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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEVADA**

GARY BENSON, CYNTHIA SHAMS,	*
ALAN SHAMS, GREG WADDILOVE,	*
JOSE ARANDA, SANDRA ARANDA,	*
STEPHEN GOODMAN, CATHEY	*
GOODMAN, DANIEL CRUZEN,	*
LINDA TAGLIANETTI, RALPH	*
DULAC, ANTHONY GREENFIELD,	*
ADELE GREENFIELD, INVESTMENT	*
RESOLUTIONS, LLC, ART KRAFT,	*
TERRY NULLE, KRISTI MALZONE,	*
KATRINA KNAFL, IMMACULATE	*
MEDICI, SUSAN MILLS, JOE NAHAS,	*
JANET PAUL, DAMAN PAUL,	*

ROBERT H. PERLMAN, LYNN  
PERLMAN, JAMES ROBERTS, THE  
JAMES J. ROBERTS, JR. TRUST, RICK  
TICHMAN, GIAN-PAOLO VERONESE,  
BOB WALPERT, PAUL WYNN,  
SANDI JAMES, BILLY FRANK AND  
KATHY BERKOWITZ

Plaintiffs,

vs.

PLATINUM CONDOMINIUM  
DEVELOPMENT, LLC,  
MARCUS DEVELOPMENT, LLC,  
MARCUS HOTELS, INC., AND  
MARCUS MANAGEMENT LAS  
VEGAS, LLC,

Defendants.

**COMPLAINT**  
**JURY TRIAL DEMANDED**

1. DECLARATORY JUDGMENT
2. BREACH OF CONTRACT
3. RECISSION
4. FRAUDULENT CONCEALMENT AND  
SUPPRESSION OF MATERIAL FACTS
5. BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR  
DEALING
6. VIOLATION OF NEVADA  
DECEPTIVE TRADE PRACTICES  
ACT
7. UNJUST ENRICHMENT AGAINST  
DEFENDANT MARCUS
8. TORTIOUS INTERFERENCE  
AGAINST DEFENDANT MARCUS
9. CIVIL CONSPIRACY
10. ALTER EGO, JOINT VENTURE, AND  
AGENCY AND RATIFICATION  
LIABILITY OF MARCUS
11. ACCOUTING AND CONSTRUCTIVE  
TRUST

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COME NOW Plaintiffs Gary Benson, Cynthia Shams, Alan Shams, Greg Waddilove,  
Jose Aranda, Sandra Aranda, Stephen Goodman, Cathey Goodman, Daniel Cruzen, Linda  
Taglianetti, Ralph Dulac, Anthony Greenfield, Adele Greenfield, Investment Resolutions, LLC,

Art Kraft, Terry Nulle, Kristi Malzone, Katrina Knafl, Immaculate Medici, Susan Mills, Joe Nahas, Janet Paul, Daman Paul, Robert H. Perlman, Lynn Perlman, James Roberts, The James J. Roberts Jr. Trust, Rick Tichman, Gian-paolo Veronese, Bob Walpert, Paul Wynn, Sandi James, Billy Frank and Kathy Berkowitz (hereinafter "Plaintiffs") and hereby file this Complaint against Platinum Condominium Development, LLC ("Platinum"), Marcus Development, LLC ("Marcus Development"), Marcus Hotels, Inc. ("Marcus Hotels"), and Marcus Management Las Vegas, LLC ("Marcus Management"). Platinum, Marcus Development, Marcus Hotels, and Marcus Management are sometimes collectively referred to as "Defendants," and Marcus Development and Marcus Hotels are sometimes collectively referred to as "Marcus".

## **I. NATURE OF THIS ACTION**

1. This litigation involves a major condominium/hotel real estate project in Las Vegas, Nevada known as the Platinum Hotel and Condominium (the "Platinum Project" or "Platinum Condominium") in which Plaintiffs purchased condominiums. The Platinum Condominium included a hotel/rental program, which was a major marketing feature for the Project. Plaintiffs participated in the rental program pursuant to rental agreements ("Rental Agreement") with Marcus Management.

2. Platinum is a de facto joint venture between the Marcus Defendants and present non-party Diversified Real Estate Concepts, Inc. ("DREC").

3. The Plaintiffs in this action and other purchasers ("Unit Owners") entered into binding and enforceable Purchase Agreements with Platinum in 2004 and 2005, (and in several cases thereafter) for the purchase of Platinum units ("Units") directly or by valid assignment. Substantially all of the sales of the Units closed in the fall of 2006 (the "Closings").

4. The Purchase Agreements and related Prospectus and Declaration of Covenants, Conditions, Restrictions, and Easements (the "CC&Rs") provided that the Unit Owners would own and control the Common Elements of the Platinum Condominium necessary to operate the hotel rental program, including but not limited to the lobby, and would have the right to contract with a management company for that purpose. The 2004 Purchase Agreements, Prospectus, and CC&Rs are sometimes hereafter collectively referred to as the "2004 Condominium Documents." As alleged hereafter, under the 2004 CC&Rs and related documents, the Common Elements consisted of the entire Platinum Condominium, with the exception of individual condominium units owned by individual owners and limited common elements such as portions of the common elements designated for the exclusive use of one or more but fewer than all Units.

5. The Defendants materially breached the 2004 Condominium Documents at the closings and have also breached the Rental Agreements. Plaintiffs seek recovery of compensatory and punitive damages in excess of \$75,000.00, exclusive of interest and costs, as a result of the wrongful actions of Defendants alleged herein relating to the 2006 closings.

## **II. PARTIES**

6. Plaintiff Gary Benson is a citizen of New Jersey, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 1714.

7. Plaintiffs Alan and Cynthia Shams (hereinafter the "Shams Plaintiffs") are citizens of Nevada, and entered into a binding and enforceable Purchase Agreements for Platinum Units 1109, 1111, 1212, 1217 and 1611 on March 17, 2004.

8. Plaintiff Greg Waddilove is a citizen of California, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 1116 on March 25, 2004.

9. Plaintiffs Jose Aranda and Sandra Aranda (hereinafter the "Aranda Plaintiffs"), are citizens of California, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 1408 on February 7, 2007.

10. Plaintiffs Cathy Goodman and Steve Goodman (hereinafter the "Goodman Plaintiffs") are citizens of Arizona, and entered into binding and enforceable Purchase Agreement for Platinum Unit 1106 on March 17, 2004.

11. Plaintiffs Daniel Cruzen and Linda Taglianetti are citizens of Nevada, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 1704 on March 17, 2004.

12. Plaintiff Ralph Dulac is a citizen of California, and entered into an assignment of a binding and enforceable Purchase Agreement for Platinum Unit 508 in December, 2006 with the original purchaser. Platinum remained obligated as the seller under said assigned Purchase Agreement.

13. Plaintiffs Anthony Greenfield and Adele Greenfield (hereinafter the "Greenfield Plaintiffs") are citizens of the United Kingdom, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 916 on March 1, 2005.

14. Plaintiff Investment Resolutions, LLC entered into binding and enforceable assignment agreements for Platinum Units 303 and 605 in February, 2006, and Unit 1008 in November, 2006 with original purchasers. Platinum remained obligated as the seller under said assigned Purchase Agreement. Investment Resolutions' sole member is Aram Hajnabi. Hajnabi is a citizen of Nevada, and Investment Resolutions, LLC is, therefore, a citizen of Nevada. Investment Resolutions is not a citizen of Wisconsin.

15. Plaintiffs Art Kraft and Terry Nulle are citizens of Illinois, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 917 on March 17, 2004.

16. Plaintiffs Kristi Malzone and Katrina Knafl are citizens of Illinois, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 1001 on May 12, 2004.

17. Plaintiff Immaculate Medici is a citizen of New York, and entered into a binding and enforceable assignment agreement for Platinum Unit 302 on May 19, 2006 with an original purchaser. Platinum remained obligated as the seller under said assigned Purchase Agreement.

18. Plaintiff Susan Mills is a citizen of California, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 919 on June 24, 2004.

19. Plaintiff Joe Nahas is a citizen of California, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 1417 on March 17, 2004.

20. Plaintiffs Janet Paul and Daman Paul (hereinafter the "Paul Plaintiffs") are citizens of Indiana, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 509 on April 22, 2004.

21. Plaintiffs Robert Perlman and Lynn Perlman (hereinafter the "Perlman Plaintiffs") are citizens of Nevada, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 1509.

22. Plaintiff James Roberts and the James J. Roberts Jr. Trust entered into a binding and enforceable Purchase Agreement for Platinum Unit 1706 on October 30, 2003 in the name of the James Roberts Trust. Said Plaintiffs are citizens of California and not of Wisconsin.

23. Plaintiff Rick Tichman is a citizen of New York, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 1211 on March 17, 2004.

24. Plaintiff Gian-paolo Veronese is a citizen of California, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 1215 on April 17, 2004.

25. Plaintiff Bob Walpert is a citizen of Missouri, and entered into binding and enforceable Purchase Agreements for Platinum Units 1304 and 1404 on March 17, 2004.

26. Plaintiff Paul Wynn is a citizen of Nevada, and entered into a binding and enforceable assignment agreement for Platinum Unit 1417 on December 1, 2006 with an original purchaser. Platinum remained obligated as the seller under said assigned Purchase Agreement.

27. Plaintiff Sandi James is a citizen of Nevada, and entered into binding and enforceable Purchase Agreements for Platinum Units 810 and 908 on March 17, 2004, for Unit 1018 on January 8, 2007, and for Unit 1604 on January 30, 2007.

28. Plaintiff Billy Frank is a citizen of California, and entered into a binding and enforceable Purchase Agreement for Platinum Unit 804 on November 21, 2004.

29. Plaintiff Kathy Berkowitz entered into a binding and enforceable assignment agreement for Platinum Unit 1709 on December 28, 2006 with an original purchaser. Platinum remained obligated as the seller under said assigned Purchase Agreement.

30. No Plaintiffs are citizens of Wisconsin. All Defendants are citizens of Wisconsin.

31. Defendant Marcus Hotels is a corporation organized and existing under the laws of the state of Wisconsin with its principal place of business in Milwaukee, Wisconsin. Marcus Hotels is the sole member of Marcus Development, which is the sole member of Platinum and Marcus Management. Accordingly, through its control of Marcus Development, the sole member of Platinum and Marcus Management, Marcus Hotels controls Platinum and Marcus Management.

32. For diversity purposes the citizenship of LLCs such as Marcus Development, Marcus Management, and Platinum are determined by the citizenship of their members. Therefore, Marcus Management, and Platinum are citizens of Wisconsin.

33. Defendant Marcus Development is a "special purpose" entity without significant assets or independent existence.

34. Defendant Platinum Condominium Development is a "special purpose" entity without significant assets or independent existence.

35. Defendant Marcus Management is also a "special purpose" entity whose sole business activity is to act as the management company of the Platinum Condominium. Marcus Development is the sole member of Marcus Management.

### **III. JURISDICTION AND VENUE**

36. Jurisdiction is proper in this Court pursuant to 28 USC § 1332 in that Plaintiffs and Defendants are citizens of different states and there is complete diversity of citizenship between Plaintiffs and Defendants.

37. The amount in controversy, in behalf of each Plaintiff, who seek rescission of the applicable Purchase Agreements, exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

38. Venue is proper in this Court because the acts and omissions from which this Complaint arises occurred, in substantial part, in this district, and this action involves real estate located in this district.

### **IV. FACTS**

39. The 2004 Condominium Documents provided that Plaintiffs and other Unit Owners would own the common elements related to the hotel rental program and would have the right to contract with an appropriate hotel management company.

40. In addition, Paragraph 14 of the 2004 Purchase Agreements provided, that although Platinum could make certain amendments to the 2004 Condominium Documents, no



41. Further, the 2004 Condominium Documents provided for an equal sharing of net rental proceeds with the Unit Owners who participated in the hotel rental program and for assessment of common expenses.

42. Moreover, on or about January 6, 2006, Platinum recorded a "final map" of the Platinum Resort Condominiums which, at note 2, stated that "all areas within the boundary of this subdivision (Lot 1) are common elements" with the exception only of all condominium units and limited common elements (the "Map"). The Map did not provide for or reserve ownership or control over these common elements to Platinum or Marcus but rather reserved ownership and control, consistent with the 2004 CC&Rs, to Plaintiffs and the other condominium unit owners.

43. The obligations assumed by Platinum under the 2004 Condominium Documents constituted valid and enforceable contractual obligations. Platinum and Marcus (for the reasons alleged hereafter) had an existing and ongoing duty to perform Platinum's obligations under the 2004 Condominium Documents.

44. In connection with the 2006 closings, Platinum purported to require Plaintiffs to accept a new and materially revised Prospectus and set of CC&Rs (the "2006 Closing Documents").

45. Commercial Elements were defined, for the first time, as follows:

"Commercial Element" shall refer to the portion of the Property identified as Lot 1 on the Map, as the same may be subdivided into separate Commercial Units from time to time.

46. "Hotel Owner" was defined for the first time as follows:

"Hotel Owner" shall refer to the Owner of the Hotel Components.

47. "Hotel Components" were defined for the first time as follows:

"Hotel Components" shall refer to those portions of the Commercial Element used for the operation of the Hotel and not subdivided into Commercial Units to be used for separate commercial purposes, such as restaurant or spa purposes.

48. In addition, Article 4 of the 2006 CC&Rs was changed to add the following sentence: "The [Homeowners'] Association shall have no control or authority over any portion of the Commercial Elements or Commercial Units, including, without limitation, the Hotel Components."

49. The practical effect of these material changes to the 2004 Condominium Documents was to transfer wrongfully ownership of Common Elements to Platinum, including Common Elements necessary to operate the hotel rental program, and the ability to contract with a hotel management company from the Unit Owners to Marcus.

50. These changes materially and substantially violated and breached the 2004 Purchase Agreement and the other 2004 Condominium Documents.

51. Regarding the above-referenced Map, on July 19, 2006, Platinum and Marcus wrongfully and without any justification purported to file a "Certificate of Amendment" (COA) to the Map. That COA purported to change the title of the Map to read, "The Platinum Resort Condominiums, a commercial condominium subdivision." More importantly, the purported COA changed note two of the Map to read as follows: "All area within the boundary of the subdivision (Lot 1) is commercial element, excepting therefrom all units and limited common elements."

52. Platinum provided no new or additional consideration or value in connection with the 2006 Closings. Rather, Defendants wrongfully reduced the rights of Plaintiffs and other condominium owners while charging Plaintiffs and the Unit Owners the same 2004 purchase

prices and increasing the Defendants' rights and control over the Platinum hotel rental operation and newly created Commercial Elements. These actions constituted a wrongful purported transfer of valuable property and ownership rights from Plaintiffs and the condominium owners to Platinum and Marcus.

53. As of 2006, Platinum had a preexisting contractual duty under the 2004 Purchase Agreement and other 2004 Condominium Documents. The 2006 Condominium Documents directly violated Platinum's preexisting duty to Plaintiffs and to other Unit Owners without consideration.

54. Likewise, the Certificate of Amendment is without any force and effect whatsoever and is void. Platinum and Marcus's actions in filing the Certificate of Amendment, which was not properly disclosed to condominium unit owners, was without any further or additional consideration, constituted a material breach of the Purchase Agreements, and violated preexisting duties to plaintiffs and other condominium owners.

55. Platinum has claimed it has provided certain documents to Plaintiffs and other purchasers prior to the 2006 closings.

56. Many of the Plaintiffs allege that they (and many other Unit Owners) did not receive prior notice of the material changes in the 2006 Condominium Documents.

57. Rather, many Plaintiffs were simply provided with a compact disc at the time of closing labeled "Public Offering Statement."

58. Plaintiffs specifically deny that any purported notice in 2006 of the material changes to the 2004 Condominium Documents was justified, valid, or enforceable. In fact, the material and substantive breaches incorporated in the 2006 Condominium Documents are illegal, void, and without any force and effect for multiple reasons including fraud, suppression and

concealment, estoppel, violation of pre-existing duty, failure of consideration and material breach of contract.

59. In short, the 2006 Condominium Documents wrongfully deprived Plaintiffs of valuable property and management rights in the Platinum Condominium to which they were entitled under the 2004 Purchase Agreements and related Documents.

60. Platinum and the Marcus Defendants wrongfully refused to offer refunds of deposits and earnest money to Plaintiffs who declined to close their respective purchase transactions in the fall of 1996.

61. The wrongful transfer of property rights alleged herein conferred a substantial economic benefit to Marcus Hotels, Marcus Development, and Platinum in that Marcus retained ownership and control over the Common Elements, and the ongoing right to manage the Platinum.

#### **PARTICIPATION IN THE RENTAL PROGRAM**

62. Plaintiffs entered into agreements with Marcus Management to participate in the rental program. The rental program was marketed and promoted as a significant benefit and major reason to enter into Purchase Agreements for the Platinum Units ("Rental Agreements").

63. Under the rental program, Marcus Management was obligated to rotate rooms on a rental system to fairly allocate rentals.

64. Marcus Management has failed to properly rotate the Units purchased by Plaintiffs on the rental program and has thereby deprived Plaintiffs of significant rental income to which they were entitled.

65. In addition, Marcus Management was required to account properly for and provide 50% of net revenue to Plaintiffs participating in the rental program.

66. Marcus, Marcus Development and Marcus Management have failed to calculate properly and pay rental income to Plaintiffs participating in the rental program under said Rental Agreements.

**V. JOINT VENTURE, ALTER EGO, AGENCY AND RATIFICATION  
ALLEGATIONS**

67. Marcus Hotels and Resorts was a trade name used by Marcus Corporation and Marcus Hotels to refer to the hotel development and management operations of Marcus.

68. On January 27, 2004, Marcus issued a press release stating "Marcus Hotels and Resorts to manage construction and operate the Platinum Suite Hotel and Spa". That release referred to Platinum as a joint venture between Marcus Hotels and Resorts and Diversified Real Estate Concepts ("DREC"). Marcus Hotels and Resorts also included in the materials provided to prospective purchasers in 2004 a brochure referring to the Platinum as "managed by Marcus Hotels and Resorts".

69. Further, in connection with marketing in 2004, Marcus distributed written materials from "Marcus Hotels and Resorts" titled "Platinum Suite Hotel and Spa". In those materials, Marcus represented that the Platinum would be positioned slightly below "more widely recognized hotels such as the Four Seasons, Mandalay Bay, the Bellagio, and Mirage, and slightly above the traditional names such as Caesars, Bally's, the Tropicana, and MGM".

70. The Website promotional information in 2004 also represented that Platinum is "A magnificent, luxury condo-hotel managed by the world-renowned Marcus Resorts".

71. Purchasers also received letters in 2005 including, for example, a letter dated July 18, 2005 to Susan Mills referring to Platinum as a division of the Marcus Corporation and signed by William Otto, President and Chief Operating Officer of "Marcus Hotels and Resort". This correspondence provided a report by the "Marcus Hotels Team".

72. Public documents reflect interlocking officers, directors and managers of the various Marcus entities. The following individuals are officers of Marcus Corporation and Marcus Hotels: William J. Otto (President and Chief Operating Officer); Stephan H. Marcus (Vice President and Director); Thomas F. Kissinger (Secretary and Director); and Douglas A. Neis (Treasurer and Director).

73. In addition, Marcus has appointed the majority members of the Condominium Association including Scott Shoenberger, a Marcus Corporate Vice-President and successor general managers of the Platinum Condominium designated by Marcus, including Peter Rockwood, Bob Schroeder and Martin Vanderlin.

74. In its 2008 10K report, Marcus Corporation states that it "manage[s] the Platinum Hotel & Spa," "earn[s] a management fee" from the Platinum project, "own[s] the hotel's public space," and "ha[s] the opportunity to earn revenues from the on-site restaurant, lounge, spa and 8,440 square feet of meeting space" located in the Platinum development.

75. As a joint venturer in Platinum, and "manager" of Platinum, Marcus Hotels is liable for the wrongful actions of Marcus/Platinum in materially changing the 2004 Purchase Agreements, and of Marcus Management for improperly failing to pay and failing to account for rents payable to plaintiffs and for overcharging Plaintiffs for administrative and overhead expenses.

76. Plaintiffs allege that Marcus, Marcus Management, and Platinum are alter egos of one another despite their respective registrations with the Secretaries of State in which said Defendants are incorporated or organized.

77. Plaintiffs allege that the funds of each Defendant are intermingled with the funds of the others to evade payment of debts to creditors such as Plaintiffs.

78. Plaintiffs further allege that there is unity of interest among these Defendants, with respect to the Platinum Project because Marcus Hotels, through Marcus Development, has dominated and controlled the business affairs of Platinum and Marcus Management for the economic benefit of Marcus Hotels.

79. Plaintiffs further allege that:

- a. Marcus and Platinum have failed to properly observe and document corporate partnership formalities;
- b. Marcus has treated Platinum's assets as the assets of Marcus;
- c. There has been a commingling of payroll and other funds;
- d. Marcus has undercapitalized Platinum;
- e. Marcus has treated Platinum assets as the assets of Marcus;
- f. Marcus employees have conducted the daily business activities of Platinum; and
- g. Marcus has treated Platinum as a mere instrumentality of Marcus.
- h. Marcus Hotels, through Marcus Management, has directed and controlled the improper rotation of rental units, improper calculation of rents due to the Plaintiffs participating in the rental program, and the failure to pay rents due and owing to Plaintiffs.
- i. In addition, Marcus Hotels, through Marcus Management, has directed and controlled the improper accounting of common expenses charged to Plaintiffs and is responsible for overcharging Plaintiffs for such expenses.

80. Plaintiffs specifically allege that Marcus directed, dominated and controlled Platinum and has disregarded any alleged separate corporate identity of Platinum.

81. Under the circumstances present in this action, any corporate status for Platinum separate from the other Defendants would be the equivalent of an adherence to a corporate fiction and would sanction a fraud and promote injustice.

82. Such fraud and injustice would include, among other things, allowing Defendants to escape liability for the breach of contract and tort claims (other than tortious interference) at issue in this case, to escape liability for diversion of Platinum assets, and to be unjustly enriched by the misconduct of Platinum which has occurred at the direction and control of Marcus. The extremely valuable benefit of retaining ownership and control over Common Elements, retaining the right to control management of Platinum, and receiving the benefit of rents improperly withheld from Plaintiffs and of common expenses overcharged to Plaintiffs

83. As a joint venture, Marcus and self-described manager of Platinum, Marcus is liable for the wrongful actions of Platinum and the other Defendants alleged herein.

84. Plaintiffs further allege that because Marcus has directed and controlled the wrongful actions of Platinum, Platinum has acted as the agent of Marcus and that Platinum's wrongful actions are imputable to and binding upon Marcus as its principal.

85. Plaintiffs further allege that Marcus has ratified the wrongful actions of Platinum and is liable for such actions for these additional reasons.

**COUNT ONE  
DECLARATORY JUDGMENT AGAINST PLATINUM**

86. Plaintiffs restate and incorporate herein by reference the foregoing allegations of this Complaint.

87. There is an actual case and controversy between Plaintiffs and Platinum relating to Platinum's obligations under the 2004 Condominium Documents.



88. Pursuant to Federal Rule of Civil Procedure 57, Plaintiffs are entitled to a declaratory judgment that Platinum had no legal or contractual right to unilaterally and materially modify and change its obligations under the 2004 Condominium Documents.

89. Plaintiffs are entitled to a declaratory judgment that the Purchase Agreements and the 2004 Condominium Documents are enforceable according to their express terms and are binding contracts relating to the Platinum Condominium.

90. Moreover, Plaintiffs are entitled to a declaratory judgment that the material changes to the Platinum Condominium contained in the 2006 Condominium Documents are a violation of Platinum's preexisting contractual duties and obligations and are unenforceable, void, illegal and ineffective, for the reasons alleged herein.

**COUNT TWO**  
**BREACH OF CONTRACT AGAINST PLATINUM,**  
**MARCUS DEVELOPMENT, AND MARCUS HOTELS AS TO THE PURCHASE**  
**AGREEMENTS**

91. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

92. Plaintiffs executed valid and binding Purchase Agreements for their respective units at the Platinum Condominium.

93. The Plaintiffs have fully performed their obligations under these Purchase Agreements, including payment of substantial escrow and Earnest Monies and applicable purchase prices.

94. Platinum materially breached the 2004 Condominium Documents. As a result of said material breach, Plaintiffs have incurred actual economic harm, entitling them to an award of compensatory damages, and have retained the legal services of attorneys, entitling them to

recover the reasonable costs of attorneys' fees and litigation under the terms of the Purchase Agreements.

95. Platinum, Marcus Management, and Marcus have also breached Platinum's contractual obligations by failing to pay properly rent income to unit owners, by overcharging unit owners for maintenance costs, and by failing to provide proper accounting to Plaintiffs and other condominium unit owners. (This Count does not apply to any Plaintiffs who did not receive the 2004 CCR's).

**COUNT THREE  
RESCISSION AGAINST PLATINUM,  
MARCUS DEVELOPMENT, AND MARCUS HOTELS**

96. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

97. As a result of Platinum's material breach of the 2004 Condominium Documents and the other wrongful actions of the Defendants, the Plaintiffs are entitled to a rescission of their respective Purchase Agreements and a full return of their deposits, Earnest Money, and all other payments by each of the Plaintiffs for their Units, including interest, tax, insurance, and all other compensatory and economic damages.

**COUNT FOUR  
FRAUDULENT MISREPRESENTATION AND CONCEALMENT AND  
SUPPRESSION OF MATERIAL FACTS AGAINST PLATINUM, MARCUS  
MANAGEMENT, AND MARCUS HOTELS**

98. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

99. Throughout the marketing of the Platinum Project in 2004, Marcus Hotels and agents of the broker for Platinum, Mizener Ventures, LLC, including Allison Mizener, Deanna Sierro, and Dale Thornton (Platinum Sales Agents) repeatedly emphasized the reputation and

prominence of Marcus as the developer, the value of the rental program, anticipated rental revenues, and the attractiveness of Platinum as an investment. The Sales Agents acted pursuant to the direction and control of Platinum and Marcus and were their agents. The representations of the Sales Agents are imputable to Platinum and Marcus.

100. Platinum and Marcus knowingly and fraudulently made misrepresentations and concealed and suppressed material facts in connection with the marketing and sale of the Platinum Project in 2004 and 2005. Platinum and Marcus did so with the intent to induce the Plaintiffs and other Unit Owners to purchase Platinum Units and forego purchasing units in competing projects.

101. As a seller of real estate, and given the half-truths and misrepresentations alleged herein, Platinum (the other Marcus entities involved in the sales and marketing of Platinum) and the Sales Agents had a duty to disclose material information and not to omit material facts.

102. False projections of rental rates, occupancy rates, and the "quality" of Platinum Condominiums as an excellent investment opportunity were made by the Sales Agents, at the direction and approval of Platinum and Marcus in the correspondence and written materials referred to herein.

103. Specifically but not exclusively, Platinum and Marcus engaged in the following misrepresentations and fraudulently suppressed and concealed the following material facts:

- a. Misrepresented that the Platinum and Marcus would properly market and maintain Platinum as a "high-end" property;
- b. That Platinum would experience occupancy rates consistent with other "high-end" Las Vegas properties in the range of 90%;

- c. That Platinum/Marcus would "rotate" condominiums in the rental program on a fair and equitable basis;
- d. That rental income would be sufficient to cover all or substantially all of mortgage payments;
- e. That rental charges for renters of condominium units would be in the range of room charges at other "high-end" Las Vegas properties;
- f. That Platinum and Marcus did not intend to honor the 2004 Purchase Agreements and other 2004 Condominium Documents;
- g. Misrepresented and overstated the size and dimensions of certain of the Condominium Units;
- h. That Platinum, Marcus Management, and Marcus were not properly accounting for and failed to pay rental income due and owing to Unit Owners, including Plaintiffs;
- i. Made false and misleading representations regarding rental income, including the purported rental projections in the 2004 Condominium Documents; and
- j. Made misrepresentations about rental income due to Plaintiffs and expenses owed by Plaintiffs in the monthly statements sent by Platinum and Marcus to Plaintiffs.

104. Platinum (and the related Marcus entities involved in marketing and promoting Platinum) omitted and failed to disclose that representations regarding the material risks of purchasing a Platinum unit and projected revenues under the Rental Agreements were not based upon an adequate, reasonable and reliable calculation, projection and analysis by Platinum and Marcus.

105. Plaintiffs have relied to their detriment on said misrepresentations, suppression and concealment by, among other things, initially entering into the 2004 Purchase Agreements, paying Earnest Money, paying purchase prices, making the mortgage payments, continuing to participate in the rental program, and paying common expenses.

106. As a result of the misrepresentations, suppression and concealment of Platinum and Marcus, the Plaintiffs have suffered economic damages entitling them to an award of compensatory damages.

107. Because Platinum and Marcus's actions constituting fraud, suppression, and concealment were done maliciously and with the intent to defraud the Plaintiffs, and in conscious and willful disregard of Plaintiffs' property rights, Plaintiffs are entitled to an additional award of punitive damages subject to proof at trial. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs as provided under Nevada law.

**COUNT FIVE**  
**BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**  
**AGAINST PLATINUM, MARCUS HOTELS, MARCUS DEVELOPMENT, AND**  
**MARCUS MANAGEMENT UNDER THE PURCHASE AGREEMENTS**  
**AND THE RENTAL AGREEMENTS**

108. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

109. Platinum and Marcus had an implied duty of good faith and fair dealing arising out of the 2004 Condominium Documents and the Rental Agreements. Platinum and Marcus specifically had the duty and obligation of good faith to avoid and not take actions inconsistent with the rights of the Plaintiffs under the 2004 Purchase Agreements.

110. Platinum and Marcus have breached their implied covenant of good faith and fair dealing as a result of their material breaches, fraudulent conduct, and suppression and concealment as alleged herein.

111. As a result of said breach, Plaintiffs have suffered actual economic harm entitling them to an award of compensatory damages.

**COUNT SIX**  
**VIOLATION OF NEVADA TRADE PRACTICES ACT AGAINST PLATINUM,**  
**MARCUS DEVELOPMENT, AND MARCUS HOTELS**

112. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

113. Under Nevada Revised Statute § 41.600, a civil action may be brought by "any person who is a victim of consumer fraud." Under the Nevada statute, "consumer fraud" includes, among other things, "an unlawful act as defined in NRS 119.330" and "[a] deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive." Nev. Rev. Stat. § 41.600(2)(a) and (e). Section 119.330(2)(a) of the Nevada Revised Statutes prohibits intentional misrepresentation, deceit or fraud in the sale or attempted sale of "any subdivision of any lot, parcel, unit, or interest in any subdivision" in the state of Nevada. Additionally, § 598.092(5)(c) of the Nevada Deceptive Trade Practices Act states, "[a] person engages in a 'deceptive trade practice' when in the course of his business or occupation he. . . [a]dvertises or offers an opportunity for investment and. . . [m]akes any untrue statement of a material fact or omits to state a material fact which is necessary to make another statement, considering the circumstances under which it is made, not misleading." Platinum and Marcus have violated the Nevada Deceptive Trade Practices Act by making the misrepresentations and concealing the material facts alleged herein. Plaintiffs have relied upon said misrepresentations and suppression

and concealment as alleged herein, and thus Plaintiffs have stated a claim for consumer fraud pursuant to §§ 119.330(2)(a) and § 598.092(5)(c) of the Nevada Revised Statutes.

114. As a result of the deceptive practices of Platinum and Marcus, Plaintiffs have been damaged in an amount in excess of \$10,000.00. Because Platinum and Marcus's fraudulent conduct and acts in violation of the Deceptive Trade Practices Act were done maliciously, with the intent to defraud the Plaintiffs, and in conscious and willful disregard of Plaintiffs' property rights, Plaintiffs are entitled to an additional award of punitive damages subject to proof at trial. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs as provided under Nevada law.

**COUNT SEVEN**  
**UNJUST ENRICHMENT AGAINST PLATINUM, MARCUS DEVELOPMENT,**  
**MARCUS HOTELS, AND MARCUS MANAGEMENT**

115. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

116. Marcus Development, Marcus Hotels, and Marcus Management have been unjustly enriched as a result of Defendant Platinum's breach of the 2004 Condominium Documents and the other wrongful action alleged herein.

117. Specifically, as a result of said breach, Marcus Development, Marcus Hotels, and Marcus Management acquired effective control and purported ownership over the Common Elements of the Platinum Project, as defined in the 2004 Condominium Documents, necessary to operate the hotel rental program and have wrongfully usurped management of the Platinum hotel operations. Specifically, Marcus Development, Marcus Hotels, and Marcus Management have been enriched by: the amounts the Plaintiffs have paid for their Units; the improper failure of Marcus Development, Marcus Hotels, and Marcus Management to properly pay rent to

Plaintiffs; overcharging Plaintiffs for expenses of Common Elements; and obtaining substantial income from the wrongful transfer of ongoing management of hotel operations to an affiliated entity of Marcus, namely, Marcus Management.

118. Plaintiffs are entitled to recover the amount of such unjust enrichment derived by Platinum, Marcus Development, Marcus Hotels, and Marcus Management in an amount to be shown by proof at trial.

**COUNT EIGHT  
TORTIOUS INTERFERENCE AGAINST MARCUS  
DEVELOPMENT AND MARCUS HOTELS**

119. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

120. Plaintiffs plead this count in the alternative, in the event that the Court determines that Marcus is not the alter ego of Defendant Platinum.

121. The 2004 Condominium Documents executed by the Plaintiffs were valid and binding contracts for the purchase of Platinum Condominiums at the specified prices. Marcus had actual knowledge of the existence of the 2004 Condominium Documents.

122. On information and belief, Marcus directed and controlled the decision by Platinum to breach materially the 2004 Purchase Agreements and other 2004 Condominium Documents at the time of the closings for the Platinum Units in 2006.

123. Marcus had actual knowledge that Platinum's actions in 2006, in violation of the 2004 Condominium Documents, were wrongful; that Platinum had a preexisting duty to perform as required by the 2004 Condominium Documents; and that the 2006 Condominium Documents were without any legal consideration and were otherwise illegal, void and without force and effect.



124. Plaintiffs further allege that Marcus had a specific wrongful economic motive to cause and direct Platinum to breach materially the 2004 Condominium Documents based upon increasing Marcus's interest in the Platinum Project. Specifically, Marcus had an economic interest in wrongfully acquiring control over the Common Elements, the right to manage the Platinum hotel operations, and purported ownership and control.

125. The Marcus Defendants' tortious interference, as alleged herein, was without any justification and was oppressive, fraudulent and malicious. Accordingly, Plaintiffs are entitled to an award of punitive damages as well as reasonable attorneys' fees and costs.

**COUNT NINE**  
**CIVIL CONSPIRACY AGAINST ALL DEFENDANTS**

126. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

127. In executing the 2004 Condominium Documents, Plaintiffs conferred substantial benefits upon the Defendants. Plaintiffs allege, upon information and belief, that Defendants have conspired among themselves and with others to wrongfully breach the 2004 Purchase Agreements as alleged herein.

128. Defendants, along with other third parties, by acting in concert and conspiracy, have attempted to accomplish and have accomplished the unlawful objective of violating Plaintiffs' rights by breaching the 2004 Condominium Documents and by engaging in the wrongful tortious interference with Plaintiffs' contractual rights, as alleged herein. Such conspiracy has been without justification and oppressive, fraudulent and malicious. Accordingly, Plaintiffs are entitled to an award of punitive damages as well as reasonable attorneys' fees and costs.

**COUNT TEN**  
**ALTER EGO, JOINT VENTURE, AGENCY AND RATIFICATION LIABILITY OF**  
**PLATINUM, MARCUS DEVELOPMENT, MARCUS MANAGEMENT AND MARCUS**  
**HOTELS**

129. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

130. As alleged herein, Platinum and Marcus were alter egos of one another with respect to the Platinum Project. Accordingly, Marcus is liable for the wrongful acts by Platinum.

131. In addition, Marcus acted as a de facto joint venturer along with present non-party DREC in the Platinum Project and is fully liable for the wrongful conduct of Platinum as a joint venturer.

132. Marcus directed and controlled the wrongful actions of Platinum as its agent. Accordingly, such wrongful actions are imputable to Marcus as the principal.

133. Further, Marcus, on information and belief, ratified the wrongful actions of Platinum as alleged herein, including the material breach of the 2004 Condominium Documents.

134. In addition, under the applicable circumstances, namely, Marcus Development's status and actions as the sole member of Platinum, and Marcus Hotels' status and actions as the sole member of Marcus Development, these Marcus Defendants are liable for the wrongful actions of Platinum.

135. In addition, Marcus Hotels is liable for the wrongful actions of Marcus Management under the Rental Agreements and otherwise in its improper management of the Platinum.

136. Accordingly, the Plaintiffs have suffered economic injury entitling them to an award of compensatory damages in such amount as proof at trial may show.

**COUNT ELEVEN**  
**ACCOUNTING AND CONSTRUCTIVE TRUST AGAINST ALL DEFENDANTS**

137. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

138. Defendants have failed to account properly and to pay for rental income due to the Plaintiffs and other Unit Owners.

139. In addition, Defendants have overcharged Plaintiffs and other Unit Owners for common expenses and have failed to account properly for such charges.

140. As a result of the underpayment of rental income due to Plaintiffs and other Unit Owners and the overcharges for common expenses, Plaintiffs are entitled to a full and complete accounting regarding rents and common expense charges.

141. In addition, Plaintiffs are entitled to compose a constructive trust on the rental income held by Defendants pending such accounting.

**COUNT TWELVE**  
**BREACH OF CONTRACT AS TO MARCUS, MARCUS DEVELOPMENT**  
**AND MARCUS HOTELS MANAGEMENT**

142. Plaintiffs restate and incorporate herein by reference the foregoing allegations of the Complaint.

143. Marcus, Marcus Development and Marcus Management have breached the Rental Agreements, as alleged herein, by failing to rotate properly Units owned by Plaintiffs for rental, by improperly calculating rental amounts due to Plaintiffs, by withholding payment of Rental Amounts payable to Plaintiffs and by otherwise failing to pay the appropriate 50% share of rental income to Plaintiffs as provided by the applicable Rental Agreements.

144. In addition, Marcus Hotels, Marcus Development, and Marcus Management have failed to properly promote and market Platinum as a "high-end" property as required by the applicable 2004 CCR and the above-discussed representation of the Sales Agents and Marcus.

WHEREFORE, Plaintiffs demand judgment against Defendants, each of them, jointly and severally for (a) general and compensatory damages in excess of \$75,000.00, exclusive of interest and costs; (b) special damages according to proof at trial; (c) punitive and exemplary damages according to proof at trial; (d) attorneys' fees; (e) cost of suit; (f) statutory damages, costs and attorneys' fees as available under Nevada law; and (g) for such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiffs respectfully demand a trial by a jury of all issues so triable.

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Dated this 17th day of July, 2009.

/s/ Jonathan H. Waller, Nevada Bar No. 5538

Jonathan H. Waller, Nevada Bar No. 5538

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