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Attorneys for **Plaintiff, THE M RESORT, LLC, a Nevada limited liability company**

DISTRICT COURT

CLARK COUNTY, NEVADA

THE M RESORT LLC, a Nevada limited liability company, Plaintiff, *vs.* STATE OF NEVADA ex rel. THE LEGISLATURE OF THE 26th SPECIAL SESSION OF THE STATE OF NEVADA; THE HONORABLE JAMES A. GIBBONS, in his official capacity as Governor of the State of Nevada; THE HONORABLE KATE MARSHALL, in her official capacity as Treasurer of the State of Nevada; THE HONORABLE KIM R. WALLIN, in her official capacity as Controller of the State of Nevada; CLEAN WATER COALITION, a Nevada joint powers authority; DOES 1-100, inclusive; and ROE CORPORATIONS 1-100, inclusive, Defendants.	Case No. Dept. No. **COMPLAINT FOR INJUNCTIVE AND DECLARTORY RELIEF AND FOR DAMAGES** **(Arbitration Exemption: Damages in Excess of $50,000.00 and Injunctive and Declaratory Relief Sought)**

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COMES NOW, THE M RESORT, LLC, a Nevada limited liability company (hereinafter "THE M RESORT" or "Plaintiff"), by and through its attorneys, Kaempfer Crowell Renshaw Gronauer & Fiorentino (hereinafter "Kaempfer Crowell"), and for its complaint against Defendants, STATE OF NEVADA ex rel. THE LEGISLATURE OF THE 26th SPECIAL SESSION OF THE STATE OF NEVADA (hereinafter, the "LEGISLATURE"), THE HONORABLE JAMES A. GIBBONS, in his official capacity as Governor of the State of Nevada (hereinafter "GOVERNOR GIBBONS"), THE HONORABLE KATE MARSHALL, in her official capacity as Treasurer of the State of Nevada (hereinafter "TREASURER MARSHALL"), THE HONORABLE KIM R. WALLIN, in her official capacity as Controller of the State of Nevada (hereinafter "CONTROLLER WALLIN"), the CLEAN WATER COALITION, a Nevada joint powers authority, (hereinafter the "CLEAN WATER COALITION" or "CWC"), DOES 1-100, inclusive, and ROE CORPORATIONS 1-100, inclusive, alleges and complains as follows:

INTRODUCTION

The CLEAN WATER COALITION is tasked with the responsibility to propose, plan, and execute projects for the purpose of maintaining and improving water quality and efficiency on behalf of Clark County and the cities therein. In order to fund its efforts toward this responsibility, the CLEAN WATER COALITION imposes regional fees for sewer connection and usage. The regional fees are paid exclusively by those connecting to and using wastewater systems in Clark County and cities within Clark County. Among thousands of others, THE M RESORT paid such fees to the CLEAN WATER COALITION. No Nevadan, other than those who utilize sewer services in Clark County, is obligated to provide funds to the CLEAN WATER COALITION. The regional fees are spent and, legally, can *only* be spent by the

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CLEAN WATER COALITION in furtherance of clean water projects for the benefit of the users who fund the CLEAN WATER COALITION.

The LEGISLATURE has enacted a law which would sweep $62,000,000 out of the CLEAN WATER COALITION and into the State's General Fund. Once in the General Fund, the CLEAN WATER COALITION would have no rights in the money and no control over the manner in which it was spent. The confiscation of the CLEAN WATER COALITION's funds is an unconstitutional taking of private property, an unconstitutional impairment of contractual obligations, violates the Equal Protection Clause of the United States Constitution and Nevada's constitutional mandate of uniform and equal taxation and assessment, and contravenes fundamental principles of law and equity.

A tax is a tax. And a fee is a fee. A tax is a generalized assessment which funds generalized functions beneficial to all while fees are specific assessments designed to pay for specific functions benefiting those who pay the fee. The legislation at issue discards the distinction and converts fees paid by a subset of Nevadans into a *de facto* tax. More importantly, the legislation virtually obliterates any ability of the CLEAN WATER COALITION to fulfill its function—to fulfill the *only* function for which the fees can be spent. The law is invalid. The funds must remain with the CLEAN WATER COALITION or, if they are not to be used to perform the functions for which they were paid, the fees must be refunded.

GENERAL ALLEGATIONS

Parties, Venue and Background

1. Plaintiff, THE M RESORT, is now and at all times relevant herein is a Nevada limited liability company organized, existing and operating under the laws of the State of Nevada. THE M RESORT is duly licensed, qualified and authorized to conduct business in the City of Henderson, County of Clark, State of Nevada as a limited liability company.

2. Defendant, the LEGISLATURE, is the holder of the legislative authority of the State of Nevada. The LEGISLATURE convened the 26th Special Session of the Nevada Legislature on February 23, 2010, and adjourned *sine die* on March 1, 2010.

3. Defendant, GOVERNOR GIBBONS, is named herein in his official capacity as the duly elected Governor of the State of Nevada.

4. Defendant, TREASURER MARSHALL, is named herein in her official capacity as the duly elected Treasurer of the State of Nevada.

5. Defendant, CONTROLLER WALLIN, is named herein in her official capacity as the duly elected Controller of the State of Nevada. In her capacity as Controller, CONTROLLER WALLIN is the ex officio State Fiscal Officer of the State of Nevada and the custodian of the General Fund of the State of Nevada.

6. Defendant, the CLEAN WATER COALITION, is a legal entity created, organized and operating by and through an interlocal agreement (hereinafter the "Original Interlocal Agreement") adopted by public agencies pursuant to the provisions of Sections 277.080 through 277.180 of Nevada Revised Statutes, which statutes are commonly known as the Interlocal Cooperation Act.

7. The principal place of business of the CLEAN WATER COALITION is in the County of Clark, State of Nevada.

8. THE M RESORT is informed and believes and based thereon alleges that the CLEAN WATER COALITION was created on or about November 20, 2002.

9. THE M RESORT is informed and believes and based thereon alleges that the parties to the Original Interlocal Agreement which created the CLEAN WATER COALITION were the Clark County Sanitation District, the City of Las Vegas, and the City of Henderson.

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10. On or about May 23, 2006, the CLEAN WATER COALITION approved an amended interlocal agreement (hereinafter the "Amended Interlocal Agreement") which modified and restated the Original Interlocal Agreement and added the City of North Las Vegas as a party to the Amended Interlocal Agreement.

11. The Amended Interlocal Agreement was subsequently submitted to the governing bodies of the prospective parties to the Amended Interlocal Agreement, which were the Clark County Water Reclamation District, the City of Las Vegas, the City of North Las Vegas, and the City of Henderson. The parties to the Amended Interlocal Agreement are referred to hereinafter collectively as the "Members." A true and correct copy of the Amended Interlocal Agreement as submitted to the Members is attached hereto, marked as Exhibit 1 and incorporated herein by reference.

12. The Clark County Water Reclamation District is now and at all times relevant herein was a "public agency" as that term is defined by NRS 277.100.

13. The City of Las Vegas is now and at all times relevant herein was a "public agency" as that term is defined by NRS 277.100.

14. The City of North Las Vegas is now and at all times relevant herein was a "public agency" as that term is defined by NRS 277.100.

15. The City of Henderson is now and at all times relevant herein was "public agency" as that term is defined by NRS 277.100.

16. On or between approximately May 23, 2006 and September 8, 2006, all Members approved and adopted the Amended Interlocal Agreement.

17. THE M RESORT is informed and believes and based thereon alleges that on or about September 8, 2006, a duly authorized Deputy Attorney General of the Attorney General's

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Office of the State of Nevada executed the Amended Interlocal Agreement approving its form and legality pursuant to NRS 277.140.

18. THE M RESORT is informed and believes and based thereon alleges that the effective date of the Amended Interlocal Agreement is September 8, 2006.

19. Defendants DOES 1-100, inclusive, are not known at this time and are therefore identified by the fictitious designation of DOES 1-100. Defendants ROE CORPORATIONS 1-100, inclusive, are not known at this time and are therefore identified by the fictitious designation of ROE CORPORATIONS 1-100. Once the true identities and capacities, whether individual, corporate, associate or otherwise, of Defendants named herein as DOES 1-100, inclusive, and ROE CORPORATIONS 1-100, inclusive, are known, Plaintiff will ask leave of this Court to amend this *Complaint for Injunctive and Declaratory Relief and for Damages* to insert the true names and capacities of DOES 1-100, and ROE CORPORATIONS 1-100 and join said Defendants in this action; Plaintiff is informed and believes, and thereon alleges, that each of the Defendants designated herein as DOE or ROE CORPORATION are responsible in some manner for the events and happenings referred to herein and caused damages to Plaintiff as herein alleged.

General Allegations Common to All Claims for Relief

20. THE M RESORT repeats and incorporates by reference each and every allegation contained in Paragraphs 1 through 19 above as though fully set forth herein.

21. The terms of the Amended Interlocal Agreement establish and define the lawful authority of the CLEAN WATER COALITION.

22. Section II of the Amended Interlocal Agreement is entitled "**Conferred and Prohibited Functions of CWC**".

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23. Subsection 2.1 of the Amended Interlocal Agreement identifies a conferred function of the CLEAN WATER COALITION and provides:

> 2.1 **Conferred Functions:** To undertake implementation of all aspects of the Systems Conveyance and Operations Program ("SCOP") as may be approved by the Governing Boards of each Member and by the Board of the CWC as provided in this Amended Agreement.

24. Subparagraph 2.1.1 defines the Systems Conveyance and Operations Program and provides:

> 2.1.1 SCOP means the planning, designing, financing, construction, and operation and maintenance of a regional system for the conveyance of Effluent from existing and future Wastewater Treatment Facilities, to the ultimate outfall location(s) returning Effluent to the Colorado River System or other locations as the CWC Members approve. The regional system may include the following:
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> (a) Physical facilities such as pipelines, tunnels, energy recovery facilities, and all appurtenant structures.
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> (b) Real and personal property, including leases of the same, rights-of-way permits, and licenses associated with the regional system facilities, including environmental impact statements.
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> (c) Any other regional system facilities associated with the treatment and conveyance of Effluent, downstream of the discharge point of the Member's treatment facilities.
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> (d) Any other such items as listed in Paragraphs (a) through (c) of this section 2.1.1 that the Members may include within the SCOP.

25. Subparagraph 2.1.2 identifies a conferred function of the CLEAN WATER COALITION and provides:

> 2.1.2 To manage the Effluent flowing through CWC facilities.

26. Subparagraph 2.1.3 identifies a conferred function of the CLEAN WATER COALITION and provides:

> 2.1.3 To enter into contracts for the sale or lease of power produced from energy recovery facilities which may constructed as part of the CWC Facilities.

27. Subsection 23.8 of the Amended Interlocal Agreement defines "Effluent" as "treated wastewater."

28. The Members have conferred no lawful authority upon the CLEAN WATER COALITION to engage in any other function except for those functions specifically identified in subsection 2.1 of the Amended Interlocal Agreement, including subparagraph 2.1.1 and 2.1.1 (a) through 2.1.1 (d), subparagraph 2.1.2, and subparagraph 2.1.3. The functions specifically identified in subsection 2.1 of the Amended Interlocal Agreement are hereinafter referred to as the "Conferred Functions."

29. Subsection 2.2 of the Amended Interlocal Agreement identifies the prohibited functions of the CLEAN WATER COALITION and provides:

> 2.2 **Prohibited Functions:** Any function which is not a conferred function is a prohibited function.

30. The functions identified in subsection 2.2 of the Amended Interlocal Agreement are hereinafter referred to as the "Prohibited Functions."

31. As of the effective date of the Amended Interlocal Agreement, the Systems Conveyance and Operations Program consisted of a proposal to plan, permit, design, construct and operate facilities to collect treated wastewater from the treatment facilities of the Members and transport the treated wastewater for release into Lake Mead at a deep-water location near the Boulder Islands returning it to the Colorado River System.

32. In furtherance of the CLEAN WATER COALITION's performance of its Conferred Functions, the Members, by and through the Amended Interlocal Agreement, authorized the CLEAN WATER COALITION to "establish and adjust regional sewer connection charges and/or regional sewer user charges to defray all or any portion of the costs of CWC."

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33. Subparagraph 12.2.2 of the Amended Interlocal Agreement established the CLEAN WATER COALITION's regional fees and provides:

> 12.2.2 Regional fees.
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> 12.2.2.1 Initial sewer connection charges will be assessed at $800 per Equivalent Residential Unit (ERU) effective October 1, 2006. The CWC ERU charges are as defined within Attachment 1. Sewer connection charges will increase by 1.5% every six months, beginning July 1, 2007, and continue through January 1, 2009.
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> 12.2.2.2 Initial sewer usage charges will be assessed at $0.105 per thousand gallons of Influent. Influent data will be used as reported to the Clark County Sewage and Wastewater Advisory Committee (SWAC) or as otherwise agreed to by the Board. Usage charges will be effective July 1, 2007.

34. For purposes of the Amended Interlocal Agreement, the term "Equivalent Residential Unit" means "the equivalent amount of wastewater produced by a single family residence."

35. For purposes of the Amended Interlocal Agreement, the term "Influent" means untreated wastewater.

36. For purposes of the Amended Interlocal Agreement, the term "Board" means "the Management Board" of the CLEAN WATER COALITION.

37. Each of the Members was responsible for collecting the regional fees imposed pursuant to subparagraph 12.2.2 of the Amended Interlocal Agreement and conveying those fees to the CLEAN WATER COALITION.

38. Subparagraph 12.2.2.4 reserved the Members' discretion as to the method by which it satisfied the Amended Interlocal Agreement's funding obligations, and provides:

> 12.2.2.4 Each Member shall determine, in its sole judgment, the method it chooses to raise funds needed to satisfy its obligations hereunder.

39. The City of Henderson does now and at all times relevant herein has included its

funding obligations to the CLEAN WATER COALITION as a portion of the connection and usage fees charged to users of its wastewater services.

40. Section 14.18.020(A) of the Henderson Municipal Code provides and at all times relevant herein has provided:

> A. Per Article II, Section 2.280(c) of the Henderson City Charter, the Henderson city council shall fix charges and rates for water and wastewater services.

41. Section 14.18.020(F) of the Henderson Municipal Code provides and at all times relevant herein has provided:

> F. All fees and charges shall be paid to the city prior to issuance of the certificate of occupancy.

42. Section 15.01.370(A) of the Henderson Municipal Code prohibits the use or occupancy of any building or structure unless a Certificate of Occupancy has been issued by the City of Henderson's building and fire safety director or the director's designee.

43. Section 14.18.060 of the Henderson Municipal Code provides and at all times relevant herein provided:

> The Clean Water Coalition (CWC) consists of four member agencies, the city of Henderson, the city of Las Vegas, Clark County Water Reclamation District, and the city of North Las Vegas. The CWC is tasked to implement the systems conveyance and operations program (SCOP) to improve our community's water quality through construction of a seventeen mile pipeline that will carry high quality treated wastewater deep into Lake Mead. The SCOP project is funded through a combination of sewer connection and user charges. All member agencies of CWC have implemented these charges. The regional sewer connection charges for wastewater became effective on October 1, 2006. The regional sewer user charges for wastewater are effective July 1, 2007.

44. In or about late September of 2007, THE M RESORT commenced construction of the M Resort Spa and Casino on property situate in the City of Henderson, County of Clark, State of Nevada.

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45. The M Resort Spa and Casino is a hotel-casino development which includes 396 hotel rooms, a casino, meeting and event space, restaurants, spa facilities, lounges and bars within a 14-story tower as well as outdoor pool facilities and amenities.

46. On or about February 5, 2008, the City of Henderson and THE M RESORT entered in an agreement entitled "THE M RESORT DEVELOPMENT AGREEMENT Between THE CITY OF HENDERSON And THE M RESORT LLC" (hereinafter the "Development Agreement"). A true and correct copy of the Development Agreement is attached hereto, marked as Exhibit 2 and incorporated herein by reference. A true and correct copy of the minutes reflecting the Henderson City Council's adoption of the Development Agreement is attached hereto, marked as Exhibit 3 and incorporated herein by reference.

47. Subparagraph 6.1(d) of Section 6 of the Development Agreement provides:

> (d) All other fees shall be paid in accordance with the Henderson Municipal Code (HMC) Title 14 and the City of Henderson Department of Utility Services Service Rules. These fees shall include other special refunding agreement reimbursements for the ... Clean Water Coalition fees.

48. Pursuant to the provisions of the Henderson Municipal Code and/or the Development Agreement, the City of Henderson charged THE M RESORT assessments directly and specifically attributable to the regional fees of the CLEAN WATER COALITION for the initial sewer connections related to the construction of the M Resort Spa and Casino.

49. On or between May 19, 2009 and September 28, 2009, THE M RESORT tendered payments in the approximate amount of $1,525,833.00 to the City of Henderson for the initial sewer connection fees directly and specifically attributable to the regional fees of the CLEAN WATER COALITION related to the construction of the M Resort Spa and Casino (hereinafter the "CLEAN WATER COALITION payments").

50. The City of Henderson received the CLEAN WATER COALITION payments.

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51. THE M RESORT is informed and believes and based thereon alleges that the City of Henderson tendered the CLEAN WATER COALITION payments to the CLEAN WATER COALITION.

52. On or about February 28, 2010, Assembly Bill 6 (hereinafter "AB 6") was introduced in the 26th Special Session of the Nevada Legislature.

53. On or about February 28, 2010, the Assembly of the 26th Special Session of the Nevada Legislature passed and approved AB 6.

54. On or about March 1, 2010, the Senate of the 26th Special Session of the Nevada Legislature passed and approved AB 6.

55. THE M RESORT is informed and believes and based thereon alleges that on March 12, 2010, GOVERNOR GIBBONS signed and approved AB 6. On further information and belief, when GOVERNOR GIBBONS agreed to sign and approve AB 6, it was with the understanding that the LEGISLATURE had sought and received the consent and approval of the CLEAN WATER COALITION and its Members regarding the transfer of CLEAN WATER COALITION payments to the General Fund of Nevada and was based on the representation that said transfer was legally permissible.

56. On March 12, 2010, AB 6 became a law of the State of Nevada.

57. Section 18 of AB 6 provides:

> 1. The Legislature finds and declares that:
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> ...
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> (c) A general law cannot be made applicable to the provisions of this section because of special circumstances.
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> 2. On March 12, 2010, or such other day as is mutually agreed upon by the Clean Water Coalition and the State Treasurer, the Clean Water Coalition shall transfer to the State of Nevada securities and cash which together total $62,000,000, for deposit in the State General Fund for unrestricted General Fund use.

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FIRST CLAIM FOR RELIEF

(Taking Under Article I, Section 8 of Nevada Constitution)

(LEGISLATURE; GOVERNOR GIBBONS; TREASURER MARHSALL; CLEAN WATER COALITION)

58. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 57 as though fully set forth herein.

59. Article I, Section 8 of the Nevada Constitution prohibits the taking of private property for public use without just compensation.

60. THE M RESORT tendered the CLEAN WATER COALITION payments.

61. The CLEAN WATER COALITION payments were paid with money that was the private property of THE M RESORT.

62. The CLEAN WATER COALITION payments must be utilized by the CLEAN WATER COALITION in furtherance of a Conferred Function of the CLEAN WATER COALITION.

63. Section 18 of AB 6 mandates the transfer of the CLEAN WATER COALITION payments to the General Fund of the State of Nevada for unrestricted General Fund use.

64. The CLEAN WATER COALITION has no lawful custodial right to money in the General Fund of the State of Nevada.

65. The CLEAN WATER COALITION has no lawful control over the expenditure of money from the General Fund of the State of Nevada.

66. The transfer of the CLEAN WATER COALITION payments to the General Fund of the State of Nevada is a Prohibited Function of the CLEAN WATER COALITION.

67. THE M RESORT has not received just compensation for the transfer of the CLEAN WATER COALITION payments to the General Fund of the State of Nevada.

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68. The taking effectuated by the LEGISLATURE, GOVERNOR GIBBONS, TREASURER MARSHALL, and the CLEAN WATER COALITION, or any of them, has proximately caused damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

69. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

SECOND CLAIM FOR RELIEF

(Taking Under Amendment V of the United States Constitution)

(LEGISLATURE; GOVERNOR GIBBONS; TREASURER MARHSALL; CLEAN WATER COALITION)

70. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 69 as though fully set forth herein.

71. The Fifth Amendment to the United States Constitution prohibits the taking of private property for public use without just compensation.

72. THE M RESORT tendered the CLEAN WATER COALITION payments.

73. The CLEAN WATER COALITION payments were paid with money that was the private property of THE M RESORT.

74. The CLEAN WATER COALITION payments must be utilized by the CLEAN WATER COALITION in furtherance of a Conferred Function of the CLEAN WATER COALITION.

75. Section 18 of AB 6 mandates the transfer of the CLEAN WATER COALITION payments to the General Fund of the State of Nevada for unrestricted General Fund use.

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76. The CLEAN WATER COALITION has no lawful custodial right to money in the General Fund of the State of Nevada.

77. The CLEAN WATER COALITION has no lawful control over the expenditure of money from the General Fund of the State of Nevada.

78. The transfer of the CLEAN WATER COALITION payments to the General Fund of the State of Nevada is a Prohibited Function of the CLEAN WATER COALITION.

79. THE M RESORT has not received just compensation for the transfer of the CLEAN WATER COALITION payments to the General Fund of the State of Nevada.

80. The taking effectuated by the LEGISLATURE, GOVERNOR GIBBONS, TREASURER MARSHALL, and the CLEAN WATER COALITION, or any of them, has proximately caused damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

81. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

THIRD CLAIM FOR RELIEF

(Imposition of Non-Uniform and Unequal Taxation and Assessment in Violation of Article 10, Section 1 of the Nevada Constitution)

(LEGISLATURE; GOVERNOR GIBBONS)

82. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 81 as though fully set forth herein.

83. Article 10, Section 1 of the Nevada Constitution requires the Nevada Legislature to provide "for a uniform and equal rate of assessment and taxation."

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84. Section 18 of AB 6 imposes a *de facto* tax upon THE M RESORT by confiscating the CLEAN WATER COALITION payments and diverting them to the General Fund of the State of Nevada for unrestricted General Fund use.

85. The *de facto* tax imposed by Section 18 of AB 6 is non-uniform and unequal in its effect as it applies only to THE M RESORT and other developers of property in Clark County, the City of Las Vegas, the City of North Las Vegas, and the City of Henderson and not to any other similarly situated person or entity in the State of Nevada.

86. The *de facto* tax imposed by Section 18 of AB 6 is non-uniform and unequal in its effect as it applies only to THE M RESORT and other users of the sewer systems in Clark County, the City of Las Vegas, the City of North Las Vegas, and the City of Henderson and not to any other similarly situated person or entity in the State of Nevada.

87. The non-uniform and unequal tax imposed by the LEGISLATURE and approved by GOVERNOR GIBBONS on THE M RESORT has proximately caused damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

88. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

FOURTH CLAIM FOR RELIEF

(Denial of Equal Protection in Violation of Section 1 of Amendment XIV to the United States Constitution)

(LEGISLATURE; GOVERNOR GIBBONS)

89. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 88 as though fully set forth herein.

90. The Fourteenth Amendment to the United States Constitution prohibits a State from denying equal protection of its laws to any person within its jurisdiction.

91. Section 18 of AB 6 imposes a *de facto* tax upon THE M RESORT by seizing the CLEAN WATER COALITION payments and depositing them in the State General Fund for unrestricted General Fund use.

92. The *de facto* tax imposed by Section 18 of AB 6 is non-uniform and unequal in its effect as it applies only to THE M RESORT and other developers of property in Clark County, the City of Las Vegas, the City of North Las Vegas, and the City of Henderson and not to any other person or entity in the State of Nevada.

93. The *de facto* tax imposed by Section 18 of AB 6 is non-uniform and unequal in its effect as it applies only to THE M RESORT and other users of the sewer systems in Clark County, the City of Las Vegas, the City of North Las Vegas, and the City of Henderson and not to any other similarly situated person or entity in the State of Nevada.

94. The denial of THE M RESORT's equal protection of the law by the LEGISLATURE and GOVERNOR GIBBONS or either of them has proximately caused damages to THE M RESORT in an amount to date in excess of ten thousand dollars ($10,000.00).

95. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

FIFTH CLAIM FOR RELIEF

(Breach of Contract – Third Party Beneficiary)

(CLEAN WATER COALITION)

96. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 95 as though fully set forth herein.

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97. THE M RESORT is and at all times relevant herein was an intended beneficiary of the Amended Interlocal Agreement by and between the CLEAN WATER COALITION and the Members.

98. In tendering the CLEAN WATER COALITION payments, THE M RESORT relied upon the performance of the terms of the Amended Interlocal Agreement by the CLEAN WATER COALITION.

99. The reliance of THE M RESORT on the CLEAN WATER COALITION's performance of the terms of the Amended Interlocal Agreement was actually known by the CLEAN WATER COALITION.

100. The reliance of THE M RESORT on the CLEAN WATER COALITION's performance of the terms of the Amended Interlocal Agreement was foreseeable.

101. THE M RESORT or the City of Henderson or both completed or caused to be completed each and every condition precedent to the performance of the obligations of the Amended Interlocal Agreement by the CLEAN WATER COALITION.

102. Section 18 of AB 6 prevents the CLEAN WATER COALITION from performing material obligations of the Amended Interlocal Agreement.

103. The breach of the Amended Interlocal Agreement by the CLEAN WATER COALITION has proximately caused damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

104. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

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SIXTH CLAIM FOR RELIEF

(Impairment of Obligation of Contract in Violation of Article I, Section 15 of the Nevada Constitution)

(LEGISLATURE; GOVERNOR GIBBONS)

105. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 104 as though fully set forth herein.

106. Article I, Section 15 of the Nevada Constitution states that, "No ... law impairing the obligation of contracts shall ever be passed."

107. The Amended Interlocal Agreement is now and at all times relevant herein was a valid and legally enforceable contract between the CLEAN WATER COALITION and the Members.

108. The Amended Interlocal Agreement obligates the Members to tender payments to the CLEAN WATER COALITION.

109. The Amended Interlocal Agreement obligates the CLEAN WATER COALITION to utilize funds tendered by Members in furtherance of Conferred Functions.

110. The Amended Interlocal Agreement prohibits the CLEAN WATER COALITION from utilizing funds tendered by Members in furtherance of Prohibited Functions.

111. Section 18 of AB 6 mandates the transfer of the CLEAN WATER COALITION funds to the General Fund of the State of Nevada for unrestricted General Fund use.

112. The CLEAN WATER COALITION has no lawful custodial right to money in the General Fund of the State of Nevada.

113. The CLEAN WATER COALITION has no lawful control over the expenditure of money from the General Fund of the State of Nevada.

114. The CLEAN WATER COALITION cannot utilize funds transferred to the General Fund of the State of Nevada in furtherance of its Conferred Functions.

115. The transfer of the CLEAN WATER COALITION payments to the General Fund of the State of Nevada is a Prohibited Function of the CLEAN WATER COALITION.

116. Section 18 of AB 6 impairs the CLEAN WATER COALITION's obligations required by the Amended Interlocal Agreement.

117. The impairment of the CLEAN WATER COALITION's obligations under the Amended Interlocal Agreement by the LEGISLATURE or GOVERNOR GIBBONS or both has proximately caused damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

118. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

SEVENTH CLAIM FOR RELIEF

(Impairment of Obligation of Contract in Violation of Article I, Section 10 of the United States Constitution)

(LEGISLATURE; GOVERNOR GIBBONS)

119. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 118 as though fully set forth herein.

120. Article I, Section 10 of the United States Constitution provides that "No State shall ... pass any ... Law impairing the Obligation of Contracts."

121. The Amended Interlocal Agreement is now and at all times relevant herein was a valid and legally enforceable contract between the CLEAN WATER COALITION and the Members.

122. The Amended Interlocal Agreement obligates the Members to tender payments to the CLEAN WATER COALITION.

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123. The Amended Interlocal Agreement obligates the CLEAN WATER COALITION to utilize funds tendered by Members in furtherance of Conferred Functions.

124. The Amended Interlocal Agreement prohibits the CLEAN WATER COALITION from utilizing funds tendered by Members in furtherance of Prohibited Functions.

125. Section 18 of AB 6 mandates the transfer of the CLEAN WATER COALITION funds to the General Fund of the State of Nevada for unrestricted General Fund use.

126. The CLEAN WATER COALITION has no lawful custodial right to money in the General Fund of the State of Nevada.

127. The CLEAN WATER COALITION has no lawful control over the expenditure of money from the General Fund of the State of Nevada.

128. The CLEAN WATER COALITION cannot utilize funds transferred to the General Fund of the State of Nevada in furtherance of its Conferred Functions.

129. The transfer of the CLEAN WATER COALITION payments to the General Fund of the State of Nevada is a Prohibited Function of the CLEAN WATER COALITION.

130. Section 18 of AB 6 impairs the CLEAN WATER COALITION's obligations required by the Amended Interlocal Agreement.

131. The impairment of the CLEAN WATER COALITION's obligations under the Amended Interlocal Agreement by the LEGISLATURE or GOVERNOR GIBBONS or both has proximately caused damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

132. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

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EIGHTH CLAIM FOR RELIEF

(Constructive Trust)

(CLEAN WATER COALITION)

133. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 132 as though fully set forth herein.

134. A relationship of trust and confidence existed between THE M RESORT, the City of Henderson and the CLEAN WATER COALITION as to the CLEAN WATER COALITION payments.

135. THE M RESORT tendered the CLEAN WATER COALITION payments in reliance upon the CLEAN WATER COALITION's legal and contractual obligation to utilize the CLEAN WATE COALITION payments only in furtherance of Conferred Functions for the benefit of THE M RESORT and other payees of the regional fees of the CLEAN WATER COALITION.

136. THE M RESORT tendered the CLEAN WATER COALITION payments in reliance upon the legal and contractual prohibition on the utilization of the CLEAN WATER COALITION payments in furtherance of a Prohibited Function.

137. Upon receipt of the CLEAN WATER COALITION payments, the CLEAN WATER COALITION became the caretaker of the CLEAN WATER COALITION payments with the legal, equitable and contractual obligation to utilize the CLEAN WATER COALITION payments only in furtherance of Conferred Functions for the benefit of THE M RESORT and other payees of the regional fees of the CLEAN WATER COALITION.

138. The transfer of the CLEAN WATER COALITION payments to the General Fund of the State of Nevada for unrestricted General Fund use is not in furtherance of a Conferred Function of the CLEAN WATER COALITION.

139. If required by Section 18 of AB 6 to transfer the CLEAN WATER COALITION payments to the General Fund of the State of Nevada for unrestricted General Fund use, the retention of legal title to the CLEAN WATER COALITION payments by the CLEAN WATER COALITION would be inequitable.

140. The existence of a constructive trust is essential to the effectuation of justice.

141. If the CLEAN WATER COALITION is required by Section 18 of AB 6 to transfer the CLEAN WATER COALITION payments to the General Fund of the State of Nevada for unrestricted General Fund use, the retention of legal title to the CLEAN WATER COALITION payments by the CLEAN WATER COALITION proximately causes damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

142. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

NINTH CLAIM FOR RELIEF

(Conversion)

(All Defendants)

143. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 142 as though fully set forth herein.

144. THE M RESORT retained rights in the CLEAN WATER COALITION payments, including, but not necessarily limited to, the right to have the CLEAN WATER COALITION payments applied exclusively in furtherance of a Conferred Function of the CLEAN WATER COALITION, the right to have the CLEAN WATER COALITION payments not applied in furtherance of a Prohibited Function of the CLEAN WATER COALITION, and

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the right to have the CLEAN WATER COALITION payments refunded if they are not to be utilized in furtherance of a Conferred Function of the CLEAN WATER COALITION.

145. The requirements of Section 18 of AB 6 are a denial of and inconsistent with THE M RESORT's title or rights in the CLEAN WATER COALITION payments.

146. The requirements of Section 18 of AB 6 are in derogation, exclusion and/or defiance of THE M RESORT's title or rights in the CLEAN WATER COALITION payments.

147. The conversion of the CLEAN WATER COALITION payments by the Defendants, and each of them, has proximately caused damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

148. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein

TENTH CLAIM FOR RELIEF

(Constructive Fraud)

(LEGISLATURE; GOVERNOR GIBBONS)

149. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 148 as though fully set forth herein.

150. A relationship of trust and confidence existed between THE M RESORT and the CLEAN WATER COALITION as to the CLEAN WATER COALITION payments.

151. THE M RESORT tendered the CLEAN WATER COALITION payments in reliance upon the CLEAN WATER COALITION's legal and contractual obligation to utilize the CLEAN WATER COALITION payments only in furtherance of Conferred Functions for the benefit of THE M RESORT and other payees of the regional fees of the CLEAN WATER COALITION.

152. THE M RESORT tendered the CLEAN WATER COALITION payments in reliance upon the legal and contractual prohibition on the utilization of the CLEAN WATER COALITION payments in furtherance of a Prohibited Function.

153. The CLEAN WATER COALITION owes a legal and equitable duty to THE M RESORT to act in good faith in regard to the CLEAN WATER COALITION payments.

154. The LEGISLATURE or GOVERNOR GIBBONS or both have compelled the CLEAN WATER COALITION to breach its duty owed to THE M RESORT by confiscating the CLEAN WATER COALITION payments and diverting them in a manner which will prevent their expenditure in furtherance of the Conferred Functions and require their expenditure in furtherance of a Prohibited Function of the CLEAN WATER COALTION.

155. Section 18 of AB 6 has the practical effect of perpetrating a fraud upon THE M RESORT by utilizing money paid by THE M RESORT for a specific purpose to fund entirely different and unrelated purposes on behalf of entirely different and unrelated beneficiaries.

156. The conduct of the LEGISLATURE or GOVERNOR GIBBONS or either of them has proximately caused damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

157. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

ELEVENTH CLAIM FOR RELIEF

(Concert of Action)

(All Defendants)

158. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 157 as though fully set forth herein.

159. Section 18 of AB 6 compels the Defendants, and each of them, to act in concert or pursuant to a common design to confiscate the CLEAN WATER COALITION payments and divert them in a manner that will prevent them from being utilized in furtherance of a Conferred Function of the CLEAN WATER COALITION.

160. Section 18 of AB 6 compels the Defendants, and each of them, to act in concert or pursuant to a common design to confiscate the CLEAN WATER COALITION payments and divert them in a manner that will cause them to be expended in furtherance of a Prohibited Function of the CLEAN WATER COALITION.

161. The conduct of the Defendants, and each of them, has proximately caused damages to THE M RESORT in an amount in excess of ten thousand dollars ($10,000.00).

162. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

TWELFTH CLAIM FOR RELIEF

(Unjust Enrichment)

(LEGISLATURE; GOVERNOR GIBBONS; TREASURER MARSHALL; CONTROLLER WALLIN)

163. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 162 as though fully set forth herein.

164. The State of Nevada has unjustly acquired the CLEAN WATER COALITION payments against fundamental principles of justice or equity and good conscience.

165. The State of Nevada will be unjustly enriched if it is permitted to retain the CLEAN WATER COALITION payments without compensating THE M RESORT for the same.

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166. As a result of the State of Nevada's unjust acquisition of the CLEAN WATER COALITION payments by the LEGISLATURE, GOVERNOR GIBBONS, TREASURER MARSHALL, or CONTROLLER WALLIN, or all of them, THE M RESORT has been damaged in an amount in excess of ten thousand dollars ($10,000.00).

167. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

THIRTEENTH CLAIM FOR RELIEF

(Declaratory Judgment)

(All Defendants)

168. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 167 as though fully set forth herein.

169. THE M RESORT and Defendants have adverse interests and a justiciable controversy exists between them.

170. THE M RESORT has a legally protectable interest in this controversy by virtue of its payment of the CLEAN WATER COALITION payments and its rights therein.

171. The controversy before this Court is ripe for judicial determination because Section 18 of AB 6 compels TREASURER MARSHALL and the CLEAN WATER COALITION to take actions which adversely impact THE M RESORT and the actions of TREASURER MARSHALL and the CLEAN WATER COALITION are imminent.

172. Pursuant to Nevada's Uniform Declaratory Judgments Act, NRS 30.010 to NRS 30.160 inclusive, THE M RESORT seeks a declaration from this Court that Section 18 of AB 6 is void *ab initio* for the reasons set forth herein.

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173. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

FOURTEENTH CLAIM FOR RELIEF

(Injunctive Relief)

(TREASURER MARSHALL; CLEAN WATER COALITION)

174. THE M RESORT repeats, realleges and incorporates each and every allegation contained in Paragraphs 1 through 173 as though fully set forth herein.

175. THE M RESORT will suffer immediate, great and irreparable injury, loss or damage if TREASURER MARSHALL or the CLEAN WATER COALITION or both transfer or cause the transfer of $62,000,000 in cash and securities from the CLEAN WATER COALITION to the General Fund of the State of Nevada for unrestricted General Fund use.

176. THE M RESORT is entitled to restrain TREASURER MARSHALL or the CLEAN WATER COALITION or both from transferring or causing the transfer of $62,000,000 in cash and securities from the CLEAN WATER COALITION to the General Fund of the State of Nevada for unrestricted General Fund use.

177. The transfer of $62,000,000 in cash and securities from the CLEAN WATER COALITION to the General Fund of the State of Nevada for unrestricted General Fund use is imminent, is in violation of THE M RESORT's rights in the subject of this action, and tends to render any judgment in this matter ineffectual.

178. THE M RESORT seeks an order enjoining TREASURER MARSHALL and the CLEAN WATER COALITION, as well as those persons acting on their behalf or in active concert with them, from undertaking the following actions until such time as this Court rules on

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the declaratory relief requested by THE M RESORT and thereafter to the extent the Court deems appropriate:

a. Acting upon, implementing or acting under the color of authority conferred by Section 18 of AB 6; and

b. Proceeding to transfer funds from the CLEAN WATER COALITION to the General Fund of the State of Nevada.

179. THE M RESORT has been required to retain the services of Kaempfer Crowell to prosecute this *Complaint for Injunctive and Declaratory Relief and for Damages* and, therefore, is entitled to recover an award of reasonable attorneys' fees and costs of suit incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, THE M RESORT, prays for judgment as follows:

1. A declaratory judgment declaring that Section 18 of Assembly Bill 6 of the 26th Special Session of the Nevada Legislature is void *ab initio*;

2. The issuance of an injunction enjoining the enforcement or any act under the color of the authority of Section 18 of Assembly Bill 6 of the 26th Special Session of the Nevada Legislature;

3. Damages in an amount to be proven at trial;

4. For an award of attorneys' fees and costs; and

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5. For such other and further relief as deemed appropriate by this Court.

DATED this 12th day of March, 2010.

KAEMPFER CROWELL RENSHAW
GRONAUER & FIORENTINO

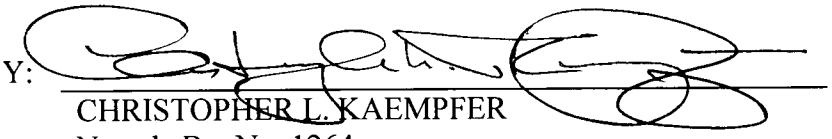
BY: 

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EXHIBIT 1

EXHIBIT 1

EXHIBIT A

AMENDED
INTERLOCAL COOPERATIVE AGREEMENT
ESTABLISHING THE CLEAN WATER COALITION

This Amended Agreement ("Amended Agreement") is dated the _____ day of_____, 2006, and is among the City of Las Vegas, City of Henderson, City of North Las Vegas, and the Clark County Water Reclamation District (formerly the Clark County Sanitation District), all of which are public agencies in the State of Nevada (the "Members").

RECITALS:

A. NRS 277.110 and 277.120 provide that any one or more public agencies may enter into agreement with any one or more other public agencies for the joint exercise of any power, privilege or authority exercised or capable of exercise by any one or more of the public agencies or for joint or cooperative action by the public agencies and may create a separate legal or administrative entity to conduct the joint or cooperative undertaking.

B. Each of the Members share a common environmental, economic and regulatory interest in the efficient and responsible collection, treatment, reuse and discharge of municipal Effluent.

C. The Members have a history of cooperatively working on programs and projects of common benefit and interest.

D. On November 20, 2002, the City of Las Vegas, the City of Henderson, and the Clark County Sanitation District entered into an Interlocal Cooperative Agreement ("Agreement") which formed the Clean Water Coalition, a political subdivision of the State of Nevada pursuant to NRS 277.110 and 277.120 for the purpose of planning, permitting, designing, constructing, and operating a Systems Conveyance and Operations Program (SCOP) to collect and convey treated Effluent from the respective Treatment Facilities of each agency to Lake Mead.

E. The City of North Las Vegas provides its citizens with Wastewater service and currently contracts with the City of Las Vegas and the Clark County Water Reclamation District for treatment services and, therefore, has no additional obligation for past SCOP costs.

F. In order to finance the design and construction of the SCOP facilities, it will be necessary to consider the establishment of regional sewer connection charges and regional sewer user charges ("Regional Fees") which will be collected from each of the Members.

NOW, THEREFORE, the Members agree as follows:

Section I
CWC Created

1.1 There was created a legal entity known as the "Clean Water Coalition" ("CWC") by interlocal agreement effective November 20, 2002, by and between the Clark County Sanitation District (now known as the Clark County Water Reclamation District), the City of Henderson, and the City of Las Vegas. This Amended Agreement is to amend the Agreement as set forth herein. This Amended Agreement completely restates the Agreement, and is by and between the Clark County Water Reclamation District, the City of Henderson, the City of Las Vegas, and the City of North Las Vegas. The CWC is established pursuant to the provisions of Chapter 277, NRS, is a political subdivision of the State of Nevada, and is an entity separate from its members pursuant to NRS 277.074 and NRS 277.120.

Section II
Conferred and Prohibited Functions of CWC

2.1 **Conferred Functions:** To undertake implementation of all aspects of the Systems Conveyance and Operations Program ("SCOP") as may be approved by the Governing Boards of each Member and by the Board of the CWC as provided in this Amended Agreement.

2.1.1 SCOP means the planning, designing, financing, construction, and operation and maintenance of a regional system for the conveyance of Effluent from existing and future Wastewater Treatment Facilities, to the ultimate outfall location(s) returning Effluent to the Colorado River system or other locations as the CWC Members approve. The regional system may include the following:

(a) Physical facilities such as pipelines, tunnels, energy recovery facilities, and all appurtenant structures.

(b) Real and personal property, including leases of the same, rights-of-way permits, and licenses associated with the regional system facilities, including environmental impact statements.

(c) Any other regional system facilities associated with the treatment and conveyance of Effluent, downstream of the discharge point of the Member's treatment facilities.

(d) Any other such items as listed in Paragraphs (a) through (c) of this section 2.1.1 that the Members may include within the SCOP.

2.1.2 To manage the Effluent flowing through CWC facilities.

2.1.3 To enter into contracts for the sale or lease of power produced from energy recovery facilities which may be constructed as part of the CWC Facilities.

2.2 **Prohibited Functions:** Any function which is not a conferred function is a prohibited function.

2.2.1 Except to the extent permitted by applicable law, the CWC shall not perform any function or exercise any power that is not performable or exercisable by at least one of the Members.

2.2.2 Except as provided herein with respect to Members, nothing in this Agreement is intended to supersede or restrict the jurisdiction of any federal, state, or local public entity.

2.2.3 CWC shall not perform any function that is being performed by a Member without written consent of such Member.

Section III
Powers

3.1 **Powers.** In furtherance of the Conferred Functions, and subject to the limitations thereof, the CWC shall have the power to undertake any of the following:

(a) To adopt and amend operating plans and procedures for all CWC activities.

(b) To adopt and amend Capital Improvement Plans.

(c) To adopt and amend Capital Budgets and Operating Budgets.

(d) To hire personnel, including legal counsel, and fix salaries and compensation for such personnel.

(e) To contract for the services of engineers, attorneys, planners, financial, and other consultants.

(f) To have and exercise the power of eminent domain throughout Clark County, Nevada.

(g) To contract with any Member or other public agency for the provision of services to or by the CWC.

(h) To enter into such contracts for design, construction, and other work as necessary to carry out its Conferred Functions and to exercise its powers.

(i) To open and maintain bank accounts and to deposit funds therein and withdraw funds therefrom.

(j) To sue and be sued in its own name.

(k) To acquire, outright or through installment purchase contracts, possess, own, lease, encumber, and dispose of outright or through installment sales contracts, real and personal property, including easements and rights of way.

(l) To obtain state, federal, or local licenses, permits, grants, loans, or aid from any agency of the United States, the State of Nevada, or any other

public or private entity necessary or convenient for the performance of any Conferred Function or the exercise of any of its powers.

(m) To finance the design, construction, operation, maintenance and replacement of all facilities which may be needed to carry out the Conferred Functions of this Agreement, including the establishment of equitable funding arrangements for all aspects of the development, construction, and operation of the SCOP, with full power to borrow money, incur debts, liabilities, and obligations, including the issuance of bonds, notes, or other evidences of indebtedness.

(n) To perform all other acts necessary or convenient for the performance of any Conferred Function or the exercise of any of its powers.

(o) To enter into contracts to produce revenue for the CWC.

(p) To assess Members for their agreed on share of administrative, operation, and maintenance and capital costs of the CWC.

(q) To establish and adjust regional sewer connection charges and/or regional sewer user charges to defray all or any portion of the costs of the CWC.

Section IV
Governing Board of CWC

4.1 The business and affairs of CWC shall be conducted and managed by a governing board, which shall be termed the Management Board ("Board"), which shall be subject to Nevada law pertaining to open meetings, if applicable.

4.2 The Board shall consist of one (1) representative from each Member signing this Amended Agreement, together with one (1) alternate representative from each Member. Each Member shall promptly designate its representative and alternate to the Board. Each representative and alternate shall hold office until the Member appointing such representative or alternate selects a successor and notifies the Board in writing of each successor's appointment. In the absence of a Member's representative, that Member's alternate shall act as its representative. A Member's representative and alternate shall be members of the governing board of such Member.

4.3 The officers of CWC shall consist of a Chairman, a Vice Chairman, and Secretary who shall be Members of the Board. The Board shall, at a meeting of the Board, which shall be held in December each year or at the next Board meeting if no meeting is held in December, elect the Chairman, Vice Chairman, and Secretary who shall serve until their successors are chosen. In the event an officer's appointment to the Board is terminated by the Member designating such officer, the Board shall select a replacement officer at its next meeting.

4.4 The Chairman shall conduct the meetings of the Board or, in his absence, the meetings shall be conducted by the Vice Chairman. The Secretary shall be responsible for keeping accurate minutes of all meetings of the Board.

4.5 The time and place of regular meetings of the Board shall be determined by the Board, but such meetings shall be held at least every three (3) months. Any member of the Board may call a meeting of the Board, provided each member and alternate is given at least seven (7) working days' written notice and notice in accordance with Nevada's open meeting law. The Members of the Board may waive notice in writing or by attendance at a meeting.

4.6 A quorum for the transaction of business by the Board shall be present if seventy-five percent (75%) of the Members are represented by their respective representatives or alternates.

4.7 The following actions of the Board require that there be unanimous consent of the representatives or alternates of all the Members:

(a) Approval and amendment of all Capital Improvement Plans.

(b) Approval of all Annual Capital Budgets and Annual Operating Budgets.

(c) Authorization to borrow money.

(d) Admission of a new member to the CWC.

(e) Termination of this Agreement.

(f) Dispute resolution pursuant to Section XX of this Amended Agreement.

(g) Determining the point of connection between CWC Facilities and new or additional facilities, which introduce additional Effluent into CWC's Facilities.

4.8 All other action of the Board shall be taken by majority vote of the Members of the Board.

4.9 The CWC shall notify each Member in writing pursuant to Section XXI of any proposed increase in Regional Fees not less than thirty (30) days prior to the Board meeting at which such increase is to be considered.

4.10 The Board may adopt Rules for conduct of the business of the Board. Such Rules shall include an obligation on each representative to submit information on a timely basis, as necessary, for annual or more frequent approvals of Operating Plans and Budgets.

Section V
Approval of Certain Matters by the Governing Boards of the Members

5.1 Except as provided in Subsection 5.2, the approval of the governing boards of each Member, in addition to action taken by the Board as required by this Amended Agreement, shall be required for the following actions:

(a) Approval and amendment of all Capital Improvement Plans.

(b) Approval and amendment of all Annual Operating Budgets and Annual Capital Budgets.

(c) Authorization to borrow money.

(d) Admission of new Members.

(e) Termination of this Agreement.

5.2 After the date established by the Board pursuant to the provisions of Paragraph 12.2.1, the approval of the governing boards of each Member shall not be required with respect to items (b) and (c) set forth above in Subsection 5.1 and items (b) and (c) set forth above in Subsection 4.7 shall no longer require unanimous consent of the representatives or alternates of all Board Members.

Section VI
Fiscal Year

6.1 The fiscal year of CWC shall be July 1 through June 30.

Section VII
Principal Office

7.1 The principal office of CWC shall be established by the Board.

Section VIII
Additional Members

8.1 In the event an entity other than the Members desires to become a Member ("New Member") of the CWC, such entity may become a Member on such terms and conditions as the Board shall prescribe, provided that the terms and conditions shall include, without limitation, the following provisions:

(a) That the NPDES permits of the Members will not be adversely affected by the proposed New Member using CWC Facilities.

(b) That the proposed New Member will assume its pro rata share of existing financial obligations of CWC in a manner acceptable to the Members. In the event each Member is jointly and severally liable for certain financial obligations of the CWC, the proposed New Member shall also assume joint and several liability in like manner as the existing Members.

(c) That the proposed New Member shall execute a copy of this Amended Agreement and all amendments hereto and shall agree to be bound by all provisions hereof.

(d) That the proposed New Member shall, concurrently with its execution of this Amended Agreement and all amendments hereto, pay its proportionate share of all cash obligations of the Members for the then current period.

(e) Any provision which may be appropriate as determined by the Board concerning purchase of an equity position in CWC.

8.2 Alternatively, in lieu of admitting an entity as a New Member, the Board may elect to accept such entity's Discharge through the CWC Facilities on such terms as the Board shall determine and for such charges as the Board shall determine, in its sole discretion, taking into account the Annual Capital Budget obligations, the Annual Operating Budget requirements, debt service, and any other matters the Board deems relevant. Any action by the Board pursuant to this Section shall include the provisions of Subparagraph (a) of Subsection 8.1, above.

Section IX
General Manager (formerly the Program Administrator)

9.1 The General Manager shall be the chief administrative officer of the CWC, shall be appointed by and serve at the pleasure of the Board, and shall be responsible to the Board for the proper and efficient administration of the CWC.

9.2 The Board shall review the performance and compensation of the General Manager annually.

9.3 Subject to the direction by the Board, and to such requirements as the Board may impose, the General Manager shall have the power:

(a) To plan, organize, and direct all CWC activities;

(b) Subject to law, to appoint and remove CWC employees;

(c) To enter into contracts on behalf of the CWC but only as approved by the Board for contracts which obligate the CWC to expend the sum of $25,000 or more; and

(d) To take such action and authorize such expenditures as specifically authorized by the Board.

Section X
Water Rights

10.1 Each Operating Member holds or has applied to the State Engineer for primary permits which cover the Discharge from their respective Treatment Facilities. Accordingly, it is the intent of the parties that each Operating Member shall own its proportionate share of the combined Discharge through the CWC Facilities subject to the provisions of this Amended Agreement until such time as the same is discharged into the Colorado River, at which time it is understood that the Discharge constitutes return flow to the river for which the State of Nevada is entitled to credit from the United States Secretary of Interior under existing contracts.

Section XI
Electric Energy and Other Revenue

11.1 Revenues received by the CWC from any source, including its own electrical energy production, shall be applied to the obligations and benefit of the CWC, as determined by the Board, and shall not inure to the benefit of any particular Member or Members or other entity.

Section XII
Fiscal Matters

12.1 **Annual Budgets.** Unless otherwise provided by law, tentative Annual Operating Budgets and Annual Capital Budgets shall be prepared for each ensuing fiscal year on or before March 15 with the final annual budgets being adopted on or before June 1 of each year.

12.1.1 The annual budgets shall be prepared in a line item format.

12.1.2 All Annual Operating Budgets and Annual Capital Budgets shall include all repayment obligations and long and short term contract obligations, which become payable during the period covered by such budgets.

12.1.3 The CWC shall not, during any fiscal year, expend or contract to expend any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts appropriated in the annual budgets for any category of expenditure, unless such expenditure is specifically approved by the Board.

12.2 **Assessment and Contributions for Operating and Capital Expenses.**

12.2.1 Until Regional Fees are in place to provide funding for CWC activities, the financial obligations of the CWC with respect to all Annual Operating Budgets and All Annual Capital Budgets shall be satisfied by the Members in the following percentages:

City of Las Vegas	30%
Clark County Water Reclamation District	46%
City of Henderson	14%
City of North Las Vegas	10%

After the date Regional Fees are in place and are providing funding for the CWC activities, including operating costs, debt reserves and debt funding, as such date is determined by the Board, the obligations of the Members to pay the costs of the CWC based on the percentages set forth in this paragraph shall cease.

12.2.2 Regional Fees.

12.2.2.1 Initial sewer connection charges will be assessed at $800 per Equivalent Residential Unit (ERU), effective October 1, 2006. The CWC ERU charges are as defined within Attachment 1. Sewer connection charges will increase by 1.5% every six months, beginning July 1, 2007, and continue through January 1, 2009.

12.2.2.2 Initial sewer usage charges will be assessed at $0.105 per thousand gallons of Influent. Influent data will be used as reported to the Clark County Sewage and Wastewater Advisory Committee (SWAC) or as otherwise agreed to by the Board. Usage charges will be effective July 1, 2007.

12.2.2.3 After January 1, 2009, connection and usage charges will be evaluated periodically to ensure adequate revenue has been generated. Any adjustments to charges will be approved by the CWC Board.

12.2.2.4 Each Member shall determine, in its sole judgment, the method it chooses to raise funds needed to satisfy its obligations hereunder.

12.2.2.5 Member agencies may, at their discretion and with the concurrence of the CWC, enter into separate agreements with the CWC for the purpose of specifying the manner in which the Member agency will collect funds for the purpose of fulfilling its ratepayers' obligations to fund the SCOP project providing, however, that the terms of the separate agreement are consistent with the provisions of this agreement.

12.2.3 The dates for payments to be made by the Members in satisfaction of their obligations hereunder shall be as determined by the Board. Each member shall pay in full, when due, its obligations herein agreed to be paid. Each Member shall be liable to the CWC and every other Member to pay its respective share of Annual Operating and Annual Capital Budgets and any other obligations assessed against the Members in accordance with this Amended Agreement.

12.2.4 In the event, for whatever reason, insufficient funds are available to the CWC to satisfy all of its annual obligations (other than by reason of the default of a Member in paying its allocated share of such annual obligations), then such deficiency shall be assessed by the CWC against all Members: (a) in the same percentages set forth in Paragraph 12.2.1, if such deficiency occurs prior to the date established by the Board that Regional Fees are providing funding for CWC activities, or (b) in proportion to each Member's contribution to CWC funding obligations from Regional Fees, for the twelve (12) months prior to the month the deficiency occurs, if the deficiency occurs after the date that Regional Fees are providing funding for CWC activities as determined by the Board pursuant to Paragraph 12.2.1. If the deficiency arises before the expiration of twelve (12) months from the date established by the Board, the Members contributions for the time period which is available shall be annualized. The CWC shall send a statement to each Member for its apportioned share of the deficiency immediately upon exercising its rights pursuant to this Subsection. Each Member shall pay the amount of the deficiency apportioned to it within 45 days after receipt of the statement pursuant to Section XXI hereof. The CWC may continue to apportion deficiencies to Members pursuant to this Subsection for so long as the deficiency exists. The Board may establish reserves and procedures for determining available funds.

12.2.5 The Board, in establishing Annual Operating Budgets and Annual Capital Budgets, may establish such reserves as deemed appropriate by the Board as may be required by any debt instrument of the CWC, or as may be required by the state or county bond banks.

12.2.6 Contributions or advances of public funds and of personnel, supplies, equipment, or property may be made to the CWC by any Member for any of the purposes of this

Amended Agreement, with the consent of the Board. Any such advance may be made subject to repayment as agreed to by the Member and the CWC.

12.3 **Revenue Bonds.** The Board shall have the power and authority to issue revenue bonds, notes, and other obligations for the purposes and in accordance with the procedure and requirements set forth in NRS 277.0705 through 277.0755.

12.4 **Other Indebtedness.** The Board shall have the power and authority to issue bonds, notes, and other indebtedness, and to participate in state and local bond banks as provided by law.

12.5 **Accounting Procedures.** Complete books and accounts shall be maintained for the CWC in accordance with generally accepted accounting principles and standards, including compliance with all applicable statutes and regulations. Unless otherwise provided by law, the CWC may, in accordance with its needs, maintain funds and account groups pursuant to NRS 354.604.

12.6 **Audit.** The CWC shall provide for an annual audit of all funds and accounts pursuant to NRS 354.624. The audit must cover the business of the CWC during the full fiscal year. The audit shall be made by a public accountant, certified or registered, or by a partnership or professional corporation registered under the provisions of NRS Chapter 628. Such financial audit shall be conducted in accordance with generally accepted auditing standards, including comment on compliance with all applicable statutes and regulations, recommendations for improvements, and any other expression of opinion on any financial statements. The audit shall be completed and copies of the audit report provided to the Members not later than five (5) months after the close of the fiscal year for which the audit is conducted. The CWC shall act upon any recommendations of the report within three (3) months after receipt of the report, unless prompter action is required, pursuant to NRS 354.624.

12.7 **Reimbursement.**

12.7.1 No person, including Members, may receive reimbursement from the CWC for expenditures on behalf of the CWC in excess of $25,000, unless the Board approves such reimbursement.

12.7.2 No person, including Members, may receive reimbursement from the CWC for expenditures on behalf of the CWC for amounts equal to or less than $25,000, unless such reimbursement is approved in writing by the General Manager.

12.8 **Audit of Payment of Regional Fees to the CWC.**

12.8.1 All payments of Regional Fees to the CWC by the Members shall be accompanied by sufficient information to enable the CWC to determine the basis of the Member's calculation of the Regional Fees being paid.

12.8.2 The CWC, in its sole discretion may audit the books and records of any Member to verify the accuracy of payments of Regional Fees made by such Member to the CWC. All audits shall be conducted during regular business hours on not less than fourteen (14) working days' notice and shall be conducted pursuant to generally accepted auditing standards.

Section XIII
Rights and Obligations of Members

13.1 **Rights.** All Members shall have all such rights as are set forth in this Amended Agreement. Specifically and subject to the terms of this Amended Agreement, all Members shall have the right to have the treated Effluent from the Wastewater generated within their respective jurisdictional boundaries or service territory, transported through the CWC Facilities up to the capacity of such facilities, whether the Member is an Operating Member or is a Member who contracts for its Wastewater to be treated by an Operating Member or Members.

13.2 **Obligations.** All Members are obligated to comply with the terms of this Amended Agreement and are bound by the provisions hereof. Specifically, and subject to the terms of this Amended Agreement, all Members are obligated to pay to the CWC, when due as determined by the Board, their share of the CWC costs whether based on a fixed and agreed percentage or based on Regional Fees. Each member is further specifically obligated to accurately determine the basis for calculating the Regional Fees to be paid by it to the CWC.

Section XIV
Liabilities of the CWC

14.1 The debts, liabilities, and obligations of CWC shall be the debts, liabilities, and obligations of CWC alone and not any of the Members.

14.2 The Board shall provide for the timely payment of all liabilities and obligations of the CWC as the same may accrue from time to time.

14.3 The funds of CWC shall be used to defend, indemnify, and hold harmless the CWC, its officers and employees, and any Member for actions taken within the scope of the CWC. Nothing herein shall limit the right of the CWC to purchase insurance to provide coverage for any of the foregoing.

14.4 CWC may, with Board approval, assume contract obligations of any Member accruing after November 20, 2002, pursuant to contracts existing on such date which pertain to the planning and design of CWC Facilities and the preparation of an environmental impact statement therefore.

Section XV
Discharge Standards

15.1 Each Operating Member shall adhere to the discharge standards set forth in its discharge permit issued by the Nevada Division of Environmental Protection ("NDEP"). The point of measurement of various elements and flows that are the subject of the discharge permit shall be at the point designated in each Operating Member's permit.

15.2 It is the intent of the parties that each Operating Member or other entity discharging Effluent into the CWC Facilities is responsible for maintaining the required standards for each Operating Member's or entity's Discharge and that there shall be no independent obligation on CWC to treat Effluent nor to obtain its own NPDES or equivalent discharge permit from the NDEP or from any other governmental agency, unless otherwise required by law.

Section XVI
Operating Member Facilities – CWC Interface

16.1 Operating Member owned and operated Discharge facilities shall consist of all existing facilities of each Operating Member to the point of connection ("Point of Connection"), which shall be determined in each instance by the Board. All facilities, including monitoring and measuring equipment downstream of the Point of Connection, shall be owned and maintained by the CWC from and after the determination of the Point of Connection by the Board. Promptly, after the determination of the Point of Connection, each Operating Member shall transfer title to any facilities it may own downstream of the Point of Connection to the CWC, free and clear of all encumbrances, together with easements not less than 30 feet in width on either side of the centerline of such facilities, together with necessary access easements from public roads.

16.2 All new or additional facilities which may in the future be designed to discharge into the CWC Facilities shall be owned and maintained by the Operating Member or entity whose Effluent is being discharged, to the Point of Connection with the CWC Facilities, at (or before) which point the Discharge shall be monitored and measured. The Point of Connection shall be determined in each instance by the Board.

Section XVII
Operation and Maintenance of Facilities

17.1 The operation and maintenance of CWC Facilities and equipment shall be conducted and/or administered as designated by the Board. The Board may enter into agreements with an Operating Member or other person or entity to act as the Operating Agent for the CWC.

17.2 During the fiscal year preceding the fiscal year when it is anticipated by the General Manager that CWC Facilities will be in operation, the General Manager will submit to the Board not later than March 15, a Tentative Operating Plan. The Board shall approve an Operating Plan for the next fiscal year not later than June 1. Thereafter, Tentative Operating Plans shall be submitted by the General Manager to the Board by March 15 each year and the Board shall approve such plans for the next fiscal year not later than June 1.

17.3 The Operating Members shall cooperate with the CWC and its Operating Agent with respect to Discharge from their respective Treatment Facilities into the CWC Facilities or into the Las Vegas Wash. Subject to the operating constraints, if any, of the respective Treatment Facilities, it is agreed that the CWC, consistent with the approved Operating Plan, shall be responsible for determining at all times the amount of Effluent from each Operating Member's Treatment Facilities that will be discharged to the Las Vegas Wash and the amount that will be introduced into the CWC Facilities. The Operating Members shall cooperate with the CWC with respect to operation of gates, pumps, and valves and other equipment necessary to direct the flow of Effluent.

17.4 Subject to the operating constraints of the Treatment Facilities of each Operating Member, and without adversely affecting the operation of such facilities, the Operating Members agree to cooperate with the CWC with respect to Effluent volumes from their respective Treatment Facilities as may be necessary to (a) meet water quality objectives, and (b) to maximize power production from the CWC power plant during peak power usage periods and as may be necessary for other operational needs or objectives of the CWC.

17.5 Nothing in this Amended Agreement shall prohibit or interfere with an Operating Member's right to contract for reuse of Effluent from its Treatment Facility prior to such Effluent reaching the Point of Connection.

17.6 During construction of the CWC Facilities, each Operating Member shall cooperate with the CWC as may be necessary with respect to diverting Effluent around construction sites and other necessary actions for the construction to commence and proceed efficiently and smoothly to completion, including providing temporary space for the storage of construction materials and equipment, provided that such cooperation will not interfere with the efficient operation of the Treatment Facility.

Section XVIII
Withdrawal or Termination

18.1 The CWC shall continue in existence until dissolved in accordance with terms of this Section.

18.2 A Member may withdraw from CWC on such terms and conditions as may be specified in an agreement of withdrawal executed by all Members.

18.3 This Amended Agreement may be rescinded and the CWC terminated by a written agreement of termination executed by all Members except during the term of any outstanding indebtedness incurred by or at the request of the CWC or for which the CWC is otherwise responsible, unless such indebtedness is dealt with in a manner satisfactory to the holder or holders of such debt and satisfactory to all of the Members.

18.4 On termination of the CWC, all of the assets of the CWC shall be disposed of in accordance with the above-referenced written agreement of termination.

Section XIX
Delinquencies

19.1 In the event a Member defaults in paying when due any obligation required to be paid to the CWC by such Member under this Agreement, which default continues for more than 60 days from the time such obligation is to be paid, the Board may require the payment of such delinquency by the non-defaulting Members (a) in the same percentages set forth in Subsection 12.2.1, calculated without taking into account the percentage of the defaulting Member, if the delinquency occurs prior to the date established by the Board that Regional Fees are providing funding for CWC activities or (b) in proportion to each member's contribution to CWC funding obligations from Regional fees for the twelve (12) months prior to the month for which the delinquency has occurred, calculated without taking into account the obligations of the defaulting Member, if the deficiency occurs after the date that Regional Fees are providing funding for CWC activities as determined by the Board pursuant to Subsection 12.2.1. If the delinquency occurs before the expiration of twelve (12) months from the date established by the Board, the Member's contributions for the time period which is available shall be annualized. The Board shall send each non-defaulting Member a statement in accordance with Section XXI promptly on action of the Board pursuant to this Subsection. Each non-defaulting Member shall pay the statement within 45 days after receiving the statement. The CWC may continue to apportion delinquencies pursuant to this Subsection for so long as the defaulting Member remains in default for 60 days or more. Non-defaulting Members making payments pursuant to this Subsection shall be subrogated to the rights of the CWC and shall have a right of direct reimbursement against the defaulting Member.

19.2 **Refund of Section 19.1 Payments.** If a defaulting Member pays its delinquent amounts owed directly to the CWC instead of directly reimbursing the non-defaulting Members for their payment of the delinquent amounts owed pursuant to Subsection 19.1, the CWC shall distribute said payment to the non-defaulting Members, subject to the provisions of Subsection 19.5 in the same proportions that they made payment to the CWC of the delinquent amounts. Any accrued interest on the delinquent amounts paid by the defaulting Member shall be distributed to the non-defaulting Members in same proportion as the reimbursement payments. If a non-defaulting Member has been

wholly reimbursed directly by a defaulting Member, it shall not receive any payments under this Subsection from said defaulting Member. If only partial reimbursement has been made directly by a defaulting Member, then payment under this Section to the non-defaulting Member shall be limited to the balance owed.

19.3 **Loss of Voting Rights.** If a Member is delinquent for more than 60 days in making payment to the CWC of any amount due under this Amended Agreement, during the period of such delinquency (i) the Board Member and alternate appointed by such Member to the CWC Board shall not be entitled to vote on any matter coming before the Board, (ii) the governing board of the defaulting Member shall have no right of approval pursuant to the provisions of this Amended Agreement, and (iii) during the time of delinquency, any provision of this Amended Agreement requiring the approval of the Board Member or alternate of the defaulting Member shall be determined without reference to the required vote of such delinquent Member.

19.4 **Late Charges.** The Board shall have the right to establish late charges to be paid by any Member which is delinquent by more than 60 days in any charge or other payment due under this Agreement.

19.5 **Crediting of Delinquent Payments.** Payments to the CWC by a defaulting Member of delinquent amounts owed under this Amended Agreement shall be credited (i) first, to interest and late charges then owing, (ii) second, to the amounts then due and owing to the CWC, applying such payments first to the most recent amounts then due and owing and (iii) third, to the amounts owed to the non-defaulting Members for reimbursement of delinquent amounts paid on behalf of the defaulting Member pursuant to Subsection 19.1 and 19.2.

19.6 **Statement of Late Charges and Interest.** Each month the CWC shall send a statement of late charges and interest owed to the defaulting Member. Payment shall be due within 45 days after receipt of the statement. Receipt shall be presumed two days after mailing if sent in accordance with Section XXI; otherwise, receipt will be presumed five days after the date on the statement if sent by regular mail.

19.7 **Interest.** All delinquent payments shall bear interest from the date the payment was due at the prime rate most recently published in the Western Edition of the Wall Street Journal plus 2 two percent per annum.

Section XX
Dispute Resolutions

20.1 **Dispute Resolution by Board Action.**

20.1.1 Except for delinquencies covered by Section XIX of this Amended Agreement, all disputes between the Members to this Amended Agreement or between a Member and the CWC arising out of or relating to the performance of this Amended Agreement, or the breach of this Amended Agreement, shall first be presented for resolution to the Board in accordance with this Section. The unanimous decision of the Board shall be binding on all Members.

20.1.2 **Filing.** A request to the Board for dispute resolution must be submitted in writing, setting forth the parties to the dispute, the allegations regarding the dispute, and be accompanied by any supporting documentation.

20.1.3 **Notice.** Notice of the written request for Board dispute resolution and the written request shall be served by the party seeking dispute resolution on the other party or parties within five (5) working days after the written request is filed with the Board. The requesting party shall file proof of service with the Board within three (3) days of service.

20.1.4 **Response.** The responding Party or the General Manager, if the dispute is with the CWC, may file its response with the Board and serve a copy on the requesting Member within five (5) working days of receipt of the requesting Member's allegations. The responding party or the General Manager, as the case may be, shall file proof of service with the Board within three (3) days of service.

20.1.5 **Hearing.** The Board shall schedule a dispute resolution hearing not later than fifteen (15) days after proof of service of a notice of written request for dispute resolution has been filed with it.

20.2 **Dispute Resolution by Arbitration or Mediation.**

20.2.1 **Arbitration.** Should the Board not be able to reach a unanimous decision on a dispute submitted to it for resolution pursuant to Subsection 20.1, any person who is a party to the dispute may submit the dispute for arbitration in accordance with this Section.

20.2.2 **Rules.** All disputes submitted to arbitration pursuant to Paragraph 20.2.1 shall be decided by arbitration in accordance with the Arbitration Rules of the Nevada Arbitration Association or the American Arbitration Association then existing, subject to any of the mandatory provisions of the Nevada Uniform Arbitration Act of 2000 as set forth at NRS 38.206 to NRS 38.248, inclusive or subsequent amendments thereto. Each party shall pay its own attorney fees and other costs. Unless the Arbitrator orders otherwise, the Arbitrator's fees and court reporter fees and other costs of arbitration shall be divided equally among the parties to the dispute.

20.2.3 **Right of Joinder.** Any arbitration arising out of or relating to this Amended Agreement may include, by consolidation, joinder, or in any other manner, any additional person not a Member to this Amended Agreement if so requested by a

Member. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein.

20.2.4 **Binding.** In the event arbitration is the designated forum, such arbitration shall be binding.

20.2.5 **Notice.** In order to be able to arbitrate any dispute between the Members, or between one or more Members and the CWC, written notice thereof must be given by the Member or the CWC requesting arbitration to the other Member or the CWC within fifteen (15) days after the Board has failed, pursuant to Subsection 20.1, to reach a unanimous decision regarding such dispute.

20.2.6 **Waiver.** The filing of the aforementioned notice of claim shall preserve that Member's or the CWC's right to arbitration, but shall not obligate the Member or the CWC to proceed with arbitration. In the event that the Member or the CWC requesting arbitration desires to proceed with arbitration, a written demand for arbitration shall be filed with the American Arbitration Association or the Nevada Arbitration Association within sixty (60) days after the above notice of arbitration, and the failure to make such demand shall forever bar such dispute from being arbitrated.

20.2.7 **Mediation.** By mutual written consent, in addition to the remedy of arbitration, the Members or the CWC may endeavor to settle the dispute in question by mediation in accordance with the then current mediation rules of the Nevada Arbitration Association, the American Arbitration Association, or other mediation service agreed to by the Members and if applicable, the CWC. Such mediation may occur at any time, including prior to the date that hearing may have been scheduled for arbitration. If a written request for mediation arises prior to the expiration of the sixty (60) days notice requirement set forth above, then such time period shall be tolled (i) for a period of ten (10) days while the request is agreed to or denied, or (ii) if the request for mediation is agreed to, then until completion of the mediation.

Section XXI
Notice

21.0 All notices under this Amended Agreement shall be in writing and shall be deemed to be delivered on the earlier to occur of (i) the date of actual receipt of the Notice (regardless of how it is delivered), and (ii) whether or not actually received, two days after the notice has been deposited in the United States mail, postage paid, registered or certified mail, return receipt requested, addressed to the Members or CWC, as the case may be, at the addresses set forth below.

To Members:

City Manager
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

City Manager
City of Henderson
240 Water Street
Henderson, Nevada 89015

General Manager
Clark County Water Reclamation District
5857 E. Flamingo Road
Las Vegas, Nevada 89122

City Manager
City of North Las Vegas
2200 Civic Center Drive
North Las Vegas, Nevada 89030

To CWC:

General Manager
Clean Water Coalition
1001 Whitney Ranch Drive, #100
Henderson, Nevada 89014

21.1 Any address in this Section may be changed by furnishing to the CWC and all other Members a change of address in writing.

Section XXII
Miscellaneous Provisions

22.1 **Other Agreements Superseded.** This Amended Agreement constitutes the entire agreement and understanding of the Members hereto with respect to the subject matter contained in this Amended Agreement, and supersedes all other oral and written negotiations, agreements, and understandings of every kind. The Members understand, agree, and declare that no promise, warranty, statement, or representation of any kind whatsoever, which is not expressly stated in this Amended Agreement has been made by any Member hereto or its officers, employees, or other agents to induce execution hereof.

22.2 **Duration.** This Amended Agreement shall be effective when approved by the governing boards of all the Members and the condition of Section XXIV has been satisfied ("Effective Date") and shall continue in force and effect until this Amended Agreement is rescinded and the CWC is terminated as provided in Section XVIII.

22.3 **Applicable Law.** This Amended Agreement shall be interpreted under the laws of the State of Nevada including, but not limited to, Chapters 41 and 277 of the Nevada Revised Statutes.

22.4 **Amendment.** This Amended Agreement may be amended by prior action taken by the governing board of each Member and upon any required approval given, or deemed to be given, by the Attorney General of Nevada.

22.5 **Assignment; Binding on Successors.** Except as otherwise provided in this Amended Agreement, the rights and duties of the Members may not be assigned or delegated without the written consent of all Members. Any attempt to assign or delegate such rights or duties in contravention of this Subsection shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities, and other obligations then in effect. This Amended Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members signing such agreement.

22.6 **Force Majeure.** Force majeure means delays or defaults due to acts of God, government (other than acts or failure to act by the Members), litigation preventing performance of obligations imposed by this Amended Agreement by any party, general strikes, or any other event beyond a party's reasonable control.

22.7 **Severability.** If one or more clauses or provisions of this Amended Agreement shall be determined by a court of competent jurisdiction to be unlawful, invalid, or unenforceable, this Amended Agreement shall nevertheless remain in full force and effect provided that the purposes of this Amended Agreement shall not be impaired thereby nor shall any inequity to one or more Members result therefrom.

Section XXIII
Definitions

23.1 **Annual Capital Budget.** "Annual Capital Budget" means all obligations expected to require cash payment in a fiscal year pertaining to Capital Costs.

23.2 **Annual Operating Budget.** "Annual Operating Budget" means all obligations expected to be paid in cash in a fiscal year pertaining to operating the CWC Facilities and conducting the business of the CWC other than Capital Costs.

23.3 **Board.** "Board" means the Management Board of the CWC.

23.4 **Capital Costs.** "Capital Costs" means the cost of constructing, financing, acquiring, planning, designing and permitting (including environmental review and any mitigation costs and filing fees) CWC Facilities, and funding of reasonable construction reserves.

23.5 **Capital Improvement Plan.** "Capital Improvement Plan" means a plan extending over a designated period of time to construct or acquire CWC Facilities, including timelines, cost estimates for various component parts of the CWC Facilities to be constructed or acquired, including all environmental and administrative costs and allocation of such projected costs among the Members by fiscal year.

23.6 **CWC Facilities.** "CWC Facilities" means the regional system constructed by CWC for the conveyance of Effluent, together with all component parts thereof, including electrical energy generating installations.

23.7 **Discharge.** "Discharge" means any release of Effluent from treatment facilities to a conveyance or to receiving water.

23.8 **Effluent.** "Effluent" means treated wastewater.

23.9 **Equivalent Residential Unit (ERU).** "ERU" means the equivalent amount of wastewater produced by a single family residence.

23.10 **Influent.** "Influent" means untreated wastewater.

23.11 **Member.** "Member" means a party to this Agreement.

23.12 **NDEP.** "NDEP" means the Nevada Division of Environmental Protection.

23.13 **NPDES.** "NPDES" means National Pollutant Discharge Elimination System as set forth in the Clean Water Act, pursuant to which the Members' discharge permits are issued by the NDEP.

23.14 **NRS.** "NRS" means Nevada Revised Statutes.

23.15 **Operating Agent.** "Operating Agent" means an agent, other than a CWC employee, appointed by the Board to operate the CWC Facilities.

23.16 **Operating Member.** "Operating Member" means a Member who owns and operates Treatment Facilities.

23.17 **Regional Fees.** "Regional Fees" means regional sewer connection charges and/or regional sewer user charges established by the Board.

23.18 **Treatment Facilities.** "Treatment Facilities" means the devices and systems used in the storage, treatment, recycling, and reclamation of sewage, or industrial waste of a liquid nature.

23.19 **Wastewater.** "Wastewater" means the spent or used water from a community or industry that contains dissolved or suspended matter.

Section XXIV
Condition to Effectiveness of this Amended Agreement

24.0 This Amended Agreement shall become effective when approved by the Attorney General of the State of Nevada pursuant to NRS 277.140.

IN WITNESS WHEREOF, the Members have caused this Amended Agreement to be executed as of the date first written above in this Amended Agreement.

Approved as to Form:

CLEAN WATER COALITION

Robert W. Marshall, Counsel

By: Chip Maxfield, Chairman of the Board

Attest:

CLARK COUNTY
WATER RECLAMATION DISTRICT

Shirley P. Parraguirre, Clerk

By: Chip Maxfield, Chairman

Approved as to Form:

Kimberly Phillips, Deputy District Attorney

Attest:

THE CITY OF HENDERSON

Monica M. Simmons, CMC, City Clerk

By: James B. Gibson, Mayor

Approved as to Form:

Shauna M. Hughes, City Attorney

Attest:

THE CITY OF LAS VEGAS

Barbara Jo Ronemus, City Clerk

By: Oscar B. Goodman, Mayor

Approved as to Form:

Bradford R. Jerbic, City Attorney

Attest:

THE CITY OF NORTH LAS VEGAS

_____
Karen Storms, City Clerk

By:_____
Michael L. Montandon , Mayor

Approved as to Form:

_____
Sean McGowan, City Attorney

Approved as to form and legality (NRS 277.140)
this _____ day of _____, 2006.

GEORGE CHANOS
Attorney General of the State of Nevada

By: _____
Senior Deputy Attorney General

ATTACHMENT 1

Clean Water Coalition

REGIONAL CONNECTION CHARGES
PROJECTED IMPLEMENTATION AND
SEMI ANNUAL CHANGES

	ERU	10/1/06	7/1/07	1/1/08	7/1/08	1/1/09
Single Family Residence, Trailer Court (space)	1	$800	$812	$824	$836	$849
Condominium, Apartment, Townhouse (unit)	0.7	560	568	577	586	595
Senior Apartment Housing (unit)	0.5	400	406	412	418	424
Hotel/Motel (per room)	0.6	480	487	494	501	509
Casino, Hotel/Motel outside room (per fixture)	1.5	1,200	1,218	1,236	1,255	1,274
Recreational Vehicle Park (space)	0.7	560	568	577	586	595
Recreational Vehicle Park – other than spaces (per fixture)	0.45	360	365	370	376	382
Convalescent/Rest Home (per bed)	0.75	600	609	618	627	636
Custodial Institution (per fixture)	0.65	520	528	536	544	552
Hospital (per bed)	1.2	960	974	989	1,004	1,019
Restaurant (per fixture)	1.33	1,064	1,080	1,096	1,112	1,129
Food Sales – no cooking facilities (per fixture)	0.65	520	528	536	544	552
Bar/Tavern w/ Food (per fixture)	1	800	812	824	836	849
Bar/Tavern w/o Food (per fixture)	0.65	520	528	536	544	552

Community/Special Event Center (per fixture)	0.65	520	528	536	544	552
Office/Warehouse (per fixture)	0.45	360	365	370	376	382
Medical/Dental/Veterinarian (per fixture)	0.25	200	203	206	209	212
Beauty/Barber/Nail/Tanning Shop (per fixture)	0.25	200	203	206	209	212
House of Worship (per fixture)	0.5	400	406	412	418	424
Motor Vehicle Wash (per bay)/ Motor Vehicle Sales w/ auto vehicle wash (per fixture)	1	800	812	824	836	849
Vehicle Maintenance/Repair Shop (per fixture)	0.45	360	365	370	376	382
School/Child Care Center (per student - maximum)	0.1	80	81	82	83	84
Service Station (per fixture)	0.65	520	528	536	544	552
Retail Store (per fixture)	0.65	520	528	536	544	552
Dry Cleaners (per fixture)	1	800	812	824	836	849
Dry Cleaner Pick-up Station – Alterations (per fixture)	0.65	520	528	536	544	552
Laundry/Laundromat (per fixture)	0.45	360	365	370	376	382
Financial Institutions (per fixture)	0.45	360	365	370	376	382
Pet Grooming (per fixture)	0.65	520	528	536	544	552

Private Club (per fixture)	0.65	520	528	536	544	552
Theme Park/Sports Complex (per fixture)	0.65	520	528	536	544	552
Theaters (per fixture)	0.45	360	365	370	376	382
Special Events Center – Limited Use (per fixture)	0.45	360	365	370	376	382
Markets w/ Disposal (per fixture)	1	800	812	824	836	849
Large Commercial Users	*	*	*	*	*	*
All other businesses not otherwise identified (per fixture)	0.65	520	528	536	544	552

* Rates are determined by using 85% of estimated annual water usage, dividing by 90,000 gallons, and multiplying by the single family residence cost ($800 for the initial charge, $812 as of July 1, 2007, $824 as of January 1, 2008, $836 as of July 1, 2008, $849 as of January 1, 2009).

EXHIBIT 2

EXHIBIT 2

HENDERSON CITY COUNCIL
AGENDA ITEM

REGULAR MEETING | Date: February 5, 2008 | UB-95

SUBJECT	Bill No. 2368 - Land Development Agreement - The M Resort
PETITIONER	Monica M. Simmons, City Clerk
RECOMMENDATION	That Bill No. 2368 be adopted as an Ordinance.

FISCAL IMPACT:

[X] No Impact [ ] Budget funds available [ ] Augmentation required

Funding Source, Amount, and Account Number(s) to be charged:

BACKGROUND / DISCUSSION / ALTERNATIVES:

M Resort LLC and the City have negotiated a Development Agreement pertaining to the M Resort parcel of land generally located at the southeast corner of St. Rose Parkway and Las Vegas Boulevard. Adoption of this Ordinance will constitute approval of the Development Agreement and attachments.

RECOMMENDED MOTION: I move that Bill No. 2368 be adopted as Ordinance No.

Monica M. Simmons, CMC
City Clerk

Mary Kay Peck, AICP
City Manager

Steve Hanson
Finance Director

CITY OF HENDERSON
240 Water Street
P.O. Box 95050
Henderson, NV 89009-5050

CITY ATTORNEY'S OFFICE
Shauna M. Hughes, City Attorney
702-267-1200
fax 702-267-1201

Memorandum

C 1 + UB-95

TO: The Honorable Mayor and City Council

FROM: Shauna M. Hughes, City Attorney

DATE: February 5, 2008

2678

SUBJECT: Land Development Agreement The M Resort (~~C-001~~ and UB-095)

Attached is a revised development agreement for the M Resort. Specifically Section 4.14 has been revised to include a requirement that an existing overhead electrical transmission line located on the subject property be placed underground. Proposed language is as follows:

4.14 Nevada Power Electrical Transmission Facilities. The intersection of St. Rose Parkway and Las Vegas Boulevard constitutes a major entry into the City of Henderson. Currently an overhead electrical transmission facility is located on a portion of the Property adjacent to Las Vegas Boulevard and St. Rose Parkway. The existing overhead transmission line on the subject property was in existence prior to the Property being within the jurisdiction of the City. Additionally, the existing overhead transmission facility does not provide service to the Property rather it provides electrical power to an existing electrical substation located east of the Property. City desires that for community aesthetics and public safety purposes that this major entry to the City not be encumbered by overhead electrical transmission lines as they currently exist. Developer, subject to an administratively approved design review shall be required to construct required facilities needed to transition the overhead transmission line(s) to below ground within the Planned Development. Construction of the underground electrical transmission line as required by this Section shall be as mutually agreed by the Parties.

This change in requirements is based upon the following:

1. St. Rose Parkway is the main entrance to the City from I-15. Development along St Rose and Las Vegas Boulevard will create a visual first impression of the City of Henderson for visitors exiting I-15. It is therefore important for the City of Henderson to ensure that development at its entrance is of the highest standards and aesthetically pleasing.
2. A major resort hotel and casino is now being developed at the intersection of St. Rose Parkway and Las Vegas Boulevard which, when open, will constitute not only the first major development at the City's western entrance but also a major tourist attraction. Based upon being not only a key entrance to the City but also a major tourist attraction, it is necessary for community aesthetics that St. Rose Parkway and Las Vegas Boulevard be free of overhead electrical transmission lines.

3. Historically the existing overhead electrical transmission line was approved and built on the property prior to annexation to the City. When the line was first proposed the City at that time objected to the location based on the intersection being a key gateway into the City and as such for community aesthetics the City desired that it either be relocated or placed underground.
4. As development proceeds south along Las Vegas Boulevard within the City there will be additional increases in vehicular and pedestrian traffic which necessitates the need to eliminate as many physical impediments as possible in the interest of public safety. Elimination of impediments includes removal of the existing overhead electrical transmission line and its large metal towers.

SMH/mm

Attachment

cc: Anthony Marnell, III
Lance Johns, Esq.
John Marchiano, Esq.

AGENDA ITEM SUPPLEMENT
INCLUDE WITH EACH AGENDA ITEM

SUBJECT	Bill No. 2368 - Land Development Agreement - The M Resort

Supporting Documentation: List all materials to be included as backup with this agenda item (e.g., contracts, agreements, correspondence, exhibits, applications, etc.).

- Development Agreement

DOCUMENT SIGNATURES

If backup includes documents requiring original signatures, indicate who will be responsible for routing the documents for signature after Council approval.

☐ Contact: ☐ City Clerk

Note: If the City Clerk's office is requested to route the document, the original document must accompany the agenda item.

PRESENTATION ITEMS

Presentation scripts must be included prior to the council meeting. Copies of photos taken during the presentation are requested for historical purposes.

Resource Requirements at Council Meeting:

☐ TV/VCR

☐ Slide Projector

☐ Software Presentation

☐ Overhead Projector/Screen

☐ Other:

Note: It is recommended that presentation resources be tested prior to the Council meeting by the presenter.

SUGGESTED KEYWORDS FOR DOCUMENT IMAGE SEARCHES

HENDERSON CITY COUNCIL
AGENDA ITEM

REGULAR MEETING | January 8, 2008 | NB-

SUBJECT	Continued Item - Bill No. 2368 - Land Development Agreement for The M Resort

BACKGROUND / DISCUSSION / ALTERNATIVES:

This item was continued from the November 6, and November 20, 2007, City Council meetings.

Becky Dresser

Becky Dresser, CMC
Deputy City Clerk

HENDERSON CITY COUNCIL
AGENDA ITEM

REGULAR MEETING Date: November 6, 2007

SUBJECT	Bill No. - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, ADOPTING THAT CERTAIN DEVELOPMENT AGREEMENT BETWEEN HENDERSON AND THE M RESORT LLC FOR THE M RESORT AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.
PETITIONER	Office of City Attorney
RECOMMENDATION	Refer to City Council Meeting of November 20, 2007

FISCAL IMPACT:

[X] No Impact [ ] Budgeted funds available [ ] Augmentation required

CMTS No. 144-08-144-3501

Funding Source, Amount, and Account Number(s) to be charged:

BACKGROUND / DISCUSSION / ALTERNATIVES:

M Resort LLC and the City have negotiated a Development Agreement pertaining to the M Resort parcel of land generally located at the southeast corner of St. Rose Parkway and Las Vegas Boulevard. Adoption of this Ordinance will constitute approval of the Development Agreement and attachments.

RECOMMENDED MOTION: I move to refer Bill No. to the City Council Meeting of November 20, 2007 for review and recommendation.

Shauna Hughes
City Attorney

Mary K. Peck
City Manager

Steve Hanson
Finance Director

ORDINANCE NO.
(Land Development Agreement with M Resort LLC)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, ADOPTING THAT CERTAIN DEVELOPMENT AGREEMENT BETWEEN HENDERSON AND THE M RESORT LLC FOR THE DEVELOPMENT OF LAND AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, pursuant to Nevada Revised Statute section 278.0201, the City Council of the City of Henderson enacted Henderson Municipal Code Section 19.2.1.S providing for the utilization of development agreements to regulate land development within the incorporated boundaries of the City of Henderson; and

WHEREAS, pursuant to Henderson Municipal Code, Section 19.9.8 requires dedication of park land, and Henderson Municipal Code Section 19.10.11 requires the payment of a Residential Construction Tax, enabled by NRS 278.4983; and

WHEREAS, the City of Henderson and M Resort LLC negotiated the terms for development of that certain property within the City of Henderson;

NOW, THEREFORE, the City Council of the City of Henderson, Nevada does ordain:

SECTION 1: The Development Agreement negotiated between the City of Henderson and M Resort LLC provides for the development of that certain property for the purposes of residential, commercial and public uses. The Development agreement, including accompanying exhibits, describe and specify the agreement for the development of the property, including description of the property, duration of the agreement, permitted uses, density and intensity of the permitted land uses, development standards and provisions for the improvement and dedication of portions of the property for pubic use. The City Council hereby approves and adopts the Development Agreement, including accompanying exhibits, and incorporates the same by reference herein. The Development Agreement, excluding all attachments is attached hereto as Exhibit 1. All other exhibits are on file with the City of Henderson, City Clerk's office.

SECTION 2: Except as otherwise provided in the Development Agreement, all ordinances, resolutions, and regulations applicable to that certain property which is the subject of the Development Agreement and governing the permitted uses of that land, density and development standards, improvements, and construction are those in effect at the time the Development Agreement is approved and as amended from time to time.

SECTION 3: SEVERABILITY. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no way affect remaining provisions of this ordinance.

SECTION 4: REPEALER. All ordinances, parts of ordinances or chapters, sections or paragraphs contained in the Henderson Municipal Code in conflict herewith are hereby repealed.

SECTION 5: EFFECTIVE DATE. This Ordinance shall become effective after its passage by the City Council of the City of Henderson, and after such passage by the City Council, publication once by title in a newspaper qualified pursuant to the provisions of Chapter 238 of NRS, as amended from time to time.

SECTION 6: PUBLICATION. The City Clerk shall cause this ordinance, immediately following its adoption, to be published once by title, together with the names of the Councilmembers

voting for or against passage, in a newspaper qualified pursuant to the provisions of Chapter 238 of NRS, as amended from time to time.

SECTION 7. If any section, subsection, paragraph, clause or provision of this Ordinance shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section or subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 8. All ordinances or parts of ordinances, sections, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

SECTION 9. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Henderson Home News, a newspaper having general circulation in the City of Henderson at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on February 7, 2008 in the Henderson Home News.

PASSED, ADOPTED, AND APPROVED THIS 5th DAY OF February 2008.

_____
James B. Gibson, Mayor

ATTEST:

_____
Monica M. Simmons, CMC, City Clerk

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The above and foregoing Ordinance was first proposed and read in title to the City Council on January 8, 2008, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

"COUNCIL AS A WHOLE"

Thereafter on February 5, 2008, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held February 5, 2008, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye: James B. Gibson, Mayor
Councilmembers:
Gerri Schroder
Arthur "Andy" Hafen
Jack Clark
Steven D. Kirk

Those voting nay: None
Those abstaining: None
Those absent: None

_____
James B. Gibson, Mayor

ATTEST:

_____
Monica M. Simmons, CMC, City Clerk

Exhibit 1
(The Development Agreement)

APN's:

191-09-201-022
191-09-201-023
191-09-210-003
191-09-210-002
191-09-201-021
191-09-201-020
191-09-201-019
191-09-210-004
191-09-210-008
191-09-210-007
191-09-210-006
191-09-101-020
191-09-110-001
191-09-199-009
191-09-601-002
191-09-299-023
191-09-199-004
191-09-299-001
199-09-299-018
199-09-299-016
199-09-299-009
199-09-299-025
199-09-299-026
199-09-299-010
199-09-299-008
199-09-299-006
199-09-299-003
199-09-299-004
199-09-299-024
199-09-299-015

THE M RESORT DEVELOPMENT AGREEMENT

Between

THE CITY OF HENDERSON

And

THE M RESORT LLC

February 5, 2008

Table of Contents

THE M RESORT DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF HENDERSON
AND
THE M RESORT LLC

This M Resort Development Agreement (the "Agreement") is made and entered into this 5th day of February, 2008, by and between the City of Henderson (the "City") and The M Resort LLC, a Nevada limited liability company ("Developer")(collectively, the "Parties").

PRELIMINARY STATEMENTS

A. The City is authorized under its Charter and the general laws of the State of Nevada to enact ordinances and enter into agreements to promote and safeguard the health, safety and welfare of its citizens.

B. The Parties desire to enter into this Agreement in accordance with NRS Chapter 278 and the Code to set forth their mutual understanding with respect to the orderly development of the Property as a resort hotel casino with mixed use residential and commercial.

C. The City desires to enter into this Agreement to provide for public services, public and private uses and urban infrastructure, to promote the health, safety and general welfare of the City and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Planned Development and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the City at least economic cost to citizens, and otherwise achieve the goals and purposes for which the laws authorizing development agreements were enacted.

D. The City Council, having determined that all of the procedural requirements for approval of this Agreement have been satisfied and after giving notice as required by law, held a public meeting on February 5, 2008, wherein the City Council found this Agreement to be: (1) in the public interest; (2) in conformance with the City's plans, policies and regulations; and (3) lawful in all respects.

E. Developer wishes to obtain assurance that Developer may develop the Planned Development in accordance with the provisions established in this Agreement. Developer acknowledges that there are insufficient public services, facilities and infrastructure, existing or planned at this time, and in order to develop the Property, Developer is willing to enter into this Agreement in order to provide certain public services, facilities and infrastructure for the area of the Planned Development. Because of the nature of the Planned Development, the type and extent of the public improvements and infrastructure for the Planned Development to be provided by Developer, and the type and

extent of the public and private improvements to be provided for the Planned Development, the Developer's decision to commence development of the Planned Development is based on expectations of proceeding and the right to proceed with the Planned Development.

NOW, THEREFORE, in consideration of the foregoing, the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1
DEFINITIONS

1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

"Applicable Rules" means and refers to:

(a) The provisions of the Code, except Title 19, and all other City rules, general plans, policies, regulations, ordinances, fees, construction codes, laws, general or specific, that are effective and amended from time to time, except to the extent any such existing or future Code provisions conflict with any provisions of this Agreement in which case the provisions of this Agreement shall control;

(b) This Agreement;

(c) Any ordinances, laws, policies, regulations or procedures applicable to Planned Development and adopted by a governmental entity other than the City whether or not the City is a constituent member of such governmental entity;

(d) Any processing fee or monetary payment not governed by this Agreement and prescribed by City ordinance which is uniformly applied to all development and construction subject to the City's jurisdiction;

(e) Any applicable state or federal law or regulation;

(f) The City Comprehensive Plan as amended, to support the development of the Planned Development.

(g) The Uniform Design and Construction Standards for Wastewater Collection Systems, as in effect from time to time and as amended.

(h) The Uniform Design and Construction Standards for Water Distribution Systems, as in effect from time to time and as amended.

"Agreement" has the meaning assigned to it in the first paragraph hereof, and at any given time includes all addenda and exhibits incorporated by reference and all amendments which hereafter are duly entered into in accordance with the terms of this Agreement.

"City" means the City of Henderson, together with its successors and assigns.

"City Attorney" means the City Attorney of Henderson, Nevada.

"City Council" means the Henderson City Council.

"City Manager" means the City Manager of Henderson, Nevada.

"Code" means the provisions of the Henderson Municipal Code, including all rules, regulations, standards, criteria, manuals and other references adopted therein.

"Conceptual Master Drainage Study" means the comprehensive drainage study attached hereto as Exhibit A, as finally accepted by the City on July 12, 2007.

"Conceptual Master Water and Sewer Studies" means the pre design report dated July 24, 2006 and attached hereto as Exhibit B.

"Developer" means The M Resort LLC, a Nevada limited liability company, and its wholly owned subsidiaries, the owner and or lease holder of the Property constituting the Planned Development, and its successors and assigns.

"Dwelling Unit" has that meaning given to it under the Code.

"Effective Date" means the effective date of an ordinance adopted by the City Council that approves the execution of this Agreement.

"Fire Station" and "Fire Station Site" shall have the meaning provided in Section 8.1

"Housing Type" shall be those as defined in this Agreement.

"Master Association" means a single property owners association formed under the NRS and subject to NRS Chapter 116 to which each residential property owner in the Planned Development is a member.

"Mixed Use Housing Type" means a structure containing commercial/office with residential units located on the upper floors. The structure shall be a minimum of Two (2) stories and no higher than Five Hundred (500) feet above grade.

"Mixed Use Planning Area" means a combination of residential and non-residential uses vertically and/or horizontally integrated that include physical and functional integration of uses, connectivity, context, design, pedestrian corridor, transit, services, amenities and urban experience.

"Multi-Family High-Rise Housing Type" means a residential structure with residential units located in the structure which structure is a minimum of Six (6) stories and no higher than Five Hundred (500) feet above grade.

"Multi-Family Mid-Rise Housing Type" means a residential structure with residential units located in the structure which structure is a minimum of Two (2) stories and no higher than Five (5) stories above grade.

"M Resort Phase One" means the approvals granted by the City of Henderson on July 12, 2007 for application DRA 2007550061 as thereafter amended or supplemented by City attached hereto as Exhibit D.

"NRS" means the Nevada Revised Statutes.

"Park" means those facilities identified as such in this Agreement.

"Person" means any individual or form of business entity authorized under the laws of the State of Nevada.

"Planning Area" means each portion of the Property as set forth on Exhibit E.

"Planned Development" means all property subject to this Agreement.

"Planning Commission" means the City of Henderson Planning Commission.

"Project Infrastructure Improvements" means any street, water, drainage, flood control, sewer or related facility that the Developer is required to install pursuant to the Master Studies, except as otherwise provided for in this Agreement.

"Property" means the real property as depicted on that certain Land Use Plan and legally described on Exhibit F.

"Resort Hotel Planning Area" shall mean and refer to the gaming site set forth on the Land Use Plan and be subject to the Supplemental Development Standards.

"Subdivision Map" means any instrument under NRS which legally subdivides property or gives the right to legally subdivide property, including, without limitation, parcel maps, division of land into large parcels, parent final Maps, tentative commercial subdivision maps, final commercial subdivision maps, reversionary maps, condominium subdivision maps, or tentative or final residential subdivision maps, for all or a portion of the Property.

"Supplemental Development Standards" has the meaning given to it in Section 2.2 of this Agreement.

SECTION 2
DEVELOPMENT OF THE PLANNED DEVELOPMENT

2.1 Planned Development. One of the primary objectives of the City and Developer in entering into this Agreement is that development of the Property be undertaken in an organized fashion so as to ensure a well-integrated, unique quality resort that is based on design concepts with a mix of resort hotel and entertainment, commercial and residential uses. The Parties have agreed through this Agreement with emphasis on the exhibits, and particularly the Supplemental Development Standards as outlined in Section 2.2 of this Agreement, to work together to accomplish certain goals for the development of the Planned Development. Those goals include the following:

(a) Walkability as used herein is intended to mean an open community that encourages connectivity between the Planning Areas themselves, to the extent practicable. Walkability is best achieved by developing within Planned Development, entertainment, commercial uses, recreational facilities, community gathering places, and civic uses to which the visitors as well as residents of the Planned Development can walk and enjoy.

(b) Traffic calming applications to slow traffic speeds, encourage walking, and provide for an open and connected network of narrower streets, sidewalks, trails and paths with mandatory requirements for fire sprinklers in all structures.

(c) Provide for a mixed use density community with commercial and residential uses that engage its owners, visitors and the public at large to utilize attractions for the City.

2.2 Supplemental Development Standards. For each Planning Area, Developer shall submit to City such specific design guidelines and development standards, necessary to properly identify and authorize development of any particular Planning Area

("Supplemental Development Standards"). For purposes of this Section, contiguous includes Planning Areas separated by public rights of way. Once Supplemental Development Standards are approved by the City Manager in consultation with the City Attorney for any Planning Area, all subsequently submitted Supplemental Development Standards must include physical and functional integration of uses, connectivity, context, design, pedestrian corridor, transit, services, and amenities consistent with all previously approved Supplemental Development Standards. Supplemental Development Standards must include:

(a) General Purposes/Intent

(b) Land Use Plan. (To include generalized building sizes, uses, use locations and parking)

(c) Traffic plan and study

(d) Design mix

(e) Permitted/Prohibited Uses

(f) Use Regulations

(g) Architectural Guidelines

(h) Architectural Character and Style

(i) Color

(j) Landscaping

(k) Design and General Development Standards

(l) Signage consistent with Section 4.7 and subject to administratively approved master sign plan

(m) Phasing Plan

2.3 Zoning. Parties agree that the Property has all necessary land use, zoning and conditional use approvals necessary for development of the Planned Development. The land use, zoning and conditional use approvals are as set forth in Exhibit G to this Agreement.

2.4 Modified Code. The Parties agree that the intention of this Agreement with the exhibits, and particularly the M Resort Phase One design review and together with Supplemental Development Standards, shall provide the standards for the Planned

Development accepted by the City, and upon which Developer may rely in developing the Property.

2.5 Time for Construction and Completion of the Planned Development. The City finds that the Developer will satisfy the principles set forth in Sections 2.1 and 2.2 upon compliance with this Agreement. To further that end, the City agrees that Planned Development will be approved for development, and Developer agrees that Planned Development will be developed and marketed in accordance with the Applicable Rules. The City acknowledges that the Planned Development will provide desirable, commercial, employment, housing, public and/or recreational opportunities for the City. If the Property is developed, this Agreement obligates Developer to develop the Developer-required Project Infrastructure Improvements. However, Developer shall have discretion as to the time of commencement, construction, phasing and completion of the Planned Development and Project Infrastructure Improvements.

2.6 Common Name for Planned Development. Subject to City's reasonable approval, Developer shall establish a common name for Planned Development or portions thereof and shall disclose such proposed name(s) to the City, by written letter to the City Manager. Developer agrees that City will not be acting unreasonably by denying a common name(s) that suggests Planned Development or portions thereof are located somewhere other than in the City. The City acknowledges that Developer will devote substantial resources to promote such common name(s) and protect its value as a unique intellectual property right which may include filing state and federal registrations for such name. The Parties therefore agree that Developer shall have the exclusive right to own, control and license the name(s). The City shall have no obligation to police the use, wrongful or otherwise, of the name(s) by third parties.

2.7 Parking Lot Landscaping. City agrees as a provision of Developer installing landscaping in excess of Code requirements to defer installation of landscaping diamonds as required by Code within the M Resort Phase One parking lots until January 1, 2014. Developer agrees to post a bond or to provide an alternative financial instrument acceptable to City, which may include but not be limited to a corporate guaranty from Developer, for the cost of installing the required landscaping. Developer further agrees that if at the end of the deferral period no structures have been built on the M Resort Phase One parking lots then Developer shall cause installation of the required landscaping.

2.8 Heliport. Planned Development shall be permitted a single heliport as defined by Code, the location of which to include any future relocation shall be as per Exhibit H to this Agreement. At such time as developer opts to relocate the heliport, the request shall be processed as a Minor Modification to this agreement.

2.9 Permitted Uses. In addition to those uses as approved as part of City approval of Supplemental Development Standards, Planned Development shall be

permitted a maximum of One (1) retail gasoline sales establishment and Three (3) drive thru windows on Mixed Use Planning Area 3 as those uses are defined by Code.

SECTION 3
APPLICABLE RULES AND CONFLICTING LAWS

3.1 Reliance on Development Standards and Applicable Rules. The City and Developer agree that Developer is approved and permitted to carry out and complete the entire Planned Development in accordance with the standards, uses, densities and other provisions set forth in the Supplemental Development Standards, and in accordance with this Agreement and the accepted Master Studies. Developer acknowledges that the Master Studies are generally conceptual in nature, in outlining the basic infrastructure required to develop the Property, and that further studies and reports may be required of Developer for review, comment, revision by Developer and ultimate acceptance by City. Should the Supplemental Development Standards or this Agreement fail to address a Code requirement then the Code shall prevail. Any such studies, modifications, or amendments that are required must relate specifically to the needs of the Planned Development.

3.2 Application of Subsequently Enacted Rules. Except as provided below, no standard, policy or regulation that would otherwise constitute an amendment or addition to Title 19, or a matter generally regulated by Title 19 of the Code on the Effective Date, such as subdivision, land use, zoning, growth management, timing and phasing of construction, shall be imposed by the City upon the Planned Development, except those in effect on the Effective Date. City may hereafter, during the term of this Agreement, apply to the Planned Development only those rules, regulations, ordinances, laws, general or specific plans, and official policies promulgated or enacted after the Effective Date that:

(a) Are not in conflict with or inconsistent with the rights of Developer with respect to the Development Standards.

(b) Are required by City to protect the health or safety of City residents.

(c) Do not constitute impact fees.

3.3 Limitation on Imposition of New Fees or Standards. Notwithstanding the terms of Section 3.2, above:

(a) The City may increase cost-based processing fees, entitlement processing fees, inspection fees, plan review fees, facility fees or water and/or sewer connection fees that apply uniformly to all development in the City.

(b) The development of the Planned Development shall be subject to the construction codes in effect at the time of application for the permit for the particular development activity.

(c) The City may apply other construction standards applicable to all developers other than Developer if such changes or additional standards are required in order to protect the health or safety of City residents.

(d) Nothing in this Agreement shall preclude the application to the Planned Development of new or changed City ordinances, regulations, plans, fees, or policies specifically mandated and required by changes in regional (ie, Regional Flood Control District, Southern Nevada Water Authority, etc.), state or federal laws or regulations. In such event, the provisions of Section 3.4 through 3.6 of this Agreement are applicable.

(e) Notwithstanding the foregoing, should the City adopt or amend new ordinances, rules, regulations or policies that exceed the limitations of Sections 3.1 through 3.4, Developer shall have the option, if mutually agreed upon with City, of accepting such new or amended matters by giving written notice of such acceptance. City and Developer shall then execute a supplement to this Agreement evidencing Developer's acceptance of the new or amended ordinance, rule, regulation, or policy.

3.4 Conflicting Federal, State or Regional Applicable Rules. The Parties agree to cooperate in preventing the adoption of federal, state or regional laws and regulations that would prevent or preclude compliance with the provisions of this Agreement only if said proposed laws and regulations are not needed to protect the health or safety of City residents. In the event that any conflicting federal, state or regional laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall remain in full force and effect as to those provisions not affected, and:

(a) Notice of Conflict. Either Party, upon learning of any such matter, will provide the other Party with written notice thereof and provide a copy of any such law, regulation or policy together with a statement of how any such matter conflicts with the provisions of this Agreement; and

(b) Modification Conferences. The Parties shall, within thirty (30) days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to the minimum extent needed to bring it into compliance with any such federal, state or regional law or regulation.

3.5 City Council Hearings. In the event the City believes that an amendment to this Agreement is necessary pursuant to Section 3.4 due to the effect of any federal or state law or regulation, the proposed amendment shall be scheduled for hearing before the City Council. The City Council shall determine the exact nature of the amendment necessitated by such federal or state law or regulation. Developer shall have the right to offer oral and written testimony at the hearing. Any modification ordered by the City Council pursuant to such hearing is subject to arbitration as set forth in Section 9.

3.6 City Cooperation. The City shall work with Developer in securing any City and/or other permits, licenses, interlocal agreements or other authorizations that may be required as a result of any amendment resulting from actions initiated under Section 3.4. As required by the Applicable Rules, Developer shall be responsible to pay all applicable fees in connection with securing of such permits, licenses or other authorizations.

3.7 Transfers to City. Any property to include facilities constructed by Developer and donated to City as required by this Agreement shall be free and clear of any mortgages, deeds of trust, liens or monetary encumbrances (except for any encumbrances that existed on any patent at the time it was delivered to Developer from the United States of America).

SECTION 4
PLANNING, DEVELOPMENT AND MAINTENANCE OF THE PLANNED DEVELOPMENT

4.1 Permitted Density, Uses, Height and Size of Structures. Pursuant to NRS Chapter 278, this Agreement sets forth the maximum height and size of structures to be constructed in Planned Development, the density of uses, and the permitted uses of the Property. The City agrees that Planned Development may be developed with the density and with the land uses and Supplemental Development Standards set forth in the Applicable Rules.

(a) Permitted Uses. The Planned Development will contain a mix of hotel, entertainment and gaming, commercial, parks and residential consistent with the boundaries shown on the Planning Area Map.

4.2 Residential. The Planned Development is permitted a maximum of 3,000 Dwelling Units. The Dwelling Units located in the Planned Development shall comply with the Supplemental Development Standards to include the following:

(a) The Mixed Use Planning Area shall provide for Multi-Family Mid-Rise, Multi-Family High-Rise and/or Mixed Use Housing Types. However in no case shall single family detached or attached as defined by Code be permitted.

4.3 Resort Hotel and Mixed Use Planning Areas. Developer may develop a non-restricted resort hotel casino within the Resort Hotel Planning Area which includes the M Resort Phase One as set forth on the Planning Area Map subject to the following conditions:

(a) Location/Uses. Developer may not materially increase the size, square footage, height and location of the Resort Hotel Planning Area without an amendment to the existing Gaming Enterprise Overlay Zone Change ZCO-05-670051 and Conditional Use Permit (CUP-05-540091) attached as Exhibit G to this Agreement. The Resort Hotel Planning Area and Mixed Use Planning Area shall be permitted a maximum height of 500 feet, 160,000 square feet of casino, 130,000 square feet of theater, 190,000 square feet of non casino restaurant, 1,000,000 square feet of non casino retail, and 150,000 square feet of convention area together with a maximum of 3,000 hotel rooms and an additional 190,000 square feet of other commercial as provided in this Agreement. Increases in maximums established by this Section shall be processed as a Minor Modification.

4.4 Supplemental Development Standards. City concurs that development of the Planning Areas will occur over a period of time and that Supplemental Development Standards are currently evolving.

(a) Developer acknowledges that City requires Developer's involvement in the submission of any Supplemental Development Standards for any Planning Area transferred by Developer to a Person other than a member of Developer (membership in Developer determined as of the Effective Date). Therefore Developer agrees that in conjunction with any transfer of a Planning Area by Developer for which Supplemental Development Standards have not been approved as a Minor Modification, Developer shall: (a) notify each transferee in writing that approval by City of Supplemental Development Standards for such Planning Area will be required; and (b) Developer and/or member of Developer shall serve as applicant in the submission of proposed Supplemental Development Standards for such Planning Area; and (d) notify City in writing of any transfer of a Planning Area for which Supplemental Development Standards have not been approved and identify the transferee.

(b) It is understood that Developer may transfer all or part of a Planning Area to a member or members of Developer (membership in Developer determined as of the Effective Date) prior to the approval of the Supplemental Development Standards for any such Planning Area. In that event, if a member subsequently transfers all or any part of any Planning Area to any Person who is not a member of Developer (membership in Developer determined as of the Effective Date), Developer acknowledges that the City requires such member's continued involvement in the submission of any Supplemental Development Standards for any Planning Area so transferred. Therefore, Developer agrees that in conjunction with

any transfer by such a member to a non-member prior to approval of Supplemental Development Standards as a Minor Modification, such member shall: (a) notify each transferee in writing that approval by City of Supplemental Development Standards for such Planning Area will be required; and (b) Developer and/or member of Developer shall serve as applicant in the submission of proposed Supplemental Development Standards for such Planning Area; and (c) notify City in writing of any transfer of an Planning Area for which Supplemental Development Standards have not been approved and identify the transferee.

(c) Procedure for Submission. Developer agrees to submit Supplemental Development Standards in accordance with the following:

i. The Resort Hotel Planning Area which shall include all of the remaining portions of the Resort Hotel Planning Area which have not been approved as part of the M Resort Phase One.

ii. Mixed Use Planning Areas 1, 2 and 3 along with the Park and Fire Station sites. In no case shall Supplemental Development Standards be approved for a portion of a Mixed Use Planning Area. However, Developer may submit Supplemental Development Standards for all or a combination of the Mixed Use Planning Areas.

(d) At such time as Supplemental Development Standards have been approved, all buildings shall be subject to an administratively approved design review.

4.5 Phasing of Major Transportation Improvements. Developer and City shall complete, and open and/or close to traffic (as applicable), the following transportation routes in accordance with the required improvement level (as defined in this Section 4.5) for the M Resort Phase One:

(a) Developer shall complete Alignment 1 which shall consist of:

i. Volunteer Boulevard (formerly Dale) full half street improvements plus two lanes on the south side of the street from Las Vegas Boulevard to Haven which shall be completed by April 27, 2009.

ii. Bowes full half street improvements plus two lanes from St. Rose Parkway to Rancho Destino which shall be completed by April 27, 2009 (collectively with (a) (1) "Alignment 1").

(b) City shall complete Alignment 2 which shall consist of:

(1) Volunteer Boulevard (formerly Dale) (2-lanes) from Rancho Destino to Executive Airport Drive which shall be completed by April 27, 2009 ("Alignment 2").

(c) In order to serve the traffic demands of the Planned Development, the Parties agree:

i. It is the intent of the Parties that the Developer constructs Alignment 1 as the initial east/west connection and the City construct Alignment 2. The Parties shall work to acquire the necessary private property rights in accordance with this Agreement. Parties shall meet quarterly, at a minimum, to achieve the intent and schedule. Should it become apparent that private property owners are non-cooperative City shall determine whether to initiate condemnation proceedings or identify an alternative Alignment 1 or Alignment 2 to be constructed as the initial westerly connection that can be constructed within the stated timeframe.

ii. City shall not unreasonably delay review, approval and permitting of Alignment 1 or Alignment 2, collectively the ("Alignments") attached as Exhibit I to this Agreement. Should any of the private property owners affected by the Alignments seek entitlements from the City for development, or improvement of its property, or divide or map the property, the City shall require dedication of the specific rights-of-way where such request is reasonable and customary to the City's typical entitlement process for similar properties located in the City.

(d) The City and Developer agree that it is in the best interest of the public and will promote the health, safety and general welfare of the City and its inhabitants to control the location and number of vehicle access points to the Resort Hotel Planning Area along St. Rose Parkway. To achieve such goal, the Parties agree that the Resort Hotel Planning Area shall have a restricted number of access points to St Rose parkway as approved by City.

4.6 Liquor. Developer shall be allowed to have a maximum of Three (3) tavern licenses within the boundaries of Mixed Use Planning Area. Further, any and all distance restrictions found in Title 4 and Title 19 of the Code with regard to Tavern licenses or Off-Sale licenses shall not apply to the Mixed Use Planning Area. Developer shall be allowed an unlimited number of Restaurants with Bar licenses permitted to operate 24-hours per day within the Mixed Use Planning Area. Any and all distance restrictions found in Title 4 and Title 19 of the Code and any amendments thereto with regard to a Restaurant with Bar license shall not apply to the Mixed Use Planning Area. The definition of a Tavern,

Restaurant with Bar, and Off-Sale liquor uses shall have the meanings currently prescribed to them in the Code.

4.7 The Processing of Applications.

(a) The City acknowledges the Developer's desire to have timely reviews of its studies, maps, plans, applications for permits and other authorizations for development of and within the Planned Development (collectively, the "Applications"). Developer acknowledges that timely review of Applications by City requires submittal of complete Applications by Developer in accordance with the master City Schedule as outlined below.

(b) The Developer agrees to provide the City with a master City Schedule (as defined herein) setting forth Developer's expected dates of submission for its Applications for the Planned Development. The master City Schedule shall be complete for all anticipated Applications, and may be used by the City to plan and adjust its staffing capacity accordingly. The Developer shall provide the City with periodic, but not less than monthly or other such periods of time as agreed upon by Parties, updates of the master City Schedule providing additional Applications, changed submission dates, and reflecting Applications already submitted to City, throughout the development of the Planned Development.

(c) The City and Developer agree that the schedule ("City Schedule") set forth below is a reasonable estimate of service targets for the City to process Applications, and shall constitute the targeted time not a guarantee for City to review Applications of the type listed. Fourth or subsequent reviews are subject to City discretion. The City Schedule is expressed in Working Days (wd) from the date of submittal:

	Category	1st Review	2nd Review	3rd Review*	Mylar/Map Signatures
1.	Hydrology Studies	15 wd	15 wd	5 wd	N/A
2.	Traffic Studies	15 wd	15 wd	5 wd	N/A
3.	Civil Improvement Plans	15 wd	15 wd	5 wd	5 wd
4.	Final Maps	15 wd	10 wd	10 wd	5 wd
5.	Parcel Maps	15 wd	10 wd	10 wd	5 wd
6.	Boundary Line Adjustments	15 wd	10 wd	5 wd	5 wd
7.	Reversionary Maps	15 wd	10 wd	5 wd	5 wd
8.	Apartments – Model Plans	15 wd	10 wd	5 wd	
9.	Apartments – Production Plans	10 wd	5 wd	5 wd	
10.	Condo – Standard Plans	15 wd	10 wd	5 wd	
11.	Condo – Model Plans	10 wd	5 wd	5 wd	
12.	Condo – Production Plans	10 wd	5 wd	5 wd	
13.	New Commercial (< 200K sf)	15 wd	10 wd	5 wd	
14.	Assembly – Restaurants	15 wd	10 wd	5 wd	
15.	Assembly – Restaurants	15 wd	10 wd	5 wd	
16.	Commercial Shell Building	15 wd	10 wd	5 wd	
17.	Tenant Improvement (< 2.5k sf)	5 wd	5 wd	5 wd	
18.	Tenant Improvement (> 2.5k sf)	10 wd	5 wd	5 wd	
19.	Fire sprinkler system	10 wd	5 wd	5 wd	
20.	Fire alarm systems	10 wd	5 wd	5 wd	
21.	Casino-Complete	25 wd	15 wd	14 wd	
22.	Casino-Shell	25 wd	15 wd	14 wd	
23.	Casino-Tenant Improvement	25 wd	15 wd	14 wd	

* if 3rd review is required

(d) The City reserves the right to reasonably extend the City Schedule for

unusually large or complex Applications (i.e., casinos, mid rise and high rise buildings, pump stations, reservoirs, flood control facilities, etc.), Applications which City determines are incomplete or Applications resubmitted to City which involve a substantially new design subject to written to electronic (email) notification of Developer within Eight (8) Business Days of the submittal and the provision of a target date for the completion of the review. Applications not listed in the City Schedule shall be reviewed within a reasonable time frame as is agreed upon between the Parties.

(e) Developer acknowledges that submission of Applications in other than the proper sequence may delay and extend the time required for consideration of many related Applications. For backbone infrastructure, or for other processing as determined necessary by the Parties, the Parties will determine the proper sequence of submittals and service targets (as agreed upon, the "Alternative Schedule"). The City agrees to the review of Applications in accordance with the City Schedule or the Alternative Schedule only if the Applications are submitted in the proper sequence. Proper sequence as used in this section for submitting Applications: (i) in accordance with the City Schedule is the order of submission of similar type applications as required by City as of the Effective Date; and (ii) in accordance with the Alternative Schedule is the order as provided in the Alternative Schedule. Therefore, Developer agrees to submit Applications in the proper sequence in order to avoid coordination problems with reviews.

(f) City shall advise Developer's Application processor, whose name and standard and electronic (e-mail) address shall be provided to City with each Application, in writing or electronically within Ten (10) Working Days of a submittal if City is unable to process an Application submitted in proper sequence; and City shall advise Developer's Application processor of the Business Day when City reasonably believes it will complete processing of the Application. If Developer submits an Application after the date specified in the City Schedule and/or the City projected completion date is more than Five (5) Working Days later than the date required under the City Schedule or the Alternative Schedule, Developer shall have the option to either: (i) accept the alternative timeframe projected by City; or (ii) request City to utilize a Consultant to process the Application at Developer's expense (the "Consultant Option").

(g) The City currently uses a variety of outside consulting firms to assist in managing peak workloads ("Consultants" or "Consultant" as the context requires). The City may choose to use Consultants for any Application as it sees fit; however, the City's decision to use a Consultant does not extend the time frames set forth in the City Schedule without mutual agreement of the Parties.

(h) Parties have entered into a separate dedicated coordinator

reimbursement agreement in the form attached hereto as Exhibit J. If requested in writing by Developer, the City Manager shall designate a second Coordinator ("2nd Coordinator") within Fourteen (14) Business Days of receipt of Developer's written request. Delivery of the written request by Developer to City shall constitute Developer's agreement to enter into an amended dedicated coordinator reimbursement agreement to compensate City for the 2nd Coordinator's services as set forth in a second coordinator reimbursement agreement with the City. The 2nd Coordinator shall not commence work as 2nd Coordinator until the second coordinator reimbursement agreement is fully executed.

(i) If requested in writing by Developer and upon mutual consent of City, City shall provide, within Thirty (30) calendar days of receipt by City of Developer's written request, such number of dedicated on-site plan check and/or inspection services personnel for the review and inspection of residential permits as City determines appropriate. Delivery of the written request by Developer to City shall constitute Developer's agreement to compensate City for the dedicated on-site plan check and/or inspection services personnel as set forth in a separate Dedicated Plans Check Reimbursement Agreement and/or Dedicated Inspection Services Reimbursement Agreement with the City. The Dedicated Plans Check Reimbursement Agreement and/or Dedicated Inspection Services Reimbursement Agreement shall be fully executed within Thirty (30) Business Days of Developer's written notice to City.

(j) The Dedicated Plans Check Reimbursement Agreement, or the Dedicated Inspection Services Reimbursement Agreement, or the Dedicated Coordinator Reimbursement Agreement (collectively "Reimbursement Agreements") shall be entered into subsequent to the Effective Date and each Party agrees to act in good faith to negotiate and execute each Reimbursement Agreement promptly. Each Reimbursement Agreement shall provide:

i. In addition to payment of normal plan check and permit fees, Developer may be required to pay up to One Hundred Forty-Five percent (145%) of salary cost for dedicated plan review and inspection services;

ii. All direct expenses agreed to by the Parties (i.e., temporary offices, travel etc.) of the reimbursed personnel shall be paid or reimbursed by Developer;

iii. Any Reimbursement Agreement may be terminated on not less than Sixty (60) calendar days written notice from Developer to City.

(k) Developer will be permitted to commence rough grading of the Property earlier than would otherwise be required under the Applicable Rules upon approval

of a tentative map together with submittal and approval of a conceptual drainage study, application and approval of a rough grading improvement plans and payment of all applicable fees.

(l) Both Developer and City acknowledge that certain permit applications for development of Project Infrastructure Improvements will be required to be reviewed and approved by outside agencies. City may conditionally approve such permit applications; however, City shall not be liable for delays caused by outside agencies.

4.8 Signage. The Parties acknowledge that the Mixed Use Planning Areas and Resort Hotel Planning Area constitute a unique environment encouraging a mixture of available entertainment, goods, services, residences and businesses that will create a unique experience. Developer acknowledges that the Property currently houses a number of signs that are not in compliance with City Codes and that prior to issuance of any permanent signs for the Resort Hotel all existing signs shall be removed. The City acknowledges that the desire for such an experience justifies signage that might be 'off premise' as to a particular parcel of land, but 'on premise' in the context of the Planned Development. Therefore City agrees, that upon compliance with all the requirements of this Section 4, a parcel of land may utilize signage that advertises a permitted use being conducted on such parcel (an "On Site Sign") or a permitted use not being conducted on such parcel, provided such permitted use is being conducted on land within the Mixed Use Planning Area or Resort Hotel Planning Areas (an "Off Site Sign"). Developer shall submit to City, for approval as a Minor Modification to this Agreement, specific sign standards for all On Site Signs and Off Site Signs. The requirements of this Section 4 and the submittals for Supplemental Development Standards pursuant to Section 2, for the Mixed Use Planning Area and Resort Hotel Planning Areas shall comply with the specific sign standards approved. Once the Minor Modification has been approved the Mixed Use Planning Area and Resort Hotel Planning Areas shall be subject to an administratively approved master sign plan.

4.9 Short Term Mining and Processing. City hereby grants Developer or designee an umbrella permit for Short Term Mining and Processing together with Batch Plant operations within the boundaries of the Planned Development, provided that such operations maintain a Two Thousand Six Hundred Forty (2,640) foot separation from the nearest occupied City residence and further provided that the maximum hours of operation are from 5:00 A.M. to dusk, Monday through Friday. The umbrella permit granted by this Section shall be subject to an administrative approval the contents of such request shall be per the City Manager, or his designee, for compliance with this Section such approval be for a maximum of Eighteen (18) months. In addition at such time as the location of the Short Term Mining and Processing and/or Batch Plant operation change a new request shall be submitted by Developer in accordance with this Section. If, at any time, City believes Developer is in violation of the requirements under this Section, it shall notify

Developer pursuant to the provisions of Section 9 of this Agreement. Developer agrees that the operations contemplated herein are to be limited in scope to meet the needs of the ongoing construction on or related to the Planned Development and shall not become a commercial quarry or commercial batch plant operation. Materials may be imported only if they are used in the Planned Development or for offsite improvements required by an accepted Master Study. Materials may be exported only if they are used for offsite improvements contemplated by the accepted Master Studies. All importation and exportation of materials shall be done along the routes which are shown on Exhibit K. Developer or his designee shall establish a 24-hour complaint hotline and post signs on the property for adjacent property owners to call to voice complaints about dust, noise or violation of operating hours. Once the phone line is established, the number shall be given to Code Enforcement staff of the City. Developer or his designee further acknowledges that they must secure any necessary air quality permits from the appropriate air quality agency. In the event Developer or designee is in violation of the conditions set forth herein, the City shall have the right to immediately suspend all Short Term Mining and Processing and Batch Plant operations until cured. Any alteration to the provisions of this Section shall be processed as a Minor Modification.

4.10 Anti-Moratorium. The Parties agree that no moratorium or future ordinance, resolution or other land use rule or regulation imposing a limitation on the construction, rate, timing or sequencing of the development of property including those that affect parcel or subdivision maps, building permits, occupancy permits or other entitlements to use land that are issued or granted by the City shall apply to the development of the Planned Development or any portion thereof. Notwithstanding the foregoing, the City may adopt ordinances that are necessary to: (i) comply with any state or federal laws or regulations; (ii) alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Planned Development, in which event the ordinance shall contain the most minimal and the least intrusive alternative possible and may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily; or (iii) maintain the City's compliance with non-City and state sewerage, water systems and utility regulations. In the event of any such moratorium, future ordinance, resolution or rule or regulation, unless taken by the City as provided under the three exceptions contained above, Developer shall continue to be entitled to apply for and receive approvals as contemplated by this Agreement and in accordance with the Applicable Rules.

4.11 Installation of Water, Sewer and Utilities in Common Areas. Provided that Developer provides full width all weather drivable access as determined by City to manholes associated with storm drain or sanitary sewer only as established in the Development Standards for maintenance purposes, Developer shall be allowed to install water, sewer and other utility lines within the common areas of the Planned Development. Municipal utilities shall be installed within municipal utility easements at a minimum width of Twenty (20) feet for a single utility and Thirty (30) feet for two or more utilities.

4.12 Construction Hours. Except as provided in Section 4.9, Developer shall be permitted Twenty-Four (24) hour a day construction for the M Resort Phase One. Construction hours for future phases of the Planned Development not in compliance with Code shall be processed as a Minor Modification to this Agreement

4.13 Wireless Facilities. The Planned Development currently contains a previously permitted but not constructed freestanding wireless facility as defined by the Code ("Telecommunication Facility"). Developer shall locate the facility so that it is architecturally integrated into the Planned Development. Said relocation shall be complete prior to issuance of a Certificate of Occupancy for the M Resort Phase One. The Parties acknowledge that temporary and permanent Telecommunication Facilities are a necessary component to effective communication and will be necessary on the Property. The Parties agree that determining the appropriate location(s), number, and general appearance of Telecommunication Facilities as part of this Agreement will permit both Developer and the City to appropriately plan the Planned Development and will help minimize any potential conflicts or disputes that might arise in regard to permits for such towers in the future. Therefore, the Parties agree that Telecommunication Facilities on the Property shall be subject to the following conditions:

(a) The Telecommunication Facilities must comply with Federal Communication Commission standards;

(b) Telecommunication Facilities may be constructed in public or private parks and open spaces, mixed use buildings, and other commercial buildings;

(c) Shall be architecturally compatible with the Development Standards and incorporate reasonable camouflaging/stealth techniques, including, by way of example, (i) architecturally screened roof-mounted antennas or (ii) designed so as to be incorporated into bell towers and/or buildings;

(d) Shall use all reasonable efforts to ensure collocation of antennas occurs on all Telecommunication Facilities;

(e) Shall use all reasonable efforts to ensure all equipment shelters are located within the structure containing the telecommunication tower or below ground in a vault;

(f) Shall be subject to City administrative design review in the event the subject Telecommunication Facility meets all applicable requirements of this Section and the Supplemental Development Standards. Facilities not meeting the requirements of this Section shall require approval of a Minor Modification;

(g) Shall not obstruct public safety communications and the usual and

customary transmission of other communication services enjoyed by adjacent property owners;

(h) Except when located on a building shall not be in excess of One Hundred (100) feet in height and shall not be located within One Hundred (100) feet of any residential lot;

(i) Developer shall demonstrate Telecommunication Facilities do not interfere with line of site transmission of City's HEN-NET System.

4.14 Nevada Power Electrical Transmission Facilities. An overhead electrical transmission facility is currently located on a portion of the Property adjacent to Las Vegas Boulevard and St. Rose Parkway as approved by Conditional Use Permit U-107-00 attached hereto as Exhibit L. Developer, subject to an administratively approved design review shall be entitled to construct required facilities needed to transition the overhead transmission line(s) to below ground and back to overhead within the Planned Development.

4.15 Planned Community Expansion. Subject to a Minor Modification the Property subject to this Agreement and this Agreement may be amended to include Two (2) parcels of land each containing approximately Five (5) acres the legal descriptions of which are hereto attached as Exhibit C to this Agreement. Once approved as a Minor Modification the aforementioned parcels shall be subject to approval of Supplemental Development Standards as outlined in Section 2.2 and all development shall be in accordance with the provisions established in this Agreement.

SECTION 5
THE PARK AND TRAILS

5.1 Construction of the Park and Trails. Developer shall construct and dedicate to City; approximately Two and one half (2.5) acres of public park(s), trails and landscaping adjacent to Las Vegas Boulevard and St. Rose Parkway together with an entry monument at the southwest corner of Las Vegas Boulevard and St. Rose Parkway in accordance with the following:

5.2 Park. Developer shall design, construct and maintain a total of approximately Two and One Half (2.5) acres of public park ("Park"). Construction of the Park shall include payment of all fees. The Park(s) may be located on either all or a part of the Property or on lands to be acquired from the Bureau of Land Management ("BLM") as part of a Recreation and Public Purpose Act application N-81554 ("Permit") attached hereto as Exhibit M. Developer shall pay for any and all costs associated with the Permit and the acquisition of the property directly to BLM. The Park(s) shall be open to the public but privately maintained with amenities which may include, but not limited to, the following: play

fields, basketball courts, beach volleyball courts, fitness courses, playgrounds, tennis courts, horseshoes, picnic areas and shelters, restroom facilities, dog park, pedestrian walkways and trails with plazas available for art fairs and farmers' markets, gazebos, fountains, hopscotch, bocce ball courts, concrete game boards, demonstration gardens, shrub maze, and courtyards. Final design of the Park shall be subject to City Parks and Recreation Board review and approval. Timing for start of construction of the 2.5 acre Park site(s) shall be no later than issuance of the first building permits by the City for a Dwelling Unit and Developer shall thereafter have Two Hundred Seventy (270) days to complete construction of the Park.

5.3 Trails and Landscaping. Developer shall design and construct trails and landscaping adjacent to Volunteer Boulevard, Gillespie Street and Bowes Avenue for the full frontage of the Planned Development as further depicted on Exhibit N. Developer shall be responsible for maintenance of the landscaping and lighting and City shall be responsible for maintenance of the trail. Design requirements for the trails and landscaping are per Exhibit O to this Agreement. Completion of the trails and landscaping adjacent to the M Resort Phase One shall be on or before issuance of a certificate of occupancy for the M Resort Phase One. Initial connectivity shall be provided by an existing sidewalk located adjacent to St. Rose Parkway and Las Vegas Boulevard. Completion of the Trails and Landscaping adjacent to Volunteer Boulevard, Gillespie Street and Bowes Avenue shall be determined at such time as future phases are approved.

5.4 Entry Monument. Developer shall assist in the design of and construct an entry monument and landscaping adjacent to the southeast corner of Las Vegas Boulevard and St. Rose Parkway. Developer shall be responsible for maintenance of the landscaping and City shall be responsible for maintenance of the entry monument. Initial design concepts for the entry monument are per Exhibit P to this Agreement. Construction of the entry monument and landscaping shall be completed on or before issuance of a certificate of occupancy for the M Resort Phase One.

5.5 Residential Construction Tax. Developer shall pay to the City the residential construction tax imposed by Chapter 278 of the NRS and Chapter 19.10 of the Code (as amended or replaced) for all Dwelling Units constructed within the Planned Development at such time as residential building permit are issued.

5.6 Indemnification. Developer shall indemnify and hold harmless the City against and from all claims, suits, actions, debts, damages, costs, losses, liabilities, injuries, judgments, charges, fines, fees, penalties, and all expenses of any nature whatsoever incurred by or asserted against the City, under or on account of any matter related directly, or indirectly, to construction of the Park, trails improvements and monument constructed pursuant to this Section 5.

5.7 Financial Guaranty. Developer shall prior to issuance of a certificate of occupancy for the M Resort Phase One which is projected to open on or about April 27,

2009 provide a bond or other alternative financial instrument reasonably acceptable to City, which may include but not be limited to a corporate guaranty by Developer for the cost of construction of the Park required by this Section 5.

SECTION 6
PROJECT INFRASTRUCTURE IMPROVEMENTS

6.1 Municipal Water and Sewer Service. The City agrees to construct the backbone water and sewer infrastructure that will provide service to the greater West Henderson area including the Planned Development. Water and sewer service will be available to the Planned Development by November 1, 2008.

(a) Developer shall reimburse the City all actual costs associated with City of Henderson Contract No. 2007-86-0036, shown in Exhibit Q, which is only a portion of the major water and sewer infrastructure necessary for full build out of the area. All costs will be audited by a third party consultant, of which the results will be final. Developer agrees to pay the full amount of the costs associated with the water infrastructure as provided for herein.

(b) Audited costs for the City's contract mentioned above shall include, and not be limited to, professional design, administration, right-of-way and easement acquisition, construction, inspection, coordination and any other costs incurred as a result of expediting the provision of water and sewer service to the Planned Development. Future phases of this project may be subject to additional water infrastructure requirements.

(c) The sewer portion of the contract will be reimbursed by a special refunding agreement, where the Developer will reimburse the City for their proportionate share calculated by the number of equivalent residential units (ERU's) the Planned Development will contribute to the sewer system.

(d) All other fees shall be paid in accordance with the Henderson Municipal Code (HMC) Title 14 and the *City of Henderson Department of Utility Services Service Rules*. These fees shall include other special refunding agreement reimbursements for the eastern segment of the St. Rose Sewer Interceptor (SR-0007, shown in Exhibit "R"), water and sewer system development charges, Southern Nevada Water Authority fees, Clean Water Coalition fees, meter fees, and others.

(e) Timing for payment of infrastructure initially installed by City and required to be reimbursed by Developer to include oversizing and system connection fees shall be as outlined in Exhibit V to this Agreement.

6.2 Public Right-of-Way. Subject to an administratively issued revocable permit from the City Manager or designee, the City may allow the following features within a public right-of-way excluding Las Vegas Boulevard and St. Rose Parkway, subject to the limitations set forth as follows:

(a) Trees, shrubs, flowers, fences, retaining walls, hedges, and other landscape features.

(b) Balconies, stairs, attached balconies, overhangs, awnings, porticos, arcades or similar architectural features provided such features maintain a minimum vertical clearance of 96 inches from finished grade and they do not extend to within 5 feet of the curb face of an adjacent street or alley.

(c) Cornices, eaves, reveals, columns, ribs, pilasters or other similar architectural features provided no architectural foam is located within 10 vertical feet of finished or sidewalk grade.

(d) Projecting signs extending from the building face over the public sidewalk or public right-of-way provided a minimum 96 inches of vertical clearance from finished grade is provided.

(e) Enhanced paving in streets, alleys, sidewalks or other similar improvements provided, City shall not be responsible for replacement or repair above that required for standard City streets, alleys and sidewalks. It is anticipated that enhanced paving will be used for a limited distance to provide emphasis and will not be used for extended lengths.

(f) Outdoor cafes or other similar food service areas located adjacent to the main building or the curb so long as a pedestrian pathway, minimum of 5 feet in width is provided and minimum of 5 feet separation is provided from the face of curb. Additionally, City may impose visual screening, operating hour's restrictions, lighting, noise, and other conditions if deemed necessary to prevent such adverse impacts.

(g) Sidewalk cafes wider than one table shall be surrounded by railings that complement the architectural style of the building and provided they do not interfere with the required pedestrian pathway.

(h) Flower boxes and other decorative elements are permitted to be attached to railings or located on the sidewalk provided they do not interfere with the required pedestrian pathway.

(i) Furnishings shall be compatible with the overall design of the building and should express the restaurant's theme or image.

(j) Umbrellas that shelter diners shall be secured so as not to create a hazard in windy conditions.

(k) The installation of misters, portable heaters or similar improvements shall comply with current codes, ordinances and regulations.

(l) Additional conditions for encroachments: The city reserves the right to deny encroachments outlined in subsection a through k without justification. Encroachments shall be located so as to not create a circuitous disjointed or unduly obstructed pedestrian path. Encroachments shall not be permitted to be permanently affixed to a publicly owned sidewalk, structure or appurtenance located in the right-of-way. Encroachments shall not unduly restrict city's ability to access or maintain the public infrastructure in the vicinity of the encroachment. Encroachments shall not obstruct, screen or interfere with street lighting or traffic control devices. The encroachment permit will specify that the applicant will be responsible for any and all maintenance related to the encroachment and that the owner shall bear the full cost of any removal, relocation, repairs or damage to publicly owned infrastructure.

6.3 Sidewalks and Streetscape Landscaping. In conjunction with submittal of Supplemental Development Standards, Developer shall submit a plan for the extension of sidewalks and streetscape landscaping. The intent of this section is to ensure that as the Planned Development is developed sidewalks and streetscape landscaping are constructed and extended to the developed and developing portions of the Planned Development to create uninterrupted pedestrian connectivity within and to Planned Development.

6.4 Franchise Agreements. The City hereby warrants that it has entered into franchise agreements with all of the public utility companies that provide utility services within the Henderson valley, including Nevada Power Company, Embarq, Southwest Gas Corporation, and Cox Cable of Las Vegas (collectively, the "Franchise Agreements"). The City agrees that the Franchise Agreements will be amended from time to time to insure the adequate provision of utility services to the Property. The City hereby agrees to take all necessary steps to revise or update the Franchise Agreements; as such revisions or updating may be necessary or appropriate in order to satisfy the needs for such services throughout the Planned Development, and to enforce the same for the benefit of Developer and its successors-in-interest.

6.5 Limitation on Developer's Obligations. Notwithstanding anything to the contrary herein, Developer shall have no obligation to participate in, pay, contribute or otherwise provide any further impact fee, exaction, or to provide facilities, dedications, or improvements beyond those specified in this Agreement or the accepted Master Studies.

6.6 Utility Connection Requirements. The Parties agree that all current and future buildings located or to be located on the Property shall be required to connect to all utilities per Code.

6.7 Indemnification. Developer shall indemnify and hold harmless the City for all judgments in favor of property owners for the amount of such judgments in excess of the appraised value of each such property easement obtained by City after December 15, 2007 as determined by appraisal obtained by the City, to the extent such judgments are incurred against the City along the south side of St. Rose Parkway between Las Vegas Boulevard and Executive Airport Drive for the Municipal Water and Sewer Service construction pursuant to this Section 6. Notwithstanding anything contained in Section 6 to the contrary, such indemnification shall not include any attorney's fees, court costs, any expert or any other fees and costs not specifically indemnified in this Section 6.

SECTION 7
ADMINISTRATION

7.1 Initial Review. Parties acknowledge a considerable amount of staff time and resources has been committed to the initial review and will be committed to the future administration of Planned Development; therefore, Developer agrees to pay City One Hundred Seventy Five Thousand ($175,000) dollars within Sixty (60) days of City Council approval of this Agreement.

7.2 Minor Modifications.

(a) A minor modification ("Minor Modification") is a modification that does not amend this Agreement but accomplishes one or more of the following in the determination of the City:

i. Review and approval of Supplemental Development Standards required by this Agreement.

ii. Review and approval of sign standards for the Planning Areas as required by this Agreement.

iii. An adjustment that includes, but is not limited to, a lot setback or similar dimensional requirements, lot size, parking, building height, yard area, lot coverage, and Housing Type minimum or maximum per Planning Area not to exceed fifteen (15%) percent or less of that required by the Supplemental Development Standards or this Agreement;

iv. The addition of Product Types that are comparable in design, density or intensity to those permitted under the Housing Types established in this Agreement or the Supplemental Development Standards;

v. The addition of standards, architectural styles, influences, or detail elements to the Supplemental Development Standards, but only if the addition conforms to the intent of the Supplemental Development Standards and this Agreement; or

vi. Alternative methods of construction from those required by construction codes.

vii. Any other change or modification planned, which the City Manager in consultation with the City Attorney determines would not constitute a material negative impact on the Planned Development.

viii. Any other action that is referenced as a Minor Modification or requires approval as a Minor Modification.

(b) Minor Modifications are subject to approval of the City Manager in consultation with the City Attorney. For each requested Minor Modification, Developer shall pay a fee to City at the time of request in the amount of Two Thousand Dollars ($2,000) together with outside consultant fees as may be reasonably required by the City to consider the requested Minor Modification.

7.3 Major Modifications. Any application for a modification that does not qualify as a Minor Modification, or any Minor Modification not granted by the City Manager ("Major Modification"), is subject to approval by the City Council. Developer shall pay a fee as negotiated with City to include outside consultant fees as may be required by City to review and prepare a Major Modification.

SECTION 8
FIRE

8.1 Construction of Station and Provision of Equipment. The Developer shall cause the design of a Five (5) bay fire station and construction on the fire station site ("Fire Station Site") as identified on Exhibit S a Two (2) bay fire station ("Fire Station"). The Fire Station shall be constructed as provided in this Section 8 including furnishing, fixtures and equipment which conforms to City requirements at Developer's sole cost and expense. Construction of the fire station shall include payment of all fees associated with the design, permitting, construction and inspection of the fire station. The Fire Station Site is on land owned by the BLM which is being acquired pursuant to the Permit. Developer shall pay for any and all costs associated with the Permit and the acquisition of the property subject to the Permit directly to BLM. Additionally, Developer will also provide the fire apparatus and equipment listed in Exhibit T. No additional fire equipment or apparatus shall be required of Developer for the M Resort Phase One. Subsequent phases may require Developer to construct additional bays on the Fire Station and/or purchase additional apparatus. Any such requirement shall be as determined by a Minor Modification to this Agreement.

(a) The Fire Station is to be built, equipped and furnished in accordance with City Fire Department requirements as set forth above and meet then-current City standards and levels of quality. Developer and City shall work together to develop plans and specifications for the Fire Station.

(b) City shall withhold the issuance of building permits and issuance of building inspections should any of the dates for Developer action set forth in Sections 8.2 and 8.3 below not be met until completion of the action required of Developer.

(c) Following completion of the Fire Station improvements, Developer shall donate to the City, free of charge, all materials, wages, apparatus, and every other item and/or cost related to the design, construction, and/or dedication of the Fire Station constructed pursuant to this Section 8.

8.2 Time for Commencement and Completion of the Fire Station. Developer shall complete construction of the Two (2) bay Fire Station ("Fire Station") no later than Eighteen (18) months after issuance of a certificate of occupancy for the M Resort Phase One which is projected to open on or about April 27, 2009 and donate the Fire Station upon completion of the Fire Station. In the unlikely event the City has not obtained the Permit prior to the start date for construction of the Fire Station, the Parties by a Minor Modification to this Agreement may elect to extend the required opening date for the Fire Station.

8.3. Fire Apparatus and Equipment. The fire apparatus and equipment listed in Exhibit N must be ordered within Thirty (30) calendar days after written notice to Developer from City. The written notice shall identify the minimum payment/deposit required of City when ordering the apparatus and equipment. Within Thirty (30) calendar days of the date of the written notice, Developer shall provide to City an amount equal to the amount identified in the written notice as necessary for payment/deposit for the fire apparatus and equipment. Thereafter Developer shall provide to the City, within Thirty (30) calendar days of receipt of written request from City, such additional funds as required by the manufacturers of the apparatus and equipment to assure timely delivery of the apparatus and equipment. Prior to payment/deposit required of City for fire apparatus and equipment required by this Section, Parties shall enter into a separate refunding agreement the form of which is attached to this Agreement as Exhibit U.

8.4 Mandatory Fire Suppression Systems. Anything in the Applicable Rules to the contrary notwithstanding, and any silence in the Applicable Rules notwithstanding, every Dwelling Unit constructed in the Planned Development shall be constructed with an automatic fire suppression system per Code, or as otherwise approved by the City Fire Department. Individual pressure booster pumps may be used by Developer to comply with water pressure requirements only where: (i) requiring an increase in diameter of the sprinkler pipes inside a Dwelling Unit would increase the construction costs of such

Dwelling Unit by more than Five Hundred ($500.00) Dollars, adjusted for inflation; or (ii) hydraulic calculations demonstrate that the required water pressure cannot be provided without use of a pump; or (iii) a builder would otherwise be required to modify the architectural plans for a Dwelling Unit. Nothing in this Section 8.4 is intended to relieve Developer from any obligation to install automatic fire suppression systems in non-residential structures, which shall be provided as required by the Applicable Rules.

8.5 Indemnification. Developer shall indemnify and hold harmless the City against and from all claims, suits, actions, debts, damages, costs, losses, liabilities, injuries, judgments, charges, fines, fees, penalties, and all expenses of any nature whatsoever incurred by or asserted against the City, under or on account of any matter related directly, or indirectly, to construction of the Fire Station and Fire Station Site improvements constructed pursuant to this Section 8.

8.6 Financial Guaranty. Developer shall prior to issuance of a certificate of occupancy for the M Resort Phase One which is projected to open on or about April 27, 2009 provide a bond or an alternative financial instrument reasonably acceptable to City, which may include but not be limited to a corporate guaranty from Developer, for the cost of construction of the Fire Station required by this Section 8.

SECTION 9
REVIEW, DEFAULT AND REMEDIES

9.1 Frequency of Reviews. The City Council shall review the development of the Planned Development at least once every Twelve (12) months during the Term of this Agreement. Prior to such review, and upon the written request of the City, Developer shall provide a report summarizing the extent of Developer's and the City's material compliance with the terms of this Agreement during the period preceding such report. The City shall not charge any expense, fee or cost with respect to such review.

9.2 Default and Remedies - In General. The City represents that it would not have entered into this Agreement if it were liable for damages under or with respect to this Agreement. The City and Developer agree that they may pursue any remedy at law or equity, except that neither Party shall be liable to the other for any monetary damages solely under or with respect to this Agreement. Subject to Section 9.3 below, in the event of any non-compliance with any provision of this Agreement, the Party alleging such non-compliance shall deliver to the other Party, in writing, not less than Fourteen (14) calendar days notice of default. The notice of default ("Notice of Default") shall specify: (i) the nature of the alleged default, and (ii) whether it is curable. If a default cannot reasonably be cured within Fourteen (14) calendar days, a non-complying Party may nonetheless timely cure such non-compliance if it commences appropriate remedial action within the Fourteen (14) calendar day period and thereafter prosecutes such action to completion with all due diligence. In addition, as to the City, if a cure of the alleged non-compliance requires action by the City Council, then the matter shall be put on the next legally available City Council

agenda after receipt of the Notice of Default and the cure period shall be extended for an additional Three (3) Business Days following such meeting. If the default is timely corrected, then no default shall exist and the noticing Party shall take no further action. If the default is not corrected, the Party charging non-compliance may proceed to adjudicate the Dispute as provided in this Section 9. For purposes of this Section 9, the term "Dispute" shall include any action, dispute, claim or controversy of any kind, whether founded in contract, tort, statutory or common law, equity, or otherwise, now existing or hereafter occurring between the Parties arising out of, pertaining to, or in connection with this Agreement, transactions or events that are governed by or arise out of this Agreement, or any related agreements, or the plans for the Planned Development.

Any failure or delay in giving a Notice of Default (under this Section 9) shall not constitute a waiver of any default. Any failure or delay by any Party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any of its rights or remedies.

9.3 Immediate, Irreparable Harm. Should either Developer or the City reasonably believe that the other has not complied with any provision of this Agreement which non-compliance will cause immediate, irreparable harm, the Party alleging such non-compliance shall deliver to the other Party, in writing, a Notice of Default which shall provide, in addition to the information otherwise required as set forth above, a description of the alleged immediate, irreparable harm that has or may arise. The Party charging non-compliance may proceed to take such action to the extent reasonably necessary and/or possible to avoid any further harm, including bringing an action, in a court of competent jurisdiction, for immediate equitable relief, as provided in Section 9.6 below. In determining whether or not a Party has or will suffer immediate, irreparable harm, the reviewing court shall acknowledge and take into consideration the unavailability of monetary damages to the Party asserting the claim.

9.4 Arbitration. Except as otherwise provided in Sections 9.3 and 9.6, Disputes between the Parties may only be resolved by binding arbitration in accordance with the Uniform Arbitration Act, Chapter 38 of the Nevada Revised Statutes. The initiating Party (the "Claimant") shall give written notice to the other Party ("Respondent") of its intention to arbitrate (the "Demand"), which Demand shall contain a statement setting forth the nature of the Dispute, the specific matters to be arbitrated, the claims being asserted, the amount involved, if any, and the remedy sought. The Parties shall have Thirty (30) calendar days from the date of the Demand to agree upon an arbitrator or arbitrators and any rules and conditions of the arbitration. In the event the Parties are unable to timely agree, the arbitration shall be administered by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules (to the extent they are not inconsistent with the Uniform Arbitration Act). Arbitration through AAA shall be conducted by a panel of Three (3) arbitrators and shall be initiated and conducted as set forth in the subsections below.

(a) Initiation. The Claimant shall file at the regional office of the AAA three copies of the Demand and three copies of this Section 9, together with the appropriate filing fee.

(b) Panel of Arbitrators. The AAA shall send simultaneously to each Party to the Dispute an identical list of 12-15 names of persons chosen from the AAA's National Roster of Neutrals. The persons on the list shall have experience with and knowledge regarding the general subject matter surrounding the Dispute and at least one of the arbitrators ultimately selected will be an attorney. Where feasible, consideration shall be given to the geographic proximity of such persons. Each Party shall have Ten (10) calendar days from the transmittal date to strike any names objected to, number the remaining names in order of preference, and return the list to the AAA. From among the names approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of Three (3) arbitrators to serve and upon acceptance shall send out a notice of appointment to the Parties and the appointed arbitrators.

(c) Arbitrator Powers. Except as set forth in Section 9.6 below, labeled Preservation of Remedies, the arbitrators shall resolve all Disputes in accordance with the applicable substantive law, including the governing statutes of limitation. The arbitrators shall be empowered to resolve any Dispute regarding the terms of this Agreement or the arbitrability of any Dispute or any claim that all or any part of this Agreement (including this Section) is void or voidable but shall have no power to change or alter the terms of this Agreement. In any arbitration hereunder, discovery of documents shall be in accordance with the Nevada Rules of Civil Procedure, with an end to providing the arbitrators, in a prompt fashion, with relevant facts regarding the Dispute. In addition, at the request of a Party, the arbitrators shall order examination by deposition of witnesses. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. All disagreements with respect to discovery shall be promptly resolved by the arbitrators. In resolving discovery disagreements, the arbitrators shall give great weight to whether requested discovery would, under the circumstances, be available under applicable law.

(d) Resolution of Arbitration Dispute. To the maximum extent practicable, the AAA, the arbitrators and the Parties shall take any action necessary to require that an arbitration proceeding hereunder be concluded within One Hundred Eighty (180) calendar days of the filing of the Dispute with the AAA. Notwithstanding anything to the contrary stated herein, the arbitrators shall be empowered to impose sanctions for any Party's failure to timely proceed.

(e) Mediation Not Precluded. Nothing in this Section 9 labeled Arbitration shall preclude the Parties from pursuing mediation to resolve a Dispute, but no Party shall be required to mediate against its will. To the extent the Parties agree to

mediation, all time lines required for arbitration shall be tolled until the mediation is concluded.

9.5 Awards. Any award, judgment or order of the arbitrator(s) pursuant to the terms of this Agreement may be entered and enforced by either Party in any state or federal court having competent jurisdiction in Clark County, Nevada. Each Party agrees to submit to the jurisdiction of any such court for purposes of enforcement of any such court order or judgment. The arbitrator(s) award shall be made promptly and, unless otherwise agreed by the Parties or specified by law, no later than Thirty (30) calendar days from the date of closing the hearing.

9.6 Preservation of Remedies. No provision of, nor the exercise of any rights under this Section 9, shall limit the right of any Party to obtain immediate equitable relief from a court having jurisdiction including, but not limited to, writs of mandamus or prohibition, injunction, set-off, and/or any other prejudgment or post-judgment provisional action or remedy. In the event either Party institutes an action for judicial relief in pursuit of any such prejudgment or post-judgment remedy, such Party may elect to have the merits of the Dispute resolved by the entertaining court in lieu of arbitration under Section 9.4.

9.7 Lack of Jurisdiction over Third Parties. In the event that joinder of a third party is necessary for a full and final adjudication of a Dispute, but such third party does not agree to submit to arbitration under Section 9.4, either Party may elect to have the entire Dispute resolved by a court having appropriate jurisdiction over all of the parties.

9.8 Attorney's Fees and Costs. In any arbitration or legal action, or both, that is instituted between or among the Parties in connection with this Agreement, the Party that prevails in such arbitration or action shall be entitled to recover from the other Party all of its reasonable attorneys' fees and legal costs and expenses.

SECTION 10
FINANCING

10.1 City Cooperation. The City expressly acknowledges and agrees that Developer may be required to finance a part of its obligations under this Agreement through private financing. The City agrees to cooperate with Developer with respect to such financing by, among other things, executing and delivering to any lender or other interested person such documents as may be reasonably requested to acknowledge (a) that the City has no lien on the Property, and (b) that the City shall recognize and allow a lender which has foreclosed or acquired a portion of the Planned Development from Developer to succeed to the rights and benefits of this Agreement as to such portion of the Property. Developer acknowledges, however, that if a local improvement district is created; such district will constitute a lien on the Property to secure repayment of the bonds.

10.2 Local Improvement Districts. The City agrees to assist Developer, in Developer's sole discretion, in the creation of one or more local improvement districts in accordance with the NRS. Such districts shall be financed on a minimum Twenty (20) year amortization schedule and the financing shall include Two (2) year capitalized interest and shall be based on an improved property loan to value ratio of Three (3) to One (1). The City further agrees to waive any requirement on the part of Developer to secure a bond for any infrastructure improvements covered by a local improvement district. Developer shall reimburse to the City all reasonable and customary (in Clark County, Nevada) third-party costs that the City incurs directly with respect to creation of a local improvement district.

10.3 Oversizing Reimbursement/Refunds. The Parties acknowledge that it will be necessary for Developer to construct and/or contribute certain public facilities/apparatus in a manner, or at a size or with a capacity to serve the needs of any property, development or dwelling unit located outside the boundaries of the Planned Development. In the event that City has required Developer to provide such oversized public facilities/apparatus, City and Developer may enter into a mutually acceptable refunding/reimbursement agreement. Such agreement shall be prepared in accordance with Code and will contain provisions for refunding or reimbursing the Developer for funds it has advanced, including any costs associated with the acquisition of rights-of-way, easements or other property interests, based on Developer's proportionate use of the total capacity of the over-sized improvement and shall have a minimum term of Ten (10) years.

SECTION 11
GENERAL PROVISIONS

11.1 Duration of Agreement. The term of this Agreement shall commence upon the Effective Date and shall expire on the Twentieth (20th) year anniversary of the Effective Date (the "Term"), unless terminated earlier pursuant to the terms hereof. City agrees that Developer shall have the right to extend the Term of this Agreement for an additional Five (5) years upon the following conditions:

(a) Developer provides written notice of such extension to City Thirty (30) calendar days prior to the expiration of the original Twenty (20) year Term of this Agreement; and

(b) Developer is not in default of this Agreement.

Upon such extension of this Agreement, Developer and City shall enter into an amendment to this Agreement memorializing the extension of the Term.

11.2 Indemnity; Hold Harmless. Except as expressly provided in this Agreement, Developer shall hold City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage, which may arise from the direct or indirect operations of

Developer or those of its contractors, subcontractors, agents, employees, or other persons acting on Developer's behalf which relate to the development of the Planned Development. Developer agrees to and shall defend City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Developer's activities in connection with the development of the Planned Development. Developer agrees to indemnify, hold harmless, and provide and pay all costs and attorneys' fees for a defense for City in any legal action filed in a court of competent jurisdiction by a third party alleging any such claims or challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional act or gross negligence of City, its officers, agents, employees, or representatives or by any third party not under the control of Developer.

11.3 Binding Effect of Agreement. Subject to Section 11.2 hereof, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties' respective permitted successors in interest.

11.4 Relationship of Parties. It is understood that the contractual relationship between City and Developer is such that Developer is not an agent of City for any purpose and City is not an agent of Developer for any capacity.

11.5 Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or mailed by certified mail postage prepaid, return receipt requested. Notices shall be addressed as follows:

To City:	CITY OF HENDERSON P.O. Box 95050, MSC 411 240 Water Street Henderson, Nevada 89009-5050 Attention: City Manager
With a copy to:	City of Henderson P.O. Box 95050, MSC 411 240 Water Street Henderson, Nevada 89009-5050 Attention: City Attorney
To Developer:	THE M RESORT LLC 6650 Via Austi Pkwy Suite 140 Las Vegas, Nevada 89119 Attention: Anthony Marnell III

With a copy to: ROSENFELD ROBERSON JOHNS & DURRANT
6725 VIA AUSTI PARKWAY
SUITE 200
LAS VEGAS, NEVADA 89119

Either Party may change its address by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

11.6 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all of any part of the subject matter hereof.

11.7 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of City and/or Developer, as the case may be.

11.8 Recording; Amendments. Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records of Clark County, Nevada. All amendments, transfers and assignments hereto must be in writing signed by the appropriate officers of City and Developer in a form suitable for recordation in the Official Records of Clark County, Nevada. Upon completion of the performance of this Agreement, or its earlier revocation or termination, a statement evidencing said completion, revocation or termination shall be signed by the appropriate officers of the City and Developer and shall be recorded in the Official Records of Clark County, Nevada.

11.9 Headings; Exhibits; Cross References. The recitals, headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement are incorporated herein by the references contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits to this Agreement, unless otherwise specified.

11.10 Release. Each residential dwelling unit shown on a recorded Subdivision Map other than a parcel map within the Planned Development shall be automatically released from the encumbrance of this Agreement without the necessity of executing or recording any instrument of release upon the issuance of a Certificate of Occupancy for the use of a Dwelling Unit thereon.

11.11 Severability of Terms. If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the Parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the Parties.

11.12 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

11.13 Unavoidable Delay or Default Extension of Time for Performance. Neither Party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities (excluding the City), failure of governmental agencies (other than the City) to perform acts or deeds necessary for the performance of this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, or similar matters beyond the control of the Parties. If written notice of any such delay is given to the non-delaying Party within Thirty (30) calendar days after the commencement thereof, an automatic extension of time, coextensive with the period of the unforced delay or longer as may be required by circumstances or as may be agreed to between the Parties, shall be deemed granted.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

APPROVED AS TO FORM:

SHAUNA M. HUGHES, City Attorney
City of Henderson

CITY:
CITY OF HENDERSON, STATE OF NEVADA

By: _____
James B. Gibson, Mayor

Attest:

Monica Martinez Simmons, CMC, City Clerk
City of Henderson

DEVELOPER:
THE M RESORT LLC,
a Nevada limited liability company

By:

By: _____
Name: Anthony A. Mannero III
Its: Manager

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the 19th day of December, 2007, by Anthony A. Mannero as Manager of The M Resort, LLC, Manager of The M Resort LLC.

Notary Public - State of Nevada
County of Clark
LISA MADRIGALE
My Appointment Expires
No: 02-77274-1 August 21, 2010

_____
NOTARY PUBLIC

EXHIBITS/SCHEDULES

Exhibit "A" Conceptual Master Drainage Study

Exhibit "B" Conceptual Master Water and Sewer Studies

Exhibit "C" Planned Community Expansion Legal Description

Exhibit "D" M Resort Phase One Design Review Approval Letter

Exhibit "E" Planning Area Map

Exhibit "F" Property and Legal Description

Exhibit "G" Comprehensive Plan Amendment, Zone Change and Conditional Use Permit Approval Letters

Exhibit "H" Heliport Location Map

Exhibit "I" Traffic Alignment Map

Exhibit "J" Dedicated Coordinator Reimbursement Agreement

Exhibit "K" Importation and Exportation Routes

Exhibit "L" Nevada Power Conditional Use Permit Approval Letter

Exhibit "M" BLM Permit N-81554 Application

Exhibit "N" Trail Map

Exhibit "O" Trail and Landscaping Design Requirements

Exhibit "P" Entry Monument Design Concepts

Exhibit "Q" Contract 2007-86-0036

Exhibit "R" SR-0007 Map

Exhibit "S" Fire Station Site

Exhibit "T" Fire Station Equipment and Apparatus

Exhibit "U" Sample Fire Apparatus Reimbursement Agreement

Exhibit "V Infrastructure Payment Schedule

"EXHIBIT A" Conceptual Master Drainage Study.

A copy of the Conceptual Master Drainage Study is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT B" Conceptual Master Water and Sewer Studies.

A copy of the Conceptual Master Water and Sewer Studies are on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT C" Planned Community Legal Description.

A copy of the Planned Community Expansion Map is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT D" M Resort Phase One Design Review Approval Letter.

A copy of the M Resort Phase One Design Review Approval Letter is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT E" Planning Area Map.

A copy of the Planning Area Map is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT F" Property and Legal Description.

The Property and Legal Description is attached.

"EXHIBIT G" Comprehensive Plan Amendment, Zone Change and Conditional Use Permit Approval Letters.

A copy of the Comprehensive Plan Amendment, Zone Change and Conditional Use Permit Approval Letters are on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT H" Heliport Location Map.

A copy of the Heliport Location Map is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT I" Traffic Alignment Maps.

A copy of the Traffic Alignment Map is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT J" Dedicated Coordinator Reimbursement Agreement.

A copy of the Dedicated Coordinator Reimbursement Agreement is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT K" Importation and Exportation Routes.

A copy of the Importation and Exportation Routes is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT L" Nevada Power Conditional Use Permit Approval Letter.

A copy of the Nevada Power Conditional Use Permit Approval Letter is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT M" BLM Permit N-81554 Application.

A copy of the BLM permit N-81554 Application is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT N" Trail Map.

A copy of the Trail Map is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT O" Trail and Landscaping Design Requirements.

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"EXHIBIT P" Entry Monument Design Concepts.

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"EXHIBIT Q" Contract 2007-86-0036.

A copy of Contract 2007-86-0036 is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT R" SR-0007 Map.

A copy of SR-0007 Map is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT S" Fire Station Site.

A copy of the Fire Station Site is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT T" Fire Station Equipment and Apparatus.

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"EXHIBIT U" Sample Fire Apparatus Reimbursement Agreement.

A copy of the Sample Fire Station Apparatus Reimbursement Agreement is on file with the City Clerk for the City of Henderson and available for review.

"EXHIBIT V" Infrastructure Payment Schedule.

A copy of the Infrastructure Payment Schedule is on file with the City Clerk for the City of Henderson and available for review.

EXHIBIT 3

EXHIBIT 3

UB-095 MINUTES

BILL NO. 2368 LAND DEVELOPMENT AGREEMENT THE M RESORT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, ADOPTING THAT CERTAIN DEVELOPMENT AGREEMENT BETWEEN HENDERSON AND THE M RESORT LLC, FOR THE DEVELOPMENT OF LAND AND PROVIDING OTHER MATTERS RELATING THERETO.

Mayor Gibson introduced Bill No. 2368 and City Manager Peck read the Bill by title.

Mayor Gibson read a statement, via memorandum from Shauna Hughes, City Attorney, dated February 5, 2008, regarding proposed language into the record: "The intersection of St. Rose Parkway and Las Vegas Boulevard constitutes a major entry in the City of Henderson. Currently, an overhead electrical transmission facility is located on a portion of the property adjacent to Las Vegas Boulevard and St. Rose Parkway. The existing overhead transmission facility on the property does not provide service to the property. The City desires that for the community aesthetics and public safety purposes, this major entry to this city not be encumbered by overhead electrical transmission lines. The developer, subject to an administratively-approved design review, shall be required to construct required facilities needed to transition the overhead transmission lines to below ground within the planned community. Construction of the underground electrical transmission lines required by this section shall be as mutually agreed by the parties."

(Motion)
Mayor Gibson moved to adopt Ordinance No. 2678, introduced as Bill No. 2368. The roll call vote favoring passage was: Those voting Aye: Clark, Gibson, Hafen, Kirk, and Schroder. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.