

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

Electronically Filed
Feb 08 2024 09:23 AM
Elizabeth A. Brown
Clerk of Supreme Court

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 4 OF 12**

Jordan T. Smith, Esq., Bar No. 12097
Brianna Smith, Esq., Bar No. 11795
Daniel R. Brady, Esq., Bar No. 15508
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Petitioners

CHRONOLOGICAL INDEX		
DOCUMENT	VOLUME	PAGES
Complaint	1	PA0001-0022
Second Amended Complaint	1	PA0023-0048
Answer to Second Amended Complaint and Counterclaim	1	PA0049-0065
Plaintiffs' Motion for Sanctions Under NRCP 37(b) for Failure to Comply with Court Orders	1	PA0066-0100
Order Regarding Original Motion for Case Concluding Sanctions	1	PA0101-0106
Order Granting Plaintiffs' Motion for Case-Terminating Sanctions	1	PA0107-0119
Motion for Appointment of Receiver	1-2	PA0120-0449
Defendants' Opposition to Plaintiffs' Motion for a Receiver	2	PA0450-0456
Reply in Support of Motion for Appointment of Receiver	2-3	PA0457-0501
Default	3	PA0502-0503
Notice of Entry of Order	3	PA0504-0518
Order Appointing Receiver and Directing Defendants' Compliance	3	PA0519-0676
Findings of Fact, Conclusions of Law and Judgment	3	PA0677-0700
Notice of Entry	3-4	PA0701-0728
Stipulation and Order Regarding the Court's Findings of Fact, Conclusions of Law and Judgment	4	PA0729-0730
Motion to Dismiss Pursuant to NRCP 41(e)	4-5	PA0731-0994
Application for Temporary Restraining Order, and Motion for Preliminary Injunction	5	PA0995-1042
Opposition to Motion for Preliminary Injunction	5-7	PA1043-1460
Notice of Entry of December 5, 2022 Order	7	PA1461-1474

CHRONOLOGICAL INDEX		
DOCUMENT	VOLUME	PAGES
Motion for Instructions to Receiver Concerning Termination of the Grand Sierra Resort Unit Owners' Association and Rental of Units Until Time of Sale	7	PA1475-1479
Order	7	PA1480-1484
Final Judgment	7	PA1485-1488
Stipulation	7	PA1489-1505
Opposition to Motion for Instructions to Receiver Concerning Termination of the Grand Sierra Resort Unit Owners' Association and Rental of the Units Until Time of Sale	7-8	PA1506-1659
Defendants' Objection to Receiver's Calculations Contained in Exhibit 1 Attached to Receiver's Omnibus Reply to Parties Oppositions to the Receiver's Motion for Orders & Instructions	8	PA1660-1670
Reply in Support of Motion for Instructions to Receiver Concerning Termination of the Grand Sierra Resort Unit Owners' Association and Rental of the Units Until Time of Sale	8-9	PA1671-1684
Opposition to Motion to Modify and Terminate Receivership and Approve Sale of Condominium Hotel	9	PA1685-1703
Notice of Posting Supersedeas Bond	9	PA1704-1716
Order	9	PA1717-1719
Order	9	PA1720-1722
Opposition to Defendants' Motion for Stay of Order Granting Receiver's Motion for Orders & Instructions Entered January 26, 2023 and the March 27, 2023 Order Overruling Defendants' Objections Related Thereto, Pending Review by the Nevada Supreme Court	9	PA1723-1785

CHRONOLOGICAL INDEX		
DOCUMENT	VOLUME	PAGES
Amended Final Judgment	9	PA1786-1789
Second Amended Final Monetary Judgment	9	PA1790-1794
Corrected Second Amended Final Monetary Judgment	9	PA1795-1799
Notice of Appeal	9-11	PA1800-2010
Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	11	PA2011-2038
Opposition to Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to be Paid to Defendants	11	PA2039-2063
Receiver's Response to Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to be Paid to Defendants	11	PA2064-2068
Reply in Support of Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	11	PA2069-2099
Order	11	PA2100-2102
Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	11	PA2103-2135
Opposition to Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	11-12	PA2136-2163
Defendants' Reply in Support of Their Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	12	PA2164-2171
Order	12	PA2172-2174
Defendants' Objections to Receiver's Spreadsheet Calculation of August 2023 Net Rents to Be Paid to the Parties	12	PA2175-2204
Defendants' Restatement, Preservation and Non-Waiver of Prior Objections to Receiver's Spreadsheet Calculation of	12	PA2205-2209

CHRONOLOGICAL INDEX		
DOCUMENT	VOLUME	PAGES
October 2023 Net Rents to Be Paid to the Parties		
Opposition/Response to Defendants' Restatement, Preservation and Non-Waiver of Prior Objections to Receiver's Spreadsheet Calculation of October 2023 Net Rents to Be Paid to the Parties	12	PA2210-2213
Defendants' Reply in Support of Their Restatement, Preservation and Non-Waiver of Prior Objections to Receiver's Spreadsheet Calculation of October 2023 Net Rents to Be Paid to the Parties	12	PA2214-2217
Order	12	PA2218-2219
Order	12	PA2220-2222

ALPHABETICAL INDEX		
DOCUMENT	VOLUME	PAGES
Amended Final Judgment	9	PA1786-1789
Answer to Second Amended Complaint and Counterclaim	1	PA0049-0065
Application for Temporary Restraining Order, and Motion for Preliminary Injunction	5	PA0995-1042
Complaint	1	PA0001-0022
Corrected Second Amended Final Monetary Judgment	9	PA1795-1799
Default	3	PA0502-0503
Defendants' Objection to Receiver's Calculations Contained in Exhibit 1 Attached to Receiver's Omnibus Reply to Parties Oppositions to the Receiver's Motion for Orders & Instructions	8	PA1660-1670

ALPHABETICAL INDEX		
DOCUMENT	VOLUME	PAGES
Defendants' Objections to Receiver's Spreadsheet Calculation of August 2023 Net Rents to Be Paid to the Parties	12	PA2175-2204
Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	11	PA2011-2038
Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	11	PA2103-2135
Defendants' Opposition to Plaintiffs' Motion for a Receiver	2	PA0450-0456
Defendants' Reply in Support of Their Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	12	PA2164-2171
Defendants' Reply in Support of Their Restatement, Preservation and Non-Waiver of Prior Objections to Receiver's Spreadsheet Calculation of October 2023 Net Rents to Be Paid to the Parties	12	PA2214-2217
Defendants' Restatement, Preservation and Non-Waiver of Prior Objections to Receiver's Spreadsheet Calculation of October 2023 Net Rents to Be Paid to the Parties	12	PA2205-2209
Final Judgment	7	PA1485-1488
Findings of Fact, Conclusions of Law and Judgment	3	PA0677-0700
Motion for Appointment of Receiver	1-2	PA0120-0449
Motion for Instructions to Receiver Concerning Termination of the Grand Sierra Resort Unit Owners' Association and Rental of Units Until Time of Sale	7	PA1475-1479
Motion to Dismiss Pursuant to NRCP 41(e)	4-5	PA0731-0994
Notice of Appeal	9-11	PA1800-2010
Notice of Entry	3-4	PA0701-0728

ALPHABETICAL INDEX		
DOCUMENT	VOLUME	PAGES
Notice of Entry of December 5, 2022 Order	7	PA1461-1474
Notice of Entry of Order	3	PA0504-0518
Notice of Posting Supersedeas Bond	9	PA1704-1716
Opposition to Defendants' Motion for Stay of Order Granting Receiver's Motion for Orders & Instructions Entered January 26, 2023 and the March 27, 2023 Order Overruling Defendants' Objections Related Thereto, Pending Review by the Nevada Supreme Court	9	PA1723-1785
Opposition to Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to be Paid to Defendants	11	PA2039-2063
Opposition to Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	11-12	PA2136-2163
Opposition to Motion for Instructions to Receiver Concerning Termination of the Grand Sierra Resort Unit Owners' Association and Rental of the Units Until Time of Sale	7-8	PA1506-1659
Opposition to Motion for Preliminary Injunction	5-7	PA1043-1460
Opposition to Motion to Modify and Terminate Receivership and Approve Sale of Condominium Hotel	9	PA1685-1703
Opposition/Response to Defendants' Restatement, Preservation and Non-Waiver of Prior Objections to Receiver's Spreadsheet Calculation of October 2023 Net Rents to Be Paid to the Parties	12	PA2210-2213
Order	7	PA1480-1484
Order	9	PA1717-1719
Order	9	PA1720-1722
Order	11	PA2100-2102

ALPHABETICAL INDEX		
DOCUMENT	VOLUME	PAGES
Order	12	PA2172-2174
Order	12	PA2218-2219
Order	12	PA2220-2222
Order Appointing Receiver and Directing Defendants' Compliance	3	PA0519-0676
Order Granting Plaintiffs' Motion for Case-Terminating Sanctions	1	PA0107-0119
Order Regarding Original Motion for Case Concluding Sanctions	1	PA0101-0106
Plaintiffs' Motion for Sanctions Under NRC 37(b) for Failure to Comply with Court Orders	1	PA0066-0100
Receiver's Response to Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to be Paid to Defendants	11	PA2064-2068
Reply in Support of Defendants' Objections to Receiver's Spreadsheet Calculation of Net Rents to Be Paid to Defendants	11	PA2069-2099
Reply in Support of Motion for Appointment of Receiver	2-3	PA0457-0501
Reply in Support of Motion for Instructions to Receiver Concerning Termination of the Grand Sierra Resort Unit Owners' Association and Rental of the Units Until Time of Sale	8-9	PA1671-1684
Second Amended Complaint	1	PA0023-0048
Second Amended Final Monetary Judgment	9	PA1790-1794
Stipulation	7	PA1489-1505
Stipulation and Order Regarding the Court's Findings of Fact, Conclusions of Law and Judgment	4	PA0729-0730

DATED this 7th day of February 2024.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith
Jordan T. Smith, Esq., #12097
Brianna Smith, Esq., #11795
Daniel R. Brady, Esq., #15508
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Petitioners

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 4 OF 12**, properly addressed to the following:

G. David Robertson, Esq., SBN 1001
Jarrad C. Miller, Esq., SBN 7093
Briana N. Collings, Esq., SBN 14694
ROBERSTON, JOHNSON, MILLER
& WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501
jarrad@nvlawyers.com
briana@nvlawyers.com

Robert L. Eisenberg, Esq., SBN 0950
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519
rle@lge.net

Attorneys for Real Parties in Interest

F. DeArmond Sharp, Esq., SBN 780
Stefanie T. Sharp, Esq. SBN 8661
ROBISON, SHARP, SULLIVAN &
BRUST
71 Washington Street
Reno, Nevada 89503
dsharp@rssblaw.com
ssharp@rssblaw.com

Attorneys for the Respondent Receiver
Richard M. Teichner

Hon. Elizabeth Gonzalez (Ret.)
Senior Judge, Dept. 10
Second Judicial District Court
75 Court Street,
Reno, NV 89501
srjgonzalez@nvcourts.nv.gov

/s/ Shannon Dinkel
An employee of PISANELLI BICE PLLC

1 117 (1975).” *Collins v. Burns*, 103 Nev. 394, 397, 741 P.2d 819, 821 (1987). MEI-
2 GSR is liable for intentionally and/or negligent misrepresentation as alleged in the
3 Second Cause of Action.

4
5 D. An enforceable contract requires, “an offer and acceptance, meeting of the minds, and
6 consideration.” *Certified Fire Protection, Inc. v. Precision Construction, Inc.* 128 Nev.
7 Adv. Op. 35, 283 P.3d 250, 255 (2012)(citing *May v. Anderson*, 121 Nev. 668, 672, 119
8 P.3d 1254, 1257 (2005)). There was a contract between the Plaintiffs and MEI-GSR.
9 MEI-GSR has breached the contract and therefore MEI-GSR is liable for breach of
10 contract as alleged in the Third Cause of Action.

11
12 E. MEI-GSR is liable for Quasi-Contract/Equitable Contract/Detrimental Reliance as
13 alleged in the Fourth Cause of Action.

14
15 F. An implied covenant of good faith and fair dealing exists in every contract in Nevada.
16 *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 109 Nev. 1043, 1046, 862 P.2d
17 1207, 1209 (1993). “The duty not to act in bad faith or deal unfairly thus becomes part
18 of the contract, and, as with any other element of the contract, the remedy for its breach
19 generally is on the contract itself.” *Id.* (citing *Wagenseller v. Scottsdale Memorial*
20 *Hospital*, 147 Ariz. 370, 383, 710 P.2d 1025, 1038 (1985)). “It is well established that
21 in contracts cases, compensatory damages ‘are awarded to make the aggrieved party
22 whole and ... should place the plaintiff in the position he would have been in had the
23 contract not been breached.’ This includes awards for lost profits or expectancy
24 damages.” *Road & Highway Builders, LLC v. Northern Nevada Rebar, Inc.*, 128 Nev.
25 Adv. Op. 36, 284 P.3d 377, 382 (2012)(internal citations omitted). “When one party
26 performs a contract in a manner that is unfaithful to the purpose of the contract and the
27
28

1 justified expectations of the other party are thus denied, damages may be awarded
2 against the party who does not act in good faith.” *Perry v. Jordan*, 111 Nev. 943, 948,
3 900 P.2d 335, 338 (1995)(*citation omitted*). “Reasonable expectations are to be
4 ‘determined by the various factors and special circumstances that shape these
5 expectations.’” *Id.* (citing *Butch Lewis*, 107 Nev. at 234, 808 P.2d at 923). MEI-GSR is
6 liable for breach of the covenant of good faith and fair dealing as set forth in the Fifth
7 Cause of Action.
8

- 9
10 G. MEI-GSR has violated NRS 41.600(1) and (2) and NRS 598.0915 through 598.0925,
11 inclusive and is therefore liable for the allegations contained in the Sixth Cause of
12 Action. Specifically, MEI-GSR violated NRS 598.0915(15) and NRS 598.0923(2).
13
14 H. The Plaintiffs are entitled to declaratory relief as more fully described below and
15 prayed for in the Seventh Cause of Action.
16
17 I. MEI-GSR wrongfully committed numerous acts of dominion and control over the
18 property of the Plaintiffs, including but not limited to renting their units at discounted
19 rates, renting their units for no value in contravention of written agreements between
20 the parties, failing to account for monies received by MEI-GSR attributable to specific
21 owners, and renting units of owners who were not even in the rental pool. All of said
22 activities were in derogation, exclusion or defiance of the title and/or rights of the
23 individual unit owners. Said acts constitute conversion as alleged in the Eighth Cause
24 of Action.
25
26 J. The demand for an accounting as requested in Ninth Cause of Action is moot pursuant
27 to the discovery conducted in these proceedings and the appointment of a receiver to
28 oversee the interaction between the parties.
K. The Unit Maintenance Agreement and Unit Rental Agreement proposed by MEI-GSR
and adopted by the Unit Owner’s Association are unconscionable. An unconscionable

1 clause is one where the circumstances existing at the time of the execution of the
2 contract are so one-sided as to oppress or unfairly surprise an innocent party. *Bill*
3 *Stremmel Motors, Inc. v. IDS Leasing Corp.*, 89 Nev. 414, 418, 514 P.2d 654, 657
4 (1973). MEI-GSR controls the Unit Owner's Association based on its majority
5 ownership of the units in question. It is therefore able to propose and pass agreements
6 that affect all of the unit owners. These agreements require unit owners to pay
7 unreasonable Common Expense fees, Hotel Expenses Fees, Shared Facilities Reserves,
8 and Hotel Reserves ("the Fees"). The Fees are not based on reasonable expectation of
9 need. The Fees have been set such that an individual owner may actually *owe* money
10 as a result of having his/her unit rented. They are unnecessarily high and imposed
11 simply to penalize the individual unit owners. Further, MEI-GSR and/or Gage Village
12 have failed to fund their required portion of these funds, while demanding the
13 individual unit owners continue to pay the funds under threat of a lien. MEI-GSR has
14 taken the Fees paid by individual unit owners and placed the funds in its general
15 operating account rather than properly segregating them for the use of the Unit Owner's
16 Association. All of said actions are unconscionable and unenforceable pursuant to NRS
17 116.112(1). The Court will grant the Tenth Cause of Action and not enforce these
18 portions of the agreements.
19

20 L. The legal concept of *quantum meruit* has two applications. The first application is in
21 actions based upon contracts implied-in-fact. The second application is providing
22 restitution for unjust enrichment. *Certified Fire*, at 256. In the second application,
23 "[l]iability in restitution for the market value of goods or services is the remedy
24 traditionally known as quantum meruit. Where unjust enrichment is found, the law
25 implies a quasi-contract which requires the defendant to pay to the plaintiff the value of
26 the benefit conferred. In other words, the defendant makes restitution to the plaintiff in
27 *quantum meruit*." *Id.* at 256-57. Gage Village has been unjustly enriched based on the
28

1 orchestrated action between it and MEI-GSR to the detriment of the individual unit
2 owners as alleged in the Eleventh Cause of Action.

3 M. Many of the individual unit owners attempted to rent their units through third-party
4 services rather than through the use of MEI-GSR. MEI-GSR and Gage Village
5 intentionally thwarted, interfered with and/or disrupted these attempts with the goal of
6 forcing the sale of the individual units back to MEI-GSR. All of these actions were to
7 the economic detriment of the individual unit owners as alleged in the Twelfth Cause of
8 Action.

9 N. The Plaintiffs are entitled to both equitable and legal relief. "As federal courts have
10 recognized, the long-standing distinction between law and equity, though abolished in
11 procedure, continues in substance, *Coca-Cola Co. v. Dixi-Cola Labs.*, 155 F.2d 59, 63
12 (4th Cir. 1946); 30A C.J.S. *Equity* § 8 (2007). A judgment for damages is a legal
13 remedy, whereas other remedies, such as avoidance or attachment, are equitable
14 remedies. See 30A *Equity* § 1 (2007)." *Cadle Co. v. Woods & Erickson, LLP*, 131
15 Nev. Adv. Op. 15, 345 P.3d 1049, 1053 (2015).

16 O. "[W]here default is entered as a result of a discovery sanction, the non-offending party
17 'need only establish a *prima facie* case in order to obtain the default.'" *Foster*, 227 P.3d
18 at 1049 (*citing Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 94, 787 P.2d 777,
19 781 (1990)). "[W]here a district court enters a default, the facts alleged in the pleadings
20 will be deemed admitted. Thus, during a NRCP 55(b)(2) prove-up hearing, the district
21 court shall consider the allegations deemed admitted to determine whether the non-
22 offending party has established a *prima facie* case for liability." *Foster*, 227 P.3d at
23 1049-50. A *prima facie* case requires only "sufficiency of evidence in order to send the
24 question to the jury." *Id.* 227 P.3d at 1050 (*citing Vancheri v. GNLV Corp.*, 105 Nev.
25 417, 420, 777 P.2d 366, 368 (1989)). The Plaintiffs have met this burden regarding all
26 of their causes of action.
27
28

1 P. "Damages need not be determined with mathematical certainty." *Perry*, 111 Nev. at
2 948, 900 P.2d at 338. The party requesting damages must provide an evidentiary basis
3 for determining a "reasonably accurate amount of damages." *Id. See also*,
4 *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 733, 192 P.3d 243, 248
5 (2008) and *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co., Inc.*, 105 Nev.
6 855, 857, 784 P.2d 954, 955 (1989).

7 Q. Disgorgement is a remedy designed to dissuade individuals from attempting to profit
8 from their inappropriate behavior. "Disgorgement as a remedy is broader than
9 restitution or restoration of what the plaintiff lost." *American Master Lease LLC v.*
10 *Idanta Partners, Ltd*, 225 Cal. App. 4th 1451, 1482, 171 Cal. Rptr. 3d 548, 572
11 (2014)(*internal citation omitted*). "Where 'a benefit has been received by the defendant
12 but the plaintiff has not suffered a corresponding loss or, in some cases, any loss, but
13 nevertheless the enrichment of the defendant would be unjust . . . the defendant may be
14 under a duty to give to the plaintiff the amount by which [the defendant] has been
15 enriched.'" *Id.* 171 Cal. Rptr. 3d at 573 (*internal citations omitted*). *See also Miller v.*
16 *Bank of America, N.A.*, 352 P.3d 1162 (N.M. 2015) and *Cross v. Berg Lumber Co.*, 7
17 P.3d 922 (Wyo. 2000).
18

19 **III. JUDGMENT**

20 Judgment is hereby entered against MEI-GSR, Gage Village and the Unit Owner's
21 Association as follows:

22 **Monetary Relief:**

- 23 1. Against MEI-GSR in the amount of \$442,591.83 for underpaid revenues to Unit owners;
- 24 2. Against MEI-GSR in the amount of \$4,152,669.13 for the rental of units of owners who had no
25 rental agreement;
- 26 3. Against MEI-GSR in the amount of \$1,399,630.44 for discounting owner's rooms without
27 credits;
- 28

- 1 4. Against MEI-GSR in the amount of \$31,269.44 for discounted rooms with credits;
- 2 5. Against MEI-GSR in the amount of \$96,084.96 for "comp'd" or free rooms;
- 3 6. Against MEI-GSR in the amount of \$411,833.40 for damages associated with the bad faith
- 4 "preferential rotation system";
- 5 7. Against MEI-GSR in the amount of \$1,706,798.04 for improperly calculated and assessed
- 6 contracted hotel fees;
- 7 8. Against MEI-GSR in the amount of \$77,338.31 for improperly collected assessments;
- 8 9. MEI-GSR will fund the FF&E reserve, shared facilities reserve and hotel reserve in the amount of
- 9 \$500,000.00 each. The Court finds that MEI-GSR has failed to fund the reserves for the units it, or
- 10 any of its agents, own. However, the Court has also determined, *supra*, that these fees were
- 11 themselves unconscionable. The Court does not believe that the remedy for MEI-GSR's failure to
- 12 fund the unconscionable amount should be some multiple of that unreasonable sum. Further, the
- 13 Court notes that Plaintiffs are individual owners: not the Unit Owner's Association. Arguably, the
- 14 reserves are an asset of the Unit Owner's Association and the Plaintiffs have no individual interest in
- 15 this sum. The Court believes that the "seed funds" for these accounts are appropriate under the
- 16 circumstances of the case; and
- 17 10. The Court finds that it would be inappropriate to give MEI-GSR any "write downs" or credits
- 18 for sums they may have received had they rented the rooms in accordance with appropriate business
- 19 practices. These sums will be disgorged.

20

21 **Non-Monetary Relief:**

- 22 1. The receiver will remain in place with his current authority until this Court rules otherwise;
- 23 2. The Plaintiffs shall not be required to pay any fees, assessments, or reserves allegedly due or
- 24 accrued prior to the date of this ORDER;
- 25 3. The receiver will determine a reasonable amount of FF&E, shared facilities and hotel reserve fees
- 26 required to fund the needs of these three ledger items. These fees will be determined within 90 days
- 27 of the date of this ORDER. No fees will be required until the implementation of these new
- 28

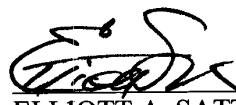
1 amounts. They will be collected from *all* unit owners and properly allocated on the Unit Owner's
2 Association ledgers; and

3 4. The current rotation system will remain in place.

4 **Punitive Damages:**

5 The Court specifically declined to hear argument regarding punitive damages during the
6 prove-up hearing. *See* Transcript of Proceedings 428:6 through 430:1. Where a defendant has been
7 guilty of oppression, fraud, or malice express or implied in an action *not arising from contract*,
8 punitive damages may be appropriate. NRS 42.005(1). Many of the Plaintiff's causes of action
9 sound in contract; therefore, they are not the subject of a punitive damages award. Some of the
10 causes of action may so qualify. The Court requires additional argument on whether punitive
11 damages would be appropriate in the non-contract causes of action. NRS 42.005(3). An appropriate
12 measure of punitive damages is based on the financial position of the defendant, its culpability and
13 blameworthiness, the vulnerability of, and injury suffered by, the offended party, the offensiveness
14 of the punished conduct, and the means necessary to deter further misconduct. *See generally*
15 *Ainsworth v. Combined Insurance Company of America*, 104 Nev. 587, 763 P.2d 673 (1988).
16 Should the Court determine that punitive damages are appropriate it will conduct a hearing to
17 consider all of the stated factors. NRS 42.005(3). The parties shall contact the Judicial Assistant
18 within 10 days of the date of this ORDER to schedule a hearing regarding punitive damages.
19 Counsel will be prepared to discuss all relevant issues and present testimony and/or evidence
20 regarding NRS 42.005 at that subsequent hearing.

21 DATED this 9 day of October, 2015.

22 
23 ELLIOTT A. SATTLER
24 District Judge
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

DATED this 9 day of October, 2015.


SHEILA MANSFIELD
Judicial Assistant

1 CODE: 4050
2 G. David Robertson, Esq. (NV Bar No. 1001)
3 Jarrad C. Miller, Esq. (NV Bar No. 7093)
4 Jonathan Joel Tew, Esq. (NV Bar No. 11874)
5 Robertson, Johnson, Miller & Williamson
6 50 West Liberty Street, Suite 600
7 Reno, Nevada 89501
8 (775) 329-5600
9 Attorneys for Plaintiffs

10 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 ALBERT THOMAS, individually; *et al.*,

13 Plaintiffs,

14 vs.

Case No. CV12-02222
Dept. No. 10

15 MEI-GSR Holdings, LLC, a Nevada Limited
16 Liability Company, GRAND SIERRA
17 RESORT UNIT OWNERS' ASSOCIATION,
18 a Nevada nonprofit corporation, GAGE
19 VILLAGE COMMERCIAL
20 DEVELOPMENT, LLC, a Nevada Limited
21 Liability Company and DOE DEFENDANTS
22 1 THROUGH 10, inclusive,

23 Defendants.

24 **STIPULATION AND ORDER REGARDING THE COURT'S**
25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

26 IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned
27 counsel on behalf of their respective clients, that:

28 1. The Findings of Fact, Conclusions of Law and Judgment, entered on October 9,
2015, does not constitute a final judgment under NRCP 54(a) because the Court has not resolved
whether it will award punitive damages;

2. The time to appeal a judgment pursuant to NRAP 4(a)(1) is not running;

3. The Plaintiffs will not seek a writ of execution, writ of attachment, or writ of
garnishment until there is a final judgment in the case.


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: October 16, 2015

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON
50 W. Liberty Street, Suite 600
Reno, NV 89501

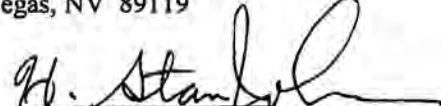
By:


Jarrod C. Miller, Esq. (SBN 7093)
Jonathan Joel Tew, Esq. (SBN 11874)
Attorneys for Plaintiffs

DATED: October 23, 2015

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119

By:


H. Stan Johnson, Esq. (SBN 265)
Steven B. Cohen, Esq. (SBN 2327)
Attorneys for Defendants

ORDER

IT IS SO ORDERED.

DATED this 3 day of November, 2015.


DISTRICT COURT JUDGE

1 **2315**

2 DANIEL F. POLSENBERG, ESQ.
3 Nevada Bar No. 2376
4 JENNIFER K. HOSTETLER, ESQ.
5 Nevada Bar No. 11994
6 DALE KOTCHKA-ALAINES, ESQ.
7 Nevada Bar No. 13168
8 LEWIS ROCA ROTHGERBER CHRISTIE LLP
9 3993 Howard Hughes Parkway, Suite 600
10 Las Vegas, NV 89169
11 Tel: 702.949.8200
12 Fax: 702.949.8398
13 jhostetler@lewisroca.com
14 dpolsenberg@lewisroca.com
15 mkotchkaalanes@lewisroca.com

16 *Attorneys for Defendants*

ABRAN VIGIL, ESQ.
Nevada Bar No. 7548
ANN HALL, ESQ.
Nevada Bar No. 5447
DAVID C. MCELHINNEY, ESQ.
Nevada Bar No. 0033
MERUELO GROUP, LLC
Legal Services Department
5th Floor Executive Offices
2535 Las Vegas Boulevard South
Las Vegas, NV 89109
Tel: (562) 454-9786
abran.vigil@meruelogroup.com
ann.hall@meruelogroup.com
david.mcelhinney@meruelogroup.com

Attorneys for Defendants

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

12 **IN AND FOR THE COUNTY OF WASHOE**

13 ALBERT THOMAS, et. al.,

14 Plaintiffs,

15 v.

16 MEI-GSR HOLDINGS, LLC., a Nevada Limited
17 Liability Company, AM-GSR Holdings, LLC., a
18 Nevada Limited Liability Company, GRAND
19 SIERRA RESORT UNIT OWNERS'
20 ASSOCIATION, a Nevada Nonprofit
21 Corporation, GAGE VILLAGE COMMERCIAL
22 DEVELOPMENT, LLC., a Nevada Limited
23 Liability Company, and DOES I-X inclusive,

24 Defendants.

Case No. CV12-02222

Dept No. OJ37

23 **MOTION TO DISMISS PURSUANT TO NRCP 41(e)**

24 **I. INTRODUCTION AND FACTUAL BACKGROUND**

25 In approximately 2005, the prior owners of the Grand Sierra Resort ("GSR") created a
26 "condominium hotel" program where individual hotel rooms could be purchased, as long as the
27 owners did not violate the RSCVA regulations limited use to 28 days or less per year. Plaintiffs in
28 the present case are or were individual Unit Owners in this "condominium hotel" program at Grand

1 Sierra Resort and Casino in Reno (the “Property”). The Plaintiffs in this matter purchased
2 condominium units through the foreclosure process, directly from the prior ownership or through
3 the Bank from approximately 2006 through 2011. It is important to note that no Plaintiff purchased
4 any condominium hotel Unit from the current owners of the GSR. Plaintiff Unit Owners purchased
5 the Units for less than \$10,000.00 in some cases, and others spent additional amounts. After the
6 unprecedented real estate market crash, or on about April 1, 2011, the current owners and operators
7 of the GSR, Defendants Gage Village LLC, AM-GSR Holdings LLC and MEI-GSR Holdings,
8 LLC purchased the GSR, which was then bank-owned by JP Morgan Chase. The Operator of GSR,
9 Defendant MEI-GSR Holdings, LLC, began charging fees allowed by the 7th Amended CC&Rs,
10 which were recorded June 27, 2007, well before the current owners purchased the property in April,
11 2011. **Exhibit 1**

12 Defendants have never had an opportunity to present evidence in this case, despite repeated
13 attempts to do so and that has led to a substantial miscarriage of justice, that continues to this very
14 day. Plaintiffs and their counsel have gotten away with substituting story-telling for actual
15 evidence, for years now, presenting nothing more than argument to the Court which has, on more
16 than one occasion been adopted as fact by the Court. By way of example, Plaintiffs have repeatedly
17 argued to the Court, and persuaded the Court, that the Plaintiffs’ primary purpose of purchasing
18 their units was as an investment and revenue generating proposition, (which Plaintiffs use as the
19 foundation for their argument that the rental revenue must exceed their expenses). This is a
20 fabrication bolstered repeatedly in Plaintiffs arguments. Plaintiffs know perfectly well that at the
21 time of the original purchase of their units they signed certifications and acknowledgements in
22 multiple documents signed by Plaintiffs prior to purchase that they were informed, that the units
23 are **not** suitable as an investment for persons seeking primarily rental income and that neither the
24 seller, nor any employee or agent suggested, stated or implied that their unit would earn a profit
25 from the rental program. Even the Unit Rental Agreements that Plaintiffs signed states in bold
26 lettering:

1 18. NO GUARANTEED RENTAL. OWNER ACKNOWLEDGES THAT
2 THERE ARE NO RENTAL INCOME GUARANTEES OF ANY NATURE...NEITHER
3 THE COMPANY NOR MANAGER GUARANTEES THAT OWNER WILL RECEIVE
4 ANY MINIMUM PAYMENTS UNDER THIS AGREEMENT OR THAT OWNER
5 WILL RECEIVE RENTAL INCOME EQUIVALENT TO THAT GENERATED BY
6 ANY OTHER UNIT IN THE HOTEL.

7 19. ...OWNER FURTHER ACKNOWLEDGES, REPRESENTS AND
8 WARRANTS THAT NEITHER THE COMPANY NOR MANAGER, OR ANY OF
9 THEIR RESPECTIVE OFFICERS, REPRESENTATIVES, EMPLOYEES, AGENTS,
10 SUBSIDIARIES, PARENT THE (sic) COMPANY AND AFFILIATES HAS (I) MADE
11 ANY STATEMENTS OR REPRESENTATIONS WITH RESPECT TO THE
12 ECONOMIC OR TAX BENEFITS OF OWNERSHIP OF THE UNIT...(Unit Rental
13 Agreement, paragraphs 18 and 18, page 13)

14 Because Defendants have been bound and gagged and repeatedly denied the opportunity
15 to present even one shred of evidence in these proceedings, this reality has been conveniently
16 swept under the rug and Plaintiffs have been allowed to continue with their narrative.

17 Another example is Plaintiffs claim that Defendants have artificially inflated costs in an
18 effort to drive down the value of Plaintiffs' Units and ultimately force them to sell their Units to
19 Defendants. While again this serves as one of Plaintiffs' flagship arguments, there is no actual
20 evidence to support it. The reality is that when MEI-GSR acquired this property in 2011, the
21 Grand Sierra Resort had gone into bankruptcy and was taken over and operated by the bank for 2
22 years beginning in 2008 or 2009. At that time Plaintiffs' units were worth somewhere in the
23 neighborhood of \$8,000 to \$10,000 and the property was on the verge of being closed down and
24 boarded up. MEI-GSR purchased the property and since that time has invested hundreds of
25 millions of dollars to restore, upgrade and improve the property, including the most recent and
26 ongoing remodel of the Units. As a result, recently Plaintiffs' Units that had been worth \$8,000
27 to \$10,000 prior to Defendants acquiring the Property, are now appraising in the range of \$25,000
28 to \$30,000. This increase in the value of Plaintiffs' units is directly related to Defendants' efforts
and expenditures. Despite this truth, Plaintiffs continue with their false narratives, claiming that
Defendants are robbing Plaintiffs of their investments and forcing them to sell their units.¹
Regardless of the posture of a case, and the sanctioning and defaulting of a party, these
proceedings should nonetheless be a search for the truth. Without a doubt, by depriving
Defendants the opportunity to defend themselves, this case has strayed far off of that path of
truth.

¹ See attached Exhibit 2, Declaration of Kent Vaughan.

Additionally, when the current owners purchased the GSR in 2011, multiple Unit Owners were not used to paying any fees or expenses associated with their Units as the costs and expenses because the bank that owned the property did not focus its efforts on operating the hotel-condominium arrangement within it. The Plaintiff Unit Owners sued the GSR on August 27, 2012, alleging 12 causes of action: 1) Petition for Appointment of a Receiver over the GSR Unit Owners Association; 2) Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR; 3) Breach of Contract as to MEI-GSR; 4) Quasi-Contract/Equitable Contract as to Defendant MEI-GSR; 5) Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR; 6) Consumer Fraud/Nevada Deceptive Trade Practices as to Defendant MEI-GSR; 7) Declaratory Relief as to Defendant MEI-GSR; 8) Conversion as to MEI-GSR; 9) Demand for Accounting as to MEI-GSR and GSR UOA; 10) Specific Performance pursuant to NRS 116.112, Unconscionable Agreement; 11) Unjust Enrichment against Defendant Gage Village; 12) Tortious Interference with contract and/or prospective business advantage as to Defendants MEI-GSR and Gage Village. **Exhibit 3.**

Plaintiffs filed their first amended complaint on September 10, 2012, with the identical causes of action. **Exhibit 4.** The Defendants filed an answer, affirmative defenses and counterclaims on November 21, 2012. **Exhibit 5.** Plaintiffs filed a second amended complaint on March 26, 2013. **Exhibit 6.**

On October 23, 2013, Judge Elliot Sattler, Department 10, struck the counterclaim of the Defendants as a sanction for the conduct of GSR's then lawyer who was later suspended from the practice of law due to substance abuse issues. **Exhibit 7.** The Court entered an order granting Plaintiffs' motion for case-terminating sanctions on October 3, 2014, which struck Defendants' answer. **Exhibit 8.** A default was entered against Defendants on November 26, 2014. **Exhibit 9.**

The Court conducted a default hearing on damages on March 23, 2015, wherein the Plaintiffs put on one witness, their “hired expert” Craig Greene, and no Plaintiff or other person with personal knowledge of the matter testified. In fact, not one Plaintiff took the stand to attest to his or her status as a unit owner or real party in interest to the lawsuit. Defendants were only

1 allowed limited cross-examination and no evidence. On October, 2015, the Court filed an Order
2 prepared by the Plaintiffs, which awarded Plaintiffs money damages under 9 categories: 1)
3 Underpaid revenue; 2) Rental of units with no rental agreement; 3) discounting of owners rooms
4 without credits; 4) discounting of rooms with credits; 5) comped rooms; 6) preferential rotation
5 system; 7) improperly calculated and assessed hotel fees; 8) improperly collected assessments and
6 9) reserve funding. **Exhibit 10.** The Court did not identify or allocate the damages that it
7 awarded to individual Plaintiffs, and this matter was not, and is not, a class action. In addition,
8 the Court never identified whether any damages could legally stem from, and be awardable based
9 on, the individual claims set forth in the Second Amended Complaint. It also bears repeating that
10 the Defendants have been prevented from presenting evidence or asserting any defenses to the
11 allegations in the case as a result of a default. **Exhibit 10.**

12 In a nutshell, the allegations of wrongdoing against the Defendants have been established
13 as a legal fiction as the result of actual misconduct by their first lawyer who was later suspended
14 from the practice of law for his conduct during the applicable period. **Exhibit 7.**

15 While the Court found that Plaintiffs were entitled to more than \$8 million in
16 compensatory damages, and to certain non-monetary relief, it is evident from the Second
17 Amended Complaint that multiple claims are mutually exclusive, and there is no way to tell
18 which claims or which Plaintiffs are entitled to which relief. In fact, some named Plaintiffs were
19 deceased at the time of the hearing, including the named Plaintiff Albert Thomas. *See, Motion for*
20 *Dismissal of Claims of Deceased Party Plaintiffs Due to Untimely Filing of Notice or Suggestion*
21 *of Death and Motion to Substitute Party*, filed November 19, 2021, and still pending at this time.

22 Despite certain Plaintiffs being deceased and approximately 16 others no longer owning
23 their property, all Plaintiffs were awarded damages in the FFCL&J. **Exhibit 10.** The FFCL&J was
24 specifically deemed **not a final judgment**, because the Court had yet to determine to what extent
25 Plaintiffs were entitled to an award of punitive damages. (*See* Discovery Commissioner's
26 Recommendation for Order filed on August 5, 2019, pg. 3: 10-17; and affirmed by the Court on
27 November 1, 2019, attached hereto as **Exhibit 11**). The FFCL&J instructs that:

1
2 “The Court requires additional argument on whether punitive damages would be
3 appropriate in the non-contract causes of action...Should the Court determine that
4 punitive damages are appropriate it will conduct a hearing to consider all of the
5 stated factors. NRS 42.0005(3). The parties shall contact the Judicial Assistant
6 within 10 days of the date of this ORDER to schedule a hearing regarding punitive
7 damages. Counsel will be prepared to discuss all relevant issues and present
8 testimony and/or evidence regarding NRS 42.005 at that subsequent hearing.” See
9 **Exhibit 10.**

10 Plaintiffs have never set that hearing. Instead, right after Remittitur from the Nevada
11 Supreme Court they filed a motion for supplemental compensatory damages and for additional
12 discovery on December 27, 2018. **Exhibit 12.** The Plaintiffs only have been allowed to conduct
13 discovery for more than 3 additional years, obtaining access to all computers, servers and even all
14 privileged communications in an effort to gin up additional compensatory damages. **Exhibit 12.**

15 This case was subject to two appeals. Defendants first filed a Notice of Appeal on November
16 2, 2015, when they appealed the FFCL&J, which was entered October 9, 2015. That appeal was
17 denied and remanded to the trial court on February 1, 2016. After remand, and on May 9, 2016, the
18 trial court dismissed the case for lack of subject matter jurisdiction. Plaintiffs appealed that
19 determination, which was then reversed by the Nevada State Supreme Court and subsequently
20 remitted to the trial court on December 27, 2018.

21 As this Court is aware, discovery on this case continues to this day, with no end in sight,
22 approximately 10 years after the filing of the initial lawsuit.

23 **II. SUMMARY OF THE ARGUMENT**

24 This case has been pending for almost 10 calendar years. The 3-year period within which
25 to bring the matter to trial after remand has expired. Hence, the longer time period within which to
26 bring a case to trial, the 5-year period, applies—and that too has lapsed. And by the plain wording
27 of the applicable rules, this matter has not been brought to trial.

28 While the Nevada Supreme Court has not articulated the exact minimum threshold for
bringing an action to trial, it is clear that the resolution of an issue as opposed to the entire action
does not constitute bringing the matter to trial. *Allyn v. McDonald*, 117 Nev. 907, 910-11, 34 P.3d
84, 586, (2001) (Holding that NRCp 41(e) requires that the "action" — not just an issue — be

1 brought to trial within the three-year period).

2 Because Plaintiffs have failed to bring the issue of punitive damages to trial, and have
3 likewise failed to finalize their compensatory damage claims within the 5-year window, or within
4 a 3-year window after Remittitur, dismissal of the entire action is mandatory.

5 **III. CALCULATION AS TO THE PASSAGE OF TIME:**

6 Dates counting toward the 5-year and 3 year rules:

- 7 1. The time period from 8/27/2012 (date complaint filed) to 11/6/2015, (date of
8 first notice of appeal) is 1,166 days, (3 years 2 months and 10 days);
- 9 2. The time period from 3/7/2016, (date of remittitur from the first appeal) to
10 5/9/2016 (date the case was dismissed for lack of subject matter jurisdiction) is
11 63 days;
- 12 3. The time period from 12/27/2018 (date of remittitur from second appeal) to
13 2/23/2022, is 1,154 days, (3 years, 1 month, 27 days);

14 A. The resulting time calculation:

- 15 1. The total elapsed time, as of today, February 23, 2022—not counting the period
16 of the two appeals—is 2383 days, or 6 years, 6 months and 7 days.

17 B. Effect of passage of time:

- 18 1. The 3-year rule under NRCP 41(e)(4)(B) lapsed on December 27, 2021; and,
- 19 2. The 5 year rule under NRCP 41(e)(2)(B) lapsed in 2020 while this matter was
20 pending before Judge Sattler. The 5 year rule has now been exceeded by more
21 than 1 year, 5 months, and 7 days.

22 **III. LEGAL ARGUMENT**

23 **A. NRCP 41 Mandates Dismissal**

24 Pursuant to NRCP 41(e): 1) the Court “may” dismiss an action if Plaintiffs fail to bring
25 an action to trial within 2 years after an action was filed; 2) the court “**must**” dismiss an action if
26 Plaintiffs fail to bring the action to trial within 5 years after the action was filed; and, 3) the court
27 “**must**” dismiss the action if Plaintiffs fail to bring the action to trial within 3 years after

28

1 remittitur was filed in the trial court. NRCP 41(e)(2)(B) and 41(e)(4)(B). In the present case,
2 after filing this action in August, 2012, the Plaintiffs have failed to bring the action to trial within
3 the 5-year and 3-year time frames provided by Rule. This mandates dismissal. *See Id, see also*
4 *Power Co. v. Henry*, 130 Nev. 182, 186, 321 P.3d 858, 862 (2014) (“**[d]ismissal is mandatory,**
5 **and the court may not examine the equities of a case to determine whether time should be**
6 **extended.**”)(internal citation omitted)(Emphasis added). Importantly, if the court improperly
7 denies dismissal, “the district court lacks any further jurisdiction, rendering its subsequent orders
8 going to the merits of the action void.” *Id.*, quoting *Cox v. Eighth Judicial District Court*, 124
9 Nev. 918, 925, 193 P.3 530, 534 (2008).

10 Under NRCP 41(e), “[a]ny action heretofore or hereafter commenced shall be dismissed
11 by the court in which the same shall have been commenced...unless such action is brought to trial
12 within 5 years after the plaintiff has filed the action.” If the time period of Rule 41(e) has expired,
13 the court has no discretion to retain jurisdiction, and must dismiss the action. *D.R. Horton, Inc. v.*
14 *District Ct.*, 131 Nev. 865, 358 P.3d 925 (2015) (“In addressing NRCP 41(e), we have concluded
15 that it is clear and unambiguous and requires no construction other than its own language”) (citing
16 *Thran v. First Judicial Dist. Court*, 79 Nev. 176, 181, 380 P.2d 297, 300 (1963)), *see also*
17 *Morgan v. Las Vegas*, 118 Nev. 315, 43 P.3d 1036 (2002) (finding that where a case has not been
18 brought to trial after five years, dismissal is mandatory, affording the district court no discretion);
19 *Rickard v. Montgomery Ward & Co.*, 120 Nev. 493, 496, 96 P.3d 743, 746 (2004), *overruled on*
20 *other grounds by Carstarphen v. Milsner*, 128 Nev. 55, 270 P.3d 1251 (2012); *Baker v. Noback*,
21 112 Nev. 1106, 1110, 922 P.2d 1201, 1203, (1996) (finding that rule 41(e) mandates that the
22 action be dismissed if it has not been brought to trial within the five years after its
23 commencement).

24 NRCP 41(e) gives five years for a trial of an “action,” not of a “claim.” *United Ass’n of*
25 *Journeymen & Apprentices of the Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 820,
26 783 P.2d 955, 957–58 (1989). Unlike a claim, an action necessarily includes all claims asserted
27 within the original complaint, along with any crossclaims, counterclaims, and third-party claims.

1 *Id.* Thus, all claims are part of one “action.” *Id.* There is an exception to NRCP 41(e) where the
2 parties are prevented from bringing the action to trial by reasons of a stay order, however, that is
3 not at issue in the present case. *Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405
4 (1982).

5 **1. The Five Year Period Started When the Complaint Was Filed**

6 The five-year period commences at the filing of the complaint. *See Johnson v. Harber*, 94
7 Nev. 524, 527, 582 P.2d 800, 801 (1978). The timing of pleadings filed thereafter, such as an
8 amended complaint or even the substitution of plaintiffs, is irrelevant for the purpose of calculating
9 this time period. *Id.* Under current Nevada law, “[a]ny period during which the parties are
10 prevented from bringing an action to trial by reason of a stay order shall not be computed in
11 determining the five-year period of [NRCP] 41(e).” *Boren*, 98 Nev. at 6, 638 P.2d at 405. The
12 holding in *Boren* was based on the fact that the district court prohibited the parties from going to
13 trial and then dismissed their action for failure to bring it to trial, circumstances that were
14 unarguably “unfair and unjust.” *Id.* at 5–6, 638 P.2d at 404; *D.R. Horton, Inc. v. Dist. Court*, 131
15 Nev. at 872, 358 P.3d at 930. All time limitations under Rule 41(e) are tolled during the pendency
16 of an appeal. *Massey v. Sunrise Hosp.*, 102 Nev. 367, 370, 724 P.2d 208, 210 (1986). The Nevada
17 Supreme Court has not articulated the exact minimum threshold for bringing an action to trial,
18 however, the resolution of an issue as opposed to the entire action does not constitute bringing the
19 matter to trial. *Allyn v. McDonald*, 117 Nev. 907, 910-11, 34 P.3d 584, 586, (2001) (finding that
20 NRCP 41(e) requires that the “action” — not just an issue — be brought to trial within the three-
21 year period.)

22 **2. Plaintiffs Have Failed to Diligently Prosecute their Claims**

23 Further a court may dismiss an action for want of prosecution where a plaintiff fails to bring
24 the entire claim. For example, in *McCurdy Trucking v. Yellow Checker Star Cab Company*, the
25 Nevada Supreme Court determined that the district court did not err by dismissing appellants’
26 action pursuant to NRCP 41(e) because appellants failed to bring the case to trial within five years
27 of filing the complaint. 127 Nev. 1158, 373 P.3d 941 (2011). The Supreme Court noted that the
28

1 district court granted summary judgment only as to the issue of punitive damages. *Id.* The court
2 did not find that there were no triable issues of fact or determine the rights of the parties by applying
3 the law to the facts, and thus, the summary judgment did not amount to bringing the case to trial
4 for the purposes of NRCP 41(e). *See Monroe*, 123 Nev. at 100, 158 P.3d at 1010; *see also Allyn v.*
5 *McDonald*, 117 Nev. 907, 910, 34 P.3d 584, 586 (2001) (concluding that a case was not brought to
6 trial when the district court granted partial dismissal, as “NRCP 41(e) requires that the ‘action’—
7 not just an issue—be brought to trial within the [applicable] period”); *see also Kester v. Wagner*,
8 22 Wyo. 512, 145 P. 748, 749 (1915) (In action for damages, held that the court properly reversed
9 the judgment and dismissed the action, where plaintiff refused to remit the punitive damages or to
10 further prosecute the action).

11 In the present case, the Plaintiffs did proceed to a default hearing in March of 2015 but only
12 as to compensatory damages. The Judgment entered October 9, 2015, is not regarded as final
13 judgment because the Court has not yet determined punitive damages. In addition, since the
14 Remittitur filed in December, 2018, the district has opened up further discovery on compensatory
15 damages at the express request of the Plaintiffs. **Exhibit 11.** The parties have litigated this matter
16 for more than 3 years after Remittitur, just on the issue of further compensatory damages that were
17 not even brought or contemplated in the March, 2015, hearing. **Exhibit 12.** The Court was clear
18 in its FFCLJ, at page 23, that it anticipates a wholly separate hearing on the issue of punitive
19 damages and it anticipates the plaintiffs presenting testimony and evidence at that hearing. **Exhibit**
20 **10.**

21 To this end, it is compelling that the Plaintiffs did not bring the *action* to trial at the March
22 2015 prove-up hearing and limited the presentation to one witness, lacking in personal knowledge,
23 to present a bulk calculation of compensatory damages. While it is true that the matter was on
24 appeal from May 6, 2016 until December of 2018, since the Remittitur there have been further
25 proceedings at the “compensatory” phase of damages, which has continued for an additional three
26 years with no end in sight, and further there has been nothing which prevented Plaintiffs from
27 setting this matter for a prove-up hearing on the remaining issue of punitive damages.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. There Is No Doubt The Plaintiffs Have Failed To Bring This Matter To Trial Within 3 years after remittitur As Required.

As set forth above, NRCp 41(e)(4)(B) states:

If a party appeals a judgment and the judgment is reversed on appeal and remanded for a new trial, the court must dismiss the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after remittitur was filed in the trial court.

Here, the First remittitur was filed in the trial court on March 7, 2016, as the Nevada Supreme Court found that the FFCL&J was not a final action. **Exhibit 13.** The Defendants' Second Notice of Appeal on the issue of ADR pursuant to NRS 34 was filed May 26, 2016. This matter was tolled for 945 days until the Second Remittitur was filed in the trial court on December 27, 2018. **Exhibit 14.**

At that point, Plaintiffs were required to bring this action to trial within 3 years of the reversal and remittitur. Plaintiffs failed to do so. At this point, this matter has gone on for approximately a decade. Pursuant to the express and mandatory language of NRCp 41(e)(4), this court **"must"** dismiss this action.

4. Plaintiffs Have Stripped The Three and Five-Year Rules of Any Meaning

The purpose of the "five-year rule" and "three-year rule" is to compel expeditious determinations of legitimate claims. *Rickard*, 120 Nev. at 496, 96 P.3d at 746; *Baker v. Noback*, 112 Nev. 1106, 922 P.2d 1201 (1996). The duty rests upon the plaintiff to use diligence and the expedite his case to final determination. *Moore v. Cherry*, 90 Nev. 390, 395, 528 P.2d 1018, 1021 (1974).

In the present case, if this Court were to view an expert witness with no personal knowledge as "bringing a case to trial," it would turn the five-year rule on its head because: 1) by its plain wording, a "default" is not a "trial," 2) a default is supposed to bring a case to an

1 expedited resolution, not be used as a springboard for limitless protracted litigation, and 3) the
2 five-year rule is made illusory under the facts of this case because now the case has no end in
3 sight.

4 **IV. CONCLUSION**

5
6 Based upon the express language in NRCP 41(e), and the mandatory dismissal required by
7 Plaintiffs failure to bring this matter to a final trial or adjudication within five years from the filing
8 on August 27, 2012 and within three years from the second remittitur on December 27, 2018,
9 dismissal of this action in its entirety is mandatory.

10
11 **AFFIRMATION**
12 **Pursuant to NRS 239B.030**

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

15 DATED this 23rd day of February, 2022.

16
17 By: /s/ David C. McElhinney
18 Abran Vigil, SBN 7548
19 Ann Hall, SBN 5447
20 David C. McElhinney, SBN 0033
21 Legal Services Department
22 5th Floor Executive Offices
23 2535 Las Vegas Boulevard South
24 Las Vegas, NV 89109
25 *Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of LEWIS ROCA ROTHGERBER
3 CHRISTIE LLP and that on this 23rd day of February, 2022, I served a true and correct copy of the
4 foregoing **MOTION TO DISMISS PURSUANT TO NRCP 41(e)** to the parties listed below, via
5 electronic service through the Second Judicial District Court's eFlex Electronic Filing system.

6
7 G. David Robertson, Esq., SBN 1001
Jarrad C. Miller, Esq., SBN 7093
8 Jonathan J. Tew, Esq., SBN 11874
ROBERSTON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
9 Reno, Nevada 89501
Tel: (775) 329-5600
10 jon@nvlawyers.com
jarrad@nvlawyers.com

F. DeArmond Sharp, Esq., SBN 780
Stefanie T. Sharp, Esq. SBN 8661
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503
Tel: (775) 329-3151
Tel: (775) 329-7169
dsharp@rssblaw.com
ssharp@rssblaw.com

Attorneys for the Receiver Richard M. Teichner

11
12 Robert L. Eisenberg, Esq., SBN 0950
LEMONS, GRUNDY & EISENBERG
13 6005 Plumas Street, Third Floor
Reno, Nevada 89519
14 Telephone: (775) 786-6868
Facsimile: (775) 786-9716
15 rle@lge.net

Attorneys for Plaintiffs

16
17
18 I declare under penalty of perjury under the laws of the State of Nevada, that the foregoing
19 is true and correct.

20 Dated this 23rd day of February, 2022.

21 /s/Iliana Godoy
22 An Employee of Meruelo Group

INDEX OF EXHIBITS

Exhibit No.	Description	No. of Pages
1	Seventh Amended CC&R's	69
2	Kent Vaughn Declaration	2
3	Complaint	22
4	Amended Complaint	25
5	Defendant's Answer and Counterclaim to Amended Complaint	17
6	Second Amended Complaint	26
7	Order Approving Conditional Guilty Plea	4
8	Order Granting Case-Terminating Sanctions	13
9	Plaintiff's Default	2
10	Findings of Fact, Conclusions of Law and Judgment	24
11	Order Affirming Master's Recommendation	7
12	Motion for Supplemental Damages Prove-up Hearing	11
13	NV Supreme Court Order Dismissing Appeal	5
14	NV Supreme Court Remittur	8

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yviloria

Exhibit 1

5-25-08
DOC # 3548504
06/27/2007 02:44:03 PM
Requested By
GRAND SIERRA RESORT
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: \$147.00 RPTT: \$0.00
Page 1 of 109

WHEN RECORDED RETURN TO:

R. Shawn Oliphant, Esq.
Fahrendorf, Vioria, 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)

GSR0141

PA0746

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>Page</u>
Article 1 DEFINITIONS.....	2
Article 2 UNITS.....	7
2.1 Description and Ownership.....	7
2.2 Certain Structures Not Constituting Part of a Unit.....	9
2.3 Shared Facilities Unit.....	9
2.4 Real Estate Taxes.....	10
Article 3 COMMON ELEMENTS	10
3.1 Description.....	10
3.2 Ownership of Common Elements.....	10
Article 4 GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS	11
4.1 Submission of Property to the Act.....	11
4.2 No Severance of Ownership	11
4.3 Easements	11
4.4 Use of the Common Elements and Public Shared Facilities	16
4.5 Maintenance, Repairs and Replacements	16
4.6 Negligence of Unit Owner	20
4.7 Joint Facilities.....	21
4.8 Additions, Alterations or Improvements.....	21
4.9 Cable Television System.....	22
4.10 Street and Utilities Dedication	23
4.11 Parking Area	23
Article 5 ADMINISTRATION.....	23
5.1 Administration of Association	23
5.2 Association.....	23
5.3 Voting Rights.....	24
5.4 Meetings.....	24
5.5 Board of Directors.....	24
5.6 General Powers of the Board	26
5.7 Insurance.....	29
5.8 Liability of the Board of Directors and Officers of the Association.....	33
5.9 Resale of Units	33
Article 6 COMMON EXPENSES & OTHER CHARGES	34
6.1 Preparation of Annual Budget	34
6.2 Capital Reserve; Supplemental Budget	34
6.3 Initial Budget	35
6.4 Failure to Prepare Annual Budget.....	35
6.5 Records of the Association	35
6.6 Status of Collected Funds	36

6.7	User Charges.....	36
6.8	Non-Use and Abandonment.....	37
6.9	Shared Facilities Expenses.....	37
6.10	Hotel Expenses.....	40
Article 7 HOTEL COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY		43
7.1	Covenants and Restrictions as to Use, Occupancy and Maintenance.....	43
Article 8 DAMAGE, DESTRUCTION, CONDEMNATION AND RESTORATION OF BUILDING		47
8.1	Application of Insurance Proceeds	47
8.2	Eminent Domain	48
8.3	Repair, Restoration or Reconstruction of the Improvements.....	48
Article 9 SALE OF THE PROPERTY		48
9.1	Sale.....	48
Article 10 MISCELLANEOUS PROVISIONS RESPECTING MORTGAGES		49
10.1	Mortgages	49
Article 11 ANNEXING ADDITIONAL PROPERTY		51
11.1	Additional Parcel	51
11.2	Amendments to Condominium Declaration	52
11.3	Determination of Amendments to Percentages of Ownership Interest in the Allocated Interests	53
11.4	Determination of Amendments to duties to pay Shared Facilities Expenses and Hotel Expenses.....	54
11.5	Existing Mortgages	54
11.6	Binding Effect.....	54
Article 12 TRANSFER OF A UNIT, DECLARANT’S RIGHT OF REPURCHASE		56
12.1	Unrestricted Transfers.....	56
12.2	Declarant’s Right of Repurchase	56
12.3	Financing of Purchase by Association	58
12.4	Miscellaneous	58
Article 13 GENERAL PROVISIONS		58
13.1	Manner of Giving Notices	58
13.2	Notice to Mortgagees	59
13.3	Notices of Estate or Representatives.....	59
13.4	Conveyance and Leases	59
13.5	No Waivers	59
13.6	Change, Modification or Rescission	59
13.7	Partial Invalidity.....	60
13.8	Perpetuities and Other Invalidity	60
13.9	Liberal Construction	60

13.10	Ownership by Land Trustee	60
13.11	Special Amendment	60
13.12	Assignments by Declarant	61
13.13	Intellectual Property Rights	61
13.14	Hotel Management Company	61
13.15	Dispute Resolution Addendum Agreement, and Agreement to Modify Statutorily Implied Warranties of Quality, to Run with the Land	62

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 the 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 permittees, the right to enter upon any portion of the Property for purposes of: (i) abating any nuisance; (ii) carrying out the rights of the Declarant, the Owner of the Shared Facilities Unit, or the Hotel Management Company to perform maintenance, repairs or other acts; and (iii) exercising any of the rights reserved to or

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

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

4.4 Use of the Common Elements and Public Shared Facilities.

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

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

4.5 Maintenance, Repairs and Replacements.

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

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

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

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

- (ii) Subject to compliance with the obligations set forth in Section 4.5(b)(i) above, and, to the extent not provided as part of the services pursuant to the Unit Maintenance Agreement described in Section 7.1(a) below, all of the maintenance, repairs and replacements within a Unit Owner's Unit, all interior and exterior doors appurtenant thereto (including, without limitation, hallway doors and locking mechanisms and components), all screens, if any, and all internal installations of such Unit such as lighting fixtures and other electrical fixtures and plumbing and any portion of any other utility service facilities located within the Unit.
- (iii) Subject to compliance with the obligations set forth in Section 4.5(b)(i) above, and, to the extent not provided as part of the services pursuant to the Unit Maintenance Agreement described in Section 7.1(a) below, all of the decorating associated with such Unit Owner's Unit (initially and thereafter from time to time), including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating (including the FF&E). Each Unit Owner shall maintain the interior surfaces of the common walls and the interior surfaces of the vertical perimeter walls, floors and ceiling of such Unit Owner's Unit in good condition at his or her sole expense as may be required from time to time. The interior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed by and at the expense of each respective Unit Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades, or other items visible on the exterior of the Building, shall be subject to the FF&E requirements of the Declarant and the Hotel Management Company as may be imposed or Amended from time to time.

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

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

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

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

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

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

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

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

4.8 Additions, Alterations or Improvements.

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

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

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

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

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

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

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

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

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

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

ARTICLE 5

ADMINISTRATION

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

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

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

5.3 Voting Rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) Operation, care, upkeep, maintenance, replacement and improvement of the Common Elements in a neat and orderly manner and as necessary or desirable for the operation of the Condominium as a first-class hotel condominium as determined by the First-Class hotel standard established by the Declarant and the Hotel Management Company;
- (ii) Preparation, adoption and distribution of the annual budget for the Association;
- (iii) Levying of assessments for Common Expenses and collection thereof from Unit Owners and expenditure of amounts collected;
- (iv) Borrowing funds;
- (v) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements;
- (vi) Obtaining adequate and appropriate kinds of insurance;
- (vii) Purchasing and receiving conveyances of Unit Ownerships and owning, conveying, mortgaging, encumbering, leasing and otherwise dealing with Unit Ownerships conveyed to or purchased by it;
- (viii) Promulgation and amendment of rules and regulations covering the details of the operation and use of the Common Elements;
- (ix) Keeping of detailed, accurate records of the receipts and expenditures affecting the use of the Common Elements and operation of the Association;
- (x) To have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements therein or accessible therefrom, or for making repairs therein necessary to prevent damage to the Common Elements;
- (xi) Pay real property taxes, special assessments, and any other special taxes or charges of the State of Nevada or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized, by law to be assessed and levied upon the real property of the Condominium and are not payable by Unit Owners directly;
- (xii) Impose charges for late payments of a Unit Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of this Declaration and rules and

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

- (xiii) By a majority vote of the entire Board, assign the Association's right to future income from Common Expenses or other sources, and mortgage or pledge substantially all of the remaining assets of the Association;
- (xiv) Record the granting of an easement pursuant to the provisions of Section 4.3 hereof and any instruments required elsewhere in this Declaration; and
- (xv) Except to the extent limited by this Declaration and the Act, the Board shall have the power and duty to exercise the rights of, and perform all of the covenants and obligations imposed upon, the Association or the Unit Owners and to execute any and all instruments required pursuant thereto.

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

- (i) Operating expenses of the Common Elements, including utility services to the extent not separately metered or charged as Shared Facilities Expenses or Hotel Expenses;
- (ii) Services of any person or firm to act on behalf of the Unit Owners in connection with real estate taxes and special assessments on the Unit Ownerships, and in connection with any other matter where the respective interests of the Unit Owners are deemed by the Board to be similar and nonadverse to each other;
- (iii) Maintenance, repair, and replacement of the Common Elements;
- (iv) Any other materials, supplies, utilities, equipment, labor, services, maintenance, repairs or structural alterations which the Board is required to secure or pay for pursuant to the terms of this Declaration or the Bylaws;
- (v) Any amount necessary to discharge or bond around any mechanics' lien or other encumbrance levied against the Common Elements. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it or bonding around said lien, in the discretion of the Board, and any costs incurred by the Board by reason of said lien or liens shall be specifically assessed to said Unit Owners.

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

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

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

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

5.7 Insurance.

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

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

- (ii) A crime policy, with fidelity bond, insuring the Association, the Board, the Unit Owners, the management agent, if any, and its employees who control or disburse funds of the Association, and the Declarant in its capacity as a Unit Owner and Board member, against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management company or of any other person handling the funds of the Association, the Board or the Unit Owners in such amounts as the Board shall deem necessary but not less than Five Hundred Thousand Dollars (\$500,000). Such policy shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such policy and bond shall provide that they may not be canceled for non-payment of any premiums without at least ten (10) days' prior written notice to the Board.
- (iii) Directors and Officers Liability insurance in such amounts as the Board shall determine to be reasonable. Directors and Officers Liability coverage must cover actions taken by the Board and officers in their official capacity as Directors and officers, for liability asserted against them whether or not the Association has the authority to indemnify them against such liability and expenses, provided that no financial arrangement made may provide protection for a person adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for intentional misconduct, fraud or a knowing violation of law, except with respect to advancement of expenses or indemnification ordered by a court, or as otherwise provided by this Declaration or the Bylaws of the Association.
- (iv) As a separate physical damage insurance policy for the Condominium is not reasonably available, the Association, and all Unit Owners by category, shall be named as additional insureds on a physical damage insurance policy for the Building that shall be maintained by the Declarant. Such policy shall provide for insurance, after application of any deductibles, in an amount not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date; exclusive of land, excavations, foundations and other items normally excluded from property policies. The Association and all Unit Owners shall reimburse the Declarant for a portion of the costs of such policy, pursuant to the formula set forth in Exhibit B. Any deductible under such policy, payable for a loss related to the Condominium, shall be paid by the Association as a Common Expense in the proportion that the loss of Condominium property bears to the total loss.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6

COMMON EXPENSES & OTHER CHARGES

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

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

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

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

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

6.5 Records of the Association.

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

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

- (ii) Detailed accurate records in chronological order of the receipts and expenditures affecting the Common Elements and Common Expenses, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expense incurred, and copies of all contracts, leases, or other agreements entered into by the Association.
- (iii) The minutes of all meetings of the Association and the Board. The Association shall maintain these minutes until the common-interest community is terminated.
- (iv) Ballots and proxies relating thereto for all elections to the Board and for any other matters voted on by the Unit Owners shall be maintained for a period of not less than ten (10) years; provided that, unless directed by court order, only the voting ballot excluding a Unit number or symbol shall be subject to inspection and copying.
- (v) Such other records of the Association as are available for inspection pursuant to NRS 116.31175, 116.31177, and 116.3118, as amended, or otherwise subject to inspection by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 7

HOTEL COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

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

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

(b) There shall be no obstruction of the Common Elements or the Public Shared Facilities nor shall anything be stored in the Common Elements (except in areas designed for such purpose) or the Public Shared Facilities, without the prior consent of the Board (or, as it relates to the Public 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 Public 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 8th day of June, 2007.

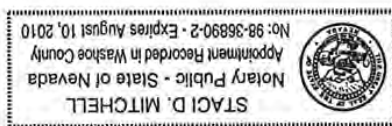
GRAND SIERRA OPERATING CORP., a Nevada Corporation

By: [Signature]
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:



[Signature]
Notary Public

My Commission 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:

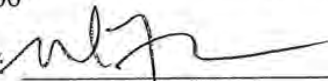
TRUSTOR:	Grand Sierra Operating Corp., a Nevada Corporation
TRUSTEE:	Stewart Title of Northern Nevada, a Nevada Corporation
BENEFICIARY:	WELLS FARGO BANK, N.A., as trustee for the benefit of holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates,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

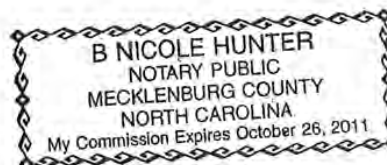
STATE OF NORTH CAROLINA)
) SS
COUNTY OF MECKLENBURG)

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)



FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yviloria

Exhibit 2

1 **DECLARATION OF KENT VAUGHAN IN SUPPORT OF DEFENDANTS' MOTION TO**
2 **DISMISS**
3

4 I, Kent Vaughan, declare as follows:

5 1. I am Senior Vice President of Hotel Operations at Grand Sierra Resort. I have held this
6 title and position at the Grand Sierra Resort since prior to MEI-GSR Holdings purchase of the
7 property in April of 2011.

8 2. I have personal knowledge of the matters set forth herein, except as to those matters that I
9 state to be upon information and belief and as to those matters I believe them to be true.

10 3. I have personally seen purchase and sale documents that were signed by original
11 purchasers of the Units in the Summit Tower at the Grand Sierra Resort. In those purchase and
12 sale documents the buyers, including Plaintiffs who were the original purchasers of their Units in
13 2006 and 2007, certified and acknowledged, in writing, that they had been informed that the units
14 they were purchasing were not suitable as an investment for persons seeking primarily rental
15 income and that neither the seller, nor any of its employees or agents had suggested, stated or
16 implied that their unit would earn a profit from the rental program. They certified in writing that
17 they had been told that purchase of a Unit was suitable for persons who were seeking the use of
18 their Units as a second home or vacation property, and who desired the benefits of amenities like
19 restaurants, concierge, room serve and spas.

20 4. Even the Unit Rental Agreements that the Plaintiffs signed states, in bold lettering, that
21 there are no rental income guarantees of any nature and that neither the seller or its employees or
22 agents made any statements or representations with respect to the economic or tax benefits of
23 ownership of their Units.

24 5. At the time MEI-GSR Holdings purchased the Grand Sierra Resort in 2011, the property
25 had been in bankruptcy for approximately 2 years and had been bank operated for that period of
26 time. The Property was in a serious state of disrepair and I am informed and believe that had
27 MEI-GSR not purchased the Property in 2011, the bank would have ceased operations at the
28

1 Grand Sierra Resort and it would have been closed and boarded up. Of course, if that had
2 occurred the value of Plaintiffs units would have fallen to zero.

3 6. Additionally, when the current owners purchased the GSR in 2011, multiple Unit Owners
4 were not used to paying any fees or expenses associated with their Units. It was my observation
5 that the bank that owned the property did not focus its efforts on operating the hotel-condominium
6 arrangement within it and was not charging unit owners for some or all of the costs called for in
7 the Governing Documents.

8 7. Since purchasing the Property in April of 2011, MEI-GSR has spent hundreds of millions
9 of dollars restoring, upgrading and improving the Property, including renovation in 2012 and 2013
10 where we replaced furniture, carpet and wall covering both in the corridors and the Summit
11 Rooms and the most recent and ongoing remodel of all of the Units in the Summit Tower,
12 including all of the Plaintiffs Units. All of this restoration, upgrade and improvement to the
13 Property has served to increase the occupancy rates of the Units and has increased the average
14 daily room rates of the Units, all of which benefits the unit owners.

15 8. Prior to MEI-GSR's purchase of the Property Plaintiffs Units were of little or no value. I
16 base this on the fact that the Property was in serious need of upgrading and repair, our occupancy
17 rates and daily room rates were significantly lower than they are today, and the entire Property
18 was on the verge of collapse. I have been informed and I believe that prior to MEI-GSR's
19 purchase of the Property in 2011, the Units were valued in a range of \$8,000 to \$10,000.

20 9. Recently I have seen written appraisals for the same Units showing an appraised value in
21 the \$25,000 to \$30,000 range. I am informed and believe, (and it only makes common sense) that
22 the increase in the value of Plaintiffs' Units is directly attributable to MEI-GSR's substantial
23 investment in the Property and its restoration, upgrades and improvements to the Property.

24

25

26 I declare under penalty of perjury that the foregoing is accurate to the best of my
27 knowledge and if called upon to testify I would testify substantially the same as is set forth in his
28 Declaration.

1
2
3
4 
Signature

2-23-22
Date

5 **AFFIRMATION**
6 **Pursuant to NRS 239B.030**

7 The undersigned does hereby affirm that this document does not contain the social
8 security number of any person.
9
10
11
12
13
14
15
16
17
18
19
20
21
22

23 **1360**
24
25
26
27
28

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yvilorla

Exhibit 3

1 CODE: \$1425
2 G. David Robertson, Esq. (NV Bar No. 1001)
3 Jarrad C. Miller, Esq. (NV Bar No. 7093)
4 Jonathan J. Tew, Esq. (NV Bar No. 11874)
5 Robertson, Johnson, Miller & Williamson
6 50 West Liberty Street, Suite 600
7 Reno, Nevada 89501
8 (775) 329-5600
9 Attorneys for Plaintiffs

6 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 ALBERT THOMAS, individually; JANE
9 DUNLAP, individually; JOHN DUNLAP,
10 individually; BARRY HAY, individually;
11 MARIE-ANNIE ALEXANDER, Trustee of
12 the MARIE-ANNIE ALEXANDER LIVING
13 TRUST; MELISSA VAGUJHELYI and
14 GEORGE VAGUJHELYI, as trustees of the
15 GEORGE VAGUJHELYI AND MELISSA
16 VAGUJHELYI 2001 FAMILY TRUST
17 AGREEMENT, U/D/A APRIL 13, 2001; D'
18 ARCY NUNN, individually; HENRY
19 NUNN, individually; MADELYN VAN DER
20 BOKKE, individually; LEE VAN DER
21 BOKKE, individually; DONALD
22 SCHREIFELS, individually; ROBERT R.
23 PEDERSON, individually and as trustee of
24 the PEDERSON 1990 TRUST; LOU ANN
25 PEDERSON, individually and as trustee of
26 the PEDERSON 1990 TRUST; LORI
27 ORDOVER, individually; WILLIAM A.
28 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

1 individually; KENNETH RICH, individually;
2 MAXINE RICH, individually; NORMAN
3 CHANDLER, individually; BENTON WAN,
4 individually; TIMOTHY D. KAPLAN,
5 individually; SILKSCAPE INC.; PETER
6 CHENG, individually; ELISA CHENG,
7 individually; GREG A. CAMERON,
8 individually; TMI PROPERTY GROUP,
9 LLC; RICHARD LUTZ, individually;
10 SANDRA LUTZ, individually; MARY A.
11 KOSSICK, individually; MELVIN CHEAH,
12 individually; DI SHEN, individually;
13 NADINE'S REAL ESTATE
14 INVESTMENTS, LLC; and DOE
15 PLAINTIFFS 1 THROUGH 10, inclusive,

16 Plaintiffs,

17 vs.

18 MEI-GSR HOLDINGS, LLC, a Nevada
19 Limited Liability Company, GRAND
20 SIERRA RESORT UNIT OWNERS'
21 ASSOCIATION, a Nevada nonprofit
22 corporation, GAGE VILLAGE
23 COMMERCIAL DEVELOPMENT, LLC, a
24 Nevada Limited Liability Company and DOE
25 DEFENDANTS 1 THROUGH 10, inclusive,

26 Defendants.

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

29 GENERAL ALLEGATIONS

30 The Parties

31 1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of
32 California.

33 2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of
34 California.

35 3. Plaintiff John Dunlap is a competent adult and is a resident of the State of
36 California.

1 4. Plaintiff Barry Hay is a competent adult and is a resident of the State of
2 California.

3 5. Plaintiff Marie-Annie Alexander, trustee of the Marie-Annie Alexander Living
4 Trust, is a competent adult and is a resident of the State of California.

5 6. Plaintiff Melissa Vagujhelyi, co-trustee of the George Vagujhelyi and Melissa
6 Vagujhelyi 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
7 resident of the State of Nevada.

8 7. Plaintiff George Vagujhelyi, co-trustee of the George Vagujhelyi and Melissa
9 Vagujhelyi 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
10 resident of the State of Nevada.

11 8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of
12 California.

13 9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of
14 California.

15 10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of
16 California.

17 11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the
18 State of California.

19 12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of
20 Minnesota.

21 13. Plaintiff Robert R. Pederson, individually and as trustee of the Pederson 1990
22 Trust, is a competent adult and is a resident of the State of California.

23 14. Plaintiff Lou Ann Pederson, individually and as trustee of the Pederson 1990
24 Trust, is a competent adult and is a resident of the State of California.

25 15. Plaintiff Lori Ordoover is a competent adult and is a resident of the State of
26 Connecticut.

27 16. Plaintiff William A. Henderson is a competent adult and is a resident of the State
28 of California.

1 17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State
2 of California.

3 18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of
4 Washington.

5 19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of
6 Washington.

7 20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New
8 York.

9 21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of
10 California.

11 22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of
12 New York.

13 23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New
14 York.

15 24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its
16 principal place of business in Nevada.

17 25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its
18 principal place of business in Nevada.

19 26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of
20 Minnesota.

21 27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of
22 California.

23 28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of
24 California.

25 29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of
26 California.

27 30. Plaintiff GareT Tom is a competent adult and is a resident of the State of
28 California.

1 31. Plaintiff Anita Tom is a competent adult and is a resident of the State of
2 California.
3 32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of
4 California.
5 33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of
6 California.
7 34. Plaintiff Peter K. Lee, as trustee of the Lee Family 2002 Revocable Trust, is a
8 competent adult and is a resident of the State of California.
9 35. Plaintiff Monica L. Lee, as trustee of the Lee Family 2002 Revocable Trust, is a
10 competent adult and is a resident of the State of California.
11 36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of
12 California.
13 37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of
14 California.
15 38. Plaintiff Barry Hay is a competent adult and is a resident of the State of
16 California.
17 39. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited
18 Liability Company.
19 40. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of
20 Hawaii.
21 41. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of
22 Hawaii.
23 42. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of
24 Wisconsin.
25 43. Plaintiff Maxine Riche is a competent adult and is a resident of the State of
26 Wisconsin.
27 44. Plaintiff Norman Chandler is a competent adult and is a resident of the State of
28 Alabama.

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

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

5 47. Plaintiff Silkscape Inc. is a California Corporation.

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

16 63. The Grand Sierra Resort Condominium Units ("GSR Condo Units") are part of
17 the Grand Sierra Unit Owners Association, which is an apartment style hotel condominium
18 development of 670 units in one 27-story building. The GSR Condo Units occupy floors 17
19 through 24 of the Grand Sierra Resort and Casino, a large-scale hotel casino, located at 2500
20 East Second Street Reno, Nevada.

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

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

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

25 67. Under the Declaration of Covenants, Conditions, Restrictions and Reservations of
26 Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs"), there is one voting
27 member for each unit of ownership (thus, an owner with multiple units has multiple votes).

1 68. Because Defendants MEI-GSR and Gage Village control more units of ownership
2 than any other person or entity, they effectively control the Unit Owners' Association by having
3 the ability to elect Defendant MEI-GSR's chosen representatives to the Board of Directors (the
4 governing body over the GSR Condo Units).

5 69. As a result of Defendants MEI-GSR and Gage Village controlling the Unit
6 Owners' Association, the Individual Unit Owners effectively have no input or control over the
7 management of the Unit Owners' Association.

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

11 71. Defendants MEI-GSR and Gage Villages' control of the Unit Owners'
12 Association violates Nevada law as it defeats the purpose of forming and maintaining a
13 homeowners' association.

14 72. Further, the Nevada Division of Real Estate requires a developer to sell off the
15 units within 7 years, exit and turn over the control and management to the owners.

16 73. Under the CC&Rs, the Individual Unit Owners are required to enter into a "Unit
17 Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein
18 Defendant MEI-GSR provides certain services (including, without limitation, reception desk
19 staffing, in-room services, guest processing services, housekeeping services, Hotel Unit
20 inspection, repair and maintenance services, and other services).

21 74. The Unit Owners' Association maintains capital reserve accounts that are funded
22 by the owners of GSR Condo Units. The Unit Owners' Association collects association dues of
23 approximately \$25 per month per unit, with some variation depending on a particular unit's
24 square footage.

25 75. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes,
26 deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance,
27 utilities, etc.

1 76. Defendant MEI-GSR has systematically allocated and disproportionately charged
2 capital reserve contributions to the Individual Unit Owners, so as to force the Individual Unit
3 Owners to pay capital reserve contributions in excess of what should have been charged.

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

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

8 79. The Individual Unit Owners also pay “Daily Use Fees” (a charge for each night a
9 unit is occupied by any guest for housekeeping services, etc.).

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

12 81. Defendant MEI-GSR has failed to properly account for the contracted “Hotel
13 Fees” and “Daily Use Fees.”

14 82. Further, the Hotel Fees and Daily Use Fees are not included in the Unit Owners’
15 Association’s annual budget with other assessments that provide the Individual Unit Owners’ the
16 ability to reject assessment increases and proposed budget ratification.

17 83. Defendant MEI-GSR has systematically endeavored to increase the various fees
18 that are charged in connection with the use of the GSR Condo Units in order to devalue the units
19 owned by Individual Unit Owners.

20 84. The Individual Unit Owners’ are required to abide by the unilateral demands of
21 MEI-GSR, through its control of the Unit Owners’ Association, or risk being considered in
22 default under Section 12 of the Agreement, which provides lien and foreclosure rights pursuant
23 to Section 6.10(f) of the CC&R’s.

24 85. Defendants MEI-GSR and/or Gage Village has attempted to purchase the units,
25 thus devalued by their own actions, at nominal, distressed prices when Individual Unit Owners
26 decide to, or are effectively forced to, sell their units because the units fail to generate sufficient
27 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

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

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

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

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

11 98. Defendants MEI-GSR and Gage Village intend to purchase the devalued units at
12 nominal, distressed prices when Individual Condo Unit Owners decide to, or are effectively
13 forced to, sell their units because the units fail to generate sufficient revenue to cover expenses
14 and have no prospect of selling their persistently loss-making units to any other buyer.

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

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

19 101. Defendant MEI-GSR has breached the Grand Sierra Resort Unit Rental
20 Agreement with Individual Condo Unit Owners by failing to follow its terms, including but not
21 limited to, the failure to implement an equitable Rotational System as referenced in the
22 agreement.

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

25 **FIRST CLAIM FOR RELIEF**
26 **(Petition for Appointment of Receiver as to**
27 **Defendant Grand Sierra Resort Unit-Owners' Association)**
28

1 103. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
2 102 of this Complaint as though fully stated herein and hereby incorporate them by this reference
3 as if fully set forth below.

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

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

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

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

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

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

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

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

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.

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

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

5 120. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
6 119 of this Complaint as though fully stated herein and hereby incorporate them by this reference
7 as if fully set forth below.

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

10 122. Defendant MEI-GSR has breached the Grand Sierra Resort Unit Rental
11 Agreement with Individual Condo Unit Owners by failing to follow its terms, including but not
12 limited to, the failure to implement an equitable Rotational System as referenced in the
13 agreement.

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

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

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

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

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

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

1 127. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
2 126 of this Complaint as though fully stated herein and hereby incorporate them by this reference
3 as if fully set forth below.

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

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

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

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

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

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

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

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

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

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

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

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

4 138. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
5 137 of this Complaint as though fully stated herein and hereby incorporate them by this reference
6 as if fully set forth below.

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

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

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

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

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

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

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

27 **WHEREFORE**, Plaintiffs request judgment against the Defendant MEI-GSR, as set
28 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.

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

3 156. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
4 154 of this Complaint as though fully stated herein and hereby incorporate them by this reference
5 as if fully set forth below.

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

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

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

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

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

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

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

23 162. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
24 161 of this Complaint as though fully stated herein and hereby incorporate them by this reference
25 as if fully set forth below.

26 163. Defendant MEI-GSR wrongfully committed a distinct act of dominion over the
27 Plaintiffs' property by renting their GSR Condo Units both at unreasonably low rates so as to
28

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

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

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

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

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

12 167. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
13 165 of this Complaint as though fully stated herein and hereby incorporate them by this reference
14 as if fully set forth below.

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

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

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

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

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

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

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

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.

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

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

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

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

11 185. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
12 183 of this Complaint as though fully stated herein and hereby incorporate them by this reference
13 as if fully set forth below.

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

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

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

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

22 **WHEREFORE**, Plaintiffs request judgment against the Defendants as follows:

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

1 7. For an accounting; and

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

3 **AFFIRMATION**

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

6 RESPECTFULLY SUBMITTED this 27th day of August, 2012.

7 ROBERTSON, JOHNSON,
8 MILLER & WILLIAMSON
9 50 West Liberty Street, Suite 600
 Reno, Nevada 89501

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

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yvilorla

Exhibit 4

FILED

Electronically
09-10-2012:03:00:32 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3205997

1 CODE: 1090
2 G. David Robertson, Esq. (NV Bar No. 1001)
3 Jarrad C. Miller, Esq. (NV Bar No. 7093)
4 Jonathan J. Tew, Esq. (NV Bar No. 11874)
5 Robertson, Johnson, Miller & Williamson
6 50 West Liberty Street, Suite 600
7 Reno, Nevada 89501
8 (775) 329-5600
9 Attorneys for Plaintiffs

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

9 ALBERT THOMAS, individually; JANE
10 DUNLAP, individually; JOHN DUNLAP,
11 individually; BARRY HAY, individually;
12 MARIE-ANNE ALEXANDER, as Trustee of
13 the MARIE-ANNIE ALEXANDER LIVING
14 TRUST; MELISSA VAGUJHELYI and
15 GEORGE VAGUJHELYI, as Trustees of the
16 GEORGE VAGUJHELYI AND MELISSA
17 VAGUJHELYI 2001 FAMILY TRUST
18 AGREEMENT, U/T/A APRIL 13, 2001; D'
19 ARCY NUNN, individually; HENRY
20 NUNN, individually; MADELYN VAN DER
21 BOKKE, individually; LEE VAN DER
22 BOKKE, individually; DONALD
23 SCHREIFELS, individually; ROBERT R.
24 PEDERSON, individually and as Trustee of
25 the PEDERSON 1990 TRUST; LOU ANN
26 PEDERSON, individually and as Trustee of
27 the PEDERSON 1990 TRUST; LORI
28 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

FIRST AMENDED COMPLAINT

1 individually; BARBARA ROSE QUINN
2 individually; KENNETH RICHE,
3 individually; MAXINE RICHE, individually;
4 NORMAN CHANDLER, individually;
5 BENTON WAN, individually; TIMOTHY D.
6 KAPLAN, individually; SILKSCAPE INC.;
7 PETER CHENG, individually; ELISA
8 CHENG, individually; GREG A.
9 CAMERON, individually; TMI PROPERTY
10 GROUP, LLC; RICHARD LUTZ,
11 individually; SANDRA LUTZ, individually;
12 MARY A. KOSSICK, individually; MELVIN
13 CHEAH, individually; DI SHEN,
14 individually; NADINE'S REAL ESTATE
15 INVESTMENTS, LLC; AJIT GUPTA,
16 individually; SEEMA GUPTA, individually;
17 FREDRICK FISH, individually; LISA FISH,
18 individually; ROBERT A. WILLIAMS,
19 individually; JACQUELIN PHAM,
20 individually; MAY ANN HOM, as Trustee of
21 the MAY ANN HOM TRUST; MICHAEL
22 HURLEY, individually; DOMINIC YIN,
23 individually; DUANE WINDHORST,
24 individually; MARILYN WINDHORST,
25 individually; VINOD BHAN, individually;
26 ANNE BHAN, individually; GUY P.
27 BROWNE, individually; GARTH A.
28 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

1 PLAINTIFFS 1 THROUGH 10, inclusive,
2 Plaintiffs,
3 vs.
4 MEI-GSR Holdings, LLC, a Nevada Limited
5 Liability Company, GRAND SIERRA
6 RESORT UNIT OWNERS' ASSOCIATION,
7 a Nevada nonprofit corporation, GAGE
8 VILLAGE COMMERCIAL
9 DEVELOPMENT, LLC, a Nevada Limited
10 Liability Company and DOE DEFENDANTS
11 1 THROUGH 10, inclusive,
12 Defendants.

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

16 **GENERAL ALLEGATIONS**

17 **The Parties**

- 18 1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of
19 California.
- 20 2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of
21 California.
- 22 3. Plaintiff John Dunlap is a competent adult and is a resident of the State of
23 California.
- 24 4. Plaintiff Barry Hay is a competent adult and is a resident of the State of
25 California.
- 26 5. Plaintiff Marie-Annie Alexander, as Trustee of the Marie-Annie Alexander Living
27 Trust, is a competent adult and is a resident of the State of California.
- 28 6. Plaintiff Melissa Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
Vagujhelyi 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
resident of the State of Nevada.

1 7. Plaintiff George Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
2 Vagujhelyi 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
3 resident of the State of Nevada.

4 8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of
5 California.

6 9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of
7 California.

8 10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of
9 California.

10 11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the
11 State of California.

12 12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of
13 Minnesota.

14 13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990
15 Trust, is a competent adult and is a resident of the State of California.

16 14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990
17 Trust, is a competent adult and is a resident of the State of California.

18 15. Plaintiff Lori Ordoover is a competent adult and is a resident of the State of
19 Connecticut.

20 16. Plaintiff William A. Henderson is a competent adult and is a resident of the State
21 of California.

22 17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State
23 of California.

24 18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of
25 Washington.

26 19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of
27 Washington.

28

1 20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New
2 York.
3 21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of
4 California.
5 22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of
6 New York.
7 23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New
8 York.
9 24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its
10 principal place of business in Nevada.
11 25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its
12 principal place of business in Nevada.
13 26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of
14 Minnesota.
15 27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of
16 California.
17 28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of
18 California.
19 29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of
20 California.
21 30. Plaintiff Garett Tom is a competent adult and is a resident of the State of
22 California.
23 31. Plaintiff Anita Tom is a competent adult and is a resident of the State of
24 California.
25 32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of
26 California.
27 33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of
28 California.

1 34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
2 competent adult and is a resident of the State of California.

3 35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
4 competent adult and is a resident of the State of California.

5 36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of
6 California.

7 37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of
8 California.

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

11 39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of
12 Hawaii.

13 40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of
14 Hawaii.

15 41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of
16 Wisconsin.

17 42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of
18 Wisconsin.

19 43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of
20 Alabama.

21 44. Plaintiff Benton Wan is a competent adult and is a resident of the State of
22 California.

23 45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of
24 California.

25 46. Plaintiff Silkscape Inc. is a California Corporation.

26 47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of
27 California.

28

1 48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of
2 California.
3 49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of
4 California.
5 50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.
6 51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of
7 California.
8 52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of
9 California.
10 53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of
11 California.
12 54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of
13 California.
14 55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.
15 56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of
16 California.
17 57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of
18 California.
19 58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of
20 Minnesota.
21 59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.
22 60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of
23 Minnesota.
24 61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of
25 California.
26 62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent
27 adult and is a resident of the State of California.
28

1 63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of
2 Minnesota.
3 64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of
4 California.
5 65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of
6 Minnesota.
7 66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of
8 Minnesota.
9 67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of
10 California.
11 68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of
12 California.
13 69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of
14 California.
15 70. Plaintiff Garth Williams is a competent adult and is a resident of the State of
16 California.
17 71. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of
18 Minnesota.
19 72. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of
20 Nevada.
21 73. Plaintiff Doug Mecham is a competent adult and is a resident of the State of
22 Nevada.
23 74. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of
24 Nevada.
25 75. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver,
26 British Columbia.
27 76. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver,
28 British Columbia.

1 77. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State
2 of California.

3 78. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult
4 and is a resident of the State of Texas.

5 79. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of
6 California.

7 80. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.

8 81. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.

9 82. Plaintiff James Taylor is a competent adult and is a resident of the State of
10 California.

11 83. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of
12 California.

13 84. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.

14 85. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.

15 86. Plaintiff Kuk Hyung (“Connie”) is a competent adult and is a resident of
16 Coquitlam, B.C.

17 87. Plaintiff Sang (“Mike”) Yoo is a competent adult and is a resident of Coquitlam,
18 British Columbia.

19 88. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and
20 is a resident of the State of Nevada.

21 89. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of
22 California.

23 90. Plaintiff Chanh Truong is a competent adult and is a resident of the State of
24 California.

25 91. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the
26 State of California.

27 92. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its
28 principal place of business in Texas.

1 93. Plaintiff Robert Brunner is a competent adult and is a resident of the State of
2 Minnesota.

3 94. Plaintiff Amy Brunner is a competent adult and is a resident of the State of
4 Minnesota.

5 95. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of
6 California.

7 96. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of
8 Illinois.

9 97. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.

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

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

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

18 101. Plaintiffs are informed and believe and thereon allege that at all relevant times
19 herein, Defendant Grand Sierra Resort Unit Owners’ Association (the “Unit Owners’
20 Association”) is a Nevada nonprofit corporation with its principal place of business in Nevada.

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

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

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

5 104. The Grand Sierra Resort Condominium Units ("GSR Condo Units") are part of
6 the Grand Sierra Unit Owners Association, which is an apartment style hotel condominium
7 development of 670 units in one 27-story building. The GSR Condo Units occupy floors 17
8 through 24 of the Grand Sierra Resort and Casino, a large-scale hotel casino, located at 2500
9 East Second Street, Reno, Nevada.

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

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

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

14 108. Under the Declaration of Covenants, Conditions, Restrictions and Reservations of
15 Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs"), there is one voting
16 member for each unit of ownership (thus, an owner with multiple units has multiple votes).

17 109. Because Defendants MEI-GSR and Gage Village control more units of ownership
18 than any other person or entity, they effectively control the Unit Owners' Association by having
19 the ability to elect Defendant MEI-GSR's chosen representatives to the Board of Directors (the
20 governing body over the GSR Condo Units).

21 110. As a result of Defendants MEI-GSR and Gage Village controlling the Unit
22 Owners' Association, the Individual Unit Owners effectively have no input or control over the
23 management of the Unit Owners' Association.

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

1 112. Defendants MEI-GSR and Gage Villages' control of the Unit Owners'
2 Association violates Nevada law as it defeats the purpose of forming and maintaining a
3 homeowners' association.

4 113. Further, the Nevada Division of Real Estate requires a developer to sell off the
5 units within 7 years, exit and turn over the control and management to the owners.

6 114. Under the CC&Rs, the Individual Unit Owners are required to enter into a "Unit
7 Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein
8 Defendant MEI-GSR provides certain services (including, without limitation, reception desk
9 staffing, in-room services, guest processing services, housekeeping services, Hotel Unit
10 inspection, repair and maintenance services, and other services).

11 115. The Unit Owners' Association maintains capital reserve accounts that are funded
12 by the owners of GSR Condo Units. The Unit Owners' Association collects association dues of
13 approximately \$25 per month per unit, with some variation depending on a particular unit's
14 square footage.

15 116. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes,
16 deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance,
17 utilities, etc.

18 117. Defendant MEI-GSR has systematically allocated and disproportionately charged
19 capital reserve contributions to the Individual Unit Owners, so as to force the Individual Unit
20 Owners to pay capital reserve contributions in excess of what should have been charged.

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

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

25 120. The Individual Unit Owners also pay "Daily Use Fees" (a charge for each night a
26 unit is occupied by any guest for housekeeping services, etc.).

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

1 122. Defendant MEI-GSR has failed to properly account for the contracted “Hotel
2 Fees” and “Daily Use Fees.”

3 123. Further, the Hotel Fees and Daily Use Fees are not included in the Unit Owners’
4 Association’s annual budget with other assessments that provide the Individual Unit Owners’ the
5 ability to reject assessment increases and proposed budget ratification.

6 124. Defendant MEI-GSR has systematically endeavored to increase the various fees
7 that are charged in connection with the use of the GSR Condo Units in order to devalue the units
8 owned by Individual Unit Owners.

9 125. The Individual Unit Owners’ are required to abide by the unilateral demands of
10 MEI-GSR, through its control of the Unit Owners’ Association, or risk being considered in
11 default under Section 12 of the Agreement, which provides lien and foreclosure rights pursuant
12 to Section 6.10(f) of the CC&R’s.

13 126. Defendants MEI-GSR and/or Gage Village have attempted to purchase, and
14 purchased, units devalued by their own actions, at nominal, distressed prices when Individual
15 Unit Owners decide to, or are effectively forced to, sell their units because the units fail to
16 generate sufficient revenue to cover expenses.

17 127. Defendant MEI-GSR and/or Gage Village have, in late 2011 and 2012, purchased
18 such devalued units for \$30,000 less than the amount they purchased units for in March of 2011.

19 128. The Individual Unit Owners effectively pay association dues to fund the Unit
20 Owners’ Association, which acts contrary to the best interests of the Individual Unit Owners.

21 129. Defendant MEI-GSR’s interest in maximizing its profits is in conflict with the
22 interest of the Individual Unit Owners. Accordingly, Defendant MEI-GSR’s control of the Unit
23 Owners’ Association is a conflict of interest.

24 **MEI-GSR’s Rental Program**

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

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

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

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

10 134. Yet, MEI-GSR has charged "Daily Use Fees" of approximately \$22.38, resulting
11 in revenue to the Individual Unit Owners as low as \$2.62 per night for the use of their GSR
12 Condo Unit (when the unit was rented for a fee as opposed to being given away).

13 135. By functionally, and in some instances actually, giving away the use of units
14 owned by the Individual Unit Owners, Defendant MEI-GSR has received a benefit because those
15 who rent the Individual Units frequently gamble and purchase food, beverages, merchandise, spa
16 services and entertainment access from Defendant MEI-GSR.

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

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

22 138. Such prioritization effectively devalues the units owned by the Individual Unit
23 Owners.

24 139. Defendants MEI-GSR and Gage Village intend to purchase the devalued units at
25 nominal, distressed prices when Individual Unit Owners decide to, or are effectively forced to,
26 sell their units because the units fail to generate sufficient revenue to cover expenses and have no
27 prospect of selling their persistently loss-making units to any other buyer.

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

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

5 142. Defendant MEI-GSR has breached the Grand Sierra Resort Unit Rental
6 Agreement with Individual Condo Unit Owners by failing to follow its terms, including but not
7 limited to, the failure to implement an equitable Rotational System as referenced in the
8 agreement.

9 143. Defendant MEI-GSR has failed to act in good faith in exercising its duties under
10 the Grand Sierra Resort Unit Rental Agreements with the Individual Unit Owners.

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

14 144. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
15 143 of this Complaint as though fully stated herein and hereby incorporate them by this reference
16 as if fully set forth below.

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

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

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

28 148. Plaintiffs are entitled to a receiver pursuant to NRS § 32.010.

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

150. 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.

151. 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)

152. 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.

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

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

155. 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.

156. 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.

157. 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.

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

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

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

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

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

16 161. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
17 160 of this Complaint as though fully stated herein and hereby incorporate them by this reference
18 as if fully set forth below.

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

21 163. Defendant MEI-GSR has breached the Agreement with Individual Unit Owners
22 by failing to follow its terms, including but not limited to, the failure to implement an equitable
23 Rotational System as referenced in the agreement.

24 164. The Agreement is an enforceable contract between Defendant MEI-GSR and
25 Plaintiffs.

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

166. 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.

167. 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)

168. 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.

169. 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.

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

171. 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.

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

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

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

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

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

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

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

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

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

14 179. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
15 178 of this Complaint as though fully stated herein and hereby incorporate them by this reference
16 as if fully set forth below.

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

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

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

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

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

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

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

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

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

15 187. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 186 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

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

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

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

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

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

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

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

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

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

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

12 196. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
13 195 of this Complaint as though fully stated herein and hereby incorporate them by this reference
14 as if fully set forth below.

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

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

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

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

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

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

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

5 202. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
6 201 of this Complaint as though fully stated herein and hereby incorporate them by this reference
7 as if fully set forth below.

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

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

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

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

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

21 206. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
22 205 of this Complaint as though fully stated herein and hereby incorporate them by this reference
23 as if fully set forth below.

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

26 208. Defendant MEI-GSR has not fulfilled its duties and obligations.
27
28

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

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

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

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

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

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

14 213. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
15 212 of this Complaint as though fully stated herein and hereby incorporate them by this reference
16 as if fully set forth below.

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

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

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

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

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

6 217. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
7 216 of this Complaint as though fully stated herein and hereby incorporate them by this reference
8 as if fully set forth below.

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

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

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

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

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

21 221. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
22 220 of this Complaint as though fully stated herein and hereby incorporate them by this reference
23 as if fully set forth below.

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

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

28 224. 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.

225. 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 10th day of September, 2012.

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

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yviloria

Exhibit 5

FILED

Electronically
11-21-2012:04:36:20 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3364146

1137

Sean L. Brohawn, Esq.
Nevada Bar No. 7618
SEAN L. BROHAWN, PLLC
50 West Liberty Street, Suite 1040
Reno, Nevada 89501
Telephone: (775) 453-1505
Facsimile: (775) 453-1537
Sean@brohawnlaw.com

Attorneys for Defendants /
Counterclaimants

**IN THE 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

Case No.: CV12-02222

Dept. No.:10

ANSWER AND COUNTERCLAIM

1 MONICA L. LEE, as Trustees of the LEE
2 FAMILY 2002 REVOCABLE TRUST;
3 DOMINIC YIN, individually; ELIAS SHAMIEH,
4 individually; JEFFREY QUINN, individually;
5 BARBARA ROSE QUINN individually;
6 KENNETH RICHE, individually; MAXINE
7 RICHE, individually; NORMAN CHANDLER,
8 individually; BENTON WAN, individually;
9 TIMOTHY D. KAPLAN, individually;
10 SILKSCAPE INC.; PETER CHENG, individually;
11 ELISA CHENG, individually; GREG A.
12 CAMERON, individually; TMI PROPERTY
13 GROUP, LLC; RICHARD LUTZ, individually;
14 SANDRA LUTZ, individually; MARY A.
15 KOSSICK, individually; MELVIN CHEAH,
16 individually; DI SHEN, individually; NADINE'S
17 REAL ESTATE INVESTMENTS, LLC; AJIT
18 GUPTA, individually; SEEMA GUPTA,
19 individually; FREDRICK FISH, individually;
20 LISA FISH, individually; ROBERT A.
21 WILLIAMS, individually; JACQUELIN PHAM,
22 individually; MAY ANN HOM, as Trustee of the
23 MAY ANN HOM TRUST; MICHAEL HURLEY,
24 individually; DOMINIC YIN, individually;
25 DUANE WINDHORST, individually; MARILYN
26 WINDHORST, individually; VINOD BHAN,
27 individually; ANNE BHAN, individually; GUY P.
28 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,

1 Plaintiffs

2 v.

3 MEI-GSR HOLDINGS, LLC, a Nevada limited
4 liability company, GRAND SIERRA RESORT
5 UNIT OWNERS' ASSOCIATION, a Nevada
6 nonprofit corporation, GAGE VILLAGE
7 COMMERCIAL DEVELOPMENT, LLC, a
Nevada Limited Liability Company and DOE
DEFENDANTS 1 THROUGH 10, inclusive,

8 Defendants.

9
10 MEI-GSR HOLDINGS, LLC, a Nevada limited
liability company,

11 Counterclaimant

12 v.

13
14 ALBERT THOMAS, individually; JANE
DUNLAP, individually; JOHN DUNLAP,
15 individually; BARRY HAY, individually;
MARIE-ANNE ALEXANDER, as Trustee of
16 the MARIE-ANNIE ALEXANDER LIVING
TRUST; MELISSA VAGUJHELYI and
17 GEORGE VAGUJHELYI, as Trustees of the
GEORGE VAGUJHELYI AND MELISSA
18 VAGUJHELYI 2001 FAMILY TRUST
AGREEMENT, U/T/A APRIL 13, 2001;
19 D' ARCY NUNN, individually; HENRY NUNN,
20 individually; MADELYN VAN DER BOKKE,
individually; LEE VAN DER BOKKE,
21 individually; DONALD SCHREIFELS,
individually; ROBERT R. PEDERSON,
22 individually and as Trustee of the PEDERSON
1990 TRUST; LOU ANN PEDERSON,
23 individually and as Trustee of the PEDERSON
1990 TRUST; WILLIAM A. HENDERSON,
24 individually; CHRISTINE E. HENDERSON,
25 individually; LOREN D. PARKER, individually;
26 SUZANNE C. PARKER, individually;
MICHAEL IZADY, individually; SAHAR
27 TAVAKOL, individually; M&Y HOLDINGS,
LLC; JL&YL HOLDINGS, LLC; GARRET
28 TOM, individually; ANITA TOM, individually;
RAMON FADRILAN, individually; FAYE

1 FADRILAN, individually; PETER K. LEE and
2 MONICA L. LEE, as Trustees of the LEE
3 FAMILY 2002 REVOCABLE TRUST;
4 JEFFREY QUINN, individually; BARBARA
5 ROSE QUINN individually; KENNETH RICHE,
6 individually; MAXINE RICHE, individually;
7 NORMAN CHANDLER, individually; BENTON
8 WAN, individually; TIMOTHY D. KAPLAN,
9 individually; SILKSCAPE INC.; GREG A.
10 CAMERON, individually; TMI PROPERTY
11 GROUP, LLC; NADINE'S REAL ESTATE
12 INVESTMENTS, LLC; ROBERT A.
13 WILLIAMS, individually; DUANE
14 WINDHORST, individually; MARILYN
15 WINDHORST, individually; GARTH A.
16 WILLIAMS, individually; PAMELA Y.
17 ARATANI, individually; DARLENE
18 LINDGREN, individually; SOO YEUN MOON,
19 individually; IRENE WEISS, as Trustee of the
20 WEISS FAMILY TRUST; PRAVESH
21 CHOPRA, individually; TERRY POPE,
22 individually; NANCY POPE, individually; KI
23 NAM CHOI, individually; YOUNG JA CHOI,
24 individually; KUK HYUNG (CONNIE) YOO,
25 individually; SANG (MIKE) YOO, individually;
26 BRETT MENMUIR, as Trustee of the
27 CAYENNE TRUST; CHANH TRUONG,
28 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' First Amended Complaint,
allege as follows:

1 1. Defendants are without knowledge or information sufficient to form a belief as to
2 the truth of the allegations contained in Paragraphs 1 through 97 and, therefore, the same are
3 denied.

4 2. Defendants admit the allegations of Paragraph 98.

5 3. Defendants deny the allegations of Paragraph 99.

6 4. Defendants deny the allegations of Paragraph 100.

7 5. Defendants admit the allegations of Paragraph 101.

8 6. Answering the allegations of Paragraph 102, Defendants are without knowledge
9 or information sufficient to form a belief as to the truth of the allegations contained in Paragraph
10 102 and, therefore, the same are denied.

11 7. Answering the allegations of Paragraph 103, Defendants incorporate the
12 preceding allegations of this Answer, as if the same were set forth at length herein.

13 8. Answering the allegations of Paragraph 104, Defendants admit that the GSR
14 Condo Units are part of the Grand Sierra Resort Unit-Owners' Association, and that the GSR
15 Condo Units are located on floors 17 through 24 of the hotel tower of the Grand Sierra Resort &
16 Casino, at 2500 East Second Street, Reno, Nevada. Defendants deny the remaining allegations
of Paragraph 104.

17 9. Defendants admit the allegations of Paragraph 105.

18 10. Defendants admit the allegations of Paragraph 106.

19 11. Defendants deny the allegations of Paragraph 107.

20 12. Defendants admit the allegations of Paragraph 108.

21 13. Defendants admit the allegations of Paragraph 109.

22 14. Defendants deny the allegations of Paragraph 110.

23 15. Defendants deny the allegations of Paragraph 111.

24 16. Defendants deny the allegations of Paragraph 112.

25 17. Defendants deny the allegations of Paragraph 113.

26 18. Defendants admit the allegations of Paragraph 114.

27 19. Answering the allegations of Paragraph 115, Defendants admit that the Unit
28 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

1 CC&Rs. Defendants deny the remaining allegations of Paragraph 115.

2 20. Answering the allegations of Paragraph 116, Defendants admit that the Unit
3 Owners pay for certain taxes, unit cleaning services, capital reserve funding for components
4 within the units and for identified elements and systems of the building, routine maintenance of
5 each unit and utilities that service each unit. Defendants deny the remaining allegations of
6 Paragraph 116.

7 21. Defendants deny the allegations of Paragraph 117.

8 22. Defendants deny the allegations of Paragraph 118.

9 23. Defendants deny the allegations of Paragraph 119.

10 24. Defendants admit the allegations of Paragraph 120.

11 25. Defendants deny the allegations of Paragraph 121.

12 26. Defendants deny the allegations of Paragraph 122.

13 27. Answering the allegations of Paragraph 123, Defendants admit that certain fees
14 paid by Unit Owners are not included within the budget of the Unit Owners' Association, as
15 provided in the CC&Rs. Defendants deny the remaining allegations of Paragraph 123.

16 28. Defendants deny the allegations of Paragraph 124.

17 29. Defendants deny the allegations of Paragraph 125.

18 30. Defendants deny the allegations of Paragraph 126.

19 31. Defendants deny the allegations of Paragraph 127.

20 32. Defendants deny the allegations of Paragraph 128.

21 33. Defendants deny the allegations of Paragraph 129.

22 34. Answering the allegations of Paragraph 130, Defendants admit that GSR rents
23 GSR Condo Units owned by GSR and Gage Village, as well as some of the GSR Condo Units
24 owned by certain individual condo Unit owners. Defendants deny the remaining allegations of
25 Paragraph 130.

26 35. Answering the allegations of Paragraph 131, Defendants admit that GSR has
27 entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants
28 deny the remaining allegations of Paragraph 131.

36. Defendants deny the allegations of Paragraph 132.

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

1 the truth of the allegations contained in Paragraph 133 and, therefore, the same are denied.

2 38. Defendants are without knowledge or information sufficient to form a belief as to
3 the truth of the allegations contained in Paragraph 134 and, therefore, the same are denied.

4 39. Defendants are without knowledge or information sufficient to form a belief as to
5 the truth of the allegations contained in Paragraph 135 and, therefore, the same are denied.

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

8 41. Defendants deny the allegations of Paragraph 137.

9 42. Defendants deny the allegations of Paragraph 138.

10 43. Defendants deny the allegations of Paragraph 139.

11 44. Defendants admit the allegations of Paragraph 140.

12 45. Defendants deny the allegations of Paragraph 141.

13 46. Defendants deny the allegations of Paragraph 142.

14 47. Defendants deny the allegations of Paragraph 143.

15 FIRST CLAIM FOR RELIEF

16 48. Answering the allegations of Paragraph 144, Defendants incorporate the
preceding allegations of this Answer, as if the same were set forth at length herein.

17 49. Defendants admit the allegations of Paragraph 145.

18 50. Defendants deny the allegations of Paragraph 146.

19 51. Defendants deny the allegations of Paragraph 147.

20 52. Defendants deny the allegations of Paragraph 148.

21 53. Defendants deny the allegations of Paragraph 149.

22 54. Defendants deny the allegations of Paragraph 150.

23 55. Defendants deny the allegations of Paragraph 151.

24 SECOND CLAIM FOR RELIEF

25 56. Answering the allegations of Paragraph 152, Defendants incorporate the
preceding allegations of this Answer, as if the same were set forth at length herein.

26 57. Defendants admit the allegations of Paragraph 153.

27 58. Defendants deny the allegations of Paragraph 154.

28 59. Defendants deny the allegations of Paragraph 155.

1 60. Defendants deny the allegations of Paragraph 156.

2 61. Defendants deny the allegations of Paragraph 157.

3 62. Defendants deny the allegations of Paragraph 158.

4 63. Defendants deny the allegations of Paragraph 159.

5 64. Defendants deny the allegations of Paragraph 160.

6 **THIRD CLAIM FOR RELIEF**

7 65. Answering the allegations of Paragraph 161, Defendants incorporate the
8 preceding allegations of this Answer, as if the same were set forth at length herein.

9 66. Answering the allegations of Paragraph 162, Defendants admit that GSR has
10 entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants
11 deny the remaining allegations of Paragraph 162.

12 67. Defendants deny the allegations of Paragraph 163.

13 68. Answering the allegations of Paragraph 164, Defendants admit that GSR has
14 entered into individual Unit Rental Agreements with certain individual condo Unit owners, but
15 has not entered into a global agreement regarding Unit rental with Unit Owners as a whole.
16 Defendants admit that each individual existing rental agreement is enforceable. Defendants deny
17 the remaining allegations of Paragraph 164.

18 69. Defendants deny the allegations of Paragraph 165.

19 70. Defendants deny the allegations of Paragraph 166.

20 71. Defendants deny the allegations of Paragraph 167.

21 **FOURTH CLAIM FOR RELIEF**

22 72. Answering the allegations of Paragraph 168, Defendants incorporate the
23 preceding allegations of this Answer, as if the same were set forth at length herein.

24 73. Answering the allegations of Paragraph 169, Defendants admit that GSR and
25 Plaintiffs are contractually obligated to each other, under one or more types of agreements
26 between them. Defendants deny the remaining allegations of Paragraph 169.

27 74. Defendants are without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in Paragraph 170 and, therefore, the same are denied.

 75. Defendants deny the allegations of Paragraph 171.

 76. Defendants deny the allegations of Paragraph 172.

1 77. Defendants deny the allegations of Paragraph 173.

2 78. Defendants deny the allegations of Paragraph 174.

3 79. Defendants deny the allegations of Paragraph 175.

4 80. Defendants deny the allegations of Paragraph 176.

5 81. Defendants deny the allegations of Paragraph 177.

6 82. Defendants deny the allegations of Paragraph 178.

7 **FIFTH CLAIM FOR RELIEF**

8 83. Answering the allegations of Paragraph 179, Defendants incorporate the
9 preceding allegations of this Answer, as if the same were set forth at length herein.

10 84. Answering the allegations of Paragraph 180, Defendants admit that GSR and
11 Plaintiffs are contractually obligated to each other, under one or more types of agreements
12 between them. Defendants deny the remaining allegations of Paragraph 180.

13 85. Answering the allegations of Paragraph 181, Defendants admit that individual
14 rental agreements require GSR to market and rent individually owned units. Defendants deny
15 the remaining allegations of Paragraph 181.

16 86. Defendants deny the allegations of Paragraph 182.

17 87. Defendants admit the allegations of Paragraph 183.

18 88. Defendants deny the allegations of Paragraph 184.

19 89. Defendants deny the allegations of Paragraph 185.

20 90. Defendants deny the allegations of Paragraph 186.

21 **SIXTH CLAIM FOR RELIEF**

22 91. Answering the allegations of Paragraph 187, Defendants incorporate the
23 preceding allegations of this Answer, as if the same were set forth at length herein.

24 92. Answering the allegations of Paragraph 188, Defendants assert that NRS 41.600
25 speaks for itself. Defendants deny the remaining allegations of Paragraph 188.

26 93. Answering the allegations of Paragraph 189, Defendants assert that NRS 41.600
27 speaks for itself. Defendants deny the remaining allegations of Paragraph 189.

28 94. Answering the allegations of Paragraph 190, Defendants assert that NRS Chapter
598 speaks for itself. Defendants deny the remaining allegations of Paragraph 190.

95. Defendants deny the allegations of Paragraph 191.

1 96. Defendants deny the allegations of Paragraph 192.

2 97. Defendants deny the allegations of Paragraph 193.

3 98. Defendants deny the allegations of Paragraph 194.

4 99. Defendants deny the allegations of Paragraph 195.

5 **SEVENTH CLAIM FOR RELIEF**

6 100. Answering the allegations of Paragraph 196, Defendants incorporate the
7 preceding allegations of this Answer, as if the same were set forth at length herein.

8 101. Defendants are without knowledge or information sufficient to form a belief as to
9 the truth of the allegations contained in Paragraph 197 and, therefore, the same are denied.

10 102. Defendants are without knowledge or information sufficient to form a belief as to
11 the truth of the allegations contained in Paragraph 198 and, therefore, the same are denied.

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

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

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

18 **EIGHTH CLAIM FOR RELIEF**

19 106. Answering the allegations of Paragraph 202, Defendants incorporate the
20 preceding allegations of this Answer, as if the same were set forth at length herein.

21 107. Defendants deny the allegations of Paragraph 203.

22 108. Defendants deny the allegations of Paragraph 204.

23 109. Defendants deny the allegations of Paragraph 205.

24 **NINTH CLAIM FOR RELIEF**

25 110. Answering the allegations of Paragraph 206, Defendants incorporate the
26 preceding allegations of this Answer, as if the same were set forth at length herein.

27 111. Defendants are without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in Paragraph 207 and, therefore, the same are denied.

 112. Defendants deny the allegations of Paragraph 208.

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

1 the truth of the allegations contained in Paragraph 209 and, therefore, the same are denied.

2 114. Defendants deny the allegations of Paragraph 210.

3 115. Defendants deny the allegations of Paragraph 211.

4 116. Defendants deny the allegations of Paragraph 212.

5 **TENTH CLAIM FOR RELIEF**

6 117. Answering the allegations of Paragraph 213, Defendants incorporate the
7 preceding allegations of this Answer, as if the same were set forth at length herein.

8 118. Answering the allegations of Paragraph 214, Defendants admit that GSR and
9 Plaintiffs are contractually obligated to each other, under one or more types of agreements
10 between them. Defendants deny the remaining allegations of Paragraph 214.

11 119. Defendants deny the allegations of Paragraph 215.

12 120. Defendants deny the allegations of Paragraph 216.

13 **ELEVENTH CLAIM FOR RELIEF**

14 121. Answering the allegations of Paragraph 217, Defendants incorporate the
15 preceding allegations of this Answer, as if the same were set forth at length herein.

16 122. Defendants deny the allegations of Paragraph 218.

17 123. Defendants deny the allegations of Paragraph 219.

18 124. Defendants deny the allegations of Paragraph 220.

19 **TWELFTH CLAIM FOR RELIEF**

20 125. Answering the allegations of Paragraph 221, Defendants incorporate the
21 preceding allegations of this Answer, as if the same were set forth at length herein.

22 126. Defendants are without knowledge or information sufficient to form a belief as to
23 the truth of the allegations contained in Paragraph 222 and, therefore, the same are denied.

24 127. Defendants deny the allegations of Paragraph 223.

25 128. Defendants deny the allegations of Paragraph 224.

26 129. Defendants deny the allegations of Paragraph 225.

27 ///

28 ///

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

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

5 **SECOND AFFIRMATIVE DEFENSE**

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

8 **THIRD AFFIRMATIVE DEFENSE**

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

12 **FOURTH AFFIRMATIVE DEFENSE**

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

16 **FIFTH AFFIRMATIVE DEFENSE**

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

20 **SIXTH AFFIRMATIVE DEFENSE**

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

23 **SEVENTH AFFIRMATIVE DEFENSE**

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

25 **EIGHTH AFFIRMATIVE DEFENSE**

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

27 **NINTH AFFIRMATIVE DEFENSE**

28 Plaintiffs waived the causes of action asserted herein.

///

1 owed by them under the CC&Rs and/or the UMAs, but to date, Counter-Defendants have failed
2 or refused to make all such payments.

3 5. Additionally, each UMA requires the unit owner to provide active credit card
4 information to GSR, as a source for payment of certain expenses incurred by the unit owner.

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

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

11 **FIRST CAUSE OF ACTION**
12 (Breach of Contract)

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

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

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

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

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

24 **SECOND CAUSE OF ACTION**
25 (Declaratory Relief)

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

28 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

1 contracts. On information and belief, Counter-Defendants deny that they owe duties to GSR
2 under the C&Rs and UMAs.

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

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

8 **THIRD CAUSE OF ACTION**
9 (Injunctive Relief)

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

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

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

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

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

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

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

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

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

27 ///

28 ///

1

2

3

4

5

6

7

8

9

0

1.

2

3

4

5

6

7

8

9

05

1

2

3

4

5

6

27

8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 AND COUNTERCLAIM

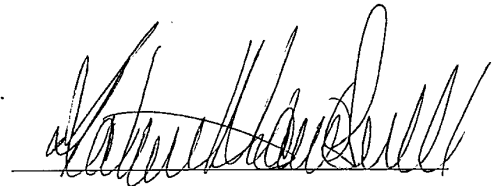
to be completed by:

_____ 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. _____
10 X delivery via e-mail/Electronic court filing

addressed to:

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

DATED this 21st day of November, 2012.



FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yviloria

Exhibit 6

FILED

Electronically

03-26-2013:02:41:53 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3617729

1 CODE: 1090
2 G. David Robertson, Esq. (NV Bar No. 1001)
3 Jarrad C. Miller, Esq. (NV Bar No. 7093)
4 Jonathan J. Tew, Esq. (NV Bar No. 11874)
5 Robertson, Johnson, Miller & Williamson
6 50 West Liberty Street, Suite 600
7 Reno, Nevada 89501
8 (775) 329-5600
9 Attorneys for Plaintiffs

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

9 ALBERT THOMAS, individually; JANE
10 DUNLAP, individually; JOHN DUNLAP,
11 individually; BARRY HAY, individually;
12 MARIE-ANNE ALEXANDER, as Trustee of
13 the MARIE-ANNIE ALEXANDER LIVING
14 TRUST; MELISSA VAGUJHELYI and
15 GEORGE VAGUJHELYI, as Trustees of the
16 GEORGE VAGUJHELYI AND MELISSA
17 VAGUJHELYI 2001 FAMILY TRUST
18 AGREEMENT, U/T/A APRIL 13, 2001; D'
19 ARCY NUNN, individually; HENRY
20 NUNN, individually; MADELYN VAN DER
21 BOKKE, individually; LEE VAN DER
22 BOKKE, individually; DONALD
23 SCHREIFELS, individually; ROBERT R.
24 PEDERSON, individually and as Trustee of
25 the PEDERSON 1990 TRUST; LOU ANN
26 PEDERSON, individually and as Trustee of
27 the PEDERSON 1990 TRUST; LORI
28 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

1 individually; BARBARA ROSE QUINN
2 individually; KENNETH RICHE,
3 individually; MAXINE RICHE, individually;
4 NORMAN CHANDLER, individually;
5 BENTON WAN, individually; TIMOTHY D.
6 KAPLAN, individually; SILKSCAPE INC.;
7 PETER CHENG, individually; ELISA
8 CHENG, individually; GREG A.
9 CAMERON, individually; TMI PROPERTY
10 GROUP, LLC; RICHARD LUTZ,
11 individually; SANDRA LUTZ, individually;
12 MARY A. KOSSICK, individually; MELVIN
13 CHEAH, individually; DI SHEN,
14 individually; NADINE'S REAL ESTATE
15 INVESTMENTS, LLC; AJIT GUPTA,
16 individually; SEEMA GUPTA, individually;
17 FREDRICK FISH, individually; LISA FISH,
18 individually; ROBERT A. WILLIAMS,
19 individually; JACQUELIN PHAM,
20 individually; MAY ANN HOM, as Trustee of
21 the MAY ANN HOM TRUST; MICHAEL
22 HURLEY, individually; DOMINIC YIN,
23 individually; DUANE WINDHORST,
24 individually; MARILYN WINDHORST,
25 individually; VINOD BHAN, individually;
26 ANNE BHAN, individually; GUY P.
27 BROWNE, individually; GARTH A.
28 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

1 PLAINTIFFS 1 THROUGH 10, inclusive,
2 Plaintiffs,
3 vs.
4 MEI-GSR Holdings, LLC, a Nevada Limited
5 Liability Company, GRAND SIERRA
6 RESORT UNIT OWNERS' ASSOCIATION,
7 a Nevada nonprofit corporation, GAGE
8 VILLAGE COMMERCIAL
9 DEVELOPMENT, LLC, a Nevada Limited
10 Liability Company and DOE DEFENDANTS
11 1 THROUGH 10, inclusive,
12 Defendants.

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

16 **GENERAL ALLEGATIONS**

17 **The Parties**

- 18 1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of
19 California.
20 2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of
21 California.
22 3. Plaintiff John Dunlap is a competent adult and is a resident of the State of
23 California.
24 4. Plaintiff Barry Hay is a competent adult and is a resident of the State of
25 California.
26 5. Plaintiff Marie-Annie Alexander, as Trustee of the Marie-Annie Alexander Living
27 Trust, is a competent adult and is a resident of the State of California.
28 6. Plaintiff Melissa Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
Vagujhelyi 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
resident of the State of Nevada.

1 7. Plaintiff George Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
2 Vagujhelyi 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
3 resident of the State of Nevada.

4 8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of
5 California.

6 9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of
7 California.

8 10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of
9 California.

10 11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the
11 State of California.

12 12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of
13 Minnesota.

14 13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990
15 Trust, is a competent adult and is a resident of the State of California.

16 14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990
17 Trust, is a competent adult and is a resident of the State of California.

18 15. Plaintiff Lori Ordoover is a competent adult and is a resident of the State of
19 Connecticut.

20 16. Plaintiff William A. Henderson is a competent adult and is a resident of the State
21 of California.

22 17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State
23 of California.

24 18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of
25 Washington.

26 19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of
27 Washington.

28

1 20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New
2 York.
3 21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of
4 California.
5 22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of
6 New York.
7 23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New
8 York.
9 24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its
10 principal place of business in Nevada.
11 25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its
12 principal place of business in Nevada.
13 26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of
14 Minnesota.
15 27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of
16 California.
17 28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of
18 California.
19 29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of
20 California.
21 30. Plaintiff Garett Tom is a competent adult and is a resident of the State of
22 California.
23 31. Plaintiff Anita Tom is a competent adult and is a resident of the State of
24 California.
25 32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of
26 California.
27 33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of
28 California.

1 34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
2 competent adult and is a resident of the State of California.

3 35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
4 competent adult and is a resident of the State of California.

5 36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of
6 California.

7 37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of
8 California.

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

11 39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of
12 Hawaii.

13 40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of
14 Hawaii.

15 41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of
16 Wisconsin.

17 42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of
18 Wisconsin.

19 43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of
20 Alabama.

21 44. Plaintiff Benton Wan is a competent adult and is a resident of the State of
22 California.

23 45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of
24 California.

25 46. Plaintiff Silkscape Inc. is a California Corporation.

26 47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of
27 California.

28

1 48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of
2 California.
3 49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of
4 California.
5 50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.
6 51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of
7 California.
8 52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of
9 California.
10 53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of
11 California.
12 54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of
13 California.
14 55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.
15 56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of
16 California.
17 57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of
18 California.
19 58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of
20 Minnesota.
21 59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.
22 60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of
23 Minnesota.
24 61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of
25 California.
26 62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent
27 adult and is a resident of the State of California.
28

1 63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of
2 Minnesota.
3 64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of
4 California.
5 65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of
6 Minnesota.
7 66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of
8 Minnesota.
9 67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of
10 California.
11 68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of
12 California.
13 69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of
14 California.
15 70. Plaintiff Garth Williams is a competent adult and is a resident of the State of
16 California.
17 71. Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of
18 California.
19 72. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of
20 Minnesota.
21 73. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of
22 Nevada.
23 74. Plaintiff Doug Mecham is a competent adult and is a resident of the State of
24 Nevada.
25 75. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of
26 Nevada.
27 76. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver,
28 British Columbia.

1 77. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver,
2 British Columbia.

3 78. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State
4 of California.

5 79. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult
6 and is a resident of the State of Texas.

7 80. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of
8 California.

9 81. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.

10 82. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.

11 83. Plaintiff James Taylor is a competent adult and is a resident of the State of
12 California.

13 84. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of
14 California.

15 85. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.

16 86. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.

17 87. Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.

18 88. Plaintiff Kuk Hyung (“Connie”) is a competent adult and is a resident of
19 Coquitlam, B.C.

20 89. Plaintiff Sang (“Mike”) Yoo is a competent adult and is a resident of Coquitlam,
21 British Columbia.

22 90. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and
23 is a resident of the State of Nevada.

24 91. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of
25 California.

26 92. Plaintiff Chanh Truong is a competent adult and is a resident of the State of
27 California.

28

1 93. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the
2 State of California.

3 94. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its
4 principal place of business in Texas.

5 95. Plaintiff Robert Brunner is a competent adult and is a resident of the State of
6 Minnesota.

7 96. Plaintiff Amy Brunner is a competent adult and is a resident of the State of
8 Minnesota.

9 97. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of
10 California.

11 98. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of
12 Illinois.

13 99. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.

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

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

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

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

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

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

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

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

7 106. The Grand Sierra Resort Condominium Units ("GSR Condo Units") are part of
8 the Grand Sierra Unit Owners Association, which is an apartment style hotel condominium
9 development of 670 units in one 27-story building. The GSR Condo Units occupy floors 17
10 through 24 of the Grand Sierra Resort and Casino, a large-scale hotel casino, located at 2500
11 East Second Street, Reno, Nevada.

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

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

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

16 110. Under the Declaration of Covenants, Conditions, Restrictions and Reservations of
17 Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs"), there is one voting
18 member for each unit of ownership (thus, an owner with multiple units has multiple votes).

19 111. Because Defendants MEI-GSR and Gage Village control more units of ownership
20 than any other person or entity, they effectively control the Unit Owners' Association by having
21 the ability to elect Defendant MEI-GSR's chosen representatives to the Board of Directors (the
22 governing body over the GSR Condo Units).

23 112. As a result of Defendants MEI-GSR and Gage Village controlling the Unit
24 Owners' Association, the Individual Unit Owners effectively have no input or control over the
25 management of the Unit Owners' Association.

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

1 114. Defendants MEI-GSR and Gage Villages' control of the Unit Owners'
2 Association violates Nevada law as it defeats the purpose of forming and maintaining a
3 homeowners' association.

4 115. Further, the Nevada Division of Real Estate requires a developer to sell off the
5 units within 7 years, exit and turn over the control and management to the owners.

6 116. Under the CC&Rs, the Individual Unit Owners are required to enter into a "Unit
7 Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein
8 Defendant MEI-GSR provides certain services (including, without limitation, reception desk
9 staffing, in-room services, guest processing services, housekeeping services, Hotel Unit
10 inspection, repair and maintenance services, and other services).

11 117. The Unit Owners' Association maintains capital reserve accounts that are funded
12 by the owners of GSR Condo Units. The Unit Owners' Association collects association dues of
13 approximately \$25 per month per unit, with some variation depending on a particular unit's
14 square footage.

15 118. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes,
16 deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance,
17 utilities, etc.

18 119. Defendant MEI-GSR has systematically allocated and disproportionately charged
19 capital reserve contributions to the Individual Unit Owners, so as to force the Individual Unit
20 Owners to pay capital reserve contributions in excess of what should have been charged.

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

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

25 122. The Individual Unit Owners also pay "Daily Use Fees" (a charge for each night a
26 unit is occupied by any guest for housekeeping services, etc.).

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

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,

1 sell their units because the units fail to generate sufficient revenue to cover expenses and have no
2 prospect of selling their persistently loss-making units to any other buyer.

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

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

7 144. Defendant MEI-GSR has breached the Grand Sierra Resort Unit Rental
8 Agreement with Individual Condo Unit Owners by failing to follow its terms, including but not
9 limited to, the failure to implement an equitable Rotational System as referenced in the
10 agreement.

11 145. Defendant MEI-GSR has failed to act in good faith in exercising its duties under
12 the Grand Sierra Resort Unit Rental Agreements with the Individual Unit Owners.

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

16 146. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
17 143 of this Complaint as though fully stated herein and hereby incorporate them by this reference
18 as if fully set forth below.

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

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

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

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

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

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

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

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

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

17 154. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
18 151 of this Complaint as though fully stated herein and hereby incorporate them by this reference
19 as if fully set forth below.

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

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

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

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

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

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

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

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

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

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

21 163. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
22 160 of this Complaint as though fully stated herein and hereby incorporate them by this reference
23 as if fully set forth below.

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

26 165. Defendant MEI-GSR has breached the Agreement with Individual Unit Owners
27 by failing to follow its terms, including but not limited to, the failure to implement an equitable
28 Rotational System as referenced in the agreement.

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

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

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

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

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

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

15 170. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 167 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

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

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

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

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

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

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

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

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

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

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

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

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

18 181. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
19 178 of this Complaint as though fully stated herein and hereby incorporate them by this reference
20 as if fully set forth below.

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

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

25 184. Defendant MEI-GSR has manipulated the rental of: (1) the hotel rooms owned by
26 Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and Defendant
27 Gage Village; and (3) GSR Condo Units owned by Plaintiffs so as to maximize Defendant MEI-
28 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.

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

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

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

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

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

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

15 198. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 195 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

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

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

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

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

28

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

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

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

8 204. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
9 201 of this Complaint as though fully stated herein and hereby incorporate them by this reference
10 as if fully set forth below.

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

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

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

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

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

24 208. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
25 205 of this Complaint as though fully stated herein and hereby incorporate them by this reference
26 as if fully set forth below.

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

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

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

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

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

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

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

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

15 215. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 212 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

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

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

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

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

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

6 219. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
7 216 of this Complaint as though fully stated herein and hereby incorporate them by this reference
8 as if fully set forth below.

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

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

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

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

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

21 223. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
22 220 of this Complaint as though fully stated herein and hereby incorporate them by this reference
23 as if fully set forth below.

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

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

28 226. 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.

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson,
3 Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of
4 18, and not a party within this action. I further certify that on the 26th day of March, 2013, I
5 electronically filed the foregoing **SECOND AMENDED COMPLAINT** with the Clerk of the
6 Court by using the ECF system which served the following parties electronically:

7 Sean L. Brohawn, Esq.
8 50 W. Liberty Street, Suite 1040
9 Reno, NV 89501
10 *Attorneys for Defendants / Counterclaimants*

11 /s/ Kimberlee A. Hill
12 An Employee of Robertson, Johnson, Miller & Williamson
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yviloria

Exhibit 7


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
SEAN L. BROHAWN, BAR NO. 7618.

No. 77967

FILED

MAR 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Sean L. Brohawn. Under the agreement, Brohawn admitted to violating RPC 1.3 (diligence), RPC 1.4 (communication), RPC 3.2 (expediting litigation), RPC 8.1 (bar admission and discipline matters), and RPC 8.4 (misconduct). He agreed to an 18-month suspension to run concurrent with the 18-month suspension imposed in *In re Discipline of Brohawn*, Docket No. 73964 (Order Approving Conditional Guilty Plea, Feb. 23, 2018).

Brohawn has admitted to the facts and violations alleged in the complaint. The record therefore establishes that a client paid Brohawn to file a lawsuit against the State of Nevada and the Board of Cosmetology. The State filed a motion to dismiss the lawsuit. Brohawn did not tell the client about the motion and took no action to oppose it. The motion was granted, and Brohawn failed to tell the client that her lawsuit had been

dismissed. When the client found out about the dismissal, Brohawn said it was due to a glitch and he would take care of it. He took no action, and the State moved for attorney fees. Brohawn did not tell the client about the motion for attorney fees and did not oppose it. The State was awarded attorney's fees. And when the State Bar contacted Brohawn regarding another matter, he failed to participate in the grievance process.

As Brohawn admitted to the violations as part of the plea agreement, the issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Brohawn admitted that he knowingly violated duties to his client (diligence, communication, and expediting litigation), and to the legal profession (bar admissions and disciplinary matters). He further admitted that his client was harmed because his failure to timely file documents in her lawsuit resulted in the matter being decided against her; moreover, she was required to pay attorney fees. The legal profession was harmed when Brohawn failed to participate in the grievance process regarding the other matter. Based on the most serious instance of misconduct at issue, Standards for Imposing Lawyer Sanctions, *Compendium of Professional*

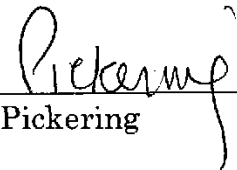
Responsibility Rules and Standards 452 (Am. Bar Ass'n 2017) ("The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations."), the baseline sanction before considering aggravating and mitigating circumstances is suspension. *See id.* Standard 4.42 (providing that suspension is appropriate if a lawyer "knowingly fails to perform services for a client and causes injury or potential injury to a client"); 6.22 (providing that suspension is appropriate when the lawyer knows that he is violating a court order or rule and causes injury to a client). The record supports the panel's findings of three aggravating circumstances (multiple offenses, pattern of misconduct, and substantial experience in the practice of law) and one mitigating circumstance (mental disability). Considering all four factors, we conclude that the agreed-upon 18-month suspension to run concurrent with the suspension in Docket No. 73964 is appropriate.

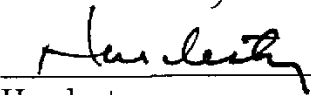
Accordingly, we hereby suspend attorney Sean L. Brohawn from the practice of law in Nevada for a period of 18 months, to run concurrent with the suspension imposed in *In re Discipline of Brohawn*, Docket No. 73964 (Order Approving Conditional Guilty Plea, Feb. 23, 2018). Brohawn shall pay restitution to his former client in the amount of \$2,000 within 60 days of the date of this order. In addition, Brohawn shall remedy the monetary consequence of his failure to respond, on his client's behalf, to the State of Nevada's motion for attorney fees, whether by having the judgment set aside and paying for the attorney fees and costs associated with such setting aside of the judgment, or otherwise extinguishing the requirement that the client pay \$2,671.34 to the State of Nevada if it cannot be set aside. Further, Brohawn shall pay the actual costs of the disciplinary

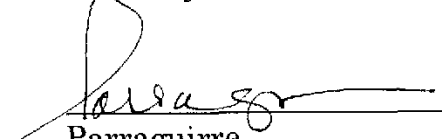
proceeding, including \$2,500 under SCR 120 within 60 days of the date of this order. The State Bar shall comply with SCR 121.1.

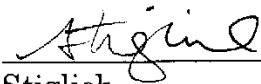
It is so ORDERED.



_____, C.J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich


_____, J.
Cadish


_____, J.
Silver

cc: Chair, Northern Nevada Disciplinary Board
Law Office of Jerry M. Snyder
Daniel M. Hooge, Bar Counsel, State Bar of Nevada
Kimberly K. Farmer, Executive Director, State Bar of Nevada
Perry Thompson, Admissions Office, U.S. Supreme Court

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yviloria

Exhibit 8

1
2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 ALBERT THOMAS, individually, et al,

10 Plaintiffs,

Case No: CV12-02222

11 vs.

Dept. No: 10

12 MEI-GSR Holdings, LLC, a Nevada Limited
13 Liability Company, et al,

14 Defendants.
15 _____/

16 **ORDER GRANTING PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS**

17 ALBERT THOMAS et al. ("the Plaintiffs") filed the PLAINTIFFS' MOTION FOR CASE-
18 TERMINATING SANCTIONS ("the Motion") on January 27, 2014. MEI-GSR Holdings, LLC
19 ("the Defendants") filed the DEFENDANTS' OPPOSITION TO THE PLAINTIFFS' MOTION
20 FOR CASE-TERMINATING SANCTIONS ("the Opposition") on February 25, 2014.¹ The
21 Plaintiffs filed the REPLY IN SUPPORT OF MOTION FOR CASE- TERMINATING
22 SANCTIONS ("the Reply") on March 10, 2014. The Plaintiffs submitted the matter for decision on
23
24

25 ¹ Pursuant to a stipulation of the parties, the Court entered the ORDER EXTENDING BRIEFING
26 SCHEDULE on February 13, 2014. That order required the Defendants to file their opposition by
27 the close of business February 24, 2014. This is yet one more example of the Defendants flaunting
28 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.

1 March 11, 2014. The Court held hearings on the Motion on August 1, 2014, and August 11, 2014.

2 The Plaintiffs previously filed a Motion for Case Concluding Sanctions on September 24,
3 2013. The Court held a three-day hearing October 21, 2013 to October 23, 2013 ("October 2013
4 hearing"). The Court struck the Defendants' counterclaims and ordered that the Defendants pay all
5 attorney fees and costs associated with the three-day hearing. The Motion renews the Plaintiffs'
6 request for case terminating sanctions and asks the Court to strike the Defendants' Answer. The
7 Motion asserts that the Defendants' discovery conduct prior to October of 2013 was willful and did
8 severely prejudice the Plaintiffs. The Motion argues that during the October 2013 hearing neither
9 the Court nor the Plaintiffs had a complete understanding of the Defendants' discovery misconduct.
10 The Motion argues that since October of 2013, the Defendants have continued to violate discovery
11 orders and delay discovery.
12

13
14 The Opposition contends that the Defendants have engaged in no conduct warranting the
15 imposition of case concluding sanctions. The Opposition argues the allegations made by the
16 Plaintiffs pre-date the October 2013 hearing. The Opposition argues that no evidence has been lost
17 or fabricated, and that the Defendants have not willfully obstructed the discovery process. The
18 Defendants submit that they have cooperated with the Plaintiffs' effort to locate 224,000 e-mails that
19 contain a word that might relate to the case even though the Defendants believe the vast majority of
20 those e-mails to be irrelevant. The Opposition further argues that the Defendants have cooperated
21 with the Plaintiffs' desire to run a "VB Script" on the Defendants' computer system that may have
22 violated third-party copyrights but which ultimately located no additional e-mails. The Opposition
23 argues that the e-mail production has been expedited but has taken time due to the volume of e-
24 mails. The Opposition contends that the e-mail privilege log that the Defendants submitted
25
26
27
28

1 complied with case law of the Ninth Circuit and that they were not required to comply with the
2 Discovery Commissioner's recommendation until the Court adopted the order.²

3 The Nevada Rules of Civil Procedure provide that a party who fails to comply with an order
4 can be sanctioned for that failure. NRCP 37(b). Sanctions against a party are graduated in severity
5 and can include: designation of facts to be taken as established; refusal to allow the disobedient party
6 to support or oppose designated claims or defenses; prohibition of the offending party from
7 introducing designated matters in evidence; an order striking out pleadings or parts thereof or
8 dismissing the action; or rendering a judgment by default against the disobedient party. NRCP
9 37(b)(2). A disobedient party can also be required to pay the reasonable expenses, including
10 attorney fees caused by the failure. NRCP 37(b)(2)(E).

11 Discovery sanctions are properly analyzed under Young v Johnny Ribeiro Bldg., Inc., 106
12 Nev. 88, 787 P.2d 777 (1990). Young requires "every order of dismissal with prejudice as a
13 discovery sanction be supported by an express, careful and preferably written explanation of the
14 court's analysis of the pertinent factors." Young, 106 Nev. at 93, 787 P.2d at 780. The Young
15 factors are as follows: (1) the degree of willfulness of the offending party; (2) the extent to which the
16 non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of
17 dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been
18 irreparably lost; (5) the feasibility and fairness of less severe sanctions; (6) the policy favoring
19 adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the
20 misconduct of his or her attorney; and (8) the need to deter parties and future litigants from similar

21
22
23
24
25
26
27
28

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.

1 abuses. Id. In discovery abuse situations where possible case-concluding sanctions are warranted,
2 the trial judge has discretion in deciding which factors are to be considered. Bahena v. Goodyear
3 Tire & Rubber Co., 126 Nev. Adv. Op. 57, 245 P.3d 1182 (2010). The Young factor list is not
4 exhaustive and the Court is not required to find that all factors are present prior to making a finding.
5 “Fundamental notions of fairness and due process require that discovery sanctions be just and . . .
6 relate to the specific conduct at issue.” GNLV Corp v. Service Control Corp, 111 Nev. 866, 870,
7 900 P.2d 323, 325 (1995).

8
9 The Court analyzed the Young factors at the October 2013 hearing and found: (1) the
10 Defendants failed to comply with discovery orders and failed to meet the extended production
11 deadlines; (2) the discovery failures were not willful; (3) lesser sanctions could be imposed, and such
12 sanctions would not unduly cause the Plaintiffs prejudice; (4) the severity of the discovery failures
13 did not warrant ending the case in favor of the Plaintiffs; (5) no evidence was presented that
14 evidence had been irreparably lost; (6) any misconduct of the attorneys did not unfairly operate to
15 penalize the Defendants; (7) there were alternatives to the requested case-concluding sanctions that
16 could serve to deter a party from engaging in abusive discovery practices in the future; and (8) non-
17 case concluding sanctions could be used to accomplish both the policy of adjudicating cases on the
18 merits and the policy of deterring discovery abuses.

19
20
21 The Defendants have, to date, violated NRCP 33 and NRCP 34 (twice). The Defendants
22 have violated three rulings of the Discovery Commissioner and three confirming orders. The Court
23 is aware of four violations of its own orders. The information that has been provided to the Plaintiffs
24 during discovery has been incomplete, disclosed only with a Court order, and often turned over very
25 late with no legitimate explanation for the delays. The Plaintiffs have written dozens of letters and
26 e-mails to the Defendants’ counsel in an effort to facilitate discovery. The Plaintiffs have filed five
27
28

1 motions to compel and five motions for sanctions. The Court held multiple hearings on discovery
2 matters including two extensive, multi-day hearings on case concluding sanctions. The Court is
3 highly concerned about the Defendants' conduct during discovery and the resulting prejudice to the
4 Plaintiffs. Based on the progress of discovery, the Defendants' ongoing discovery conduct, and the
5 Plaintiffs' Motion the Court has chosen to revisit the Young factors and reassess the decision made
6 at the October 2013 hearing.

8 The first factor of the Young analysis is willfulness. The Plaintiffs allege that the discovery
9 failures in this case were deliberate and willful. Repeated discovery abuses and failure to comply
10 with district court orders evidences willfulness. Foster v. Dingwall, 126 Nev. Op. 6, 227 P.3d 1042
11 (2010)(citing, Young, 106 Nev. at 93, 787 P.2d at 780). Willfulness may be found when a party fails
12 to provide discovery and such failure is not due to an inability on the offending party's part. Havas v
13 Bank of Nevada, 96 Nev. 567, 570, 613 P.2d 706, 708 (1980). The Nevada Supreme Court has not
14 opined that it is necessary to establish wrongful intent to establish willfulness.

16 At the October 2013 hearing, the Defendants argued that they were substantially in
17 compliance with the June 17, 2013, discovery request. The Defendants initially disclosed between
18 200-300 e-mails. The Defendants argued that the discovery dispute was only over a few irrelevant
19 documents. Since the October 2013 hearing, additional e-mail searches have uncovered 224,226 e-
20 mails not previously disclosed to the Plaintiffs. The Court now has serious doubt that the
21 representations made by the Defendants at the October 2013 hearing were accurate and genuine.

23 The Defendants designated Caroline Rich, the Defendants' previous Controller, to gather the
24 discovery information with assistance from their internet technology department ("IT"). The Court
25 initially believed that Ms. Rich did her best to produce the discovery information (including e-mails)
26 she felt was relevant. Ms. Rich did not have direct access to the IT system of the Defendants. Nor
27
28

1 did she have access to the e-mails of all staff members. For instance, she did not have access to the
2 e-mails of those employees who outranked her. The Plaintiffs have subsequently discovered e-mails
3 where Ms. Rich is a participant in e-mail correspondence that was directly relevant to the search. It
4 would be excusable if Ms. Rich overlooked e-mail sent by other employees or did not have access to
5 her superiors' e-mail accounts. However, it now appears that she did not disclose e-mails in which
6 she was a participant in the correspondence. This calls into question her credibility.
7

8 The Court is further troubled by the representations of the Defendants' counsel, Sean
9 Brohawn, that the volume of subsequent e-mails was going to be inconsequential and it would take
10 minimal time for the Defendants to produce. The Court would have found the information that there
11 were potentially hundreds of thousands of additional e-mails to be critical in reaching its October
12 2013, decision. The discrepancy between the 200-300 e-mails produced in the original discovery
13 and the 224,226 subsequently identified is enormous. The Court cannot attribute this discrepancy to
14 a good faith error. The discrepancy appears at best to be a failure of the Defendants to adequately
15 search their e-mail system in response to the initial discovery requests. At worst, it is a deliberate
16 failure to comply with the discovery rules.
17

18 The Defendants had an obligation to engage in an adequate search of the information
19 requested in discovery, and to designate the appropriate party to testify regarding the discovery
20 production. *See generally*, NRCPP 16.1(b); NRCPP 26(b); NRCPP 26 (e). Defendants' counsel had the
21 responsibility to oversee and supervise the collection of the discovery. *See*, NRCPP 16.1(e)(3). Both
22 the Defendants and the Defendants' counsel failed to meet their discovery obligations. That failure
23 led to the Court being provided seriously inaccurate information at the October 2013 hearing.
24

25
26 //

27 //
28

1 The Defendants have consistently violated Nevada Rules of Civil Procedure, orders
2 compelling discovery, and the Court's directives. The Defendants have not proffered any legitimate
3 or lawful explanation for their conduct. The Defendants have not objected to or requested
4 clarification of discovery requests. Many times they have simply not responded. Other responses
5 have been incomplete. Often, information was only produced after the Plaintiffs filed motions to
6 compel. At various hearings and conferences the Defendants produced previously undisclosed
7 discovery information that suddenly appeared. The Court reverses its earlier decision and finds that
8 the Defendants discovery failures are in fact willful.

10 The Court next considered the second Young factor possible prejudice to the Plaintiffs if a
11 lesser sanction were imposed. The Nevada Supreme Court has upheld entries of default where
12 litigants engage in abusive litigation practices that cause interminable delays. Foster, 126 Nev. Op.
13 6, 227 P.3d at 1048 (*citing Young*, 106 Nev. at 93, 787 P.2d at 780). Willful and recalcitrant
15 disregard of the judicial process presumably prejudices the non-offending party. Id. The discovery
16 received by the Plaintiffs had to be forced from the Defendants, with multiple motions to compel,
17 which has greatly increased the Plaintiffs' costs. The Plaintiffs have been hindered in developing
18 their causes of action and preparing for trial. In reviewing the possible prejudice to the Plaintiffs, the
19 Court finds that the Plaintiffs have been more prejudiced than was apparent at the time of the
20 October 2013 hearing.

22 The Plaintiffs were not provided with 200,000 e-mails at the outset of discovery in
23 accordance with their June 17, 2013, Request for Production. The Plaintiffs conducted their
24 depositions prior to receiving the additional e-mail and financial information. The value of a
25 deposition is significantly diminished if the deposing party does not have all the relevant information
26 they need prior to the deposition. Given the new information, the Plaintiffs may need to re-depose
27
28

1 those individuals. The Plaintiffs discovered additional employees of the Defendants who would
2 potentially have information and require deposition. The Plaintiffs estimated that after review of the
3 e-mails, which was still ongoing at the time of the August hearings, that they would need another six
4 to nine months to prepare the case for trial. That would result in trial almost a year and a half after
5 the original trial date. As additional information has to come light, it has become apparent that the
6 Defendants' discovery conduct has severely prejudiced the Plaintiffs' case.
7

8 Thirdly, the Court compared the severity of dismissal to the severity of the discovery abuse.
9 "The dismissal of a case, based upon a discovery abuse . . . should be used only in extreme
10 situations; if less drastic sanctions are available, they should be utilized." GNLV Corp., 111 Nev. at
11 870, 900 P.2d at 325 (citing Young, 106 Nev. at 92, 787 P.2d at 779-80). The Court is no longer
12 persuaded that the effort of Ms. Rich was in good faith or that the Defendants designated the
13 appropriate party to undertake the production of discovery. Ms. Rich was a relatively new
14 employee, she did not have access to her superiors' e-mail and records, and she did not know the
15 names and positions of other Defendants' employees. The Court is not convinced that the
16 Defendants have properly made discovery disclosures such that the Plaintiffs have had a fair
17 opportunity to develop their litigation plan. The Court is keenly aware that granting the Plaintiffs'
18 motion would effectively end the case, leaving only the issue of damages to be decided. The
19 Defendants have abused and manipulated the discovery rules and case-terminating sanctions is the
20 option available to properly punish the Defendants' conduct.
21

22 In looking at the fourth factor in October 2013, the Court noted that there was no evidence
23 presented at the hearing or raised by the moving papers that evidence had been irreparably lost. The
24 Plaintiffs argue that information has been lost or destroyed. The fact that evidence had not been
25 produced is not the same as the destruction or loss of evidence. There remains no evidence to
26
27
28

1 indicate that evidence has been lost or destroyed by the Defendants. This factor remains consistent
2 in the reevaluation of the October 2013, decision.

3 Fifth, in October 2013, the Court found that there were many alternatives to the requested
4 case-concluding sanctions that could serve to deter a party from engaging in abusive discovery
5 practices in the future. The Defendants have received four sanctions for their discovery failures.
6 The Defendants' conduct since the October 2013 hearing indicates that the previously imposed
7 sanctions have not been sufficient to modify the Defendants' behavior. Time has shown that there
8 are no effective alternatives to case concluding sanctions.
9

10 The Court considered two major policy factors together. Nevada has a strong policy, and the
11 Court firmly believes, that cases should be adjudicated on their merits. *See, Scrimmer v. Dist. Court*,
12 116 Nev. 507, 516-517, 998 P.2d 1190, 1196 (2000). *See also, Kahn v. Orme*, 108 Nev. 510, 516,
13 835 P.2d 790, 794 (1992). Further, there is a need to deter litigants from abusing the discovery
14 process established by Nevada law. When a party repeatedly and continuously engaged in discovery
15 misconduct the policy of adjudicating cases on the merits is not furthered by a lesser sanction.
16 *Foster*, 126 Nev. Op. 6, 227 P.3d at 1048. In reevaluating the matter, the Court again considered the
17 major policy that cases be adjudicated on their merits. The Court must balance that policy with the
18 need to deter litigants from abusing the discovery process. The information provided at the October
19 2013 hearing was disingenuous. The Defendants' discovery abuse persisted after the October 2013
20 hearing despite the severity of the sanctions imposed. The Court is now convinced that the
21 Defendants' actions warrant the imposition of case concluding sanctions. In light of Defendants'
22 repeated and continued abuses, the policy of adjudicating cases on the merits is not furthered in this
23 case. The ultimate sanctions are necessary to demonstrate to future litigants that they are not free to
24 disregard and disrespect the Court's orders.
25
26
27
28

1 Lastly, the Court considered whether striking the Answer would unfairly operate to penalize
2 the Defendants for the misconduct, if any, of their attorneys. As previously stated, there were
3 failures to produce and abuses of discovery on behalf of the Defendants. The Court remains
4 concerned that the attorneys for the Defendants did not adequately supervise discovery and
5 misrepresented the number of e-mails at issue for disclosure. There remains no evidence to show
6 that Defendants' counsel directed their client to hide or destroy evidence. Any misconduct on the
7 part of the attorney does not unfairly operate to punish the Defendants.

9 The Nevada Supreme Court offered guidance as to how sanctions are to be imposed.
10 "Fundamental notions of fairness and due process require that discovery sanctions be just and . . .
11 relate to the specific conduct at issue." GNLV Corp., 111 Nev. at 870, 900 P.2d at 325 (*citing*
12 Young, 106 Nev. at 92, 787 P.2d at 779-80). The Court recognizes that discovery sanctions should
13 be related to the specific conduct at issue. The discovery abuse in this case is pervasive and colors
14 the entirety of the case. The previous discovery sanctions have been unsuccessful in deterring the
15 Defendants' behavior. Due to the severity and pattern of the Defendants' conduct there are no lesser
16 sanctions that are suitable.

18 Despite the October 2013 hearing sanctions, the Defendants have continued their
19 noncompliant discovery conduct. The stern sanctions which the Court imposed on the Defendants in
20 October 2013, did not have the desired effect of bringing the Defendants' conduct in line with the
21 discovery rules. After the October 2013 hearing, the Court identified that the major outstanding
22 discovery issue between the parties was the Plaintiffs' access to Defendants' e-mail system. The
23 parties were ordered to work together to develop terms to be used in the e-mail search. The
24 Defendants were ordered to review the 224, 226 e-mails identified by November 25, 2013. The
25 Defendants were ordered to deliver a privilege log for those e-mails the Defendants believed should
26
27
28

1 not be provided to the Plaintiffs. Further, the Defendants were ordered to provide a copy of withheld
2 e-mails to the court with the privilege log for an in-camera review, and e-mail a copy of the privilege
3 log to the Plaintiffs. The Plaintiffs were to be provided access to all the e-mails not designated in the
4 privilege log beginning November 26, 2013. The Defendants failed to produce those e-mails by the
5 Courts' deadline and the Plaintiffs moved for sanctions. The parties were ordered to submit the
6 Defendants' November 25, 2013, privilege log to Discovery Commissioner, Wesley Ayres, with
7 corresponding briefing. Commissioner Ayres determined that the privilege log was legally
8 insufficient. The result was the Defendants waived any right to withhold e-mails identified in their
9 privilege log and the Plaintiffs were entitled to all 78,473 e-mails containing the search term "condo"
10 or "condominium". The Court adopted the recommendation of the Discovery Commissioner finding
11 that the Defendants' objection to the recommendation based on shortage of time to review the
12 privilege log was a result of the Defendants' inaction and lack of participation in the discovery
13 process. The Defendants still did not release the e-mails and the Plaintiffs filed a motion to compel.
14

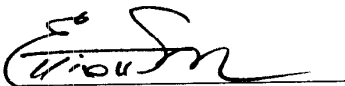
15
16 Nevada Rule of Civil Procedure 1 indicates that the rules of civil procedure are to be
17 administered to secure the "just, speedy, and inexpensive determination of every action." It appears
18 to the Court that the Defendants' focus in this case has been not to comply with NRCP 1. The
19 Defendants' failures to comply with discovery rules have been numerous and pervasive throughout
20 the case. The trial has been rescheduled multiple times resulting in a delay of over a year. The
21 Defendants' failures have led to additional costs to the Plaintiffs and required the Plaintiffs to seek
22 relief from the Court on multiple occasions. This has placed an undue burden on both the Plaintiffs
23 and the Court. The Court has employed progressive sanctions to address discovery abuses. Those
24 sanctions have not been adequate to curtail the Defendants' improper conduct. The Court has
25 repeatedly warned the Defendants that if it found the information provided at the October 2013
26
27
28

1 hearing to be disingenuous, or if discovery abuses continued it would grant case terminating
2 sanctions.

3 NOW, THEREFORE IT IS HEREBY ORDERED that the Motion is GRANTED.

4 IT IS FURTHER ORDERED, that the Defendants' Answer is stricken. The Parties are
5 ORDERED to contact the Judicial Assistant for Department 10 within ten days from the date of this
6 order to set a hearing to prove up damages.
7

8 DATED this 3 day of October, 2014.

9
10 
11 ELLIOTT A. SATTLER
12 District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yviloria

Exhibit 9

CV12-02222
DC-09900061780-022
ALBERT THOMAS ETAL. VS. MEI- 2 Pages
District Court 11/26/2014 10:03 AM
Washoe County
1550-4
KJONER

CODE: 1550

FILED

2014 NOV 26 AM 10:03

ACTING CLERK OF THE COURT

BY DEPUTY

Jaqueline Bryant

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

DEFAULT

WHEREAS, on or about January 27, 2014, the Plaintiffs herein filed *Plaintiffs' Motion for Case-Terminating Sanctions* under NRCP 37 ("Motion"), the Motion having been fully briefed, this Court having conducted hearings on the Motion and entered an *Order Granting Plaintiffs' Motion for Case-Terminating Sanctions* on or about October 3, 2014, which struck Defendants' Answer, Default is hereby entered against the above-named Defendants as to the Plaintiffs' Second Amended Complaint on file herein.

DATED this 26th day of November, 2014.

JACQUELINE BRYANT
CLERK OF THE COURT,

By: Deputy Clerk

[Signature]

DEFAULT
PAGE 1

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

PA0933

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

3
4 **AFFIRMATION**
5 **Pursuant to NRS 239B.030**

6 The undersigned does hereby affirm that the preceding document, **Default:**

7 ☒ Document does not contain the social security number of any person

8 -OR-

9 ☐ Document contains the social security number of a person as required by:

10 ☐ A specific state or federal law, to wit:

11 _____
(State specific state or federal law)

12 -or-

13 ☐ For the administration of a public program


14 -or-

15 ☐ For an application for a federal or state grant

16 -or-

17 ☐ Confidential Family Court Information Sheet
18 (NRS 125.130, NRS 125.230 and NRS 125B.055)

19 Date: November 26, 2014

20 
(Signature)

21 Jarrad C. Miller
(Print Name)

22 Plaintiff
23 (for)

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yvilorla

Exhibit 10

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

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

Case No: CV12-02222

vs.

Dept. No: 10

MEI-GSR Holdings, LLC, a Nevada Limited
Liability Company, et al,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This action was commenced on August 27, 2012, with the filing of a COMPLAINT ("the Complaint"). The Complaint alleged twelve causes of action: 1) Petition for Appointment of a Receiver as to Defendant Grand Sierra Resort Unit-Owners' Association; 2) Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR; 3) Breach of Contract as to Defendant MEI-GSR; 4) Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR; 5) Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR; 6) Consumer Fraud/Nevada Deceptive Trade Practices Act Violations as to Defendant MEI-GSR; 7) Declaratory Relief as to Defendant MEI-GSR; 8) Conversion as to Defendant MEI-GSR; 9) Demand for an Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association; 10) Specific Performance Pursuant to NRS 116.122, Unconscionable Agreement; 11) Unjust Enrichment/Quantum Meruit against Defendant Gage Village Development; 12) Tortious Interference with Contract and/or Prospective Business Advantage against Defendants MEI-GSR

1 and Gage Development. The Plaintiffs (as more fully described *infra*) were individuals or other
2 entities who had purchased condominiums in the Grand Sierra Resort ("GSR"). A FIRST
3 AMENDED COMPLAINT ("the First Amended Complaint") was filed on September 10, 2012.
4 The First Amended Complaint had the same causes of action as the Complaint.

5 The Defendants (as more fully described *infra*) filed an ANSWER AND COUNTERCLAIM
6 ("the Answer") on November 21, 2012. The Answer denied the twelve causes of action; asserted
7 eleven affirmative defenses; and alleged three Counterclaims. The Counterclaims were for: 1)
8 Breach of Contract; 2) Declaratory Relief; 3) Injunctive Relief.

9 The Plaintiffs filed a SECOND AMENDED COMPLAINT ("the Second Amended
10 Complaint") on March 26, 2013. The Second Amended Complaint had the same causes of action as
11 the Complaint and the First Amended Complaint. The Defendants filed an ANSWER TO SECOND
12 AMENDED COMPLAINT AND COUNTER CLAIM ("the Second Answer") on May 23, 2013.
13 The Second Answer generally denied the allegations in the Second Amended Complaint and
14 contained ten affirmative defenses. The Counterclaims mirrored the Counterclaims in the Answer.

15 The matter has been the subject of extensive motion practice. There were numerous
16 allegations of discovery abuses by the Defendants. The record speaks for itself regarding the
17 protracted nature of these proceedings and the systematic attempts at obfuscation and intentional
18 deception on the part of the Defendants. Further, the Court has repeatedly had to address the
19 lackadaisical and inappropriate approach the Defendants have exhibited toward the Nevada Rules of
20 Civil Procedure, the District Court Rules, the Washoe District Court Rules, and the Court's orders.
21 The Defendants have consistently, and repeatedly, chosen to follow their own course rather than
22 respect the need for orderly process in this case. NRCP 1 states that the rules of civil procedure
23 should be "construed and administered to secure the just, speedy, and inexpensive determination of
24 every action." The Defendants have turned this directive on its head and done everything possible to
25 make the proceedings unjust, dilatory, and costly.

26 The Court twice has addressed a request to impose case concluding sanctions against the
27 Defendants because of their repeated discovery abuses. The Court denied a request for case
28 concluding sanctions in its ORDER REGARDING ORIGINAL MOTION FOR CASE

1 CONCLUDING SANCTIONS filed December 18, 2013 ("the December Order"). The Court found
2 that case concluding sanctions were not appropriate; however, the Court felt that some sanctions
3 were warranted based on the Defendants' repeated discovery violations. The Court struck all of the
4 Defendants' Counterclaims in the December Order and required the Defendants to pay for the costs
5 of the Plaintiffs' representation in litigating that issue.

6 The parties continued to fight over discovery issues after the December Order. The Court
7 was again required to address the issue of case concluding sanctions in January of 2014. It became
8 clear that the Defendants were disingenuous with the Court and Plaintiffs' counsel when the first
9 decision regarding case concluding sanctions was argued and resolved. Further, the Defendants
10 continued to violate the rules of discovery and other court rules even after they had their
11 Counterclaims struck in the December Order. The Court conducted a two day hearing regarding the
12 renewed motion for case concluding sanctions. An ORDER GRANTING PLAINTIFFS' MOTION
13 FOR CASE-TERMINATING SANCTIONS was entered on October 3, 2014 ("the October Order").
14 The Defendants' Answer was stricken in the October Order. A DEFAULT was entered against the
15 Defendants on November 26, 2014.

16 The Court conducted a "prove-up hearing" regarding the issue of damages from March 23
17 through March 25, 2015. The Court entered an ORDER on February 5, 2015 ("the February Order")
18 establishing the framework of the prove-up hearing pursuant to *Foster v. Dingwall*, 126 Nev. Adv.
19 Op. 6, 227 P.3d 1042 (2010). The February Order limited, but did not totally eliminate, the
20 Defendants' ability to participate in the prove-up hearing. The Court heard expert testimony from
21 Craig L. Greene, CPA/CFF, CFE, CCEP, MAFF ("Greene") at the prove-up hearing. Greene
22 calculated the damages owed the Plaintiffs using information collected and provided by the
23 Defendants. The Court finds Greene to be very credible and his methodology to be sound. Further,
24 the Court notes that Greene attempted to be "conservative" in his calculations. Greene used
25 variables and factors that would eliminate highly suspect and/or unreliable data. The Court has also
26 received and reviewed supplemental information provided as a result of an inquiry made by the
27 Court during the prove-up hearing.

28

1 The GSR is a high rise hotel/casino in Reno, Nevada. The GSR has approximately 2000
2 rooms. The Plaintiffs purchased individual rooms in the GSR as condominiums. It appears to the
3 Court that the primary purpose of purchasing a condominium in the GSR would be as an investment
4 and revenue generating proposition. The condominiums were the subject of statutory limitations on
5 the number of days the owners could occupy them during the course of a calendar year. The owners
6 would not be allowed to "live" in the condominium. When the owners were not in the rooms they
7 could either be rented out or they had to remain empty.

8 As noted, *supra*, the Court stripped all of the Defendants general and affirmative defenses in
9 the October Order. The Defendants stand before the Court having involuntarily conceded all of the
10 allegations contained in the Second Amended Complaint. The Court makes the following findings
11 of fact:

12 **I. FINDINGS OF FACT**

- 13 1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of
14 California.
- 15 2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of California.
- 16 3. Plaintiff John Dunlap is a competent adult and is a resident of the State of California.
- 17 4. Plaintiff Barry Hay is a competent adult and is a resident of the State of California.
- 18 5. Plaintiff Marie-Annie Alexander, as Trustee of the Marie-Annie Alexander Living
19 Trust, is a competent adult and is a resident of the State of California.
- 20 6. Plaintiff Melissa Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
21 Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
22 resident of the State of Nevada.
- 23 7. Plaintiff George Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
24 Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
25 resident of the State of Nevada.
- 26 8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of California.
- 27 9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of California.
- 28

1 10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of
2 California.
3 11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the State of
4 California.
5 12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of
6 Minnesota.
7 13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990 Trust,
8 is a competent adult and is a resident of the State of California.
9 14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990 Trust,
10 is a competent adult and is a resident of the State of California.
11 15. Plaintiff Lori Ordovery is a competent adult and is a resident of the State of
12 Connecticut.
13 16. Plaintiff William A. Henderson is a competent adult and is a resident of the State of
14 California.
15 17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State of
16 California.
17 18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of
18 Washington.
19 19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of
20 Washington.
21 20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New
22 York.
23 21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of
24 California.
25 22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of New
26 York.
27
28

- 1 23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New
2 York.
- 3 24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its principal
4 place of business in Nevada.
- 5 25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its
6 principal place of business in Nevada.
- 7 26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of Minnesota.
- 8 27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of California.
- 9 28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of
10 California.
- 11 29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of
12 California.
- 13 30. Plaintiff Garrett Tom is a competent adult and is a resident of the State of California.
- 14 31. Plaintiff Anita Tom is a competent adult and is a resident of the State of California.
- 15 32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of
16 California.
- 17 33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of California.
- 18 34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
19 competent adult and is a resident of the State of California.
- 20 35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
21 competent adult and is a resident of the State of California.
- 22 36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.
- 23 37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of
24 California.
- 25 38. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited Liability
26 Company.
- 27
28

1 39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of
2 Hawaii.
3 40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of
4 Hawaii.
5 41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of
6 Wisconsin.
7 42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of
8 Wisconsin.
9 43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of
10 Alabama.
11 44. Plaintiff Benton Wan is a competent adult and is a resident of the State of California.
12 45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of
13 California.
14 46. Plaintiff Silkscape Inc. is a California Corporation.
15 47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of California.
16 48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of California.
17 49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of
18 California.
19 50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.
20 51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of California.
21 52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of California.
22 53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of
23 California.
24 54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of
25 California.
26
27
28

1 55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.
2 56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of California.
3 57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of California.
4 58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of Minnesota.
5 59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.
6 60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of
7 Minnesota.
8 61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of
9 California.
10 62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent adult
11 and is a resident of the State of California.
12 63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of
13 Minnesota.
14 64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.
15 65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of
16 Minnesota.
17 66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of
18 Minnesota.
19 67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of California.
20 68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of California.
21 69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of
22 California.
23 70. Plaintiff Garth Williams is a competent adult and is a resident of the State of
24 California.
25 71. Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of
26 California.
27
28

1 72. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of
2 Minnesota.
3 73. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of
4 Nevada.
5 74. Plaintiff Doug Mecham is a competent adult and is a resident of the State of Nevada.
6 75. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of
7 Nevada.
8 76. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver, British
9 Columbia.
10 77. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver, British
11 Columbia.
12 78. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State of
13 California.
14 79. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult and
15 is a resident of the State of Texas.
16 80. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of
17 California.
18 81. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.
19 82. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.
20 83. Plaintiff James Taylor is a competent adult and is a resident of the State of California.
21 84. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of California.
22 85. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.
23 86. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.
24 87. Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.
25 88. Plaintiff Kuk Hyung ("Connie") is a competent adult and is a resident of Coquitlam,
26 B.C.
27
28

1 89. Plaintiff Sang (“Mike”) Yoo is a competent adult and is a resident of Coquitlam, B.C.
2 90. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and is
3 a resident of the State of Nevada.
4 91. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of
5 California.
6 92. Plaintiff Chanh Truong is a competent adult and is a resident of the State of
7 California.
8 93. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the State of
9 California.
10 94. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its
11 principal place of business in Texas.
12 95. Plaintiff Robert Brunner is a competent adult and is a resident of the State of
13 Minnesota.
14 96. Plaintiff Amy Brunner is a competent adult and is a resident of the State of
15 Minnesota.
16 97. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of California.
17 98. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of Illinois.
18 99. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.
19 100. The people and entities listed above represent their own individual interests. They are
20 not suing on behalf of any entity including the Grand Sierra Unit Home Owner’s Association. The
21 people and entities listed above are jointly referred to herein as “the Plaintiffs”.
22 101. Defendant MEI-GSR Holdings, LLC (“MEI-GSR”) is a Nevada Limited Liability
23 Company with its principal place of business in Nevada.
24 102. Defendant Gage Village Commercial Development, LLC (“Gage Village”) is a
25 Nevada Limited Liability Company with its principal place of business in Nevada.
26
27
28

1 103. Gage Village is related to, controlled by, affiliated with, and/or a subsidiary of MEI-
2 GSR.

3 104. Defendant Grand Sierra Resort Unit Owners' Association ("the Unit Owners'
4 Association") is a Nevada nonprofit corporation with its principal place of business in Nevada.

5 105. MEI-GSR transferred interest in one hundred forty-five (145) condominium units to
6 AM-GSR Holdings, LLC ("AM-GSR") on December 22, 2014.

7 106. Defendants acknowledged to the Court on January 13, 2015, that AM-GSR would be
8 added to these proceedings and subject to the same procedural posture as MEI-GSR. Further, the
9 parties stipulated that AM-GSR would be added as a defendant in this action just as if AM-GSR was
10 a named defendant in the Second Amended Complaint. Said stipulation occurring and being ordered
11 on January 21, 2015.

12 107. MEI-GSR, Gage Village and the Unit Owner's Association are jointly referred to
13 herein as "the Defendants".

14 108. The Grand Sierra Resort Condominium Units ("GSR Condo Units") are part of the
15 Grand Sierra Unit Owners Association, which is an apartment style hotel condominium development
16 of 670 units in one 27-story building. The GSR Condo Units occupy floors 17 through 24 of the
17 Grand Sierra Resort and Casino, a large-scale hotel casino, located at 2500 East Second Street,
18 Reno, Nevada.

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

21 110. Gage Village and MEI-GSR own multiple GSR Condo Units.

22 111. MEI-GSR owns the Grand Sierra Resort and Casino.

23 112. Under the Declaration of Covenants, Conditions, Restrictions and Reservations of
24 Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs"), there is one voting member
25 for each unit of ownership (thus, an owner with multiple units has multiple votes).
26
27
28

1 113. Because MEI-GSR and Gage Village control more units of ownership than any other
2 person or entity, they effectively control the Unit Owners' Association by having the ability to elect
3 MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR
4 Condo Units).

5 114. As a result of MEI-GSR and Gage Village controlling the Unit Owners' Association,
6 the Individual Unit Owners effectively have no input or control over the management of the Unit
7 Owners' Association.

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

11 116. MEI-GSR and Gage Villages' control of the Unit Owners' Association violates
12 Nevada law as it defeats the purpose of forming and maintaining a homeowners' association.

13 117. Further, the Nevada Division of Real Estate requires a developer to sell off the units
14 within 7 years, exit and turn over the control and management to the owners.

15 118. Under the CC&Rs, the Individual Unit Owners are required to enter into a "Unit
16 Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein MEI-
17 GSR provides certain services (including, without limitation, reception desk staffing, in-room
18 services, guest processing services, housekeeping services, Hotel Unit inspection, repair and
19 maintenance services, and other services).

20 119. The Unit Owners' Association maintains capital reserve accounts that are funded by
21 the owners of GSR Condo Units. The Unit Owners' Association collects association dues of
22 approximately \$25 per month per unit, with some variation depending on a particular unit's square
23 footage.

24 120. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes,
25 deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance,
26 utilities, etc.
27
28

1 121. MEI-GSR has systematically allocated and disproportionately charged capital reserve
2 contributions to the Individual Unit Owners, so as to force the Individual Unit Owners to pay capital
3 reserve contributions in excess of what should have been charged.

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

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

8 124. The Individual Unit Owners also pay "Daily Use Fees" (a charge for each night a unit
9 is occupied by any guest for housekeeping services, etc.).

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

12 126. MEI-GSR has failed to properly account for the contracted "Hotel Fees" and "Daily
13 Use Fees."

14 127. Further, the Hotel Fees and Daily Use Fees are not included in the Unit Owners'
15 Association's annual budget with other assessments that provide the Individual Unit Owners' the
16 ability to reject assessment increases and proposed budget ratification.

17 128. MEI-GSR has systematically endeavored to increase the various fees that are charged
18 in connection with the use of the GSR Condo Units in order to devalue the units owned by
19 Individual Unit Owners.

20 129. The Individual Unit Owners' are required to abide by the unilateral demands of MEI-
21 GSR, through its control of the Unit Owners' Association, or risk being considered in default under
22 Section 12 of the Agreement, which provides lien and foreclosure rights pursuant to Section 6.10(f)
23 of the CC&R's.

24 130. Defendants MEI-GSR and/or Gage Village have attempted to purchase, and
25 purchased, units devalued by their own actions, at nominal, distressed prices when Individual Unit
26
27
28

1 Owners decide to, or are effectively forced to, sell their units because the units fail to generate
2 sufficient revenue to cover expenses.

3 131. MEI-GSR and/or Gage Village have, in late 2011 and 2012, purchased such devalued
4 units for \$30,000 less than the amount they purchased units for in March of 2011.

5 132. The Individual Unit Owners effectively pay association dues to fund the Unit
6 Owners' Association, which acts contrary to the best interests of the Individual Unit Owners.

7 133. MEI-GSR's interest in maximizing its profits is in conflict with the interest of the
8 Individual Unit Owners. Accordingly, Defendant MEI-GSR's control of the Unit Owners'
9 Association is a conflict of interest.

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

14 135. MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement with
15 Individual Unit Owners.

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

20 137. MEI-GSR has rented the Individual Condo Units for as little as \$0.00 to \$25.00 a
21 night.

22 138. Yet, MEI-GSR has charged "Daily Use Fees" of approximately \$22.38, resulting in
23 revenue to the Individual Unit Owners as low as \$2.62 per night for the use of their GSR Condo Unit
24 (when the unit was rented for a fee as opposed to being given away).

25 139. By functionally, and in some instances actually, giving away the use of units owned
26 by the Individual Unit Owners, MEI-GSR has received a benefit because those who rent the
27
28

1 Individual Units frequently gamble and purchase food, beverages, merchandise, spa services and
2 entertainment access from MEI-GSR.

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

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

7 142. Such prioritization effectively devalues the units owned by the Individual Unit
8 Owners.

9 143. MEI-GSR and Gage Village intend to purchase the devalued units at nominal,
10 distressed prices when Individual Unit Owners decide to, or are effectively forced to, sell their units
11 because the units fail to generate sufficient revenue to cover expenses and have no prospect of
12 selling their persistently loss-making units to any other buyer.

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

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

17 146. MEI-GSR has breached the Grand Sierra Resort Unit Rental Agreement with
18 Individual Condo Unit Owners by failing to follow its terms, including but not limited to, the failure
19 to implement an equitable Rotational System as referenced in the agreement.

20 147. MEI-GSR has failed to act in good faith in exercising its duties under the Grand
21 Sierra Resort Unit Rental Agreements with the Individual Unit Owners.

22 The Court is intimately familiar with all of the allegations in the twelve causes of action
23 contained in the Second Amended Complaint. The Court's familiarity is a result of reviewing all of
24 the pleadings and exhibits in this matter to include the various discovery disputes, the testimony at
25 the numerous hearings conducted to date, and the other documents and exhibits on file. The Court
26 finds that the facts articulated above support the twelve causes of action contained in the Second
27 Amended Complaint.
28

II. CONCLUSIONS OF LAW

- 1
- 2 A. The Court has jurisdiction over MEI-GSR, Gage Village, the Unit Owner's Association
- 3 and the Plaintiffs.
- 4 B. The appointment of a receiver is appropriate when: (1) the plaintiff has an interest in
- 5 the property; (2) there is potential harm to that interest in property; and (3) no other
- 6 adequate remedies exist to protect the interest. *See generally Bowler v. Leonard*, 70
- 7 Nev. 370, 269 P.2d 833 (1954). *See also* NRS 32.010. The Court appointed a receiver
- 8 to oversee the Unit Owner's Association on January 7, 2015. The Court concludes that
- 9 MEI-GSR and/or Gage Village have operated the Unit Owner's Association in a way
- 10 inconsistent with the best interests of all of the unit owners. The continued
- 11 management of the Unit Owner's Association by the receiver is appropriate under the
- 12 circumstances of this case and will remain in effect absent additional direction from the
- 13 Court.
- 14 C. Negligent misrepresentation is when "[o]ne who, in the course of his business,
- 15 profession or employment, or in any other action in which he has a pecuniary interest,
- 16 supplies false information for the guidance of others in their business transactions, is
- 17 subject to liability for pecuniary loss caused to them by their justifiable reliance upon
- 18 the information, if he fails to exercise reasonable care or competence in obtaining or
- 19 communicating the information." *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d
- 20 1382, 1387 (1998) (quoting *Restatement (Second) of Torts § 552(1) (1976)*). Intentional
- 21 misrepresentation is when "a false representation made with knowledge or belief that it
- 22 is false or without a sufficient basis of information, intent to induce reliance, and
- 23 damage resulting from the reliance. *Lubbe v. Barba*, 91 Nev. 596, 599, 540 P.2d 115,
- 24
- 25
- 26
- 27
- 28

1 117 (1975).” *Collins v. Burns*, 103 Nev. 394, 397, 741 P.2d 819, 821 (1987). MEI-
2 GSR is liable for intentionally and/or negligent misrepresentation as alleged in the
3 Second Cause of Action.

4
5 D. An enforceable contract requires, “an offer and acceptance, meeting of the minds, and
6 consideration.” *Certified Fire Protection, Inc. v. Precision Construction, Inc.* 128 Nev.
7 Adv. Op. 35, 283 P.3d 250, 255 (2012)(citing *May v. Anderson*, 121 Nev. 668, 672, 119
8 P.3d 1254, 1257 (2005)). There was a contract between the Plaintiffs and MEI-GSR.
9 MEI-GSR has breached the contract and therefore MEI-GSR is liable for breach of
10 contract as alleged in the Third Cause of Action.

11
12 E. MEI-GSR is liable for Quasi-Contract/Equitable Contract/Detrimental Reliance as
13 alleged in the Fourth Cause of Action.

14
15 F. An implied covenant of good faith and fair dealing exists in every contract in Nevada.
16 *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 109 Nev. 1043, 1046, 862 P.2d
17 1207, 1209 (1993). “The duty not to act in bad faith or deal unfairly thus becomes part
18 of the contract, and, as with any other element of the contract, the remedy for its breach
19 generally is on the contract itself.” *Id.* (citing *Wagenseller v. Scottsdale Memorial*
20 *Hospital*, 147 Ariz. 370, 383, 710 P.2d 1025, 1038 (1985)). “It is well established that
21 in contracts cases, compensatory damages ‘are awarded to make the aggrieved party
22 whole and ... should place the plaintiff in the position he would have been in had the
23 contract not been breached.’ This includes awards for lost profits or expectancy
24 damages.” *Road & Highway Builders, LLC v. Northern Nevada Rebar, Inc.*, 128 Nev.
25 Adv. Op. 36, 284 P.3d 377, 382 (2012)(*internal citations omitted*). “When one party
26 performs a contract in a manner that is unfaithful to the purpose of the contract and the
27
28

1 justified expectations of the other party are thus denied, damages may be awarded
2 against the party who does not act in good faith.” *Perry v. Jordan*, 111 Nev. 943, 948,
3 900 P.2d 335, 338 (1995)(*citation omitted*). “Reasonable expectations are to be
4 ‘determined by the various factors and special circumstances that shape these
5 expectations.’” *Id.* (citing *Butch Lewis*, 107 Nev. at 234, 808 P.2d at 923). MEI-GSR is
6 liable for breach of the covenant of good faith and fair dealing as set forth in the Fifth
7 Cause of Action.
8

- 9
10 G. MEI-GSR has violated NRS 41.600(1) and (2) and NRS 598.0915 through 598.0925,
11 inclusive and is therefore liable for the allegations contained in the Sixth Cause of
12 Action. Specifically, MEI-GSR violated NRS 598.0915(15) and NRS 598.0923(2).
13
14 H. The Plaintiffs are entitled to declaratory relief as more fully described below and
15 prayed for in the Seventh Cause of Action.
16
17 I. MEI-GSR wrongfully committed numerous acts of dominion and control over the
18 property of the Plaintiffs, including but not limited to renting their units at discounted
19 rates, renting their units for no value in contravention of written agreements between
20 the parties, failing to account for monies received by MEI-GSR attributable to specific
21 owners, and renting units of owners who were not even in the rental pool. All of said
22 activities were in derogation, exclusion or defiance of the title and/or rights of the
23 individual unit owners. Said acts constitute conversion as alleged in the Eighth Cause
24 of Action.
25
26 J. The demand for an accounting as requested in Ninth Cause of Action is moot pursuant
27 to the discovery conducted in these proceedings and the appointment of a receiver to
28 oversee the interaction between the parties.
K. The Unit Maintenance Agreement and Unit Rental Agreement proposed by MEI-GSR
and adopted by the Unit Owner’s Association are unconscionable. An unconscionable

1 clause is one where the circumstances existing at the time of the execution of the
2 contract are so one-sided as to oppress or unfairly surprise an innocent party. *Bill*
3 *Stremmel Motors, Inc. v. IDS Leasing Corp.*, 89 Nev. 414, 418, 514 P.2d 654, 657
4 (1973). MEI-GSR controls the Unit Owner's Association based on its majority
5 ownership of the units in question. It is therefore able to propose and pass agreements
6 that affect all of the unit owners. These agreements require unit owners to pay
7 unreasonable Common Expense fees, Hotel Expenses Fees, Shared Facilities Reserves,
8 and Hotel Reserves ("the Fees"). The Fees are not based on reasonable expectation of
9 need. The Fees have been set such that an individual owner may actually *owe* money
10 as a result of having his/her unit rented. They are unnecessarily high and imposed
11 simply to penalize the individual unit owners. Further, MEI-GSR and/or Gage Village
12 have failed to fund their required portion of these funds, while demanding the
13 individual unit owners continue to pay the funds under threat of a lien. MEI-GSR has
14 taken the Fees paid by individual unit owners and placed the funds in its general
15 operating account rather than properly segregating them for the use of the Unit Owner's
16 Association. All of said actions are unconscionable and unenforceable pursuant to NRS
17 116.112(1). The Court will grant the Tenth Cause of Action and not enforce these
18 portions of the agreements.
19

20 L. The legal concept of *quantum meruit* has two applications. The first application is in
21 actions based upon contracts implied-in-fact. The second application is providing
22 restitution for unjust enrichment. *Certified Fire*, at 256. In the second application,
23 "[l]iability in restitution for the market value of goods or services is the remedy
24 traditionally known as quantum meruit. Where unjust enrichment is found, the law
25 implies a quasi-contract which requires the defendant to pay to the plaintiff the value of
26 the benefit conferred. In other words, the defendant makes restitution to the plaintiff in
27 *quantum meruit*." *Id.* at 256-57. Gage Village has been unjustly enriched based on the
28

1 orchestrated action between it and MEI-GSR to the detriment of the individual unit
2 owners as alleged in the Eleventh Cause of Action.

3 M. Many of the individual unit owners attempted to rent their units through third-party
4 services rather than through the use of MEI-GSR. MEI-GSR and Gage Village
5 intentionally thwarted, interfered with and/or disrupted these attempts with the goal of
6 forcing the sale of the individual units back to MEI-GSR. All of these actions were to
7 the economic detriment of the individual unit owners as alleged in the Twelfth Cause of
8 Action.

9 N. The Plaintiffs are entitled to both equitable and legal relief. "As federal courts have
10 recognized, the long-standing distinction between law and equity, though abolished in
11 procedure, continues in substance, *Coca-Cola Co. v. Dixi-Cola Labs.*, 155 F.2d 59, 63
12 (4th Cir. 1946); 30A C.J.S. *Equity* § 8 (2007). A judgment for damages is a legal
13 remedy, whereas other remedies, such as avoidance or attachment, are equitable
14 remedies. *See* 30A *Equity* § 1 (2007)." *Cadle Co. v. Woods & Erickson, LLP*, 131
15 Nev. Adv. Op. 15, 345 P.3d 1049, 1053 (2015).

16 O. "[W]here default is entered as a result of a discovery sanction, the non-offending party
17 'need only establish a *prima facie* case in order to obtain the default." *Foster*, 227 P.3d
18 at 1049 (*citing Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 94, 787 P.2d 777,
19 781 (1990)). "[W]here a district court enters a default, the facts alleged in the pleadings
20 will be deemed admitted. Thus, during a NRCP 55(b)(2) prove-up hearing, the district
21 court shall consider the allegations deemed admitted to determine whether the non-
22 offending party has established a *prima facie* case for liability." *Foster*, 227 P.3d at
23 1049-50. A *prima facie* case requires only "sufficiency of evidence in order to send the
24 question to the jury." *Id.* 227 P.3d at 1050 (*citing Vancheri v. GNLV Corp.*, 105 Nev.
25 417, 420, 777 P.2d 366, 368 (1989)). The Plaintiffs have met this burden regarding all
26 of their causes of action.
27
28

- 1 P. "Damages need not be determined with mathematical certainty." *Perry*, 111 Nev. at
2 948, 900 P.2d at 338. The party requesting damages must provide an evidentiary basis
3 for determining a "reasonably accurate amount of damages." *Id. See also*,
4 *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 733, 192 P.3d 243, 248
5 (2008) and *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co., Inc.*, 105 Nev.
6 855, 857, 784 P.2d 954, 955 (1989).
- 7 Q. Disgorgement is a remedy designed to dissuade individuals from attempting to profit
8 from their inappropriate behavior. "Disgorgement as a remedy is broader than
9 restitution or restoration of what the plaintiff lost." *American Master Lease LLC v.*
10 *Idanta Partners, Ltd*, 225 Cal. App. 4th 1451, 1482, 171 Cal. Rptr. 3d 548, 572
11 (2014)(*internal citation omitted*). "Where 'a benefit has been received by the defendant
12 but the plaintiff has not suffered a corresponding loss or, in some cases, any loss, but
13 nevertheless the enrichment of the defendant would be unjust . . . the defendant may be
14 under a duty to give to the plaintiff the amount by which [the defendant] has been
15 enriched.'" *Id.* 171 Cal. Rptr. 3d at 573 (*internal citations omitted*). *See also Miller v.*
16 *Bank of America, N.A.*, 352 P.3d 1162 (N.M. 2015) and *Cross v. Berg Lumber Co.*, 7
17 P.3d 922 (Wyo. 2000).
18
19

20 **III. JUDGMENT**

21 Judgment is hereby entered against MEI-GSR, Gage Village and the Unit Owner's
22 Association as follows:

23 **Monetary Relief:**

- 24 1. Against MEI-GSR in the amount of \$442,591.83 for underpaid revenues to Unit owners;
25 2. Against MEI-GSR in the amount of \$4,152,669.13 for the rental of units of owners who had no
26 rental agreement;
27 3. Against MEI-GSR in the amount of \$1,399,630.44 for discounting owner's rooms without
28 credits;

- 1 4. Against MEI-GSR in the amount of \$31,269.44 for discounted rooms with credits;
- 2 5. Against MEI-GSR in the amount of \$96,084.96 for "comp'd" or free rooms;
- 3 6. Against MEI-GSR in the amount of \$411,833.40 for damages associated with the bad faith
- 4 "preferential rotation system";
- 5 7. Against MEI-GSR in the amount of \$1,706,798.04 for improperly calculated and assessed
- 6 contracted hotel fees;
- 7 8. Against MEI-GSR in the amount of \$77,338.31 for improperly collected assessments;
- 8 9. MEI-GSR will fund the FF&E reserve, shared facilities reserve and hotel reserve in the amount of
- 9 \$500,000.00 each. The Court finds that MEI-GSR has failed to fund the reserves for the units it, or
- 10 any of its agents, own. However, the Court has also determined, *supra*, that these fees were
- 11 themselves unconscionable. The Court does not believe that the remedy for MEI-GSR's failure to
- 12 fund the unconscionable amount should be some multiple of that unreasonable sum. Further, the
- 13 Court notes that Plaintiffs are individual owners: not the Unit Owner's Association. Arguably, the
- 14 reserves are an asset of the Unit Owner's Association and the Plaintiffs have no individual interest in
- 15 this sum. The Court believes that the "seed funds" for these accounts are appropriate under the
- 16 circumstances of the case; and
- 17 10. The Court finds that it would be inappropriate to give MEI-GSR any "write downs" or credits
- 18 for sums they may have received had they rented the rooms in accordance with appropriate business
- 19 practices. These sums will be disgorged.

20

21 **Non-Monetary Relief:**

- 22 1. The receiver will remain in place with his current authority until this Court rules otherwise;
- 23 2. The Plaintiffs shall not be required to pay any fees, assessments, or reserves allegedly due or
- 24 accrued prior to the date of this ORDER;
- 25 3. The receiver will determine a reasonable amount of FF&E, shared facilities and hotel reserve fees
- 26 required to fund the needs of these three ledger items. These fees will be determined within 90 days
- 27 of the date of this ORDER. No fees will be required until the implementation of these new
- 28

1 amounts. They will be collected from *all* unit owners and properly allocated on the Unit Owner's
2 Association ledgers; and

3 4. The current rotation system will remain in place.

4 **Punitive Damages:**

5 The Court specifically declined to hear argument regarding punitive damages during the
6 prove-up hearing. *See* Transcript of Proceedings 428:6 through 430:1. Where a defendant has been
7 guilty of oppression, fraud, or malice express or implied in an action *not arising from contract*,
8 punitive damages may be appropriate. NRS 42.005(1). Many of the Plaintiff's causes of action
9 sound in contract; therefore, they are not the subject of a punitive damages award. Some of the
10 causes of action may so qualify. The Court requires additional argument on whether punitive
11 damages would be appropriate in the non-contract causes of action. NRS 42.005(3). An appropriate
12 measure of punitive damages is based on the financial position of the defendant, its culpability and
13 blameworthiness, the vulnerability of, and injury suffered by, the offended party, the offensiveness
14 of the punished conduct, and the means necessary to deter further misconduct. *See generally*
15 *Ainsworth v. Combined Insurance Company of America*, 104 Nev. 587, 763 P.2d 673 (1988).
16 Should the Court determine that punitive damages are appropriate it will conduct a hearing to
17 consider all of the stated factors. NRS 42.005(3). The parties shall contact the Judicial Assistant
18 within 10 days of the date of this ORDER to schedule a hearing regarding punitive damages.
19 Counsel will be prepared to discuss all relevant issues and present testimony and/or evidence
20 regarding NRS 42.005 at that subsequent hearing.

21 DATED this 9 day of October, 2015.

22 
23 ELLIOTT A. SATTLER
24 District Judge
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

DATED this 9 day of October, 2015.


SHEILA MANSFIELD
Judicial Assistant

FILED
Electronically
CV12-02222
2022-02-23 05:54:55 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8912535 : yvilorla

Exhibit 11