

Assessor's Parcel Number: N/A

Date: FEBRUARY 23, 2017

Recording Requested By:

Name: DOUG RITCHIE, DA'S OFFICE

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A



KAREN ELLISON, RECORDER

SETTLEMENT AGREEMENT #2017.029
(Title of Document)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is entered into as of the date of its execution by and among Douglas County (the "County"); the HISTORIAN INN, L.L.C., a Nevada limited liability company ("Historian Inn"); and CLE HOSPITALITY LLC, a Nevada limited liability company ("CLE"). The County, Historian Inn and CLE are referred to herein collectively as the "Parties" and individually as a "Party."

NO. 2017.029
FEB 23 PM 2:47
DOUGLAS COUNTY
CLERK
[Signature]

FILED

**I.
RECITALS**

1. County is a political subdivision of the State of Nevada.
2. Deborah L. Pierrel ("Pierrel") is the managing member of Historian Inn and CLE which are limited liability companies and, as the chief executive officer of both business entities, has the discretion and authority to manage and disburse the funds collected by Historian Inn and CLE and to execute this Settlement Agreement on behalf of Historian Inn and CLE.
3. Historian Inn is the successor-in-interest to the assets, liabilities and operations of CLE which operates a hotel in Gardnerville, Nevada.
4. During the years 2012, 2013, 2014, 2015, and 2016, CLE and Historian Inn, as the successor to CLE, failed to remit all of the transient lodging rental taxes ("Room Taxes") it collected as required by NRS Chapter 244 and Douglas County Code, Title 3.
5. CLE and Historian Inn has alleged that its liability is less than the \$125,400.39 in unpaid Room Taxes and \$43,659.94 in penalties and taxes initially claimed due by Douglas County due to "charge backs" from their credit card merchant accounts and other financial deductions.
6. The unresolved dispute regarding the correct amount of Room Taxes due and payable to Douglas County have taken a financial toll on the operations of CLE and the Historian Inn.
7. CLE and Historian Inn have subsequently provided financial information that a Douglas County auditor from the Douglas County Finance Department and the Douglas County Treasurer have been able to examine and agree that an adjustment to the original Room Tax liability and associated interest and penalties are reasonable and justified.
8. The parties recognize that it is in their individual interests to amicably resolve the dispute among the parties and to avoid costly litigation that will delay the resolution of this matter. Therefore, the Parties have agreed it is mutually desirable to avoid the expense, burden, and uncertainties of litigation concerning the above issues and to resolve all issues involving the unpaid Room Taxes.
9. The parties have therefore agreed to the amount of ONE HUNDRED AND TWELVE THOUSAND DOLLARS (\$112,000) and the terms of this Settlement Agreement as a

full and complete settlement of any claims arising from the Room Tax liability to Douglas County by and among the Parties, for the monthly Room Tax reports submitted by CLE and Historian Inn for the years 2012, 2013, 2014, 2015, and January through November 2016. Payments made under the terms of this agreement will apply to amounts agreed to under this settlement.

II. AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Effective Date of Settlement Agreement. This Settlement Agreement shall become effective upon its execution by Douglas County, CLE, and Historian Inn.

2. Initial Payment. CLE or Historian Inn will pay the sum of Fifteen Thousand Dollars (\$15,000) to the County within fifteen (15) days of the execution of the Settlement Agreement by the County.

3. Monthly Payments. Beginning March 31, 2017, and on the last calendar day of each subsequent month through and including February 28, 2018, CLE or Historian Inn will pay the sum of Three Thousand and Eight Hundred Dollars (\$3,800) to the County. Periodic Payments. In addition to the initial payment and monthly payments, CLE or Historian Inn will pay the following sums to the County on or before the dates indicated:

June 31, 2017: Five Thousand Dollars (\$5,000)

September 31, 2017: Twenty Thousand Dollars (\$20,000)

December 31, 2017: Twenty Thousand Dollars (\$20,000)

February 28, 2018: Six Thousand and Four Hundred Dollars (\$6,400)

4. Confession of Judgment. Contemporaneously with the execution of this Settlement Agreement CLE and Historian will cause the execution and delivery of a Stipulation and Confession of Judgment pursuant to NRS 17.090 confessing the amount of ONE HUNDRED AND TWELVE THOUSAND DOLLARS (\$112,000) due to the County from CLE and Historian Inn, jointly and severally in a form substantially similar to the Stipulation and Confession of Judgment attached hereto as Exhibit "1." It is further confessed that the sum of Eight Hundred Dollars (\$800) is due to the County for its attorney's fees and costs incurred.

5. Notice of Default. If the County does not receive any promised payment on or before the date it is due, the County agrees to provide ten (10) days written notice of the default to Pierrel, Managing Member of CLE and Historian Inn, at the address specified herein. Notice shall be sent certified mail, return receipt requested. CLE or Historian Inn will have twenty (20) days from receipt of the notice of default to cure the default.

6. Filing of a Confession of Judgment. If after twenty (20) days from the receipt of notice of a default, any default is not cured and no payment is received by the County, the County will cause the filing of the Stipulation and Confession of Judgment with the Clerk of the Ninth Judicial District Court of the State of Nevada, in and for the County of Douglas.

7. Timely Reporting Required. CLE or Historian Inn agree to file all required reports to the County required by Nevada law and Douglas County ordinance when due and to remit all Room Taxes due with such reports. CLE or Historian Inn will cause any required financial records or other documentation substantiating the information contained in the reports to the County when requested.

8. Release of Claims. Upon the full and faithful performance of each and every term and condition of this Settlement Agreement by CLE or Historian Inn, the County will release CLE and Historian Inn from any liability related to the monthly Room Tax reports submitted by CLE and Historian Inn for the years 2012, 2013, 2014, 2015, and January through November 2016 and any delinquent Room Tax payments associated therewith.

9. Duty of Cooperation. The Parties shall cooperate with each other if any Party requires access to non-privileged documents or other written information, such as in connection with the future refinancing of the real property owned by CLE or Historian Inn.

10. Release of Liens. The County agrees that the multiple Liens or Claims of Liens related to the transient lodging rental taxes ("Room Taxes") previously filed with the County recorder or clerk recorder that have not been released will be released by the County within thirty (30) days of the County's execution of this agreement in lieu of a single lien indicating the amount that comports with the agreed upon sum under this Settlement Agreement. In the event that CLE or Historian refinances the real property between now and February 2018, the County agrees that it will cooperate with CLE or Historian and will release the lien that is the subject of this Settlement Agreement. In the event CLE or Historian does refinance the real property, the remaining sums owed under this Agreement will be paid in full from an escrow account opened as part of a refinance.

11. Applicable Law, Venue and Jurisdiction. This Settlement Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the State of Nevada. Any dispute or controversy arising out of or relating to this Settlement Agreement shall only be brought in the Ninth Judicial District Court, and each Party hereby submits to personal jurisdiction in such court.

12. Modifications and Amendments. This Settlement Agreement may be modified or amended only by a written agreement duly executed by all the Parties to this Settlement Agreement.

13. Integration. This Settlement Agreement constitutes the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party with respect to the subject matter hereof, except as specifically set forth in this Settlement Agreement.

14. **Severability.** If any provision of this Settlement Agreement is found to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Settlement Agreement, such provisions shall be fully severable and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Settlement Agreement and the remaining provisions of this Settlement Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by severance from this Settlement Agreement.

15. **Acknowledgment.** The Parties represent and warrant that all of the waivers and promises set forth in this Settlement Agreement are made after an opportunity to consult with legal counsel of their choosing, with an understanding of their significance and consequence, and that the terms are reasonable.

16. **Time is of the Essence.** The Parties expressly acknowledge and agree that time is of the essence. The failure of CLE or Historian Inn to faithfully perform any of the terms and conditions of the Settlement Agreement will result in the breach of this Settlement Agreement and the filing of the Stipulation and Confession of Judgment.

17. **Execution in Counterparts.** This Settlement Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be an original, and such counterparts together shall constitute but one and the same instrument and agreement, and this Settlement Agreement shall not be binding on any Party until all Parties have executed it.

18. **Presumptions.** This Settlement Agreement shall be construed without regard to any presumption or rule requiring that it be construed against the Party causing this Settlement Agreement, or any part hereof, to be drafted. The headings used in this Settlement Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Settlement Agreement.

19. **No Assignment.** The Parties, on behalf of themselves and their officers, directors, shareholders, representatives, agents and employees, warrant and represent that they have not assigned, transferred or hypothecated or purported to have assigned, transferred to or hypothecated and will not in the future assign, transfer or hypothecate to anyone any debt, claim for compensation or other claim, invoice, receivable, liability, demand, property, action, or cause of action, or any interest therein, based upon or arising out of or pertaining to or concerning or connected with any matter, facts, events, circumstances or things released herein.

20. **No Intended Third Party Beneficiaries.** Nothing contained in this Settlement Agreement is intended to convey any rights or to create a contractual relationship with any third party or to otherwise allow a third party to assert a cause of action against any Party.

21. **Attorneys' Fees.** Each Party shall be responsible for paying its own costs and expenses incurred in this matter through the execution of the Settlement Agreement by all of the Parties. However, in the event any litigation between the Parties is commenced based upon an alleged breach or default of their respective obligations pursuant to the terms of this Settlement Agreement, the prevailing Party shall be entitled to recover its attorneys' and expert fees and

costs against any non-prevailing Party. The Parties mutually agree to waive any claim for punitive damages in any such suit.

22. Notices. Except for any notices required under applicable law to be given in another manner, notices shall be made as follows:

CLE or Historian Inn:

Deborah L. Pierrel
Managing Member
Historian Inn L.L.C.
PO Box 2446
Mammoth Lakes, CA 93546

DOUGLAS COUNTY:

Douglas V. Ritchie, Esq.
P.O. Box 218
Minden, NV 89423

All notices, requests, demands, directions, and other communications provided for in this Settlement Agreement must be in writing and must be mailed by Certified Mail (return receipt requested) or delivered in person to the appropriate Party at that Party's respective address set forth above, or such other address as the other Party may provide in writing; *provided, however*, that notice shall be deemed sufficient if actually received by the Party regardless of the mode of transmission or delivery.

The address for notice may be changed from time to time by either party by providing written notice of the change of address.

23. Binding Effect. Once this Settlement Agreement becomes effective, it shall be binding upon and inure to the benefit of the successors, assigns, trustees, receivers, personal representatives, legatees, and devisees of the Parties.

24. Authorization. Each Party represents and warrants that it has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Settlement Agreement and to perform its obligations thereunder. The County represents and warrants that its authority to enter into and execute this Settlement Agreement has been properly approved by the necessary governing board after conducting a duly-noticed public hearing.

IN WITNESS WHEREOF, the parties hereto execute this Settlement Agreement as set forth below.

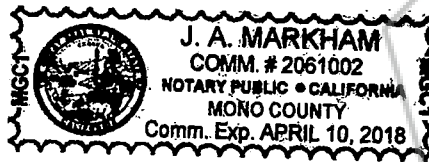
CLE HOSPITALITY LLC

By: _____

Deborah L. Pierrel, Managing Member, for CLE
Hospitality LLC

STATE OF CA)
COUNTY OF Mono) ss:

Subscribed and sworn to before me
this 2 day of February, 2017, by
Deborah L Pierrel, Managing Member,
For CLE Hospitality, LLC.



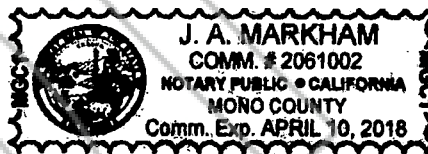
J. A. Markham
NOTARY PUBLIC

HISTORIAN INN L.L.C.

By: [Signature]
Deborah L. Pierrel, Managing Member, for Historian
Inn L.L.C.

STATE OF CA)
COUNTY OF Mono) ss:

Subscribed and sworn to before me
this 2 day of February, 2017, by
Deborah L Pierrel, Managing Member for
Historian Inn, L.L.C.



J. A. Markham
NOTARY PUBLIC

DOUGLAS COUNTY

DATED: 2/23/17

[Signature]
William B. Penzel, Chairman
Douglas County Board of County Commissioners

Attest

[Signature]
Kathy Lewis, Douglas County Clerk-Treasurer

EXHIBIT "1"

COPY

3. Amount Confessed Due. CLE and HISTORIAN INN, jointly and severally, hereby confess judgment in favor of Plaintiff Douglas County, a political subdivision of the State of Nevada (“Douglas County”) in the amount of ONE HUNDRED AND TWELVE THOUSAND DOLLARS (\$112,000), or any part unpaid thereof and do hereby authorize the Clerk of the Ninth Judicial District Court of the State of Nevada, in and for the County of Douglas, to enter judgment for said sum against CLE and HISTORIAN INN in favor of Douglas County.

4. Confessed Costs. In addition to the \$112,000 or any part thereof confessed due and payable to Douglas County, CLE and HISTORIAN INN confess that an additional EIGHT HUNDRED DOLLARS (\$800) is hereby confessed due to Douglas County for attorney’s fees and costs that are or will be incurred by Douglas County, together with interest thereon at the rate of 12% per annum.

5. Basis for Confession. This Confession of Judgment is for money justly due and payable to Douglas County for unpaid Transient Occupancy Tax (“Room Tax”) related to the operation of the business commonly known as the Historian Inn for the tax years 2012 through 2016. There was a dispute related to a portion of the \$171,588.01 due to Douglas County but a settlement agreement was reached regarding a compromise of the amount due based on financial records provided to Douglas County. As an inducement to Douglas County to accept a compromise of the amount due, should the case go to trial, and to agree to receive payments over a one-year period, the undersigned have voluntarily executed this Confession of Judgment after having consulted with an attorney of their choice.

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Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9803 Fax (775) 783-6490

