IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

MEI-GSR HOLDINGS, LLC, a Nevada corporation; AM-GSR HOLDINGS, LLC, a Nevada corporation; and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada corporation,

Petitioners,

v.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE ELIZABETH GONZALEZ (RET.), SENIOR JUDGE, DEPARTMENT OJ41; AND RICHARD M. TEICHNER, RECEIVER,

Respondents,

and

ALBERT THOMAS, ET AL., individuals,

Real Parties in Interest.

APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, MANDAMUS
VOLUME 1 OF 12

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DATED this 7th day of February 2024.

PISANELLI BICE PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 7th day of February 2024, I electronically filed and served a true and correct copy of the above and foregoing **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, MANDAMUS, VOLUME 1 OF 12,** properly addressed to the following:

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNIE ALEXANDER, Trustee of the MARIE-ANNIE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/D/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; DONALD SCHREIFELS, 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, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARETT TOM, individually; ANITA TOM, individually; 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; BARRY HAY, individually; JEFFERY JAMES QUINN, individually; BARBARA ROSE QUINN

Case No.
Dept. No.

COMPLAINT

individually; KENNETH RICH, individually; MAXINE RICH, 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; and DOE PLAINTIFFS 1 THROUGH 10, inclusive,

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.

COME NOW Plaintiffs ("Plaintiffs" or "Individual Unit Owners"), by and through their counsel of record, Robertson, Johnson, Miller & Williamson, and for their causes of action against Defendants hereby complain as follows:

GENERAL ALLEGATIONS

The Parties

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, 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, 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, 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 Barry Hay is a competent adult and is a resident of the State of California.

39. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited Liability Company.

40. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of Hawaii.

41. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of Hawaii.

42. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of Wisconsin.

43. Plaintiff Maxine Riche is a competent adult and is a resident of the State of Wisconsin.

44. Plaintiff Norman Chandler is a competent adult and is a resident of the State of Alabama.

45. Plaintiff Benton Wan is a competent adult and is a resident of the State of California.

46. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of California.

47. Plaintiff Silkscape Inc. is a California Corporation.

48. Plaintiff Peter Cheng is a competent adult and is a resident of the State of California.

49. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of California.

50. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of California.

51. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.

52. Plaintiff Richard Lutz is a competent adult and is a resident of the State of California.

53. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of California.

54. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of California.

55. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of California.

56. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.

57. Plaintiffs are informed and believe and thereon allege that at all relevant times herein defendant MEI-GSR Holdings, LLC ("MEI-GSR") is a Nevada Limited Liability Company with its principal place of business in Nevada.

58. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant Gage Village Commercial Development, LLC ("Gage Village") is a Nevada Limited Liability Company with its principal place of business in Nevada.

59. Plaintiffs are informed and believe and thereon allege that Gage Village is related to, controlled by, affiliated with, or a subsidiary of MEI-GSR.

60. Plaintiffs are informed and believe and thereon allege that at all relevant times herein Defendant Grand Sierra Resort Unit Owners' Association (the "Unit Owners' Association") is a Nevada nonprofit corporation with its principal place of business in Nevada.

61. The true names and capacities whether individual, corporate, associate or otherwise of Plaintiff Does and Defendant Does 1 through 10, are unknown to Plaintiffs, and Plaintiffs therefore sue them by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when such are ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendant Does is liable to Plaintiffs in some manner for the occurrences that are herein alleged.

MEI-GSR's Control of the Unit Owners' Association is to Plaintiffs' Detriment

62. The Individual Unit Owners re-allege each and every allegation contained in paragraphs 1 through 61 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

63. 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.

64. All of the Individual Unit Owners own, or have owned, one or more GSR Condo Units.

65. Defendants Gage Village and MEI-GSR own multiple GSR Condo Units.

66. Defendant MEI-GSR owns the Grand Sierra Resort and Casino.

67. 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).

68. Because Defendants 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 Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

69. As a result of Defendants 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.

70. Defendants MEI-GSR and Gage Village has used, and continues to use, their control over the Defendant Unit Owners' Association to advance Defendants MEI-GSR and Gage Villages' economic objectives to the detriment of the Individual Unit Owners.

71. Defendants 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.

72. 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.

73. 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 Defendant 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).

74. 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.

75. 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.

76. Defendant 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.

77. Defendants MEI-GSR and Gage Development have failed to pay proportionate capital reserve contribution payments in connection with their Condo Units.

78. Defendant MEI-GSR has failed to properly account for, or provide an accurate accounting for the collection and allocation of the collected capital reserve contributions.

79. 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.).

80. Defendants MEI-GSR and Gage Village have failed to pay proportionate Daily Use Fees for the use of Defendants' GSR Condo Units.

81. Defendant MEI-GSR has failed to properly account for the contracted "Hotel Fees" and "Daily Use Fees."

82. 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.

83. Defendant 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.

84. 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.

85. Defendants MEI-GSR and/or Gage Village has attempted to purchase the units, thus 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.

86. Defendant MEI-GSR and/or Gage Village has purchased such devalued units for $30,000 less than the amount they purchased units for in March of 2011.

87. The Individual Unit Owners effectively pay association dues to fund the Unit Owners' Association, which acts contrary to the best interests of the Unit Owners' Association and contrary to the mandates of the CC&Rs.

88. Defendant 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.

MEI-GSR's Rental Program

89. As part of Defendant MEI-GSR's Grand Sierra Resort and Casino business operations, it rents: (1) hotel rooms owned by Defendant MEI-GSR that are not condominium units; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by the Individual Condo Unit Owners.

90. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement with Individual Condo Unit Owners.

91. Defendant MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by Individual Condo Unit Owners so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Condo Unit Owners.

92. Defendant MEI-GSR has rented the Individual Condo Units for as little as $0.00 to $25.00 a night.

93. 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.

94. By functionally giving away the use of units owned by the Individual Unit Owners, Defendant MEI-GSR has received a benefit because those who rent the Individual

Condo Units frequently gamble and purchase food, beverages, merchandise, spa services and entertainment access from Defendant MEI-GSR.

95. Defendant MEI-GSR has rented Individual Condo Units to third parties without providing Individual Condo Unit Owners with any notice or compensation for the use of their unit.

96. Further, Defendant MEI-GSR has systematically endeavored to place a priority on the rental of Defendant MEI-GSR's hotel rooms, Defendant MEI-GSR's GSR Condo Units, and Defendant Gage Village's Condo Units.

97. Such prioritization effectively devalues the units owned by the Individual Condo Unit Owners.

98. Defendants MEI-GSR and Gage Village intend to purchase the devalued units at nominal, distressed prices when Individual Condo 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.

99. Some of the Individual Condo Unit Owners have retained the services of a third party to market and rent their GSR Condo Unit(s).

100. Defendant MEI-GSR has systematically thwarted the efforts of any third party to market and rent the GSR Condo Units owned by the Individual Unit Owners.

101. Defendant 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.

102. Defendant MEI-GSR has failed to act in good faith as to exercise of its duties under the Grand Sierra Resort Unit Rental Agreements with the Individual Condo Unit Owners.

FIRST CLAIM FOR RELIEF
(Petition for Appointment of Receiver as to Defendant Grand Sierra Resort Unit-Owners' Association)

103. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 102 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

104. Because Defendant MEI-GSR and/or Gage Village controls more units of ownership than any other person or entity, Defendant MEI-GSR and Gage Village effectively control the Grand Sierra Resort Unit Owners' Association by having the ability to elect Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

105. As a result of Defendant MEI-GSR controlling the Grand Sierra Resort Unit-Owners' Association, Plaintiffs effectively have no input or control over the management of the Unit Owners' Association.

106. Defendant MEI-GSR has used, and continues to use, its control over the Defendant Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-GSR's economic objectives to the detriment of Plaintiffs.

107. Plaintiffs are entitled to a receiver pursuant to NRS § 32.010.

108. Pursuant to NRS § 32.010, a receiver is appropriately appointed in this case as a matter of statute and equity.

109. Unless a receiver is appointed, Defendant MEI-GSR will continue to control the Unit Owners' Association to advance Defendant MEI-GSR's economic objections to the detriment of Plaintiffs.

110. Without the grant of the remedies sought in this Complaint, Plaintiffs have no adequate remedy at law to enforce their rights and Plaintiffs will suffer irreparable harm unless granted the relief as prayed for herein.

WHEREFORE, Plaintiffs request judgment against the Defendant Grand Sierra Resort Unit Owners' Association, as set forth below.

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SECOND CLAIM FOR RELIEF
(Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR)

111. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 110 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

112. Defendant MEI-GSR made affirmative representations to Plaintiffs regarding the use, rental and maintenance of the Individual Condo Unit Owners' GSR Condo Units.

113. Plaintiffs are now informed and believe, and thereon allege, that these representations were false.

114. The Defendant MEI-GSR knew that the affirmative representations were false, in the exercise of reasonable care should have known that they were false, and/or knew or should have known that they lacked a sufficient basis for making said representations.

115. The representations were made with the intention of inducing Plaintiffs to contract with Defendant MEI-GSR for the marketing and rental of Plaintiffs' GSR Condo Units and otherwise act, as set out above, in reliance upon the representations.

116. Plaintiffs justifiably relied upon the affirmative representations of Defendant MEI-GSR in contracting with Defendant MEI-GSR for the rental of their GSR Condo Units.

117. As a direct and proximate result of Defendant MEI-GSR's misrepresentations, Plaintiffs have been, and will continue to be, harmed in the manner herein.

118. Plaintiffs are further informed and believe, and thereon allege, that said representations were made by Defendant MEI-GSR with the intent to commit an oppression directed toward Plaintiffs by intentionally devaluing there GSR Condo Units. As a result, Plaintiffs are entitled to an award of exemplary damages against the Defendant MEI-GSR, and each of them, according to proof at the time of trial.

119. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

THIRD CLAIM FOR RELIEF
(Breach of Contract as to Defendant MEI-GSR)

120. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 119 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

121. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement with Individual Condo Unit Owners.

122. Defendant 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.

123. The Grand Sierra Resort Unit Rental Agreement Defendant MEI-GSR entered into an enforceable contract with Plaintiffs.

124. Plaintiffs have performed all of their obligations and satisfied all of their conditions under the Agreement, and/or their performance and conditions were excused.

125. As a direct and proximate result of Defendant MEI-GSR's breaches of the Agreement as alleged herein, Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

126. In addition, as a direct, proximate and necessary result of Defendants' bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees which they are entitled to recover under the terms of the Agreement.

WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

FOURTH CLAIM FOR RELIEF
(Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR)

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127. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 126 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

128. Defendant MEI-GSR is contractually obligated to Plaintiffs. The contractual obligations are based upon the underlying agreements between Defendant MEI-GSR and Plaintiffs, and principles of equity and representations.

129. Plaintiffs relied upon the representations of Defendant MEI-GSR and trusted Defendant MEI-GSR with the marketing and rental of their GSR Condo Units.

130. Due to the devaluation of the GSR Condo Units caused by Defendant MEI-GSR's actions, the expenses they have had to incur, and their inability to sell the Property in its current state, Plaintiffs have suffered damages.

131. Defendant MEI-GSR was informed of, and in fact knew of, Plaintiffs' reliance upon their representations.

132. Based on these facts, equitable or quasi-contracts existed between Plaintiffs and Defendant MEI-GSR's actions as described hereinabove.

133. Defendant MEI-GSR, however, has failed and refused to perform its obligations.

134. These refusals and failures constitute material breaches of their agreements.

135. Plaintiffs have performed all of their obligations and satisfied all conditions under the contracts, and/or their performance and conditions, under the contracts, were excused.

136. As a direct and proximate result of Defendant MEI-GSR's wrongful conduct as alleged herein, the Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

137. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

FIFTH CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR)

138. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 137 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

139. As alleged herein, Plaintiffs entered into one or more contracts with Defendant MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement.

140. Under the terms of their respective agreement(s), Defendant MEI-GSR was obligated to market and rent Plaintiffs' GSR Condo Units.

141. Defendant MEI-GSR has manipulated the rental of: (1) the hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and Defendant Gage Village; and (3) GSR Condo Units owned by Plaintiffs so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by Plaintiffs.

142. Every contract in Nevada has implied into it, a covenant that the parties thereto will act in the spirit of good faith and fair dealing.

143. Defendant MEI-GSR has breached this covenant by intentionally making false and misleading statements to Plaintiffs, and for its other wrongful actions as alleged in this Complaint.

144. As a direct and proximate result of Defendant MEI-GSR's breaches of the implied covenant of good faith and fair dealing, Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

145. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

SIXTH CLAIM FOR RELIEF
(Consumer Fraud/Nevada Deceptive Trade Practices Act Against Defendant MEI-GSR)

146. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 145 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

147. NRS § 41.600(1) provides that "[a]n action may be brought by any person who is a victim of consumer fraud."

148. NRS § 41.600(2) explains, in part, "'consumer fraud' means . . . [a] deceptive trade practice as defined in NRS §§ 598.0915 to 598.0925, inclusive."

149. NRS Chapter 598 identifies certain activities which constitute deceptive trade practices; many of those activities occurred in MEI-GSR's dealings with Plaintiffs.

150. Defendant MEI-GSR, in the course of their business or occupation, knowingly made false representations and/or misrepresentations to Plaintiffs.

151. Defendant MEI-GSR failed to represent the actual marketing and rental practices implemented by Defendant MEI-GSR, as the Defendant was contractually and legally required to do.

152. Defendant MEI-GSR's conduct, as described herein, constitutes deceptive trade practices and is in violation of, among other statutory provisions and administrative regulations, NRS §§ 598.0915 to 598.0925.

153. As a direct and proximate result of Defendant MEI-GSR's deceptive trade practices, Plaintiffs have suffered damages.

154. Plaintiffs are also entitled to recover their costs in this action and reasonable attorneys' fees, as allowed by law.

155. **WHEREFORE**, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

SEVENTH CLAIM FOR RELIEF
(Declaratory Relief as to Defendant MEI-GSR)

156. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 154 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

157. As alleged hereinabove, an actual controversy has arisen and now exists between Plaintiffs and Defendant MEI-GSR, regarding the extent to which Defendant MEI-GSR has the legal right to control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-GSR's economic objections to the detriment of Plaintiffs.

158. The interests of Plaintiffs and Defendant MEI-GSR are completely adverse as the Plaintiffs.

159. Plaintiffs have a legal interest in this dispute as they are the owners of record of certain GSR Condo Units.

160. This controversy is ripe for judicial determination in that Plaintiffs have alluded to and raised this issue in this Complaint.

161. Accordingly, Plaintiffs seek a judicial declaration that Defendant MEI-GSR cannot control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-GSR's economic objectives to the detriment of Plaintiffs.

WHEREFORE, the Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

EIGHTH CLAIM FOR RELIEF
(Conversion as to Defendant MEI-GSR)

162. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 161 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

163. Defendant MEI-GSR wrongfully committed a distinct act of dominion over the Plaintiffs' property by renting their GSR Condo Units both at unreasonably low rates so as to

only benefit Defendant MEI-GRS, and also renting said units without providing any compensation or notice to Plaintiffs.

164. Defendant MEI-GSR's acts were in denial of, or inconsistent with, Plaintiffs' title or rights therein.

165. Defendant MEI-GSR's acts were in derogation, exclusion, or defiance of the Plaintiffs' title or rights therein.

166. **WHEREFORE**, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

NINTH CLAIM FOR RELIEF
(Demand for Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association)

167. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 165 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

168. The Nevada Revised Statutes impose certain duties and obligations upon trustees, fiduciaries, managers, advisors, and investors.

169. Defendant MEI-GSR has not fulfilled its duties and obligations.

170. Plaintiffs are informed and believe, and thereon allege, that they are interested parties in the Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR's endeavors to market, maintain, service and rent Plaintiffs' GSR Condo Units.

171. Among their duties, Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR are required to prepare accountings of their financial affairs as they pertain to Plaintiffs.

172. Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR have failed to properly prepare and distribute said accountings.

173. Accordingly, Plaintiffs are entitled to the relief set forth below.

174. **WHEREFORE**, Plaintiffs request judgment against the Defendants MEI-GSR and the Grand Sierra Unit Owners Association, as set forth below.

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TENTH CLAIM FOR RELIEF
(Specific Performance Pursuant to NRS 116.112, Unconscionable Agreement)

175. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 173 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

176. As alleged herein, Plaintiffs entered into one or more contracts with Defendant MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement and the Unit Maintenance Agreement.

177. The Grand Sierra Resort Unit Rental Agreement is unconscionable pursuant to NRS § 116.112 because MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned or controlled by Defendant MEI-GSR; and (3) GSR Condo Units owned by Individual Condo Unit Owners so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Condo Units Owners.

178. The Unit Maintenance Agreement is unconscionable pursuant to NRS § 116.112 because of the excessive fees charged and the Individual Unit Owners' inability to reject fee increases.

179. **WHEREFORE**, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

ELEVENTH CLAIM FOR RELIEF
(Unjust Enrichment / Quantum Meruit against Defendant Gage Village Development)

180. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 178 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

181. Defendant Gage Village has unjustly benefited from MEI-GSR's devaluation of the GSR Condo Units.

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182. Defendant Gage Village has unjustly benefited from prioritization of their GSR Condo Units under MEI-GSR's rental scheme to the immediate detriment of the Individual Unit Owners.

183. It would be inequitable for the Defendant Gage Village to retain those benefits without full and just compensation to the Individual Unit Owners.

184. **WHEREFORE**, Plaintiffs request judgment against the Defendant Gage Village, as set forth below.

TWELFTH CLAIM FOR RELIEF
(Tortious Interference with Contract and /or Prospective Business Advantage against Defendants MEI-GSR and Gage Development)

185. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 183 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

186. Individual Unit Owners have contracted with third parties to market and rent their GSR Condo Units.

187. Defendant MEI-GSR has systematically thwarted the efforts of those third parties to market and rent the GSR Condo Units owned by the Individual Unit Owners.

188. Defendant MEI-GSR has prioritized the rental of GSR Condo Units Owned by Defendant Gage Village to the economic detriment of the Individual Unit Owners.

189. Defendant Gage Village has worked in concert with Defendant MEI-GSR in its scheme to devalue the GSR Condo Units and repurchase them.

WHEREFORE, Plaintiffs request judgment against the Defendants as follows:

1. For the appointment of a neutral receiver to take over control of Defendant Grand Sierra Unit Owners' Association;
2. For compensatory damages according to proof, in excess **of $10,000.00;**
3. For punitive damages according to proof;
4. For attorneys' fees and costs according to proof;
5. For declaratory relief;
6. For specific performance;

7. For an accounting; and

8. For such other and further relief as the Court may deem just and proper.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that this document does not contain the social security number of any person.

RESPECTFULLY SUBMITTED this 27th day of August, 2012.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON
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By: */s/ Jarrad C. Miller*
G. David Robertson, Esq.
Jarrad C. Miller, Esq.
Jonathan J. Tew, Esq.
Attorneys for Plaintiffs

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Clerk of the Court
Transaction # 3617729

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Attorneys for Plaintiffs

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE 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; DONALD SCHREIFELS, 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, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARRET TOM, individually; ANITA TOM, individually; 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,

Case No. CV12-02222
Dept. No. 10

SECOND AMENDED COMPLAINT

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; FREDRICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, individually; MAY ANN HOM, as Trustee of the MAY ANN HOM TRUST; MICHAEL HURLEY, individually; DOMINIC YIN, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISINE MECHAM, individually; KWANGSOO SON, individually; SOO YEUN MOON, individually; JOHNSON AKINDODUNSE, 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 HAM, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUNG (CONNIE), individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDERS MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; PATRICIA M. MOLL, individually; DANIEL MOLL, individually; and DOE

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PLAINTIFFS 1 THROUGH 10, inclusive,

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.

COME NOW Plaintiffs ("Plaintiffs" or "Individual Unit Owners"), by and through their counsel of record, Robertson, Johnson, Miller & Williamson, and for their causes of action against Defendants hereby complain as follows:

GENERAL ALLEGATIONS

The Parties

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.

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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.

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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, British Columbia.

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.

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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. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant MEI-GSR Holdings, LLC ("MEI-GSR") is a Nevada Limited Liability Company with its principal place of business in Nevada.

101. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant Gage Village Commercial Development, LLC ("Gage Village") is a Nevada Limited Liability Company with its principal place of business in Nevada.

102. Plaintiffs are informed and believe and thereon allege that Gage Village is related to, controlled by, affiliated with, and/or a subsidiary of MEI-GSR.

103. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant Grand Sierra Resort Unit Owners' Association (the "Unit Owners' Association") is a Nevada nonprofit corporation with its principal place of business in Nevada.

104. The true names and capacities whether individual, corporate, associate or otherwise of Plaintiff Does and Defendant Does 1 through 10, are unknown to Plaintiffs, and Plaintiffs therefore include them by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when such are ascertained. Plaintiffs are informed and

believe and thereon allege that each of the fictitiously named Defendant Does is liable to Plaintiffs in some manner for the occurrences that are herein alleged.

MEI-GSR's Control of the Unit Owners' Association is to Plaintiffs' Detriment

105. The Individual Unit Owners re-allege each and every allegation contained in paragraphs 1 through 102 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

106. 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.

107. All of the Individual Unit Owners: hold an interest in, own, or have owned, one or more GSR Condo Units.

108. Defendants Gage Village and MEI-GSR own multiple GSR Condo Units.

109. Defendant MEI-GSR owns the Grand Sierra Resort and Casino.

110. 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).

111. Because Defendants 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 Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

112. As a result of Defendants 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.

113. Defendants MEI-GSR and Gage Village have used, and continue to use, their control over the Defendant Unit Owners' Association to advance Defendants MEI-GSR and Gage Villages' economic objectives to the detriment of the Individual Unit Owners.

114. Defendants 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.

115. 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.

116. 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 Defendant 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).

117. 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.

118. 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.

119. Defendant 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.

120. Defendants MEI-GSR and Gage Development have failed to pay proportionate capital reserve contribution payments in connection with their Condo Units.

121. Defendant MEI-GSR has failed to properly account for, or provide an accurate accounting for the collection and allocation of the collected capital reserve contributions.

122. 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.).

123. Defendants MEI-GSR and Gage Village have failed to pay proportionate Daily Use Fees for the use of Defendants' GSR Condo Units.

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124. Defendant MEI-GSR has failed to properly account for the contracted "Hotel Fees" and "Daily Use Fees."

125. 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.

126. Defendant 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.

127. 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.

128. 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.

129. Defendant 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.

130. 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.

131. Defendant 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.

MEI-GSR's Rental Program

132. As part of Defendant MEI-GSR's Grand Sierra Resort and Casino business operations, it rents: (1) hotel rooms owned by Defendant MEI-GSR that are not condominium

units; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by the Individual Condo Unit Owners.

133. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement with Individual Unit Owners.

134. Defendant MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by Individual Condo Unit Owners so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Unit Owners.

135. Defendant MEI-GSR has rented the Individual Condo Units for as little as $0.00 to $25.00 a night.

136. 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).

137. By functionally, and in some instances actually, giving away the use of units owned by the Individual Unit Owners, Defendant 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 Defendant MEI-GSR.

138. Defendant 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.

139. Further, Defendant MEI-GSR has systematically endeavored to place a priority on the rental of Defendant MEI-GSR's hotel rooms, Defendant MEI-GSR's GSR Condo Units, and Defendant Gage Village's Condo Units.

140. Such prioritization effectively devalues the units owned by the Individual Unit Owners.

141. Defendants 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,

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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.

142. Some of the Individual Unit Owners have retained the services of a third party to market and rent their GSR Condo Unit(s).

143. Defendant MEI-GSR has systematically thwarted the efforts of any third party to market and rent the GSR Units owned by the Individual Unit Owners.

144. Defendant 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.

145. Defendant 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.

FIRST CLAIM FOR RELIEF
(Petition for Appointment of Receiver as to Defendant Grand Sierra Resort Unit Owners' Association)

146. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 143 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

147. Because Defendant MEI-GSR and/or Gage Village controls more units of ownership than any other person or entity, Defendant MEI-GSR and Gage Village effectively control the Grand Sierra Resort Unit Owners' Association by having the ability to elect Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

148. As a result of Defendant MEI-GSR controlling the Grand Sierra Resort Unit-Owners' Association, Plaintiffs effectively have no input or control over the management of the Unit Owners' Association.

149. Defendant MEI-GSR has used, and continues to use, its control over the Defendant Grand Sierra Resort Unit Owners' Association to advance Defendant MEI-GSR's economic objectives to the detriment of Plaintiffs.

150. Plaintiffs are entitled to a receiver pursuant to NRS § 32.010.

151. Pursuant to NRS § 32.010, the appointment of a receiver is appropriate in this case as a matter of statute and equity.

152. Unless a receiver is appointed, Defendant MEI-GSR will continue to control the Unit Owners' Association to advance Defendant MEI-GSR's economic objections to the detriment of Plaintiffs.

153. Without the grant of the remedies sought in this Complaint, Plaintiffs have no adequate remedy at law to enforce their rights and Plaintiffs will suffer irreparable harm unless granted the relief as prayed for herein.

WHEREFORE, Plaintiffs request judgment against the Defendant Grand Sierra Resort Unit Owners' Association, as set forth below.

SECOND CLAIM FOR RELIEF
(Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR)

154. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 151 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

155. Defendant MEI-GSR made affirmative representations to Plaintiffs regarding the use, rental and maintenance of the Individual Unit Owners' GSR Condo Units.

156. Plaintiffs are now informed and believe, and thereon allege, that these representations were false.

157. The Defendant MEI-GSR knew that the affirmative representations were false, in the exercise of reasonable care should have known that they were false, and/or knew or should have known that it lacked a sufficient basis for making said representations.

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158. The representations were made with the intention of inducing Plaintiffs to contract with Defendant MEI-GSR for the marketing and rental of Plaintiffs' GSR Condo Units and otherwise act, as set out above, in reliance upon the representations.

159. Plaintiffs justifiably relied upon the affirmative representations of Defendant MEI-GSR in contracting with Defendant MEI-GSR for the rental of their GSR Condo Units.

160. As a direct and proximate result of Defendant MEI-GSR's misrepresentations, Plaintiffs have been, and will continue to be, harmed in the manner herein.

161. Plaintiffs are further informed and believe, and thereon allege, that said representations were made by Defendant MEI-GSR with the intent to commit an oppression directed toward Plaintiffs by intentionally devaluing there GSR Condo Units. As a result, Plaintiffs are entitled to an award of exemplary damages against the Defendant, according to proof at the time of trial.

162. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

THIRD CLAIM FOR RELIEF
(Breach of Contract as to Defendant MEI-GSR)

163. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 160 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

164. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement (the "Agreement") with Individual Condo Unit Owners.

165. Defendant MEI-GSR has breached the Agreement with Individual 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.

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166. The Agreement is an enforceable contract between Defendant MEI-GSR and Plaintiffs.

167. Plaintiffs have performed all of their obligations and satisfied all of their conditions under the Agreement, and/or their performance and conditions were excused.

168. As a direct and proximate result of Defendant MEI-GSR's breaches of the Agreement as alleged herein, Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

169. In addition, as a direct, proximate and necessary result of Defendant's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees which they are entitled to recover under the terms of the Agreement.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

FOURTH CLAIM FOR RELIEF
(Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR)

170. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 167 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

171. Defendant MEI-GSR is contractually obligated to Plaintiffs. The contractual obligations are based upon the underlying agreements between Defendant MEI-GSR and Plaintiffs, and principles of equity and representations made by MEI-GSR.

172. Plaintiffs relied upon the representations of Defendant MEI-GSR and trusted Defendant MEI-GSR with the marketing and rental of their GSR Condo Units.

173. Due to the devaluation of the GSR Condo Units caused by Defendant MEI-GSR's actions, the expenses they have had to incur, and their inability to sell the Property in its current state, Plaintiffs have suffered damages.

174. Defendant MEI-GSR was informed of, and in fact knew of, Plaintiffs' reliance upon its representations.

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175. Based on these facts, equitable or quasi-contracts existed between Plaintiffs and Defendant MEI-GSR's actions as described hereinabove.

176. Defendant MEI-GSR, however, has failed and refused to perform its obligations.

177. These refusals and failures constitute material breaches of their agreements.

178. Plaintiffs have performed all of their obligations and satisfied all conditions under the contracts, and/or their performance and conditions, under the contracts, were excused.

179. As a direct and proximate result of Defendant MEI-GSR's wrongful conduct as alleged herein, the Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

180. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

FIFTH CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR)

181. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 178 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

182. As alleged herein, Plaintiffs entered into one or more contracts with Defendant MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement.

183. Under the terms of their respective agreement(s), Defendant MEI-GSR was obligated to market and rent Plaintiffs' GSR Condo Units.

184. Defendant MEI-GSR has manipulated the rental of: (1) the hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and Defendant Gage Village; and (3) GSR Condo Units owned by Plaintiffs so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by Plaintiffs.

185. Every contract in Nevada has implied into it, a covenant that the parties thereto will act in the spirit of good faith and fair dealing.

186. Defendant MEI-GSR has breached this covenant by intentionally making false and misleading statements to Plaintiffs, and for its other wrongful actions as alleged in this Complaint.

187. As a direct and proximate result of Defendant MEI-GSR's breaches of the implied covenant of good faith and fair dealing, Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

188. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

SIXTH CLAIM FOR RELIEF
(Consumer Fraud/Nevada Deceptive Trade Practices Act Against Defendant MEI-GSR)

189. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 186 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

190. NRS § 41.600(1) provides that "[a]n action may be brought by any person who is a victim of consumer fraud."

191. NRS § 41.600(2) explains, in part, "'consumer fraud' means . . . [a] deceptive trade practice as defined in NRS §§ 598.0915 to 598.0925, inclusive."

192. NRS Chapter 598 identifies certain activities which constitute deceptive trade practices; many of those activities occurred in MEI-GSR's dealings with Plaintiffs.

193. Defendant MEI-GSR, in the course of its business or occupation, knowingly made false representations and/or misrepresentations to Plaintiffs.

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194. Defendant MEI-GSR failed to represent the actual marketing and rental practices implemented by Defendant MEI-GSR, as the Defendant was contractually and legally required to do.

195. Defendant MEI-GSR's conduct, as described in this Complaint, constitutes deceptive trade practices and is in violation of, among other statutory provisions and administrative regulations, NRS §§ 598.0915 to 598.0925.

196. As a direct and proximate result of Defendant MEI-GSR's deceptive trade practices, Plaintiffs have suffered damages.

197. Plaintiffs are also entitled to recover their costs in this action and reasonable attorneys' fees, as allowed by law.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

SEVENTH CLAIM FOR RELIEF
(Declaratory Relief as to Defendant MEI-GSR)

198. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 195 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

199. As alleged hereinabove, an actual controversy has arisen and now exists between Plaintiffs and Defendant MEI-GSR, regarding the extent to which Defendant MEI-GSR has the legal right to control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-GSR's economic objections to the detriment of Plaintiffs.

200. The interests of Plaintiffs and Defendant MEI-GSR are completely adverse as to the Plaintiffs.

201. Plaintiffs have a legal interest in this dispute as they are the owners of record of certain GSR Condo Units.

202. This controversy is ripe for judicial determination in that Plaintiffs have alluded to and raised this issue in this Complaint.

203. Accordingly, Plaintiffs seek a judicial declaration that Defendant MEI-GSR cannot control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-GSR's economic objectives to the detriment of Plaintiffs.

WHEREFORE, the Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

EIGHTH CLAIM FOR RELIEF
(Conversion as to Defendant MEI-GSR)

204. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 201 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

205. Defendant MEI-GSR wrongfully committed a distinct act of dominion over the Plaintiffs' property by renting their GSR Condo Units both at unreasonably low rates so as to only benefit Defendant MEI-GSR, and also renting said units without providing any compensation or notice to Plaintiffs.

206. Defendant MEI-GSR's acts were in denial of, or inconsistent with, Plaintiffs' title or rights therein.

207. Defendant MEI-GSR's acts were in derogation, exclusion, or defiance of the Plaintiffs' title or rights therein.

WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

NINTH CLAIM FOR RELIEF
(Demand for Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association)

208. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 205 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

209. The Nevada Revised Statutes impose certain duties and obligations upon trustees, fiduciaries, managers, advisors, and investors.

210. Defendant MEI-GSR has not fulfilled its duties and obligations.

211. Plaintiffs are informed and believe, and thereon allege, that they are interested parties in the Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR's endeavors to market, maintain, service and rent Plaintiffs' GSR Condo Units.

212. Among their duties, Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR are required to prepare accountings of their financial affairs as they pertain to Plaintiffs.

213. Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR have failed to properly prepare and distribute said accountings.

214. Accordingly, Plaintiffs are entitled to a full and proper accounting.

WHEREFORE, Plaintiffs request judgment against the Defendants MEI-GSR and the Grand Sierra Unit Owners Association, as set forth below.

TENTH CLAIM FOR RELIEF
(Specific Performance Pursuant to NRS 116.112, Unconscionable Agreement)

215. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 212 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

216. As alleged herein, Plaintiffs entered into one or more contracts with Defendant MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement and the Unit Maintenance Agreement.

217. The Grand Sierra Resort Unit Rental Agreement is unconscionable pursuant to NRS § 116.112 because MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned or controlled by Defendant MEI-GSR; and (3) GSR Condo Units owned by Individual Unit Owners so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Unit Owners.

218. The Unit Maintenance Agreement is unconscionable pursuant to NRS § 116.112 because of the excessive fees charged and the Individual Unit Owners' inability to reject fee increases.

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WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

ELEVENTH CLAIM FOR RELIEF
(Unjust Enrichment / Quantum Meruit against Defendant Gage Village Development)

219. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 216 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

220. Defendant Gage Village has unjustly benefited from MEI-GSR's devaluation of the GSR Condo Units.

221. Defendant Gage Village has unjustly benefited from prioritization of its GSR Condo Units under MEI-GSR's rental scheme to the immediate detriment of the Individual Unit Owners.

222. It would be inequitable for the Defendant Gage Village to retain those benefits without full and just compensation to the Individual Unit Owners.

WHEREFORE, Plaintiffs request judgment against the Defendant Gage Village, as set forth below.

TWELFTH CLAIM FOR RELIEF
(Tortious Interference with Contract and /or Prospective Business Advantage against Defendants MEI-GSR and Gage Development)

223. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 220 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

224. Individual Unit Owners have contracted with third parties to market and rent their GSR Condo Units.

225. Defendant MEI-GSR has systematically thwarted the efforts of those third parties to market and rent the GSR Condo Units owned by the Individual Unit Owners.

226. Defendant MEI-GSR has prioritized the rental of GSR Condo Units Owned by Defendant Gage Village to the economic detriment of the Individual Unit Owners.

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227. Defendant Gage Village has worked in concert with Defendant MEI-GSR in its scheme to devalue the GSR Condo Units and repurchase them.

WHEREFORE, Plaintiffs request judgment against the Defendants as follows:

1. For the appointment of a neutral receiver to take over control of Defendant Grand Sierra Unit Owners' Association;

2. For compensatory damages according to proof, in excess of $10,000.00;

3. For punitive damages according to proof;

4. For attorneys' fees and costs according to proof;

5. For declaratory relief;

6. For specific performance;

7. For an accounting; and

8. For such other and further relief as the Court may deem just and proper.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that this document does not contain the social security number of any person.

RESPECTFULLY SUBMITTED this 26th day of March, 2013.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

By: */s/ Jarrad C. Miller*
G. David Robertson, Esq.
Jarrad C. Miller, Esq.
Jonathan J. Tew, Esq.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 26th day of March, 2013, I electronically filed the foregoing **SECOND AMENDED COMPLAINT** with the Clerk of the Court by using the ECF system which served the following parties electronically:

Sean L. Brohawn, Esq.
50 W. Liberty Street, Suite 1040
Reno, NV 89501
Attorneys for Defendants / Counterclaimants

/s/ Kimberlee A. Hill
An Employee of Robertson, Johnson, Miller & Williamson

1085
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Attorneys for Defendants / Counterclaimants

IN THE SECOND JUDICAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE 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; DONALD SCHREIFELS, 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, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARRET TOM, individually; ANITA TOM, individually; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and

Case No.: CV12-02222

Dept. No.:10

ANSWER TO SECOND AMENDED COMPLAINT AND COUNTERCLAIM

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; FREDRICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, individually; MAY ANN HOM, as Trustee of the MAY ANN HOM TRUST; MICHAEL HURLEY, individually; DOMINIC YIN, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISINE MECHAM, individually; KWANGSOO SON, individually; SOO YEUN MOON, individually; JOHNSON AKINDODUNSE, 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 HAM, individually; YOUNG JA CHOI, individually; SANG DEE SOHN, individually; KUK HYUNG (CONNIE), individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDERS MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; PATRICIA M. MOLL, individually; DANIEL MOLL, individually; and DOE PLAINTIFFS 1 THROUGH 10, inclusive,

Plaintiffs

v.

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.

/

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company,

Counterclaimant

v.

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE 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; DONALD SCHREIFELS, 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; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; GARRET TOM, individually; ANITA TOM, individually; RAMON FADRILAN, individually; FAYE

FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; 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.; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; NADINE'S REAL ESTATE INVESTMENTS, LLC; ROBERT A. WILLIAMS, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; SOO YEUN MOON, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; KI NAM CHOI, individually; YOUNG JA CHOI, individually; KUK HYUNG (CONNIE) YOO, individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; CHANH TRUONG, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; and DOES 1 through 200, inclusive,

Counter-Defendants

ANSWER

Defendants, MEI-GSR HOLDINGS, LLC, a Nevada limited liability company ("GSR"), GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation ("GSR UOA"), GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company ("Gage Village") (collectively "Defendants"), by and through their counsel of record, SEAN L. BROHAWN, PLLC, for their answer to Plaintiffs' Second Amended Complaint, allege as follows:

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1 through 99 and, therefore, the same are denied.

2. Defendants admit the allegations of Paragraph 100.

3. Defendants deny the allegations of Paragraph 101.

4. Defendants deny the allegations of Paragraph 102.

5. Defendants admit the allegations of Paragraph 103.

6. Answering the allegations of Paragraph 104, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 and, therefore, the same are denied.

7. Answering the allegations of Paragraph 105, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

8. Answering the allegations of paragraph 106, Defendants admit that the GSR Condo Units are part of the Grand Sierra Resort Unit-Owners' Association, and that the GSR Condo Units are located on floors 17 through 24 of the hotel tower of the Grand Sierra Resort & Casino, at 2500 East Second Street, Reno, Nevada. Defendants deny the remaining allegations of Paragraph 106.

9. Defendants admit the allegations of 107.

10. Defendants admit the allegations of Paragraph 108.

11. Defendants deny the allegations of Paragraph 109.

12. Defendants admit the allegations of Paragraph 110.

13. Defendants admit the allegations of Paragraph 111.

14. Defendants deny the allegations of Paragraph 112.

15. Defendants deny the allegations of Paragraph 113.

16. Defendants deny the allegations of Paragraph 114.

17. Defendants deny the allegations of Paragraph 115.

18. Defendants admit the allegations of Paragraph 116.

19. Answering the allegations of Paragraph 117, Defendants admit that the Unit Owners' Association maintains a capital reserve account, and that the Unit Owners' Association collects association dues that vary depending upon the size of the unit, as provided in the

CC&Rs. Defendants deny the remaining allegations of Paragraph 117.

20. Answering the allegations of Paragraph 118, Defendants admit that the Unit Owners pay for certain taxes, unit cleaning services, capital reserve funding for components within the units and for identified elements and systems of the building, routine maintenance of each unit and utilities that service each unit. Defendants deny the remaining allegations of Paragraph 118.

21. Defendants deny the allegations of Paragraph 119.

22. Defendants deny the allegations of Paragraph 120.

23. Defendants deny the allegations of Paragraph 121.

24. Defendants admit the allegations of Paragraph 122.

25. Defendants deny the allegations of Paragraph 123.

26. Defendants deny the allegations of Paragraph 124.

27. Answering the allegations of Paragraph 125, Defendants admit that certain fees paid by Unit Owners are not included within the budget of the Unit Owners' Association, as provided in the CC&Rs. Defendants deny the remaining allegations of Paragraph 125.

28. Defendants deny the allegations of Paragraph 126.

29. Defendants deny the allegations of Paragraph 127.

30. Defendants deny the allegations of Paragraph 128.

31. Defendants deny the allegations of Paragraph 129.

32. Defendants deny the allegations of Paragraph 130.

33. Defendants deny the allegations of Paragraph 131.

34. Answering the allegations of Paragraph 132, Defendants admit that GSR rents GSR Condo Units owned by GSR and Gage Village, as well as some of the GSR Condo Units owned by certain individual condo Unit owners. Defendants deny the remaining allegations of Paragraph 132.

35. Answering the allegations of Paragraph 133, Defendants admit that GSR has entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants deny the remaining allegations of Paragraph 133.

36. Defendants deny the allegations of Paragraph 134.

37. Defendants are without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in Paragraph 135 and, therefore, the same are denied.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 136 and, therefore, the same are denied.

39. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 137 and, therefore, the same are denied.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 138 and, therefore, the same are denied.

41. Defendants deny the allegations of Paragraph 139.

42. Defendants deny the allegations of Paragraph 140.

43. Defendants deny the allegations of Paragraph 141.

44. Defendants admit the allegations of Paragraph 142.

45. Defendants deny the allegations of Paragraph 143.

46. Defendants deny the allegations of Paragraph 144.

47. Defendants deny the allegations of Paragraph 145.

FIRST CLAIM FOR RELIEF

48. Answering the allegations of Paragraph 146, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

49. Defendants admit the allegations of Paragraph 147.

50. Defendants deny the allegations of Paragraph 148.

51. Defendants deny the allegations of Paragraph 149.

52. Defendants deny the allegations of Paragraph 150.

53. Defendants deny the allegations of Paragraph 151.

54. Defendants deny the allegations of Paragraph 152.

55. Defendants deny the allegations of Paragraph 153.

SECOND CLAIM FOR RELIEF

56. Answering the allegations of Paragraph 154, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

57. Defendants admit the allegations of Paragraph 155.

58. Defendants deny the allegations of Paragraph 156.

59. Defendants deny the allegations of Paragraph 157.

60. Defendants deny the allegations of Paragraph 158.

61. Defendants deny the allegations of Paragraph 159.

62. Defendants deny the allegations of Paragraph 160.

63. Defendants deny the allegations of Paragraph 161.

64. Defendants deny the allegations of Paragraph 162.

THIRD CLAIM FOR RELIEF

65. Answering the allegations of Paragraph 163, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

66. Answering the allegations of Paragraph 164, Defendants admit that GSR has entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants deny the remaining allegations of Paragraph 164.

67. Defendants deny the allegations of Paragraph 165.

68. Answering the allegations of Paragraph 166, Defendants admit that GSR has entered into individual Unit Rental Agreements with certain individual condo Unit owners, but has not entered into a global agreement regarding Unit rental with Unit Owners as a whole. Defendants admit that each individual existing rental agreement is enforceable. Defendants deny the remaining allegations of Paragraph 166.

69. Defendants deny the allegations of Paragraph 167.

70. Defendants deny the allegations of Paragraph 168.

71. Defendants deny the allegations of Paragraph 169.

FOURTH CLAIM FOR RELIEF

72. Answering the allegations of Paragraph 170, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

73. Answering the allegations of Paragraph 171, Defendants admit that GSR and Plaintiffs are contractually obligated to each other, under one or more types of agreements between them. Defendants deny the remaining allegations of Paragraph 171.

74. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 172 and, therefore, the same are denied.

75. Defendants deny the allegations of Paragraph 173.

76. Defendants deny the allegations of Paragraph 174.

77. Defendants deny the allegations of Paragraph 175.

78. Defendants deny the allegations of Paragraph 176.

79. Defendants deny the allegations of Paragraph 177.

80. Defendants deny the allegations of Paragraph 178.

81. Defendants deny the allegations of Paragraph 179.

82. Defendants deny the allegations of Paragraph 180.

FIFTH CLAIM FOR RELIEF

83. Answering the allegations of Paragraph 181, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

84. Answering the allegations of Paragraph 182, Defendants admit that GSR and Plaintiffs are contractually obligated to each other, under one or more types of agreements between them. Defendants deny the remaining allegations of Paragraph 182.

85. Answering the allegations of Paragraph 183, Defendants admit that individual rental agreements require GSR to market and rent individually owned units. Defendants deny the remaining allegations of Paragraph 183.

86. Defendants deny the allegations of Paragraph 184.

87. Defendants deny the allegations of Paragraph 185.

88. Defendants deny the allegations of Paragraph 186.

89. Defendants deny the allegations of Paragraph 187.

90. Defendants deny the allegations of Paragraph 188.

SIXTH CLAIM FOR RELIEF

91. Answering the allegations of Paragraph 189, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

92. Answering the allegations of Paragraph 190, Defendants assert that NRS 41.600 speaks for itself. Defendants deny the remaining allegations of Paragraph 190.

93. Answering the allegations of Paragraph 191, Defendants assert that NRS 41.600 speaks for itself. Defendants deny the remaining allegations of Paragraph 191.

94. Answering the allegations of Paragraph 192, Defendants assert that NRS Chapter 598 speaks for itself. Defendants deny the remaining allegations of Paragraph 192.

95. Defendants deny the allegations of Paragraph 193.

96. Defendants deny the allegations of Paragraph 194.

97. Defendants deny the allegations of Paragraph 195.

98. Defendants deny the allegations of Paragraph 196.

99. Defendants deny the allegations of Paragraph 197.

SEVENTH CLAIM FOR RELIEF

100. Answering the allegations of Paragraph 198, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

101. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 199 and, therefore, the same are denied.

102. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 200 and, therefore, the same are denied.

103. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 201 and, therefore, the same are denied.

104. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 202 and, therefore, the same are denied.

105. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 203 and, therefore, the same are denied.

EIGHTH CLAIM FOR RELIEF

106. Answering the allegations of Paragraph 204, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

107. Defendants deny the allegations of Paragraph 205.

108. Defendants deny the allegations of Paragraph 206.

109. Defendants deny the allegations of Paragraph 207.

NINTH CLAIM FOR RELIEF

110. Answering the allegations of Paragraph 208, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

111. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 209 and, therefore, the same are denied.

112. Defendants deny the allegations of Paragraph 210.

113. Defendants are without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in Paragraph 211 and, therefore, the same are denied.

114. Defendants deny the allegations of Paragraph 212.

115. Defendants deny the allegations of Paragraph 213.

116. Defendants deny the allegations of Paragraph 214.

TENTH CLAIM FOR RELIEF

117. Answering the allegations of Paragraph 215, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

118. Answering the allegations of Paragraph 216, Defendants admit that GSR and Plaintiffs are contractually obligated to each other, under one or more types of agreements between them. Defendants deny the remaining allegations of Paragraph 216.

119. Defendants deny the allegations of Paragraph 217.

120. Defendants deny the allegations of Paragraph 218.

ELEVENTH CLAIM FOR RELIEF

121. Answering the allegations of Paragraph 219, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

122. Defendants deny the allegations of Paragraph 220.

123. Defendants deny the allegations of Paragraph 221.

124. Defendants deny the allegations of Paragraph 222.

TWELFTH CLAIM FOR RELIEF

125. Answering the allegations of Paragraph 223, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

126. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 224 and, therefore, the same are denied.

127. Defendants deny the allegations of Paragraph 225.

128. Defendants deny the allegations of Paragraph 226.

129. Defendants deny the allegations of Paragraph 227.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim or cause of action against Defendants for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages and, to the extent of such failure of such mitigation, are precluded from recovery herein.

THIRD AFFIRMATIVE DEFENSE

Defendants allege that the incidents referred to in the Complaint, and any and all injuries and damages resulting therefrom, if any occurred, were caused or contributed to by the acts or omissions of a third party over whom Defendants had no control.

FOURTH AFFIRMATIVE DEFENSE

Defendants allege that the injuries or damages suffered by Plaintiffs, if any, were caused in whole or in part by an independent intervening cause over which these Defendants had no control.

FIFTH AFFIRMATIVE DEFENSE

The injuries or damages, if any, sustained by Plaintiffs were caused in whole, or in part, through the negligence of others who were not the agents of these Defendants or acting on behalf of the these Defendants.

SIXTH AFFIRMATIVE DEFENSE

The injuries or damages, if any, suffered by Plaintiffs, were caused in whole, or in part, or were contributed to by reason of the negligence of Plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by one or more statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs assumed the risk of injury by virtue of its own conduct.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs waived the causes of action asserted herein.

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TENTH AFFIRMATIVE DEFENSE

Defendants presently have insufficient knowledge or information upon which to form a belief as to whether they may have additional, and as yet, unstated affirmative defenses available. Defendants therefore reserve the right to assert additional affirmative defenses in the event discovery indicates that they are appropriate.

WHEREFORE, Defendants pray that:

1. Plaintiffs' Complaint be dismissed, with prejudice.

2. For all litigation expenses, costs, attorney's fees, and other damages incurred in defending against the Complaint; and

3. For such other and further relief as the Court deems proper.

COUNTERCLAIM

Counterclaimant MEI-GSR HOLDINGS, LLC, a Nevada limited liability company ("GSR"), for its counterclaim against Counter-Defendants, alleges as follows:

1. The named Counter-Defendants are all current or former owners of one or more hotel-condominiums within the project known as the Grand Sierra Resort Unit-Owners' Association (the "Project").

2. The Counter-Defendants referred to herein as DOES 1 through 200 are as yet unknown parties to the UMAs an/or CC&Rs referred to herein, or are current or former owners of one or more hotel-condominiums within the Project, and as such owe duties to GSR under such contracts, or based upon other causes of action. GSR will seek leave of this Court to amend this Counterclaim to name such parties at such time as their identities become known to GSR.

3. GSR is a successor declarant in the Project, and as such, is entitled to collect certain non-homeowner's association dues and/or fees under the CC&Rs governing the Project, and under separate Unit Maintenance Agreements between each unit owner in the Project and GSR.

4. GSR has demanded that Counter-Defendants pay the full amount of dues and fees owed by them under the CC&Rs and/or the UMAs, but to date, Counter-Defendants have failed or refused to make all such payments.

5. Additionally, each UMA requires the unit owner to provide active credit card

information to GSR, as a source for payment of certain expenses incurred by the unit owner.

6. Some of the Counter-Defendants have failed or refused to provide active credit card information to GSR, in compliance with the UMAs.

7. Prior to bringing this Counterclaim, GSR provided notice to each Counter-Defendant of the above breaches of the UMAs, and provided each Counter-Defendant with at leas 60 days within which to cure such breaches, however, Counter-Defendants have failed or refused to cure all such breaches.

FIRST CAUSE OF ACTION
(Breach of Contract)

8. GSR incorporates by reference the preceding Paragraphs of this Counterclaim as if set forth at length herein.

9. GSR and Counter-Defendants are parties to the CC&Rs and UMAs.

10. GSR has performed all obligations required to be performed by it under the CC&Rs and UMAs, or was excused from performance of such obligations due to Counter-Defendants' conduct.

11. Counter-Defendants have breached the CC&Rs and UMAs by failing to pay all sums when due under those agreements and/or by failing to provide active credit card information as required by the UMAs, despite individual written demands by GSR.

12. Counter-Defendants' breaches of the CC&Rs and UMAs have foreseeably caused GSR damages in an amount in excess of $10,000, subject to proof at trial.

SECOND CAUSE OF ACTION
(Declaratory Relief)

13. GSR incorporates by reference the preceding paragraphs of this Counterclaim as if set forth at length herein.

14. GSR asserts that the CC&Rs and UMAs are valid and existing contracts to which each Counter-Defendant is a party, and that Counter-Defendants owe duties to GSR under those contracts. On information and belief, Counter-Defendants deny that they owe duties to GSR under the C&Rs and UMAs.

15. An actual controversy has arisen and now exists between GSR and Counter-Defendants concerning their respective rights, entitlements, obligations and duties under the CC&Rs and UMAs.

16. GSR therefore requests a declaratory judgment determining the parties' rights under the CC&Rs and UMAs.

THIRD CAUSE OF ACTION
(Injunctive Relief)

17. GSR incorporates by reference the preceding paragraphs of this Counterclaim as if set forth at length herein.

18. Counter-Defendants are obligated under each UMA to provide active credit card information to GSR to help defray charges incurred under each UMA. Several of the Counter-Defendants have failed or refused to provide such credit card information to GSR.

19. GSR therefore requests that this Court enter a mandatory injunction requiring Counter-Defendants to provide active credit card information to GSR, as required by the UMAs.

WHEREFORE, GSR requests relief against Counter-Defendants as follows:

1. That GSR be granted judgment for all past due dues, fees, and related charges owed by Counter-Defendants under the CC&Rs and UMAs, in an amount in excess of $10,000, subject to proof at trial;

2. That this Court enter a declaratory judgment determining the parties' rights under the CC&Rs and UMAs;

3. That this Court enter a mandatory injunction requiring Counter-Defendants to provide active credit card information to GSR, as required by the UMAs;

4. For costs of suit incurred herein, interest, and attorneys' fees; and

5. For such other and further relief as the Court deems proper.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of May, 2013,

SEAN L. BROHAWN, PLLC

By: _____
Sean L. Brohawn, Esq.
Nevada Bar #7618

50 West Liberty Street, Suite 1040
Reno, NV 89501
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Facsimile: (775) 453-1537
Sean@brohawnlaw.com

Attorneys for Defendants / Counterclaimant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of SEAN L. BROHAWN, PLLC, and that on the date shown below, I caused service of a true and correct copy of the attached:

ANSWER TO SECONDN AMENDED COMPLAINT AND COUNTERCLAIM

to be completed by:

_____ personally delivering

_____ sending via Federal Express or other overnight delivery service

_____ depositing for mailing in the U.S. mail with sufficient postage affixed thereto

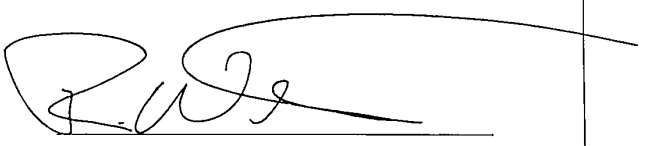
_____ delivery via facsimile machine to fax no._____

__X__ delivery via e-mail/Electronic court filing

addressed to:

G. David Robertson, Esq. (NV Bar No. 1001) Jarrad C. Miller, Esq. (NV Bar No. 7093) Jonathan J. Tew, Esq. (NV Bar No. 11874) Robertson, Johnson, Miller & Williamson 50 West Liberty Street, Suite 600 Reno, Nevada 89501	(775) 329-5600	Attorneys for Plaintiffs

DATED this 23rd day of May, 2013.



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Clerk of the Court
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CODE: 2185
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Attorneys for Plaintiffs

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. AND ALL RELATED MATTERS	Case No. CV12-02222 Dept. No. 10

PLAINTIFFS' MOTION FOR SANCTIONS UNDER NRCP 37(b) FOR FAILURE TO COMPLY WITH COURT ORDERS

Plaintiffs, by and through their counsel of record, the law firm of Robertson, Johnson, Miller & Williamson, hereby submit this Motion for Sanctions under NRCP 37(b) for Failure to Comply with Court Orders ("Motion"). This Motion is supported by the attached memorandum of points and authorities, the papers, pleadings, and documents on file herein, and any oral argument which this Court may choose to hear.

RESPECTFULLY SUBMITTED this 24th day of September, 2013.

ROBERTSON, JOHNSON, MILLER & WILLIAMSON
By: */s/ Jonathan J. Tew*
Jonathan J. Tew, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs have propounded discovery on the Defendants, including a: (1) First Set of Requests for Production of Documents ("First RFP"); (2) Second Set of Requests for Production of Documents ("Second RFP"); and (3) First Set of Interrogatories ("Interrogatories"). Yet, the Defendants have deliberately and willfully elected not to provide the Plaintiffs with complete discovery responses. Indeed, the Defendants failed to produce documents responsive to over half (1/2) of the First RFP requests and provided no response whatsoever to the Second RFP and Interrogatories.

In order to force the Defendants to comply with their discovery obligations under Nevada law, the Plaintiffs filed a Motion to Compel Production of Documents ("First Motion to Compel") and Second Motion to Compel Discovery Responses ("Second Motion to Compel").[1] The Defendants did not oppose either motion. As a result, Discovery Commission Ayres issued two recommendations for order. The first Recommendation for Order ("First Recommendation") required the Defendants to produce for inspection, without objections, all documents responsive to Plaintiffs First RFP by September 13, 2013. It also sanctioned Defendants $1,000. The second Recommendation for Order ("Second Recommendation") required the Defendants to: (1) serve Plaintiffs, without objections, answers to their Interrogatories; and (2) produce for inspection, without objections, all documents responsive to Plaintiffs' Second RFP by September 16, 2013. The Second Recommendation also sanctioned Defendants $1,000.

The Defendants failed to object to either recommendation for order, and this Court subsequently entered orders confirming both recommendations for order (the "Confirming Orders"). Yet, the Defendants defiantly refused to comply with this Courts' Confirming Orders.

With trial less than thirty (30) days away, the Defendants have severely prejudiced Plaintiffs' ability to fully establish their case. Indeed, by withholding critical discovery, the

[1] The Plaintiffs have also filed a third motion to compel, which seeks an order compelling the deposition of Alex Meruelo. However, the deadline to oppose that motion has not yet passed.

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Defendants have prevented the Plaintiffs' experts from completing an expert report, which is essential to proving both liability and damages.

Further, the Defendants have yet to serve their pretrial disclosures under NRCP 16.1(a)(3), and are now in violation of that rule. Pursuant to NRCP 16.1(e)(3), sanctions are also appropriate for failure to comply with NRCP 16.1(a)(3).

Accordingly, the Plaintiffs hereby request that this Court sanction the Defendants by entering a default judgment against them. Undoubtedly, the Plaintiffs seek serious sanctions against the Defendants. However, the Defendants have no one to blame for their discovery misconduct but themselves. This Court should not allow the Defendants to willfully violate the Nevada Rules of Civil Procedure and this Court's orders without serious sanctions – otherwise, renegade litigants will habitually abuse judicial resources and thwart the "just, speedy, and inexpensive determination of every action." NRCP 1.

II. FACTUAL BACKGROUND

A. The Defendants' Failure to Produce Documents Responsive to Plaintiffs' First RFP and Violation of this Court's First Confirming Order

The Plaintiffs hand delivered their First RFP on April 10, 2013. Pursuant to NRCP 34(b), the Defendants were to respond within 30 days, or by May 10, 2013.

On or about May 10, 2013, counsel for the Defendants called and requested an extension of time within which to respond to the discovery requests. (See Exhibit 2 to First Motion to Compel.) The Plaintiffs granted a one-week extension to Thursday, May 16, 2013. Yet, by May 23, 2013, well after the extended deadline had passed, the Plaintiffs had received no response to their First RFP. Accordingly, the Plaintiffs sent Defendants a letter indicating the urgency of timely discovery compliance because of the early trial date. (See Exhibit 2 to First Motion to Compel.)

On May 29, 2013, Plaintiffs' counsel sent Defendants' counsel yet another letter attempting to resolve the discovery dispute without seeking court intervention. (See Exhibit 3 to First Motion to Compel.)

On May 31, 2013, Plaintiffs' counsel spoke with Defendants' counsel confirming that the Defendants would provide the opportunity to review responsive documents via an onsite inspection the week of June 17, 2013. (See Exhibit 4 to First Motion to Compel.)

Plaintiffs' counsel thereafter sent Defendants' counsel a letter on June 4, 2013, which stated that "[o]ur inspection team will consist of myself, one of my staff members and persons from the accounting firm of McGovern & Greene, LLP ("Accountants") . . . . [t]he Accountants will be traveling to Reno from Chicago for the inspection. Thus, ***it is critical*** **that**: (1) the inspection proceeds on the scheduled dates and times; and **(2)** ***all documents and electronic data responsive to the discovery requests be available during the inspection***." (See Exhibit 4 to First Motion to Compel (emphasis supplied).)

The Defendants provided access to their documents at the Grand Sierra Resort. Yet, despite the parties' agreement, the documents the Defendants provided were limited in scope and failed to respond to a significant number of the Plaintiffs' document requests.

On June 28, 2013, counsel for the parties met regarding discovery and other issues. Defendants' counsel indicated that the Defendants would produce additional documents by July 3, 2013. However, no further documents were produced.

Finally, on Wednesday, July 10, 2013, counsel for the Plaintiffs sent Defendants a meet and confer letter, which requested that the Defendants confirm by Friday, July 12, 2013 that they would fully comply with Plaintiffs' First RFP by Monday, July 22, 2013. (See Exhibit 1 to First Motion to Compel.) The meet and confer letter also highlighted that the Defendants' continued delay of the discovery process was preventing the Plaintiffs' experts from completing their reports.

However, the Defendants did not respond to the meet and confer letter. Thus, on July 15, 2013, Plaintiffs filed their First Motion to Compel, which the Defendants failed to oppose. Accordingly, on September 4, 2013, Discovery Commissioner Ayres entered the First Recommendation in favor of the Plaintiffs, which was adopted by this Court's September 20, 2013 Confirming Order (the "First Order"). (A true and correct copy of the First Recommendation is attached hereto as Exhibit 1; a true and correct copy of this Court's First

Order is attached as Exhibit 2.) The First Order required the Defendants to produce for inspection, without objections, all documents responsive to Plaintiffs First RFP by September 13, 2013. (See Exhibit 1 at 3:6-10.) It also sanctioned the Defendants $1,000.

However, the Defendants failed to comply with the First Order by not producing *any* documents prior to the September 13, 2013 deadline.

B. The Defendants' Failure to Respond to Plaintiffs Second RFP and Interrogatories, and Violation of this Court's Second Confirming Order

Plaintiffs propounded their Second RFP and Interrogatories on July 10, 2013. The original deadline to respond was therefore August 12, 2013. However, the Defendants were granted two extensions to comply.

On Tuesday, August 13, 2013, Plaintiffs' counsel sent Defendants' counsel a letter confirming a telephone conversation in which an extension had been granted to 5:00 p.m. on August 14, 2013. (See Exhibit 1 to Second Motion.) Defendants did not respond to the discovery requests by the specified deadline. On Thursday, August 15, 2013, Plaintiffs' counsel sent defense counsel another meet and confer letter. This letter indicated that the discovery responses were expected by 5:00 p.m. on August 15, 2013. (See Exhibit 2 to Second Motion.) In response to the meet and confer letter, counsel for the parties held a telephonic meet and confer in the afternoon of August 15, 2013. However, Defendants once again did not respond to the discovery requests by the specified deadline.

On August 16, 2013, Plaintiffs filed their Second Motion, which the Defendants failed to oppose. Accordingly, on September 5, 2013, Discovery Commissioner Ayres entered the Second Recommendation in favor of the Plaintiffs, which was adopted by this Court's September 19, 2013 Confirming Order (the "Second Order"). (A true and correct copy of the Second Recommendation is attached hereto as Exhibit 3; a true and correct copy of this Court's Second Order is attached as Exhibit 4.) The Second Order required the Defendants to comply with Plaintiffs' Second RFP and Interrogatories, without objections, by September 16, 2013. (See Exhibit 3 at 3:18-20.) It also sanctioned the Defendants $1,000 for their "unexcused failures to respond to Plaintiffs' interrogatories and requests for production." (Exhibit 3 at 19-10.)

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However, the Defendants failed to comply with the Second Order by not producing any documents prior to its September 16, 2013 deadline.

C. The Defendants' Willful Disregard for the Nevada Rules of Civil Procedure and this Court's Confirming Orders has Severely Prejudiced the Plaintiffs' Ability to Establish their Case

The Plaintiffs in this case all own (or have owned) Grand Sierra Resort Condominium Units ("GSR Condo Units"). The GSR Condo Units are part of an apartment style hotel condominium development of 670 units, which 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.

As GSR Condo Unit Owners, the Plaintiffs are parties to various agreements with the Defendants, including: (1) a Unit Rental Agreement; (2) a Unit Maintenance Agreement; and (3) certain declarations of covenants, conditions and restrictions (the "CC&Rs"), which establish the Grand Sierra Unit Owners Association.[2]

The Plaintiffs' Complaint alleges that the Defendants deliberately violated these agreements as part of a scheme to: (1) maximize their profit at the expense of the Plaintiffs; and (2) devalue the GSR Condo Units so that Defendant MEI-GSR could repurchase those units for little or no value.[3] The limited discovery produced to date supports the Plaintiffs' allegations.

In fact, that limited discovery demonstrates that the Defendants, among other things: (1) rented Plaintiffs' units as part of the unit rental program without providing compensation; (2) rented Plaintiffs' units that were not part of the unit rental program without providing compensation; and (3) rented Plaintiffs' units for $0 to $20, while charging Plaintiffs' more than

[2] A few plaintiffs elected not to be part of the unit rental program. Yet, the limited discovery provided to date demonstrates that the Defendants unscrupulously rented their units anyway, and simply pocketed the money.

[3] Indeed, *during the pendency of this litigation*, Defendant Grand Sierra Unit Owners' Association has sold a number of Plaintiffs' units pursuant to NRS Chapter 116 to Defendant MEI-GSR. Worse, certain deposition testimony has revealed that the Defendants failed to comply with the notice requirements of NRS Chapter 116. Finally, the Defendant Unit Owners' Association never provided any notices to Plaintiffs' counsel.

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$20 to clean and maintain the room (thereby requiring Plaintiffs to write checks to the Defendants).

The Plaintiffs suspect that the Defendants are liable for additional misconduct. However, the Defendants refuse to provide Defendants with substantial and critical discovery relating to accounting and financial documents and information, as well as internal Grand Sierra Resort correspondence, which are likely to establish both liability and damages.[4]

Defendants are also now in violation of two of this Court's orders (*i.e.*, the Confirming Orders), which severely prejudices the Plaintiffs by, without limitation: (1) preventing Plaintiffs' access to discovery that is necessary to establish the Plaintiffs' case; (2) preventing Plaintiffs' experts from producing a final expert report; and (3) causing Plaintiffs' litigation costs to skyrocket.[5]

III. LEGAL STANDARD

NRCP 37(b)(2) provides that:

> If a party . . . fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> > (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
> > (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
> > (C) **An order striking the pleadings or parts thereof**, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, **or rendering a judgment by default against the disobedient party;**
> > (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except and order to submit to physical or mental examination;

[4] Plaintiffs are extremely frustrated that the Defendants have failed to produce numerous emails. Indeed, Plaintiffs have copies of emails that the Defendants undoubtedly have, but did not produce. (See Exhibit 5.) Thus, the Defendants' credibility at this stage is extremely questionable.

[5] Plaintiffs incurred significant costs to have their Accountants attend the June 17 – 21 document inspection. In order to maximize the utility of the document inspection, Plaintiffs notified the Defendants that complete discovery was critical because the Accountants would be attending the inspection. (See Section II.A, *supra*.) Yet, the Defendants' production was woefully deficient. Plaintiffs' expect to incur substantial, additional expert costs if the Defendants ever comply with this Court's Confirming Orders.

. . .

> In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(Emphasis supplied.)

Further, "Courts have 'inherent equitable powers to dismiss actions or enter default judgments for . . . abusive litigation practices.'" Young v. Johnny Ribeiro Bldg., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (citations omitted). Finally, the Nevada Supreme Court has noted that where "discovery sanctions are within the power of the district court, this court will not reverse the particular sanctions imposed absent a showing of abuse of discretion." Id.

IV. LEGAL ANALYSIS

A. This Court Should Enter Default Judgment Against the Defendants

Failure to comply with discovery rules may lead to entry of judgment in the nature of a default judgment. When considering this sanction, due process "requires that the discovery sanctions for discovery abuses be just and that the sanctions relate to the claims which were at issue in the discovery order which is violated." Id. Further, the Court's order must contain a detailed explanation of the factors it considered in reaching its conclusion. Id. As the Nevada Supreme Court has noted:

> The factors a court may properly consider include, but are not limited to: the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.

Id.; see also, Kelly Broadcasting Co. v. Sovereign Broadcast, 96 Nev. 188, 192, 606 P.2d 1089, 1091-1092 (1980) (**failing to answer interrogatories** or providing incomplete or evasive answers **may result in entry of default judgment"** (emphasis supplied).)

1. The Defendants' Degree of Willfulness is Substantial

In the present case, the Defendants' degree of willfulness in not providing discovery is severe. As the Plaintiffs' motions to compel and this Motion demonstrate:

- The Defendants have had nearly six (6) months to fully respond to Plaintiffs' First RFP, yet they have failed to provide full discovery.
- The Defendants knew that providing complete discovery with respect to Plaintiffs' First RFP during the week of June 17, 2013 was critical because the Plaintiffs' experts were attending the inspection, yet only limited discovery was provided.
- The Defendants failed to object to any of Plaintiffs' First RFP requests, yet have refused to completely respond to same.
- The Defendants failed to answer any interrogatories or object to same. Because of this failure, the Plaintiffs have no ability to seek additional discoverable information before trial based on the Defendants' answers to interrogatories.
- The Defendants failed to respond to any of Plaintiffs' Second RFP requests or object to same.
- The Defendants forced Plaintiffs to file two (2) motions to compel, and then failed to oppose same. By failing to oppose Plaintiffs motions, they have acknowledged that they have no good faith basis to deny discovery.
- The Defendants have elected to violate two (2) court orders compelling them to produce documents and respond to interrogatories, despite that trial in less than thirty (30) days away.
- The Defendants have misled Plaintiffs by clearly not producing certain correspondence.

In sum, the Defendants' willful refusal to provide discovery is clearly demonstrated by their entire course of conduct. The Plaintiffs generously provided the Defendants with numerous extensions and thoroughly documented every attempt they made to work out each discovery dispute without resorting to motion practice. Yet, the Defendants elected to simply ignore every rule, courtesy or Court order in this case. There is simply no excuse why critical discovery has not been provided now that the parties are on the eve of trial.

2. The Plaintiffs Have Been Severely Prejudiced

As the Court is clearly aware, a three (3) week trial in this case is set to commence in less than thirty (30) days. Further, this case is extremely complicated – there are nearly one hundred (100) plaintiffs, each with his or her own unique facts and damages. Yet, the Defendants have denied Plaintiffs the discovery necessary to fully discover the Defendants' wrongful conduct and the extent of each Plaintiffs' damages. This is severely prejudicial. See Avionic Co. v. General Dynamics Corp., 957 F.2d 555 (8th Cir. 1992) ("In the context of Rule 37(b)(2) motions "prejudice" exists if the failure to make discovery impairs the opponent's ability to determine the factual merits of the party's claim.")

Indeed, the Plaintiffs have repeatedly, and in writing, notified the Defendants that their refusal to provide complete discovery was preventing Plaintiffs' experts from completing their final expert reports. However, the Defendants never responded.

Worse, as the discovery requests demonstrate, Plaintiffs seek substantial and detailed accounting and financial documents, which takes time to review and analyze. By refusing to provide timely discovery, and now by violating this Court's Confirming Orders, it is unclear whether the Defendants will provide discovery in time for the Plaintiffs' experts to complete a final report before trial.

Finally, because a number of the Plaintiffs are elderly, postponement of the trial is simply not possible. And, in fact, an October trial is essential since the Defendant Unit Owners Association continues (despite this litigation) to improperly sell Plaintiffs' units under NRS Chapter 116 to Defendant MEI-GSR (thus perpetuating their scheme to devalue and repurchase units).

In sum, given the irreparable prejudice the Defendants have caused the Plaintiffs, an order of default judgment is the only appropriate sanction. See e.g., In re Phenylpropanolamine (PPA) Products, 460 F.3d 1217, 1236 (9th Cir. 2006) (holding that, with respect to discovery abuses, "[p]rejudice from unreasonable delay is presumed" and failure to comply with court orders mandating discovery "is sufficient prejudice").

3. The Severity of the Discovery Sanction Is Appropriate Given the Discovery Abuses

The entry of default judgment is severe. However, so clearly is the Defendants' abuse of the discovery process and flagrant disregard of this Court's Confirming Orders. Not responding to discovery and not complying with court orders compelling discovery warrants a case terminating sanction. See Kerley v. Aetna Casualty & Sur. Co., 94 Nev. 710, 711, 585 P.2d 1339, 1340 (1978) (finding case terminating sanction appropriate when counsel was served with a motion to compel production of documents, raised no objection to the validity of the requests, filed no motion for protective order, and failed to comply with an order compelling the production of documents.)

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Critically, the Defendants have deliberately thwarted the Plaintiffs' ability to establish the full extent of the Defendants' liability and the Plaintiffs' damages. At this late stage, the Plaintiffs have no ability to conduct follow up discovery based on the Defendants responses to discovery because the Defendants have blatantly failed to respond to more than half (1/2) of Plaintiffs First RFP requests, or *any* of Plaintiffs Second RFP Requests and Interrogatories.

Accordingly, the clear prejudice the Defendants have imposed upon the Plaintiffs warrants a severe sanction.

4. A Less Severe Sanction Would Not Be Feasible or Fair to the Plaintiffs

This Court, rather than entering default judgment against the Defendants, could (1) order that certain designated facts be taken to be established for the purposes of the action; (2) refuse to allow the Defendants to support or oppose designated claims or defenses; and / or (3) prohibit the Defendants from introducing designated matters in evidence. [6]

As was noted above, there are nearly one hundred (100) plaintiffs in this case – each with his or her own unique set of facts with respect to liability and damages. Accordingly, it would seemingly be very difficult to designate "across-the-board" facts as being established.

Further, many of the Plaintiffs' discovery requests seek significant accounting and financial information that is necessary to proving liability and damages. Thus, the Plaintiffs need this information, and prohibiting the Defendants' use of same at trial would likely not amount to much of a sanction.

Finally, while refusing to allow the Defendants to support or oppose designated claims or defenses would be more feasible and fair than the other less severe alternatives, the Plaintiffs still contend that the factors discussed herein weigh heavily in favor of an order of default judgment against the Defendants.

5. A Severe Sanction Would Promote Rule 1 of the Nevada Rules of Civil Procedure and Operate to Deter Future Discovery Abuses

Rule 1 of the Nevada Rules of Civil Procedure provides:

---

[6] This Court can also strike all (or portions) of the Defendants' Answer in lieu of entering default judgment.

> These rules govern the procedure in the district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. **They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.**

(emphasis supplied.)

The Defendants repeatedly flouted the Nevada Rules of Civil Procedure and willfully violated this Court's orders. By doing so, they have compromised the Plaintiffs' ability to fully establish their case and prepare for trial. This Court should not condone such behavior, but instead, should enter default judgment against the Defendants. Such a sanction would send the appropriate message that compliance with the Nevada Rules of Civil Procedure and court orders is not optional – whether you are the Grand Sierra Resort or indigent.

B. This Court Should Also Sanction the Defendants by Prohibiting Them From Opposing the Expert Opinion and Testimony of Plaintiffs' Expert

The Defendants have prevented Plaintiffs' expert from producing a final expert report by providing severely limited discovery. As such, this Court should prohibit the Defendants from opposing Plaintiffs' expert's testimony and expert report.

C. This Court Should Also Enter Default Judgment Against the Defendants Pursuant to NRCP 16.1(e)(3) for Their Failure to Comply with NRCP 16.1(a)(3)

The Defendants' pretrial disclosures were due September 20, 2013. However, to date, the Defendants have yet to serve Plaintiffs with their pretrial disclosures. NRCP 16.1(a)(3) provides:

> **(3) Pretrial Disclosures.** In addition to the disclosures required by Rule 16.1(a)(1) and (2), a party must provide to other parties the following information regarding the evidence that it may present at trial, including impeachment and rebuttal evidence:
>
> > (A) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present, those witnesses who have been subpoenaed for trial, and those whom the party may call if the need arises;
> > (B) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and
> > (C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately

> identifying those which the party expects to offer and those which the party may offer if the need arises.
>
> **Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial.** Within 14 days thereafter, unless a different time is specified by the court, a party may serve a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under NRS 48.025 and 48.035, shall be deemed waived unless excused by the court for good cause shown.

(Emphasis supplied.)

Thus, the Defendants are in violation of NRCP 16.1(a)(3) because they did not serve their pretrial disclosures more than thirty (30) days before trial. NRCP 16.1(e)(3) provides:

> **(e) Failure or Refusal to Participate in Pretrial Discovery; Sanctions.**
>
> (3) **If an attorney fails to reasonably comply with any provision of this rule**, or if an attorney or a party fails to comply with an order entered pursuant to subsection (d) of this rule, the court, upon motion or upon its own initiative, **shall impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:**
>
> > **(A)** ***Any of the sanctions available pursuant to Rule 37(b)(2)*** **and Rule 37(f);**
> >
> > (B) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a).

(Emphasis supplied.)

Thus, not only is default judgment appropriate due to the Defendants' willful violation of this Court's Confirming Orders, it is also appropriate under NRCP 16.1(e)(3). Indeed, the Defendants have now *further prejudiced* the Defendants by making it more difficult for Plaintiffs to file motions in limine.

V. CONCLUSION

The Defendants' behavior in this case with respect to discovery has been appalling. They have repeatedly and persistently ignored their obligations under the Nevada Rules of Civil Procedure, and now have flaunted two (2) orders of this Court. Worse, the Defendants' discovery

failures have deeply prejudiced the Plaintiffs' ability to fully establish their case. For these reasons, this Court should enter default judgment against the Defendants and require that the Defendants pay for Plaintiffs' attorneys fees and costs in briefing this sanctions dispute.

AFFIRMATION

Pursuant to NRS § 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 24th day of September, 2013.

ROBERTSON, JOHNSON, MILLER & WILLIAMSON

By: */s/ Jonathan J. Tew*
Jonathan J. Tew, Esq.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 24th day of September, 2013, I electronically filed the foregoing **PLAINTIFFS' MOTION FOR SANCTIONS UNDER NRCP 37(b) FOR FAILURE TO COMPLY WITH COURT ORDER**S with the Clerk of the Court by using the ECF system which served the following parties electronically:

Sean L. Brohawn, Esq.
Reese Kintz & Brohawn, LLC
936 Southwood Boulevard, Suite 301
Incline Village, NV 86451
Attorneys for Defendants / Counterclaimants

/s/ Jonathan J. Tew
An Employee of Robertson, Johnson, Miller & Williamson

Index of Exhibits

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2.	Confirming Order, filed September 20, 2013	3
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4.	Confirming Order, filed September 19, 2013	3
5.	Email communication, dated October 27-28, 2011	1

EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

FILED
Electronically
09-04-2013:11:52:11 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3970473

CODE NO. 1945

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.

Case No. CV12-02222

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company, et al.,

Dept. No. 10

Defendants.
_____/

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company,

Counterclaimant,

vs.

ALBERT THOMAS, individually, et al.

Counterdefendants.
_____/

RECOMMENDATION FOR ORDER

Presently before the Court is *Plaintiffs' Motion to Compel Production of Documents*, filed on July 15, 2013. Essentially, Plaintiffs state that they served Defendants MEI-GSR Holdings, LLC, Grand Sierra Resort Unit Owners' Association, and Gage Village Commercial Development, LLC, with a request for production of documents on April 10, 2013. Defendants provided access to certain documents on June 17, 2013, but that production was deficient. During a meeting on June

28, 2013, Defendants agreed to produce additional documents by July 3, 2013; however, no additional documents were produced. Plaintiffs' counsel then sent a letter to Defendants' counsel regarding this discovery dispute, but he received no response. Plaintiffs now seek an order compelling Defendants to fully comply with the request for production, and to reimburse them for the costs incurred in connection with this motion. Defendants were served with a copy of the motion, but filed no response. The motion was submitted for decision on August 7, 2013, and it was referred to the Discovery Commissioner on August 19, 2013.

Failure of an opposing party to serve and file a written opposition to a motion may be construed as an admission that the motion is meritorious and a consent to granting the same. See DCR 13(3). Since Defendants filed no opposition to this motion, the Court may properly assume that the statements set forth in Plaintiffs' motion are true and correct. In addition, any objections that Defendants might have had to the discovery requests at issue were waived by their failure to serve timely responses. See NRCP 34(b) (response to request for production generally is due within thirty days after service of the request); see also, e.g., Krewson v. City of Quincy, 120 F.R.D. 6, 7 (D. Mass. 1988) (failure to serve timely response to request for production constitutes a waiver of any objection to categories of that request). Plaintiffs are therefore entitled to an order directing Defendants to produce the requested documents and information described in their request for production. The specific omissions are identified in Plaintiffs' motion.

Plaintiffs also seek an award of the expenses they incurred in connection with this motion. Our rules authorize such an award:

> If the motion [to compel] is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

NRCP 37(a)(4). Absent any opposition by Defendants, the Court cannot conclude that opposition to

the motion was substantially justified. In addition, the Court is aware of no circumstances demonstrating that an award of expenses would be unjust. Significantly, Plaintiffs have shown that their counsel attempted to confer with Defendants' counsel in an effort to avoid court action.[1]

ACCORDINGLY, *Plaintiffs' Motion to Compel Production of Documents* should be GRANTED.

IT SHOULD, THEREFORE, BE ORDERED that Defendants produce for inspection and copying by Plaintiffs, without objections and no later than September 13, 2013, all documents and information within their possession, custody, or control that fall within the scope of the request for production of documents previously served upon Defendants on or about April 10, 2013, and that Defendants also failed to previously produce in this action.

IT SHOULD FURTHER BE ORDERED that Defendants, collectively, pay to Plaintiffs, collectively, the sum of $1,000, as and for an award of the reasonable expenses incurred by Plaintiffs in making this motion to compel.

DATED: This 3rd day of September, 2013.

WESLEY M. AYRES
DISCOVERY COMMISSIONER

[1] Because both parties had the opportunity to fully express their positions in writing, they have had the "opportunity to be heard" required by NRCP 37(a)(4)(A). See Hartman v. Caplan, 115 F.R.D. 599, 602 (N.D. Ill. 1987); Addington v. Mid-American Lines, 77 F.R.D. 750, 752 n.1 (W.D. Mo. 1978).

CERTIFICATE OF SERVICE

CASE NO. CV12-02222

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 4th day of September, 2013, I electronically filed the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

G. ROBERTSON, ESQ. for CAYENNE TRUST et al.

JARRAD MILLER, ESQ. for CAYENNE TRUST et al.

JONATHAN TEW, ESQ. for CAYENNE TRUST et al.

SEAN BROHAWN, ESQ. for GRAND SIERRA RESORT UNIT-OWNERS' ASS'N et al.

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

Brandy Almond
Court Clerk

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

FILED
Electronically
09-20-2013:04:13:35 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4012403

CODE NO. 2690

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. CV12-0222

Dept. No. 10

MEI-GSR HOLDINGS, LLC, a Nevada limited Liability company,

Counterclaimant,

vs.

ALBERT THOMAS, individually, et al.

Counter Defendants.
_____/

CONFIRMING ORDER

On September 4, 2013, the Discovery Commissioner served a *Recommendation for Order* in this action. None of the parties to this action has filed an objection regarding that recommendation and the period for filing any objection concerning that recommendation has expired. See NRCP 16.1(d)(2).

ACCORDINGLY, the Court hereby CONFIRMS, APPROVES, and ADOPTS the Discovery Commissioner's Recommendation for Order served on September 4, 2013.

DATED this 20 day of SEPTEMBER, 2013.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV12-02222

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 20th day of SEPTEMBER, 2013, I electronically filed the **CONFIRMING ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

G. ROBERTSON, ESQ., for CAYENNE TRUST, et al.

JARRAD MILLER, ESQ., for CAYENNE TRUST, et al.

JONATHAN TEW, ESQ., for CAYENNE TRUST, et al.

SEAN BROHAWN, ESQ. for GRAND SIERRA RESORT UNIT-OWNERS' ASS'N et al.

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

Mikki Merkouris
DIO court clerk

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

FILED
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09-05-2013:04:30:55 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3976102

CODE NO. 1945

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.

Case No. CV12-02222

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company, et al.,

Dept. No. 10

Defendants.
_____/

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company,

Counterclaimant,

vs.

ALBERT THOMAS, individually, et al.

Counterdefendants.
_____/

RECOMMENDATION FOR ORDER

Presently before the Court is *Plaintiffs' Second Motion to Compel Discovery Responses*, which was filed on August 16, 2013. Essentially, Plaintiffs state that they served Defendants MEI-GSR Holdings, LLC, Grand Sierra Resort Unit Owners' Association, and Gage Village Commercial Development, LLC, with a set of interrogatories and a second request for production of documents on July 10, 2013. Plaintiffs subsequently extended the deadline for Defendants' responses to

August 14, 2013; however, no responses were served by that deadline. In a letter faxed to Defendants' counsel on August 15, 2013, Plaintiffs' counsel observed that Defendants' responses are overdue, and that a motion to compel would be filed unless the responses were served immediately. Counsel for both sides also spoke with each other on August 15, 2013, regarding the overdue responses. Despite these communications, no responses have been served. Plaintiffs now seek an order compelling Defendants to provide the requested information and documents, and to reimburse them for the costs incurred in connection with this motion. Defendants were served with a copy of the motion, but they filed no response. The motion was submitted on September 4, 2013.

Failure of an opposing party to serve and file a written opposition to a motion may be construed as an admission that the motion is meritorious and a consent to granting the same. See DCR 13(3). Since Defendants filed no opposition to this motion, the Court may properly assume that the statements set forth in Plaintiffs' motion are true and correct. In addition, any objections that Defendants might have had to the discovery requests at issue were waived by their failure to serve timely responses. See NRCP 33(b)(3); (response to interrogatories generally is due within thirty days after service of the interrogatories); id. 34(b) (response to request for production generally is due within thirty days after service of the request); see also, e.g., Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981) (failure to object to interrogatories within the time fixed by rule generally constitutes a waiver of any objection); Krewson v. City of Quincy, 120 F.R.D. 6, 7 (D. Mass. 1988) (failure to serve timely response to request for production constitutes a waiver of any objection to categories of that request). Plaintiffs are therefore entitled to an order directing Defendants to provide the requested information and documents.

Plaintiffs also seek an award of the expenses they incurred in connection with this motion. Our rules authorize such an award:

> If a party . . . fails . . . to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or . . . to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just . . . In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to

> pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

NRCP 37(d); see also id. 37(a)(4) (prevailing party on a motion to compel generally is entitled to an award of related expenses). Absent any opposition by Defendants, the Court cannot conclude that opposition to the motion was substantially justified. In addition, the Court is aware of no circumstances demonstrating that an award of expenses would be unjust. Significantly, Plaintiffs have shown that their counsel attempted to confer with Defendants' counsel in an effort to avoid court action.[1]

ACCORDINGLY, *Plaintiffs' Second Motion to Compel Discovery Responses* should be GRANTED.

IT SHOULD, THEREFORE, BE ORDERED that Defendants serve upon Plaintiffs, without objections and no later than September 16, 2013, answers to the interrogatories previously served upon Defendants in this action on July 10, 2013.

IT SHOULD FURTHER BE ORDERED that Defendants produce for inspection and copying by Plaintiffs, without objections and no later than September 16, 2013, all documents and information within their possession, custody, or control that fall within the scope of Plaintiffs' second request for production of documents previously served upon Defendants on or about July 10, 2013.

IT SHOULD FURTHER BE ORDERED that Defendants, collectively, pay to Plaintiffs, collectively, the sum of $1,000, as and for a sanction for Defendants' unexcused failures to respond to Plaintiffs' interrogatories and requests for production.

DATED: This 5th day of September, 2013.

WESLEY M. AYRES
DISCOVERY COMMISSIONER

[1] Because both parties had the opportunity to fully express their positions in writing, they have had the "opportunity to be heard" required by NRCP 37(a)(4)(A) (to the extent that rule might be applicable to this motion). See Hartman v. Caplan, 115 F.R.D. 599, 602 (N.D. Ill. 1987); Addington v. Mid-American Lines, 77 F.R.D. 750, 752 n.1 (W.D. Mo. 1978).

CERTIFICATE OF SERVICE

CASE NO. CV12-02222

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the ___ day of September, 2013, I electronically filed the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

G. ROBERTSON, ESQ. for CAYENNE TRUST et al.

JARRAD MILLER, ESQ. for CAYENNE TRUST et al.

JONATHAN TEW, ESQ. for CAYENNE TRUST et al.

SEAN BROHAWN, ESQ. for GRAND SIERRA RESORT UNIT-OWNERS' ASS'N et al.

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

Annemarie Simpsdn
Court Clerk

EXHIBIT “4”

EXHIBIT “4”

EXHIBIT “4”

FILED
Electronically
09-19-2013:04:19:16 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4009486

CODE NO. 2690

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. CV12-0222

Dept. No. 10

MEI-GSR HOLDINGS, LLC, a Nevada limited Liability company,

Counterclaimant,

vs.

ALBERT THOMAS, individually, et al.

Counter Defendants.
_____/

CONFIRMING ORDER

On September 5, 2013, the Discovery Commissioner served a *Recommendation for Order* in this action. None of the parties to this action has filed an objection regarding that recommendation and the period for filing any objection concerning that recommendation has expired. See NRCP 16.1(d)(2).

ACCORDINGLY, the Court hereby CONFIRMS, APPROVES, and ADOPTS the Discovery Commissioner's Recommendation for Order served on September 5, 2013.

DATED this 19 day of SEPTEMBER, 2013.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV12-02222

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 19 day of SEPTEMBER, 2013, I electronically filed the **CONFIRMING ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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JONATHAN TEW, ESQ., for CAYENNE TRUST, et al.

SEAN BROHAWN, ESQ. for GRAND SIERRA RESORT UNIT-OWNERS' ASS'N et al.

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]

Sheila Mansfield

EXHIBIT "5"

EXHIBIT "5"

EXHIBIT "5"

From: Jennifer Campbell <Jennifer.Campbell@GrandSierraResort.com>
To: Melvin Cheah <melvin.cheah@sbcglobal.net>
Sent: Friday, October 28, 2011 4:44 PM
Subject: RE: Mailing address change

Hi Melvin,

I have sent the change to accounting and have changed in my database. For your convenience, I am attaching your September statements. When the mail is returned to us, we will resend the check to your new address.

Sincerely,

Jennifer Campbell
Condo Owner Service Coordinator
Grand Sierra Resort and Casino
2500 East Second Street
Reno, Nevada 89595

p. 775.789.5354
f. 775.788.6996

www.grandsierraresort.com
Get Lucky at GSR

From: Melvin Cheah [mailto:melvin.cheah@sbcglobal.net]
Sent: Thursday, October 27, 2011 4:48 PM
To: Jennifer Campbell
Subject: Mailing address change

Jennifer,

Can you please update my mailing address on file for everything related to unit 1911 to

3330 Sterling Ct
Napa, CA 94558

Thanks. I don't know if I informed you previously but I'm finding things show up at the old address and slipping

through the cracks because I'm not getting them on time. Please update everything including payments from the rental rotation and all statements and communications. Thanks.

Mel.

FILED
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12-18-2013:11:09:01 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4206388

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 REGARDING ORIGINAL MOTION FOR CASE CONCLUDING SANCTIONS

Albert Thomas et al ("the Plaintiffs") filed a Motion for Sanctions Under NRCP 37(b) for Failure to Comply with Court Orders ("the Motion") on September 24, 2013. The Court enter an Oder Shortening time on September 27, 2013, in light of the fast-approaching trial date. The Defendants were to file an opposition no later than 5:00 p.m. on October 2, 2013. No opposition was filed by this deadline. On October 3, 2103, the Plaintiffs requested that this matter be submitted for decision. Approximately one hour later, MEI-GSR Holdings, LLC et al ("the Defendants") filed an Opposition to Plaintiffs' Motion for Sanctions ("the Opposition"). The Plaintiffs filed a Reply in Support of Plaintiffs' Motion for Sanctions Under NRCP 37(b) for Failure to Comply with Court Orders ("the Reply") on October 4, 2013. An Errata to the Reply was filed later that day. The Plaintiffs contemporaneously resubmitted the matter for the Court's decision.

The Motion asked the Court to strike the Defendants' Answer. This would effectively end the case, leaving only the issue of damages to be decided. The Court issued an Order on October 17,

2013 ("the October Order") in which the factual background of the discovery issues are fully and adequately recited. The Court hereby adopts that factual recitation, making specific note of the Defendants' repeated failures to respond to the Plaintiffs' motions to compel, to object to Commissioner Ayers' Recommendations for Order, and to comply with the Adopted Orders of this Court based off of Commissioner Ayers' recommendations. *See*, October Order, 2:23 – 6-9. The Court felt a hearing would assist in assessing the extent to which sanctions were appropriate. A three-day hearing commenced on October 21, 2013, at approximately 1:30 p.m.[1] Over the course of those three days the Court heard testimony from Craig Greene, a financial investigator, Caroline Rich, the Grand Sierra Resort's Controller, and William Lee Burtch, the Grand Sierra Resort's Senior Vice President of Innovation and Technology. The Court conducted a lengthy analysis under Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990), and ultimately declined to impose case-concluding sanctions. The Court instead struck the Defendants' counterclaims and ordered that the Defendants pay all attorney's fees and costs associated with the three-day hearing.

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 Court did not grant such a sanction. However, the Court did thoroughly analyze those factors in reaching its decision to impose the lesser sanctions. This Order memorializes the Court's findings and will thus detail each factor, *infra*.

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

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[1] The two-week trial was originally set to begin on October 21, 2013. In an in-chambers status conference on October 16, 2013, the Court informed counsel that trial could not start on the scheduled date due to failures in discovery. The Court pushed back the trial date two days to October 23, 2013. Notwithstanding the advance notice and extra time, the Defendants failed to submit their proposed jury instructions in violation of WDCR 7(8). The Defendants' counsel did not assist the Court staff with marking exhibits prior to the scheduled trial date, and failed to timely file a trial statement as required by WDCR 5. Lastly, the Court noted at the hearing that the Defendants' pretrial disclosures were filed two weeks late, in violation of N.R.C.P. 16.1(3).

misconduct of his or her attorney, and (8) the need to deter parties and future litigants from similar 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 Plaintiffs alleged that the discovery failures in this case were deliberate and willful. The Court found that there was no doubt that certain failures laid at the feet of the Defendants. The Defendants failed to comply with discovery orders and failed to meet the extended production deadlines to which they agreed. However, after hearing testimony from Caroline Rich, the Court could not find that such failure was willful. The fact that emails were not produced and accounts were not searched did not appear to be an intentional disruption of the discovery process by the employees of the Defendant. Ms. Rich did her best to produce what she felt was relevant. Although her judgment excluded pertinent material, such oversight did not rise to the level of willfulness. Further, the Court could not find that the Defense attorneys Mr. Brohawn or Mr. Reese willfully obstructed the discovery process.

The Court next considered the possible prejudice to the Plaintiffs if a lesser sanction were imposed. "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 v. Service Control Corp, 111 Nev. 866, 870, 900 P.2d 323, 325 (1995). While a case-concluding sanction would benefit the Plaintiffs, the Court found that (1) lesser sanctions could be imposed, and (2) such sanctions would not unduly cause the Plaintiffs prejudice. Instrumental in this finding was the Plaintiffs' Counsel's own admission that, if necessary, they could go to trial in a matter of days with the information that they had at that point.

Thirdly, the Court compared the severity of dismissal to the severity of the discovery abuse. The Court again affirmatively found that discovery failures had occurred. The severity of those abuses was not determinable and thus did not warrant ending the case in favor of the Plaintiffs. There was no evidence as to who was at fault for the failures to produce information. Further, the Court found that the good faith effort of Caroline Rich eliminated the possibility that the violations should be met with such a severe sanction.

In looking at the fourth factor, 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 fact that evidence had not been produced is not the same as the destruction or loss of evidence. This factor was not particularly helpful in the Court's determination.

Fifth, 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 Court excluded from its consideration certain possible sanctions. For example, the Court found that it would not be feasible to order a jury to deem a fact relating to withheld evidence to be true, when the Court itself could not find that such evidence in fact existed. Notwithstanding, the Court found that other sanctions could be feasible and fair to both parties.

The Court considered the 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. The Court found that it could employ non-case concluding sanctions to accomplish both of these prerogatives.

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 Defendants produced some, albeit incomplete, information to the Plaintiffs. The evidence did not show that Mr. Brohawn, Mr. Reese, or their firm was directing the client to hide or destroy evidence. While the abuses amount to the kind of misconduct that warrants some sort of sanction, they do not warrant penalizing the Defendants themselves with the extreme sanction of concluding the case.

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The Nevada Supreme Court offered guidance as to sanctions that may be imposed in lieu of case-concluding sanctions. "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). Under those fundamental notions and upon balance of the Young factors, the Court found the following sanctions to be appropriate:

1. All of the Defendants' counterclaims were stricken.[2]
2. The Defendants would bear the reasonable cost associated with the three-day hearing, including attorney's fees, expert witness fees and all other reasonable expenses.[3]

IT IS SO ORDERED.

DATED this 18 day of December, 2013.

ELLIOTT A. SATTLER
District Judge

[2] *See*, NRCP 37(b)(2)(when a party fails to comply with a court order, the court may strike pleadings or parts thereof). *See also* GNLV Corp., 111 Nev. at 871, 900 P.2d at 326 (suggesting that a Court can strike a party's cross-claim as an appropriate sanction).

[3] *See* NRCP 37(b)(2)("[T]he Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure" to comply).

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

DATED this 18th day of December, 2013.

SHEILA MANSFIELD
Judicial Assistant

FILED
Electronically
2014-10-03 02:02:11 PM
Cathy Hill
Acting Clerk of the Court
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

ORIGINAL

FILED
2014 OCT 16 PM 1:41
CATHY HILL
ACTING CLERK OF THE COURT
BY _____ DEPUTY

CODE: 2490
Jarrad C. Miller, Esq. (NV Bar No. 7093)
Jonathan J. Tew, Esq. (NV Bar No. 11874)
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
(775) 329-5600
Attorneys for Plaintiffs

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

MOTION FOR APPOINTMENT OF RECEIVER

Plaintiffs, by and through their attorneys of the law firm of Robertson, Johnson, Miller and Williamson, hereby respectfully move this court for appointment of a receiver for the purpose of implementing compliance with the covenants codes and restrictions, maintenance agreements and rental agreements governing the contractual relationships between the parties, and to enjoin the above-captioned Defendants from interfering therewith (the "Motion").

This Motion is made and based upon the Memorandum of Points and Authorities attached hereto, filed concurrently herewith and incorporated herein by reference, the papers and pleadings on file herein, and any oral argument that this Court may consider at any hearing on this Motion.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 16th day of October, 2014.

ROBERTSON, JOHNSON
MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

By: _____
Jonathan J. Tew, Esq.
Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

This Statement of Facts is made and based upon the Declaration of Jarrad C. Miller, Esq., filed concurrently herewith and incorporated herein by reference.

In 2006, Grand Sierra Operating Corp, D/B/A Grand Sierra Resort & Casino converted 670 of its nearly 2000 hotel rooms into hotel-condominium units for sale to third parties. 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 within the Grand Sierra Resort Casino. All 670 of the GSR Condo Units are governed by the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs") (See Exhibit 1.)

Under the CC&Rs, the GSR Condo Unit owners are required to enter into a "Unit Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein Defendant 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). (See Exhibit 1 at page 4 and Exhibit 2.)

The Plaintiffs purchased condo units ("Individual Condo Units") in the Grand Sierra Resort & Casino ("GSR") as an investment.[1] The law dictates that a "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." (See Exhibit 3.) The units cannot be occupied as permanent residences. Thus, their value is a function of short-term rental income derived from paying hotel guests.

The average unit originally sold for an amount in excess of $200,000. (See Exhibit 4, Purchase and Sale Agreement with buyers, and also Plaintiffs, George and Melissa Vagujhelyi, in the amount of $230,000.)[2]

In marketing the GSR Condo Units for sale to investors, each owner was given the opportunity to participate in GSR's rental program under a rental rotation system that provided for equal rotation of all comparable units. To participate, each individual unit owner entered into a unit rental agreement (the "Unit Rental Agreement") with the GSR. (See Exhibits 5.) At its essence, Individual Condo Owners and GSR shared equally in the rental revenue after deduction of the Daily Use Fee. (Id. at page 8.)

Thus, the three contracts that govern the relationship between the parties are the CC&Rs, Unit Maintenance Agreement and Unit Rental Agreements (collectively "Governing Documents"). (See Exhibits 1, 2 and 5).

On March 31, 2011, the GSR was purchased for approximately $42,000,000 by Defendant MEI-GSR. As a result of the purchase, Defendant MEI-GSR acquired/was assigned all of the rights and duties of the prior own under the Governing Documents.

Defendant MEI-GSR almost immediately terminated the Original Unit Rental Agreements for all private unit owners. (See Exhibit 6.) Next, Defendant MEI-GSR gave all private unit owners the take it or leave it option of signing a new Unit Rental Agreement which

---

[1] Only a few Plaintiffs purchased units for leisure and use only.

[2] The majority of the Plaintiffs in this case purchased their units at or around the average original sales price. However, some of the Plaintiffs purchased their units at a much lower sales price from the original condo purchaser.

dictated that all of the Defendants' condo units will be rented prior to other Plaintiff-owned Units. (See Exhibit 6 & 7.) The new Unit Rental Agreement generally resulted in the private unit owners *owing money each month to Defendant MEI-GSR rather than receiving revenue*. An equal rotation system with other similar units within the UOA was the very foundation upon which the units were purchased by Plaintiffs as a viable investment. Essentially, Plaintiffs' units would only be rented during peak occupancy, yet Defendant MEI-GSR charged the Individual Unit Owners full fees under the Governing Documents. 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. and reserves. (Essentially, Defendant MEI-GSR took Plaintiffs' Units out of the rental rotation and continued to demand full payment of fees for units that were seldom being used.) Defendants' goal was to get the individual unit owners to sell their units to Defendants. (See, e.g., Exhibits 8.)

Some Plaintiffs agreed to rent their Individual Condo Units under the new, unequal, Unit Rental Agreement. Ultimately, Defendant MEI-GSR defrauded the Plaintiffs that were in the Unit Rental Program by over-comping their units, by sending false invoices and not paying those Plaintiffs money that was owed under the contracts. (See Exhibit 9 at p.6.) Defendant MEI-GSR also defrauded the Plaintiffs that were not part of the new Unit Rental Program by willfully renting their units without their permission, and simply pocketing the profit. (See Exhibit 9 at p.11.) Worse, Defendant MEI-GSR sent these particular Plaintiffs false invoices showing that their rooms were not rented.

The Defendants simply engaged in misconduct and committed breaches under the Unit Rental Program. For example, they: (1) comped Plaintiffs' units to gamblers they were not allowed to comp under the Unit Rental Program; (2) comped Plaintiffs' units well over the number of times allowed under the Unit Rental Program; (3) comped Plaintiffs' units that were not part of the Unit Rental Program. (See Exhibit 9 at p.14.)

In an attempt to obtain relief, some Plaintiffs used the services of a third-party company, IndyHAP. (See Exhibit 10.) The Defendants undertook numerous means to drive IndyHap out of business, such as withholding payments, preventing advertising and booking Plaintiffs' units

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without their permission, such that IndyHAP guests would not be able to use the units. (See Exhibit 11.) Their efforts were successful. IndyHAP closed its operations at the end of 2012. (See Exhibits 12.)

Thus, within less than two years, Defendants had cutoff revenue to Plaintiffs by eliminating an equal rotation system and driving IndyHAP out of business. As a result of cutting off revenue, the Defendants purchased 98 privately held units between April of 2011 and October of 2012. The Defendants purchased 98 units at an average purchase price of $12,193. (See Exhibit 13.) In procuring the purchase of the 98 units during that time period, the Defendants were sending false invoices to the owners, Owner Account Statements, underreporting room usage, comps and income. Remarkably, the Defendants would tell blatant verbal lies to induce the sale of units, which is confirmed by the deposition testimony of the Defendants' employee, Susie Ragusa. (See Exhibit 9 & 14.)

The CC&RS provide that there shall be one vote for each unit within the UOA. (See Exhibit 1.) Defendants MEI-GSR and Gage Village have continuously maintained control of the UOA by using its votes to appoint two of the three members to the UOA board. (See Exhibit 15.) The Defendants' choices for the Board have been *employees of the Defendants*. Defendant MEI-GSR employees used their positions on the UOA board to the detriment of the Plaintiffs. The Defendant MEI-GSR employees formulated a strategy to terminate the UOA by acquiring 80% of the units so that they can terminate the UOA under NRS § 116.2118. (See Exhibit 16.)

LEGAL ARGUMENT

A. This Court Should Appoint James S. Proctor as Receiver to Implement Compliance with the Governing Documents

1. Plaintiffs are Entitled to the Appointment of a Receiver Pursuant to N.R.S § 32.010.

N.R.S. § 32.010 provides, in pertinent part, as follows:

> A receiver may be appointed by the court in which an action is pending, or by the judge thereof:
> . . .
> 1. **In an action** by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the

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> creditor's claim, **or between** partners or **others jointly owning or interested in any property or fund, on application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.**
>
> . . .
>
> 6. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity.

(Emphasis supplied.)

The Nevada Supreme Court has typically approved the appointment of a receiver 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 that interest. See Bowler v. Leonard, 70 Nev. 370, 269 P.2d 833 (1954). As discussed *infra* and *supra*, each of these elements is satisfied by the facts in this case.

a. Plaintiff has an interest in the property.

As discussed above, Plaintiffs own Individual Condo Units.

b. The Plaintiffs' interests in the property are threatened.

Without a receiver, Plaintiffs' interest in the property is threatened by the continuing violations of the Governing Documents.

c. Appointing a receiver is the only adequate remedy.

Appointing a receiver is the only way to ensure Defendants' compliance with the Governing Documents.

When any ultimate judgment will be empty of relief because of the loss of subject matter or the waste of proceeds, a receiver should be appointed. See Bowler v. Leonard, 70 Nev. 370, 269 P.2d 833 (1984). Plaintiffs cannot continue to sustain their units with revenue and Defendants' continued charging of fees.

Defendants' continued control over the Condo Units threatens the value of the Plaintiffs' properties. Plaintiffs can no longer be expected to trust Defendants' management of its condo units and owners' association. Appointment of a neutral receiver will ensure that the Plaintiffs'

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interests are secured and that the remaining value is protected. The appointment of a receiver is thus the only adequate way to protect the Plaintiffs' property.

Further, now is appropriate time for the Court to appoint a receiver since it just issued case-terminating sanctions against the Defendants.[3]

The Plaintiffs request that James S. Proctor be appointed as receiver. Mr. Proctor has numerous years of experience in acting as a receiver and impeccable credentials. (See Exhibit 17, a true and correct copy of Mr. Proctor's *curriculum vitae*).

Therefore, pursuant to the aforementioned Nevada statute, and long-standing Nevada case law, this Court is respectfully requested to appoint a receiver, and specifically requested to appoint Mr. Proctor.

B. The Plaintiffs Have Prevailed on Their First Cause of Action for the Appointment of a Receiver

As the Court is aware, the Plaintiffs' First Cause of Action of their Second Amended Complaint requested the appointment of a receiver as to the Grand Sierra Resort Unit Owners' Association. (See Second Amended Complaint at p.15-16.) On October 3, 2014, this Court struck the Defendants' answer and awarded Plaintiffs case-terminating sanctions. Accordingly, the appointment of a receiver as to the Grand Sierra Resort Unit Owners' Association is unquestionably proper since the Plaintiffs have prevailed on that cause of action.

C. **This Court Should Issue A Preliminary Injunction To Aid The Receiver.**

Plaintiffs request that the order appointing the receiver also include the issuance of a preliminary injunction to aid the receiver in the execution of his duties and to prevent any interference with such duties by any of the Defendants.

Preliminary injunctive relief is authorized when there exists: 1) a likelihood of success on the merits; 2) irreparable harm to the moving party if the injunctive relief is not granted; and 3) a greater hardship to the moving party if the injunctive relief is not granted than the hardship

[3] N.R.S. § 32.010(3) provides that the appointment of a receiver is also appropriate "[a]fter judgment, to carry the judgment into effect." While a final judgment has not been entered in this case, the case has been resolved on the merits because of the Court-issued case-terminating sanctions. Accordingly, appointment of a receiver is now appropriate to carry those case-terminating sanctions into effect.

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to the non-moving party if the injunctive relief is granted. See Univ. and Community College Sys. of Nev. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

As each element is satisfied, as discussed *supra*, the preliminary injunction should order, among other things, that all Defendants in this action, and their respective agents, officers and employees, and all other persons acting in concert with them who have actual or constructive notice of this order, be restrained and enjoined from engaging in, or performing, 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; and

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.

III

CONCLUSION

Accordingly, as the Defendants are not complying with the Governing Documents, Plaintiffs respectfully request the entry of the order attached hereto as Exhibit 18,[4] (the "Order"), granting the following relief:

The appointment of James S. Proctor as Receiver (the "Receiver") (1) over Defendant Grand Sierra Resort Unit Owners' Association, a Nevada Non-Profit Corporation ("GSRUOA"); (2) over Defendant MEI-GSR Holdings, LLC., a Nevada Limited Liability Company for the

[4] Exhibits 1, 2 and 3 of the proposed Order are not included with Exhibit 18 to this Motion. However, Exhibits 1, 2 and 3 of the proposed Order are Exhibits 1, 2 and 5 of this Motion, respectively.

limited purposes of monitoring and controlling, if the receiver in his sole discretion deems necessary, the operation, rental, maintenance, fee, due and reserve collection of all condominium units governed by the GSRUOA that are owned by any Plaintiff or Defendant to this action ("Property").

The Receiver is appointed for the purpose of implementing compliance, among all condominium units, including Defendants' units, with the Governing Documents. (See Exhibits 1, 2 and 5).

The Receiver is not charged with trying to account for or collect any fees, reserves or revenue associated with events prior to the entry of this Order.

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

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 16th day of October, 2014.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

By: _____
Jonathan J. Tew, Esq.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 16th day of October, 2014, I caused to be deposited in the U.S. Mail, first-class postage fully prepaid, a true and correct copy of the foregoing **MOTION FOR APPOINTMENT OF RECEIVER** addressed to the following:

H. Stan Johnson, Esq.
Steven B. Cohen, Esq.
Cohen-Johnson, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119
Facsimile: (702) 823-3400
Email: sjohnson@cohenjohnson.com
Attorneys for Defendants

I further certify that on the 16th day of October, 2014 I caused a true and correct copy of the foregoing **MOTION FOR APPOINTMENT OF RECEIVER** to be hand-delivered to:

Sean L. Brohawn, Esq.
Reese Kintz & Brohawn, LLC
936 Southwood Boulevard, Suite 301
Incline Village, NV 86451
Attorneys for Defendants

An Employee of Robertson, Johnson, Miller & Williamson

INDEX OF EXHIBITS

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EXHIBIT "1"

EXHIBIT "1"

EXHIBIT "1"

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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 8/28/13 MT

TABLE OF CONTENTS

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(e) 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 he 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(c) hereof. The foregoing and the rights granted under Section 4.3(c) 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(n) 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 6th 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 6th day of June, 2007.

STACI D. MITCHELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-38890-2 - 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: 98-38890-2 - 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

IUO-GSR 002508

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.: 507198

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°06'56" East along the East line of said Parcel 1, a distance of 209.59 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. 897925; 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 15.55 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 88°15'47" West, having a radius of 10.00 feet and a central angle of 88°22'41"; thence South 0°06'54" East, 361.51 feet; thence South 89°53'06" West, 50.00 feet to the true point of beginning.

Continued on next page

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

Document Number 2292358 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. 306998 of the Official Records of Washoe County, Nevada; thence North 89°00'20" West, along the Northerly line of said Parcel, a distance of 663.20 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 335.84 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 232.02 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 257.27 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. 807198

Document Number 2292339 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 769946 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°28'05" West, a distance of 425.16 feet; 3) North 01°26'55" 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 80.83 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, 1976 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 356.44 feet; 2) South

Continued on next page

89°23'34" East, a distance of 348.62 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. 388, filed in the Office of Washoe County Recorder on November 10, 1976, File No. 434491; thence North 88°15'07" East, along the Southerly right of way line of Glendale Avenue, a distance of 156.65 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 51.31 feet to a chain link fence; thence along said chain link fence the following seventeen (17) courses and distances; 1) South 88°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°46'13" East, a distance of 39.96 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 165.32 feet; 17) South 14°17'58" 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 05°44'10" 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

Order No. 507198

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 35.00 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 115.00 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. 83899, Official Records of Washoe County, Nevada; thence North 63°46'57" West along the Northerly line of said Benna Parcel, a distance of 1099.66 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. 434484, 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 20.28 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 25°29'03" East, a distance of 268.32 feet to the Northerly line of said Benna Parcel; thence from a tangent which bears North 03°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 280.16 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. 2456502, Official Records.

BASIS OF BEARINGS: Recorded of Survey Map Number 2775, File No. 1834648 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 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 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 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 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:

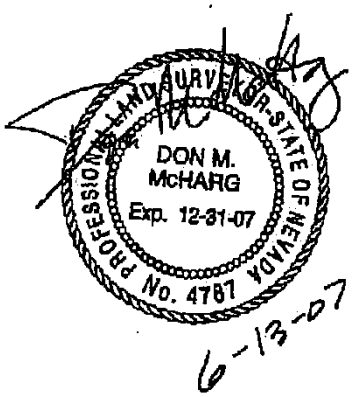
A portion of Parcel B as shown on Tract Map 4760, located between an elevation of 4709.55 and an elevation of 4722.80 within the following described parcel within Section 7, Township 19 North, Range 20 East, M.D.M., Reno, Washoe County, Nevada:

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

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[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]

GRAND SIERRA OPERATING CORP.

BY: ______ June 6, 2007 DATE

STATE OF NEVADA } ss
COUNTY OF WASHOE

[illegible] June 6, 2007 by Thomas J. Schroeder AS President - CEO OF GRAND SIERRA OPERATING CORP.

NOTARY PUBLIC

MY COMMISSION EXPIRES August 10, 2010

CITY ENGINEER'S CERTIFICATE:

[illegible]

CITY ENGINEER ______ DATE ______

DIVISION OF WATER RESOURCES CERTIFICATE:

[illegible]

11 June 2007 DATE

UTILITY COMPANIES CERTIFICATE:

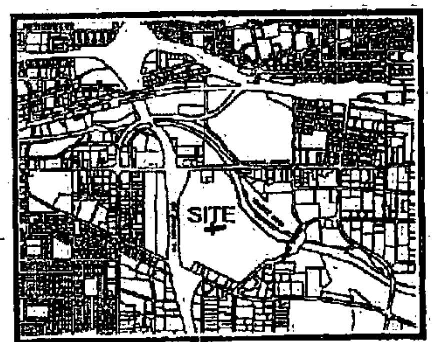
[illegible]

SIERRA PACIFIC POWER CO. 6/6/2007 DATE

NEVADA BELL TELEPHONE CO. D/B/A AT&T NEVADA 6/6/07 DATE

CHARTER COMMUNICATIONS 6-11-07 DATE

TRUCKEE MEADOWS WATER AUTHORITY 6/11/2007 DATE



VICINITY MAP
NO SCALE

SHEET INDEX
1. TITLE SHEET
2. BOUNDARY SURVEY
3. ISOMETRIC VIEW
4. UNIT DIMENSIONS-FLOOR 24
5. UNIT DIMENSIONS-FLOOR 24
6. UNIT DIMENSIONS-FLOOR 24
7. UNIT DIMENSIONS-FLOOR 24
8. UNIT DIMENSIONS-FLOOR 24
9. UNIT DIMENSIONS-FLOOR 24
10. UNIT DIMENSIONS-FLOOR 24

TAX CERTIFICATE:

[illegible]

WASHOE COUNTY TREASURER 6/6/2007 DATE

Deputy Treasurer
TITLE

CITY CERTIFICATE:

[illegible]

COMMUNITY DEVELOPMENT DIRECTOR ______ DATE ______

TITLE COMPANY CERTIFICATE:

[illegible]

STEWART TITLE COMPANY

BY: Russ Caldwell, TITLE OFFICER 6/5/07 DATE

RENO CITY PLANNING CERTIFICATE:

[illegible]

PLANNING MANAGER ______ DATE ______

DISTRICT BOARD OF HEALTH CERTIFICATE:

[illegible]

FOR THE DISTRICT BOARD OF HEALTH 6/6/07 DATE

SURVEYOR'S CERTIFICATE:

[illegible]

1. [illegible]
2. [illegible] 6-13-07
3. [illegible]
4. [illegible]

P.L.S. [illegible]

6-13-07

OFFICIAL PLAT OF HOTEL CONDOMINIUMS AT GRAND SIERRA RESORT PHASE 7

SUMMIT

SHEET 1 OF 10

HOTEL CONDOMINIUMS AT GRAND SIERRA RESORT PHASE 7

SUMMIT

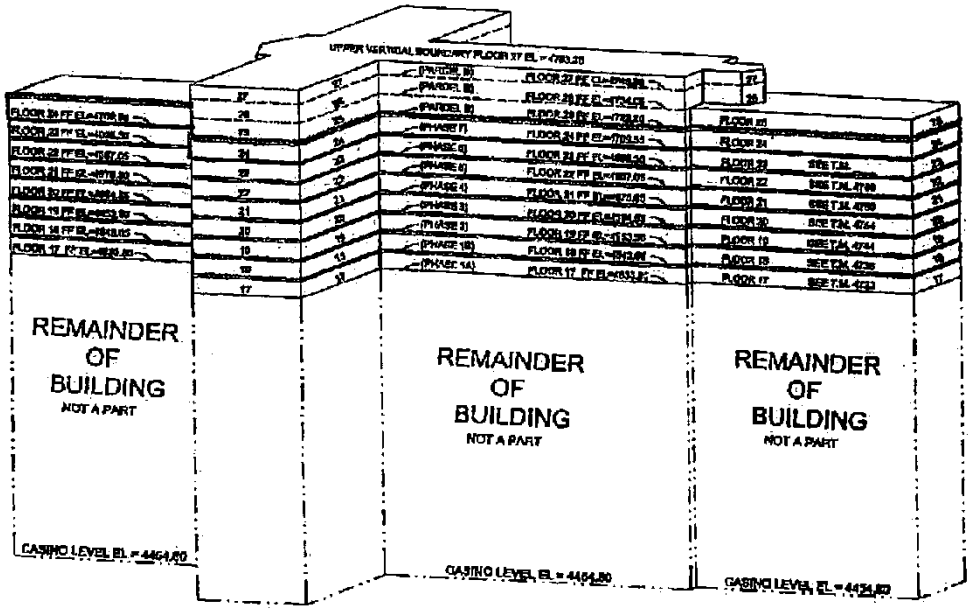
SECURITY INTEREST HOLDERS CERTIFICATE

BUILDING DETAIL
AT FINISH FLOOR ELEV. = 4708.95
1"=100'

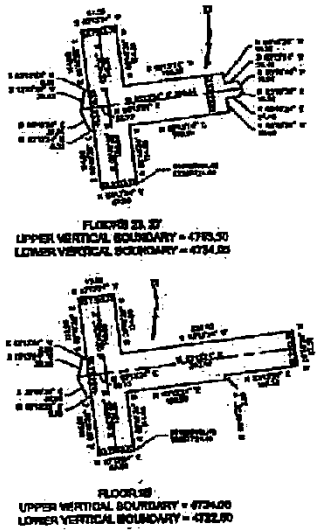
BASIS OF BEARINGS AND COORDINATES

BASIS OF ELEVATIONS

NOTES



ISOMETRIC VIEW OF BUILDING PARCELS



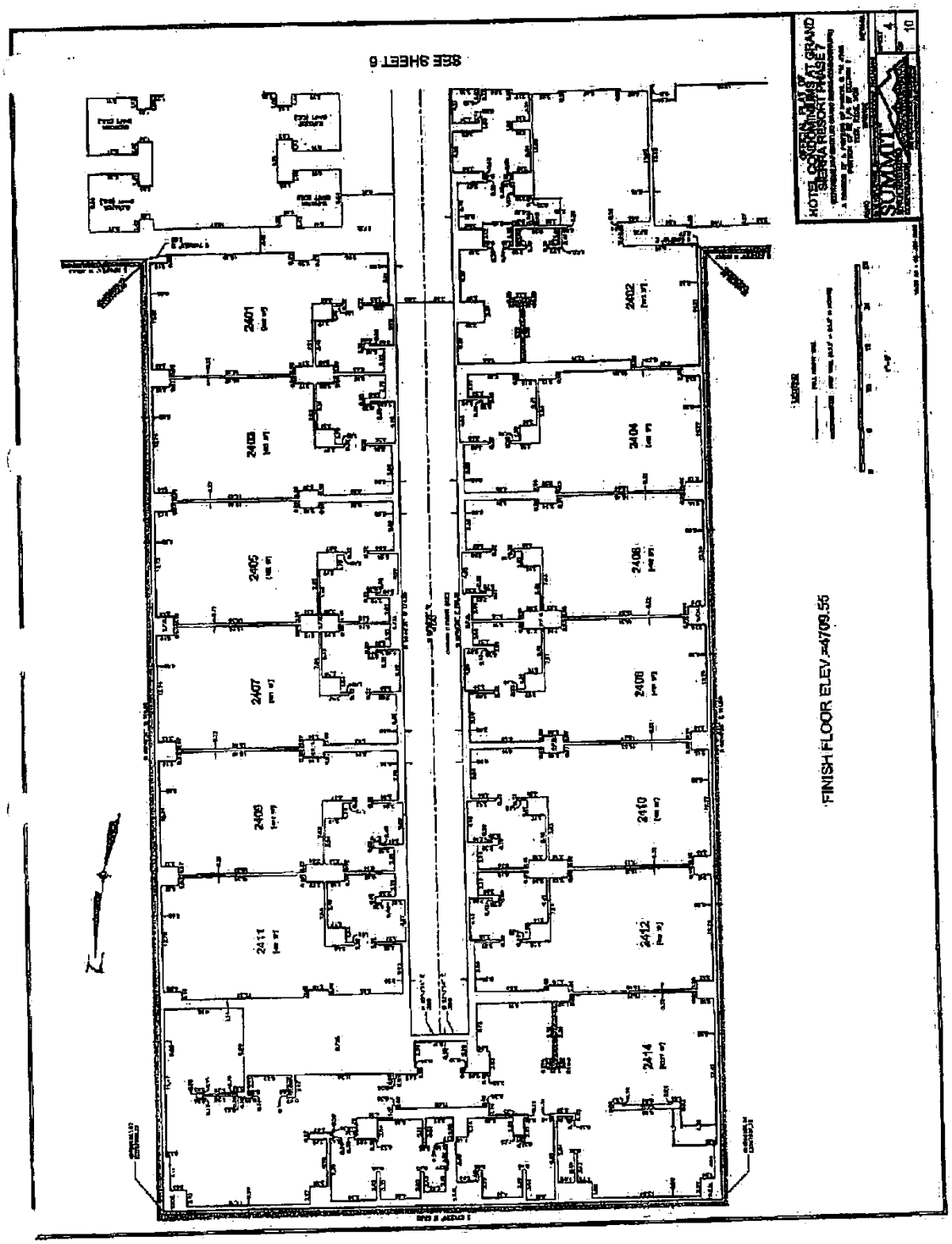
PLAN VIEW OF PARCEL B

B.P.U. BETWEEN CEILING AND FINISH FLOOR/ROOF ABOVE (HEIGHT VARIES)--SEE NOTE 6 ON PAGE 2

OFFICIAL PLAT OF
HOTEL CONDOMINIUMS AT GRAND SIERRA RESORT PHASE 1

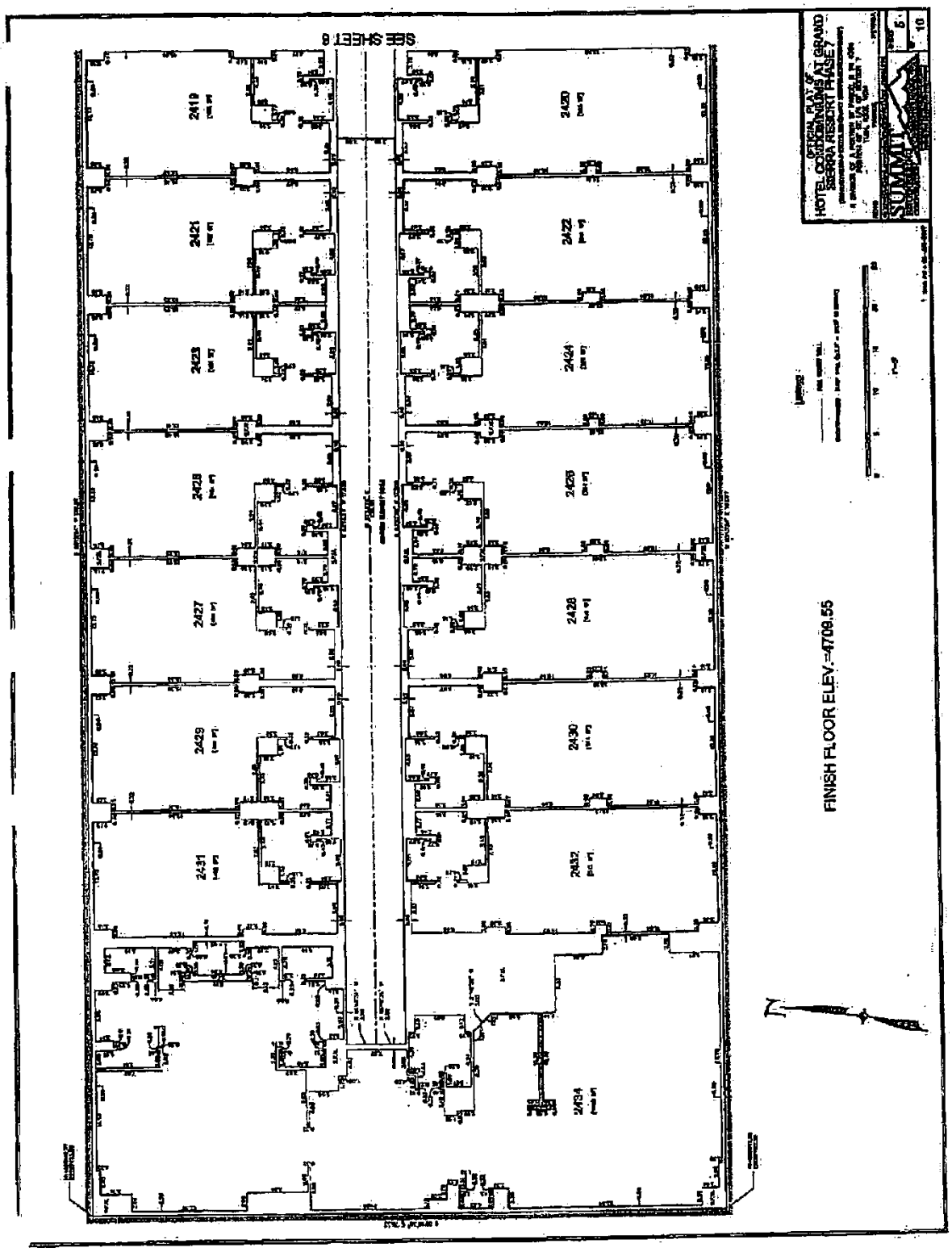
SUMMIT

3 OF 10



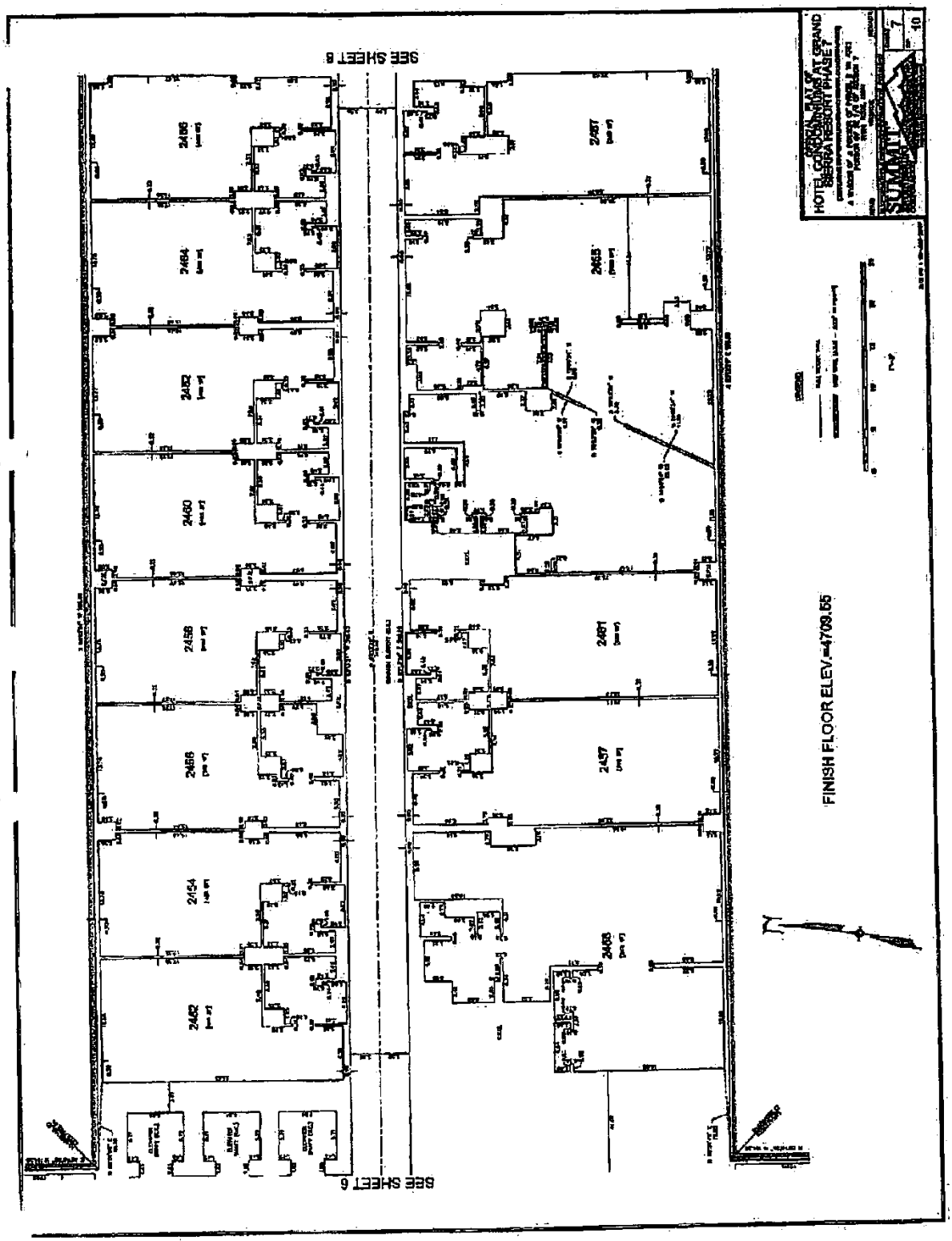
IUO-GSR 002528

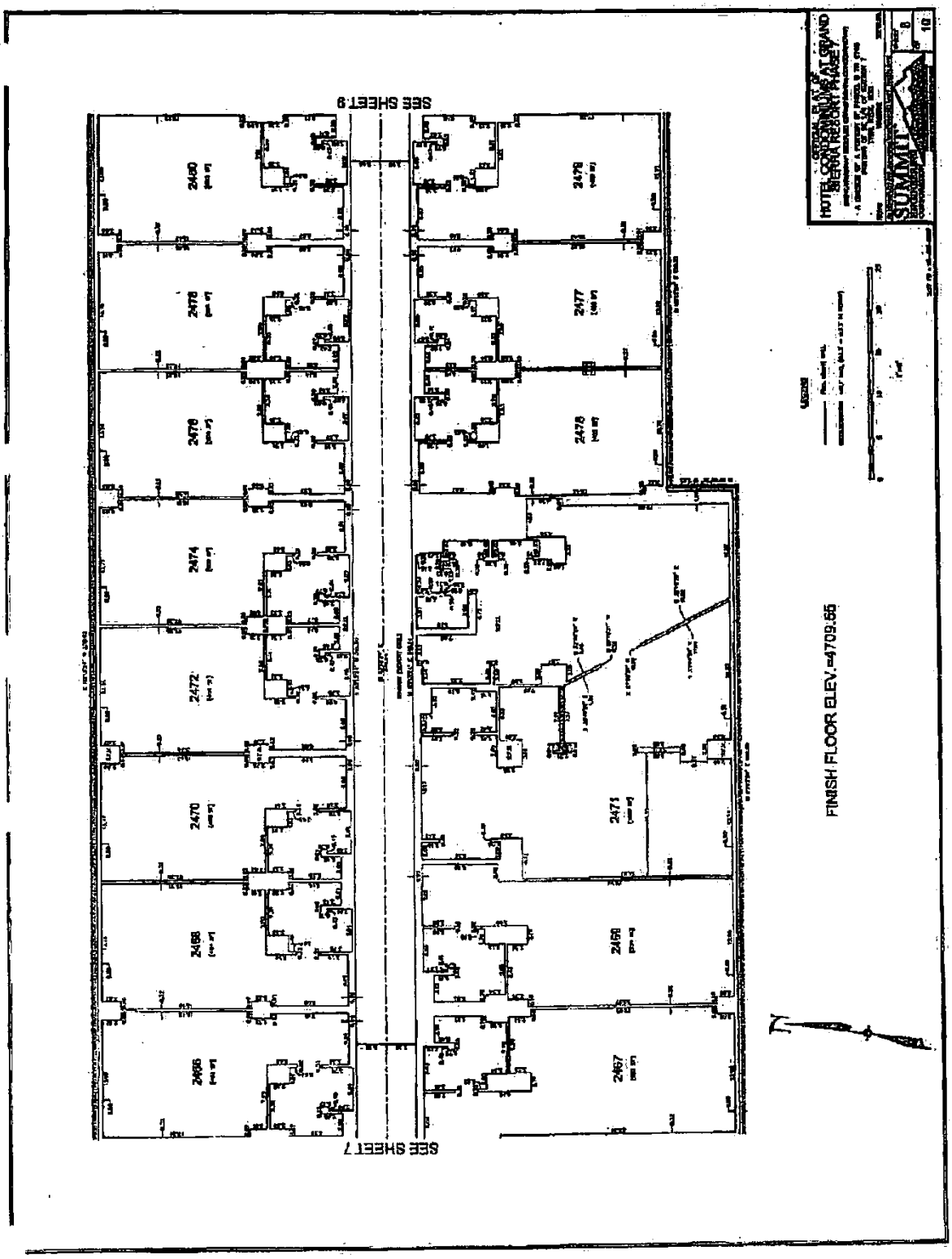
PA0220



IUO-GSR 002529

IUO-GSR 002530


SEE SHEET 8
SEE SHEET 6
FINISH FLOOR ELEV.=4709.55


SEE SHEET 9
SEE SHEET 7
FINISH FLOOR ELEV.=4709.65
SUMMIT

HOTEL CONDOMINIUMS AT GRAND SIERRA RESORT PHASE 7
SUMMIT
FINISH FLOOR ELEV.=4708.55
SEE SHEET 8

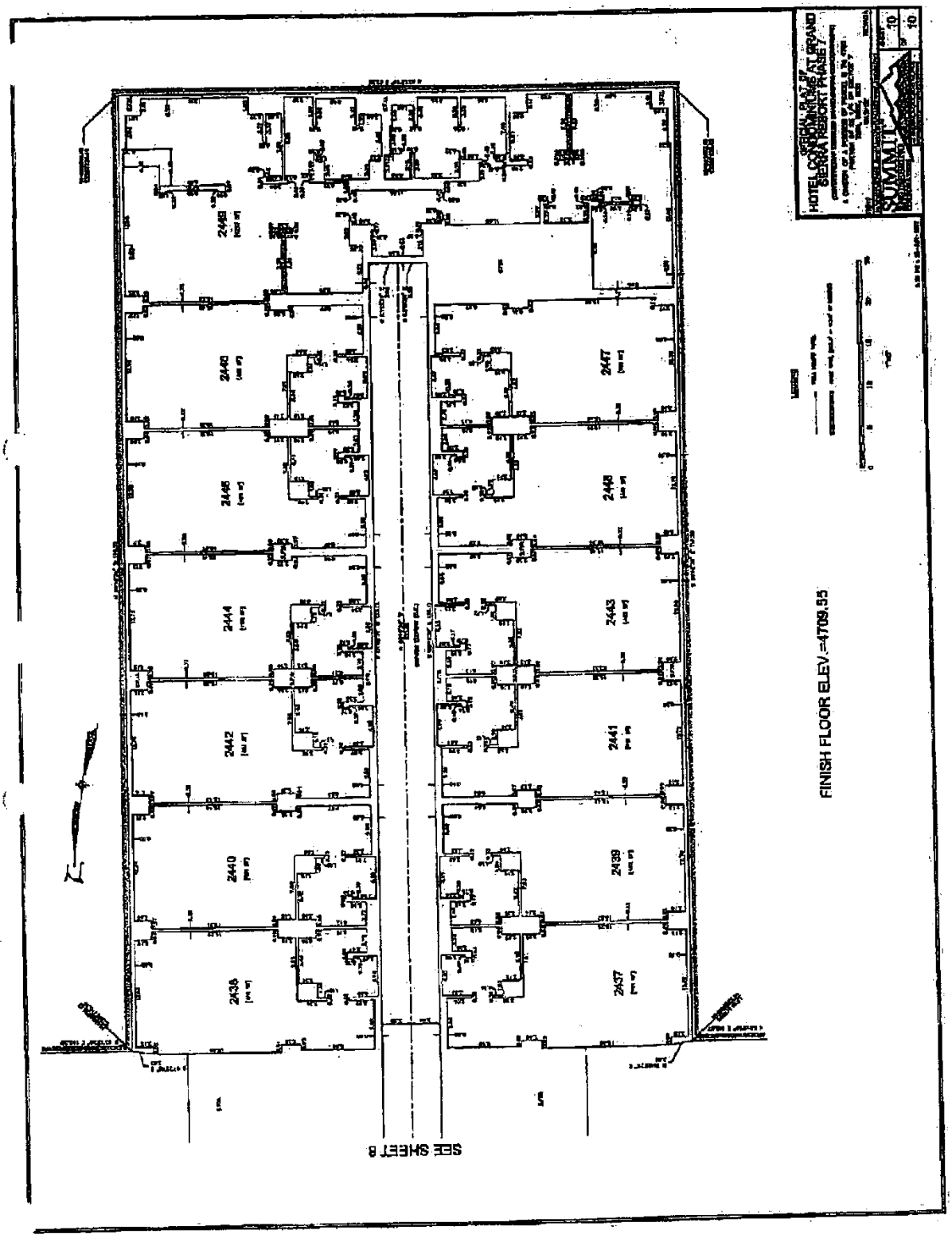

HOTEL CONDOMINIUM AT GRAND SIERRA RESORT PHASE 7
SUMMIT
2448
2446
2447
2445
2444
2443
2442
2441
2440
2439
2438
2437
FINISH FLOOR ELEV.=4709.55
SEE SHEET 8

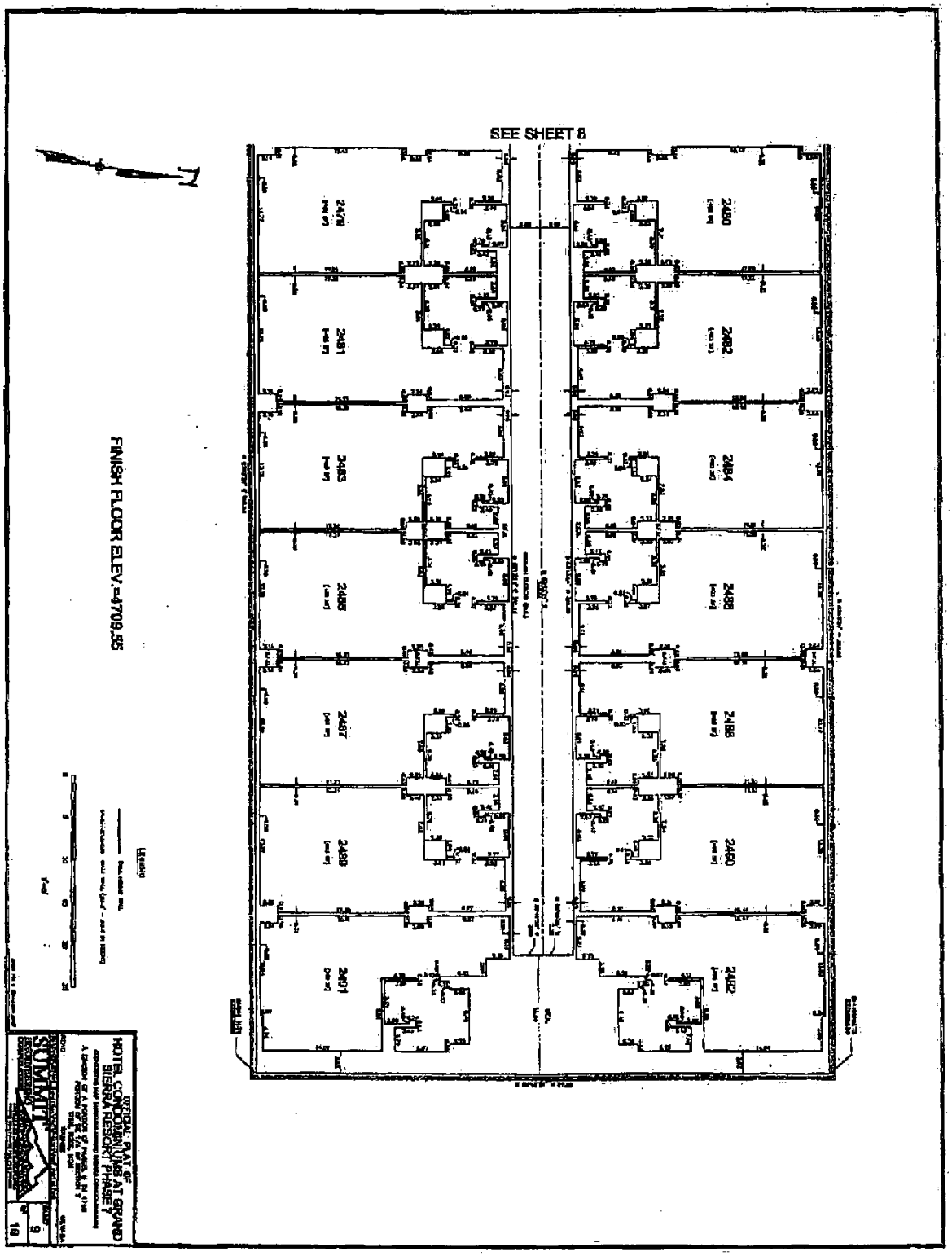
EXHIBIT B

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 Type	Unit Qty	Unit Sq Ft	% of Ownership	Total Unit Sq Ft	Total % of Gyrfalcon Suite
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%



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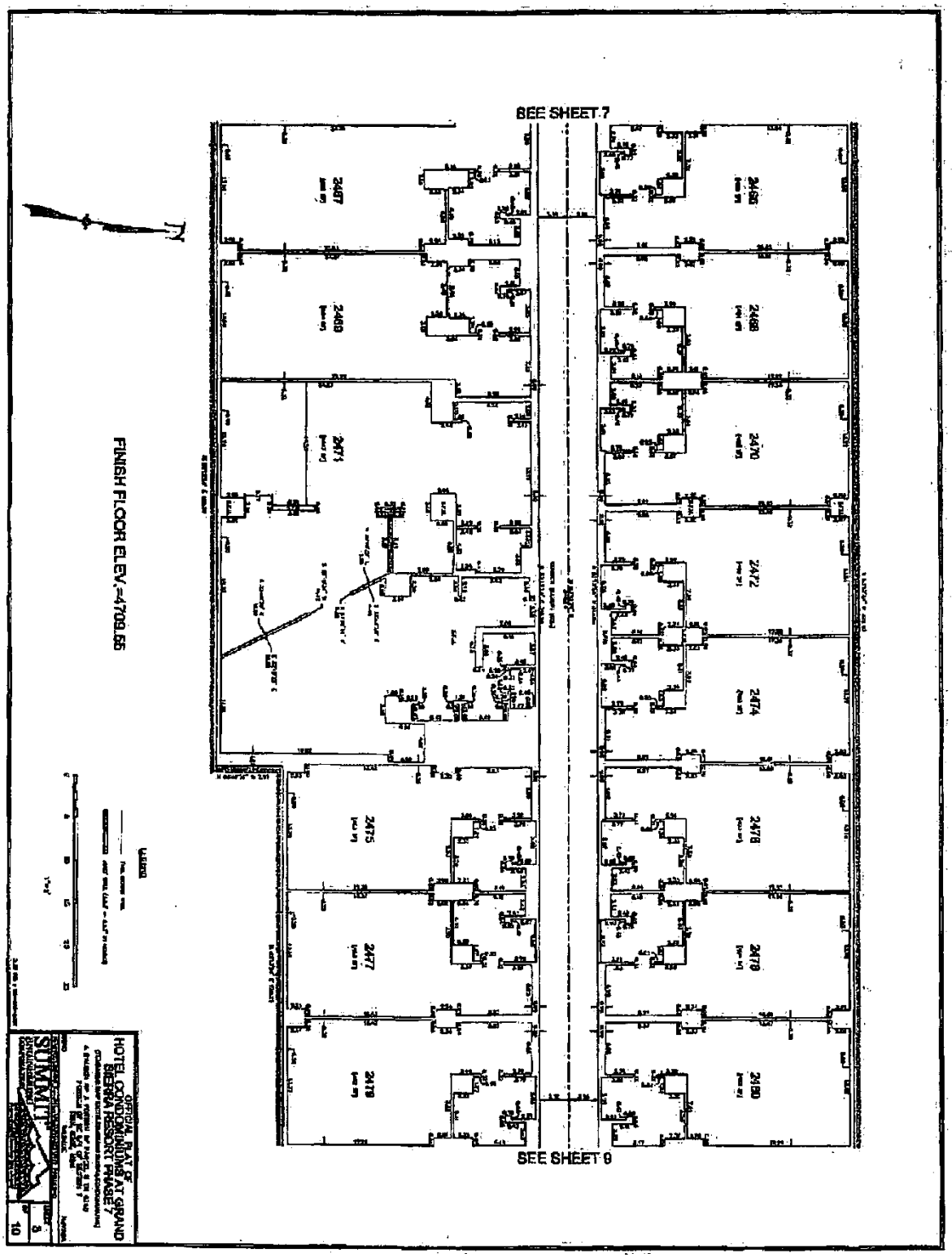
SEE SHEET 7
SEE SHEET 9
FINISH FLOOR ELEV.=4709.65
2467
2468
2469
2470
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2477
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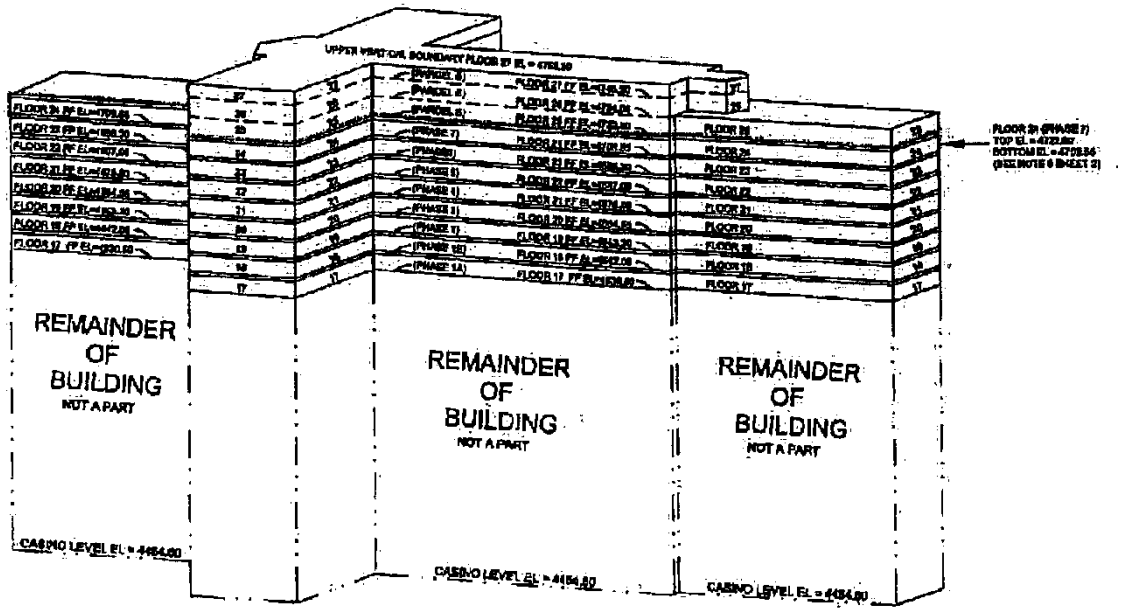
2480
HOTEL LOT 2 OFFICIAL PLAT OF GRAND
SUMMIT

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 15TH DAY OF DECEMBER, 2006, 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: _____
Roberts H. Pace, Jr.
Executive Vice President &
Chief Operating Officer

STATE OF NEVADA)
) SS
COUNTY OF WASHOE)

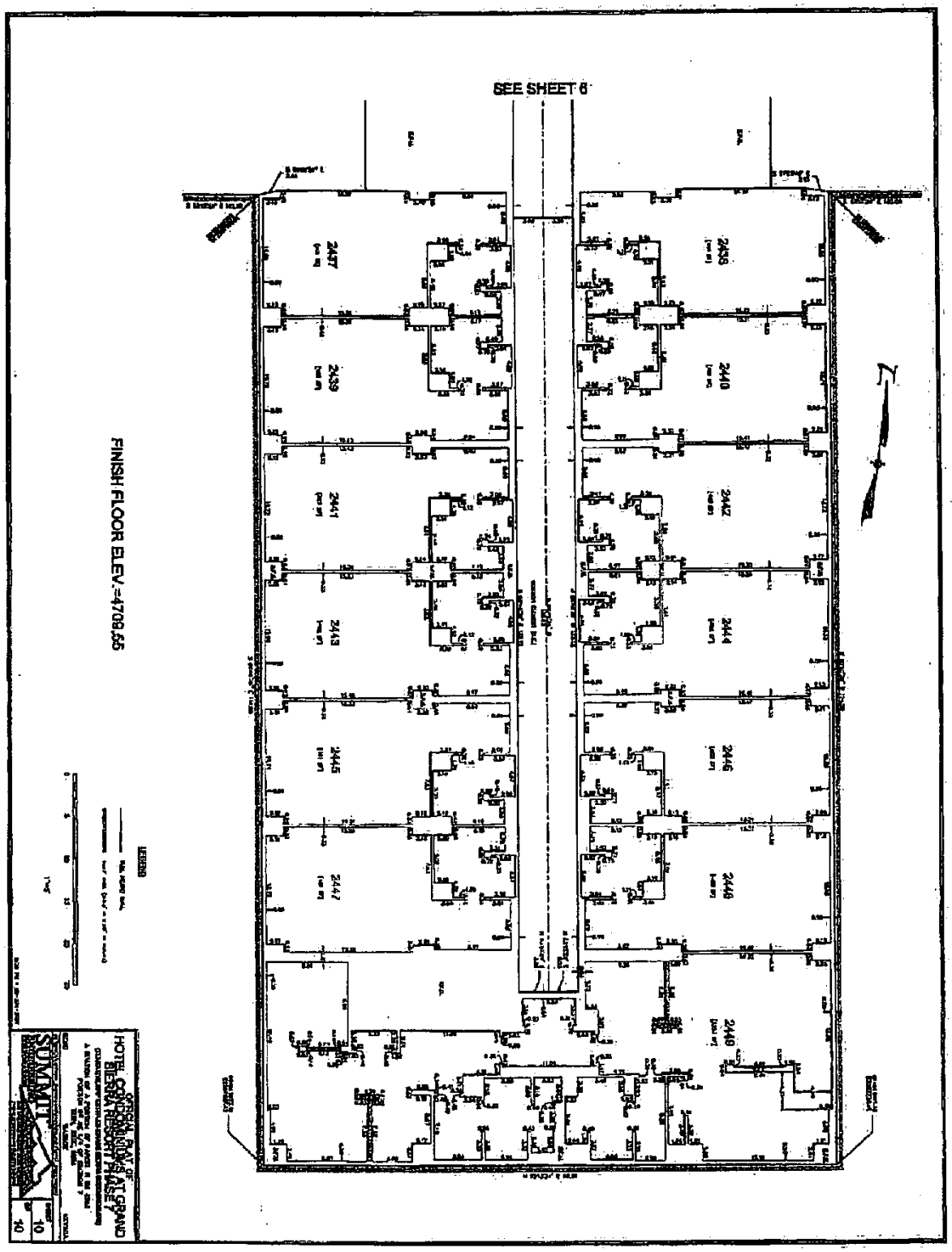
Staci D. Mitchell, a Notary Public in and for the County and State aforesaid, do hereby certify that Roberts H. Pace, as Executive Vice President & Chief Operating Officer of Grand Sierra Operating Corp., a Nevada corporation, personally known to me to be the same person whose name is subscribed to the 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: 98-0880-2 - Expires August 10, 2010



IUO-GSR 002541

PA0233

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 Description	Unit Count	Unit Sq Ft	Unit % 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	Number of Units	Unit Square Footage	Percentage of Ownership	Total Unit Square Footage	Total Percentage 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