual Unit Owners.

The Court is intimately familiar with all of the allegations in the twelve causes of action contained in the Second Amended Complaint. The Court's familiarity is a result of reviewing all of the pleadings and exhibits in this matter to include the various discovery disputes, the testimony at the numerous hearings conducted to date, and the other documents and exhibits on file. The Court finds that the facts articulated above support the twelve causes of action contained in the Second Amended Complaint.

II. CONCLUSIONS OF LAW

A. The Court has jurisdiction over MEI-GSR, Gage Village, the Unit Owner's Association and the Plaintiffs.

B. The appointment of a receiver is appropriate when: (1) the plaintiff has an interest in the property; (2) there is potential harm to that interest in property; and (3) no other adequate remedies exist to protect the interest. *See generally Bowler v. Leonard*, 70 Nev. 370, 269 P.2d 833 (1954). *See also* NRS 32.010. The Court appointed a receiver to oversee the Unit Owner's Association on January 7, 2015. The Court concludes that MEI-GSR and/or Gage Village have operated the Unit Owner's Association in a way inconsistent with the best interests of all of the unit owners. The continued management of the Unit Owner's Association by the receiver is appropriate under the circumstances of this case and will remain in effect absent additional direction from the Court.

C. Negligent misrepresentation is when "[o]ne who, in the course of his business, profession or employment, or in any other action in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." *Barmeltler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382, 1387 (1998) (quoting *Restatement (Second) of Torts § 552(1) (1976)).* Intentional misrepresentation is when "a false representation made with knowledge or belief that it is false or without a sufficient basis of information, intent to induce reliance, and damage resulting from the reliance. *Lubbe v. Barba,* 91 Nev. 596, 599, 540 P.2d 115,

117 (1975)." *Collins v. Burns,* 103 Nev. 394, 397, 741 P.2d 819, 821 (1987). MEI-GSR is liable for intentionally and/or negligent misrepresentation as alleged in the Second Cause of Action.

D. An enforceable contract requires, "an offer and acceptance, meeting of the minds, and consideration." *Certified Fire Protection, Inc. v. Precision Construction, Inc.* 128 Nev. Adv. Op. 35, 283 P.3d 250, 255 (2012)(*citing May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005)). There was a contract between the Plaintiffs and MEI-GSR. MEI-GSR has breached the contract and therefore MEI-GSR is liable for breach of contract as alleged in the Third Cause of Action.

E. MEI-GSR is liable for Quasi-Contract/Equitable Contract/Detrimental Reliance as alleged in the Fourth Cause of Action.

F. An implied covenant of good faith and fair dealing exists in every contract in Nevada. *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 109 Nev. 1043, 1046, 862 P.2d 1207, 1209 (1993). "The duty not to act in bad faith or deal unfairly thus becomes part of the contract, and, as with any other element of the contract, the remedy for its breach generally is on the contract itself." *Id.* (*citing Wagenseller v. Scottsdale Memorial Hospital,* 147 Ariz. 370, 383, 710 P.2d 1025, 1038 (1985)). "It is well established that in contracts cases, compensatory damages 'are awarded to make the aggrieved party whole and … should place the plaintiff in the position he would have been in had the contract not been breached.' This includes awards for lost profits or expectancy damages." *Road & Highway Builders, LLC v. Northern Nevada Rebar, Inc.*, 128 Nev. Adv. Op. 36, 284 P.3d 377, 382 (2012)(*internal citations omitted).* "When one party performs a contract in a manner that is unfaithful to the purpose of the contract and the

justified expectations of the other party are thus denied, damages may be awarded against the party who does not act in good faith." *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995)(*citation omitted*). "Reasonable expectations are to be 'determined by the various factors and special circumstances that shape these expectations.'" *Id.* (*citing Butch Lewis*, 107 Nev. at 234, 808 P.2d at 923). MEI-GSR is liable for breach of the covenant of good faith and fair dealing as set forth in the Fifth Cause of Action.

G. MEI-GSR has violated NRS 41.600(1) and (2) and NRS 598.0915 through 598.0925, inclusive and is therefore liable for the allegations contained in the Sixth Cause of Action. Specifically, MEI-GSR violated NRS 598.0915(15) and NRS 598.0923(2).

H. The Plaintiffs are entitled to declaratory relief as more fully described below and prayed for in the Seventh Cause of Action.

I. MEI-GSR wrongfully committed numerous acts of dominion and control over the property of the Plaintiffs, including but not limited to renting their units at discounted rates, renting their units for no value in contravention of written agreements between the parties, failing to account for monies received by MEI-GSR attributable to specific owners, and renting units of owners who were not even in the rental pool. All of said activities were in derogation, exclusion or defiance of the title and/or rights of the individual unit owners. Said acts constitute conversion as alleged in the Eighth Cause of Action.

J. The demand for an accounting as requested in Ninth Cause of Action is moot pursuant to the discovery conducted in these proceedings and the appointment of a receiver to oversee the interaction between the parties.

K. The Unit Maintenance Agreement and Unit Rental Agreement proposed by MEI-GSR and adopted by the Unit Owner's Association are unconscionable. An unconscionable

clause is one where the circumstances existing at the time of the execution of the contract are so one-sided as to oppress or unfairly surprise an innocent party. *Bill Stremmel Motors, Inc. v. IDS Leasing Corp.*, 89 Nev. 414, 418, 514 P.2d 654, 657 (1973). MEI-GSR controls the Unit Owner's Association based on its majority ownership of the units in question. It is therefore able to propose and pass agreements that affect all of the unit owners. These agreements require unit owners to pay unreasonable Common Expense fees, Hotel Expenses Fees, Shared Facilities Reserves, and Hotel Reserves ("the Fees"). The Fees are not based on reasonable expectation of need. The Fees have been set such that an individual owner may actually *owe* money as a result of having his/her unit rented. They are unnecessarily high and imposed simply to penalize the individual unit owners. Further, MEI-GSR and/or Gage Village have failed to fund their required portion of these funds, while demanding the individual unit owners continue to pay the funds under threat of a lien. MEI-GSR has taken the Fees paid by individual unit owners and placed the funds in its general operating account rather than properly segregating them for the use of the Unit Owner's Association. All of said actions are unconscionable and unenforceable pursuant to NRS 116.112(1). The Court will grant the Tenth Cause of Action and not enforce these portions of the agreements.

L. The legal concept of *quantum meruit* has two applications. The first application is in actions based upon contracts implied-in-fact. The second application is providing restitution for unjust enrichment. *Certified Fire*, at 256. In the second application, "[l]iability in restitution for the market value of goods or services is the remedy traditionally known as quantum meruit. Where unjust enrichment is found, the law implies a quasi-contract which requires the defendant to pay to the plaintiff the value of the benefit conferred. In other words, the defendant makes restitution to the plaintiff in *quantum meruit*." *Id.* at 256-57. Gage Village has been unjustly enriched based on the

orchestrated action between it and MEI-GSR to the detriment of the individual unit owners as alleged in the Eleventh Cause of Action.

M. Many of the individual unit owners attempted to rent their units through third-party services rather than through the use of MEI-GSR. MEI-GSR and Gage Village intentionally thwarted, interfered with and/or disrupted these attempts with the goal of forcing the sale of the individual units back to MEI-GSR. All of these actions were to the economic detriment of the individual unit owners as alleged in the Twelfth Cause of Action.

N. The Plaintiffs are entitled to both equitable and legal relief. "As federal courts have recognized, the long-standing distinction between law and equity, though abolished in procedure, continues in substance, *Coca-Cola Co. v. Dixi-Cola Labs.*, 155 F.2d 59, 63 (4th Cir. 1946); 30A C.J.S. *Equity* § 8 (2007). A judgment for damages is a legal remedy, whereas other remedies, such as avoidance or attachment, are equitable remedies. *See* 30A *Equity* § 1 (2007)." *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1053 (2015).

O. "[W]here default is entered as a result of a discovery sanction, the non-offending party 'need only establish a *prima facie* case in order to obtain the default." *Foster*, 227 P.3d at 1049 (*citing Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 94, 787 P.2d 777, 781 (1990)). "[W]here a district court enters a default, the facts alleged in the pleadings will be deemed admitted. Thus, during a NRCP 55(b)(2) prove-up hearing, the district court shall consider the allegations deemed admitted to determine whether the non-offending party has established a prima facie case for liability." *Foster*, 227 P.3d at 1049-50. A prima facie case requires only "sufficiency of evidence in order to send the question to the jury." *Id.* 227 P.3d at 1050 (*citing Vancheri v. GNLV Corp.*, 105 Nev. 417, 420, 777 P.2d 366, 368 (1989)). The Plaintiffs have met this burden regarding all of their causes of action.

P. "Damages need not be determined with mathematical certainty." *Perry*, 111 Nev. at 948, 900 P.2d at 338. The party requesting damages must provide an evidentiary basis for determining a "reasonably accurate amount of damages." *Id. See also, Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 733, 192 P.3d 243, 248 (2008) and *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co., Inc.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989).

Q. Disgorgement is a remedy designed to dissuade individuals from attempting to profit from their inappropriate behavior. "Disgorgement as a remedy is broader than restitution or restoration of what the plaintiff lost." *American Master Lease LLC v. Idanta Partners, Ltd*, 225 Cal. App. 4th 1451, 1482, 171 Cal. Rptr. 3d 548, 572 (2014)(*internal citation omitted).* "Where 'a benefit has been received by the defendant but the plaintiff has not suffered a corresponding loss or, in some cases, any loss, but nevertheless the enrichment of the defendant would be unjust . . . the defendant may be under a duty to give to the plaintiff the amount by which [the defendant] has been enriched.'" *Id.* 171 Cal. Rptr. 3d at 573 (*internal citations omitted). See also Miller v. Bank of America, N.A.*, 352 P.3d 1162 (N.M. 2015) and *Cross v. Berg Lumber Co.*, 7 P.3d 922 (Wyo. 2000).

III. JUDGMENT

Judgment is hereby entered against MEI-GSR, Gage Village and the Unit Owner's Association as follows:

Monetary Relief:

1. Against MEI-GSR in the amount of $442,591.83 for underpaid revenues to Unit owners;
2. Against MEI-GSR in the amount of $4,152,669.13 for the rental of units of owners who had no rental agreement;
3. Against MEI-GSR in the amount of $1,399,630.44 for discounting owner's rooms without credits;

4. Against MEl-GSR in the amount of $31,269.44 for discounted rooms with credits;

5. Against MEI-GSR in the amount of $96,084.96 for "comp'd" or free rooms;

6. Against MEI-GSR in the amount of $411,833.40 for damages associated with the bad faith "preferential rotation system";

7. Against MEl-GSR in the amount of $1,706,798.04 for improperly calculated and assessed contracted hotel fees;

8. Against MEI-GSR in the amount of $77,338.31 for improperly collected assessments;

9. MEI-GSR will fund the FF&E reserve, shared facilities reserve and hotel reserve in the amount of $500,000.00 each. The Court finds that MEI-GSR has failed to fund the reserves for the units it, or any of its agents, own. However, the Court has also determined, *supra*, that these fees were themselves unconscionable. The Court does not believe that the remedy for MEI-GSR's failure to fund the unconscionable amount should be some multiple of that unreasonable sum. Further, the Court notes that Plaintiffs are individual owners: not the Unit Owner's Association. Arguably, the reserves are an asset of the Unit Owner's Association and the Plaintiffs have no individual interest in this sum. The Court believes that the "seed funds" for these accounts are appropriate under the circumstances of the case; and

10. The Court finds that it would be inappropriate to give MEI-GSR any "write downs" or credits for sums they may have received had they rented the rooms in accordance with appropriate business practices. These sums will be disgorged.

Non-Monetary Relief:

1. The receiver will remain in place with his current authority until this Court rules otherwise;

2. The Plaintiffs shall not be required to pay any fees, assessments, or reserves allegedly due or accrued prior to the date of this ORDER;

3. The receiver will determine a reasonable amount of FF&E, shared facilities and hotel reserve fees required to fund the needs of these three ledger items. These fees will be determined within 90 days of the date of this ORDER. No fees will be required until the implementation of these new

amounts. They will be collected from *all* unit owners and properly allocated on the Unit Owner's Association ledgers; and

4. The current rotation system will remain in place.

Punitive Damages:

The Court specifically declined to hear argument regarding punitive damages during the prove-up hearing. *See* Transcript of Proceedings 428:6 through 430:1. Where a defendant has been guilty of oppression, fraud, or malice express or implied in an action *not arising from contract*, punitive damages may be appropriate. NRS 42.005(1). Many of the Plaintiff's causes of action sound in contract; therefore, they are not the subject of a punitive damages award. Some of the causes of action may so qualify. The Court requires additional argument on whether punitive damages would be appropriate in the non-contract causes of action. NRS 42.005(3). An appropriate measure of punitive damages is based on the financial position of the defendant, its culpability and blameworthiness, the vulnerability of, and injury suffered by, the offended party, the offensiveness of the punished conduct, and the means necessary to deter further misconduct. *See generally Ainsworth v. Combined Insurance Company of America*, 104 Nev. 587, 763 P.2d 673 (1988). Should the Court determine that punitive damages are appropriate it will conduct a hearing to consider all of the stated factors. NRS 42.005(3). The parties shall contact the Judicial Assistant within 10 days of the date of this ORDER to schedule a hearing regarding punitive damages. Counsel will be prepared to discuss all relevant issues and present testimony and/or evidence regarding NRS 42.005 at that subsequent hearing.

DATED this 9 day of October, 2015.

ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

DATED this 9 day of October, 2015.

SHEILA MANSFIELD
Judicial Assistant

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada Limited Liability Company, et al

Defendant.

ORDER

Case#: CV12-02222

Dept. 10 (Senior Judge)[1]

Pursuant to WDCR 12(5) the Court after consideration of the Plaintiffs' November 6, 2015 Motion in Support of Punitive Damages Award ("Punitive Damages Motion"), the Defendants' December 1, 2020 opposition ("Opposition"), Plaintiffs' July 30, 2020 Reply in Support of Award of Punitive Damages ("Punitive Damages Reply"), Plaintiffs' July 6, 2022 Punitive Damages Summary, Defendants' July 6, 2022 Trial Summary, the oral argument and evidence submitted by the parties during the hearing on July 8 and 18, 2022, a review of the briefing, exhibits, testimony of the witness, transcripts of the proceedings as well as the evidence in the record, including but not

[1] On January 21, 2021, Chief District Court Judge Scott Freeman, entered an Order Disqualifying All Judicial Officers of the Second Judicial District Court. On September 19, 2022, the Nevada Supreme Court entered a Memorandum of Temporary Assignment, appointing the undersigned Senior Judge.

limited to, evidence submitted during the underlying hearing on compensatory damages, and being fully informed rules on the Punitive Damages Motion[2]:

The Court conducted a prove up hearing on March 23-25, 2015[3] after striking the Defendants answer for discovery abuses and entering a default. This resulted in an admission as true all allegations contained in the Second Amended Complaint. An order awarding damages and making factual findings was entered on October 9, 2015. The Court at that time requested further briefing on the issue of punitive damages and ordered the parties to contact chambers to schedule a hearing. Defendants have argued the Unit Maintenance Agreement and Unit Rental Agreement prohibit an award of punitive damages and limit an award of compensatory damages. These arguments were already raised and rejected when the Court issued its October 9, 2015 Order.

The economic loss doctrine does not apply to limit Plaintiffs' recovery for intentional torts.[4]

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[2] Although no written order finding that punitive damages were warranted was entered after the July 8, 2022 hearing and prior to the commencement of the July 18, 2022 hearing, it appears that all involved agreed that the July 18 hearing would not be necessary if Senior Justice Saitta found that punitive damages should not be awarded. The motion was granted orally during the July 18, 2022 hearing. 7/18/2022 Transcript, p. 10, l. 1-2. The findings stated on the record were:

There were five tort claims set forth by the plaintiffs in an earlier hearing. Number 1, we have a tortious interference with contract; we have fraud; we have conversion; we have deceptive trade practices -- it appears as if I'm missing one -- oh, tortious breach of the covenant of good faith and fair dealing; fraud and intentional misrepresentation -- let me be clear on that one -- violation of the Deceptive Trade Practices Act. And I believe that that contains all the necessary findings that need to be made for us to proceed in our hearing today.

7/18/2022 Transcript, p. 10; l. 8-18.

[3] Regardless of what an earlier Judge called the proceeding, the March 2015 evidentiary hearing was a bench trial. The Court has determined that this is a bench trial based upon the USJR definitions.

> *According to the definitions in the data dictionary, a bench trial is held when a trial begins and evidence is taken or witnesses are sworn. Accordingly, if you have indicated that the bench trial was held, then a corresponding bench trial disposition should be used to dispose of the case.*

See https://nvcourts.gov/AOC/Programs_and_Services/Research_and_Statistics/FAQs/#civil1. The length of time between the first portion of the trial and the conclusion of the trial is one which is unacceptable in the administration of justice in Nevada.

[4] *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 402 fn. 2 (2013).

The Nevada Legislature has limited the recovery of punitive damages in NRS 42.005.[5]

The Court in the October 9, 2015 Order found that the Defendants had made intentional misrepresentations(fraud), breached the covenant of good faith and fair dealing, and converted the property of the Plaintiffs.

The Court is tasked, in part, with determining which causes of action support the punitive damages claim and warrant the award of punitive damages, if any.

While it is unclear whether the breach of the implied covenant finding in the October 9, 2015 Order is sufficient to support a punitive damages award, the conduct related to the conversion and intentional misrepresentation/fraud claims clearly warrant consideration of such damages.

Defendants' officers, including Kent Vaughan, Defendants' Senior Vice President of Operations, admitted to the tortious scheme.[6]

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[5] That statute provides in pertinent part:

1. Except as otherwise provided in NRS 42.007, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant. Except as otherwise provided in this section or by specific statute, an award of exemplary or punitive damages made pursuant to this section may not exceed:

(a) Three times the amount of compensatory damages awarded to the plaintiff if the amount of compensatory damages is $100,000 or more; or

* * *

3. If punitive damages are claimed pursuant to this section, the trier of fact shall make a finding of whether such damages will be assessed. If such damages are to be assessed, a subsequent proceeding must be conducted before the same trier of fact to determine the amount of such damages to be assessed. The trier of fact shall make a finding of the amount to be assessed according to the provisions of this section…

[6] Vaughn testified in deposition on August 26, 2013. Relevant portions of the transcript show the conscious decision by an officer of Defendants.

> Q. How did you first come to know in July of 2011 that the Grand Sierra was taking in income for units that were not in the unit rental program?
> A. I authorized the front desk to use non-rental units due to demand, consumer demand.
> Q. And when you authorized the front desk in was it July of 2011 –
> A. Yes.
> Q. -- to use units that were not in the unit rental program, did you or anyone else that you know of who represents the Grand Sierra, contact the Grand Sierra Resort unit rental owners who were not in the program, to advise them of this policy?

The Court finds the given the prior striking of Defendant's answer, Vaughn's testimony alone is sufficient to meet the burden of proof of clear and convincing evidence to prove malice, oppression or fraud related to the tortious scheme.

The damages awarded in the October 9, 2015 Order are based in part on contract claims. Damages for the tort claims were based upon the same calculations and testimony provided by Plaintiffs' sole witness. This crossover does not preclude an award of punitive damages related to the tort damages but limits a double recovery.

> A plaintiff may assert several claims for relief and be awarded damages on different theories. It is not uncommon to see a plaintiff assert a contractual claim and also a cause of action asserting fraud based on the facts surrounding the contract's execution and performance. See Amoroso Constr. v. Lazovich and Lazovich, 107 Nev. 294, 810 P.2d 775 (1991). The measure of damages on claims of fraud and contract are often the same. However, Marsh is not permitted to recover more than her total loss plus any punitive damages assessed. She can execute on the assets of any of the five parties to the extent of the judgments entered against them until she recovers her full damages.

Topaz Mutual Co. v. Marsh, 108 Nev. 845, (1992) at pages 851- 852.

After review of all of the available evidence the Court concludes that two categories of damages from the October 2015 Order warrant and support an award of punitive damages:

> Damages awarded for underpaid revenues $442,591.83 fall within the conversion claim[7] and intentional misrepresentation/fraud[8];

A. No.
Q. Why?
A. I didn't have authorization to rent them.
Q. So it was a conscious decision to rent them without authorization?
A. Yes.

Vaughan Transcript, Ex. 1 to Reply, at p. 29 l. 3-21.

[7] October 9, 2015 Order, Conclusion of Law C, at p. 16 l. 16 to p. 17 l. 4.

[8] October 9, 2015 Order, Conclusion of Law I, at p. 18 l. 15 to l. 22.

Damages awarded for the rental of units of owners who had no rental agreements $4,152,669.13 falls within the conversion claim[9] and intentional misrepresentation/fraud[10]; The award of punitive damages on these claims would not act as a double recovery for Plaintiffs. The Court finds that the remaining damages awarded in the October 9, 2015 Order are based on contract claims rather than tort claims and not appropriate for consideration of punitive damages. Given Defendants' tortious scheme and the intentional misconduct of Defendants, punitive damages in this case are appropriate to set an example.

The amount of these damages serve to punish and will not destroy Defendants.[11]

While the Court recognizes that there is a spectrum of percentages which have been awarded in various Nevada punitive damages cases, given the nature of the conduct and procedural history of this case, the Court concludes the appropriate multiplier in this matter is two (2) times the compensatory award for the conversion claim and intentional misrepresentation/fraud claim. Accordingly based on the compensatory damages for which punitive damages are appropriate totaling $4,595,260.96 the Court awards punitive damages in the total amount of $9,190,521.92 Plaintiffs counsel is directed to submit a final judgment consistent with the October 9, 2015 Order and this Order.

Dated this 17th day of January 2023.

Hon. Elizabeth Gonzalez, (Ret.)
Sr. District Court Judge

[9] October 9, 2015 Order, Conclusion of Law C, at p. 16 l. 16 to p. 17 l. 4.

[10] October 9, 2015 Order, Conclusion of Law I, at p. 18 l. 15 to l. 22.

[11] See July 18, 2022 transcript (sealed), p. 100 l. 2 to p. 101 l. 5.

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 17th day of January, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

DALE KOTCHKA-ALANES

DANIEL POLSENBERG, ESQ.

DAVID MCELHINNEY, ESQ.

BRIANA COLLINGS, ESQ.

ABRAN VIGIL, ESQ.

JONATHAN TEW, ESQ.

JARRAD MILLER, ESQ.

TODD ALEXANDER, ESQ.

F. SHARP, ESQ.

STEPHANIE SHARP, ESQ.

G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.

Hailey W. Lange

Hon. Elizabeth Gonzalez (Ret.)
Sr. District Court Judge
PO Box 35054
Las Vegas, NV 89133

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada Limited Liability Company, et al

Defendant.

ORDER

Case#: CV12-02222

Dept. 10 (Senior Judge)

Pursuant to WDCR 12(5) the Court after a review of the briefing and related documents and being fully informed rules on the pending Applications for Order to Show Cause:

PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT.[1] The Court concludes that the order entered by Sr. Justice Saitta on 9/29/21 removed the obligation to disgorge the funds until further order. Cause has not been shown that a violation of NRS 22.010(3)[2] has

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[1] The court has also reviewed the DEFENDANTS' OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT filed 2/17/21 and the REPLY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT filed 2/19/21. The Court notes that an OST was submitted and never acted upon.

[2] The statute provides in pertinent part:

occurred by failing to disgorge the amounts identified in the 12/24/2020 order; the motion is denied.

PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE filed 09/27/21[3] for Defendants' failure to comply with the January 7, 2015 Order Appointing Receiver and Directing Defendants' Compliance. Cause has been shown that a violation of NRS 22.010(3)[4] has occurred by failing to comply with the order appointing receiver; the motion is granted. Pursuant to NRS 22.030(2)[5] a trial is scheduled to be conducted under NRS 22.090.[6] At trial the Court will hear the answer and any evidence presented by the parties; determine whether a contemptuous act has occurred; and. if so, may order relief and/or damages including but not limited to those set forth under NRS 22.100.[7]

NRS 22.010 Acts or omissions constituting contempts. The following acts or omissions shall be deemed contempts:
3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

[3] The Court has also reviewed DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE filed 10/11/21, and PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE filed 11/5/21.

[4] The statute provides in pertinent part:

NRS 22.010 Acts or omissions constituting contempts. The following acts or omissions shall be deemed contempts:
3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

[5] The statute provides in pertinent part:

NRS 22.010 Acts or omissions constituting contempts. The following acts or omissions shall be deemed contempts:
3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

[6] The statute provides in part:

NRS 22.090 Trial; court to hear answer and witnesses; adjournment. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested shall make to the same, and may examine witnesses for or against the person arrested, for which an adjournment may be had from time to time if necessary.

[7] The statute provides in part:

NRS 22.100 Penalty for contempt.
1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.
2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding $500 or the person may be imprisoned not exceeding 25 days, or both.
3. In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule

PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE filed 11/19/21[8] for Defendants' failure to comply with the January 7, 2015 Order Appointing Receiver by increasing the . Cause has been shown that a violation of NRS 22.010(3)[9] has occurred by failing to comply with the order appointing receiver and unilaterally increasing fees[10]; the motion is granted. Pursuant to NRS 22.030(2)[11] a trial is scheduled to be conducted under NRS 22.090.[12] At trial the Court will hear the answer and any evidence presented by the parties; determine whether a contemptuous act has occurred; and, if so, may order relief and/or damages including but not limited to those set forth under NRS 22.100.[13]

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or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.

[8] The Court has also reviewed the DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AND REQUEST FOR AWARD OF ATTORNEYS' FEES AND COSTS filed 12/03/21 and PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE filed on 12/17/21.

[9] The statute provides in pertinent part:

NRS 22.010 Acts or omissions constituting contempts. The following acts or omissions shall be deemed contempts:
3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

[10] These fees were separately addressed by order entered on January 4, 2022.

[11] The statute provides in pertinent part:

NRS 22.010 Acts or omissions constituting contempts. The following acts or omissions shall be deemed contempts:
3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

[12] The statute provides in part:

NRS 22.090 Trial; court to hear answer and witnesses; adjournment. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested shall make to the same, and may examine witnesses for or against the person arrested, for which an adjournment may be had from time to time if necessary.

[13] The statute provides in part:

NRS 22.100 Penalty for contempt.
1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.
2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding $500 or the person may be imprisoned not exceeding 25 days, or both.
3. In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule

The request for attorney's fees by Defendants is denied.

PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT filed 2/1/22[14] for Defendants refusal to comply with orders, including those issued on January 4, 2022, the motion is granted. Pursuant to NRS 22.030(2)[15] a trial is scheduled to be conducted under NRS 22.090.[16] At trial the Court will hear the answer and any evidence presented by the parties; determine whether a contemptuous act has occurred; and, if so, may order relief and/or damages including but not limited to those set forth under NRS 22.100.[17]

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or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.

[14] The Court has also reviewed OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT filed 2/18/22 and REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT filed 2/28/22.

[15] The statute provides in pertinent part:

NRS 22.010 Acts or omissions constituting contempts. The following acts or omissions shall be deemed contempts:
3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

[16] The statute provides in part:

NRS 22.090 Trial; court to hear answer and witnesses; adjournment. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested shall make to the same, and may examine witnesses for or against the person arrested, for which an adjournment may be had from time to time if necessary.

[17] The statute provides in part:

NRS 22.100 Penalty for contempt.
1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.
2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding $500 or the person may be imprisoned not exceeding 25 days, or both.
3. In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.

PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT filed on 3/2/22.[18] The Court concludes that the mailing of the meeting notice by an 80% owner of the units at GSRUOA is not a violation of a prior court order.[19] Cause has not been shown that a violation of NRS 22.010(3)[20] by this mailing; the motion is denied.

PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT AND REQUEST FOR ORAL ARGUMENT ON MOTION DURING HEARING SET FOR MAY 12, 2022 filed on 4/25/22[21] for Defendants refusal to comply with orders, including those issued on January 4, 2022 and failure to turn over rent, the motion is granted. Pursuant to NRS 22.030(2)[22] a trial is scheduled to be conducted under NRS 22.090.[23] At trial the Court will hear the answer and any

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[18] The Court has also reviewed DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT filed 3/17/22 and REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT filed 4/5/22.

[19] The court addressed this in the 12/5/22 Order related to injunctive relief.

[20] The statute provides in pertinent part:

NRS 22.010 Acts or omissions constituting contempts. The following acts or omissions shall be deemed contempts:
3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

[21] The Court has also reviewed DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT AND REQUEST FOR ORAL ARGUMENT ON MOTION DURING HEARING SET FOR MAY 12, 2022 filed 5/9/22, PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT AND REQUEST FOR ORAL ARGUMENT ON MOTION DURING HEARING SET FOR MAY 20, 2022 filed 5/16/22 and DEFENDANTS' SURREBUTTAL TO PLAINTIFFS' MAY 24, 2022 REBUTTAL ORAL ARGUMENT REGARDING PLAINTIFFS MOTION FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT filed

[22] The statute provides in pertinent part:

NRS 22.010 Acts or omissions constituting contempts. The following acts or omissions shall be deemed contempts:
3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

[23] The statute provides in part:

evidence presented by the parties; determine whether a contemptuous act has occurred; and, if so, may order relief and/or damages including but not limited to those set forth under NRS 22.100.[24] Because of the overlap between the various allegations of contempt, the Court has determined that it is appropriate to consolidate the trials on these matters. The trials in this matter are set for April 3 – 6, 2023 beginning at 9:00 a.m. If counsel after consultation believe the estimated time period of 4 days is either too long or too short, counsel shall submit a stipulation and order as to the length of the proceedings.

Dated this 31st day January, 2023.

Hon. Elizabeth Gonzalez, (Ret.)
Sr. District Court Judge

NRS 22.090 Trial; court to hear answer and witnesses; adjournment. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested shall make to the same, and may examine witnesses for or against the person arrested, for which an adjournment may be had from time to time if necessary.

[24] The statute provides in part:

NRS 22.100 Penalty for contempt.

1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.
2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding $500 or the person may be imprisoned not exceeding 25 days, or both.
3. In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 1st day of February, 2023, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

DALE KOTCHKA-ALANES

DANIEL POLSENBERG, ESQ.

DAVID MCELHINNEY, ESQ.

BRIANA COLLINGS, ESQ.

ABRAN VIGIL, ESQ.

JONATHAN TEW, ESQ.

JARRAD MILLER, ESQ.

TODD ALEXANDER, ESQ.

F. SHARP, ESQ.

STEPHANIE SHARP, ESQ.

G. DAVID ROBERTSON, ESQ.

ROBERT EISENBERG, ESQ.

JENNIFER HOSTETLER, ESQ.

Hailey W. Lange