

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

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*Supreme Court Case No.*

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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.*

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**APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR, IN THE  
ALTERNATIVE, MANDAMUS  
VOLUME 7 OF 12**

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DATED this 7th day of February 2024.

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## **CERTIFICATE OF SERVICE**

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

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**  
9

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

11 Plaintiffs,

12 vs.

Case No. CV12-02222  
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited  
14 liability company, GRAND SIERRA  
15 RESORT UNIT OWNERS' ASSOCIATION,  
16 a Nevada nonprofit corporation, GAGE  
17 VILLAGE COMMERCIAL  
18 DEVELOPMENT, LLC, a Nevada limited  
19 liability company; AM-GSR HOLDINGS,  
20 LLC, a Nevada limited liability company; and  
21 DOE DEFENDANTS 1 THROUGH 10,  
22 inclusive,

23 Defendants.

24 **ORDER GRANTING RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS**

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

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery  
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-  
3 Terminating Sanctions, filed October 3, 2014 at 12.) See *Young v. Johnny Ribeiro Bldg., Inc.*,  
4 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court  
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. See  
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.

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

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

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



1 Court struck the disgorgement order granted in the December 24, 2020 Order Granting  
2 Clarification ("December 24, 2020 Order"). Whereas the Court originally instructed that "[u]ntil  
3 the DUF, the [HE], and [SFUE] are recalculated by the Receiver, the fees calculated by the past  
4 receiver shall be applied," the revised order struck this reversion to the prior receiver's  
5 calculations. Thus, the Receiver states he is now without direction as to which calculations are  
6 to be applied until he is able to redo his own calculations. (See December 24, 2020 Order at  
7 3:23-4:10 (where the Court informs the Receiver his calculations for 2020 are incorrect and  
8 invalid under the Governing Documents and they must be redone).) Defendants argue the  
9 Receiver's prior calculations, which were in place until the December 24, 2020 Order was  
10 issued, should be utilized. Notably, this directly contradicts the Court's December 24, 2020  
11 Order, is inequitable, and thus is denied outright. (*Id.*)

12 The Appointment Order provides the Receiver authority to take control of "all accounts  
13 receivable, payments, rents, including all statements and records of deposits, advances, and  
14 prepaid contracts or rents . . . ." (Appointment Order at 3:15-18.) Defendants are also ordered to  
15 cooperate with the Receiver and not "[i]nterfer[e] with the Receiver, directly or indirectly." (*Id.*  
16 at 8:2-15.) The Receiver has informed the parties of his intent to open a separate account into  
17 which all rents and other proceeds from the units will be deposited, and now requests the Court's  
18 permission to open such an account. (Motion at 11:19; Motion to Stay Special Assessment, filed  
19 August 20, 2021 at Ex. 2.) Defendants have refused to cooperate with the Receiver's request to  
20 turnover various proceeds, in violation of the Appointment Order, and now object to Receiver's  
21 authority to open a separate account. (Appointment Order at 8:2-15; Defendant's Opposition at  
22 6:14-7:21.)

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

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

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

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

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

12 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo  
13 regarding the property in controversy and to safeguard said property from being dissipated while  
14 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,  
15 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345  
16 (Ohio Ct. App. 1994).) This Court reiterated this premise in another order, stating that "[o]ne of  
17 the purposes of the [Appointment] Order was to preserve the status quo of the parties during the  
18 pendency of the action. Another purpose was to enforce [the] agreements." (Order, filed  
19 November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See  
20 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a  
21 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"  
22 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC  
23 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,  
24 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve  
25 the status quo).

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

1 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.  
2 App. Sept. 19, 2019) (noting that “[u]pon the receiver’s appointment, [Defendant’s] corporate  
3 officers and directors lost all authority to control the corporation”); First Sav. & Loan Ass’n v.  
4 First Fed. Sav. Loan Ass’n, 531 F. Supp. 251, 255 (D. Haw. 1981) (“When a receiver is  
5 appointed for a corporation, the corporation’s management loses the power to run its affairs and  
6 the receiver obtains all of the corporation’s powers and assets.”). “Simply put, corporate  
7 receivership is a court-mandated change in corporate management.” Francis, 487 P.3d 1089 at  
8 1092-93.

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

14 Next, the Findings of Fact, Conclusions of Law and Judgement issued on October 9,  
15 2015 (“FFCLJ”), explicitly ordered the Receiver to calculate “a reasonable amount of FF&E,  
16 shared facilities and hotel reserve fees” and other necessary fees to be assessed against Plaintiffs.  
17 (FFCLJ at 22:25-27.) Accordingly, the Receiver is to calculate the DUF, SFUE, and HE for  
18 2020. Such calculations should be based upon the same methodology as used for the 2021 fees,  
19 once the Court has approved of such methodology.

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

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



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

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

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

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

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

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

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

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

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

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

25 //

26 //

27 //

28 //

DATED 12.21.21

*Smaller*

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

FILED  
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Alicia L. Lerud  
Clerk of the Court  
Transaction # 8953058 : yvilorla

# Exhibit 16



## Iliana Godoy

---

**From:** Stefanie Sharp <ssharp@rssblaw.com>  
**Sent:** Wednesday, January 12, 2022 5:06 PM  
**To:** David McElhinney  
**Cc:** Jarrad Miller; Jon Tew; Robert L. Eisenberg, Esq; Abran Vigil; Ann Hall; DPolsenberg@lewisroca.com; JHostetler@lewisroca.com; Iliana Godoy; Hayes, Dawn; Jeanne Tarantino  
**Subject:** RE: Unit Owner Membership meeting

Mr. McElhinney: I have already communicated to you the position of the Receiver on this issue and I don't think further email communication on this matter would be productive.

Best regards,

Stefanie Sharp

---

**From:** David McElhinney <David.McElhinney@meruelogroup.com>  
**Sent:** Tuesday, January 11, 2022 5:39 PM  
**To:** Stefanie Sharp <ssharp@rssblaw.com>  
**Cc:** Jarrad Miller <jarrad@nvlawyers.com>; Jon Tew <jon@nvlawyers.com>; Robert L. Eisenberg, Esq <rle@lge.net>; Abran Vigil <Abran.Vigil@meruelogroup.com>; Ann Hall <Ann.Hall@meruelogroup.com>; DPolsenberg@lewisroca.com; JHostetler@lewisroca.com; Iliana Godoy <Iliana.Godoy@meruelogroup.com>; Hayes, Dawn <DHayes@lewisroca.com>; Jeanne Tarantino <jtarantino@associasn.com>  
**Subject:** RE: Unit Owner Membership meeting

Ms. Sharp, first of all, I am not trying to be confrontational with you and I appreciate that email exchanges can, on occasion be non-productive however I just want to better understand your response and the Receiver's refusal to let the unit members vote go forward. In my email to you I expressed my view that we do not believe that the vote of the Unit Owner membership has been addressed in, or would be a violation of, any of the January 4, 2022, Orders. The Court has ordered that we are to proceed under the 7<sup>th</sup> Amended CC&Rs. Whether I agree with the Court's rational to invalidate the 9<sup>th</sup> Amended CC&Rs and return to the 7<sup>th</sup> Amended CC&Rs, and how it arrived at that decision, is not relevant to this discussion. Regardless of whether we look to the 7<sup>th</sup> or 9<sup>th</sup> Amended CC&Rs, both versions of the CC&Rs and Nevada law applicable to both versions, provide that a common-interest community, (NRS Chapter 116) or condominium hotel (NRS Chapter 116B) may be terminated by agreement of unit owners to whom at least 80% of the votes in the association are allocated. That vote is not a function of the UOA, its board, its managers, officers, the Declarant or any other agents of the UOA. It is solely a function of the vote of the unit owners. In his role as a neutral agent and not an agent for either party, I believe it is as important for the Receiver to consider and take steps to protect the property interests not only for the Plaintiffs but for the Defendants as well and the Defendants ability to exercise their contractual rights under the Governing Documents and in accordance with Nevada law is a fundamental property interest of Defendants that the Receiver has a duty to protect. I find this a particularly compelling duty of the Receiver since we all agree that the Receiver is appointed for the purpose of implementing compliance, among all unit owners, with the Governing Documents.

Please direct me to the language in any one or more of the 7 orders that you believe allow the Receiver to ignore, amend or modify this contractual provision in the Governing Documents and impair the legal right of the units owners to cast their vote whether or not to terminate the common-interest community. Thank you, David



**David McElhinney**  
**Associate General Counsel**  
o:775.789.5330  
c:562.413.8528  
[david.mcelhiney@meruelogroup.com](mailto:david.mcelhiney@meruelogroup.com)

---

**From:** Stefanie Sharp [<mailto:ssharp@rssblaw.com>]  
**Sent:** Sunday, January 9, 2022 1:47 PM  
**To:** David McElhinney <[David.McElhinney@meruelogroup.com](mailto:David.McElhinney@meruelogroup.com)>  
**Cc:** Jarrad Miller <[jarrad@nvlawyers.com](mailto:jarrad@nvlawyers.com)>; Jon Tew <[jon@nvlawyers.com](mailto:jon@nvlawyers.com)>; Robert L. Eisenberg, Esq <[rle@lge.net](mailto:rle@lge.net)>; Abran Vigil <[Abran.Vigil@meruelogroup.com](mailto:Abran.Vigil@meruelogroup.com)>; Ann Hall <[Ann.Hall@meruelogroup.com](mailto:Ann.Hall@meruelogroup.com)>; DPolsenberg@lewisroca.com; JHostetler@lewisroca.com; Iliana Godoy <[Iliana.Godoy@meruelogroup.com](mailto:Iliana.Godoy@meruelogroup.com)>; Hayes, Dawn <[DHayes@lewisroca.com](mailto:DHayes@lewisroca.com)>; Jeanne Tarantino <[jtarrantino@associasn.com](mailto:jtarrantino@associasn.com)>  
**Subject:** RE: Unit Owner Membership meeting

Mr. McElhinney:

The Receiver and I have had the opportunity to review the 7 orders filed on January 4, 2022. The orders are clear that the Receiver is to maintain the status quo and that immediately upon the appointment of the Receiver all authority to manage and control the GSROUA was immediately transferred from the GSROUA's Board of Directors, managers, officers, the Declarant and other agents to the Receiver. Further, your clients are required to cooperate with the Receiver and refrain from any actions which will interfere with the ability of the Receiver to perform his duties, one of which is to maintain the "status quo."

The orders are clear. The Board of Directors of the GSROUA has no authority over the Association or its agents and cannot call any meetings. The orders also prohibit your clients from taking any actions which interfere with the ability of the Receiver to perform his duties, which include maintaining the status quo.

Any attempt by your clients or the current Board of Directors (who have no authority) to hold a meeting of the GSROUA Board or its members to terminate the condominium hotel, sell the units or take any other action is in direct violation of the orders.

If you attempt to take any such actions, the Receiver will notify the Court and proceed with any other actions he deems necessary or appropriate pursuant to the authority granted to him under the orders.

Best regards,

Stefanie Sharp

---

**From:** David McElhinney <[David.McElhinney@meruelogroup.com](mailto:David.McElhinney@meruelogroup.com)>  
**Sent:** Thursday, January 6, 2022 5:42 PM  
**To:** Stefanie Sharp <[ssharp@rssblaw.com](mailto:ssharp@rssblaw.com)>  
**Cc:** Jarrad Miller <[jarrad@nvlawyers.com](mailto:jarrad@nvlawyers.com)>; Jon Tew <[jon@nvlawyers.com](mailto:jon@nvlawyers.com)>; Robert L. Eisenberg, Esq <[rle@lge.net](mailto:rle@lge.net)>; Abran Vigil <[Abran.Vigil@meruelogroup.com](mailto:Abran.Vigil@meruelogroup.com)>; Ann Hall <[Ann.Hall@meruelogroup.com](mailto:Ann.Hall@meruelogroup.com)>; DPolsenberg@lewisroca.com; JHostetler@lewisroca.com; Iliana Godoy <[Iliana.Godoy@meruelogroup.com](mailto:Iliana.Godoy@meruelogroup.com)>; Hayes, Dawn <[DHayes@lewisroca.com](mailto:DHayes@lewisroca.com)>  
**Subject:** Unit Owner Membership meeting

Ms. Sharp and Mr. Teichner:

As you know, we cancelled the Unit Owner meeting that had been scheduled for today. While we do not believe that the vote of the Unit Owner membership has been addressed in, or would be a violation of, any of the January 4, 2022, Orders, out of an abundance of caution and in good faith, we postponed the meeting while we continue to read and absorb the content and scope of the seven Orders. While I remain of the opinion that none of the seven Orders give the Receiver power to prevent a meeting and vote of Unit Owner membership, I thought it, nonetheless, appropriate to reach out to both of you to request your cooperation and that you not object to our rescheduling the meeting. To be clear, I don't want my conciliatory approach and the seeking of your permission to be an admission by me or any of the Defendants that any of the seven Orders require my seeking your permission.

The attached mailer was prepared in line with the CC&Rs and NRS 116 and NRS 116B. It gave 30 days (15 is required) for a meeting of the Unit Owner membership to vote on the termination procedure provided for in the Governing Documents and the Nevada Revised Statutes. We would like to get this matter back on calendar and we request your cooperation and providing us with available dates in January or February to assure your availability and for the purpose of resetting the Unit Owner membership meeting and casting of votes. We believe that it is very important that the Members be permitted to exercise their right to vote on termination as provided for in both the Governing Documents and the Nevada Revised Statutes. Thank you, David



**David McElhinney**

**Associate General Counsel**

o:775.789.5330

c:562.413.8528

[david.mcelhinney@meruelogroup.com](mailto:david.mcelhinney@meruelogroup.com)

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Clerk of the Court  
Transaction # 8953058 : yvilorla

# Exhibit 17

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**  
9

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

11 Plaintiffs,

12 vs.

Case No. CV12-02222  
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited  
14 liability company, GRAND SIERRA  
15 RESORT UNIT OWNERS' ASSOCIATION,  
16 a Nevada nonprofit corporation, GAGE  
17 VILLAGE COMMERCIAL  
18 DEVELOPMENT, LLC, a Nevada limited  
19 liability company; AM-GSR HOLDINGS,  
20 LLC, a Nevada limited liability company; and  
21 DOE DEFENDANTS 1 THROUGH 10,  
22 inclusive,

23 Defendants.  
24  
25

26 **ORDER GRANTING PLAINTIFFS' MOTION FOR INSTRUCTIONS TO RECEIVER**

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

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

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

4 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing  
5 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James  
6 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"), the  
7 rental and other revenues from the condominiums, as well as other property of the non-  
8 GSRUOA Defendants. (See Appointment Order at 1:23-26.) The receivership was implemented  
9 "for the purpose of implementing compliance, among all condominium units, including units  
10 owned by any Defendant in this action . . . with the Covenants, Codes and Restrictions recorded  
11 against the condominium units, the Unit Maintenance Agreements and the original Unit Rental  
12 Agreements (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25,  
13 2019, Richard Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order  
14 Granting Motion to Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed  
15 January 25, 2019.)

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

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

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

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

9 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo  
10 regarding the property in controversy and to safeguard said property from being dissipated while  
11 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,  
12 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345  
13 (Ohio Ct. App. 1994).) This Court reiterated this premise in a subsequent order, stating that  
14 "[o]ne of the purposes of the [Appointment] Order was to preserve the status quo of the parties  
15 during the pendency of the action. Another purpose was to enforce [the] agreements." (Order,  
16 filed November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See  
17 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a  
18 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"  
19 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC  
20 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,  
21 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve  
22 the status quo).

23 In this case, the Receiver was specifically tasked with implementing compliance with the  
24 Governing Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-  
25 2:3.) Reading this obligation to implement compliance with the Seventh Amended CC&Rs with  
26 the obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs  
27 cannot be amended, repealed, nor replaced until the Receiver is relieved of his duties by the  
28 Court. The continuance of this specific Governing Document will ensure the status quo, as is the



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

3 Furthermore, upon the appointment of the Receiver, all authority to manage and control  
4 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,  
5 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,  
6 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.  
7 App. Sept. 19, 2019) (noting that "[u]pon the receiver's appointment, [Defendant's] corporate  
8 officers and directors lost all authority to control the corporation"); First Sav. & Loan Ass'n v.  
9 First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a receiver is  
10 appointed for a corporation, the corporation's management loses the power to run its affairs and  
11 the receiver obtains all of the corporation's powers and assets."). "Simply put, corporate  
12 receivership is a court-mandated change in corporate management." Francis, 487 P.3d 1089 at  
13 1092-93.

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

18 Accordingly, the Ninth Amended CC&Rs are *void ab initio*, and even if they were not,  
19 the Ninth Amended CC&Rs would be improper and thus subject to rescission or cancellation.<sup>1</sup>

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

25  
26 <sup>1</sup> Defendants argue any challenge to the Ninth Amended CC&Rs must be brought pursuant to the ADR provision  
27 therein. The Court rejects this argument *in toto* considering the Appointment Order, the purpose of the Appointment  
28 Order, and binding Nevada law which all dictate the receivership is intended to maintain the status quo – not allow  
for a key Governing Document to be unilaterally amended by Defendants. Further, the claim for a Receivership was  
brought in the Second Amended Complaint and the Nevada Supreme Court has already found that the District Court  
has subject matter jurisdiction over the action.



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

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

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

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

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

22 **IT IS HEREBY ORDERED** that Plaintiffs' Motion is granted.

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

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

//

//

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1       **IT IS SO ORDERED.**

2       DATED 12.21.21.



SENIOR JUSTICE  
Nancy Saitta

3  
4  
5       Submitted by:

6       ROBERTSON, JOHNSON,  
7       MILLER & WILLIAMSON

8  
9       /s/ Jarrad C. Miller

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

1 **2540**

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17 *Attorneys for Defendants MEI-GSR Holdings,*  
18 *LLC, AM-GSR Holdings, LLC, and GAGE*  
19 *VILLAGE COMMERCIAL DEVELOPMENT,*  
20 *LLC*

21  
22  
23 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

25 ALBERT THOMAS, et. al.,

26 Plaintiff(s),

27 v.

28 MEI-GSR HOLDINGS, LLC., a Nevada  
Limited Liability Company, AM-GSR  
Holdings, LLC., a Nevada Limited Liability  
Company, GRAND SIERRA RESORT UNIT  
OWNERS' ASSOCIATION, a Nevada  
Nonprofit Corporation, GAGE VILLAGE  
COMMERCIAL DEVELOPMENT, LLC., a  
Nevada Limited Liability Company, and DOES  
I-X inclusive,

Defendant(s).

Case No. CV12-02222

Dept. No.: 10

**NOTICE OF ENTRY OF DECEMBER 5, 2022 ORDER**

Defendants, MEI-GSR, LLC, a Nevada Limited Liability Company; GAGE VILLAGE  
COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company' and, AM-GSR

1 HOLDINGS, LLC, a Nevada Limited Liability Company (hereinafter referred to as  
2 “Defendants”), by and through their counsel, David C. McElhinney, Associate General Counsel  
3 with the Meruelo Group gives notice that on December 5th, 2022 the Court issued its Order  
4 addressing and ruling upon Plaintiffs’ Application for Temporary Restraining Order, and Motion  
5 for Preliminary Injunction, a true and correct copy of which is attached hereto as **Exhibit 1**.

6  
7  
8 **AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

11 RESPECTFULLY SUBMITTED this December 5, 2022.

12 /s/ David C. McElhinney, Esq.  
13 ABRAN VIGIL, ESQ.  
Nevada Bar No. 7548  
14 ANN HALL, ESQ.  
Nevada Bar No. 5447  
15 DAVID C. McELHINNEY, ESQ.  
Nevada Bar No. 0033  
16 MERUELO GROUP, LLC  
Legal Services Department  
17 5<sup>th</sup> Floor Executive Offices  
2535 Las Vegas Boulevard South  
18 Las Vegas, NV 89109  
Attorneys for Defendants  
19  
20  
21  
22  
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24  
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1360

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am employed in County of Clark, State of Nevada and, on this date, December 5, 2022 I deposited for mailing with the United States Postal Service, and served by electronic mail, a true copy of the attached document addressed to:

G. David Robertson, Esq., SBN 1001  
Jarrad C. Miller, Esq., SBN 7093  
Briana N. Collings, Esq. SBN 14694  
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Further, I certify that on the December 5, 2022, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filings to all persons registered to receive electronic service via the Court's electronic filing and service system.

DATED this December 5, 2022

  
Iliana Godoy

**INDEX OF EXHIBITS**

1. December 5<sup>th</sup>, 2022 Order addressing Plaintiffs' Application for Temporary Restraining Order, and Motion for Preliminary Injunction ..... 4-13 pp.

FILED  
Electronically  
CV12-02222  
2022-12-05 02:30:10 PM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 9392740

# Exhibit 1

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

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

7 ALBERT THOMAS, et. al,

8 Plaintiff,

9 vs.

10 MEI-GSR HOLDINGS, LLC., a Nevada  
11 Limited Liability Company, et al

12 Defendant.  
13  
14  
15  
16  
17

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)  
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Pursuant to WDCR 12(5) the Court after a review of the briefing, exhibits, declarations,<sup>1</sup> transcripts and related documents and being fully informed rules on the APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND MOTION FOR PRELIMINARY INJUNCTION ("the Injunctive Relief Motion") related to a meeting noticed by Defendants for March 14, 2022 to hold a vote on whether the Grand Sierra Resort Unit Owners Association ("GSRUOA") should be dissolved.

The Court makes the following factual findings:

<sup>1</sup> The declarations considered include those filed on March 28, 2022 after the March 25, 2022 hearing.



1 The Court notes that at a hearing on March 11, 2022, the Court granted a temporary restraining  
2 order on the following:

3 ...The meeting is scheduled for next Monday. I don't know how long it will take for the  
4 order to be prepared, reviewed by Mr. McElhinney, sent to you for a signing and everything,  
5 but I just want to make sure I understand that *the meeting next Monday is off*.  
6 THE COURT: That is correct, by virtue of court order. Yes.

7 Transcript of March 11, 2022, Hearing, page 42 lines 1-7. (Emphasis added.)

8 Although no written order was filed, a bond was posted by Plaintiffs in the amount of \$50,000 on  
9 March 11, 2022.

10 At the preliminary injunction hearing on March 25, 2022, the parties stipulated to an extension of  
11 the temporary restraining order pending resolution of the Injunctive Relief Motion. Transcript of  
12 March 25, 2022, Hearing, page 125.

14 The condominium-hotel arrangement at the Grand Sierra Resort constitutes a common-interest  
15 community.

16 The rights and obligations of all unit owners at the Grand Sierra Resort are defined in Nevada  
17 Revised Statutes, Chapter 116.

19 Each unit owner's Deed and Title to their Units at the Grand Sierra Resort, is subject to the  
20 covenants, conditions, restrictions and reservations included in the Seventh Amendment to  
21 Condominium Declaration of Covenants, Conditions, Restrictions and Reservations of Easements,  
22 ("7th Amended CC&Rs").

24 These covenants, conditions, restrictions and reservations limit the owner's property interest.

25 Section 9.1, appearing on pages 48 and 49 of the 7th Amended CC&Rs, provides as follows:

26 a. At a meeting duly called for such purpose and open to attendance by all Unit Owners, the  
27 Unit Owners by affirmative vote of the Unit Owners who own eighty percent (80%) or  
28 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

1 become the duty of every Unit Owner to execute and deliver such instruments and to  
2 perform all acts as in manner and form may be necessary to effect such sale.

3 Section 9.1 of the 7th Amended CC&Rs sets forth both a right and obligation of the unit owners  
4 that has been a part of their Deed and Title to their Units since the date they purchased their units.  
5 Defendants and its privies are currently the owner of over 80% of the units of GSRUOA.

6 The notice of the unit owners meeting at issue in these injunctive relief proceedings is Exhibit 3 to  
7 the Injunctive Relief Motion. That notice complies with NRS 116 and Section 9.1 of the 7th  
8 Amended CC&Rs.

9 The Court has previously made Findings that Defendants are systematically attempting to increase  
10 the various fees in order to devalue the units. October 9, 2015 Order par. 142-143.

11 The Court has previously made Findings that Defendants breached the Unit Maintenance  
12 Agreement and the Unit Rental Agreement. October 9, 2015 Order par. 146.

13 The findings made in the October 9, 2015 Order do not preclude the Defendants, as owners of  
14 more than 80% of the units,<sup>2</sup> from proceeding under Section 9.1 of the 7th Amended CC&Rs.

15 The January 7, 2015 Order Appointing Receiver and Directing Defendants' Compliance provides:

16 Defendants, and their agents, servants and employees, and those acting in concert with  
17 them, shall not engage in or perform directly or indirectly, any or all of the following acts: a.  
18 Interfering with the Receiver, directly or indirectly, in the management and operation of the  
19 Property . . . c. Doing any act which will, or which will tend to, impair, defeat, divert, prevent  
20 or prejudice the preservation of the Property or the interest in the Plaintiffs in the Property

21 January 7, 2015 Order at page 8 lines 2-11. Defendants efforts under Section 9.1 of the 7th  
22 Amended CC&Rs do not violate this provision of the January 7, 2015 Order.

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<sup>2</sup> See Paragraph 6 of Declaration of David C. McElhinney filed on March 17, 2022 as Exhibit 12 of the Opposition to the Injunctive Relief Motion.

1 The Receiver's authority is governed by the January 7, 2015 Order which gives certain authority over  
2 the management and operation of the GSRUOA but does not extend to oversight over ownership  
3 of the units.

4 The CC&R's constitute deed restrictions that limit and define Plaintiffs' interest in their units.

5  
6 The judgment entered October 9, 2015 does not include the depreciation or diminution in value of  
7 the units. As with any type of sale, a unit owner may assign, retain or otherwise reserve such a claim  
8 from a transfer. These claims may have been preserved and may be retained by a unit owner, in this  
9 matter, at the time of any transfer.<sup>3</sup>

10 In deciding an injunctive relief motion the court is guided by NRCP 65 and NRS 33.010.

11 Under the statute, an injunction may be granted under the following circumstances:

- 12 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded,  
13 and such relief or any part thereof consists in restraining the commission or continuance of  
14 the act complained of, either for a limited period or perpetually.
- 15 2. When it shall appear by the complaint or affidavit that the commission or continuance of  
16 some act, during the litigation, would produce great or irreparable injury to the plaintiff.
- 17 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is  
18 about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's  
19 rights respecting the subject of the action and tending to render the judgment ineffectual.

20 Injunctive relief is equitable in nature and allows a Court to fashion a remedy balancing the interests  
21 of the parties that protects the right of the movant.

22 NRS 116.2118<sup>4</sup> governs the termination of a common-interest community.

23 <sup>3</sup> To avoid confusion in this matter, a written notice of the intent to retain any of the claims must be made prior to the  
24 sale.

25 <sup>4</sup> That statute provides:

- 26 1. Except in the case of a taking of all the units by eminent domain, in the case of foreclosure against an entire  
27 cooperative of a security interest that has priority over the declaration, or in the circumstances described in NRS  
28 116.2124, a common-interest community may be terminated only by agreement of units' owners to whom at least 80  
percent of the votes in the association are allocated, or any larger percentage the declaration specifies, and with any other  
approvals required by the declaration. The declaration may specify a smaller percentage only if all of the units are  
restricted exclusively to nonresidential uses.
2. An agreement to terminate must be evidenced by the execution of an agreement to terminate, or ratifications  
thereof, in the same manner as a deed, by the requisite number of units' owners. The agreement must specify a date after

1 NRS 116.2118(1), allows for the termination of a common-interest community by agreement of unit  
2 owners to whom at least 80% of the votes in the association are allocated.

3 NRS 116.2118(2), provides that an agreement to terminate the common interest community must be  
4 evidenced by the execution of an agreement to terminate, or ratifications thereof, in the same  
5 manner as a deed, by the requisite number of unit owners.  
6

7 NRS 116.2118 (1), dictates that the respective interests of unit owners are the fair market value of  
8 their units.

9 Sale of the Plaintiffs' units will not operate to extinguish a unit owner's claims for damages which  
10 exist at the time of the "transfer" and are retained by a unit owner.  
11

12  
13 which the agreement will be void unless it is recorded before that date. An agreement to terminate and all ratifications  
14 thereof must be recorded in every county in which a portion of the common-interest community is situated and is  
effective only upon recordation.

15 3. In the case of a condominium or planned community containing only units having horizontal boundaries described  
in the declaration, an agreement to terminate may provide that all of the common elements and units of the common-  
16 interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common-  
interest community is to be sold following termination, the agreement must set forth the minimum terms of the sale.

17 4. In the case of a condominium or planned community containing any units not having horizontal boundaries  
described in the declaration, an agreement to terminate may provide for sale of the common elements, but it may not  
18 require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or  
all the units' owners consent to the sale.

19 5. The association, on behalf of the units' owners, may contract for the sale of real estate in a common-interest  
community, but the contract is not binding on the units' owners until approved pursuant to subsections 1 and 2. If any  
20 real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee  
for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect  
21 the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence  
with all powers it had before termination. Proceeds of the sale must be distributed to units' owners and lienholders as  
22 their interests may appear, in accordance with NRS 116.21183 and 116.21185. Unless otherwise specified in the  
agreement to terminate, as long as the association holds title to the real estate, each unit's owner and his or her  
23 successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the  
unit. During the period of that occupancy, each unit's owner and his or her successors in interest remain liable for all  
24 assessments and other obligations imposed on units' owners by this chapter or the declaration.

25 6. In a condominium or planned community, if the real estate constituting the common-interest community is not to  
be sold following termination, title to the common elements and, in a common-interest community containing only units  
26 having horizontal boundaries described in the declaration, title to all the real estate in the common-interest community,  
vests in the units' owners upon termination as tenants in common in proportion to their respective interests as provided  
27 in NRS 116.21185, and liens on the units shift accordingly. While the tenancy in common exists, each unit's owner and  
his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly  
constituted the unit.

28 7. Following termination of the common-interest community, the proceeds of a sale of real estate, together with the  
assets of the association, are held by the association as trustee for units' owners and holders of liens on the units as their  
interests may appear.

1 NRS 116.21185 provides for resolution of value of interests following termination.<sup>5</sup>

2 Plaintiffs have alleged that the appraisal done at the request of Defendants was not done by the  
3 GSRUOA. The Court agrees. As a result, the Court will permit unit owners to contest the  
4 appraisals and present their own appraisals setting forth their claimed fair market value.

5  
6 Currently there are a number of Applications for Issuance of Orders to Show Cause related to  
7 Defendants conduct with respect to the Receiver.<sup>6</sup> These Applications for OSC will be decided  
8 and, if cause is shown, hearings on these issues will proceed.

9 Currently the Receiver has not been paid as directed by the January 7, 2015 Order. As Defendants  
10 are the 80% owners of the units at GSRUOA; are the owners noticing the meeting seeking  
11 dissolution of GSRUOA, and sale under NRS 116.2118, Defendants must address this issue prior to  
12 sale.  
13

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15  
16 <sup>5</sup> NRS 116.21185 Respective interests of units' owners following termination. The respective interests of units'  
owners referred to in subsections 5, 6 and 7 of NRS 116.2118 and in NRS 116.21183 are as follows:

17 1. Except as otherwise provided in subsection 2, the respective interests of units' owners are the fair market values  
18 of their units, allocated interests, and any limited common elements immediately before the termination, as determined  
19 by one or more independent appraisers selected by the association. The decision of the independent appraisers must be  
20 distributed to the units' owners and becomes final unless disapproved within 30 days after distribution by units' owners  
to whom 25 percent of the votes in the association are allocated. The proportion of interest of any unit's owner to that  
of all units' owners is determined by dividing the fair market value of that unit and its allocated interests by the total fair  
market values of all the units and their allocated interests.

21 2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value  
thereto before destruction cannot be made, the interests of all units' owners are:

- 22 (a) In a condominium, their respective interests in the common elements immediately before the termination;  
23 (b) In a cooperative, their respective ownerships immediately before the termination; and  
(c) In a planned community, their respective liabilities for common expenses immediately before the termination..

24 <sup>6</sup> Those include:

25 Plaintiffs' 04/25/22 Motion for Order to Show Cause (Defendants' contempt for violations of Court's orders, including  
01/04/22 orders)

26 Plaintiffs' 03/02/22 Motion for Order to Show Cause (Defendants' contempt for violations of Court's orders, including  
01/04/22 orders)

27 Plaintiffs' 02/01/22 Motion for Order to Show Cause (Defendants' contempt for violations of Court's orders, including  
01/04/22 orders)

28 Plaintiffs' 11/19/21 Motion for Order to Show Cause (Defendants' contempt for violating 01/17/15 Order) and,  
12/23/21 Plaintiffs' 09/27/21 Motion for Order to Show Cause (Defendants' contempt for violating 01/17/15 Order)  
Plaintiffs' 2/11/21 Motion for Order to Show Cause (Defendants' contempt for violating 12/24/22 order)

These are referred to collectively as the Applications for OSC.

1 The Court makes the following legal conclusions:

2 After balancing the interests of the parties and in evaluating the legal issues, the Court concludes  
3 that Plaintiffs will suffer irreparable injury if no relief is granted. The Court has fashioned a remedy  
4 that balances the rights of both parties in this matter.  
5

6 The Court concludes the Plaintiffs will not suffer irreparable harm if the statutory process under  
7 NRS 116.2118 et seq. along with Court supervision as outlined herein is followed.

8 The Court concludes Defendants property interest are protected by issuance of this relief.

9 Therefore, the Court issues the following Orders:

10 IT IS THEREFORE ORDERED, that the Grand Sierra unit owners are allowed to proceed with  
11 their vote to terminate the GSRUOA and election to sell the Property as a whole.  
12

13 IT IS FURTHER ORDERED that prior to a sale of the Property as a whole, the Court shall enter  
14 an Order on motion to terminate and or modify the Receivership that addresses the issues of  
15 payment to the Receiver and his counsel, the scope of the wind up process of the GSRUOA to be  
16 overseen by the Receiver, as well as the responsibility for any amounts which are awarded as a result  
17 of the pending Applications for OSC.  
18

19 IT IS FURTHER ORDERED that no sale of the units at GSRUOA or the property rights related to  
20 the GSRUOA and the units which currently compose GSRUOA shall occur until further order of  
21 this Court which includes a process for the resolution of any retained claims by Plaintiffs and  
22 procedure for the determination of fair market value of Plaintiffs' units under NRS 116.2118 et seq.  
23

24 IT IS FURTHER ORDERED that this Court shall provide supervision of the appraisal process of  
25 the units in order to assure that Plaintiffs are provided an opportunity to submit their own appraisal  
26 of their respective units for consideration and determination of the fair market value of the units and  
27 their allocated interests.  
28




1 IT IS FURTHER ORDERED that Defendants and anyone acting on their behalf are restrained  
2 from transferring, selling or otherwise alienating, the units at GSRUOA or the property rights  
3 related to the GSRUOA and the units which currently compose GSRUOA pending further order of  
4 the Court.

5  
6 IT IS FURTHER ORDERED that the bond posted by Plaintiffs in the amount of \$50,0000,  
7 following the Court's granting a Temporary Restraining Order on March 11, 2022, remain in place  
8 as adequate security for this Preliminary Injunction.

9 IT IS FURTHER ORDERED that in all other respects the Injunctive Relief Motion is denied.  
10

11  
12 Dated this 5th day December, 2022.

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15 Hon. Elizabeth Gonzalez, (Ret.)  
16 Sr. District Court Judge  
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DALE KOTCHKA-ALANES  
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Attorneys for Plaintiffs

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

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222  
Dept. No. OJ41

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

Defendants.

**MOTION FOR INSTRUCTIONS TO RECEIVER**  
**CONCERNING TERMINATION OF THE GRAND SIERRA RESORT UNIT OWNERS'**  
**ASSOCIATION AND RENTAL OF UNITS UNTIL TIME OF SALE**

Plaintiffs, by and through their counsel of record, the law firms of Robertson, Johnson, Miller & Williamson and Lemons, Grundy & Eisenberg, hereby submit this Motion For Instructions To Receiver Concerning Termination Of Grand Sierra Resort Unit Owners'

MOTION FOR INSTRUCTIONS TO RECEIVER CONCERNING TERMINATION OF GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION AND RENTAL OF UNITS UNTIL TIME OF SALE

PAGE 1

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

PA1475

1 Association And Rental Of Units Until Time Of Sale (“Motion”). This Motion is based upon the  
2 memorandum of points and authorities, all pleadings on file herein, and any oral argument the  
3 Court may deem appropriate.

4 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of January, 2022.

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

8 *And*

9 LEMONS, GRUNDY & EISENBERG  
10 6005 Plumas Street, Third Floor  
Reno, Nevada 89519

11 By: /s/ Jarrad C. Miller  
12 Jarrad C. Miller, Esq.  
13 Briana N. Collings, Esq.  
*Attorneys for Plaintiffs*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 The Court has entered an Order permitting Defendants to terminate the Grand Sierra Resort  
17 Unit Owners’ Association (“GSRUOA”). The Court’s Order is silent on the management of the  
18 Defendants’ and Plaintiffs’ units during the time period when the GSRUOA is terminated and  
19 the units are sold during which period the association, controlled exclusively by the receiver,  
20 holds title to all association units. To remove any ambiguity, the Court should instruct the  
21 Receiver to continue the rental of Defendants’ and Plaintiffs’ units under the existing  
22 receivership orders until such time as the sale of the units and distribution of sale proceeds in  
23 accordance with this Court’s Order dated December 5, 2022 and existing receivership orders.

24 **II. ANALYSIS**

25 The Court issued its Order on Plaintiffs’ Application for Temporary Restraining Order,  
26 and Motion for Preliminary Injunction, which sought to stop Defendants’ planned vote to  
27 terminate the GSRUOA, on December 5, 2022 (“Order”). In the Order, the Court held  
28 Defendants are allowed to proceed with a vote to terminate the GSRUOA and election to sell the

1 Property. (Order at 4:21, 7:10-12.) The Court's Order does not address how the Receiver  
2 should manage the Defendants' and Plaintiffs' units between the time of termination of the  
3 GSRUOA and the sale of the units under the terms stated in the Order.

4 Pursuant to NRS 116.2118, "[i]f any real estate is to be sold following termination, title  
5 to that real estate, upon termination, vests in the **association** as trustee for the holders of all  
6 interests in the units." NRS 116.2118(5) (emphasis added). "Unless otherwise specified in the  
7 agreement to terminate, as long as the association holds title to the real estate, each unit's owner  
8 and his or her successors in interest have an exclusive right to occupancy of the portion of the  
9 real estate that formerly constituted the unit." Id. "During the period of that occupancy, each  
10 unit's owner and his or her successors in interest remain liable for all assessments and other  
11 obligations imposed on units' owners by this chapter or the declaration." Id. It is indisputable  
12 that the association is under a receivership and governed by this Court's numerous receivership  
13 orders. Accordingly, based upon the Court's orders and the dictates of NRS 116.2118, all  
14 aspects of the receivership, including but not limited to the continuation of the rental program  
15 under the Governing Documents, should continue until the sale of the units has been concluded  
16 and parties are paid in full for their units.

17 In accordance with the Court's Order concerning Receiver's Motion for Orders &  
18 Instructions dated January 26, 2023, the Receiver is responsible for the entire GSRUOA and the  
19 "rent from the units owned by the Parties are to be paid to the Receiver and utilized for the  
20 purposes identified in the Appointment Order including payment of the Receiver's expenses."  
21 Id. at 2:11-20. Accordingly, to wrap up the termination of the GSRUOA (sell the units and  
22 prepare the appropriate accountings) it is necessary that the Receiver continue to rent the Parties  
23 units until the sale is complete, not only to fairly dissolve the GSRUOA, but also to fund the  
24 necessary tasks of the Receiver.

25 Further, if the Receiver does not continue to rent Defendants' and Plaintiffs' units in  
26 accordance with the Court's existing orders it would result in economic waste and the inequitable  
27 result that Plaintiffs and Defendants are responsible for "all assessments and other obligations  
28 imposed on units' owners . . ." until the sale of the units with no rental revenue. See NRS

1 116.2118(5). Clearly, during the time period between termination of the GSRUOA and sale of  
2 the units, the Receiver should continue to rent Plaintiffs' and Defendants' units under the terms  
3 of the existing Court orders. An alternative result would also be absurd given that the Plaintiffs  
4 have prevailed on their claims for a receivership, breach of the implied covenant of good faith  
5 and tortious interference with contract (because Defendants "systematically thwarted the efforts  
6 of any third party to market and rent the GSR units owned by the Individual Unit Owners" and  
7 intended "to purchase the devalued units at nominal, distressed prices when Individual Unit  
8 Owners decide to, or are effectively forced to, sell their units . . ."). See Findings of Fact,  
9 Conclusions of Law and Judgment dated October 9, 2015 at 15:9-17.

10 **III. CONCLUSION**

11 Accordingly, the Receiver should be instructed to continue to rent Plaintiffs' and  
12 Defendants' units under the existing receivership orders until such time as the units are sold and  
13 proceeds are paid to the unit owners in accordance with this Court's orders.

14 **AFFIRMATION**

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

17 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of January, 2022.

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

21 *And*

22 LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Third Floor  
23 Reno, Nevada 89519

24 By: /s/ Jarrad C. Miller  
Jarrad C. Miller, Esq.  
25 Briana N. Collings, 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 26<sup>th</sup> day of January, 2023, I  
5 electronically filed the foregoing **MOTION FOR INSTRUCTIONS TO RECEIVER**  
6 **CONCERNING TERMINATION OF GRAND SIERRA RESORT UNIT OWNERS'**  
7 **ASSOCIATION AND RENTAL OF UNITS UNTIL TIME OF SALE** with the Clerk of the  
8 Court by using the ECF system which served the following parties electronically:

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19 Pisanelli Bice PLLC  
20 400 South 7<sup>th</sup> Street, Suite 300  
21 Las Vegas, NV 89101  
22 *Attorneys for Defendants*  
23 *MEI-GSR Holdings, LLC;*  
*Gage Village Commercial*  
*Development, LLC; and*  
*AM-GSR Holdings, LLC*

*/s/ Teresa W. Stovak*

An Employee of Robertson, Johnson, Miller & Williamson

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

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

ALBERT THOMAS, et. al.,

Plaintiff,

vs.

MEI-GSR HOLDINGS, LLC., a Nevada  
Limited Liability Company, et al

Defendant.

) ORDER

) Case#: CV12-02222

) Dept. 10 (Senior Judge)

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

**RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS** filed 12/1/23.<sup>1</sup> This motion is granted.

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

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

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

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

9  
10 Central to answering the inquiries posed by the Receiver is the scope of the Receiver’s authority.  
11 Despite the arguments made by the Defendants, the Receiver is responsible over the entire  
12 GSRUOA. The GSRUOA includes not only units owned by Plaintiffs but also units owned by  
13 Defendants (collectively the “Parties”). While the Receiver is not to collect rent from the units of  
14 those who are not Parties to this action, the rent from the units owned by the Parties are to be paid  
15 to the Receiver and utilized for the purposes identified in the Appointment Order including  
16 payment of the Receiver’s expenses. These expenses can only be paid from the rents which are  
17 earned by the units owned by the Parties to the action, i.e. the Plaintiffs and the Defendants units.

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

19 The Receiver’s calculated Daily Use Fee (DUF), Shared Facilities Unit Expenses (SFUE), and Hotel  
20 Expense (HE) fees apply to both the Plaintiffs owned units and Defendants owned units. The rental  
21 income to be collected by the Receiver relates to units owned both by the Plaintiffs and Defendants.  
22 The Court confirms that, “in accordance with the Governing Documents”, including the “Findings  
23 of Fact, Conclusions of Law and Judgment, Filed October 9, 2015” that the Receiver has the  
24 authority to direct, audit, oversee, and implement the reserve study for all 670 condominium units.  
25  
26  
27  
28

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

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

9  
10 Attached as Exhibit 1 to the Receiver's Omnibus Reply is a spreadsheet with calculations based  
11 upon the various orders of the Court. The Court notes these calculations appear to include only  
12 units owned by Plaintiffs. If either Plaintiffs or Defendants object to the calculations contained in  
13 Exhibit 1, a written objection shall be filed within 15 judicial days of entry of this Order. If an  
14 objection is filed, the Receiver may file a response to the objection within 15 days of the filing of the  
15 objection. If no objection is filed, the Defendants shall make the deposits of rent listed in the  
16 column on the far right of each page of Exhibit 1 in the total amount of \$1,103,950.99 into the  
17 Receiver's bank account within 25 judicial days of entry of this Order. Prior to making any  
18 disbursements, the Receiver shall file a motion with the Court outlining the funds received and the  
19  
20  
21  
22

23  
24 

---

<sup>2</sup> The language in the Order provides in part:

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

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



1 proposed distributions for the Receiver's fees and expenses as well as amounts set aside for reserve  
2 and any proposed distributions to the Parties.

3 Dated this 26th day January, 2023.

4  
5 

6 Hon. Elizabeth Gonzalez, (Ret.)  
7 Sr. District Court Judge  
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DALE KOTCHKA-ALANES  
DANIEL POLSENBERG, ESQ.  
DAVID MCELHINNEY, ESQ.  
BRIANA COLLINGS, ESQ.  
ABRAN VIGIL, ESQ.  
JONATHAN TEW, ESQ.  
JARRAD MILLER, ESQ.  
TODD ALEXANDER, ESQ.  
F. SHARP, ESQ.  
STEPHANIE SHARP, ESQ.  
G. DAVID ROBERTSON, ESQ.  
ROBERT EISENBERG, ESQ.  
JENNIFER HOSTETLER, ESQ.

Holly W. Lange

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MERUELO GROUP, LLC  
Legal Services Department  
5th Floor Executive Offices  
2535 Las Vegas Boulevard South  
Las Vegas, NV 89109  
Tel: (562) 454-9786

*Attorneys for Defendants  
MEI-GSR Holdings, LLC;  
Gage Village Commercial Development, LLC;  
and AM-GSR Holdings, LLC*

**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;

Case No.: CV12-0222  
Dept. No.: 10 (Senior Judge)

**FINAL JUDGMENT**

1 FARAD TORABKHAN, individually; SAHAR  
2 TAVAKOL, individually; M&Y HOLDINGS,  
3 LLC; JL&YL HOLDINGS, LLC; SANDI  
4 RAINES, individually; R. RAGHURAM,  
5 individually; USHA RAGHURAM,  
6 individually; LORI K. TOKUTOMI,  
7 individually; GARRET TOM, individually;  
8 ANITA TOM, individually; RAMON  
9 FADRILAN, individually; FAYE FADRILAN,  
10 individually; PETER K. LEE and MONICA L.  
11 LEE, as Trustees of the LEE FAMILY 2002  
12 REVOCABLE TRUST; DOMINIC YIN,  
13 individually; ELIAS SHAMIEH, individually;  
14 JEFFREY QUINN individually; BARBARA  
15 ROSE QUINN individually; KENNETH  
16 RICHE, individually; MAXINE RICHE,  
17 individually; NORMAN CHANDLER,  
18 individually; BENTON WAN, individually;  
19 TIMOTHY D. KAPLAN, individually;  
20 SILKSCAPE INC.; PETER CHENG,  
21 individually; ELISA CHENG, individually;  
22 GREG A. CAMERON, individually; TMI  
23 PROPERTY GROUP, LLC; RICHARD LUTZ,  
24 individually; SANDRA LUTZ, individually;  
25 MARY A. KOSSICK, individually; MELVIN  
26 CHEAH, individually; DI SHEN, individually;  
27 NADINE'S REAL ESTATE INVESTMENTS,  
28 LLC; AJIT GUPTA, individually; SEEMA  
GUPTA, individually; FREDRICK FISH,  
individually; LISA FISH, individually;  
ROBERT A. WILLIAMS, individually;  
JACQUELIN PHAM, individually; MAY ANN  
HOM, as Trustee of the MAY ANN HOM  
TRUST; MICHAEL HURLEY, individually;  
DOMINIC YIN, individually; DUANE  
WINDHORST, individually; MARILYN  
WINDHORST, individually; VINOD BHAN,  
individually; ANNE BHAN, individually; GUY  
P. BROWNE, individually; GARTH A.  
WILLIAMS, individually; PAMELA Y.  
ARATANI, individually; DARLENE  
LINDGREN, individually; LAVERNE  
ROBERTS, individually; DOUG MECHAM,  
individually; CHRISINE MECHAM,  
individually; KWANGSOO SON, individually;  
SOO YEUN MOON, individually; JOHNSON  
AKINDODUNSE, individually; IRENE  
WEISS, as Trustee of the WEISS FAMILY  
TRUST; PRAVESH CHOPRA, individually;  
TERRY POPE, individually; NANCY POPE,  
individually; JAMES TAYLOR, individually;  
RYAN TAYLOR, individually; KI HAM,  
individually; YOUNG JA CHOI, individually;  
SANG DAE SOHN, individually; KUK  
HYUNG (CONNIE), individually; SANG

(MIKE) YOO, individually; BRETT  
MENMUIR, as Trustee of the CAYENNE  
TRUST; WILLIAM MINER, JR., individually;  
CHANH TRUONG, individually; ELIZABETH  
ANDERS MECUA, individually; SHEPHERD  
MOUNTAIN, LLC; ROBERT BRUNNER,  
individually; AMY BRUNNER, individually;  
JEFF RIOPELLE, individually; PATRICIA M.  
MOLL, individually; DANIEL MOLL,  
individually; and DOE PLAINTIFFS 1  
THROUGH 10, inclusive ,

Plaintiff(s),

v.

MEI-GSR HOLDINGS, LLC, a Nevada  
Limited Liability Company, AM-GSR  
HOLDINGS, LLC, a Nevada Limited Liability  
Company, GRAND SIERRA RESORT UNIT  
OWNERS' ASSOCIATION, a Nevada  
Nonprofit Corporation, GAGE VILLAGE  
COMMERCIAL DEVELOPMENT, LLC., a  
Nevada Limited Liability Company, and DOES  
I-X inclusive,

Defendant(s).

This matter having come before the Court for a default prove-up hearing from March 23,  
2015 to March 25, 2015, with Findings of Fact and Conclusions of Law and Judgment entered  
October 9, 2015, and again before the Court on July 8, 2022 and July 18, 2022 on Plaintiffs'  
November 6, 2015 Motion in Support of Punitive Damages Award, with an Order entered on  
January 17, 2023,

IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of  
Plaintiffs and against Defendants as follows:

1. Against MEI-GSR in the amount of \$442,591.83 for underpaid revenues to Unit owners;
2. Against MEI-GSR in the amount of \$4,152,669.13 for the rental of units of owners who  
had no rental agreement;
3. Against MEI-GSR in the amount of \$1,399,630.44 for discounting owner's rooms without  
credits;
4. Against MEI-GSR in the amount of \$31,269.44 for discounted rooms with credits;
5. Against MEI-GSR in the amount of \$96,084.96 for "comp'd" or free rooms;

PISANELLI BICE  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

1 6. Against MEI-GSR in the amount of \$411,833.40 for damages associated with the bad  
2 faith "preferential rotation system";

3 7. Against MEI-GSR in the amount of \$1,706,798.04 for improperly calculated and  
4 assessed contracted hotel fees;

5 8. Against MEI-GSR in the amount of \$77,338.31 for improperly collected assessments;

6 **TOTAL COMPENSATORY DAMAGES.....\$8,318,215.54**

7 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs be given and granted  
8 punitive damages against Defendants in the total amount of **\$9,190,521.92**.

9 This Judgment shall accrue pre- and post-judgment at the applicable legal rate as provided  
10 by Nevada law until fully satisfied. No pre-judgment interest shall accrue on the punitive damages  
11 award.

12 IT IS FURTHER ORDERED AND ADJUDGED that Defendants shall take nothing by  
13 way of their counterclaims which were previously stricken by the Court.

14  
15 Dated this 2nd day of February, 2023

16  
17   
18 THE HONORABLE ELIZABETH G. GONZALEZ  
(RET.)

19 Respectfully submitted by:

20 PISANELLI BICE PLLC

21  
22 By: /s/ Jordan T. Smith  
23 Jordan T. Smith, Esq., #12097  
24 400 South 7th Street, Suite 300  
25 Las Vegas, Nevada 89101

26 *Attorneys for Defendants/Appellants*  
27 *MEI-GSR Holdings, LLC;*  
28 *Gage Village Commercial Development, LLC;*  
*and AM-GSR Holdings, LLC*

1 **3795**

2 ABRAN VIGIL, ESQ.  
3 Nevada Bar No. 7548  
4 ANN HALL, ESQ.  
5 Nevada Bar No. 5447  
6 DAVID C. MCELHINNEY, ESQ.  
7 Nevada Bar No. 0033  
8 MERUELO GROUP, LLC  
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16 [david.mcelhinney@meruelogroup.com](mailto:david.mcelhinney@meruelogroup.com)

17 *Attorneys for Defendants MEI-GSR Holdings,*  
18 *LLC, AM-GSR Holdings, LLC, and GAGE*  
19 *VILLAGE COMMERCIAL DEVELOPMENT,*  
20 *LLC*

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

23 ALBERT THOMAS, et. al.,

24 Plaintiff(s),

Case No. CV12-02222

Dept. No.: 10

25 v.

26 MEI-GSR HOLDINGS, LLC., a Nevada  
27 Limited Liability Company, AM-GSR  
28 Holdings, LLC., a Nevada Limited Liability  
Company, GRAND SIERRA RESORT UNIT  
OWNERS' ASSOCIATION, a Nevada  
Nonprofit Corporation, GAGE VILLAGE  
COMMERCIAL DEVELOPMENT, LLC., a  
Nevada Limited Liability Company, and DOES  
I-X inclusive,

Defendant(s).

**STIPULATION**

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs ALBERT  
THOMAS, et al., by and through their counsel JARRAD MILLER, ESQ. and Defendants MEI-  
GSR Holdings, LLC; AM-GSR Holdings, LLC.; and GAGE VILLAGE COMMERCIAL

1 DEVELOPMENT, LLC; that the attached Agreement to Terminate has been approved by the  
2 parties as compliant with the Court order of January 26, 2023 (filed at 11:06 a.m.) The parties  
3 allow the Receiver to execute the "certification" of the Agreement to Terminate in accordance  
4 with Court Order.

5  
6 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

9  
10 **IT IS SO STIPULATED.**

11  
12 By: /s/ David McElhinney, Esq.

13  
14 6th <sup>February</sup> ~~of January,~~ 2023.

15  
16 David McElhinney  
17 2500 East Second Street  
18 Reno, NV 89595  
19 Attorney for Defendants

By: 

2nd <sup>Feb.</sup> ~~of January,~~ 2023.

20  
21 Jarrad Miller  
22 Robertson, Johnson, Miller and Williamson  
23 50 W. Liberty Street Suite 600  
24 Reno, NV 89501  
25 Attorney for Plaintiffs



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am employed in County of Clark, State of Nevada  
3 and, on this date, February 6, 2023 I deposited for mailing with the United States Postal Service,  
4 and served by electronic mail, a true copy of the attached document addressed to:

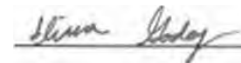
5 G. David Robertson, Esq., SBN 1001  
Jarrad C. Miller, Esq., SBN 7093  
6 Briana N. Collings, Esq. SBN 14694  
ROBERTSON, JOHNSON, MILLER &  
7 WILLIAMSON  
50 West Liberty Street, Suite 600  
8 Reno, Nevada 89501  
Tel: (775) 329-5600  
9 jarrad@nvlawyers.com  
briana@nvlawyers.com  
10 *Attorneys for Plaintiffs*

F. DeArmond Sharp, Esq., SBN 780  
Stefanie T. Sharp, Esq. SBN 8661  
ROBISON, SHARP, SULLIVAN & BRUST  
71 Washington Street  
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Tel: (775) 329-3151  
Tel: (775) 329-7169  
dsharp@rssblaw.com  
ssharp@rssblaw.com  
*Attorneys for the Receiver*  
Richard M. Teichner

11 Robert L. Eisenberg, Esq. SBN 0950  
LEMONS, GRUNDY, & EISENBERG  
12 6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
13 *Attorney for Plaintiffs*

Jordan T. Smith, Esq.  
Pisanelli Bice PLLC  
400 South 7th Street, Suite 300  
Las Vegas, NV 89101

14  
15 Further, I certify that on the February 6, 2023, I electronically filed the foregoing with the  
16 Clerk of the Court electronic filing system, which will send notice of electronic filings to all  
17 persons registered to receive electronic service via the Court's electronic filing and service system.  
18 DATED this February 6, 2023



20 Iliana Godoy

**INDEX OF EXHIBITS**

1. Agreement to Terminate Condominium Hotel, Condominium Hotel Association, and  
Declaration of Covenants, Conditions, Restrictions and Reservation of Easements.. 6-17 pp.

FILED  
Electronically  
CV12-02222  
2023-02-06 01:32:45 PM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 9494287

# Exhibit 1

APNS: 012-211-24; 012-211-28; 012-211-36;  
012-491-01; 012-491-02; 012-491-04;  
012-491-05; 012-491-08; 012-491-12;  
012-491-13; 012-492-01 through 012-492-06;  
012-492-08; 012-492-08; 012-492-14 through  
012-492-16; 012-492-18; 012-493-01; 012-493-02;  
012-493-04 through 012-493-06

When recorded please mail to:  
Grand Sierra Resort Unit Owners Association  
c/o Associa Sierra North  
10509 Professional Circle #200  
Reno, NV 89521

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

**AGREEMENT TO TERMINATE CONDOMINIUM HOTEL, CONDOMINIUM HOTEL  
ASSOCIATION, AND DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS**

Condominium Hotel : Hotel-Condominiums At Grand Sierra Resort

Association : Grand Sierra Resort Unit – Owner’s Association

Declaration : Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Hotel-Condominiums at Grand Sierra Resort recorded December 15, 2006 as Document No. 3475705, Official records Washoe County, Nevada and all amendments thereto, including but not limited to the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Easements for Hotel-Condominiums at Grand Sierra Resort recorded June 27, 2007 as Document No. 3548504 and the Ninth Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Easements for Hotel-Condominiums at Grand Sierra Resort re-recorded November 30, 2021 as Document No. 5253317.

Real Property : The legal description is included in Exhibit A attached hereto. This legal description is Exhibit A from the Declaration.

The undersigned Hotel Unit Owner and the owners of units at the Condominium Hotel representing at least eighty percent (80%) of the votes in the Association defined above (the “80% Units’ Owners”) hereby agree as follows:

1. Termination of Condominium Hotel. At a meeting conducted by the Association on January 18, 2023 (the “Meeting”), Hotel Unit Owner and 80% Units’ Owners approved the termination of the Condominium Hotel. The Condominium Hotel is terminated effective upon the filing of this Agreement in the records of the Office of the County Recorder of Washoe County, State of Nevada.

2. Sale of Common Elements, Shared Components, and Units. Following termination of the Condominium Hotel, all of the common elements, shared components, and units of the Condominium Hotel shall be sold pursuant to the terms of a subsequently drafted Agreement for Sale of Condominium Hotel Interests and further Court Order from the Second Judicial District Court of the State of Nevada in and for the County of Washoe in Case No. CV12-02222 (“Receivership Action”). Pursuant to NRS 116.2118(5), approval of the yet to be drafted Agreement for Sale of Condominium Hotel Interests must take place at a meeting and receive approval from the Hotel Unit Owner and 80% of the Units’ Owners and be approved by the Court in the Receivership Action.

3. Approval of Sale of Real Estate. At the Meeting, Hotel Unit Owner and 80% Units’ Owners authorized the Association controlled by the Receiver appointed in the Receivership Action, on behalf of the Units’ Owners, to contract for the sale of real estate owned by the Units’ Owners in the Condominium Hotel. For all real estate to be sold following termination, title to that real estate, upon execution of this termination agreement, vests in the Association with the Receiver as trustees for the holders of all interests in the units. And as long as the Association hold title to the real estate, each of the Unit’s Owners shall have a right of occupancy as provided in the Declaration and during that period of occupancy, each of the Units’ Owners shall remain liable for all assessments, shared expenses and other obligations imposed on Units’ Owners by applicable Nevada law or the Declaration.

4. Termination of Association. At the Meeting, Hotel Unit Owner and 80% of Units’ Owners approved the termination of the Association. The Association defined above now has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds thereof distributed upon Court approval in the Receivership Action, the Association continues in existence with all powers it had before termination under the receivership. Upon execution of the sale documents and distribution of the proceeds and an order issued in the Receivership Action the Association will be terminated.

5. Termination of Declaration. The Declaration is terminated effective upon the filing of this Agreement in the records of the Office of the County Recorder of Washoe County, State of Nevada unless otherwise ordered by the Court in the Receivership Action, or the Association is terminated in accordance with paragraph 4 herein. A Rescission and Notice of Termination of the Declaration shall also be recorded on or before the date identified in Section 8 below.

6. Severability. If any provision of this Agreement is held to be invalid or unenforceable to any extent, the invalidity or unenforceability of that provision shall not affect any other provision of this Agreement so long as the essential terms of the transactions contemplated

by this Agreement remain enforceable or otherwise ordered in the Receivership Action. The stricken provision or part shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision or part as is legally possible so as to effect the original intent of the parties as closely as possible. If modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Agreement, the entire Agreement is to be held unenforceable.

7. Compliance. To the extent that any provisions of this Agreement, should be deleted, modified, or amended in order to comply with the provisions of the Declaration or Nevada Revised Statutes, those provisions shall be deleted, modified, or amended accordingly in a self-executing manner to the same extent necessary to achieve compliance and achieve the essential purposes of this Agreement unless otherwise ordered in the Receivership Action. All other terms of this Agreement shall remain in full force and effect.

8. Effectiveness of Agreement. This Agreement will be void unless it is recorded on or before December 1, 2050.

9. General Provisions. This Agreement may be executed in counterparts and may be further altered by Court Order.

[End of Page – Signatures Follow]

## EXECUTION

The parties executed this Agreement as of the date first written above.

**HOTEL UNIT OWNER:**

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

By: \_\_\_\_\_  
Alex Meruelo  
Manager

**80% of UNITS' OWNERS:**

AM-GSR HOLDINGS LLC  
a Nevada limited liability company

By: \_\_\_\_\_  
Alex Meruelo  
Manager

GAGE VILLAGE COMMERCIAL  
DEVELOPMENT, LLC, a California  
limited liability company

By: \_\_\_\_\_  
Alex Meruelo  
Manager

**CERTIFICATION ON NEXT PAGE**

**Certification**

The undersigned, hereby certifies, under penalty of perjury, that this Agreement to Terminate (a) was provided to its members for action and that at least eighty percent (80%) voted in favor of termination of the Association and termination of the Declaration; (b) that the affirmative action was taken by those members whose votes are recorded in the official records of the Association, and (c) that such affirmative vote conforms with the requirements found in the Declaration.

**ASSOCIATION:**

Grand Sierra Resort Unit-Owners Association, A  
Nevada Nonprofit Corporation

By: \_\_\_\_\_  
Richard M. Teichner, Receiver

STATE OF NEVADA       )  
                                  )  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by Alex Meruelo as Manager of MEI-GSR Holdings, LLC, a Nevada limited liability company, as manager of AM-GSR HOLDINGS LLC, a Nevada limited liability company, and as manager of GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a California limited liability company

\_\_\_\_\_  
Notary Public

STATE OF NEVADA       )  
                                  )  
COUNTY OF WASHOE    )

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by \_\_\_\_\_ as Receiver of Grand Sierra Resort Unit-Owners Association, a Nevada nonprofit corporation.

\_\_\_\_\_  
Notary Public



## EXHIBIT A

### Legal Description

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

#### PARCEL 1:

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

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

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

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

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

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

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

THENCE North 00°03'36" East along the West line of Parcel 1, a distance of 355.44 feet to the POINT OF BEGINNING.

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

APN: 012-211-24.

#### PARCEL 2-A:

A non-exclusive easement for the right, privilege and authority  
Continued on next page

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

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

BEGINNING at the Northeast corner of Parcel B, as shown on Parcel Map No. 227, filed in the office of the Washoe County Recorder on the 28th day of February, 1976, File No. 397925; thence South  $89^{\circ}23'54''$  East, 51.51 feet;

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

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

THENCE 15.55 feet on the arc of a tangent curve to the right, having a radius of 9.72 feet and a central angle of  $91^{\circ}37'19''$  to a point on the Southerly right of way of Glendale Avenue; thence along said Southerly right of way line North  $88^{\circ}15'47''$  East, 69.74 feet; thence departing said Southerly right of way line, 15.42 feet on the arc of a curve to the right, whose tangent bears South  $88^{\circ}15'47''$  West, having a radius of 10.00 feet and a central angle of  $88^{\circ}22'41''$ ; thence South  $0^{\circ}06'54''$  East, 361.61 feet; thence South  $89^{\circ}53'06''$  West, 50.00 feet to the true point of beginning.

Continued on next page

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

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

PARCEL 2:

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

COMMENCING at the Section corner common to Sections 7, 8, 17 and 18, Township 19 North, Range 20 East, M.D.M. and proceeding South 10°25'59" East, a distance of 99.98 feet to a 1/2 inch diameter pin, said pin being at the Northeast corner of that land conveyed from Matley, et al, to Lee Brothers, in a deed recorded as Document No. 306898 of the Official Records of Washoe County, Nevada; thence North 89°00'20" West, along the Northerly line of said Parcel, a distance of 553.20 feet to a 1/2 inch diameter iron pin; thence South 00°59'40" West, a distance of 187.77 feet to a 1/2 inch diameter iron pin; thence North 84°35'28" West, a distance of 24.46 feet to the TRUE POINT OF BEGINNING; thence North 84°35'28" West, a distance of 231.51 feet; thence South 00°54'52" West, a distance of 370.06 feet to a galvanized steel fence post; thence North 54°40'01" West, a distance of 335.84 feet to a point on the Southerly right of way line of Greg Street; thence along the Southerly right of way line of Greg Street the following four (4) courses and distances: 1) North 47°58'37" East, a distance of 232.02 feet; 2) from a tangent which bears the last named course, along a circular curve to the right with a radius of 760.00 feet and a central angle of 19°23'42", an arc length of 257.27 feet to a point of compound curvature; 3) along said compound circular curve to the right with a radius of 45.00 feet and central angle of 83°54'13", an arc length of 65.90 feet; 4) South 28°43'28" East a distance of 134.97 feet to the TRUE POINT OF BEGINNING, all as shown and set forth on that certain Record of Survey for MGM GRAND, filed in the office of the County Recorder of Washoe County, Nevada, on November 24, 1981, as File No. 769945.

APN: 012-231-29

Continued on next page

Document Number 2292339 is provided pursuant to the requirements of Section 1. NRS 111.312

**PARCEL 3:**

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

Beginning at the intersection of the Northerly line of Mill Street with the Easterly line of U.S. Highway 395 as shown on Record of Survey Map Number 1518, File Number 769946 of the Official Records of Washoe County, Nevada, from which the Northeast corner of said Section 18 bears North  $86^{\circ}22'05''$  East a distance of 3260.13 feet; thence along the Easterly line of Interstate 580 the following eight (8) courses and distances; 1) North  $09^{\circ}34'52''$  West, a distance of 352.44 feet; 2) North  $03^{\circ}28'05''$  West, a distance of 423.16 feet; 3) North  $01^{\circ}26'55''$  West, a distance of 498.41 feet; 4) North  $01^{\circ}24'09''$  West, a distance of 434.30 feet; 5) from a tangent which bears North  $01^{\circ}25'23''$  West, along a circular curve to the right with a radius of 858.06 feet and a central angle of  $36^{\circ}09'39''$ , an arc length of 541.54 feet; 6) from an tangent which bears North  $34^{\circ}44'16''$  East along a circular curve to the left with a radius of 900.00 feet and a central angle of  $28^{\circ}28'08''$ , an arc length of 447.19 feet; 7) North  $06^{\circ}16'08''$  East a distance of 117.19 feet; 8) from a tangent which bears the last named course, along a circular curve to the right with a radius of 61.15 feet and a central angle of  $83^{\circ}37'49''$ , an arc length of 89.26 feet to a point on the Southerly line of Glendale Avenue; thence along the Southerly line of Glendale Avenue the following four (4) courses and distances; 1) North  $89^{\circ}53'57''$  East, a distance of 196.41 feet; 2) North  $00^{\circ}06'21''$  East, a distance of 4.00 feet; 3) North  $89^{\circ}53'57''$  East, a distance of 11.17 feet; 4) North  $88^{\circ}16'07''$  East, a distance of 80.83 feet to a point on the Westerly line of Watson and Meehan Corporation Property, said point being the Northeast corner of Parcel No. 1, as shown on the Parcel Map No. 340, filed in the Office of Washoe County Recorder on November 10, 1976 File No. 434453; thence along the Westerly, Southerly, and Easterly lines of said Watson and Meehan Corporation Property the following three (3) courses and distances; 1) South  $00^{\circ}05'56''$  West, a distance of 355.44 feet; 2) South

Continued on next page

89°23'34" East, a distance of 348.62 feet; 1) North  
 00°06'34" West, a distance of 369.63 feet to a point on the  
 Southerly right of way line of Glendale Avenue, said point  
 being the Northeastly corner of Parcel No. 1, as shown on  
 the Parcel Map No. 338, filed in the Office of Washoe  
 County Recorder on November 10, 1976, File No. 434451;  
 thence North 88°16'07" East, along the Southerly right of  
 way line of Glendale Avenue, a distance of 156.65 feet;  
 thence South 02°12'06" East a distance of 4.24 feet to the  
 Northeast corner of a concrete block wall, thence South  
 02°12'06" East, along Easterly face of said block wall, a  
 distance of 13.05 feet to an angle point in said block  
 wall; thence North 88°00'20" East, along the Northerly  
 line of said block wall, a distance of 51.31 feet to a chain  
 link fence; thence along said chain link fence the  
 following seventeen (17) courses and distances; 1) South  
 88°11'19" East, a distance of 10.04 feet; 2) South 79°03'12"  
 East, a distance of 10.54 feet; 3) South 70°04'24" East, a  
 distance of 9.08 feet; 4) South 56°48'54" East, a distance  
 of 10.33 feet; 5) South 52°50'24" East, a distance of 49.76  
 feet; 6) South 49°03'32" East, a distance of 10.57 feet; 7)  
 South 38°43'47" East, a distance of 78.93 feet; 8) South  
 41°22'11" East, a distance of 10.14 feet; 9) South  
 48°20'20" East, a distance of 10.07 feet; 10) South  
 54°50'53" East, a distance of 10.04 feet; 11) South  
 59°44'13" East, a distance of 39.96 feet; 12) South  
 50°21'10" East, a distance of 10.37 feet; 13) South  
 39°50'28" East, a distance of 10.12 feet; 14) South  
 31°57'47" East, a distance of 105.60 feet; 15) South  
 20°08'38" East, a distance of 76.52 feet; 16) South  
 34°19'10" East, a distance of 165.32 feet; 17) South  
 14°17'58" East, a distance of 279.78 feet; thence along a  
 line that is more or less coincident with said chain link  
 fence the following fifteen (15) courses and distances: 1)  
 South 06°44'18" East, a distance of 109.36 feet; 2) South  
 05°15'13" East, a distance of 158.53 feet; 3) South  
 27°57'06" East, a distance of 129.07 feet; 4) South  
 43°18'46" East, a distance of 228.10 feet; 5) South  
 44°58'46" East, a distance of 133.07 feet; 6) South 38°2'46"  
 East, a distance of 66.06 feet; 7) South 47°15'56" East, a  
 distance of 107.92 feet; 8) South 50°50'59" East, a  
 distance of 489.05 feet; 9) South 55°41'02" East, a distance  
 of 45.51 feet; 10) South 46°38'29" East, a distance of 98.99  
 feet; 11) South 63°53'42" East a distance of 151.28 feet;  
 12) South 52°31'06" East, a distance of 151.08 feet; 13)

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North 78°53'28" East, a distance of 75.55 feet; 14) South 73°46'40" East, a distance of 132.04 feet; 15) South 64°35'20" East, a distance of 98.69 feet to a point on the Northerly right of way line of Greg Street; thence along the Northerly right of way line of Greg Street the following ten (10) courses and distances: 1) South 20°40'40" West, a distance of 294.78 feet; 2) from a tangent which bears South 47°48'19" West, along a circular curve to the right with a radius of 750.00 feet and a central angle of 27°10'38", and arc length of 355.75 feet; 3) South 74°58'57" West, a distance of 120.67 feet; 4) from a tangent which bears the last named course, along a circular curve to the right with a radius of 36.00 feet and a central angle of 31°49'47", an arc length of 20.00 feet to a point of compound curvature; 5) along said compound circular curve to the right with a radius of 116.00 feet and a central angle of 32°40'13", an arc length of 65.14 feet; 6) South 71°14'17" West, a distance of 50.82 feet; 7) South 11°03'06" East, a distance of 8.54 feet; 8) from a tangent which bears the last named course, along a circular curve to the right with a radius of 36.00 feet and a central angle of 76°26'01", an arc length of 48.02 feet to a point of reverse curvature; 9) along said reverse circular curve to the left with a radius of 604.00 feet and a central angle of 17°23'58", an arc length of 183.42 feet; 10) South 47°58'57" West, a distance of 824.52 feet to the Northeast corner of parcel conveyed to Bruno Benna, et al, recorded as Document No. 83899, Official Records of Washoe County, Nevada; thence North 63°46'57" West along the Northerly line of said Benna Parcel, a distance of 1099.66 feet to the Northeast corner of Parcel B as shown on Parcel Map No. 341, filed in the office of Washoe County recorded on November 10, 1976, File No. 434454, thence South 26°13'03" West, along the Easterly line of said Parcel B, a distance of 266.37 feet; thence South 18°46'57" East and distance of 28.28 feet to a point on the Northerly right of way line of Mill Street; thence North 63°44'52" West, along said Northerly right of way line, a distance of 80.00 feet; thence North 26°13'03" East, a distance of 286.32 feet to the Northerly line of said Benna Parcel; thence from a tangent which bears North 63°43'05" East, along a circular curve to the left with a radius of 86.58 feet and a central angle of 81°21'28" an arc length of 123.19 feet; thence North 77°48'23" West a distance of 234.00 feet; thence South 26°13'03" West a distance of 280.15 feet to the

Continued on next page

Northerly line of Mill Street; thence North  $63^{\circ}44'52''$  West, along the Northerly line of Mill Street, a distance of 208.34 feet to the Point of Beginning.

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

BASIS OF BEARINGS: Recorded of Survey Map Number 2775, File No. 1824848 of the Official Records of Washoe County, Nevada; MAD 83, Nevada West Zone.

APN: 012-211-26

Document Number 2458501 is provided pursuant to the requirements of Section 1. NRS 111.312

2645

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LLC*

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

ALBERT THOMAS, et. al.,

Plaintiff(s),

v.

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

Defendant(s).

Case No. CV12-02222

Dept. No.: 10

**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**



1 Defendants oppose the “Motion for Instructions to Receiver concerning termination of the  
2 Grand Sierra Resort Unit Owner’s Association and Rental of the Units until the time of sale.” The  
3 basis for this opposition is fairly simple: NRS 116. Provides that upon termination of the hotel  
4 condominium, there are no longer units, there is a piece of real estate that formerly constituted  
5 units. The hotel condominium has been terminated. Since there are no units, there is nothing to  
6 rent. Per statute, the owners of what used to be units have an exclusive right to occupancy of those  
7 former units, but statute does not grant a right to alienate their interest in those units (i.e., allow  
8 others to occupy or otherwise possess them for any period of time). As such, rentals of the 670  
9 former units cannot occur pending a sale.

10 This opposition is based upon the points and authorities attached hereto and all pleadings  
11 and papers on file herein.

12 DATED February 14, 2023.

13  
14 **POINTS AND AUTHORITIES**

15 **I. BACKGROUND:**

16 On January 26, 2023, Plaintiff filed a motion requesting the Receiver to continue to forcing  
17 Defendants rent the Plaintiffs’ Units for them even after the Termination of the Condominium  
18 Hotel. Plaintiffs’ state that the Court’s Order (December 5, 2023) “does not address how the  
19 Receiver should manage the Defendants’ and Plaintiffs’ units between the time of termination of  
20 the GSRUOA and the sale of the units under the terms of the stated in the Order.” *Motion for*  
21 *Instructions, p. 3, ll. 1-3.* This issue is governed by statute which sets forth precisely what the  
22 units’ owners’ rights are after termination. *See, NRS 116.2118.* In addition, the Agreement to  
23 Terminate has been fully executed and sets forth the same language as NRS 116.2118, which  
24 states: “at a meeting conducted by the Association on January 18, 2023 (the Meeting.) Hotel Unit  
25 Owner and 80% Units’ Owners approved the termination of the Condominium Hotel. The  
26 Condominium Hotel is terminated effective upon the filing of this Agreement in the records of the  
27 Office of the County Recorder of Washoe County, State of Nevada.” **Exhibit 1.**

1 Because it has been terminated, there is simply no more “Condominium Hotel” or  
2 individual hotel rooms after the recordation of the Agreement to Terminate. **Exhibit 2** and *NRS*  
3 *116.2118(5)*. As set forth below, the only right which the individual Unit Owners have after  
4 termination is “exclusive right to occupancy of the portion of the real estate **that formerly**  
5 **constituted the unit.**” *NRS 116.2118(5)*(Emphasis added.) Simply put, there is no ongoing right  
6 or ability of Plaintiffs to force Defendants to continue to administer a rental program for the  
7 Plaintiffs’ units after the individual units were terminated, and no right of former unit owners to  
8 rent what used to be their units. [They may occupy them for X days?].

## 9 II. LAW AND ANALYSIS:

### 10 A. Statute Provides That Units No Longer Exist, So They Cannot Be Rented

11 NRS 116.2118(5) provides in pertinent part:

12  
13 If any real estate is to be sold following termination, title to that real estate, upon  
14 termination, vests in the association as trustee for the holders of all interests in the  
15 units...as long as the association holds title to the real estate, each unit’s owner and  
16 his or her successors in interest have an exclusive right to occupancy of the portion  
17 of the real estate that **formerly constituted the unit**. During the period of that  
occupancy, each unit’s owner and his or her successors in interest remain liable for  
all assessments and other obligations imposed on units’ owners by this chapter or  
the declaration.”

18 *Id.*, (Emphasis added.)

19 The language of NRS 116.2118 is plain and unambiguous. *See JED Prop., LLC v.*  
20 *Coastline RE Holdings NV Corp.* 131 Nev. 91, 94, 343 P.3d 1239, 1241 (2015)(“We do not look  
21 to other sources...unless a statutory ambiguity requires us to look beyond the statute’s language to  
22 determine the legislative intent.”) The plain, unambiguous language of the statute provides that  
23 each former unit owner has “exclusive right to occupancy” of that portion of the real estate that  
24 “formerly constituted the unit.” *NRS 116.2118(5)*. Occupancy means exactly that—occupying,  
25 not selling or renting. This makes common sense because the Unit Owners Association must hold  
26 the real estate in trust for the benefit of the former unit owners who do not hold title; pending a  
27 sale, there should be no opportunity for any particular former unit owner to expose any portion of  
28 the real estate to potential third-party claims or liens that may cloud title or create new claims

1 pending a sale that would have to be identified and then stacked for payment—making a sale and  
2 wind down more expensive and difficult.

3 Supporting this analysis, one can read on in the applicable statutes. For example, statute  
4 makes clear that former unit owners have no title to alienate, but a right to a fair market value of  
5 their former units. NRS 116.21185 states:

6  
7 ...the respective interests of units’ owners are the fair market values of their units,  
8 allocated interests, and any limited common elements immediately before the  
9 termination, as determined by one or more independent appraisers...the decision of  
10 the independent appraisers must be distributed to the units’ owners and becomes  
11 final unless disapproved within 30 days after distribution by units owners to whom  
12 25 percent of the votes in the association are allocated.

13 *NRS 116.21185(1)*. The statutory scheme contemplates that the fair market value will be  
14 set and “final” in 30 days unless the units’ owners “disapprove.” *Id.* No Plaintiff or non-party  
15 owner has submitted a “disapproval” or provided their own independent appraisal of their units  
16 within 30 days after any potential triggering date, including the date on which the Hotel Unit  
17 Owner submitted an appraisal or within 30 days after the Court’s December 5, 2022 Order that  
18 allowed termination to proceed.<sup>1</sup>

19 As of December 5, 2022, the Plaintiffs were aware that the Court was following the  
20 statutory process set forth in NRS 116.2118, which provides that a unit owner can “disapprove” or  
21 provide an independent appraisal within 30 days. The Plaintiffs did not provide an appraisal  
22 within even a year of being provided the original appraisal in October, 2021, and they have  
23 certainly not provided their independent appraisal within 30 or even 60 days of the Court order  
24 allowing a separate appraisal. Statute clearly provides that—since the condominium hotel has  
25 been terminated—the former unit owners’ interest is a fair market value as opposed to anything

---

26 <sup>1</sup> The December 5, 2022 order, at pp. 6 -7, stated in pertinent part: ... the Court will permit unit owners to contest the  
27 appraisals and present their own appraisals setting forth their claimed fair market value... The Court has fashioned a  
28 remedy that balances the rights of both parties in this matter. The Court concludes the Plaintiffs will not suffer  
irreparable harm if the statutory process under NRS 116.2118 et. seq. along with Court supervision as outlined herein  
is followed...this Court shall provide supervision of the appraisal process of the units in order to assure that Plaintiffs  
are provided an opportunity to submit their own appraisal of their respective units for consideration and determination  
of the fair market value of the units and their allocated interests....

1 related to them having title that can be alienated in any way or rented. Moreover, there is no  
2 statutory right for any party to force Defendants to continue to provide front desk services,  
3 reservation services, accounting, etc. for third-party guests now that the condominium hotel has  
4 been terminated by statute, declaration and agreement. **Exhibits 1 and 2.**

5  
6 **B. The “res,” or Object of the Rental Agreement No Longer Exists, Rending it Null.**

7 The Court has entered a final judgment on February 2, 2023, and the Condominium Hotel  
8 has been formally terminated by a vote of 84% of the Unit Owners.<sup>2</sup> Therefore, there is nothing to  
9 rent and no basis to force Defendants to perform services under the Unit Rental Agreement. That  
10 Agreement, the Grand Sierra Resort Unit Rental Agreement, is a private rental contract that is  
11 expressly “voluntary” pursuant to its own terms. **Exhibit 3.** Under well-settled rules of contract,  
12 a court has no power to create a new contract for the parties which they have not created for  
13 themselves, *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981), and here,  
14 there is no legal basis upon which to force Defendants to perform functions that are involuntary.

15 See *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. 476, 483-88, 376 P.3d 151, 156-159  
16 (2016) (holding that a court “will not reform the contract” even if a contract is against public  
17 policy) Even if an agreement is against public policy, courts must “refrain from rewriting the  
18 parties’ contract.”. The Nevada Supreme Court has been clear that a Court “will not reform the  
19 contract.” *Id.*, 132 Nev. at 488, 376 P.3d at 159.

20 Similarly, to the extent Plaintiffs would request that the Receiver—who holds title to the  
21 real estate formerly constituting units—begin a rental program, that would be a new, for profit  
22 endeavor that a) goes beyond what a community association can do post-termination under NRS  
23 116, and b) would violate the community association’s chartered existence as a non-profit under  
24 NRS Chapter 82. See NRS 82.081(1) (a non-profit cannot exist for the purpose of distributing  
25 profits to members, directors, or officers).

26  
27 \_\_\_\_\_  
28 As of this writing the Court has ordered the Receiver to Execute the Agreement to Terminate the Condominium Hotel.  
As soon as the Receiver executes and returns the Agreement to Terminate the Condominium Hotel, the Agreement to  
Terminate will be recorded and the individual units will cease to exist pursuant to NRS 116.2118.

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1 1360

2 **CERTIFICATE OF SERVICE**

3 Pursuant to NRCP 5(b), I certify that I am employed in County of Clark, State of Nevada  
4 and, on this date, February 14, 2023 I deposited for mailing with the United States Postal Service,  
5 and served by electronic mail, a true copy of the attached document addressed to:

6 G. David Robertson, Esq., SBN 1001  
Jarrad C. Miller, Esq., SBN 7093  
7 Jonathan J. Tew, Esq., SBN 11874  
Briana N. Collings, Esq. SBN 14694  
8 ROBERTSON, JOHNSON, MILLER &  
WILLIAMSON  
9 50 West Liberty Street, Suite 600  
Reno, Nevada 89501  
10 Tel: (775) 329-5600  
jon@nvlawyers.com  
11 jarrad@nvlawyers.com  
briana@nvlawyers.com  
12 *Attorneys for Plaintiffs*

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*

13 Robert L. Eisenberg, Esq. SBN 0950  
14 LEMONS, GRUNDY, & EISENBERG  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
15 *Attorney for Plaintiffs*

16  
17 Further, I certify that on the February 14, 2023, I electronically filed the foregoing with the  
18 Clerk of the Court electronic filing system, which will send notice of electronic filings to all  
19 persons registered to receive electronic service via the Court's electronic filing and service system.  
20 DATED this February 14, 2023

21 

22 Iliana Godoy

**INDEX OF EXHIBITS**

1. Agreement to Terminate Condominium Hotel, Condominium Hotel Association, and Declaration of Covenants, Conditions, Restrictions and Reservation of Easements.....10 – 24 pp.
2. Seventh Amendment and Restatement to Condominium Hotel Declaration of Covenants, Conditions, Restrictions and Reservation of Easement for Hotel-Condominiums at Grand Sierra Resort.....25 – 139 pp.
3. Grand Sierra Unit Rental Agreement.....140 – 158 pp.

FILED  
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CV12-02222  
2023-02-14 03:12:09 PM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 9510223 : yviloria

# Exhibit 1



APNS: 012-211-24; 012-211-28; 012-211-36;  
012-491-01; 012-491-02; 012-491-04;  
012-491-05; 012-491-08; 012-491-12;  
012-491-13; 012-492-01 through 012-492-06;  
012-492-08; 012-492-08; 012-492-14 through  
012-492-16; 012-492-18; 012-493-01; 012-493-02;  
012-493-04 through 012-493-06

When recorded please mail to:  
Grand Sierra Resort Unit Owners Association  
c/o Associa Sierra North  
10509 Professional Circle #200  
Reno, NV 89521

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

**AGREEMENT TO TERMINATE CONDOMINIUM HOTEL, CONDOMINIUM HOTEL  
ASSOCIATION, AND DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS**

Condominium Hotel : Hotel-Condominiums At Grand Sierra Resort

Association : Grand Sierra Resort Unit – Owner’s Association

Declaration : Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Hotel-Condominiums at Grand Sierra Resort recorded December 15, 2006 as Document No. 3475705, Official records Washoe County, Nevada and all amendments thereto, including but not limited to the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Easements for Hotel-Condominiums at Grand Sierra Resort recorded June 27, 2007 as Document No. 3548504 and the Ninth Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Easements for Hotel-Condominiums at Grand Sierra Resort re-recorded November 30, 2021 as Document No. 5253317.

Real Property : The legal description is included in Exhibit A attached hereto. This legal description is Exhibit A from the Declaration.

The undersigned Hotel Unit Owner and the owners of units at the Condominium Hotel representing at least eighty percent (80%) of the votes in the Association defined above (the “80% Units’ Owners”) hereby agree as follows:

1. Termination of Condominium Hotel. At a meeting conducted by the Association on January 18, 2023 (the "Meeting"), Hotel Unit Owner and 80% Units' Owners approved the termination of the Condominium Hotel. The Condominium Hotel is terminated effective upon the filing of this Agreement in the records of the Office of the County Recorder of Washoe County, State of Nevada.

2. Sale of Common Elements, Shared Components, and Units. Following termination of the Condominium Hotel, all of the common elements, shared components, and units of the Condominium Hotel shall be sold pursuant to the terms of a subsequently drafted Agreement for Sale of Condominium Hotel Interests and further Court Order from the Second Judicial District Court of the State of Nevada in and for the County of Washoe in Case No. CV12-02222 ("Receivership Action"). Pursuant to NRS 116.2118(5), approval of the yet to be drafted Agreement for Sale of Condominium Hotel Interests must take place at a meeting and receive approval from the Hotel Unit Owner and 80% of the Units' Owners and be approved by the Court in the Receivership Action.

3. Approval of Sale of Real Estate. At the Meeting, Hotel Unit Owner and 80% Units' Owners authorized the Association controlled by the Receiver appointed in the Receivership Action, on behalf of the Units' Owners, to contract for the sale of real estate owned by the Units' Owners in the Condominium Hotel. For all real estate to be sold following termination, title to that real estate, upon execution of this termination agreement, vests in the Association with the Receiver as trustees for the holders of all interests in the units. And as long as the Association hold title to the real estate, each of the Unit's Owners shall have a right of occupancy as provided in the Declaration and during that period of occupancy, each of the Units' Owners shall remain liable for all assessments, shared expenses and other obligations imposed on Units' Owners by applicable Nevada law or the Declaration.

4. Termination of Association. At the Meeting, Hotel Unit Owner and 80% of Units' Owners approved the termination of the Association. The Association defined above now has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds thereof distributed upon Court approval in the Receivership Action, the Association continues in existence with all powers it had before termination under the receivership. Upon execution of the sale documents and distribution of the proceeds and an order issued in the Receivership Action the Association will be terminated.

5. Termination of Declaration. The Declaration is terminated effective upon the filing of this Agreement in the records of the Office of the County Recorder of Washoe County, State of Nevada unless otherwise ordered by the Court in the Receivership Action, or the Association is terminated in accordance with paragraph 4 herein. A Rescission and Notice of Termination of the Declaration shall also be recorded on or before the date identified in Section 8 below.

6. Severability. If any provision of this Agreement is held to be invalid or unenforceable to any extent, the invalidity or unenforceability of that provision shall not affect any other provision of this Agreement so long as the essential terms of the transactions contemplated

by this Agreement remain enforceable or otherwise ordered in the Receivership Action. The stricken provision or part shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision or part as is legally possible so as to effect the original intent of the parties as closely as possible. If modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Agreement, the entire Agreement is to be held unenforceable.

7. Compliance. To the extent that any provisions of this Agreement, should be deleted, modified, or amended in order to comply with the provisions of the Declaration or Nevada Revised Statutes, those provisions shall be deleted, modified, or amended accordingly in a self-executing manner to the same extent necessary to achieve compliance and achieve the essential purposes of this Agreement unless otherwise ordered in the Receivership Action. All other terms of this Agreement shall remain in full force and effect.

8. Effectiveness of Agreement. This Agreement will be void unless it is recorded on or before December 1, 2050.

9. General Provisions. This Agreement may be executed in counterparts and may be further altered by Court Order.

[End of Page – Signatures Follow]

EXECUTION

The parties executed this Agreement as of February 8<sup>th</sup>, 2022.

**HOTEL UNIT OWNER:**

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

By: \_\_\_\_\_  
Alex Meruelo  
Manager

**80% of UNITS' OWNERS:**

AM-GSR HOLDINGS LLC  
a Nevada limited liability company

By: \_\_\_\_\_  
Alex Meruelo  
Manager

GAGE VILLAGE COMMERCIAL  
DEVELOPMENT, LLC, a California  
limited liability company

By: \_\_\_\_\_  
Alex Meruelo  
Manager

**CERTIFICATION ON NEXT PAGE**

**Certification**

The undersigned, hereby certifies, under penalty of perjury, that this Agreement to Terminate (a) was provided to its members for action and that at least eighty percent (80%) voted in favor of termination of the Association and termination of the Declaration; (b) that the affirmative action was taken by those members whose votes are recorded in the official records of the Association, and (c) that such affirmative vote conforms with the requirements found in the Declaration.

**ASSOCIATION:**

Grand Sierra Resort Unit-Owners Association, A  
Nevada Nonprofit Corporation

By: \_\_\_\_\_  
Richard M. Teichner, Receiver

STATE OF NEVADA )  
 )  
COUNTY OF \_\_\_\_\_ )

SEE ATTACHED

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by Alex Meruelo as Manager of MEI-GSR Holdings, LLC, a Nevada limited liability company, as manager of AM-GSR HOLDINGS LLC, a Nevada limited liability company, and as manager of GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a California limited liability company

\_\_\_\_\_  
Notary Public

STATE OF NEVADA )  
 )  
COUNTY OF WASHOE )

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by \_\_\_\_\_ as Receiver of Grand Sierra Resort Unit-Owners Association, a Nevada nonprofit corporation.

\_\_\_\_\_  
Notary Public

## ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                     )  
  ) ss.  
County of Los Angeles             )

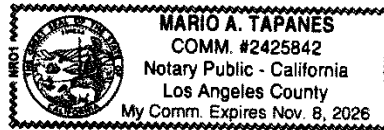
On **FEBRUARY 8, 2023**, before me, **MARIO A. TAPANES**, a Notary Public, personally appeared **ALEX MERUELO**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Mario A. Tapanes  
Notary Public



Notary Commission No. : 2425842  
Commission Expires: 11/08/2026  
Notary Phone: (562) 745-2355

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*The data below is not required by law and is for identification purposes only. The Notary does not attest to its truthfulness, accuracy, or validity. The failure to include any information below does not affect the validity of this certificate. Furthermore, the Notary Public completing this certificate does not verify the truthfulness, accuracy, or validity of the information below.*

<b>Signer Capacity:</b>	Manager of entities set forth below
<b>Signer is Representing:</b>	MEI-GSR Holdings, LLC; AM-GSR Holdings LLC; and Gage Village Commercial Development, LLC.
<b>Title/Type of Document:</b>	Agreement to Terminate Condominium Hotel, Condominium Hotel Association, and Declaration of Covenants, Conditions, Restrictions and Reservation of Easements
<b>Date of Document:</b>	February 8, 2023
<b>Number of Pages:</b>	Twelve (12) excluding this Page and any other similar ones

## EXHIBIT A

### Legal Description

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

#### PARCEL 1:

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

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

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

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

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

THENCE South 00°05'54" East, 158.86 feet to the South line of said Parcel 2;

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

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

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

APN: 012-211-24.

#### PARCEL 1-A:

A non-exclusive easement for the right, privilege and authority  
Continued on next page

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

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

BEGINNING at the Northeast corner of Parcel B, as shown on Parcel Map No. 227, filed in the office of the Washoe County Recorder on the 26th day of February, 1976, File No. 397925; thence South 89°23'54" East, 51.51 feet;

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

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

THENCE 15.55 feet on the arc of a tangent curve to the right, having a radius of 9.72 feet and a central angle of 91°37'19" to a point on the Southerly right of way of Glendale Avenue; thence along said Southerly right of way line North 88°15'47" East, 69.74 feet; thence departing said Southerly right of way line, 15.42 feet on the arc of a curve to the right, whose tangent bears South 88°15'47" West, having a radius of 10.00 feet and a central angle of 88°22'41"; thence South 0°06'54" East, 361.61 feet; thence South 89°53'06" West, 50.00 feet to the true point of beginning.

Continued on next page



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

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

PARCEL 2:

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

COMMENCING at the Section corner common to Sections 7, 8, 17 and 18, Township 19 North, Range 20 East, M.D.M. and proceeding South  $10^{\circ}25'59''$  East, a distance of 99.98 feet to a 1/2 inch diameter pin, said pin being at the Northeast corner of that land conveyed from Matley, et al, to Lee Brothers, in a deed recorded as Document No. 306898 of the Official Records of Washoe County, Nevada; thence North  $89^{\circ}00'20''$  West, along the Northerly line of said Parcel, a distance of 563.20 feet to a 1/2 inch diameter iron pin; thence South  $00^{\circ}59'40''$  West, a distance of 187.77 feet to a 1/2 inch diameter iron pin; thence North  $84^{\circ}35'28''$  West, a distance of 24.46 feet to the TRUE POINT OF BEGINNING; thence North  $84^{\circ}35'28''$  West, a distance of 231.51 feet; thence South  $00^{\circ}54'52''$  West, a distance of 370.06 feet to a galvanized steel fence post; thence North  $54^{\circ}40'01''$  West, a distance of 335.84 feet to a point on the Southerly right of way line of Greg Street; thence along the Southerly right of way line of Greg Street the following four (4) courses and distances: 1) North  $47^{\circ}58'37''$  East, a distance of 232.02 feet; 2) from a tangent which bears the last named course, along a circular curve to the right with a radius of 760.00 feet and a central angle of  $19^{\circ}23'42''$ , an arc length of 257.27 feet to a point of compound curvature; 3) along said compound circular curve to the right with a radius of 45.00 feet and central angle of  $83^{\circ}54'13''$ , an arc length of 65.90 feet; 4) South  $28^{\circ}43'28''$  East a distance of 134.97 feet to the TRUE POINT OF BEGINNING, all as shown and set forth on that certain Record of Survey for MGM GRAND, filed in the office of the County Recorder of Washoe County, Nevada, on November 24, 1981, as File No. 769946.

APN: 012-231-29

Continued on next page

Document Number 2292339 is provided pursuant to the requirements of Section 1. NRS 111.312

PARCEL 3:

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

Beginning at the intersection of the Northerly line of Mill Street with the Easterly line of U.S. Highway 395 as shown on Record of Survey Map Number 1518, File Number 769946 of the Official Records of Washoe County, Nevada, from which the Northeast corner of said Section 18 bears North  $86^{\circ}22'05''$  East a distance of 3260.13 feet; thence along the Easterly line of Interstate 580 the following eight (8) courses and distances; 1) North  $09^{\circ}34'52''$  West, a distance of 352.44 feet; 2) North  $03^{\circ}28'05''$  West, a distance of 425.16 feet; 3) North  $01^{\circ}26'55''$  West, a distance of 498.41 feet; 4) North  $01^{\circ}24'09''$  West, a distance of 434.30 feet; 5) from a tangent which bears North  $01^{\circ}25'23''$  West, along a circular curve to the right with a radius of 858.86 feet and a central angle of  $36^{\circ}09'39''$ , an arc length of 541.54 feet; 6) from an tangent which bears North  $34^{\circ}44'16''$  East along a circular curve to the left with a radius of 900.00 feet and a central angle of  $28^{\circ}28'08''$ , an arc length of 447.19 feet; 7) North  $06^{\circ}16'08''$  East a distance of 117.19 feet; 8) from a tangent which bears the last named course, along a circular curve to the right with a radius of 61.15 feet and a central angle of  $83^{\circ}37'49''$ , an arc length of 39.26 feet to a point on the Southerly line of Glendale Avenue; thence along the Southerly line of Glendale Avenue the following four (4) courses and distances; 1) North  $89^{\circ}53'57''$  East, a distance of 196.41 feet; 2) North  $00^{\circ}06'21''$  East, a distance of 4.00 feet; 3) North  $89^{\circ}53'57''$  East, a distance of 11.17 feet; 4) North  $88^{\circ}16'07''$  East, a distance of 80.83 feet to a point on the Westerly line of Watson and Mechan Corporation Property, said point being the Northeastly corner of Parcel No. 1, as shown on the Parcel Map No. 340, filed in the Office of Washoe County Recorder on November 10, 1976 File No. 434453; thence along the Westerly, Southerly, and Easterly lines of said Watson and Mechan Corporation Property the following three (3) courses and distances: 1) South  $00^{\circ}05'56''$  West, a distance of 355.44 feet; 2) South

Continued on next page

89°23'34" East, a distance of 348.62 feet; 3) North  
 00°06'34" West, a distance of 369.63 feet to a point on the  
 Southerly right of way line of Glendale Avenue, said point  
 being the Northeast corner of Parcel No. 1, as shown on  
 the Parcel Map No. 338, filed in the Office of Washoe  
 County Recorder on November 10, 1976, File No. 434451;  
 thence North 88°16'07" East, along the Southerly right of  
 way line of Glendale Avenue, a distance of 156.65 feet;  
 thence South 02°12'06" East a distance of 4.24 feet to the  
 Northeast corner of a concrete block wall, thence South  
 02°12'06" East, along Easterly face of said block wall, a  
 distance of 13.05 feet to an angle point in said block  
 wall; thence North 88°00'20" East, along the Northerly  
 line of said block wall, a distance of 61.31 feet to a chain  
 link fence; thence along said chain link fence the  
 following seventeen (17) courses and distances; 1) South  
 88°11'19" East, a distance of 10.04 feet; 2) South 79°03'12"  
 East, a distance of 10.54 feet; 3) South 70°04'24" East, a  
 distance of 9.08 feet; 4) South 56°48'54" East, a distance  
 of 10.33 feet; 5) South 52°50'24" East, a distance of 49.76  
 feet; 6) South 49°03'32" East, a distance of 10.57 feet; 7)  
 South 38°43'47" East, a distance of 78.53 feet; 8) South  
 41°22'11" East, a distance of 10.14 feet; 9) South  
 48°20'20" East, a distance of 10.07 feet; 10) South  
 54°50'53" East, a distance of 10.04 feet; 11) South  
 59°44'13" East, a distance of 39.96 feet; 12) South  
 50°21'10" East, a distance of 10.37 feet; 13) South  
 39°50'28" East, a distance of 10.12 feet; 14) South  
 31°57'47" East, a distance of 105.60 feet; 15) South  
 20°08'38" East, a distance of 76.52 feet; 16) South  
 34°19'10" East, a distance of 165.32 feet; 17) South  
 14°17'58" East, a distance of 279.78 feet; thence along a  
 line that is more or less coincident with said chain link  
 fence the following fifteen (15) courses and distances; 1)  
 South 06°44'18" East, a distance of 109.36 feet; 2) South  
 05°15'13" East, a distance of 158.53 feet; 3) South  
 27°57'06" East, a distance of 129.07 feet; 4) South  
 43°18'46" East, a distance of 228.10 feet; 5) South  
 44°58'46" East, a distance of 133.07 feet; 6) South 38°2'46"  
 East, a distance of 64.06 feet; 7) South 47°15'55" East, a  
 distance of 107.92 feet; 8) South 50°50'59" East, a  
 distance of 489.05 feet; 9) South 55°41'02" East, a distance  
 of 45.51 feet; 10) South 46°38'29" East, a distance of 98.99  
 feet; 11) South 62°53'42" East a distance of 151.28 feet;  
 12) South 52°31'06" East, a distance of 151.08 feet; 13)

Continued on next page

North 78°53'28" East, a distance of 75.55 feet; 14) South 73°46'40" East, a distance of 132.04 feet; 15) South 64°35'20" East, a distance of 98.69 feet to a point on the Northerly right of way line of Greg Street; thence along the Northerly right of way line of Greg Street the following ten (10) courses and distances: 1) South 20°40'40" West, a distance of 294.78 feet; 2) from a tangent which bears South 47°43'19" West, along a circular curve to the right with a radius of 750.00 feet and a central angle of 27°10'38", and arc length of 355.75 feet; 3) South 74°58'57" West, a distance of 120.67 feet; 4) from a tangent which bears the last named course, along a circular curve to the right with a radius of 36.00 feet and a central angle of 31°49'47", an arc length of 20.00 feet to a point of compound curvature; 5) along said compound circular curve to the right with a radius of 116.00 feet and a central angle of 32°40'13", an arc length of 66.14 feet; 6) South 71°14'17" West, a distance of 50.82 feet; 7) South 11°03'08" East, a distance of 8.54 feet; 8) from a tangent which bears the last named course, along a circular curve to the right with a radius of 36.00 feet and a central angle of 76°26'01", an arc length of 48.02 feet to a point of reverse curvature; 9) along said reverse circular curve to the left with a radius of 604.00 feet and a central angle of 17°23'58", an arc length of 183.42 feet; 10) South 47°58'57" West, a distance of 224.52 feet to the Northeast corner of parcel conveyed to Bruno Benna, et al, recorded as Document No. 83899, Official Records of Washoe County, Nevada; thence North 63°46'57" West along the Northerly line of said Benna Parcel, a distance of 1099.66 feet to the Northeast corner of Parcel B as shown on Parcel Map No. 341, filed in the office of Washoe County recorded on November 10, 1976, File No. 434454, thence South 26°13'03" West, along the Easterly line of said Parcel B, a distance of 266.37 feet; thence South 18°46'57" East and distance of 28.28 feet to a point on the Northerly right of way line of Mill Street; thence North 63°44'52" West, along said Northerly right of way line, a distance of 80.00 feet; thence North 26°13'03" East, a distance of 286.32 feet to the Northerly line of said Benna Parcel; thence from a tangent which bears North 63°43'05" East, along a circular curve to the left with a radius of 86.58 feet and a central angle of 81°31'28" an arc length of 123.19 feet; thence North 77°48'23" West a distance of 234.00 feet; thence South 26°13'03" West a distance of 280.15 feet to the

Continued on next page

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

said land is shown and delineated as Parcel A on Record of Survey Map No. 3804, recorded June 21, 2000 as Document No. 2458502, Official Records.

BASIS OF BEARINGS: Recorded of Survey Map Number 2775, File No. 1814848 of the Official Records of Washoe County, Nevada; NAD 83, Nevada West Zone.

APN: 012-211-26

Document Number 2458501 is provided pursuant to the requirements of Section 1, NRS 111.312

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# Exhibit 2

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Requested By  
GRAND SIERRA RESORT  
Washoe County Recorder  
Kathryn L. Burke - Recorder  
Fee: \$147.00 RPTT: \$0.00  
Page 1 of 109



**WHEN RECORDED RETURN TO:**

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

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(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)

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

**WITNESSETH:**

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

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

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

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

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

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

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

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

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

## **ARTICLE 1**

### **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## ARTICLE 2

### UNITS

#### **2.1 Description and Ownership.**

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

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

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

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

(d) Reserved.

(e) Reserved.

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

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



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

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

### ARTICLE 3

#### COMMON ELEMENTS

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

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

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

#### ARTICLE 4

##### **GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS**

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

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

##### **4.3 Easements.**

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

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

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

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



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

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

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

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

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

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



- (A) utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems, including, without limitation, all wires, conduits, pipes, ducts, panels, pumps, antennae, satellite dishes, transformers, computers, controls, control centers, cables, mechanical equipment areas, utility rooms, water heaters serving multiple units and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, television, internet, electrical, plumbing and/or other services to the Condominium Property;
  - (B) any and all structural components of the improvements, including without limitation, all footings, foundations, exterior walls and finishes, roof, roof trusses, roof support elements, and insulation; and
  - (C) all heating, ventilating, and air conditioning systems, including, without limitation, risers, compressors, air handlers, ducts, condensers; fans, generators, chillers, water towers and other apparatus used in the delivery of HVAC services to the Condominium Property.
- (iii) A non-exclusive easement to use the loading area and to have access between the loading area and the Hotel Units, Residential Units, and Commercial Units; subject at all times to such rules and regulations, restrictions, scheduling requirements, fees, costs and use charges as may be adopted or imposed from time to time by the Declarant, or by the Shared Facilities Unit Owner if such areas hereafter are made part of the Shared Facilities Unit.
  - (iv) A non-exclusive easement to use and enjoy portions of the Shared Facilities Unit which from time to time are made available by the Owner of the Shared Facilities Unit for use by the Unit Owners of the Hotel Units, Residential Units and Commercial Units and the Hotel Guests, subject to such rules and regulations, restrictions, scheduling requirements, fees, costs and use charges as may be adopted or imposed from time to time by the Shared Facilities Unit Owner, including, without limitation, each Unit Owner's proportionate share of the Shared Facilities Expenses as more particularly described in Section 6.9 below.

(f) **Declarant's Right to Enter.** The Declarant hereby reserves to itself, the Owner of the Shared Facilities Unit, the Hotel Management Company, their respective successors and assigns, and any of their agents or 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.

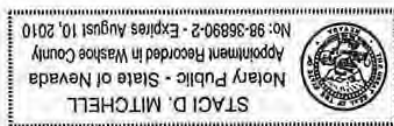
GRAND SIERRA OPERATING CORP., a Nevada Corporation

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

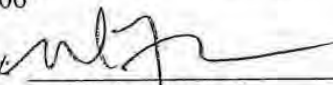
recorded in the office of the County Recorder of Washoe County, Nevada, on June 23, 2006, in Book 1, as Document No. 3404772, hereby consents to the execution and recording of the within Declaration and agrees that said Deed of Trust is subject thereto and to the provisions of the Uniform Common-Interest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

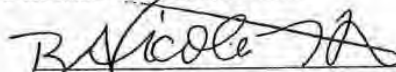
By: 

Name: Michael Farrell

Title: Vice President

STATE OF NORTH CAROLINA )  
 ) SS  
COUNTY OF MECKLENBURG )

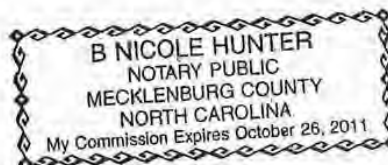
On this 7<sup>th</sup> day of June, 2007, personally appeared before me Michael Farrell, as Vice President of WACHOVIA BANK, NATIONAL ASSOCIATION, acting in its authorized capacity as Servicer for and on behalf of WELLS FARGO BANK, N.A., as trustee for the benefit of holders of J.P. Morgan Chase Commercial 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)



# **EXHIBIT A**

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

**LEGAL DESCRIPTION OF THE PROPERTY**

Order No.: 507198

### LEGAL DESCRIPTION

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

#### PARCEL 1:

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

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

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

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

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

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

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

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

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

APN: 012-211-24.

#### PARCEL 1-A:

A non-exclusive easement for the right, privilege and authority  
Continued on next page

-1-

SCHEDULE A  
CLTA PRELIMINARY REPORT  
(12/92)

STEWART TITLE  
Guaranty Company