subscription parties and you cannot enforce a contract or find a breach of a contract by a nonparty. First cause of action is dismissed.

Second cause of action, Powell, Coleman, Arnold, breach of fiduciary duty. Under the restatement second of torts, if a fiduciary duty exists between two persons when one of them is under a duty to act for or to give advice to or for the benefit of another upon matters within the scope of the relation.

The Nevada Supreme Court has stated that a breach of fiduciary duty claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to another by virtue of the tortious -- seeks damages that result from a tortious conduct of one who has a duty to another by virtue of the fiduciary duty. In order to prevail on a claim for breach of fiduciary duty, the plaintiff must show the existence of a fiduciary duty, a breach of that duty, and that the breach proximately caused damages.

In this particular case, there may have been a mistake, but that certainly doesn't arise to fraud or a breach of the contract. In this case, this was a simple transaction, the purchase sale agreement, and most importantly, Mr. Yount got what he wanted, which was a founders share.

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Now, it has been argued hypothetically that it may not have been Mr. Yount's desire to buy the founders shares from CR, but from some other party, but it is no different than getting a Cadillac from Jones West Ford or a Cadillac from Don Weir. Mr. Yount ended up with a Cadillac. Therefore, he has not been able to prove damages in this case and the second cause of action is dismissed.

Third cause of action, fraud, all defendants with the exception of Powell, Coleman. This requires a high standard to prove, clear and convincing evidence. It is asserted against Mr. Criswell, Mr. Radovan, CR Cal Neva LLC, Criswell Radovan LLC, Cal Neva Lodge LLC, David Marriner Real Estate LLC, and New Cal Neva Lodge. The elements of fraud are a false representation. There has been no evidence presented here that any of the material facts were proven to be false or known to be false by any of the parties. In fact, the testimony is completely opposite.

Second claim is made with the knowledge or belief that it is false or without a sufficient basis of information. There's no evidence that anybody knew that this was false. He had the information provided by third parties, they were verified again by CPAs, by members on site, the architect, the construction manager. The third element is there's an intent to induce reliance on those false

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statements.

In this case, the defendant had ample opportunities to inspect this and didn't have to rely on, indeed, didn't rely solely on the information provided by the defendants in this case. He gave the information to his CFO. He gave the information to his CPA. He asked his CPA if this was a good investment, whether to proceed, and the CPA gave him a green light he could.

And as far as damages is concerned, well, we go back to the fact that Mr. Yount owns a founders shares in the Cal Neva LLC and has not proven that he has suffered any damages. And the Nevada Supreme Court has also said that the false representation must have played a material and substantial part in leading the defendant to adopt his particular course.

Now, in this case, the allegations are that some of those false statements was the opening date moved back from December 12th to the spring. Well, that was known several days before Mr. Yount invested in it.

Also, that Mr. Yount was buying a founders share under the PPM. Well, the evidence shows that Mr. Yount holds a founders shares that was distributed under the $20 million PPM and constitutes a founders shares.

And that it played a material and substantial part

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in leading the defendant to adopt his present course. Well, it appears that Mr. Yount, a sophisticated investor, reached out, conducted due diligence, independent investigation, and decided to invest knowing full well under Exhibits 3, 4 and 5 that there were risks associated, which included losing his entire investment.

Now, the Blanchard case, I think this is dicta, because it really doesn't square with the facts of this case, states that if a defendant was unaware of the complaint of making an independent investigation will be charged with knowledge of facts, which reasonable diligence would have disclosed, such a plaintiff is deemed to have relied upon his own judgment and not on the defendant's representation.

That doesn't really apply in this particular case. I know the defense relies upon this. Because in that case, it was a husband and wife arguing over the dissolution of a marriage and the dissolution of the marital estate and the property settlement agreement.

The Court in that case denied the wife's motion -- actually, dismissed the lawsuit, Judge Lee Gates dismissed the lawsuit, finding that the wife couldn't prove that there was a misrepresentation, a false misrepresentation as to where the assets were.

The Nevada Supreme Court stated that the

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appellate's actions for intentional misrepresentation imposes a burden on the plaintiff to show the following elements, that the defendant made a false representation to him with knowledge and belief that the representations were false without a sufficient basis for making the representation. Further, the plaintiff must establish that the defendant intended to induce the plaintiff to act or refrain from acting on the representation and that the plaintiff justifiably relied on the representation. Finally, the plaintiff must establish that he was damaged as a result.

In this case, the Nevada Supreme Court found that the husband had superior knowledge of the location of the assets and that the wife did not possess. That there were many assets, there were complex transactions, and that the wife should not bear the loss of the opportunity to prove that representation, because the husband had superior knowledge.

In this particular case, the defendant was just as knowledgeable as everybody else. He was a sophisticated investor, he was a contractor, well-aware of cost overruns, well-aware of the problems in rehabing an old development. Indeed, the testimony is that Mr. Yount has spent almost ten years in building a home on the shores of Lake Tahoe, which is an outstanding addition to the community. That he was

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operating from the same facts and circumstances everybody else was.

That he didn't just rely on the defendants, he relied on his CPA, he relied on his CFO, he relied on the architect, Mr. Grove. He took a tour. He had possession of the reports.

So the Court finds that Blanchard doesn't absolve -- doesn't provide a shield to the defendants, but that the plaintiff has not proven false statements or unjustifiable reliance. And, finally, as stated before, received just what he wanted, which was a founders share, and therefore has not proven damages.

The fourth cause of action, which was negligence against PCA contains the following elements, that the plaintiff must show that the defendant owed a duty of care to the plaintiff and that the breach of duty has caused plaintiff to suffer damages.

Now, in Nevada, the issues of negligence are factual issues decided by the trier of fact. But synthesized, it's simply that there's a duty, there's a breach, there's causation, there's legal causation, there's actual causation and there's damages.

In this case, negligence against PCA was a mistake and does not rise to the level of negligence. Also, once

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again, Mr. Yount received what he asked for, a founders share, which there is no damages shown. The fourth cause of action is dismissed.

Fifth cause of action, conversion. The Nevada Supreme Court has defined conversion as a distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his title rights therein or in derogation, exclusion or defiance of such title or rights. Conversion is not an act of general intent. The determination of whether a conversion has occurred is a question of fact. In this particular case, the documents show the money went into the project to pay off the debts. Because of that, the fifth of the cause of action is dismissed.

The sixth cause of action, which is punitive damages. Well, punitive damages require a finding that the conduct of the party is outrageous and beyond the pale. The evidence must be convincing by clear and convincing evidence that the defendants have been engaged in oppression, fraud, malice, express or implied, and that the plaintiff in addition to compensatory damages may seek to recover damages as -- for the sake of an example in punishing the defendants.

There's no evidence whatsoever that the conduct of the defendants in this case was outrageous, beyond the pale,

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or fraudulent, and, therefore, the sixth cause of action is dismissed.

The seventh cause of action, securities fraud. First, under Exhibit 3, there's a disclaimer. Second, pursuant to NRS 90.530, this is not a security. Third, under Rule 4 A of the Securities and Exchange Act of 1933, this is a private placement agreement and not a security. And, therefore, the seventh cause of action is dismissed.

Because those actions have been dismissed against the defendant, the counterclaim by the defendant, David Marriner, against the other defendants must be dismissed as moot.

The defendants' counterclaim is unclean hands. In determining whether a party's improper conduct bars relief, the Nevada Supreme Court applies a two-factor test. One, the egregiousness of the misconduct at issue; and, two, the seriousness of the harm caused by the misconduct against the granting of the requested relief. And that the District Court has broad discretion in awarding damages.

In this case, but for the intentional interference with the contractual relations between Mosaic and Cal Neva LLC, this project would have succeeded. That is undisputed. Mr. Chaney agrees, Mr. Yount agrees, everybody agrees that money would have covered all the costs and the debts.

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This Court has documented dozens of e-mail exchanges between Mr. Yount and the IMC and their efforts to undermine the Mosaic loan and there is no more solid evidence of that than in Exhibit 124. That deal was done. That deal had been executed. That deal was in place. Mosaic had evidenced its enthusiasm to close this deal. And yet the day that individuals from the IMC went to the Mosaic offices without the knowledge of CR, that deal was dead. And the testimony is unequivocal, there was never an attempt by the IMC to resurrect it, despite the open invitation by Mosaic to reintroduce the loan.

This Court finds that it was the intent of the IMC to kill this loan, divest CR from its shares on the threat of legal, civil, criminal actions for their own benefit and not the benefit of the project.

Indeed, if you look at the e-mails from Molly Kingston afterwards, she's reaching out saying, who is going to manage this? What's plan B? We need CR in there until such time as we find some substitutes. They had no foresight in this. It's tragic. So the counterclaim from the defendants is granted.

It will be the order of the Court, Ms. Clerk, that judgment is in favor of all defendants. Damages awarded against the plaintiff on behalf of Mr. Radovan, Mr. Criswell

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of $1.5 million each, two years' salary, management fees, lost wages, and pursuant to the contract, the operating agreement, all attorney's fees and costs. Mr. Little, Mr. Wolf, prepare the order. This Court's in recess.

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STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on September 8, 2017, at the hour of 9:00 a.m., and took verbatim stenotype notes of the proceedings had upon the trial in the matter of GEORGE S. YOUNT, et al., Plaintiffs, vs. CRISWELL RADOVAN, et al., Defendants, Case No. CV16-00767, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 1142, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 13th day of October 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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EXHIBIT 2

FILED
Electronically
CV16-00767
2017-09-15 11:16:05 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6301767

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE YOUNT IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10,

Defendants.
_____/

Case No.: CV16-00767

Dept. No.: 7

AMENDED ORDER

On September 8, 2017, after hearing testimony and taking evidence in a seven-day bench trial, this Court dismissed Plaintiff's Second Amended Complaint, dismissed the crossclaims by Defendants David Marriner and Marriner Real Estate, LLC as moot and entered judgment against Plaintiff and in favor of Defendants. In its oral ruling, the Court awarded damages on Defendants' counterclaim.

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Upon further consideration, the Court is concerned that its oral recitation of damages maybe subject to misinterpretation and thus hereby amends its previous *Order* as follows:

1. WILLIAM CRISWELL ("Criswell"), is awarded $1.5 million in compensatory damages, two years' salary, management fees (if applicable), attorney's fees and costs of suit;
2. ROBERT RADOVAN ("Radovan"), is awarded $1.5 million in compensatory damages, two years' salary, management fees (if applicable), attorney's fees and costs of suit;
3. DAVID MARRINER; is awarded $1.5 million in compensatory damages[1], attorney's fees and costs of suit;
4. POWELL, COLEMAN AND ARNOLD, LLP ("PCA"), is awarded its attorney's fees and costs of suit;[2]
5. CRISWELL RADOVAN, LLC (Criswell Radovan), is awarded its lost Development Fees,[3] attorney's fees and costs of suit;
6. CR CAL NEVA, LLC ("CR Cal Neva"), is awarded its lost Development Fees,[4] attorney's fees, and costs of suit;
7. CAL NEVA LODGE, LLC, is awarded its attorney's fees and costs of suit; [5]
8. MARRINER REAL ESTATE, LLC, is awarded its attorney's fees, and costs.[6]

IT IS SO ORDERED this 15 day of September, 2017.

Patrick F Flanagan
PATRICK FLANAGAN
District Judge

[1] These damages include both lost commissions (Ex. 1) and loss of business good will.
[2] There was no testimony or evidence of damages to PCA produced at trial.
[3] Less that which has been earned and paid up to $1.2 million in the aggregate. (Ex. 3, p. 8)
[4] Less that which has been earned and paid up to $1.2 million in the aggregate. (Ex. 3, p.8)
[5] There were no damages sought on behalf of this project development entity.
[6] Only to the extent that they are not duplicative of any award or fees to David Marriner individually.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 15 day of September, 2017, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Richard G. Campbell, Jr., Esq., attorney for Plaintiff George Stuart Yount;

Andrew N. Wolf, Esq., Attorney for Defendants David Marriner and Marriner Real Estate, LLC; and

Martin A. Little, Esq., attorney for Defendants Criswell Radovan, LLC; CR Cal Neva, LLC; Robert Radovan; William Criswell; Cal Neva Lodge, LLC; Powell, Coleman, and Arnold, LLP.

Judicial Assistant

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DECLARATION OF WILLIAM CRISWELL IN SUPPORT OF DEFENDANTS' MOTION TO AMEND JUDGMENT

1. I am a Defendant in this action, and a member of Defendant Criswell Radovan, LLC ("Criswell Radovan"), and Defendant CR Cal Neva, LLC, a limited liability company owned by Defendant Robert Radovan ("Radovan") and myself. I make this declaration based on my own personal knowledge.

2. Radovan and I had a binding agreement with Cal Neva Lodge under which we would manage the operations of the property once it was completed and open. This fact is reflected in the Confidential Private Placement Memorandum, Trial Ex. 3 (recognizing that Cal Neva Lodge will enter into a hotel management agreement with Criswell Radovan or its affiliate) and the Amended and Restated Operating Agreement, Trial Ex. 5 ("Day-to-day management of the Project will be performed by an Affiliate of CR").

3. Key provisions of the Resort Management Agreement, a true and correct copy of which is attached hereto, were as follows:

- A separate entity, CR Hospitality, LLC, was formed by Radovan and myself for the purpose of serving as the hotel manager under a franchise agreement with Starwood Hotels and as part of the Starwood Luxury Collection. Radovan and I each owned 30.5% of the membership interest in the entity. The remaining interests were held by key executive personnel in the operation.
- A copy of the Management Agreement was reviewed and approved by the Executive Committee before closing with the investors.
- The minimum term of the Agreement was ten years from the date of opening, with two options for CR Hospitality to extend the term by five additional years each.
- The fees to be paid to CR Hospitality or management of the hotel were:
  - A Basic Fee equal to 3% of Revenue; and
  - An incentive fee equal to 10% of Net Operating Income before reserves and debt service.

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- The total fees to be earned by CR Hospitality for the initial term of ten years following opening were estimated in the Financial Pro Forma section of the Confidential Private Offering Memorandum dated March 2014, a copy of which was accepted in evidence at trial as Trial Exhibit 4.

The following chart shows the estimates of total management fees for each of the first ten years of operation as shown in Trial Exhibit 4 and calculates the share of those fees that would have been received by each of Radovan and Criswell were it not for Yount's actions:

Lost Management Fees Per Trial Exhibit 4 dated March 2014 - 1st Ten Year Term

Year	Base Fee[1]	Base Incentive Fee[2]	Total Annual Fees	Criswell Share[3]	Radovan Share
1[4]	650,250	-0-	650,250	198,326	198,326
2	809,416	617,266	1,426,682	435,138	435,138
3	862,039	772,100	1,634,139	498,412	498,412
4	887,900	725,115	1,613,015	491,970	491,970
5	914,537	751,291	1,665,828	508,078	508,078
6	941,973	778,252	1,720,225	524,669	524,669
7	970,232	806,022	1,776,254	541,757	541,757
8	999,339	834,625	1,833,964	559,359	559,359
9	1,029,320	864,086	1,893,406	577,489	577,489
10	1,060,199	881,368	1,941,567	592,178	592,178
				4,927,376	4,927,376
TOTAL					

[1] Found in fourth line from bottom of Financial Pro Forma of Trial Exhibit 4.

[2] The 30.5% share owned by each of Criswell and Radovan in the total management fees to be paid to CR Hospitality. Because this management agreement was for a single property, costs of on site management, record keeping, office space, etc. would have been costs of the hotel itself and are not shown as a reduction in these values.

[3] 2015 was assumed to be a partial year as the first operating year when this projection was prepared in 2014. 2016 was to be the first full year of operations.

[4] Found under Fixed Charges Section of Financial Pro Forma of Trial Exhibit 4.

4. Importantly, the Financial Pro Forma which forms the basis for these damages was not only thoroughly vetted by several experts in the hotel industry, including Starwood Hotel and Resorts, but according to testimony at trial, by Yount's own accountant, Ken Tratner, who looked at the pro forma for reasonableness, and then gave the Pro Forma to a hospitality expert to review who told him it was reasonable; and then accountant Tratner gave Yount the go ahead to invest. *See* Trial Testimony of Ken Tratner, Volume VI, pp. 849-50, 855.

5. The above estimate of management fees is taken from Trial Exhibit 4, which was prepared in early 2014 and reflected a then depressed hotel market in the area. A more recent, and much higher, projection can be found in an updated pro forma (the "2015 Forecast") dated December 15, 2015 and prepared by Orion Hospitality, an outside consultant in the hospitality industry. Using those projections, the total of projected management fees which were lost by Radovan and I due to the actions of Yount and others would be $7,546,000.

I declare under the penalty of perjury under the laws of Nevada that the foregoing is true and correct.

DATED this 23rd day of March, 2018.

By: William Criswell
William Criswell

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EXHIBIT 1
TO DECLARATION OF WILLIAM CRISWELL

CAL NEVA RESORT, SPA & CASINO RENOVATION & REPOSITIONING - NORTH LAKE TAHOE

SCH. H: HOSPITALITY OPERATIONS PROFORMA FORECAST

Last Revised: December 12, 2015 4:20 PM
Printed: December 30, 2015

2014 = Base Year, current dollars assumed
3.0% Assumed annual inflation rate

		% Frac Rms Avl	% Whole Rms Avl	Opening Year Year 1 Forecast 2016		Year 2 Forecast 2017		Stabilized Year Year 3 Forecast 2018		Year 4 Forecast 2019		Year 5 Forecast 2020		Year 6 Forecast 2021		Year 7 Forecast 2022		Year 8 Forecast 2023		Year 9 Forecast 2024		Year 10 Forecast 2025		Year 11 Forecast 2026	
Hotel Key Count			100%	191		191		191		191		191		191		191		191		191		191		191	
Residential Key Count / Residential % Available for Daily Rental			67.5%	49		49		49		49		49		49		49		49		49		49		49	
Combined Daily Keys Available for Rental				240		240		240		240		240		240		240		240		240		240		240	
Number of Annual Hotel Rooms Available for Daily Rental				46,477		69,715		69,715		69,715		69,715		69,715		69,715		69,715		69,715		69,715		69,715	
Number of Annual Residential Rooms Available for Daily Rental				0		17,885		17,885		17,885		17,885		17,885		17,885		17,885		17,885		17,885		17,885	
Combined Total Annual Rooms Available for Rental				46,477		87,600		87,600		87,600		87,600		87,600		87,600		87,600		87,600		87,600		87,600	
Occ% Static Hotel	74,050 sf		191	60.3%		64.5%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%	
Occ% Residential Hotel	35,000 sf		56	60.3%		64.5%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%	
Combined Occupancy %	109,050 sf		247	60.3%		64.5%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%		66.8%	
Number of Annual Non-Owner Occupied Hotel Rooms				28,037		44,973		46,552		46,552		46,552		46,552		46,552		46,552		46,552		46,552		46,552	
Number of Annual Non-Owner Occupied Residential Rooms				0		11,536		11,947		11,947		11,947		11,947		11,947		11,947		11,947		11,947		11,947	
Combined Number of Annual Non-Owner Occupied Rooms				28,037		56,509		58,499		58,499		58,499		58,499		58,499		58,499		58,499		58,499		58,499	
Additional Occupied Rooms from Owners		30 Day/Yr	30 Day/Yr	1,120		1,680		1,680		1,680		1,680		1,680		1,680		1,680		1,680		1,680		1,680	
Average Length of Stay (LOS) / Number of Guests per Occupied Room		2 Days	1.65 ppl																						
ADR Static Hotel				$315		$325		$334		$344		$355		$365		$376		$387		$399		$411		$423	
ADR Residential				$316		$325		$335		$345		$355		$366		$377		$388		$400		$412		$424	
Combined ADR				$ 315		$ 325		$ 334		$ 344		$ 355		$ 365		$ 376		$ 388		$ 399		$ 411		$ 424	
ADR Change vs Prior Year				0.0%		3.1%		2.9%		3.0%		3.0%		3.0%		3.0%		3.0%		3.0%		3.0%		3.0%	
Combined RevPAR				$ 190		$ 210		$ 223		$ 230		$ 237		$ 244		$ 251		$ 259		$ 267		$ 275		$ 283	

All Dollars shown are Current US$ (000's)

DEPARTMENTAL REVENUES																									
Hotel Rooms Rental				8,835	53.1%	14,607	42.1%	15,561	42.1%	16,027	42.2%	16,508	42.2%	17,003	42.3%	17,514	42.4%	18,039	42.4%	18,580	42.5%	19,137	42.5%	19,712	42.6%
For-Sale Residential Rooms Rental				0	0.0%	3,750	10.8%	4,000	10.8%	4,120	10.8%	4,244	10.9%	4,371	10.9%	4,502	10.9%	4,638	10.9%	4,777	10.9%	4,920	10.9%	5,068	10.9%
Total Rooms				8,835	53.1%	18,357	52.9%	19,561	53.0%	20,148	53.0%	20,752	53.1%	21,375	53.2%	22,016	53.2%	22,676	53.3%	23,357	53.4%	24,057	53.4%	24,779	53.5%
Resort Fee	$25	POR	0.00%	729	4.4%	1,455	4.2%	1,504	4.1%	1,504	4.0%	1,504	3.9%	1,504	3.7%	1,504	3.6%	1,504	3.5%	1,504	3.4%	1,504	3.3%	1,504	3.2%
Food & Beverage	$120	PP/Day	3.00%	6,125	36.8%	12,590	36.2%	13,411	36.3%	13,813	36.4%	14,228	36.4%	14,655	36.5%	15,094	36.5%	15,547	36.5%	16,013	36.6%	16,494	36.6%	16,989	36.7%
HOA/Club Dues	$1.00	PSF/Mth	3.00%	0	0.0%	458	1.3%	473	1.3%	487	1.3%	502	1.3%	517	1.3%	532	1.3%	548	1.3%	564	1.3%	581	1.3%	599	1.3%
Spa, Theater, Programming, Yacht & Recreation	$20	POR	3.00%	619	3.7%	1,272	3.7%	1,355	3.7%	1,395	3.7%	1,437	3.7%	1,480	3.7%	1,525	3.7%	1,570	3.7%	1,618	3.7%	1,666	3.7%	1,716	3.7%
Gaming Lease (17k NSF)	$200,000	P/Yr	0.00%	133	0.8%	200	0.6%	200	0.5%	200	0.5%	200	0.5%	200	0.5%	200	0.5%	200	0.5%	200	0.5%	200	0.4%	200	0.4%
Home Owners' Usage (Hskp) Fees	$45	Per Day	3.00%	53	0.3%	83	0.2%	85	0.2%	88	0.2%	90	0.2%	93	0.2%	96	0.2%	99	0.2%	102	0.2%	105	0.2%	108	0.2%
Retail Leases, Telephone, Event Space & Other	$5	POR	3.00%	155	0.9%	318	0.9%	339	0.9%	349	0.9%	359	0.9%	370	0.9%	381	0.9%	393	0.9%	404	0.9%	417	0.9%	429	0.9%
TOTAL				16,649	100.0%	34,733	100.0%	36,927	100.0%	37,984	100.0%	39,073	100.0%	40,194	100.0%	41,348	100.0%	42,538	100.0%	43,763	100.0%	45,024	100.0%	46,324	100.0%
DEPARTMENTAL EXPENSES																									
Hotel Rooms Rental				2,209	25.0%	3,067	21.0%	3,112	20.0%	3,205	20.0%	3,302	20.0%	3,401	20.0%	3,503	20.0%	3,608	20.0%	3,716	20.0%	3,827	20.0%	3,942	20.0%
For-Sale Residential Rooms Rental				0	25.0%	825	22.0%	840	21.0%	865	21.0%	891	21.0%	918	21.0%	946	21.0%	974	21.0%	1,003	21.0%	1,033	21.0%	1,064	21.0%
Total Rooms				2,209	25.0%	3,893	21.2%	3,952	20.2%	4,071	20.2%	4,193	20.2%	4,319	20.2%	4,448	20.2%	4,582	20.2%	4,719	20.2%	4,861	20.2%	5,007	20.2%
Resort Fee				0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Food & Beverage				4,900	80.0%	9,568	76.0%	9,924	74.0%	10,222	74.0%	10,529	74.0%	10,844	74.0%	11,170	74.0%	11,505	74.0%	11,850	74.0%	12,205	74.0%	12,572	74.0%
HOA/Club Dues				0	0.0%	275	60.0%	236	50.0%	243	50.0%	251	50.0%	258	50.0%	266	50.0%	274	50.0%	282	50.0%	291	50.0%	299	50.0%
Spa, Theater, Programming, Yacht & Recreation				464	75.0%	890	70.0%	881	65.0%	907	65.0%	934	65.0%	962	65.0%	991	65.0%	1,021	65.0%	1,051	65.0%	1,083	65.0%	1,115	65.0%
Gaming Lease (17k NSF)				0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Home Owners' Usage (Hskp) Fees				45	85.0%	58	70.0%	60	70.0%	61	70.0%	63	70.0%	65	70.0%	67	70.0%	69	70.0%	71	70.0%	73	70.0%	75	70.0%
Retail Leases, Telephone, Event Space & Other				155	100.0%	143	45.0%	135	40.0%	140	40.0%	144	40.0%	148	40.0%	152	40.0%	157	40.0%	162	40.0%	167	40.0%	172	40.0%
TOTAL				7,773	46.7%	14,827	42.7%	15,188	41.1%	15,644	41.2%	16,113	41.2%	16,597	41.3%	17,094	41.3%	17,607	41.4%	18,136	41.4%	18,680	41.5%	19,240	41.5%
UNDISTRIBUTED EXPENSES																									
Administrative & General				1,165	7.0%	2,153	6.2%	2,216	6.0%	2,279	6.0%	2,344	6.0%	2,412	6.0%	2,481	6.0%	2,552	6.0%	2,626	6.0%	2,701	6.0%	2,779	6.0%
Sales & Marketing				1,332	8.0%	1,910	5.5%	1,846	5.0%	1,899	5.0%	1,954	5.0%	2,010	5.0%	2,067	5.0%	2,127	5.0%	2,188	5.0%	2,251	5.0%	2,316	5.0%
Activities & Programming				166	1.0%	174	0.5%	185	0.5%	190	0.5%	195	0.5%	201	0.5%	207	0.5%	213	0.5%	219	0.5%	225	0.5%	232	0.5%
Repairs & Maintenance				832	5.0%	1,667	4.8%	1,699	4.6%	1,747	4.6%	1,797	4.6%	1,849	4.6%	1,902	4.6%	1,957	4.6%	2,013	4.6%	2,071	4.6%	2,131	4.6%
Utilities				533	3.2%	973	2.8%	997	2.7%	1,026	2.7%	1,055	2.7%	1,085	2.7%	1,116	2.7%	1,149	2.7%	1,182	2.7%	1,216	2.7%	1,251	2.7%
TOTAL				4,029	24.2%	6,877	19.8%	6,942	18.8%	7,141	18.8%	7,346	18.8%	7,556	18.8%	7,773	18.8%	7,997	18.8%	8,227	18.8%	8,465	18.8%	8,709	18.8%
GOP (BEFC)				4,847	29.1%	13,029	37.5%	14,797	40.1%	15,199	40.0%	15,614	40.0%	16,041	39.9%	16,480	39.9%	16,933	39.8%	17,400	39.8%	17,880	39.7%	18,375	39.7%
FIXED COSTS																									
Base Operator Management Fee				499	3.0%	1,042	3.0%	1,108	3.0%	1,140	3.0%	1,172	3.0%	1,206	3.0%	1,240	3.0%	1,276	3.0%	1,313	3.0%	1,351	3.0%	1,390	3.0%
Incentive Fee (10% of GOP less Condo Owner Splits - For Employees)				485	10.0%	1,153	10.0%	1,320	10.0%	1,355	10.0%	1,392	10.0%	1,429	10.0%	1,468	10.0%	1,508	10.0%	1,549	10.0%	1,591	10.0%	1,635	10.0%
Leases & Sales Tax*				0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Insurance**				116	0.7%	183	0.6%	194	0.6%	200	0.6%	205	0.6%	211	0.6%	217	0.6%	224	0.6%	230	0.6%	237	0.6%	243	0.6%
Capex - FF&E Reserve**				332	2.0%	913	3.0%	1,295	4.0%	1,332	4.0%	1,369	4.0%	1,409	4.0%	1,449	4.0%	1,490	4.0%	1,533	4.0%	1,577	4.0%	1,622	4.0%
Personal Property & Real Estate Taxes**				365	2.2%	578	1.9%	615	1.9%	632	1.9%	650	1.9%	669	1.9%	688	1.9%	708	1.9%	728	1.9%	749	1.9%	770	1.9%
Splits to Homeowners	20% Admin, then	50% Split		0	0.0%	1,500	4.3%	1,600	4.3%	1,648	4.3%	1,698	4.3%	1,749	4.4%	1,801	4.4%	1,855	4.4%	1,911	4.4%	1,968	4.4%	2,027	4.4%
TOTAL				1,797	10.8%	5,369	15.5%	6,132	16.6%	6,307	16.6%	6,487	16.6%	6,672	16.6%	6,864	16.6%	7,060	16.6%	7,263	16.6%	7,472	16.6%	7,687	16.6%
NOI (EBITDA - Cash Available for Debt Service)				3,050	18.3%	7,659	22.1%	8,665	23.5%	8,893	23.4%	9,127	23.4%	9,368	23.3%	9,617	23.3%	9,873	23.2%	10,136	23.2%	10,408	23.1%	10,688	23.1%
					8	Mths Operations in Yr 1																			

NOTES & ASSUMPTIONS:

* Assumes these expenses are already wrapped into and included in the departmental expenses for each revenue generating center.
** Assumes Insurance, Capex Reserve and Property Taxes for Owned Units are paid for by the Owner from their split of revenues. These line items calc on Total Gross Revenues less all Owner Unit Revenues and HOA/Usage Fees.
Assumes the residential owned units are available to the optional rental program for transient rental accommodations when not Owner occupied..
HOA carry cost/fees subsidy paid by the developer (if applicable) are included on the S&M Absorption Schedule C.
Estimated split to homeowners has been generically set to a 50/50 after a 20% admin fee has been charged for administering the optional rental program to help offset fixed costs.
Assumptions have been made for the HOA and it's cost of operation in this model, it is assumed to be fully supported by the home Owners with a small additional margin.
It is assumed the Owners have the hotel operator assist with their housekeeping and property maintenance, but reimburse the hotel operation accordingly for that service provided.
Gaming Space is leased out to a 3rd party licensed NV State Gaming Operator, actual lease rate is still TBD.

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EXHIBIT 2
TO DECLARATION OF WILLIAM CRISWELL

RESORT MANAGEMENT AGREEMENT

between

NEW CAL-NEVA LODGE, LLC,
as Owner

and

CR HOSPITALITY, LLC
as Operator

Dated as of September 23 2014

Project:
Cal Neva Resort
Crystal Bay, Nevada

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RESORT MANAGEMENT AGREEMENT

This **RESORT MANAGEMENT AGREEMENT** ("***Agreement***") is made and entered into as of September __, 2014, by and between **NEW CAL-NEVA LODGE, LLC**, a Nevada limited liability company ("***Owner***"), and **CR HOSPITALITY, LLC**, a Nevada limited liability company ("***Operator***").

RECITALS:

Owner is or will be, prior to or as of the commencement of Operator's services hereunder, the owner of real property located at 2 Stateline Road, Crystal Bay, Nevada 89402 (the "***Property***"). Owner intends to renovate the Resort (as defined below) and reposition it to operate as a luxury property. Owner wishes to engage Operator to manage the Resort (as defined below) under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, incorporating the above recitals as though fully set forth, and in consideration of the mutual covenants, promises and obligations set forth below, the parties hereto agree as follows:

ARTICLE 1. **THE RESORT**

Section 1.1 Resort. The term "***Resort***" will be used in this Agreement to refer collectively to the following:

1.1.1 the Property;

1.1.2 the "***Improvements***" of the Resort, consisting of the main hotel building, tower and several ancillary buildings and amenities, as they may change and/or be supplemented from time to time, including, without limitation, the spa, terrace units, chalet units and cabin units, beach houses, and possibly including a casino, and other buildings, facilities (if any), used in connection with the operation of the Resort (provided, however, if any of the foregoing are owned by a person or entity other than Owner, then the management thereof may be evidenced in a separate management agreement with such owner, if requested by Owner, Operator or such owner);

1.1.3 the "***Operating Equipment***" of the Resort, consisting of all tools, uniforms, china, glassware, linen, silverware and other similar items of a similar nature used exclusively in connection with the operation of the Resort;

1.1.4 the "***Operating Supplies***" of the Resort, consisting of all inventories and consumable items customarily consumed on a daily basis, and used exclusively in connection with the operation of the Resort, including, without limitation, food and beverage inventory, office supplies, cleaning supplies, laundry and valet supplies, stationery, and other similar items; and

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1.1.5 the "***FF&E***" of the Resort, consisting of all furniture and furnishings, fixtures and equipment located in or used exclusively in connection with the operation of the Resort other than the Operating Equipment, the Operating Supplies, and any items contained within the walls and ceilings of the Improvements (which are deemed to be part of the Improvements), including, without limitation, signs, televisions, computers, and any vehicles or boats used exclusively in connection with the operation of the Resort (provided, however, if any of the foregoing are owned by a person or entity other than Owner, then the management thereof may be evidenced in a separate management agreement with such owner, if requested by Owner, Operator or such owner).

Section 1.2 Title to Property. Owner represents and warrants that Owner has acquired fee simple title to the Property. Owner will, at its expense, make commercially reasonable efforts to enable Operator perform its management services consistent with the terms of this Agreement without unreasonable interference.

ARTICLE 2. OPERATING TERM AND COMMENCEMENT OF RESORT OPERATIONS

Section 2.1 Opening Date. The opening of the Resort will occur at a time when (i) construction of the first phase of the renovation of the Resort has been substantially completed, (ii) FF&E, Operating Equipment and Operating Supplies necessary to open and operate the Resort have been obtained and delivered to the Resort for use, (iii) all required business licenses and certificates of occupancy for the ordinary operation of the Resort have been obtained, (iv) all final building inspections for the ordinary operation of the Resort have been conducted and passed, (v) all insurance described in ***Article 7*** is in effect, (vi) the Resort bank accounts have been established and funded with the minimum balances set forth in this Agreement, and (vii) the Resort is ready to receive guests (as determined by Operator). This date is referred to herein as the "***Opening Day***" or "***Opening Date***."

Section 2.2 Term. Subject to ***Section 2.4*** hereof, the initial term of this Agreement (the "***Initial Term***") will commence on the Opening Date and will continue until midnight on December 31 of the tenth (10th) Operating Year (as defined in ***Section 14.13*** below) following the Opening Date. Operator will have the option to extend the term of this Agreement for two additional periods of five (5) years each (each, a "***Renewal Term***") upon the same terms and conditions as set forth herein. Operator may exercise its option with regard to the first Renewal Term by Notice to Owner at any time after January 1 and on or before April 1 of the tenth (10th) Operating Year, and may exercise its option with regard to the second Renewal Term at any time after January 1 and on or before April 1 of the fifteenth (15th) Operating Year. Upon any expiration of the term of this Agreement (as the same may be renewed, the "***Term***"), the rights of Operator under ***Article 4*** hereof to receive Management Fees (as defined in ***Section 4.1***) shall expire and terminate as of the date of expiration, subject to the terms of ***Section 2.5*** below.

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Section 2.3 Standard of Operation. Owner and Operator agree that the Resort will be operated as a luxury resort, consistent with the Annual Budget, in compliance with the requirements of the mortgage and applicable law, and otherwise in a prudent and efficient manner reasonably calculated to protect and preserve the assets that comprise the Resort. Subject to the foregoing, the Resort will be operated with a quality of service substantially similar to that provided at The Ritz-Carlton, Lake Tahoe and/or Hyatt Regency Lake Tahoe Resort, Spa and Casino as of the date hereof (the "***Operating Standard***"), but with different luxury appointments, facilities and "personality," taking into account the physical layout of the Resort.

Section 2.4 Termination. Owner shall have the right, by Notice to Operator, to terminate this Agreement, without fee or penalty (i) upon the closing of a sale or transfer of the Resort, (ii) in accordance with the provisions of ***Articles 8 and 9*** below, upon the loss of more than fifty percent (50%) (on a key count basis) of the Improvements, as a result of a condemnation or casualty event, (iii) for Cause (as such term is defined in ***Section 14.13***), (iv) due to the inability of Owner to obtain third party financing acceptable to Owner in its sole discretion that results in the permanent cessation of development of the Resort (i.e., if the Resort does not and will not open for business to the public), or (v) upon the occurrence of any event or condition beyond the reasonable control of Owner that results in the permanent cessation of development of the Resort (i.e., if the Resort does not and will not open for business to the public). Any such termination shall be effective as of a date that is not less than thirty (30) days after the date of delivery of a Notice of termination delivered to Operator, unless the termination is for Cause, in which case the termination shall be effective as of ten (10) days after the date of delivery of a Notice of termination delivered to Operator; provided, however, in no event shall such termination be effective until the date that is the earlier of (A) the earliest date on which all Resort employees can be terminated without liability to Operator or (B) the date on which all Resort employees receive payment from Owner through the employees' date of termination and cease to actually work at the Resort, all in compliance with any applicable federal or state plant closing or similar laws (such as the Worker Retraining and Notification Act of 1990 (as amended, the "***WARN Act***") and any state law equivalent). Operator shall have the right to terminate this Agreement (i) upon ten (10) days' Notice to Owner if Owner abandons the redevelopment of the Property as a Resort (or if such redevelopment is delayed at any time by more than ninety (90) days as compared to the construction timeline provided to Operator by Owner) or (ii) upon occurrence of an Event of Default on the part of Owner. Any termination shall not affect the right of either party to exercise all rights and remedies provided under applicable law, including Owner's right, if applicable, to seek damages by reason of any termination for Cause of Operator and Operator's right, if applicable, to seek damages by reason of an Event of Default on the part of Owner.

Section 2.5 Obligations Upon Termination. Upon expiration of the Term or on the earlier termination thereof pursuant to the provisions of **Section 2.4** above, the following provisions shall apply, which provisions shall survive the termination of this Agreement:

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2.5.1 Payment of Fees. Each party shall, within five (5) business days after request therefor, pay to the other all amounts then determinable as due to such other party (whether as a result of accrued and unpaid amounts or as a result of any overpayment).

2.5.2 Delivery of Possession and Return of Property. Operator will vacate, surrender, and deliver to Owner possession of the Resort and all of Owner's properties and assets within the possession of Operator, including keys, locks and safe combinations, files, correspondence, information regarding group bookings, reservation lists, ledgers, and bank statements, peacefully and promptly upon the termination of this Agreement and, as soon as reasonably practicable, but in any event within ten (10) days after the termination of this Agreement, Operator shall deliver to Owner, originals or copies of, as reasonably determined appropriate by Operator and to the extent in the possession of Operator (as hereinafter described, "***Books and Records***"): (i) all books and records prepared or maintained by Operator during the Term with respect to the Resort; (ii) all permits, plans, purchase and sale agreements, licenses, warranties, contracts and other documents pertaining to the Resort and in the possession of Operator; (iii) all insurance policies, bills of sale or other documents evidencing title or rights of Owner; and (iv) any other records or documents pertaining to the Resort and in the possession of Operator which are necessary or reasonably incidental for the ownership and management of the Resort (provided, however, that if any of the items referred to in this Section shall pertain to the Resort as well as to other properties not owned by Owner or its Affiliates, then Operator need not deliver the originals thereof if it delivers copies of such items). In addition to the foregoing, Operator shall, promptly upon the termination of this Agreement, assign to Owner or its designee such existing contracts, if any, relating to the operation and maintenance of the Resort as Owner shall direct to the extent the same are assignable in accordance with their terms. After the termination of this Agreement, Operator will have the right to inspect or make copies of any of these Books and Records for its own purposes with reasonable advance notice.

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2.5.3 Final Accounting. Within ninety (90) days after the termination of this Agreement (the "***Post-Termination Period***"), Operator shall be obligated to deliver to Owner a final accounting, which shall cover the period from the end of the prior Operating Year to the termination date (and which shall specifically identify any and all expenses which have been incurred in connection with the Resort as of the date thereof but which have yet to be paid); provided, however, that if such termination date shall be a date other than the last day of a calendar month, the final accounting shall be prepared as of the last day of the month in which such termination occurs and shall be delivered to Owner within ninety (90) days thereafter.

2.5.4 Assignment of Licenses and Permits. To the extent assignable and at no cost to Operator, Operator shall, as soon as reasonably possible after the termination of this Agreement, assign to Owner or its designee all licenses and permits necessary for the ordinary operation of the Resort (provided, however, all licenses required for the sale and service of alcoholic beverages shall be held at all times by Owner, and not by Operator).

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2.5.5 Termination of Resort Employees. In addition to its obligation to pay all Resort employee-related expenses during the Term hereof, Owner shall bear and be responsible for all costs of terminating such employees, including, without limitation, the costs of any related employee claims (such as wrongful termination claims) and of any applicable federal or state plant closing or similar laws (such as the WARN Act and any state law equivalent) and all amounts due to such employees in connection with the termination of this Agreement, including, without limitation, salaries, employee benefits, bonuses, accrued vacation pay and severance.

2.5.6 Confidentiality. Except as necessary to perform its obligations or enforce its rights and remedies under this Agreement, Operator will keep confidential all information concerning the Resort obtained by Operator or in Operator 's possession, and not use any of it in any other manner that would directly compete with the Resort;

2.5.7 Shadow Management. Owner, at its option, may install a shadow management team in the Resort during the thirty (30) day period immediately preceding the termination date to have daily access to the Resort and its books and records; provided, however, such team will not (a) unreasonably interfere with the management and operations of the Resort, and (b) consist of more than ten (10) members. Owner will continue to employ a sufficient number of Resort employees to avoid a WARN act violation following any termination of this Agreement;

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2.5.8 General Assistance. If Operator has been paid all fees due to it under this Agreement during the Post-Termination Period, Operator shall otherwise assist Owner and any other person designated by Owner in any manner which reasonably requires Operator's involvement to ensure a smooth and orderly transition to the next operator.

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2.5.9 Interest in Other Resorts. Commencing on the date hereof and continuing throughout the Term, Operator agrees, on behalf of itself and its Affiliates (collectively, the "***Operator Parties***" and individually, an "***Operator Party***) that no Operator Party will, directly or indirectly, whether on its own account or as a shareholder, partner, joint venturer, employee, consultant, advisor, agent, or Affiliate, of any person, firm, corporation or other entity, develop or operate, or act as developer or operator, or have any interest in the development or operation of hotels or other resorts (other than hotels or resorts in which one or more of the Operator Parties may invest in the future solely as a passive investment) that are within fifty (50) miles of the Resort, without the prior written consent of Owner, which consent may be granted or withheld in Owner's sole and absolute discretion. Subject to the foregoing, Operator or its Affiliates may now or in the future manage other hotels and resorts on behalf of other third-parties, and Owner agrees such activities of Operator and its Affiliates shall not constitute a breach of this Agreement or a violation of any duty, including any express or implied fiduciary duty of Operator to Owner.

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ARTICLE 3. **USE AND OPERATION OF THE RESORT**

Section 3.1 Appointment of Operator. Owner hereby engages Operator for the Term as an independent contractor for purposes of operating the Resort for Owner's account, including directing the Resort employees in the operation of the Resort, and directing all advertising, promotion, marketing, sales and reservations for the Resort. Operator will have, within the limits of this Agreement, the right and duty to supervise, direct and control Resort employees and all operations of and relating to the Resort and the management thereof. Owner and Operator agree that to the extent that any fiduciary duties or other extra-contractual duties exist or are implied for any reason whatsoever including, without limitation, those resulting from the principal-agent relationship, and such duties are inconsistent with, or would have the effect of modifying, limiting or restricting the express provisions of this Agreement, the terms of this Agreement shall control.

Section 3.2 Financial Reporting. Operator will cause the accounting staff of the Resort to supply Owner promptly with all financial reports and budgets required under the terms of this Agreement, and Operator will, on a periodic basis to be mutually agreed upon, and as Owner may reasonably request from time to time, meet with Owner and Owner's representatives at the Property for purposes of reviewing the Resort's operations.

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Section 3.3 Operator's Obligations and Authority. Operator will provide its services as necessary to ensure that the Resort employees operate the Resort as a luxury resort, and in the provision of such services will have the following specific authority and obligations, in amplification of its authority and obligations set forth in ***Section 3.1*** above:

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3.3.1 use commercially reasonable efforts to maximize revenues associated with the use of the Resort's facilities, including through the supervision and direction, in cooperation with Owner, of all marketing, promotion, advertising, sales and related functions.

3.3.2 cause the accounting staff of the Resort to supply Owner promptly with all financial reports and budgets required under the terms of this Agreement.

3.3.3 cause the Resort employees to use commercially reasonable efforts to collect all charges, rents and other amounts due from Resort guests, patrons, tenants, subtenants, parties providing exclusive services and concessionaires, which efforts shall include where necessary or desirable, the following: (i) demanding and giving receipts for charges, rents and other amounts due; (ii) giving notices to quit or surrender space occupied or used by the party in question; and (iii) following Owner's approval, Operator shall confer with and cooperate with counsel designated by Owner in the institution and prosecution of any remedies and proceedings which Owner may, in its sole and absolute discretion, decide to institute, and Operator and its employees shall be reasonably available as witnesses on request; suits and proceedings shall be subject to Owner's

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reasonable input and approval, and all costs of such suits and proceedings not recovered from other parties shall, subject to the provisions of ***Section 14.2*** below, be paid out of the Operating Account (as defined in ***Section 5.4*** below); Operator shall not have any liability whatsoever as a result of its failure to collect any amounts receivable.

3.3.4 direct the establishment of a policy regarding association with any credit card system.

3.3.5 supervise and direct the recruiting, employment, compensation, promotion, supervision, transfer and discharge of all Resort employees; provided, however, Owner shall have the right to provide input on the candidates for General Manager, the Director of Food and Beverage, the Director of Sales and Marketing, the Executive Chef and the Controller (the "***Key Personnel***"), which the Operator agrees to consider in good faith (but with no obligation to honor any Owner directions), and shall have the right to approve the General Manager and the Executive Chef; provided, further, if Owner fails to approve or reject any such candidate within five (5) business days of receiving the resume of such candidate, then Owner shall be deemed to have approved such candidate for hire. Owner shall have no right to interfere with, supervise or otherwise direct the Key Personnel or any Resort employee, but Owner may at any time request, but not require, the removal from the Resort of any person employed as General Manager who is unsatisfactory to Owner, and Operator agrees to consider such request in good faith (but with no obligation to honor such request).

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3.3.6 cause the appropriate Resort employees to:

(a) negotiate on Owner's behalf and with Owner's consultation and input, with any labor union lawfully entitled to represent Resort employees;

(b) arrange in Owner's name for utility, telephone, vermin extermination, security, trash removal and other services necessary for the proper operation of the Resort;

(c) purchase on the credit of Owner and in accordance with this Agreement all food, beverages, Operating Supplies and expendables, and such other services and merchandise as are necessary for the proper operation of the Resort;

(d) subject to and within the limits of the Annual Budget (as defined in ***Section 3.8***) or as permitted under this Agreement or otherwise agreed by Owner, make all purchases or provide for all services, materials, Operating Equipment, FF&E, and provisions contemplated by the Annual Budget, all for the benefit of the Resort;

(e) maintain and repair or provide for the proper maintenance, repair and upkeep of the Resort in accordance with the Operating Standard;

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(f) grant concessions and enter into space leases for services and uses customarily subject to concession or lease in resorts, if desirable in Operator's opinion, subject to Owner's prior written consent in each instance, which consent shall not be unreasonably withheld;

(g) determine and set all rates and charges for rooms, food and beverage service and other facilities at the Resort in a manner consistent with the Annual Budget;

(h) settle and compromise claims where appropriate in Operator's opinion, provided that settlement of any claim shall only be made with prior notice to Owner, and settlement of any claim in excess of $25,000 shall be with Owner's prior written consent, which may be withheld in Owner's sole and absolute discretion; and

(i) assist the Owner in selecting and securing insurance for the Resort and its operations as set forth in ***Article 7***.

3.3.7 negotiate and execute, in the name of Owner, and on behalf of Owner, in Operator's capacity as an independent contractor of Owner, contracts with subcontractors, consultants and suppliers for the provision of all services, supplies, equipment, maintenance, security and other items reasonably necessary for the operation of the Resort, which are consistent with the Annual Budget, and which are not provided by the Resort employees or by Operator; provided, that (i) Operator shall use commercially reasonable efforts to cause such contracts to include a provision for cancellation thereof by Owner or Operator for convenience and without expense, upon not more than 30 days' written notice, and (ii) Operator may not, without Owner's prior written approval, execute any contract on behalf of Owner that (A) is for services or supplies not contemplated in the Annual Budget, (B) requires payment of more than $50,000 per calendar year by Owner or (C) has a term of over one year. Any contract for a capital expenditure over $25,000 (to the extent not contemplated in the Annual Budget) shall require the prior written approval of Owner, which approval may be withheld by Owner in its sole and absolute discretion.

3.3.8 reasonably cooperate with Owner in (i) reviewing the plans and specifications for any alteration of the Resort premises, (ii) providing consulting services with respect to replacement FF&E, including the design and quantities required, and (iii) eliminating, in general, operating problems or improving operations; provided that Operator shall be entitled to charge Owner (and to condition the provision of such services upon payment to Operator of) such amounts as may be mutually agreed upon by Owner and Operator to compensate Operator for its time in connection with such services; Operator shall have no liability as a result of its review of such plans or specifications, and Operator makes no warranties in connection therewith (including, without limitation, any warranty that the plans and specifications comply with any applicable law);

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3.3.9 reasonably cooperate with Owner to generally ensure the Project's compliance with material applicable statutes, ordinances, laws, rules, regulations, orders and requirements of any federal, state or local government and appropriate departments, and, in cooperation with Owner, cause all such other things to be done within its reasonable control in and about the Resort as are necessary to comply with any notice of violation of law from any governmental entity or the orders and requirements of any local board of fire underwriters or any other body which may exercise similar functions (so long as compliance does not involve capital improvements to the Project); provided, however, either Operator or Owner shall have the right to contest by legal proceedings, until final determination, the validity or application of any such statute, ordinance, law, rule, regulation, order or requirement to the extent and in the manner provided or permitted by law, and Operator shall be entitled to charge Owner such amounts as may be reasonable under the circumstances if Operator is required to expend excessive amounts of time attending to any such matter.

3.3.10 Operator shall take advantage of labor and material savings through competitive bids of quantity purchases when reasonable, but all such savings or other discounts shall accrue to the benefit of Owner.

3.3.11 Operator shall (i) exercise reasonable diligence to maintain, safeguard and preserve material, equipment and supplies belonging to the Resort, all of which shall be delivered to and stored upon the Resort and used only in connection with the Resort; maintain an adequate inventory of food, beverage and retail as is consistent with the Annual Budget, and, if requested by Owner, quarterly as of March 31, June 30, September 30 and December 31, furnish Owner with copies of such inventories within twenty (20) days after the end of the quarter; and (iii) promptly advise Owner in writing of the theft or mysterious disappearance of any such material, equipment and supplies.

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Section 3.4 Owner's Obligations; Working Capital; Employee Payroll Reserve.

3.4.1 In performing its duties hereunder, Operator shall act for the account of Owner, and all expenses incurred by Operator in accordance with the terms hereof as a result of such performance shall be borne exclusively by Owner. To the extent funds necessary therefor are not generated by the operation of the Resort, they shall be supplied by Owner to Operator within five (5) business days after Operator has given written notice to Owner that additional funds are necessary. Operator shall in no event be required to advance any of its own funds or use its own credit for the operation of the Resort in accordance with the terms hereof. If Operator elects to advance any money in connection within the Resort to pay any expenses for Owner, such advance shall be considered a loan subject to repayment with interest, and Owner agrees to reimburse Operator promptly therefor, together with Interest as provided in ***Article X*** below

3.4.2 All debts and liabilities to third persons incurred by Operator in conformity with the provisions hereof shall be the debts and liabilities of Owner only,

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and Operator shall not be liable for any such obligations by reason of its management, supervision, direction and operation of the Resort for Owner or for any other reason whatsoever, and Operator may so inform third parties with whom it deals on behalf of Owner and may take any other steps to carry out the intent of this provision.

3.4.3 In furtherance of the foregoing, throughout the Term, Owner (i) will provide, to the extent necessary, funds in excess of those generated from operations to pay for items required to operate and maintain the Resort and to comply with the terms of this Agreement ("***Working Capital***"), including the payment of all fees and assessments and other sums due to Operator, mortgage or other indebtedness, taxes and insurance, and (ii) will provide working capital sufficient to assure the uninterrupted operation of the Resort, in a manner materially consistent with the Annual Budget. As of the Opening Date, Owner shall have deposited in the Operating Account initial Working Capital in the amount of Two Hundred Fifty Thousand Dollars ($250,000) (the "***Minimum Balance***"), and the Minimum Balance will be maintained by Owner at all times; the amount of the Minimum Balance may be changed as part of the Annual Budget process but it must always be sufficient to provide the Resort with adequate working capital to operate the Resort in accordance with the Operating Standard and the Annual Budget.

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3.4.4 To the extent that the Working Capital is reduced to an amount that is less than the amount reasonably necessary to assure the uninterrupted and efficient operation of the Resort as set forth above, the amount of additional required funds shall be provided by Owner within five (5) business days after Operator provides written notice to Owner of such required additional Working Capital. If Owner fails to do so and such failure continues for five (5) business days after notice from Operator, Owner shall indemnify and hold Operator harmless from any loss or expense Operator might incur as a result of such deposit not having been made, and Operator may exercise its right to rights and remedies pursuant to ***Article 11***.

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3.4.5 In addition to the Working Capital required as set forth above, no later than the Opening Date, Owner shall establish and fund a reserve (the "***Employee Payroll Reserve***") to be held at a bank account selected by Operator and approved by Owner in an amount equal one month's payroll for the Resort's employees, as determined by Operator (the "***Minimum Payroll Reserve Balance***"). If at any time Gross Revenues (as defined in ***Exhibit A*** hereto) are insufficient to cover all or any portion of any costs or expenses relating to the employment of the Resort's employees, Operator shall have the right to withdraw funds from the Employee Payroll Reserve for the payment of any expenses relating to the employment of the Resort's employees, including, but not limited to, wages, bonuses, employee benefits (including, but not limited to, health and welfare and retirement plans), taxes and/or insurance. Operator shall notify Owner in writing (the "***Withdrawal Notice***") within five (5) Business Days' following any withdrawal from the Minimum Payroll Reserve (together with reasonably detailed back-up information stating the amount drawn and the employee related expenses covered by such withdrawal). No later than five (5) business days following Owner's receipt of the Withdrawal Notice,

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Owner shall fund an amount equal to the funds required to replenish the Employee Payroll Reserve to an amount equal to the Minimum Payroll Reserve Balance.

Section 3.5 Owner's Representative. Owner will appoint from time to time an individual to act as its representative, to whom Operator will direct all communications, information and reports.

Section 3.6 Resort Employees.

3.6.1 All employees of the Resort will be the employees of Owner. Operator, as an independent contractor of Owner, shall be responsible for and is authorized to screen test, investigate, interview, hire, train, supervise, discharge, and pay the Key Personnel and, through the Key Personnel, all other administrative, service and operating employees of the Resort, subject to this Agreement and the Annual Budget. Such Resort employees shall in every instance be employees of Owner, however Owner shall have no right to supervise or direct such employees. Operator shall use commercially reasonable efforts to ensure that the Resort employees are employed, and perform their services, in accordance with all applicable laws. All costs, expenses and liabilities relating to Resort employees shall be expenses of operating the Resort (and an estimate of the costs and expenses related to employee hiring, compensation, benefits and training shall be set forth in the Annual Budget). Operator shall be reimbursed from the Operating Account for all employment-related costs and expenses.

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3.6.2 Subject to reasonable availability, Operator shall, at no cost to Operator, be responsible for arranging health insurance coverage for employees of the Resort.

3.6.3 Operator shall bear no direct responsibility for the acts or omissions of Resort employees.

Section 3.7 Independent Contractor. Operator, in accordance with its status as an independent contractor, covenants and agrees that Operator will conduct itself consistent with such status, that it will neither hold itself out as nor claim to be a partner, officer or employee of Owner by reason hereof.

Section 3.8 Annual Budget.

3.8.1 At least thirty (30) days prior to the commencement of each Operating Year, Operator will submit to Owner for its approval an annual budget in a form reasonably acceptable to Owner (the "***Proposed Annual Budget***"). The Proposed Annual Budget will set forth the projections of income and expense, the cost of replacements of FF&E and capital improvements for the forthcoming Operating Year, the anticipated Gross Operating Profit, Net Operating Income and such additional information as Owner may reasonably request.

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3.8.2 Owner shall have the right to approve the Proposed Annual Budget in its reasonable discretion, and shall deliver written notice to Operator of Owner's approval or disapproval (which disapproval notice shall contain the Owner's reasons for disapproval and proposed revisions) within fourteen (14) days after delivery of the Proposed Annual Budget. Until such time as Owner and Operator have expressly agreed upon the Proposed Annual Budget, the Resort will be operated in accordance with the Annual Budget from the prior Operating Year, with such adjustments to the Annual Budget for the prior Operating Year as may be necessary (as determined by Operator in its reasonable discretion) to reflect approved contracts or leases, deletion of non-recurring expense items set forth on such Annual Budget and increased or decreased insurance costs, taxes, utility costs, and debt service payments and to reflect increases, if any, in the CPI in effect as of January 1 of the current Operating Year over the CPI in effect as of January 1 of the prior Operating Year.

3.8.3 Owner will promptly review the Proposed Annual Budget and will consult with Operator prior to the commencement of the forthcoming Operating Year in an effort to approve the Proposed Annual Budget for such forthcoming Operating Year before January 1st of such Operating Year or as soon as possible thereafter. Operator and Owner shall each respond to any written comments and revisions requested by the other with respect to the Proposed Annual Budget promptly, but in no case later than fourteen (14) after delivery of such comments and revisions, until such time as the parties agree on the final draft of the Proposed Annual Budget (such approved Proposed Annual Budget, the "***Annual Budget***"). Failure of either party to respond within such two (2) week period shall be deemed approval of the most recent draft of the Proposed Annual Budget. The Annual Budget shall constitute an authorization for Operator to expend the amounts approved as long as the expenses are incurred in connection with the operation and management of the Resort. Operator shall make every reasonable effort to insure that the actual costs of maintaining and operating the Resort shall not exceed the Annual Budget, either in the aggregate or in any one category, and significant year-to-date budget variances will be explained to Owner each month; provided, however, Owner acknowledges that the Annual Budget consists of projections and assumptions which depend in large measure on factors beyond the control of the Resort employees and Operator.

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3.8.4 Notwithstanding anything herein to the contrary, Operator may not incur any item of expense which would result in the amount of authorized expenditures in any major budget category (which shall be consistent with the expense line items shown on the summary page of the Financial Reports (as defined in ***Section 5.5.3***)) in the Annual Budget being exceeded by more than the greater of (i) 10% or (ii) $50,000, without Owner's prior written approval; provided, however, in cases of emergency, Operator may make any and all expenditures which exceed the aforementioned spending limit without prior approval, if such expenditures are necessary in the reasonable judgment of Operator to prevent damage or injury and obtaining Owner's prior approval would be impracticable by reason of such emergency. Operator will promptly notify Owner of any such emergency expenditures.

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3.8.5 Operator will use commercially reasonable efforts to ensure that the Resort employees comply with the capital improvements portion of the Annual Budget and that the employees do not, except for emergencies, materially deviate from the amount budgeted therefor or incur any material additional capital expense without Owner's prior written consent.

3.8.6 Owner and Operator acknowledge that the Annual Budget is an estimate of revenue and expenses and not a guarantee of projected results.

ARTICLE 4. **FEES AND REIMBURSEMENTS OF EXPENSES**

Section 4.1 Management Fees. Operator will be entitled to receive, as an expense of Resort operations, the following management fees (the "***Management Fees***"):

4.1.1 Base Fees (as defined on ***Exhibit A*** attached hereto) in monthly installments on or before the twentieth (20^{th}) day of each month for the preceding calendar month. Operator shall cause such payments to be made directly from the Operating Account (as defined in ***Section 5.4***), and if sufficient funds are not available in that account to cover the Base Fees due, Owner will pay the amount payable on or before the date due. Notwithstanding the foregoing, if Operator has not timely delivered to Owner the monthly financial reports required pursuant to this Agreement, then payment of the Base Fees for any calendar month shall be deferred and not paid until such reports are delivered. Interest shall not accrue on any such deferred Base Fees.

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4.1.2 Base Incentive Fees (as defined on ***Exhibit A*** attached hereto) on an estimated basis in monthly installments on or before the twentieth (20th) day of each month. The estimated payment of Base Incentive Fees to be made to Operator each month shall equal one-twelfth (1/12th) of the Base Incentive Fees that Operator is projected to earn in accordance with the Annual Budget (which projection shall take into consideration the Base Incentive Fees earned during the immediately prior Operating Year, if applicable). Operator shall cause such payments to be made directly from the Operating Account, and if sufficient funds are not available in that account to cover the Base Incentive Fees due, Owner will pay the amount payable on or before the due date. Operator's right to receive Base Incentive Fees shall be deferred to the extent required to make Debt Service payments. To the extent that the payment of any Base Incentive Fees is deferred pursuant to the preceding sentence, Owner shall pay such fees, with Interest from the date such Base Incentive Fees were due, to Operator as soon as sufficient funds are available, but in all events, not later than the effective date of any termination of this Agreement.

Section 4.2 Year-End Adjustment to Fees. If for any Operating Year, the aggregate amount of Management Fees paid with respect to such Operating Year by Owner to Operator shall be more or less than the Management Fees payable for such Operating Year based upon the final determination of such Management Fees as reflected in the annual financial statements certified by the Auditor (defined in ***Section 5.5.2***) in accordance with this Agreement, then, by way of year-end adjustment, within fifteen (15)

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days after the delivery of such annual financial statements to Owner, Operator shall pay to Owner the amount of any overpayment or withdraw from the Operating Account the amount of any underpayment; provided, however, that in the event that funds in the Operating Account are not sufficient to pay fully the Management Fees payable to Operator hereunder, Owner shall, within five (5) business days after Operator's request therefor, pay to Operator the amount of such deficiency.

Section 4.3 Reimbursement of General Costs. Owner will reimburse Operator for all reasonable out-of-pocket expenses incurred by Operator in performing its duties under this Agreement in a manner materially consistent with the Annual Budget or otherwise approved by Owner, including food, lodging and travel expenses for out-of-town travel of Operator's corporate employees, but not including the wages or employee benefits of such corporate employees (except as provided in this ***Section 4.3*** below). For directors, partners and the executive team of Operator, air travel shall be first class; provided, however, that such directors, partners and executive team members shall purchase a coach ticket and use a first class upgrade, if available. Operator will use commercially reasonable efforts to estimate these costs and will include such estimates in the Annual Budget. In the event that any Operator personnel perform duties at the Resort on a temporary basis until a replacement for the Resort employee who normally performs those duties can be obtained, then Owner will reimburse Operator for the total employment cost of such personnel (based on the lesser of (i) the salary and benefits payable for the position being filled, as set forth in the Annual Budget, or the (ii) actual salary and benefits of such Operator personnel) during the term of their temporary employment at the Resort.

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Section 4.4 Reimbursement of Accounting Costs. All accounting for the Resort may be performed by Operator through a central accounting system, in which event the Owner will reimburse Operator for Owner's pro rata share of Operator's actual cost of such accounting services, which shall include the costs of Operator's accounting personnel and systems, including, without limitation, information technology support services. Owner's pro rata share shall be equitably determined by Operator based on the properties utilizing the central accounting system and the extent of accounting required by each such property. An estimate of Owner's pro rata share shall be set forth in the Annual Budget.

Section 4.5 Reimbursement of Centralized Marketing and Sales Costs. It is anticipated that during the Term, certain marketing and sales services for the Resort may be performed at one or more marketing and sales centers operated by Operator or its Affiliate. If such centralized marketing and sales services are provided, and if the Resort's participation in such centralized services is approved by Owner, in its sole discretion, Owner will reimburse Operator for Owner's pro rata share of the actual costs of such centralized services, which shall include the costs incurred by Operator or its Affiliate for personnel and systems dedicated to such marketing and sales centers. Owner's pro rata share shall be equitably determined by Operator based on the properties utilizing the marketing and sales center and the extent of the services required by each

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such property. An estimate of Owner's pro rata share shall be set forth in the Annual Budget.

ARTICLE 5. **ACCOUNTING AND BANK ACCOUNTS**

Section 5.1 Books and Records. Operator will cause to be maintained, at Operator's home office, full and adequate books of account and other records reflecting Resort operations. The books and records will be kept in accordance with the Uniform System (as defined in ***Exhibit A***) and otherwise in accordance with generally accepted accounting principles. Owner and its representatives will have the right to inspect and copy Resort books and records at any reasonable time upon reasonable advance (at least 2 business days') notice.

Section 5.2 Provision for Replacement of Operating Equipment. Operator and Owner agree that it is desirable to average monthly charges for replacements of Operating Equipment in each Operating Year. Operator will include in the Annual Budget the estimated total cost of replacing and restocking the Operating Equipment for the applicable Operating Year. During the Operating Year, Operator will cause the Resort employees to make all replacements of Operating Equipment reasonably deemed by Operator to be necessary or desirable, to the extent materially consistent with the Annual Budget, and all such expenditures will be charged against the Operating Account.

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Section 5.3 Reserve for Replacement of and Additions to Furnishings and Equipment and Capital Expenditures. As a component of the Annual Budget, Operator and Owner will agree upon an amount to be charged in the following Operating Year for the creation of a reserve for the replacement of and additions to FF&E and capital expenditures; such reserve (the "***FF&E Reserve***") shall be: (i) for the first Operating Year, two percent (2%) (or such greater amount that is required by the holder of any mortgage encumbering the Property) of the anticipated Gross Revenues (as defined in ***Exhibit A*** hereto) for the following Operating Year, (ii) for the second and third Operating Years, three percent (3%) (or such greater amount that is required by the holder of any mortgage encumbering the Property) of the anticipated Gross Revenues for the following Operating Year, and (iii) for each Operating Year thereafter, four percent (4%) (or such greater amount that is required by the holder of any mortgage encumbering the Property) of the anticipated Gross Revenues for the following Operating Year. Operator will establish an interest-bearing account in a bank selected by Operator and approved by Owner (the "***Reserve Account***") into which there will be deposited monthly additions to the Reserve Account, and Operator will cause expenditures for replacements of and additions to the FF&E and capital expenditures to be made from the Reserve Account, as set forth in the Annual Budget. Except as otherwise expressly provided in this Agreement (e.g., with respect to emergencies and permitted variations), any proposed expenditure in excess of the amounts set forth in the Annual Budget for such items may only be made with Owner's prior written consent, which may be withheld in Owner's sole and absolute discretion.

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Section 5.4 Bank Accounts. All funds derived from Resort operations shall be deposited in an interest bearing account in a bank selected by Operator and approved by Owner (the "***Operating Account***"). The Operating Account shall be used by Operator to pay operating expenditures of the Resort and any other payments relative to the Property as permitted by the terms of this Agreement. Operator's designated signatories shall have check writing authority for the Operating Account; provided, however, the signature of a designated representative of Owner shall be required for checks in an amount over Ten Thousand Dollars ($10,000.00) if the expenditure is not contemplated in the Annual Budget and the expenditure has not otherwise been previously approved by Owner. Operator's funds shall not be commingled in such Operating Account and any funds which are deemed by Operator to be in excess of the current and projected short-term financial needs of the Resort, after taking into consideration reasonable reserves, shall be transferred by Operator to Owner from time to time.

Section 5.5 Financial Reports.

5.5.1 Within twenty (20) days after the end of each month, a profit and loss statement showing the results of Resort operations for that month and the period year-to-date, and containing a computation of Gross Operating Profit and Net Operating Income for those periods, will be delivered to Owner. The profit and loss statement shall show variances from the Annual Budget. Operator shall also provide a management report, balance sheet and general ledger. In addition, Operator shall furnish such monthly and quarterly reports of collections, disbursements and other accounting matters as reasonably requested by Owner from time to time.

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5.5.2 Operator shall cooperate with an independent certified public accountant engaged by Owner (the "***Independent Accountant***") to prepare and deliver to Owner, within seventy-five (75) days after the end of each Operating Year, a profit and loss statement, balance sheet and statement of changes in financial position, showing the results of Resort operations during the preceding Operating Year, and such additional information and schedules as Owner may reasonably request. Each of these reports will include a comparison of results against the preceding Operating Year.

5.5.3 Operator acknowledges and agrees that Operator's duties include the preparation of the financial reports (the "***Financial Reports***") described in ***Section 5.5.1***, and Operator shall coordinate with the Independent Accountant to ensure that the Financial Reports are in the correct form and include the correct information to allow the Independent Accountant to prepare its financial statements pursuant to ***Section 5.5.2*** in accordance with industry standards.

ARTICLE 6. **REPAIRS, MAINTENANCE AND ALTERATIONS**

Section 6.1 Repairs and Maintenance. As an expense of Resort operations, Operator will cause the Resort to be maintained in good repair and condition consistent with the Operating Standard of the Resort and in accordance with the Annual Budget.

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The costs of replacing the FF&E in accordance therewith shall be funded using the Reserve Account or funds supplied by Owner.

Section 6.2 Alterations. At Owner's request and subject to mutually agreeable terms (including, without limitation, a construction management fee if requested by Operator), Operator may also plan and supervise such alterations, additions or improvements in or to the Resort as are necessary to maintain the Operating Standard of the Resort. The budget for any such alterations, additions or improvements shall, if not included in the Annual Budget, be subject to the approval of Owner in its sole discretion; provided, however, Owner shall not undertake such alterations, additions or improvements unless Operator approves the same in writing as being consistent with the Operating Standard. The costs of any alteration, addition or improvement will be paid with funds supplied by Owner.

ARTICLE 7. **INSURANCE**

Section 7.1 Owner's Insurance. Owner agrees to obtain and maintain in force regarding the Resort all appropriate insurance, including insurance customary for the resort industry and for the geographic location of the Resort, as determined by Owner in its reasonable discretion, and insurance regarding Resort operations and management, in amounts sufficient to cover all typical risks of loss to the Resort, and to Owner, Operator and their respective interests in the Resort. The insurance coverage will include liquor liability insurance with limits not less than $1,000,000 per occurrence, and with an annual aggregate of $1,000,000, public liability, property damage, theft or damage to guests' property, interruption of business, fire and property damage to the Resort on an all-risk basis, including earthquake and such other coverage as is reasonably customary and available for resorts of equivalent class in the Lake Tahoe region or as is required by the holder of any mortgage encumbering the Property or governmental authorities having jurisdiction over the Resort. Notwithstanding the foregoing, policies of fire and property damage insurance will be carried by Owner for the full replacement value of the Resort, less the value of the Resort site and foundations only.

Section 7.2 Policies of Insurance. All insurance, with the exception of workers' compensation and employers' liability insurance, will be carried with reputable insurance companies selected by Owner and reasonably approved by Operator. Workers' compensation and employers' liability insurance shall be selected by Operator and reasonably approved by Owner. Operator will be named as an additional insured on all policies to the extent of its insurable interests. All policies will provide that Operator be given thirty (30) days' advance written notice of any modification or cancellation. The originals of all policies will be delivered to Owner for safekeeping. Copies of the policies will be maintained at the Resort as part of the Resort's files and records.

Section 7.3 Waiver of Subrogation. Each party hereby waives any right that such party may have against the other party on account of any loss or damage arising in any manner, and WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE OTHER PARTY, that is covered by policies of property,

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liability, theft, workmen's compensation or other insurance now or hereafter existing during the Term or that would have been covered had the insurance required under this Agreement been procured. Each party shall immediately give to its insurance companies notice of this waiver and have them waive any rights of subrogation they may have against the other party, endorsing their policies where necessary to prevent the invalidation of insurance coverage by reason of this waiver. Each party shall take no action (such as admission of liability) which bars the other party from obtaining any protection afforded by any policy of insurance maintained in relation to the Property. Each party shall have the exclusive right, at its option, to conduct the defense to any claim, demand or suit within limits prescribed by its policy or policies of insurance. Each party shall furnish any and all information requested by the other party for the purpose of establishing the placement of insurance coverage and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder.

Section 7.4 Operator's Insurance. Operator shall, at the expense of Owner, maintain in full force and effect insurance policies with respect to the Resort employees and the corporate staff of Operator reasonably satisfactory to Owner that are issued by insurance companies which have an A.M. Best General Policyholder's Service Operating of not less than "B+VIII", which are licensed in the State of Nevada (and the State of California, if determined necessary by Operator) and which are otherwise reasonably satisfactory to Owner. Such policies shall provide the following coverages (or such other coverages or upon such other terms as may be required pursuant to any Resort financings):

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(i) Workers' compensation and employers' liability insurance subject to the statutory limits of the State of Nevada (and the State of California, if determined necessary by Operator).

(ii) Comprehensive automobile liability insurance in an amount not less than $1,000,000 combined single limit for bodily injury and property damage.

(iii) Professional liability insurance (insuring Operator against liability for, among other matters, all negligent acts or omissions in connection with the management of the Property, with coverage for harm to person and property) with a per occurrence limit of not less than $1,000,000 per claim and in the aggregate. Operator shall maintain this insurance for at least three (3) years after the termination of this Agreement.

(iv) Commercial crime insurance policy or fidelity bond for all personnel that perform services or otherwise might have the opportunity to misappropriate Owner's property or funds, with limits of not less than $1,000,000 per occurrence. This policy or bond must include third-party client coverage for Owner's property.

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(v) Employment Practices liability insurance with a per occurrence limit of not less than $1,000,000 and third party extension, including coverage for losses that arise out of local, state, or federal anti-discrimination laws. Operator shall maintain this insurance for at least three (3) years after the termination of this Agreement. This policy must include coverage for acts of any third-party.

ARTICLE 8. **DAMAGE TO AND DESTRUCTION OF THE RESORT**

Section 8.1 Repairs Following Damage or Destruction. Except as provided below in ***Section 8.2***, Owner agrees to repair, restore, rebuild or replace any damage to, or impairment or destruction of, the Resort that occurs during the Term. If Owner fails to undertake the work within thirty (30) days after its receipt of the insurance proceeds available with regard to such loss, or to complete the work with reasonable diligence, Operator may (but is not obligated to) cause the work to be undertaken and completed for Owner's account; in that event Operator will be entitled to (i) full reimbursement from Owner, plus Interest, and (ii) receipt of any insurance proceeds paid as a result of the event of destruction.

Section 8.2 Election to Terminate. Subject to the limitations established by the holder of any mortgage encumbering the Property, if more than fifty percent (50%) of the Resort is substantially destroyed or damaged during the Term (as determined by the amount of damage to the Improvements as compared to the full replacement cost of the Improvements), Owner may refuse to rebuild the Resort, or may convert the buildings to a use other than a resort, and terminate this Agreement. Owner will exercise this right of termination by written notice to Operator within sixty (60) days of the date the damage or destruction occurred.

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ARTICLE 9. **CONDEMNATION**

Section 9.1 Election to Terminate. In the event of a permanent or temporary, total or partial condemnation following any eminent domain, condemnation, compulsory acquisition or similar proceeding, which results in the loss of more than fifty percent (50%) of the Resort (as determined by the value of that portion of the Resort taken or condemned as compared to the full value of the Resort prior to the taking or condemnation), this Agreement may be terminated by Owner, upon its delivery of written notice of termination to Operator. Any award arising by reason of any condemnation during the Term that takes into account the compensation payable to Operator hereunder will be reasonably allocated in accordance with such award. If such award does not take into account such compensation, then the award shall be reasonably allocated by mutual agreement, giving compensation to both Operator and Owner to the extent of the loss sustained by each. If Operator and Owner are unable to reach a mutual agreement as to continued use of the Resort or allocation of the award, either party may pursue its rights or remedies with respect thereto in a court of competent jurisdiction.

Section 9.2 Temporary Condemnation. Operator will receive its Management Fees during a "temporary condemnation" (i.e., a condemnation that is initiated but not

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completed) or any temporary taking, to the extent operations are not ceased during such period as a result of such "temporary condemnation" or temporary taking.

ARTICLE 10. **RIGHT TO PERFORM COVENANTS OF THE OTHER PARTY**

If either Operator or Owner fails to make any payment or perform any act required under this Agreement within the time period allowed for such payment or performance, then the other party may elect to do so after giving ten (10) days' Notice. Such Notice is not required, however, in the event of an emergency. Any such election will not release the other party from its obligations, and the electing party will not be deemed to have waived any right or remedy. Any payment made by the electing party will be promptly repaid, together with interest on the amount paid from the date of payment to the date repaid at a variable rate of interest ("***Interest***") equal to the lesser of (i) the prime rate (or if none, its nearest equivalent) from time to time announced by Bank of America plus three percent (3%) per annum, compounded monthly, or (ii) the maximum rate allowed by applicable law.

ARTICLE 11. **DEFAULT**

Section 11.1 Event of Default. The occurrence of an event of default, as set forth below, will entitle the non-defaulting party to exercise any right or remedy under this Agreement, including the termination of this Agreement and the recovery of damages and any other rights and remedies provided under this Agreement or by law. Each of the following constitutes an event of default under this Agreement (an "***Event of Default***"):

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11.1.1 Operator's failure to pay Owner any money then due and owing to Owner from Operator within twenty (20) days after Notice (as defined in ***Section 14.6***) from Owner of such failure;

11.1.2 Owner's failure to pay Operator any money then due and owing to Operator or Owner's failure to provide funds, including, without limitation, Working Capital, as required under this Agreement or otherwise to meet its financial obligations as required under this Agreement, within ten (10) days after Notice from Operator of such failure or within two (2) days after Notice from Operator of such failure if and to the extent the funds are required to pay employment costs relating to the Resort Employees;

11.1.3 Any material breach of or inaccuracy in any representation or warranty made by Operator or Owner herein at the time such representation or warranty was made;

11.1.4 Any formal admission by Operator or Owner of insolvency or of inability to pay their respective debts as they become due, or the filing by or against Operator or Owner of any petition, consent or application under any bankruptcy or similar law concerning the payment by Operator or Owner of their obligations; provided that if the institution of any proceedings is by a third party, then no event of default shall

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occur if, within ninety (90) days of such institution, Operator or Owner stays or causes the stay of such order or proceedings;

11.1.5 The institution of any procedure for the seizure, levy or attachment of all or a substantial portion of Operator's or Owner's assets, or the appointment of a receiver for or in respect of Operator or Owner or their assets, unless, within ninety (90) days after the institution of any such procedure or the appointment of any such receiver, the procedure shall have been dismissed or the receiver shall have been discharged; and

11.1.6 Except as otherwise provided in this ***Article 11***, the failure by either party to perform any material promise or undertaking of this Agreement (other than the payment of money) within thirty (30) days after Notice of such failure; provided that if the failure cannot be cured within the thirty (30) day period, then no event of default will occur so long as the party in default (i) commences action to cure within the thirty (30) day period, (ii) diligently continues to cure such default, and (iii) in fact cures the default within a reasonable period of time and in any event within ninety (90) days after Notice of such failure. In no event shall the failure to operate the Property in accordance with the Operating Standard give rise to an Event of Default hereunder.

Section 11.2 No Waiver. No failure by either Operator or Owner to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy, shall constitute a waiver of any breach or default, present or future, except by specific written waiver.

ARTICLE 12. **PROPRIETARY MARKS**

Section 12.1 Proprietary Rights. Operator acknowledges that the name of the Resort and all related names, trademarks, service marks, copyrights and logos and other indicia, whether registered or not ("***Owner's Marks***"), shall be the exclusive property of Owner. Operator agrees not to use the name of the Resort or any combination or variation thereof or the Owner's Marks on any other hotel or resort other than the Resort, without the prior written consent of Owner (which consent may be withheld in Owner's sole and absolute discretion). Operator shall have the right to list the Resort and use any professional photos of the Resort or any portion thereof on Operator's website and in marketing and other promotional materials for the benefit of Operator and/or the Resort.

ARTICLE 13. **COSTS AND ATTORNEYS' FEES**

In the event of any controversy, claim or action being filed or instituted between Operator and Owner respecting this Agreement, or regarding the Resort, the prevailing party will be entitled to receive from the other party its reasonable attorneys' fees and costs, whether or not such controversy or claim is litigated or prosecuted to judgment. The court will determine the prevailing party, taking into consideration the merits of the

claims asserted by each party, the amount of the judgment or settlement received by each party, and the relative equities between the parties.

ARTICLE 14. **GENERAL PROVISIONS**

Section 14.1 Taxes and Impositions. Owner will pay, prior to delinquency, all real estate taxes and assessments which may become a lien on the Resort and which become due and payable during the Term, unless payment is in good faith being contested by Owner and enforcement of payment has been stayed. If requested, Owner will provide to Operator documentary evidence of payment. Regularly assessed taxes and assessments will be included in Resort expenses for budgetary purposes.

Section 14.2 Indemnification.

14.2.1 Owner agrees to indemnify, hold harmless and defend Operator, its employees, agents and representatives from any suit, demand, claim, cause of action, liability, loss, cost or expense, including attorneys' fees (collectively, "***Claim***"), that arises, or is alleged to have arisen, out of the design, development, construction, refurbishing, maintenance, marketing, sales or operation of the Resort or Owner's or Operator's actions, conduct or forbearance under this Agreement, including, without limitation, any Claims made by employees at the Resort. Notwithstanding the foregoing, Owner shall not be required to indemnify Operator, its employees, agents and representatives against damages or expenses suffered as a result of (a) the Gross Negligence, wanton or reckless misconduct, willful misconduct or fraud on the part of Operator or (b) actions taken by Operator outside the scope of its authority under this Agreement.

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14.2.2 Operator shall indemnify and hold harmless Owner, its employees, agents and representatives from and against all Claims arising out of (a) the Gross Negligence, wanton or reckless misconduct, willful misconduct or fraud on the part of Operator or (b) actions taken by Operator outside the scope of its authority under this Agreement, and shall at its own cost and expense defend any action or proceeding against Owner arising therefrom.

14.2.3 If the person or entity to be indemnified hereunder (the "***Indemnitee***") receives notice of any claim, action or proceeding (an "***Action***") against Indemnitee with respect to which indemnification is to be sought from the party with the obligation to indemnify (the "***Indemnitor***") under this Section, Indemnitee shall promptly notify Indemnitor of the Action in writing. Indemnitee may direct Indemnitor to assume the defense of the Action and to pay all reasonable costs and expenses incurred as a result thereof. If Indemnitee shall not have directed Indemnitor to assume the defense of the Action, Indemnitor shall have the right to participate at its own expense in the defense of any such Action. If Indemnitor shall not have employed counsel to have charge of the defense of any such Action following the notice and direction specified above, or if Indemnitee shall have reasonably concluded that there may be defenses available to Indemnitee which are different from or additional to those available to Indemnitor (in

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which case Indemnitor shall not have the right to direct the defense of such Action on behalf of the Indemnitee), the Indemnitee shall have the right to retain its own counsel and all reasonable resulting legal and other expenses incurred by Indemnitee shall be borne by Indemnitor.

14.2.4 Resort employees shall not be deemed to be employees of, or otherwise acting on behalf of, Operator for purposes of this ***Section 14.2***.

14.2.5 The provisions of this ***Section 14.2*** will survive termination or expiration of this Agreement regardless of cause.

Section 14.3 Right of Inspection and Review. Operator, Owner and their respective representatives will have the right to enter upon any part of the Resort at reasonable times during the Term for the purpose of examining or inspecting the same, or for examining or making extracts from the books and records of the Resort, or for any other necessary and reasonable purpose. These inspections, however, will be conducted with as little disturbance to the business and operation of the Resort as reasonably possible.

Section 14.4 Assignment by Operator. Operator may assign its rights under this Agreement to (a) an Affiliate of Operator or (b) any entity that merges with or acquires all or substantially all of the assets of Operator, which has full right, power and authority to provide to Owner all services and organizational expertise (including applicable trademarks and service marks) that Operator is required to provide hereunder, provided that in such event Operator will not be absolved of liability for performance of this Agreement. Any other assignment by Operator will be subject to Owner's prior written consent, which, (i) for the first thirty-nine (39) months of the Term, may be withheld by Owner in its sole discretion and (ii) after the first thirty-nine (39) months of the Term, shall be granted so long as the assignee is a financially responsible party who enjoys a good business reputation and has experience operating resorts similar to the Resort, provided that in such event Operator will be absolved of liability for performance of this Agreement that arises from and after the date of the assignment. Any sale, assignment or transfer of the controlling interest in Operator (i.e., the possession directly or indirectly of the power to direct or cause the direction of the management and policies of Operator, whether through the ownership of voting securities, or by contract, or otherwise) shall be deemed an assignment of this Agreement by Operator subject to the provisions of this ***Section 14.4***. Any attempt by Operator to assign its rights hereunder in contravention of this Agreement will be void.

Section 14.5 Assignment by Owner. Owner may assign its rights under this Agreement to an Affiliate of Owner, any successor entity of Owner by merger or operation of law, or any person or entity who acquires the Resort from Owner in a sale or transfer. Owner may also freely grant a security interest in or collaterally assign its rights under this Agreement as security for the payment of any Resort financing. Operator hereby consents to any such assignment or collateral assignment and agrees to subordinate this Agreement and its rights hereunder to any mortgage or deed of trust

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granted by Owner to a Resort lender and agrees, subject to the timely payment of all Management Fees due and payable to Operator under this Agreement, to attorn to such lender under the terms of this Agreement. Owner agrees to use commercially reasonable efforts to secure a commercially reasonable form of non-disturbance agreement from any such lender for the benefit of Operator. Subject to the foregoing, Operator shall sign and deliver any commercially reasonable agreement or instrument requested by such lender which evidences the foregoing rights of the lender and Operator. Any other assignment by Owner will be subject to Operator's prior written consent. Any attempt by Owner to assign its rights hereunder in contravention of this Agreement will be void.

Section 14.6 Notices. The terms "***Notice***" and "***Notify***" mean notice given as prescribed in this Section. Any notice or other document to be given hereunder must be in writing and shall be deemed to have been duly and sufficiently given only if (i) personally delivered with proof of delivery thereof (any notice or communication so delivered being deemed to have been received at the time so delivered), or (ii) sent by Federal Express or other reputable overnight courier (any notice or communication so delivered being deemed to have been received only when delivered), or (iii) sent by telecopier or facsimile (any notice or communication so delivered by telecopier or facsimile being deemed to have been received (A) on the business day so sent, if so sent prior to 4:00 p.m. (based upon the recipient's time) of the business day so sent, and (B) on the business day following the day so sent, if so sent on a non-business day or on or after 4:00 p.m. (based upon the recipient's time) of the business day so sent (unless actually received by the addressee on the day so sent) and provided such telecopied or faxed notice is followed by delivery of same in the manner set forth in clause (i) or (ii) above, in any such case addressed to the respective parties as follows:

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If to Owner:

NEW CAL-NEVA LODGE, LLC
c/o Criswell Radovan, LLC
1336 Oak Avenue Suite D
St. Helena, CA 94574
Attention: William Criswell and Robert Radovan
Telecopier: (707) 963-0513

If to Operator:

CR HOSPITALITY, LLC
c/o Criswell Radovan, LLC
1336 Oak Avenue Suite D
St. Helena, California 94574
Attention: Robert Radovan
Telecopier: (707) 963-0513

Either party may, by notice given as aforesaid, change the person or persons or address or addresses, or designate an additional person or persons or an additional

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address or addresses, for its notices, provided, however, that notices of change of address or addresses shall only be effective upon receipt.

Section 14.7 Approvals, Consents and Other Actions. Except as expressly provided herein, whenever the approval, consent, satisfaction, request, agreement, judgment, determination or other discretionary action of Operator or Owner is required or permitted by this Agreement, such discretionary action will be given, taken or exercised reasonably and in good faith. Except as expressly provided herein, any such discretionary action of one party that is requested by the other party will not be withheld or delayed unreasonably.

Section 14.8 No Affiliate Liability. Each of the following is herein referred to as an "***Party Affiliate***": (a) any direct or indirect holder of any equity interest or securities of a party hereto (whether such holder is a limited or general partner, member, stockholder, or otherwise), (b) any Affiliate of a party hereto or (c) any director, officer, partner, trustee, employee, representative or agent of (1) a party hereto, (2) any Affiliate of a party hereto, or (3) any such holder of equity interest securities referred to in clause (a) preceding. Unless otherwise expressly liable pursuant to a written agreement, no Party Affiliate shall have any liability or obligation of any nature whatsoever in connection with or under this Agreement or the transactions contemplated hereby (whether or not such Party Affiliate has called or received capital for funding of such party's obligations hereunder), and each party hereby waives and releases all claims related to any such liability or obligation.

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Section 14.9 Parties in Interest. This Agreement shall be binding solely upon, be enforceable solely by, and inure solely to the benefit of, each party hereto and its successors and permitted assigns and, except as expressly provided herein, nothing in this Agreement is intended to confer upon any other person or entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 14.10 No Interest in Real Property. Nothing in this Agreement shall be construed to create an interest in real property.

Section 14.11 Estoppel Certificates. Operator and Owner agree, at any time and from time to time, upon not less than ten (10) days' prior Notice from the other party or any Resort lender, to execute, acknowledge and deliver to the other party or such lender a statement in writing certifying that this Agreement has not been modified and is in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and specifying the modifications) and stating whether or not to the best knowledge of the party providing such certificate there exists any default of which such party may have knowledge.

Section 14.12 Further Assurances.

14.12.1 Each party hereto will execute and acknowledge any and all agreements, contracts, leases, licenses, applications, verifications and such other

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additional instruments and documents in recordable form as may be requested by the other party hereto in order to carry out the intent of this Agreement and to perfect or give further assurances of any of the rights granted or provided for herein.

14.12.2 Operator shall reasonably cooperate with and assist Owner from time to time in any and all attempts by Owner to obtain financings for the Resort. Such cooperation shall not entitle Operator to any additional compensation and Operator shall not be considered to be acting as a broker for Owner unless Owner and Operator enter into a separate written agreement engaging Operator as broker with respect to such financings. Such cooperation shall include, without limitation, answering prospective lenders' questions about the Resort and obtaining items required by lenders.

14.12.3 Operator shall cooperate with and assist Owner from time to time in any and all attempts by Owner to sell the Resort or any portion thereof. Such cooperation shall not entitle Operator to any additional compensation and Operator shall not be deemed to be acting as a broker for Owner unless Owner and Operator enter into a separate written agreement engaging Operator as broker with respect to the Resort. Such cooperation shall include, without limitation, answering prospective purchasers' questions about the Resort.

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Section 14.13 Certain Definitions. As used herein, the following terms shall have the respective meanings set forth below:

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Affiliate means, when used with reference to a specified person or entity, any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the specified person or entity. As used herein, the term "***control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise, and shall in any event include the ownership or power to vote fifty percent (50%) or more of the outstanding equity or voting interests, respectively, of such other person.

Calendar Quarter means each three (3) month period during the Term commencing on January 1, April 1, July 1 and October 1, except that the first Calendar Quarter shall be that period commencing on the Opening Date and ending on the last day of the calendar quarter in which the Opening Date occurs. In the event that this Agreement shall terminate on a date other than on the last day of a calendar quarter, the last Calendar Quarter hereunder shall end on the date of termination.

Cause means any of the following:

(a) the occurrence of an Event of Default by Operator;

(b) fraud, dishonesty, bad faith, Gross Negligence, wanton or reckless misconduct, or willful misconduct by Operator in connection with the performance of any of Operator's tasks hereunder; or

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(c) Operator's indictment or conviction of a crime constituting a felony.

CPI means the Consumer Price Index-All Urban Consumers, San Francisco-Oakland-San Jose (1982-84=100), as published by the United States Department of Labor Statistics, for the applicable comparison period. If the CPI shall cease to use 1982-84 as the base year, the CPI shall be converted in accordance with the conversion factor, if any, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the Term, such other governmental index or computation, if any, with which it is replaced shall be used. If no conversion factor is supplied by the United States Department of Labor, Bureau of Statistics, either for a new base year or a new index, the parties shall agree upon a replacement for the CPI to be used.

Debt Service means Owner's obligation to pay regularly scheduled monthly payments of principal and interest (on a fully-amortized basis) on account of third-party financing (not from any Affiliate of Owner) secured by the Property, so long as the amount of such financing does not, in the aggregate, exceed the greater of seventy-five percent (75%) of (i) the value of the Resort (as complete), or (ii) the cost of development of the Resort, each as determined by the Resort lender at the time of such financing.

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Net Operating Income means Gross Operating Profit after fixed charges (including real estate taxes, insurance, capitalized leases and FF&E Reserve and Base Fees) calculated under the Uniform System.

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Gross Negligence occurs when a person with no intent to cause harm intentionally performs an act or omits to perform an act, and such act or omission is so unreasonable and dangerous that he or she knows, or should know, that it is highly probable that harm will result.

Operating Year means each twelve (12) month period during the Term commencing on January 1 and ending on December 31, except that the first Operating Year shall be that period commencing on the Opening Date and ending on the first December 31 that occurs after the date that is four (4) full calendar months after the Opening Date. In the event that this Agreement shall terminate on a date other than December 31, the last Operating Year hereunder shall end on the date of termination.

Section 14.14 Limitation on Authority. Operator shall take no actions with respect to the Resort, the Property or the business or affairs of Owner except as provided hereunder or as provided by the Annual Budget. Notwithstanding any other provision of this Agreement to the contrary, Operator shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever, or to be reimbursed by Owner for any such commitment or obligation, except to the extent contemplated herein. The foregoing restriction shall include, without limitation, incurring any expense on behalf of Owner which is not within the parameters of the Annual Budget (except as permitted under ***Section 3.8***), entering into any agreement with

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an Affiliate of Operator without Owner's prior written consent, which consent may be withheld by Owner for any or no reason, in Owner's sole and absolute discretion.

Section 14.15 Representations and Warranties of Operator. Operator represents and warrants to Owner that: (i) Operator is a Nevada limited liability company, organized and validly existing and in good standing under the laws of the State of Nevada and has all requisite power and authority to carry on its business as now conducted and to execute, deliver and perform this Agreement; (ii) the execution, delivery and performance by Operator of this Agreement are within its power, have been authorized by all necessary corporate action and do not contravene any provision of its organizational documents; (iii) this Agreement has been duly executed and delivered by Operator; and (iv) this Agreement is a valid and binding obligation of Operator.

Section 14.16 Representations and Warranties of Owner. Owner represents and warrants to Operator that: (i) Owner is a Nevada limited liability company, organized and validly existing and in good standing under the laws of the State of Nevada and has all requisite power and authority to carry on its business as now conducted and to execute, deliver and perform this Agreement; (ii) the execution, delivery and performance by Owner of this Agreement are within its power, have been authorized by all necessary corporate action and do not contravene any provision of its organizational documents; (iii) this Agreement has been duly executed and delivered by Owner; and (iv) this Agreement is a valid and binding obligation of Owner.

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Section 14.17 Negation of Partnership or Joint Venture. Nothing in this Agreement shall constitute or be construed to constitute or create a partnership, joint venture or lease between Owner and Operator with respect to the Resort.

Section 14.18 Waiver. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be consent or waiver to or of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act by the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

Section 14.19 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall be construed as a single instrument.

Section 14.20 Captions. The captions used for the Articles and Sections in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement or any Article or Section hereof.

Section 14.21 Construction. Unless the context clearly indicates to the contrary, words singular or plural in number shall be deemed to include the other and pronouns

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having a neuter, masculine or feminine gender shall be deemed to include the others. The term "***person***" shall be deemed to include an individual, corporation, limited liability company, partnership, trust, unincorporated organization, government and governmental agency or subdivision, as the context shall require.

Section 14.22 Survival. Each term, covenant and agreement contained herein shall survive any expiration or sooner termination of this Agreement and shall remain in full force and effect as between Owner and Operator, notwithstanding any such expiration or termination to the extent that any such term, covenant and agreement (i) involves a payment obligation which has not been fully performed in accordance with this Agreement prior to such expiration or termination, or (ii) contemplates performance by either party hereto subsequent to such expiration or termination.

Section 14.23 Unenforceable Provisions. In the event any provision of this Agreement is declared or adjudged to be unenforceable or unlawful by any governmental authority, then such unenforceable or unlawful provision shall be excised there from, and the remainder of this Agreement, together with all rights and remedies granted thereby, shall continue and remain in full force and effect.

Section 14.24 Cumulative Remedies. All rights, powers, remedies, benefits and privileges available under any provision of this Agreement to any party hereunder are in addition to and cumulative of any and all rights, powers, remedies, benefits and privileges available to such party under all other provisions of this Agreement, at law or in equity.

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Section 14.25 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Nevada, without regard to its conflicts of law principles.

Section 14.26 Limitation of Liability of Owner. Unless otherwise expressly liable pursuant to a written agreement, no personal liability shall at any time be asserted or enforceable against the Owner, its principals, members, partners, shareholders, officers, employees, or Party Affiliates, or any of their respective heirs, legal representatives, successors and assigns, or against the principals of Operator, on account of this Agreement or on account of any covenant, undertaking or agreement contained in this Agreement.

Section 14.27 Amendments. This Agreement can be modified or amended only by a written document duly executed by the parties hereto or their duly appointed representatives. Operator agrees to accept any commercially reasonable amendments of this Agreement that are requested by a Resort lender, prior to the execution of its mortgage securing its financing, which are reasonably calculated to protect such lender's interest in the Property and do not reduce the compensation payable to Operator hereunder or otherwise materially diminish the rights or materially increase the obligations of Operator.

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Section 14.28 Exhibits. Exhibits referred to in this Agreement and attached hereto are incorporated herein in full by this reference as if each of such exhibits were set forth in the body of this Agreement and duly executed by the parties hereto.

Section 14.29 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby. All prior negotiations, representations and agreements with respect thereto not incorporated in this Agreement are hereby superseded. The parties hereto acknowledge that no oral representations, inducements, promises or agreements, have been made by any party hereto or anyone acting on behalf of a party hereto which are not embodied herein and mutually agree that no oral agreement, statement or promise not contained in this Agreement shall be valid or binding on either party.

OWNER:

NEW CAL-NEVA LODGE, LLC,
a Nevada limited liability company

By:_____
Its:_____

OPERATOR:

CR HOSPITALITY, LLC,
a Nevada limited liability company

By: William T. Criswell
William T. Criswell,
Managing Member

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Section 14.28 Exhibits. Exhibits referred to in this Agreement and attached hereto are incorporated herein in full by this reference as if each of such exhibits were set forth in the body of this Agreement and duly executed by the parties hereto.

Section 14.29 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby. All prior negotiations, representations and agreements with respect thereto not incorporated in this Agreement are hereby superseded. The parties hereto acknowledge that no oral representations, inducements, promises or agreements, have been made by any party hereto or anyone acting on behalf of a party hereto which are not embodied herein and mutually agree that no oral agreement, statement or promise not contained in this Agreement shall be valid or binding on either party.

OWNER:

NEW CAL-NEVA LODGE, LLC,
a Nevada limited liability company

By:_____
Its: MANAGING MEMBER

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OPERATOR:

CR HOSPITALITY, LLC,
a Nevada limited liability company

By:_____
William T. Criswell,
Managing Member

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EXHIBIT A

FEES

1. ***Base Fee***: The Base Fee for any period shall be equal to three percent (3%) of the Gross Revenue in that period. "***Gross Revenue***" means all revenue and income of any kind derived directly or indirectly from the Resort or from the use thereof as calculated and limited by the then-current Uniform System of Accounts for the Lodging Industry, as adopted by the American Hotel and Motel Association from time to time and referred to as "Total Revenue" therein (the "***Uniform System***"); provided, however, Gross Revenue for any such period shall not include:

a. Excise, sales and use taxes or similar impositions collected directly from patrons or guests or included as part of the sales price of any goods or services and paid to any governmental authority, such as gross receipts, admission or similar equivalent taxes;

b. Gratuities or service charges collected and paid to employees;

c. Sales and other receipts of tenants, licensees and concessionaires, except to the extent payable as rent under a lease or occupancy agreement;

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d. Insurance proceeds (subject, however, to the inclusion of business interruption insurance awards to the extent such insurance is carried by Owner);

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e. Condemnation awards, except for condemnation awards for temporary use of the Property;

f. Proceeds from sale of the Resort;

g. Proceeds from any seller-financing or other mortgage indebtedness; and

h. Interest earned on any deposits in the Reserve Account or Operating Account.

2. ***Base Incentive Fee***: The Base Incentive Fee for any period shall be equal to ten percent (10%) of Gross Operating Profit in that period. "***Gross Operating Profit***" means income from the Resort before fixed charges and Base Fees calculated under the Uniform System.

Case No. 74275

In the Supreme Court of Nevada

GEORGE STUART YOUNT, individually and in his capacity as owner of George Yount IRA,

Appellant,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN AND ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10.,

Respondent.

APPEAL

from the Second Judicial District Court, Washoe County, Nevada
The Honorable N. PATRICK FLANAGAN, District Judge
The Honorable JEROME POLAHA
The Honorable EGAN WALKER
District Court Case No. CV16-00767

APPELLANT'S APPENDIX
VOLUME 12
PAGES 2751-3000

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION

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For the administration of a public program

- OR -

_____ For an application for a federal or state grant

- OR -

_____ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 125B.055

Date: February 2, 2018

HOWARD & HOWARD ATTORNEYS, PLLC

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

On this day I served the foregoing **DEFENDANTS' REPLY BRIEF REGARDING POST-TRIAL PROCEDURE BY SUCCESSOR JUDGE** in this action or proceeding electronically with the Clerk of the Court via the E-File and Serve system, which will cause this document to be served upon the following counsel of record:

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I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service was executed by me on February 2, 2018 at Las Vegas, Nevada.

An Employee of HOWARD & HOWARD ATTORNEYS PLLC

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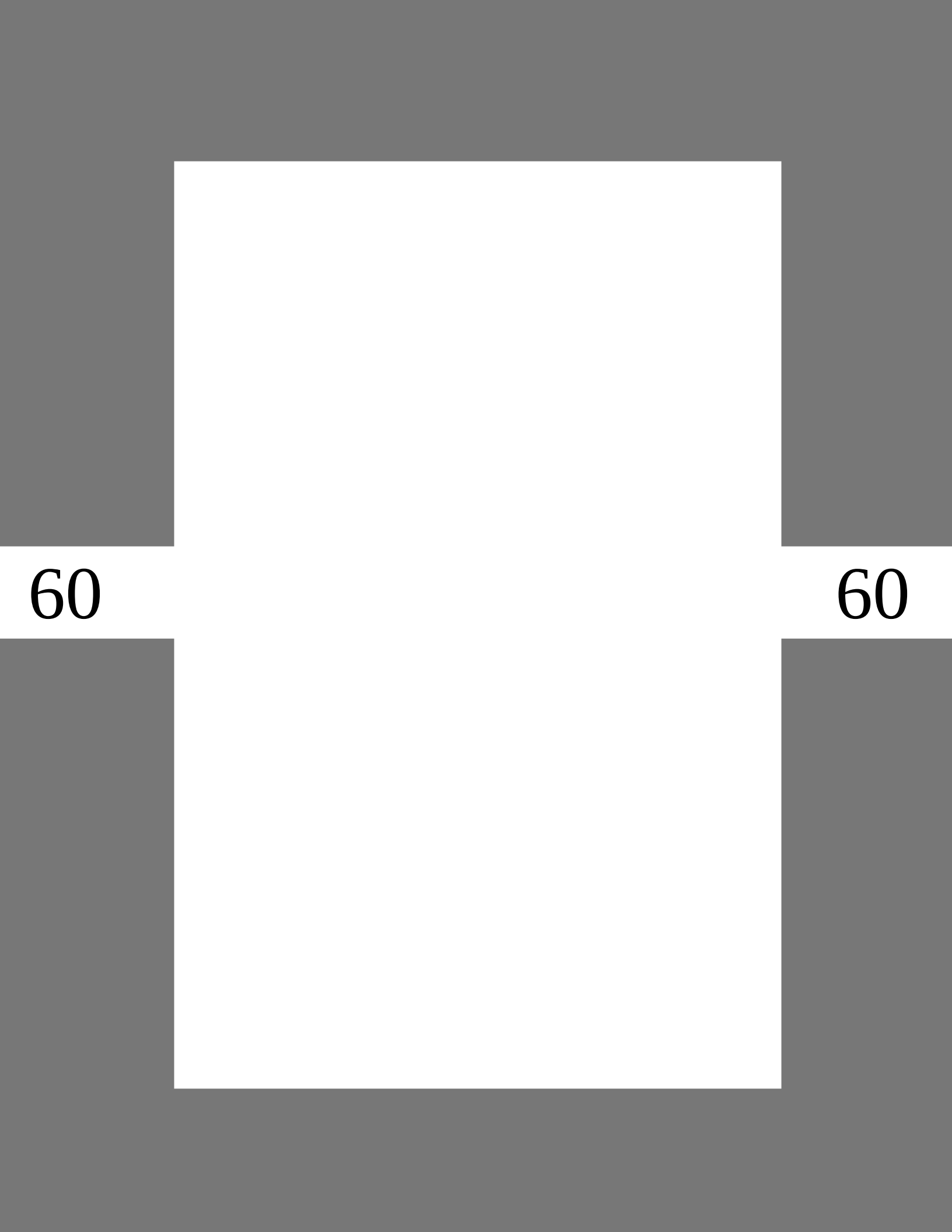
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Attorneys for Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA,

Plaintiff,

v.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company and DOES 1-10,

Defendants.

CASE NO. CV16-00767

DEPT NO. B7

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JUDGMENT

This matter came before the Court for a bench trial on August 29, 2017, through September 8, 2017, the late Hon. Patrick Flanagan, District Judge, presiding. Plaintiff George Stuart Yount, individually and in his capacity as owner of George Stuart Yount IRA, appeared

by and through his counsel of record, Richard G. Campbell, Jr., Esq. Defendants Criswell Radovan, LLC, CR Cal Neva, LLC, Robert Radovan, William Criswell, and Powell, Coleman and Arnold, LLP, appeared by and through their counsel Martin A. Little, Esq., of Howard & Howard Attorneys PLLC. Defendants David Marriner and Marriner Real Estate, LLC, appeared by and through their counsel of record, Andrew N. Wolf, Esq., of Incline Law Group, LLP.

On September 8, 2017, at the conclusion of the trial and following the close of the evidence, Judge Flanagan, ruling from the bench, orally stated his findings of fact, conclusions of law and decision on the record in open court pursuant to NRCP 52. Judge Flanagan also adopted the proposed findings of fact submitted by the defendants prior to trial. Transcript 1131:14-16.

On or about September 15, 2017, a transcript of the trial was filed, containing Judge Flanagan's ruling from the bench. On September 15, 2017, the same day, Judge Flanagan issued an *AMENDED ORDER* clarifying his award of damages to the various Defendants.

At the conclusion of his ruling from the bench, Judge Flanagan requested that defendants' counsel prepare the judgment. Thereafter, Judge Flanagan suddenly fell ill and passed away on October 6, 2017. Thereafter, on October 30, 2017, defense counsel jointly submitted a proposed form of findings of fact, conclusions of law and judgment.

Subsequently, the matter was assigned to the undersigned District Judge. On November 13, 2017, the court held a status conference wherein the court directed the parties to file briefs regarding the appropriate procedure to be followed after Judge Flanagan's untimely passing. This briefing was completed on or about February 2, 2018. Based on the briefing, the court determines that the primary rules which govern further proceedings by the undersigned successor judge are NRCP 52 (findings by the court; judgment on partial findings), NRCP 58 (entry of judgment) and NRCP 63 (inability of a judge to proceed).

In this case, Judge Flanagan left an extensive record of his decision, including summaries of witness testimony, the credibility of certain witnesses, his analysis of various trial exhibits, and his determination of each claim for relief.

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The court has reviewed the trial transcript in its entirety and the exhibits referenced in the transcript and in Judge Flanagan's ruling. Pursuant to NRCP 63, the court hereby certifies its familiarity with the record. Moreover, given the status of the case at the time of Judge Flanagan's passing (evidence closed, closing arguments completed, and a completed ruling from the bench on the merits, followed by his written Amended Order), and the detailed extent of Judge Flanagan's ruling from the bench and his subsequently filed Amended Order dated September 8, 2017, the court has determined, pursuant to NRCP 63, that the proceedings in this case may be completed as set forth herein without prejudice to the parties.

Under NRCP 63, the court has discretion to recall witnesses. The court finds no need or reason to recall witnesses. See: *Smith's Food King v. Hornwood*, 108 Nev. 666, 836 P. 2d 1241 (1992); and, *Canseco v. United States*, 97 F.3d 1224, 1227 (9th Cir. 1996) [successor judges need only certify their familiarity with those portions of the record that relate to the issues before them]. *Compare: Mergentime Corporation v. Washington Metropolitan Area Transit Authority*, 166 F.3d 1257 (DC Cir. 1999). Accordingly, the court now enters judgment as follows:

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Second Amended Complaint, and each of the causes of action stated therein, are dismissed with prejudice as to all Defendants.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Marriner's and Marriner Real Estate's crossclaim against the other defendants is moot and is dismissed with prejudice.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay William Criswell the sum of **$1.5 Million** in compensatory damages.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Robert Radovan the sum of **$1.5 Million** in compensatory

damages.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay DAVID MARRINER, individually, the sum of **$1.5 Million**.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay each defendant its costs of suit as allowed by law. Each Defendant shall file and serve its verified memorandum of costs as required by Chapter 18 NRCP.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendants may seek recovery of their attorney's fees by an appropriate motion pursuant to NRCP 54(d) and NRS 18.010, or as otherwise allowed by law.

DATED this 9 day of March 2018.

DISTRICT COURT JUDGE

Submitted by:

INCLINE LAW GROUP, LLP
Andrew N. Wolf, Esq.
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Attorneys for Defendants
David Marriner and Marriner Real Estate, LLC

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Attorneys for Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, Plaintiff, v. CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company and DOES 1-10, Defendants.	CASE NO. CV16-00767 DEPT NO. B7

NOTICE OF ENTRY OF JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 12, 2018, a final Judgment was entered in this matter by District Judge Jerry Polaha. (Eflex Transaction # 6572400.)

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Affirmation: The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

Date: March 12, 2018.

INCLINE LAW GROUP, LLP

By: s/Andrew N. Wolf
ANDREW N. WOLF
Nevada State Bar No. 4424
Attorneys for Defendants DAVID MARRINER
and MARRINER REAL ESTATE, LLC

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Incline Law Group, LLP, and that on this day, I caused to be served, a true and correct copy of:

NOTICE OF ENTRY OF JUDGMENT

UPON:

Richard G. Campbell, Jr. THE LAW OFFICE OF RICHARD G. CAMPBELL, JR. INC. 333 Flint Street Reno, NV 89501 Telephone: (775) 384-1123 Fax: (775) 686-2401 rcampbell@rgclawoffice.com	Attorney for Plaintiff George Stuart Yount, Individually and in his capacity as Owner of George Stuart Yount IRA
Martin A. Little HOWARD & HOWARD ATTORNEYS PLLC 3800 Howard Hughes Parkway, Suite 1000 Las Vegas, NV 86169 Telephone: 702-257-1483 Fax: 702-567-1568	Attorney for Defendants Criswell Radovan, LLC, CR CAL NEVA LLC, Robert Radovan, William Criswell, Cal Neva Lodge, LLC, Powell, Coleman and Arnold, LLP
Daniel F. Polsenberg Joel D. Henriod LEWIS ROCA ROTHGERBER CHRISTIE LLP 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169 Telephone: (702) 949-8200 Fax: (702) 949-8398	Attorneys for Plaintiff George Stuart Yount, etc.

VIA: Washoe County Eflex e-filing system: A true and correct copy of the foregoing document(s) was (were) electronically served via the court's electronic filing system to the above named attorneys associated with this case. If the any of the above named attorneys (and all of their listed co-counsel within the same firm) are not registered with the court's e-filing system, then a true and correct paper copy of the above-named document(s) was(were) served on the attorney via U.S.P.S. first class mail with first-class postage prepaid, to the attorney's address listed above, on this date.

Date: March 13, 2018. ___/s/ Stacy Crocket_____
Stacy Crocket

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George Stuart Yount

002760

DISTRICT COURT
WASHOE COUNTY, NEVADA

GEORGE STUART YOUNT, individually and in his capacity as owner of GEORGE YOUNT IRA, Plaintiff, *vs.* CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN AND ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10, Defendants.	Case No. CV16-00767 Dept. No. 7 **AMENDED NOTICE OF APPEAL**

002760

AMENDED NOTICE OF APPEAL

Please take notice that plaintiff George Stuart Yount, individually and in his capacity as owner of George Yount IRA, hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;

2. "Amended Order," entered on September 15, 2017 (Exhibit 1);

3. "Judgment," filed March 12, 2018, notice of entry of which was served electronically on March 13, 2018; and

4. All rulings and interlocutory orders made appealable by any of the foregoing.

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

Dated this 23rd day of March, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Joel D. Henriod*
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Attorneys for Plaintiff

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002761

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2018, I served the foregoing "Amended Notice of Appeal" on counsel by the Court's electronic filing system to the persons and addresses listed below:

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HOWARD & HOWARD
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ANDREW N. WOLF
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Incline Village, Nevada 89451

/s/ Adam Crawford
An Employee of Lewis Roca Rothgerber Christie LLP

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EXHIBIT 1

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EXHIBIT 1

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Transaction # 6301767

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE YOUNT IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10,

Defendants.
_____/

Case No.: CV16-00767

Dept. No.: 7

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AMENDED ORDER

On September 8, 2017, after hearing testimony and taking evidence in a seven-day bench trial, this Court dismissed Plaintiff's Second Amended Complaint, dismissed the crossclaims by Defendants David Marriner and Marriner Real Estate, LLC as moot and entered judgment against Plaintiff and in favor of Defendants. In its oral ruling, the Court awarded damages on Defendants' counterclaim.

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Upon further consideration, the Court is concerned that its oral recitation of damages maybe subject to misinterpretation and thus hereby amends its previous *Order* as follows:

1. WILLIAM CRISWELL ("Criswell"), is awarded $1.5 million in compensatory damages, two years' salary, management fees (if applicable), attorney's fees and costs of suit;
2. ROBERT RADOVAN ("Radovan"), is awarded $1.5 million in compensatory damages, two years' salary, management fees (if applicable), attorney's fees and costs of suit;
3. DAVID MARRINER; is awarded $1.5 million in compensatory damages[1], attorney's fees and costs of suit;
4. POWELL, COLEMAN AND ARNOLD, LLP ("PCA"), is awarded its attorney's fees and costs of suit;[2]
5. CRISWELL RADOVAN, LLC (Criswell Radovan), is awarded its lost Development Fees,[3] attorney's fees and costs of suit;
6. CR CAL NEVA, LLC ("CR Cal Neva"), is awarded its lost Development Fees,[4] attorney's fees, and costs of suit;
7. CAL NEVA LODGE, LLC, is awarded its attorney's fees and costs of suit; [5]
8. MARRINER REAL ESTATE, LLC, is awarded its attorney's fees, and costs.[6]

IT IS SO ORDERED this 15 day of September, 2017.

Patrick Flanagan
PATRICK FLANAGAN
District Judge

[1] These damages include both lost commissions (Ex. 1) and loss of business good will.
[2] There was no testimony or evidence of damages to PCA produced at trial.
[3] Less that which has been earned and paid up to $1.2 million in the aggregate. (Ex. 3, p. 8)
[4] Less that which has been earned and paid up to $1.2 million in the aggregate. (Ex. 3, p.8)
[5] There were no damages sought on behalf of this project development entity.
[6] Only to the extent that they are not duplicative of any award or fees to David Marriner individually.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 15 day of September, 2017, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Richard G. Campbell, Jr., Esq., attorney for Plaintiff George Stuart Yount;

Andrew N. Wolf, Esq., Attorney for Defendants David Marriner and Marriner Real Estate, LLC; and

Martin A. Little, Esq., attorney for Defendants Criswell Radovan, LLC; CR Cal Neva, LLC; Robert Radovan; William Criswell; Cal Neva Lodge, LLC; Powell, Coleman, and Arnold, LLP.

Judicial Assistant

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Transaction # 6592906 : yviloria

EXHIBIT 2

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EXHIBIT 2

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Jacqueline Bryant
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Transaction # 6573654

CODE: 2535
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Incline Village, Nevada 89451
(775) 831-3666

Attorneys for Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, Plaintiff, v. CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company and DOES 1-10, Defendants.	CASE NO. CV16-00767 DEPT NO. B7

NOTICE OF ENTRY OF JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 12, 2018, a final Judgment was entered in this matter by District Judge Jerry Polaha. (Eflex Transaction # 6572400.)

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Affirmation: The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

Date: March 12, 2018.

INCLINE LAW GROUP, LLP

By: s/Andrew N. Wolf
ANDREW N. WOLF
Nevada State Bar No. 4424
Attorneys for Defendants DAVID MARRINER
and MARRINER REAL ESTATE, LLC

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Incline Law Group, LLP, and that on this day, I caused to be served, a true and correct copy of:

NOTICE OF ENTRY OF JUDGMENT

UPON:

Richard G. Campbell, Jr. THE LAW OFFICE OF RICHARD G. CAMPBELL, JR. INC. 333 Flint Street Reno, NV 89501 Telephone: (775) 384-1123 Fax: (775) 686-2401 rcampbell@rgclawoffice.com	Attorney for Plaintiff George Stuart Yount, Individually and in his capacity as Owner of George Stuart Yount IRA
Martin A. Little HOWARD & HOWARD ATTORNEYS PLLC 3800 Howard Hughes Parkway, Suite 1000 Las Vegas, NV 86169 Telephone: 702-257-1483 Fax: 702-567-1568	Attorney for Defendants Criswell Radovan, LLC, CR CAL NEVA LLC, Robert Radovan, William Criswell, Cal Neva Lodge, LLC, Powell, Coleman and Arnold, LLP
Daniel F. Polsenberg Joel D. Henriod LEWIS ROCA ROTHGERBER CHRISTIE LLP 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169 Telephone: (702) 949-8200 Fax: (702) 949-8398	Attorneys for Plaintiff George Stuart Yount, etc.

VIA: Washoe County Eflex e-filing system: A true and correct copy of the foregoing document(s) was (were) electronically served via the court's electronic filing system to the above named attorneys associated with this case. If the any of the above named attorneys (and all of their listed co-counsel within the same firm) are not registered with the court's e-filing system, then a true and correct paper copy of the above-named document(s) was(were) served on the attorney via U.S.P.S. first class mail with first-class postage prepaid, to the attorney's address listed above, on this date.

Date: March 13, 2018. ___/s/ Stacy Crocket_____
Stacy Crocket

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Jacqueline Bryant
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Transaction # 6572400

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Attorneys for Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA,

Plaintiff,

v.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company and DOES 1-10,

Defendants.

CASE NO. CV16-00767

DEPT NO. B7

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JUDGMENT

This matter came before the Court for a bench trial on August 29, 2017, through September 8, 2017, the late Hon. Patrick Flanagan, District Judge, presiding. Plaintiff George Stuart Yount, individually and in his capacity as owner of George Stuart Yount IRA, appeared

by and through his counsel of record, Richard G. Campbell, Jr., Esq. Defendants Criswell Radovan, LLC, CR Cal Neva, LLC, Robert Radovan, William Criswell, and Powell, Coleman and Arnold, LLP, appeared by and through their counsel Martin A. Little, Esq., of Howard & Howard Attorneys PLLC. Defendants David Marriner and Marriner Real Estate, LLC, appeared by and through their counsel of record, Andrew N. Wolf, Esq., of Incline Law Group, LLP.

On September 8, 2017, at the conclusion of the trial and following the close of the evidence, Judge Flanagan, ruling from the bench, orally stated his findings of fact, conclusions of law and decision on the record in open court pursuant to NRCP 52. Judge Flanagan also adopted the proposed findings of fact submitted by the defendants prior to trial. Transcript 1131:14-16.

On or about September 15, 2017, a transcript of the trial was filed, containing Judge Flanagan's ruling from the bench. On September 15, 2017, the same day, Judge Flanagan issued an *AMENDED ORDER* clarifying his award of damages to the various Defendants.

At the conclusion of his ruling from the bench, Judge Flanagan requested that defendants' counsel prepare the judgment. Thereafter, Judge Flanagan suddenly fell ill and passed away on October 6, 2017. Thereafter, on October 30, 2017, defense counsel jointly submitted a proposed form of findings of fact, conclusions of law and judgment.

Subsequently, the matter was assigned to the undersigned District Judge. On November 13, 2017, the court held a status conference wherein the court directed the parties to file briefs regarding the appropriate procedure to be followed after Judge Flanagan's untimely passing. This briefing was completed on or about February 2, 2018. Based on the briefing, the court determines that the primary rules which govern further proceedings by the undersigned successor judge are NRCP 52 (findings by the court; judgment on partial findings), NRCP 58 (entry of judgment) and NRCP 63 (inability of a judge to proceed).

In this case, Judge Flanagan left an extensive record of his decision, including summaries of witness testimony, the credibility of certain witnesses, his analysis of various trial exhibits, and his determination of each claim for relief.

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The court has reviewed the trial transcript in its entirety and the exhibits referenced in the transcript and in Judge Flanagan's ruling. Pursuant to NRCP 63, the court hereby certifies its familiarity with the record. Moreover, given the status of the case at the time of Judge Flanagan's passing (evidence closed, closing arguments completed, and a completed ruling from the bench on the merits, followed by his written Amended Order), and the detailed extent of Judge Flanagan's ruling from the bench and his subsequently filed Amended Order dated September 8, 2017, the court has determined, pursuant to NRCP 63, that the proceedings in this case may be completed as set forth herein without prejudice to the parties.

Under NRCP 63, the court has discretion to recall witnesses. The court finds no need or reason to recall witnesses. See: *Smith's Food King v. Hornwood*, 108 Nev. 666, 836 P. 2d 1241 (1992); and, *Canseco v. United States*, 97 F.3d 1224, 1227 (9th Cir. 1996) [successor judges need only certify their familiarity with those portions of the record that relate to the issues before them]. *Compare: Mergentime Corporation v. Washington Metropolitan Area Transit Authority*, 166 F.3d 1257 (DC Cir. 1999). Accordingly, the court now enters judgment as follows:

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Second Amended Complaint, and each of the causes of action stated therein, are dismissed with prejudice as to all Defendants.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Marriner's and Marriner Real Estate's crossclaim against the other defendants is moot and is dismissed with prejudice.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay William Criswell the sum of **$1.5 Million** in compensatory damages.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Robert Radovan the sum of **$1.5 Million** in compensatory

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damages.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay DAVID MARRINER, individually, the sum of **$1.5 Million**.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay each defendant its costs of suit as allowed by law. Each Defendant shall file and serve its verified memorandum of costs as required by Chapter 18 NRCP.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendants may seek recovery of their attorney's fees by an appropriate motion pursuant to NRCP 54(d) and NRS 18.010, or as otherwise allowed by law.

DATED this 9 day of March 2018.

DISTRICT COURT JUDGE

Submitted by:

INCLINE LAW GROUP, LLP
Andrew N. Wolf, Esq.
264 Village Boulevard, Suite 104
Incline Village, NV 89451
Telephone: (775) 831-3666
Attorneys for Defendants
David Marriner and Marriner Real Estate, LLC

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Jacqueline Bryant
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Transaction # 6592907 : yviloria

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Attorneys for Plaintiff
George Stuart Yount

DISTRICT COURT
WASHOE COUNTY, NEVADA

GEORGE STUART YOUNT, individually and in his capacity as owner of GEORGE YOUNT IRA, Plaintiff, *vs.* CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN AND ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10, Defendants.	Case No. CV16-00767 Dept. No. 7 **AMENDED CASE APPEAL STATEMENT**

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AMENDED CASE APPEAL STATEMENT

1. Name of appellants filing this case appeal statement:

Plaintiff George Stuart Yount, individually and in his capacity as owner of George Yount IRA

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Patrick Flanagan and The Honorable Jerome Peloha

3. Identify each appellant and the name and address of counsel for each appellant:

Attorneys for Appellant George Stuart Yount, individually and in his capacity as owner of George Yount IRA

DANIEL F. POLSENBERG
JOEL D. HENRIOD
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
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(702) 949-8200

RICHARD G. CAMPBELL, JR.
THE LAW OFFICE OF RICHARD G. CAMPBELL, JR. INC.
200 South Virginia Street, 8th Floor
Reno, Nevada 89501
(775) 686-2446

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Attorneys for Respondents Criswell Radovan, LLC; CR Cal Neva, LLC; Robert Radovan; William Criswell; Cal Neva Lodge, LLC; and Powell, Coleman and Arnold LLP

MARTIN A. LITTLE
ALEXANDER VILLAMAR
HOWARD & HOWARD
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
(702) 257-1483

Attorney for Respondents David Marriner and Marriner Real Estate,LLC

ANDREW N. WOLF
INCLINE LAW GROUP, LLP
264 Village Boulevard, Suite 104
Incline Village, Nevada 89451
(775) 831-3666

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

None

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, *e.g.*, date complaint, indictment, information, or petition was filed:

"Complaint," filed April 4, 2016

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This action arises from a dispute over shares in a real estate development project. Plaintiff-appellant sued the Defendant-respondent developers for fraud and conversion (among other claims) to obtain a refund of his $1 million investment, upon learning that Defendants did not give him the type of shares that they had promised to give him.

The Court dismissed Plaintiff's second amended complaint and entered judgment in favor of the Defendants. The Court then awarded monetary damages to the Defendants based on their affirmative defense of unclean hands. (*See* "Amended Order," entered September 15, 2017.) Plaintiff appealed that ruling on October 16, 2017. Plaintiff now appeals from the final judgment.

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11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

N/A

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

There are no circumstances that make settlement impossible.

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

Dated this 23rd day of March, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Joel D. Henriod*
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2018, I served the foregoing "Amended Case Appeal Statement" on counsel by the Court's electronic filing system to the persons and addresses listed below:

MARTIN A. LITTLE
ALEXANDER VILLAMAR
HOWARD & HOWARD
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

ANDREW N. WOLF
INCLINE LAW GROUP, LLC
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Incline Village, Nevada 89451

/s/ Adam Crawford
An Employee of Lewis Roca Rothgerber Christie LLP

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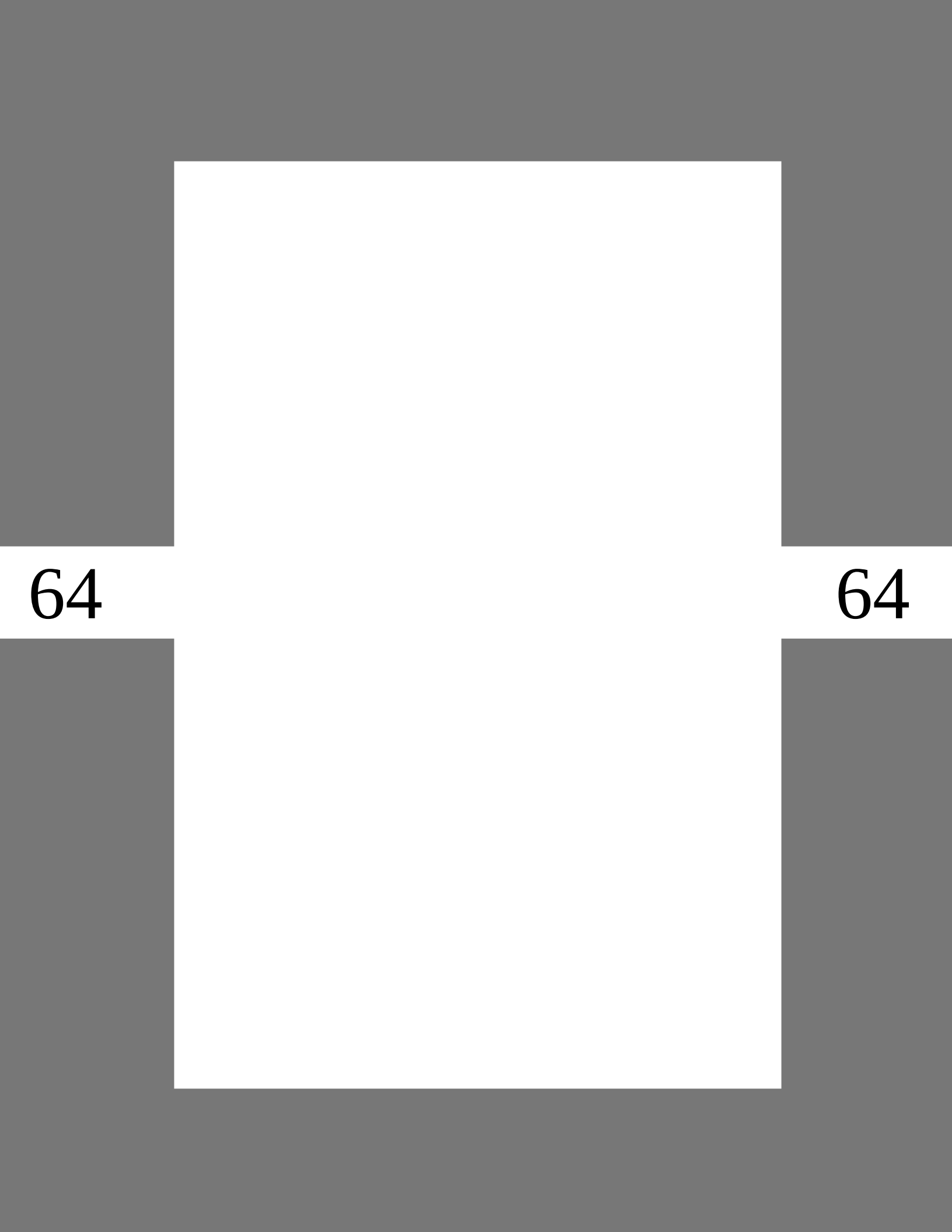
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Alexander Villamar, Esq., NV Bar No. 9927
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Attorneys for Defendants,
Criswell Radovan, LLC, CR Cal Neva, LLC,
Robert Radovan, William Criswell, and
Powell, Coleman and Arnold LLP

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company; and DOES 1 through 10, Inclusive,

Defendants.

CASE NO.: CV16-00767
DEPT NO.: B7

DEFENDANTS' MOTION TO AMEND JUDGMENT

Defendants Criswell Radovan, LLC (Criswell Radovan), CR Cal Neva, LLC ("CR Cal Neva"), Robert Radovan ("Radovan"), William Criswell ("Criswell"), and Powell, Coleman and Arnold LLP ("PCA"), (Collectively "Defendants"), by and through their undersigned counsel, hereby move this Court to amend the Judgment entered on March 12, 2018, to include lost

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Alexander Villamar, Esq., NV Bar No. 9927
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E-Mail: mal@h2law.com; av@h2law.com
Attorneys for Defendants,
Criswell Radovan, LLC, CR Cal Neva, LLC,
Robert Radovan, William Criswell, and
Powell, Coleman and Arnold LLP

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company; and DOES 1 through 10, Inclusive,

Defendants.

CASE NO.: CV16-00767
DEPT NO.: B7

DEFENDANTS' MOTION TO AMEND JUDGMENT

Defendants Criswell Radovan, LLC (Criswell Radovan), CR Cal Neva, LLC ("CR Cal Neva"), Robert Radovan ("Radovan"), William Criswell ("Criswell"), and Powell, Coleman and Arnold LLP ("PCA"), (Collectively "Defendants"), by and through their undersigned counsel, hereby move this Court to amend the Judgment entered on March 12, 2018, to include lost

management and development fees, consistent with the Amended Order filed on September 15, 2017.

This Motion is made and based on the attached Memorandum of Points and Authorities, the pleadings and papers on file herein, and the arguments of counsel at any hearing hereof.

DATED this 27th day of March, 2018.

HOWARD & HOWARD ATTORNEYS PLLC

By: _____

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Alexander Villamar, Esq.
3800 Howard Hughes Pkwy, Suite 1000
Las Vegas, Nevada 89169
Telephone No. (702) 257-1483
Facsimile No. (702) 567-1568
Attorneys for Criswell Radovan, LLC, CR Cal Neva, LLC, Robert Radovan, William Criswell, Cal Neva Lodge, LLC, Powell, Coleman and Arnold LLP,

HOWARD & HOWARD ATTORNEYS PLLC 002783

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

This matter came before the Honorable Patrick Flanagan for a bench trial on August 29, 2017. On September 8th, at the conclusion of the trial, Chief Judge Flanagan issued an oral decision on the record in open court lasting over two hours. A copy of the transcript of the issued decision is attached hereto as **Exhibit 1**. Significantly, in those findings, Chief Judge Flanagan entered a sweeping defense verdict in favor of the Defendants, dismissing all of Mr. Yount's claims against the Defendants with prejudice. Chief Judge Flanagan then specifically found that Mr. Yount had colluded with another investor, IMC Investment Group ("IMC") to intentionally interfere with Criswell Radovan's refinancing efforts with Mosaic, which ultimately led to the demise of the Project:

> In this case, but for the intentional interference with the contractual relations between Mosaic and Cal-Neva, this Project would have succeeded. That is undisputed. . . .

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> This Court has documented dozens of email exchanges between Mr. Yount and the IMC in their efforts to undermine the Mosaic loan and there is no more solid evidence of that than in Exhibit 124. That deal was done. That deal has been executed. That deal was in place. Mosaic had evidenced its enthusiasm to close this deal. And yet the day that individuals from the IMC went to the Mosaic offices without the knowledge of [Criswell Radovan], that deal was dead. The testimony is unequivocal, there was never an attempt by the IMC to resurrect it, despite the open invitation by Mosaic to reintroduce the loan.
>
> **This Court finds that it was the intent of the IMC to kill this loan, divest [Criswell Radovan] from it shares on the threat of legal, civil, criminal actions for their own benefit and not the benefit of the project.**

Id. at 52-53 (emphasis added).

Chief Judge Flanagan then awarded Radovan and Criswell $1.5 million each in compensatory damages, two year's salary, management fees, attorney fees and costs. *Id.* A week later, on September 15, 2017, he issued a separate Amended Order clarifying his damage award and including lost development fees to Criswell Radovan. *See* Amended Order, **Exhibit 2** hereto.

II.

LEGAL ARGUMENT

AN AMENDED JUDGMENT SHOULD BE ENTERED

A. LEGAL STANDARD

A motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of the judgment. NRCP 59(e). The purpose of such a motion is "to seek correction at the trial court level of an erroneous order or judgment." *Chiara v. Belaustegui*, 86 Nev. 856, 858, 477 P.2d 857, 859 (1970). Specifically, a motion to alter or amend the judgment is a proper method for challenging the total amount of the judgment. *See Fleischer v. August*, 103 Nev. 242, 247, 737 P.2d 518, 521 (1987).

Here, the Judgment should be amended to conform to Judge Flanagan's decision, including the Amended Order, pursuant to which Criswell and Radovan were awarded lost management fees, and Criswell Radovan was awarded lost development fees. The basis for this award was squarely in the record, as was the amount of lost development fees, leaving only the amount of the lost management fees to be quantified.

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B. THE JUDGMENT SHOULD BE AMENDED TO INCLUDE LOST DEVELOPMENT FEES

As the decision and Amended Order correctly note, Criswell Radovan was the developer of the subject project, entitled to a $1.2 million Development Fee, payable in monthly installments of $60,000. *See* Confidential Private Placement Memorandum, Trial Ex. 3, p.8. Criswell Radovan earned all of its Development Fee, but "recontributed to the Company $480,000 of its Development Fee as of 6/1/14." *See* Section 7.4 of the Amended and Restated Operating Agreement, Trial Ex. 5; *see also* Trial Testimony of William Criswell, Volume I, pp. 186-188. Importantly, Criswell Radovan was not repaid its Development Fee before the project failed. *See* Trial Testimony of Robert Radovan, Volume VI, pp. 953-956. Accordingly, pursuant to the Amended Order, the Judgment should be amended to include an award of $480,000 to Criswell Radovan.

C. THE JUDGMENT SHOULD BE AMENDED TO INCLUDE LOST MANAGEMENT FEES

Criswell and Radovan had a binding agreement with Cal Neva Lodge, under which they would manage the operations of the property once it was completed and open. This fact is reflected in the Confidential Private Placement Memorandum, Trial Ex. 3 (recognizing that Cal Neva Lodge will enter into a hotel management agreement with Criswell Radovan or its affiliate) and the Amended and Restated Operating Agreement, Trial Ex. 5 ("Day-to-day management of the Project will be performed by an Affiliate of CR").

As demonstrated by the attached Declaration of William Criswell, key provisions of the Management Agreement were:

- A separate entity, CR Hospitality, LLC was formed by Criswell and Radovan for the purpose of serving as the hotel manager under a franchise agreement with Starwood Hotels and as part of the Starwood Luxury Collection. Criswell and Radovan each owned 30.5% of the membership interest in the entity. The remaining interests were held by key executive personnel in the operation.
- A copy of the Management Agreement was reviewed and approved by the Executive Committee before closing with the investors, and was one of the documents provided to investors such at closing.
- The minimum term of the agreement was 10 years from the date of opening, with two options for CR Hospitality to extend the term by five additional years each.
- The fees to be paid to CR Hospitality or management of the hotel were:
  - A Basic Fee equal to 3% of Revenue; and
  - An incentive fee equal to 10% of Net Operating Income before reserves and debt service.

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- The total fees to be earned by CR Hospitality for the initial term of ten years following opening were estimated in the Financial Pro Forma section of the Confidential Private Offering Memorandum dated March, 2014 and accepted in evidence at trial as Trial Exhibit 4.

The following chart shows the estimates of total management fees for each of the first ten years of operation as shown in Trial Exhibit 4 and calculates the share of those fees that would have been received by each of Radovan and Criswell were it not for Yount's actions:

Lost Management Fees Per Trial Exhibit 4 dated March 2014

1st Ten Year Term

Year	Base Fee[1]	Base Incentive Fee[2]	Total Annual Fees	Criswell Share[3]	Radovan Share
1[4]	650,250	-0-	650,250	198,326	198,326
2	809,416	617,266	1,426,682	435,138	435,138
3	862,039	772,100	1,634,139	498,412	498,412
4	887,900	725,115	1,613,015	491,970	491,970
5	914,537	751,291	1,665,828	508,078	508,078
6	941,973	778,252	1,720,225	524,669	524,669
7	970,232	806,022	1,776,254	541,757	541,757
8	999,339	834,625	1,833,964	559,359	559,359
9	1,029,320	864,086	1,893,406	577,489	577,489
10	1,060,199	881,368	1,941,567	592,178	592,178
				4,927,376	4,927,376
TOTAL					

[1] Found in fourth line from bottom of Financial Pro Forma of Trial Exhibit 4.

[2] The 30.5% share owned by each of Criswell and Radovan in the total management fees to be paid to CR Hospitality. Because this management agreement was for a single property, costs of on site management, record keeping, office space, etc. would have been costs of the hotel itself and are not shown as a reduction in these values.

[3] 2015 was assumed to be a partial year as the first operating year when this projection was prepared in 2014. 2016 was to be the first full year of operations.

[4] Found under Fixed Charges Section of Financial Pro Forma of Trial Exhibit 4.

Importantly, the Financial Pro Forma which forms the basis for these damages was not only thoroughly vetted by several experts in the hotel industry, including Starwood Hotel and Resorts, but according to testimony at trial, by Yount's own accountant, Ken Tratner, who looked at the pro forma for reasonableness, and then gave the Pro Forma to a hospitality expert to review who told him it was reasonable; and then accountant Tratner gave Yount the go ahead to invest. *See* Trial Testimony of Ken Tratner, Volume VI, pp. 849-50, 855.

The above estimate of management fees is taken from Trial Exhibit 4, which was prepared in early 2014 and reflected a then depressed hotel market in the area. A more recent, and much higher, projection can be found in an updated pro forma (the "2015 Forecast") dated December 15, 2015 and prepared by Orion Hospitality, an outside consultant in the hospitality industry. Using those projections, the total of projected management fees which were lost by Criswell and Radovan due to the actions of Yount and others would be $7,546,000.

Accordingly, pursuant to the Amended Order, the Judgment should be amended to include an award of **at least** $4,927,376 in lost management fees to each of Criswell and Radovan.

III.

CONCLUSION

Based on the foregoing, Defendants respectfully request that their Motion to Amend Judgment be granted in its entirety.

DATED this 27th day of March 2018.

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HOWARD & HOWARD ATTORNEYS PLLC
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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION

X Document does not contain the social security number of any person

- OR -

_____ Document contains the social security number of a person as required by:

_____ A specific state or federal law, to wit:

_____
(State specific state or federal law)

- OR -

For the administration of a public program

- OR -

_____ For an application for a federal or state grant

- OR -

_____ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 125B.055

Date: March 27th, 2018

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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

I served the foregoing **DEFENDANTS' MOTION TO AMEND JUDGMENT** in this action or proceeding electronically with the Clerk of the Court via the E-File and Serve system, which will cause this document to be served upon the following counsel of record:

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I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service was executed by me on March 27th, 2018 at Las Vegas, Nevada.

An Employee of HOWARD & HOWARD ATTORNEYS PLLC

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EXHIBIT 1

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STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--oOo--

GEORGE S. YOUNT, et al., Plaintiffs, vs. CRISWELL RADOVAN, et al., Defendants.	Case No. CV16-00767 Department 7

TRANSCRIPT OF PROCEEDINGS

TRIAL VII

September 8, 2017

9:00 a.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

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APPEARANCES:

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RENO, NEVADA, September 8, 2017, 9:00 a.m.

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THE COURT: Good morning, ladies and gentlemen. Thank you for your indulgence. As I was reviewing the files and exhibits last night, I had some questions that I thought perhaps I'd start them off and it may assist counsel in narrowing its arguments to the Court. I'll start with Mr. Campbell. Is Cal Neva Lodge LLC in bankruptcy?

MR. CAMPBELL: Yes, it is, your Honor.

THE COURT: Is it subject to the automatic stay?

MR. CAMPBELL: Yes, your Honor.

THE COURT: So the charge against it should be dismissed?

MR. CAMPBELL: I don't know about dismissed. I think it probably or have to be litigated as a claim in the bankruptcy court.

THE COURT: I'm just talking about in this Court.

MR. CAMPBELL: Here this court, yeah.

THE COURT: Second question, the subscription agreement, is that between Cal Neva Lodge LLC and the plaintiff?

MR. CAMPBELL: That's correct, your Honor.

THE COURT: Would you concede, then, that CR Cal

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Neva LLC, Criswell Radovan LLC are not parties to this contract?

MR. CAMPBELL: To the subscription agreement?

THE COURT: Yes.

MR. CAMPBELL: I believe its managers and members of the LLC, they are parties to the contract. They were the agents and operating on behalf of the Cal Neva. They were the managing entities.

THE COURT: Have you pled an alter ego theory in this case?

MR. CAMPBELL: I pled that the defendants have individual liability.

THE COURT: The next question I had dealt with the seventh cause of action, which is the securities fraud pursuant to NRS 90.570. Mr. Campbell, are these securities?

MR. CAMPBELL: Yes, they are, your Honor. If you look at Exhibit Number 3, which is the private placement memorandum.

THE COURT: I've looked at it.

MR. CAMPBELL: The very first page says it's a securities offering with the exception that applies under the statute as far as registration of the security with either the federal or state government, but it doesn't mean it's not a security. It is a security. That's what was being sold

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under the PPM.

THE COURT: But isn't this one, don't those disclaimers state that this is essentially a real estate investment and securities?

MR. CAMPBELL: I don't think a person would get a -- beyond being on the deed or be entitled to a real property interest here. They're a member of an LLC and hold a share, so to speak, in that, in that LLC. If they were -- if you were buying a piece of real estate, you would get, you know, it would be designated as an owner of that piece of real estate.

THE COURT: Doesn't this qualify as a private placement under section 482 of the Securities Act of 1933? I mean, we have less than 35 investors, because we have 20. These are sophisticated investors, as defined in the statute itself, and it's not for public solicitation.

MR. CAMPBELL: Your Honor, I don't think that means as far as registration statements, a security is a security under my understanding and that's what's represented in the PPM. This securities offering is what the language says.

THE COURT: Okay. Let me see if there's any other questions I have here before we begin. I think that answers some of the questions I have. Thank you. Mr. Campbell, you

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have the floor.

MR. CAMPBELL: Thank you, your Honor. During the course of this trial, the defendants have really attempted to shift the focus of this case on what happened after October 13th of 2015. I think they've done that in an attempt to not have this Court focus on what happened to Mr. Yount.

What I see are the inexcusable acts of the defendants prior to or about the time that he made his investment. The real focus on this, your Honor, should be what happened prior to October 13th or at about that same time frame.

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THE COURT: Just a minute here. Go ahead.

MR. CAMPBELL: They shifted that focus. What I believe the facts have shown in this case, I think, let's go back and focus on what really happened on the October 13th time frame. Let's start with the Powell Coleman law firm. Despite what Mr. Coleman said, he was acting as an escrow agent. You don't take money in a two party transaction, put it into your trust account as for no other reason, it's -- it's an escrow. You're holding money in an escrow.

And even more in this case, he was holding it in his trust account. And as your Honor knows, there's sacred duties related to a trust account. You just don't have money

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go into your trust account and willy-nilly send it out the next day. Those rules are pretty consistent both under the Texas Bar Rules, and in addition in our trial brief, I cited what the Texas rules consider an escrow holder.

THE COURT: How did he breach the instructions? He did exactly what he was instructed.

MR. CAMPBELL: There were no instructions. That's the problem. There was no writing whatsoever.

THE COURT: This is a new age, people write contracts in cyberspace instead of paper.

MR. CAMPBELL: I'm not talking about paper. I'm not talking about anything in cyberspace. There was no indication in there that Mr. Yount agreed to purchase a CR share.

THE COURT: That's true.

MR. CAMPBELL: So he gets money into his trust account. He's got no documentation as to what this money is for or whether there's any kind of an agreement. And then he just willy-nilly releases it the next day based on his client's word.

THE COURT: Instructions.

MR. CAMPBELL: His client's word, nothing else. We've got the approval. What's really important, though, your Honor, is that he was telling his clients before that

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time that they needed to get some documentation regarding this. He was assuming it was a CR share, but he still said, you need to document this, you need to get the approval.

THE COURT: Well, it was a CR share.

MR. CAMPBELL: That's what purportedly they tried to sell. That's certainly not what Mr. Yount agreed to.

THE COURT: No. But that's what they sold. They sold a CR share.

MR. CAMPBELL: So he's got a duty to Mr. Yount. He's got a duty, I think, to the members of the LLC. He's representing the LLC, ostensibly, even though Mr. Yount is buying something different than what he thought he bought, he will become a member of the LLC, so he is owed duties both as a member and as an escrow holder and as someone who has deposited a million dollars into Mr. Coleman's trust account.

And I think that duty becomes even more evident, your Honor, when we look at what happened back in January and February of 2016 both. That's Exhibit Number 33, which is the -- well, first, if you go back to what he told his clients in Exhibit Number 33, which is the e-mail string with his clients about what needed to be done.

And if you fast forward to Exhibit Number 64, which are the documents that Mr. Coleman sent to Mr. Yount, and aside from the misrepresentations and the untruths in

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these documents, it's very telling that when he drafted a purchase agreement, albeit in this case he was trying to paper the transaction back from CR -- from Mr. Yount back to CR, he drafts a purchase agreement. He knows that you -- he's a sophisticated transactional attorney. He knows you do transactions with documents.

And he put in the purchase agreement, section four, the closing of this transaction described herein is contingent upon the agreement receiving the approval of the members who collectively own 67 percent. Such approval must be in writing and pursuant to the terms of the operating agreement. And he knows, and on his examination, when I questioned him, he understands what a closing is. You get the documents all signed, you get everybody signed up, then you release the funds.

That didn't happen here. He gets a million dollars into his trust account. He has no documentation. He has no corroboration at all as to what Mr. Yount has agreed to or not agreed to and he willy-nilly releases the funds. I don't think that could be a clearer breach of the duty he owed to Mr. Yount and the duty he owed to the other members of the Cal Neva Lodge LLC.

It's astounding to me to do something like that without some writing. And why in the first place, why would

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the money ever go to the trust account if there was a side deal? There was no reason for that to go into his trust account. So he obviously gave him some kind of notice as, is there something going on. He tells his clients, you got to have documents to paper this deal. He doesn't. And then we know what documents he knows he thinks need to paper that deal, because he sends them.

THE COURT: His testimony is that this was a private transaction, an owner selling to a buyer, happens every day.

MR. CAMPBELL: Sure, it does, but not without notice to the other party, not without some agreement either oral, some kind of an agreement. He had no indication whatsoever that there was any agreement with Mr. Yount and CR, Criswell Radovan or any of those entities. And he's got a clear conflict of interest here. He's been representing CR or Mr. Criswell for a number of years and now he's representing the entity, which includes its members. Why isn't he looking out for those members?

Why isn't he -- why is he so adamant about just trusting his client's word to go ahead, we got approval, send me the money, and then he doesn't send it to CR. He sends it to CR's attorney when CR is buying the shares. The whole thing doesn't make any sense, your Honor. I think Mr.

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Coleman's law firm has breached the duties, and under the breach of the fiduciary duty and the negligence claims we asserted, I think the facts in this case and the evidence are squarely on point to prove that he's guilty of those two counts.

THE COURT: All right.

MR. CAMPBELL: Moving to Mr. Marriner was merely a facilitator. I think the evidence shows otherwise. He was deeply involved in getting Mr. Yount to invest under the PPM, where are you, let me help you get a trust agent. Mr. Marriner was the feet on the ground, boots on the ground, and he was in charge of getting the investors into the fold. The evidence doesn't show that it was a handoff deal, here's Mr. Yount, I'm not going to have anything more to deal with him, it's yours, Mr. Radovan, you take care of it.

THE COURT: What about the e-mail from your client, I'm dealing now with Robert?

MR. CAMPBELL: He's dealing with him related to getting documents on the pro formas. That's what that related to.

THE COURT: What about the e-mail from Mr. Marriner, which says, if you have any -- after your client sends a list of questions, the e-mail from Mr. Marriner says, I'm sending these on to Robert for him to answer, and then

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Mr. Radovan answers those questions.

MR. CAMPBELL: But that doesn't excuse or change Mr. Marriner's role in this function. I think a real telling indication of what he really was doing, despite his representations that he was merely a facilitator is, you know, Exhibit 8. He says, our signature pages, we would like to have you on our team is what he says in that exhibit.

Exhibit Number 11, he says, we expect the hotel to sell within seven years. We project that the net profit may be 100 million or more. He goes on, we project to have the hotel refinanced. He's representing himself as a member of the team. Even Exhibit 14, he goes on to say the same type of thing.

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And then, importantly, in Exhibit 45, he's writing -- Mr. Marriner is writing to Mr. Radovan and Mr. Criswell, he says, please keep in mind these are my friends and neighbors and they look to me for advice and protection. Those are his own words. He's telling Mr. Radovan, Mr. Criswell as what he saw as his role in getting people into this project.

THE COURT: Isn't his role to find -- in Exhibit 1, he's a broker real, estate broker for this project.

MR. CAMPBELL: But Exhibit 1 also includes his

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role as selling shares of the PPM and it says in that exhibit that he has full authority to do so. I mean, you've seen the language in it.

THE COURT: I agree. It said that he was and I think he testified that he had been asked to raise $5 million for the PPM.

MR. CAMPBELL: And that he had full authority to do whatever is necessary. I don't have the exact quote. You've seen it. It's not limited to a handoff. And I think his testimony is just trying to walk away from the responsibilities he had under this, the duties he had, and what he actually did in the project.

So when you look at that Exhibit 45, Mr. Marriner says he's the advisor and protector.

THE COURT: Well, these were his friends. He's been involved in that community for, what did he testify, 20, 25 years. And I'm sure he's imploring Mr. Radovan to make it right. He's got to live in that community. He's got to go to the grocery store. He sees the people at the post office.

MR. CAMPBELL: Sure. And I think he felt bad. Did he really protect his client when he knew the change orders were $9 million and didn't tell Mr. Yount? Did he protect his clients when he was buying his share under the PPM and instead Mr. Radovan says, no, no, they both know the

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PPM isn't full, with Mr. Busick's investment? Did he protect him when he failed to tell him?

And I believe Mr. Marriner's testimony on this point is that when Mr. Radovan said, don't tell him that, I believe he probably said that, because Mr. Radovan didn't want him to know. But that doesn't excuse not telling him.

As you heard Mr. Criswell's testimony, there was nothing in the nondisclosure agreement that would somehow limit Mr. Marriner from telling Mr. Yount, hey, just want to let you know, the PPM has been fully subscribed and Robert has a different deal for you, so you should talk to him. You know, that's a simple phone call, that's a simple e-mail, and we probably wouldn't even be here today. Because it was a material change and it was not what Mr. Yount had been negotiating with both Mr. Marriner and Mr. Radovan since July, mid July. So for all the chatter and all the correspondence that took place in that two and a half month time frame, we're selling you a PPM share, that's a material change when they're not selling him a PPM share.

THE COURT: One of CR's shares.

MR. CAMPBELL: So I really think that it's amazing that Mr. Marriner painted himself as the victim in this case at the end of his direct testimony. The victim here is Mr. Yount. He's the one that is out $1 million. Mr.

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Marriner is the one that his firm made half a million dollars from selling the shares under the PPM. Yeah, that simple phone call, and I don't think there would have been any prohibition from him doing that. I think it was a clear breach of his duty, it was fraud, it was fraud by omission.

You don't tell someone that they're going to buy something for a two-and-a-half-month-period and it comes to your attention that's not the case, and you walk away from it. That's a material -- that's an omission of a material fact that was very, very important.

THE COURT: I understand your argument.

MR. CAMPBELL: I think if Mr. Marriner had done what he should have done, like I say, we wouldn't be here.

I'll touch on the securities fraud issue, your Honor. My interpretation of NRS Chapter 90 is even if it is a private placement, the 90.570, about fraudulent or prohibited acts, 90.570, with the offer to sell a security a person shall not directly or indirectly make an untrue statement of a material fact or omit the material fact, not misleading in light of the circumstances.

THE COURT: What's misleading about the statements?

MR. CAMPBELL: It's a material omission.

THE COURT: What is material?

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MR. CAMPBELL: That Les Busick filled out the PPM and the negotiations we've had for the last two and a half months, we don't have a -- we don't have a share of the PPM to sell you, so Mr. Radovan will sell you one of his shares.

THE COURT: Would you concede that CR held two founders shares?

MR. CAMPBELL: There's no doubt that they held two founders share.

THE COURT: Would you concede that CR sold one of those founders shares to Mr. Yount?

MR. CAMPBELL: In their mind. There was never a meeting of the minds.

THE COURT: Yes or no, did Mr. Yount acquire one of CR's founders shares, yes or no?

MR. CAMPBELL: That's a tough question to answer. What I learned in contract languages is both parties had to agree to a deal. This was a one-sided transaction.

THE COURT: Take a step back. Did Mr. Yount want to buy a founders share?

MR. CAMPBELL: He wanted to buy a founders share under the PPM.

THE COURT: That's fine. PPM covers 20 shares, million dollars a share. CR had two shares. The Ladera loan required CR to have at least 1 million invested, skin in the

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game, as has been bantered about in this courtroom. They had 2 million, 2 founders shares. When Mr. Yount was able to free up the cash from his IRA, his 401K and had the million dollars to invest, and he wanted a CR -- I mean, he wanted a founders share. Did he not pay $1 million for a founders share? The answer is yes, that's what he wanted. Isn't one of CR's two shares a founders share?

MR. CAMPBELL: Yes, it is, your Honor.

THE COURT: Didn't he then acquire a founders share which he sought from the beginning?

MR. CAMPBELL: If you consider only one party agreeing to a transaction and making a contract, I guess he did, but it's --

THE COURT: This is not one party's agreement. He wanted a founders share -- let's just take CR out. Let's reverse this. Let's just say that Mr. Yount had two founders shares and the subscription had been sold out. And Mr. Criswell says, this Cal Neva Lodge is a beautiful project. It's going to launch the North Shore of Lake Tahoe internationally and whoever is on the ground floor is going to be making a lot of money. I want in. I want a founders share.

And Mr. Marriner says, I'd love to help you, but they're all sold out, however, I happen to have heard that

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Mr. Yount has two shares, two founders shares. Let me ask him if he's willing to sell it to you. Goes to Mr. Yount, Mr. Yount says, for a million bucks, you bet.

So Mr. Criswell sends a million dollars to Mr. Yount's attorney's trust account and says, upon the execution of the transfer of the share, send the million dollars to Mr. Yount. That transaction occurred. Didn't Mr. Criswell acquire a founders share?

MR. CAMPBELL: Again, your Honor, if you have Mr. Criswell assuming he is buying under the PPM.

THE COURT: There's 20.

MR. CAMPBELL: Moneys go into the project when you're buying under the PPM, your money goes into the project. It isn't taken out of the project. You do a transaction like that, there's conditions to get it approved.

THE COURT: All right. At the next shareholder meeting or in writing?

MR. CAMPBELL: It's just a different situation. You can't tell someone you're selling them a Cadillac and then -- a new Cadillac and then without telling -- when you drive up in the car, it's a ten-year-old Cadillac. It's a different deal than what Mr. Yount assumed he was buying into.

THE COURT: But in this case, Mr. Yount has the

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two brand-new Cadillacs. There's 18 brand-new Cadillacs out there. Mr. Yount says, I can only drive one at a time and I'll sell mine to Mr. Criswell. Doesn't Mr. Criswell get a brand-new Cadillac?

MR. CAMPBELL: Not if he wasn't delivered a brand-new Cadillac, not if he was delivered a ten-year-old Cadillac.

THE COURT: Tell me, and nobody has explained it to me, tell me if I laid that founders share from Mr. Criswell and Mr. Radovan right next to the founders share of Mr. Busick, what difference is there?

MR. CAMPBELL: Well, there's a big difference with it if there's no shareholder approval as we saw in the document.

THE COURT: I'm not talking about the process, the shareholder approval set out in the operating agreement. What's the difference between those two shares?

MR. CAMPBELL: Functionally, there is no difference.

THE COURT: So didn't Mr. Yount get what he wanted, which was a founders share?

MR. CAMPBELL: No. He wanted a founders share under the PPM, and that's the difference, and that's the material difference.

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THE COURT: If there's 20 shares under the PPM and he gets one of them, where are the damages?

MR. CAMPBELL: Because Mr. Yount would have never invested $1 million if he knew that he was buying a CR share. His testimony was pretty clear on that. He would not have --

THE COURT: But he wanted a founders share.

MR. CAMPBELL: But he would not have bought a share from CR that would indicate to him that CR was taking money out of the project instead of a million dollars going in to help the Cal Neva get to the finish line.

THE COURT: I understand that argument, but nobody as yet told me -- I guess you have. There is no difference between the CR share, founders share and Mr. Busick's founders share.

MR. CAMPBELL: Assuming you have shareholder approval.

THE COURT: Correct.

MR. CAMPBELL: Which never happened in this case.

THE COURT: Well, that's a matter of opinion. Go ahead. Next argument.

MR. CAMPBELL: Let's move to CR.

THE COURT: With respect to Mr. Criswell as to the causes of action three, six and seven, isn't it Mr. Yount's testimony that the first time he ever met William Criswell

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was at the December 12th, 2015 meeting after he had already invested his money?

MR. CAMPBELL: That's correct, your Honor.

THE COURT: Okay. Thank you. Go ahead.

MR. CAMPBELL: But Mr. Criswell was a partner and knew about the sale of the CR share to Mr. Yount.

THE COURT: Okay.

MR. CAMPBELL: His testimony was pretty clear on that. So I think, your Honor, you've heard a bunch of different people talk about that December 12th meeting and I think there's only one conclusion, that if you link it altogether, that Mr. Yount was shocked and dismayed and upset and by then he didn't even know about the sale from CR to him instead of under the PPM.

THE COURT: I think Mr. Yount characterized it as rousing.

MR. CAMPBELL: That doesn't happen if all the members and Mr. Yount had already known what was conveyed to them. So I think the proof is in the pudding there as to what happened in that meeting and what was disclosed in that meeting and what had not been disclosed prior to that time.

I don't think there's any evidence that it was a staged revolt. It was a reaction to what they had heard both from Mr. Radovan and Mr. Criswell trying to smooth it over

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when people were so upset.

They were rightly upset. These people together had a collective $18 million into this project and the project was going forward without new financing. It was considerably over budget. The construction budget alone was probably, if you round it to 10 million out of a 17 million construction budget, that's a 60 percent increase, close to a 60 percent increase in a budget that was in the documents that said was ironclad and we've vetted it.

THE COURT: That's the price.

MR. CAMPBELL: That's a big shock to me. It would be a big shock to anybody, I would believe.

Let's move to the fraud as to the CR's entity. You know, active omission of a material fact can be fraud. There's no doubt about that under the law. And I think in this instance, especially in light of the recommendations and assurances that were provided to Mr. Yount prior to making the investment and the change in circumstances or the information that Mr. Radovan knew, I think this was actionable fraud.

As we know about the change order in September, if you look at the actual change orders that were signed and the documents that show the change orders that have at least been approved by the construction manager, but had not been signed

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off, there was close to over $10 million in change orders that were approved or were in the works.

And Mr. Yount's testimony and I think it was clear and it was corroborated by the evidence is he never knew that there was that kind of change orders. That's a material omission. You know, what's the problem in calling Mr. Yount, there's a lot of chatter, a lot of e-mail going back and forth with Mr. Marriner and Mr. Radovan at this time, just want to let you know we confirm the change orders we talked about in July are now pushing up to $10 million.

THE COURT: Wasn't he informed of that not only in the July construction report --

MR. CAMPBELL: No, your Honor. I'll address that. That's the argument that Mr. Marriner, he made that early on in the project. It's the argument that we've heard repeatedly through this that somehow Exhibit Number 18 tells Mr. Yount that the project is $9 million over. And in exhibit -- we have all memorized Exhibit 18 pretty much, and, you know, surprisingly, Mr. Chaney had a very similar recollection of what happened in that July time frame in that investors meeting.

The exhibit says, okay, we're going to refinance this mezzanine for 15 million with a less costly loan. So the mezzanine is six, but we know there's interest on top of

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that, so that's seven plus, who knows, it's not quantified, but it's not just $6 million. He goes on, we have some code issues that we have to deal with, we have to use some of this 15 million refinance for that. Doesn't quantify that.

So what are those code issues? Mr. Yount believed them to be $5 million plus at that time. That's what was in his e-mails and that's what was told to him. So he whether it was told then or before, he knew that there was some change orders and it was going to be in his -- what he's documented as $5 million plus.

We know that the same e-mail says, now we're going to release some funds for the condo development, not quantified, but --

THE COURT: They had it down to the square foot.

MR. CAMPBELL: It wasn't quantified from a dollar amount. What does that mean, the condo development? If you look at Exhibit 4, the condo development in the second box in Exhibit 4, where it says, once we get 20 million, we're going and start doing the condos.

THE COURT: Correct.

MR. CAMPBELL: That was a $2 million number. How much was that condo development? So there's all these things, and then Mr. Radovan and Mr. Marriner tried to lump in Exhibit 10 as kind of the tandem notice that if you look

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at 10 with all the litany of change orders, again, not quantified in dollars, and the Exhibit Number 18, which says we're going to refinance for 15 million, you can't just add 6 million of the Ladera loan and assume that 9 million means there's a $9 million change orders.

If that was the case, that e-mail should have said that. It should have said, we're going to have 8 or $9 million and the entirety of the difference of paying Ladera off is going to the change orders. But it doesn't say that. It says we're going to do a bunch of things we're going to do and no one ever quantifies it. And what we know is that Mr. Yount was told it was 5 million plus.

And he also was told, well, Mr. Radovan said we'd like to have some cushion. Well, great, we'll have some cushion. We don't know what that is, but it's at least a little extra money if you consider all of the other things.

As we know, refinancing alone is not free. You have upfront costs. What was that 15 million going to go for? Certainly never in any document said that 15 million refinance -- nine of it was going to change orders that were never in existence. So that's a material change from that was told in July to what Mr. -- from what Mr. Marriner and Radovan knew come September, weeks before he invested in this project.

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And, in addition, that refinance of the mezzanine loan, that was the only time that anybody told Mr. Yount about a refinance, those terms that we were going to get a better terms. But we know Mr. Radovan testified here and, again, in deposition that he knew in September, maybe even as early as August, that they needed to refinance the entire project. And if they didn't refinance that entire project, they were not going to finish this deal.

And he never told Mr. Yount that. Telling Mr. Yount that we're going to do a 15 million mezz refinance, which, six plus will go to payoff, and going to a total refinance of the project with substantial additional funds, somewhere between 16 million more than the budget, that's a material fact. I mean, if I was an investor, anybody who was an investor, they would want to know that the project was now going to have to be refinanced and it's not going to go forward.

THE COURT: But wasn't this discussed amongst the EC for months? I mean, they had been in negotiations with Mosaic in November. Those individuals were clearly aware that that was one of the options, the total refi was one of the options, the mezz was another, a capital call was a third. Would you argue that having all of those options on the table is a dereliction of the duty of the management,

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that they would be deficient in their duty if they didn't explore all these options and lay it out.

As a matter of fact, I think the testimony from everybody was that the EC was actively involved and knowledgeable, particularly with the Mosaic loan, because they asked tough questions of Mr. Radovan. Asked him to go back, see if he couldn't negotiate a way that the bank would waive the fee, asked him to go back, tell Mosaic to hold off while they explore other options, asked him to go back to see if he couldn't raise the limit of the money. Doesn't seem to me that the EC was operating in the dark at all.

MR. CAMPBELL: I tend to agree with you somewhat. I know from some of the e-mails that one of the late exhibits we introduced yesterday, that the EC was asking for a lot of information.

THE COURT: And that's their duty.

MR. CAMPBELL: I don't have a problem with that. But Mr. Yount is not on the EC. He's not even an investor at that time. He's leading up to his investment. If that knowledge is out there, and certainly Mr. Radovan knew and, perhaps I don't know when the EC actually knew, the e-mail we looked at the late exhibit yesterday was late October 27th, I believe. Exhibit 78, I believe it was.

Yeah, they knew, but Mr. Yount never knew. He

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wasn't privy to the EC communications. He wasn't negotiating. He didn't even know probably who was on the EC at that time. He was talking to Mr. Marriner and Mr. Radovan and those are the guys that tell him that -- that need to tell him, that have a duty to tell him in light of the previous representations that, hey, we're now -- we're closing in on 10 million in change orders. If we don't get a refinance, we're not going to go forward on this thing.

That just astounds me that you couldn't consider that as a material omission of fact before Mr. Yount puts a million dollars into this project, that an investor wouldn't want to know those kinds of facts and it wouldn't affect his decision. He testified it certainly would have affected his decision. He would not have gone forward or he would have figured out more.

The mere fact that you have a budget increase of that magnitude and a potential stop work unless you get some refinancing, those are things that Mr. Marriner, Mr. Radovan knew and were not disclosed to Mr. Yount. And those were important, important facts that would have been a very big part of his decision making.

So when you add that into the total lack of any communications regarding the switching of the sale, the PPM being full up, I mean, those are three pretty big facts that

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would have factored into Mr. Yount's decision making process and which he testified he would not have gone forward with those facts in mind.

So I think it's very telling as to what Mr. Yount knew and didn't know. I mean, there's no mistake that when Mr. Yount was sent those documents in February by Mr. Coleman, that he had never agreed to any of this stuff.

Furthermore, I think, your Honor, I think there's a couple of different arguments that they've made that, the defendants have made through trial that I think are real important, too, is somehow the language in the PPM documents exonerates the reliance argument. And I think your Honor has already ruled on that issue in the Marriner order on summary judgment where you said that the Court does not find that the PPM and subscription agreement effectively disclaim reliance. Rather, that notice is limited to the disclosure with the risk associated with the investment.

You're right. Those risks set forth in the PPM are risks that once you're in the project, you could have a capital call, you could be diluted.

THE COURT: You could lose your entire investment.

MR. CAMPBELL: You could lose your entire investment, but that's not the same as fraudulent omission or misrepresentations. Those language does not excuse actions

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of someone to sell a security to someone prior to that you can't rely on that kind of exculpatory language. Sure, if it was after the fact, that's a little different situation.

I think defendants also take the position that I think is untenable is that Mr. Yount could have done more due diligence on this project. First of all, Mr. Yount did due diligence. You saw that July e-mail string. There was a lot of due diligence. There were questions and there were questions answered.

THE COURT: He talked to his CPA, he took a tour of the site.

MR. CAMPBELL: Sure. He did a lot of due diligence. And he was told in that time frame, he was told we're about 5 million over budget. We're going to do a refinance of the mezz to cover some of these costs without any particularization of what they were. So he did do due diligence.

THE COURT: Talked to the architect.

MR. CAMPBELL: So when he gets those answers from the developer, I don't think he has a duty to follow up a couple of weeks before his investment and say, well, you know, have the change orders -- has the number of the change orders? Are we still on schedule? In fact, he did ask, are we still on schedule?

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And according to Mr. Yount's contemporaneous documents, the schedule was going to be a soft opening, but the only schedule change was because of a light winter and the lack of revenue if they opened in December.

For all intents and purposes, he was told several times, yeah, we're ready to open. We can do it on the 12th. We're not going to, because of the bad winter that might occur that we've had in the past years and the lack of revenue. We'll do a soft opening and move on. But, you know, that's far different than what he's told.

So I don't think as an investor, he's made those representations, those representations are made to him, he relies on them, I don't think the day before he makes his investment he has a duty to follow up. I think the duty lays on the people that gave him the representations in the first place to follow up and say, hey, look, those things we told you back in July, it's not true anymore. Things have changed. And we want to let you know before you make your investment. That's the duty.

And, finally, as to due diligence, how do you do due diligence when someone switches what you bargained for to buy something under the PPM and instead you get a CR. I don't know how you do due diligence on something like that. By the way, is there room under the PPM? Can I still buy?

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That's a duty to tell Mr. Yount that Busick closed out the PPM.

Again, we have Mr. Radovan painting himself as a victim in this case. While they were able to put a million, Mr. Radovan and Mr. Criswell, their entities were able to put a million dollars in that, Mr. Yount is that out a million dollars. I don't see how they are the victims.

Again, this would have been so easy to avoid this whole trial. Mr. Radovan picks up the phone and says, hey, Stuart, guess what, Busick just closed out the PPM, but if you still want a share, I can sell you one of my shares. Is that okay with you? Can we agree to that? You want to sign a document or I'll confirm it in an e-mail? That never happened, your Honor. That never happened. I find that inexcusable.

And then what makes it even worse is that they don't tell him at all.

THE COURT: Well, that's an interesting point that you bring up, Mr. Campbell, because the uncontroverted testimony is that Mr. Radovan thought Mr. Marriner told Mr. Yount, and Mr. Marriner thought Mr. Radovan told Mr. Yount. In fact, neither of them told Mr. Yount, but it doesn't seem to have any evidence in the record that either Mr. Marriner or Mr. Radovan got together and said, let's not

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tell Mr. Yount.

MR. CAMPBELL: Well, Mr. Marriner testified that Mr. Radovan told him not to tell, not to discuss it. And I believe Mr. Marriner on that, because I think Mr. Radovan needed that million dollars and he saw an opportunity here to sell one of the shares.

THE COURT: I believe the testimony from Mr. Radovan is that he wanted Mr. Yount to participate, founder of Napa Valley, unquestioned pillar of the community, a sterling character.

MR. CAMPBELL: Sure.

THE COURT: Absolutely a gem and somebody you would want on your board or involved in your company no matter what the enterprise is, a board member of the TRPA. Who wouldn't bend over backwards to help Mr. Yount be part of the Cal Neva, an iconic project like that on the North Shore some 300 feet from his property?

MR. CAMPBELL: Wouldn't you ask? Wouldn't you ask that person?

THE COURT: Well, sure, you want to be part, you want a founders share?

MR. CAMPBELL: You want to buy one of my shares?

THE COURT: Do you want to buy a founders share? We diverge on that point. I respect that decision.

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MR. CAMPBELL: I mean it would have been an easy fix.

THE COURT: Clearly.

MR. CAMPBELL: And it would have been the right thing to do and it would have been the easy thing to do. And as Mr. Criswell testified, he's been in a -- he's done a ton of deals in his day. And when you get an agreement, especially a million dollar transaction, you at least get a handshake. We don't have a handshake. We don't have a wink or a nod in this case, your Honor.

THE COURT: Didn't even go furniture shopping.

MR. CAMPBELL: Let's move to the conversion next, your Honor. I think what CR did in this fits all the elements of conversion also. They took the money. There was no agreement to take the money. Once this ruse was found out -- and it's interesting, I think that's an important point to make, your Honor, is that, you know, Mr. Yount took a tour with Mr. Radovan, I think they had breakfast together, a week or so after he closed. Does he tell him, hey, I'm going to confirm, you know, I'm going to send you a share, a certificate or confirmation that the deal has gone through. Doesn't tell him anything.

Doesn't tell him at all. In fact, Mr. Yount doesn't even know until if you look at Exhibit Number 60, at

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page 172, Mr. Yount says, I'm looking at this cap table and the cap table has a footnote, Stuart Yount holds 1 million within the CR 2 million. Mr. Yount says, this is in error. If you look back of the communications up to the sale, as well as who my IRA check went to, I was buying 1 million of the original founding investment, which I was told out of the 15.5 available out of the 20. Please correct the cap table and show my preferred interest as one of the original investors.

We know what Mr. Yount is thinking. This is the first time, we're talking about three or four months after his investment, that any indicia comes to him that he's told that he may have bought a CR share instead of one of the PPM. To me, that silence just proves to me what Mr. Radovan was doing was trying to hide the ball on this deal.

And when they got caught, when they had that meeting at the Hyatt on the 27th, they talked about, okay, we're going to buy back your share. We'll get some money to buy back your share.

THE COURT: Once we get reimbursed.

MR. CAMPBELL: We'll send you some documents to do that. What documents do they send him? They send him these documents that are totally inaccurate. There's no mistake. They're trying to get Mr. Yount to sign a document that he

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was mistaken in his belief that he was buying a PPM or he mistakenly signed the subscription agreement and that the parties' real intent was to have him buy a CR share.

Why would you put something in that document so untrue and try to get Mr. Yount to sign a document like that other than to cover what you had done back in October. Because they knew, they knew they didn't have an agreement and they were trying to paper this transaction, trying to get another falsehood into the document, that we've had a shareholder meeting and all the shareholders have approved that.

That just didn't take place. That is egregious. And I think it goes to prove the point they were never going to tell him unless they got caught. And when once they got caught, they tried to paper the deal that Mr. Yount never agreed to get involved in.

Back to the conversion, your Honor. I think, your Honor, the tenor of the members, I don't think they would have ever approved this transaction that was supposed to be required, whether it be at a special meeting or the annual meeting. Mr. Chaney's block, I don't think -- he was certainly upset, and I think from the e-mail chatter we've seen, so were the other investors pretty upset over this whole thing.

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You can't buy Mr. Radovan's testimony that the members would have approved this. They never did. Mr. Yount demanded his money back. There was no approval from the members. There was no contract. When they refused to give him his money back, that's conversion, plain and simple. Couldn't be any clearer, I think. So that's just to me, it's a classic case.

Your Honor asked earlier about the individual liability, and my understanding of the pleading rules is that piercing the veil is not an actual pleading requirement. But we did say that Criswell Radovan individually were liable under the case, and I think the facts in this case have demonstrated under Nevada law as far as piercing the corporate veil, we're there. These businesses were not capitalized. CR and Cal Neva -- CR Cal Neva, Criswell Radovan LLC, Mr. Criswell said these are really just shell entities.

THE COURT: To the projects, to the various projects.

MR. CAMPBELL: We don't have any employees. Your Honor knows the elements. They're pretty well spelled out in the McCleary Cattle Company case and I think the Lumos, the LLC Marketing versus Lumos. As your Honor knows, there's three or four things you had to do, and there's a whole

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checklist that the courts have looked at to help them in making a determination.

The three elements are whether the corporation is influenced or governed by the stockholders, there's such a unity of interest that the company and the stockholders are the same, and adhere to a corporate fiction or separate entity to sanction fraud or promote a manifest injustice.

If your Honor renders a judgment against one of these entities here, he'll never be able to collect. These are not capitalized. They have no assets. And that's -- there's a 14-part test that the courts have used kind of to help them in the determination, again, capitalization, non-observance of corporate formalities, insolvency of the corporation at the time of the litigation, intermingling of funds.

Here's a great example of intermingling of funds. If CR sells a share and their attorney sends it to Criswell Radovan, clearly ignoring corporate formality, the money back and forth, the bank accounts were intermingled. So, yeah, I think the use of the same address, employment of the same attorneys and employees for all different entities.

So I think in this case, what we've got here is that the Court should ignore the corporation and pierce the veil, if it's so inclined to enter a judgment and both Mr.

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Criswell and Mr. Radovan are individually liable in this case.

I'm going to move to the Mosaic loan issue.

THE COURT: We want to make sure that we give the other side sometime as well.

MR. CAMPBELL: I can wrap this up pretty quick, your Honor.

THE COURT: Go ahead.

MR. CAMPBELL: I think the Mosaic loan issue is a red herring. That happened way after the fact. There was no counterclaim against Mr. Yount for somehow derailing that loan and there's no evidence that he was involved in any discussions with Mosaic. Obviously, all the investors were concerned. We've got the e-mails. They're trying to work out a strategy. Mr. Yount has no -- what incentive would he have to undermine the Mosaic loan? Mr. Criswell tells him in exhibit --

THE COURT: Clearly none.

MR. CAMPBELL: 51.

THE COURT: I think everybody testified that Mosaic was the best option. Mr. Chaney said it as well. It was the best option to rescue the project.

MR. CAMPBELL: We have the best evidence in this case as to what happened with Mosaic, their own words in the

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e-mail, which are --

THE COURT: 124.

MR. CAMPBELL: The new one yesterday, the Mosaic termination letter that surprisingly wasn't produced.

THE COURT: February 24th.

MR. CAMPBELL: Very material to these facts. I think it is a sideshow. That doesn't apply to what happened in October 13th. There's no evidence that Mr. Yount interfered in that. Mr. Radovan says he thought he did and the loan would close. Even that tape recording yesterday or the message, Mr. Radovan tried to tell the Court that voice message said we can close at the end of the month. You heard it twice.

THE COURT: At the end of the year.

MR. CAMPBELL: You heard it twice. It didn't say that. It said, we've got other things to do and we've got other deals to close, where are we on this deal? We haven't heard from you for a while. So it's a sideshow. It shouldn't at all be considered as to whether Mr. Yount was defrauded, whether his money was converted from him, whether there was a breach of duties. A total sideshow that I don't think is relevant to this case.

Same with Mr. Chaney's credibility. We spent a lot of time yesterday on his credibility. He came here

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forward, because he was mad, too, and rightly should be mad. I think he does have a prejudice. Who wouldn't? And so I think his testimony was helpful to the Court. It confirmed how the Mosaic meeting was set up. Certainly told the Court that Mr. Yount wasn't involved and corroborated the evidence as to what actually happened to the Mosaic loan.

I think also the July meeting was very informative, because the testimony Mr. Chaney gave and in comparison with Exhibit 18, almost identical, same thing. We're over budget, no quantification. We're going to get a mezz loan refinance, get better terms, and we'll have to pay off the original one. We're going to release some money for the condos. We've got some code issues that we've got to deal with. And we're going to have a little cushion. So, you know, very consistent. So, again, Mr. Chaney's credibility I don't think goes to the heart of this matter.

Again, I think the best evidence in this case is the e-mail exchange with Mosaic and Mr. Radovan and the other members of the EC.

Two more issues to briefly address. I think attorney's fees in this case are proper both under the operating agreement that provides for prevailing party attorney's fees and also under NRS Chapter 90 -- I think it's 660, that provides prevailing party attorney's fees for

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securities fraud, which I think fits this bill.

Finally, punitive damages. I think CR's actions to take Mr. Yount's money under false pretenses was proven by clear and convincing evidence and that those individuals were guilty of egregious conduct. Again, the best evidence here, I think, is, your Honor, Exhibit Number 34.

Exhibit 34 is that e-mail string that was -- where Mr. Little tried to point, where there was some confusion or some notice to Mr. Yount that he was buying a CR share. So we get some differing instructions. And what does Mr. Radovan do?

He sends a message to Mr. Yount, actually, the funds, and this is October 3rd, so the Busick deal is closed, he sends an e-mail to Mr. Yount, actually, the funds, your million dollars should be wired into our attorney's account which was, you know, which would have been evident from the subscription agreement that Mr. Yount says -- that Mr. Yount signed.

And he says, in accordance with the documents, those documents are the subscription agreement. He intentionally says, send the money in accordance with the subscription agreement, the subscription agreement to buy under the PPM. Why doesn't this say, here's a new set of documents for you to buy one of our shares. I think it was

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an intentional, malicious act so they could hide this from Mr. Yount and keep that money for themselves.

And it's corroborated by the fact that they don't tell him at all until he finds out in late January and then they try to paper the transaction that they easily could have done in this e-mail by saying, here's the documents you really need to sign, because the PPM is filled up.

So I think punitive damages are -- should be awarded in this case to punish that kind of egregious activity. Again, simple fix, little teeny notice, just too bad it didn't happen.

In summary, your Honor, I want to conclude, I want to thank the Court for its patience, a lot of testimony, a lot of documents to look at. And as the Court well knows, the best evidence in a case is the contemporaneous documents that were made at or about the time of when events transpired.

And if you look to what the documents in this case, and especially Mr. Yount's documents, those documents were made at that time. I think they're very honest and forthright. It tells a very true and accurate story of what Mr. Yount was told, what he believed, what transpired at that time in that time frame.

On the flip side, the defendant's documents,

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there's a paucity of documents to support their position. Mr. Radovan says, I told Ken Tratner in a telephone conversation about the amount of the change orders and the schedule change. Never happened. No documents to support that. Mr. Tratner totally contradicts that.

Marriner e-mails back and forth who told what, when like school kids in third grade. No documentation of that. In fact, the documents they do have, which I just went over, was Mr. Radovan telling Mr. Yount, sign the subscription agreement and send the money to our attorney as to what is set forth in the PPM.

I think the same with the Marriner documents. Those documents tell the story of what Marriner thought he was doing and what kind of a team he was on and what his responsibilities were at the time.

So I think even yesterday on the message, there's such a paucity of evidence from their side and such a strong story from the real documents, the best evidence in this case as to what happened. And I think if the Court focuses on this, it's an easy way to make a decision that what actually happened to Mr. Yount, how Mr. Yount was really defrauded out of his money and should not have been. Thank you, your Honor.

THE COURT: Thank you, Mr. Campbell. Let me get

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my notes up-to-speed here. I think I've got everything down. Thank you. Mr. Little.

MR. LITTLE: Thank you, your Honor.

THE COURT: Hang on a second. Everybody, stand up. Those are tough chairs back there.

All right. Thank you very much, ladies and gentlemen. Mr. Little.

MR. LITTLE: Thank you, your Honor. This is a very serious case and there are some very serious allegations made or levied against my clients and because of that, I need to spend sometime going through their cause of actiones and the evidence, and I appreciate the Court's indulgence in advance for allowing me to do that.

Before we get into the weeds, I think it's important to step back and really wrap our arms around not only what happened at this trial, but what didn't happen. In fact, your Honor, I think it is absolutely critical to step back and look not only at who was called by Mr. Yount to support his claims, but who wasn't called.

Now, we know and I won't waste a lot of time on it, that the only witness that Mr. Yount put forward other than himself is Mr. Chaney. However, Mr. Chaney was not only shown to have a massive ax to grind, he was at the helm of a corporation that was found to have intentionally destroyed

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evidence and intentionally withheld evidence.

Counsel tried to rehabilitate him by saying, wait a minute, they were just a victim of some rogue employee. But we went back through that. That federal judge meticulously went through the facts and went to great lengths to show his company's detailed involvement. Such involvement, your Honor, that they were sanctioned $331,000, and as lawyers, we know that is a significant sanction.

Now, Mr. Chaney was also personally found liable for intentionally interfering with a contract. Your Honor, that is a eerily similar to what we heard and seen happen in this case with respect to the Mosaic loan.

Mr. Chaney aside, your Honor should be asking yourself, where was the unbiased members of the executive committee testifying at this trial on behalf of Mr. Yount saying they were defrauded, kept in the dark, duped, things of that nature? Where was Mr. Busick, a member of the executive committee, a man that Mr. Yount admittedly knew very well, a man with a construction background who invested another million and a half dollars into this project after going on the site with Penta and going through the change orders.

Mind you, this happened a couple of weeks before Mr. Yount invested his money. Where was Mr. Busick

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testifying that he was mislead, duped, kept in the dark.

More importantly, where was Mr. Busick or any of the investors to support Mr. Yount's supposition that this project was failing when he made his investment? After all, your Honor, this supposition, this belief by Mr. Yount that the project was tanking is the one fact that is necessarily holding up his causes of action. If you take away that fact, they crumble.

You should also be asking yourself not only where was Mr. Busick and the other investors, where was Penta, where was Peter Grove the project architect? If this project was truly crumbling when he invested, where was the Penta or the architect here saying they weren't being paid, they were threatening to walk off the job, or they lacked confidence in the project.

Your Honor, none of those people were here and that should sound a massive red flag to this Court that the things in this case were not as Mr. Yount believed them to be with the benefit of hindsight and after drinking IMC's Kool-Aid.

Now, Mr. Campbell may come back in his redirect and say, why didn't you call these people? The answer is simple, your Honor, we did not need to. This is their case, not ours. It's their burden of proof, not ours. We knew

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what these people were going to say. There is no evidence that this project was crumbling and I'll go through that.

Your Honor, as lawyers, we know that jurors are instructed to bring their common sense to evaluating the evidence and I would ask your Honor to do the same thing. Let's step back before I get into the weeds, let's look at the case from a 30,000-foot level.

Common sense, your Honor, says a sophisticated investor like Mr. Busick, who is on the executive committee, he's not going to put a million and a half into the project a mere week or so before Mr. Yount does if he believes, mind you after walking the project, not with Robert Radovan, after walking the job with Penta, he's not going to make that kind of investment if there's some belief out there that this project is failing.

Moreover, nobody in their right mind, your Honor, believes this project isn't going to get funded after hearing that phone message that we heard twice yesterday. That is a majorly deflating piece of evidence to Mr. Yount's case. That is the CEO of Mosaic saying, both sides, Mr. Radovan and them, had been working very hard on securing that loan. That didn't happen overnight. That happened over a period of time, your Honor.

That phone call was in mid November. They had

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been working hard for some period of time. And he told you on the -- or he told us on the phone that Mosaic was very enthusiastic about closing that loan. Your Honor, that is a critical piece of evidence that shows you have to step back and put yourself in our minds and you're being asked to -- by the plaintiffs to say that they knew this project was tanking, this was a bait and switch. Put yourself back in that context. This is what is happening with the Mosaic loan. They didn't believe that. Common sense says that.

Common sense also says, my clients aren't going to be putting money back in the project in October as the evidence is undisputed that they did if they felt that the project was tanking.

Common sense also says, if my clients were a fraction as bad as Mr. Chaney and Mr. Yount would have you believe, they would have been removed as managers a long time ago. And guess what, we're two years forward and that hasn't happened and there's a simple procedure under the operating agreement to do that.

Your Honor, common sense also says that we're not going to keep offering to give this man tours, updated tours of this project, including a tour three days before he invested, so he could see with his own eyes and hear from his own ears how this project is going if we believe it's

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tanking. Common sense doesn't support that, your Honor.

Common sense also says, why are we hiring a general manager and bringing him over from the Bahamas the same period he's investing if we think this project is going down the tubes? That's all evidence that you heard, your Honor. That evidence is undisputed and it does not support their theory that we knew this project was tanking, which, again, is the critical fact underlying their claims.

Now, before we talk about what this case is really about, I think we need to step back and talk about what it is not. This is not a fraud and punitive damage case, your Honor. Mr. Yount has not proven fraud elements by any standard much less the heightened clear and convincing evidence standard.

In fact, you'll recall whenever he was asked what evidence or proof he had to support his fraud claims, he uniformly admitted he had none. He just said, it's my own personal information and belief.

And just so your Honor knows, I'm not making that up. If you go to page 93, line 18 through 22 of his deposition, he was asked, question, do you have any evidence that Criswell Radovan sold you one of their shares because they knew the project was in trouble? Answer, no, it just seems obvious to me. Your Honor, supposition and belief is

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not evidence. It's certainly not clear and convincing evidence.

Now, contrary to this belief, the evidence in his own case in chief clearly demonstrated that the true facts were not as he believed. He simply got caught up in a rumor mill that was intentionally being promulgated by the IMC folks to get rid of Criswell Radovan. And he rushed to judgment at a later point in time when the project was in trouble, but only because the Mosaic loan was being subverted.

Now, your Honor, Mr. Yount, again, from the 30,000-foot level only has himself and IMC to blame for his plight in this case and that's where his fingers should be pointed.

Let's step back and let's talk about the evidence in connection with the fraud and punitive damage claims. And, you know, I don't want to waste too much time on it. I want to start with the seventh cause of action for securities fraud. Your Honor hit the nail on the head, this is not a securities case. Absolutely not.

NRS 90.530 provides a list of transactions that are exempt from the registration requirements; in other words, exempt from that statute from the Nevada's Uniform Securities Act 90.530, 10 provide, quote, an offer to sell or

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the sale of a security to a financial or institutional investor is an exempt transaction. That regulation further specifies that an institutional investor includes, a, quote, accredited investor as defined under rule 501 of reg D.

Now, if we go to Exhibit 42, your Honor hit the nail on the head, the subscription agreement, it's very clear that this was a private offering, this was a real estate transaction, and it was only open to accredited investors. Now, the company paid some very expensive securities lawyers to make sure that founders shares were exempt from federal and state securities laws. They did it.

Mr. Yount admitted he signed those documents, he admitted he was an accredited investor when he made his investment, and that statute has no applicability to this case. So any claims under NRS 90, which is Nevada's securities fraud claim, need to be dismissed.

Let's talk about the common law fraud and punitive damages claims, which are the third and sixth causes of action. I think we have to start this analysis with several key pieces of evidence in mind, your Honor. First, although counsel has tried to downplay its significance, the legal disclaimers in the private placement memorandum and the subscription agreement, they are very important, your Honor. They're there for a reason and they gut his fraud claims.

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Mr. Yount's is a sophisticated investor. He's a sophisticated man. He doesn't need the protections of this Court. He's not some unsuspecting, innocent person. He's a very sophisticated man. He admits to such. He's been on boards. You heard the testimony. He acknowledged having an opportunity to review these documents, to review the disclaimers, to have his CPA and legal counsel look at it and he told you that he understood and agreed to some very important facts. He knew this is a risky, speculative investment. He knew the project couldn't be analyzed in a vacuum based on some budget that was outdated and provided in 2014.

Rather, he understood that circumstances could and in fact did change by the time he was getting involved and that costs could increase, the budget could increase, and that those things could affect his investment and the project's ultimate success.

He also understood and agreed that the project was seeking financing that may not be secured, and if they didn't get that financing, guess what, the project could fail and he could lose his investment. He understood that. He told you that under oath.

He also understood and agreed that he could only rely on his own due diligence and not representations made by

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the defendants. And, you know, in fact, your Honor, we know that he didn't blindly rely on any of the defendants in this case. He went directly to the project's architect, his own personal architect, for guidance on cost overruns and the schedule.

Exhibits 13 and 28, I'm not going to go through them, but your Honor is very familiar with those. But he asked the architect, hey, what are the project's chances of success? And he was cautioned at that point in time that the costs were exceeding the budget, they were trying to get their arms around it and get it in check. He wasn't told that it was in check. He was told it wasn't in check, but they were trying to do that. He also was told by the architect they're in a fund raising mode, same thing he was told by Mr. Radovan.

Now, it's important, the architect told him, look, I have no problem keeping you informed of the progress of this job. And you heard me ask Mr. Yount, he couldn't remember conveniently whether he had further conversations with the architect, but one thing he did make clear is that there's nothing the architect told him that dissuaded him from investigating in this project.

Aside from the architect, we know he solicited the advice of his CFO, his chief financial officer, and his

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Los Angeles based CPA. He asked them to evaluate the investment on his behalf. He sent them all the documents he got. We heard from his CPA, I think, time is getting foggy, I think it was yesterday, and you heard the CPA say he was given everything he asked for. There were no questions that he asked that went unanswered. And you know what, you didn't hear the CPA say there was anything misleading in any of the documents or information that had been provided to him.

We also know and I mentioned that Mr. Yount knew Les Busick very well. And, in fact, he was impressed by the fact that Mr. Busick was an investor on this project. Mr. Yount even asked Mr. Marriner for a list of the investors. Why do that unless you want to see who they are and possibly go talk to them? And that's a significant point, there's nothing that prevented Mr. Yount from going to talk to these people, Mr. Busick who is on the executive committee, and getting more information.

Now, we know from Exhibit 10, your Honor, he got that report, which detailed all these cost impacts that were adversely impacting the budget and the schedule. And his testimony was, I didn't ask anything specific about that. Well, whose fault is that, your Honor?

Although he conveniently left the fact out of his direct testimony, we know he walked the job for two hours

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with a Penta representative in July. He had every opportunity to ask whatever questions he wanted about cost overruns, the schedule.

Importantly, your Honor, we know that Dave Marriner asked Mr. Yount a number of times in August, September, and even a few days before he made his investment, hey, do you want to come have a walk, walk the job with me and see the progress of it, again, so his own eyes and ears he could see where the project was, your Honor. Does that sound like we're trying to conceal facts from him? But yet we're somehow to blame because he was too busy to take Dave Marriner up on those offers.

We also know from his testimony that there was not a single thing he asked for that he wasn't provided. And, in fact, we know from the e-mails and the testimony that Dave Marriner and Robert Radovan asked him multiple times, hey, Mr. Yount, is there anything else you need from us? And he didn't respond. He didn't ask for anything.

In fact, the only thing he asked for between mid August and when he invested on October 13th was to ask Mr. Radovan one question, how is the project schedule holding up? And he was truthfully told that the soft opening was April and the grand opening was Father's Day.

Your Honor, nobody held a gun to his head and

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prevented him from walking the job site and seeing the progress with his own eyes, from asking questions of us or the construction team, the architect, Penta, Mr. Busick. In fact, he was encouraged to do so and he didn't take anyone up on that offer.

So, your Honor, when you put all of these facts together, he cannot prove by any standard, much less a clear and convincing evidence standard, that he justifiably relied upon any representations made by the defendants. And your Honor knows very well that justifiable reliance is a necessary element of any fraud claim.

Now, your Honor, I would draw the Court's attention to the Nevada Supreme Court case of Blanchard versus Blanchard, which is 108 Nevada 908. The case says something very important. It says, if you're a plaintiff and you undertake an independent investigation, as we know Mr. Yount did, you will be charged with knowledge of all facts which reasonable diligence would have disclosed. Very important, your Honor.

Had Mr. Yount bothered to go on updated progress tours or asked more questions, he would have clearly seen that the facts were exactly as they had been represented to him by Mr. Marriner and Mr. Radovan.

The schedule, he would have seen that the soft

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opening was April, the grand opening was back on Father's Day, June, whatever that is, and he would have been told that was done not only to accommodate weather or tourism, but because of all the added work that Penta was doing. Do you think that page 16, all that work, you don't think there's going to be more days associated with doing that? That's a significant amount of work. If he had gone on the tours, asked questions, he would have seen that financing had not been secured yet, but as you heard in the phone message yesterday, it was seemingly imminent and everybody had positive vibes that was coming through.

He would have also seen, your Honor, that the project costs were almost to the penny, to the penny what Robert Radovan had represented way back in July that he forecasted it would be. Robert said, they're five to $6 million and they're escalating, and that's why we're going out and getting an additional ten and a half million dollars, $9 million debt, another million dollars in equity. We're right there when he invests, your Honor.

So, your Honor, he cannot prove justifiable reliance. He undertook an investigation and had he done more, he would have discovered -- I guess the point is, he would have discovered what was already the case and what he already knew. In other words, there were no

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misrepresentations, but regardless, because of all this, he can't prove justifiable reliance.

I want to go through the specific allegations and show you that they're not supported by clear and convincing evidence. Before I do, I want to draw your attention to two points. One, your Honor hit the nail on the head. Bill Criswell fraud claims absolutely have to fail against him for the additional reason that Mr. Yount never met, spoke to or relied upon anything that Mr. Criswell did or said before investing.

Now, your Honor, it's a fundamental tenant of corporation law that members of an LLC like Mr. Criswell are not -- are shielded from personal liability unless you have proof of an independent claim against that person.

In other words, you can't impute any sort of bad acts by the company or another member to one member. And that's what they're trying to do here, your Honor. There's no evidence. Bill Criswell didn't get involved until after. Claims have to be dismissed against him.

I found it a bit troubling when I read counsel's findings of facts and conclusions of law based on claims in there that have never been plead. One of those claims is a fraud cause of action against Bruce Coleman's law firm. Your Honor, they never pled fraud against Bruce Coleman. We can

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look at their third and seventh causes of action and there's nothing there. Obviously, Nevada doesn't allow trial by ambush. There is no fraud claim pled against Bruce Coleman and that should be dismissed.

Let's talk about the specific misrepresentation or omissions that were --

THE COURT: Just a minute, Mr. Little. As to Powell, Coleman and Arnold, we have three causes of action. We have the breach of fiduciary duty, we have negligence, and punitive damages.

MR. LITTLE: I think that's it.

THE COURT: I didn't see any fraud being pled.

MR. LITTLE: Correct.

THE COURT: In the second amended complaint.

MR. LITTLE: It's in their findings of fact and conclusions of law.

THE COURT: Understood.

MR. LITTLE: Interestingly, there's also a fraud finding against New Cal Neva Lodge LLC, which, of course, is in bankruptcy and counsel could be sanctioned for violating the automatic stay for that. I'm guessing those things were mistakes.

Stepping back to the specific allegations, let's talk about the budget or cost overrun first. Now, you heard

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during testimony, Mr. Yount and Mr. Campbell were trying to split hairs, basically, over what Robert Radovan said in July, but what you heard him say he knew that those costs were at least 5 to $6 million, they were going to be more, that there -- I think the words were there was more on the horizon, and that's why they were seeking $9 million in debt and an additional million and a half in equity.

If you look at his owns notes, your Honor, Exhibit 21, he understood that the cost overruns were $10 million. I pulled out his deposition, page 149. In the interest of time, I won't go through that, but he said, yes, I understood the project was over budget by $10 million.

Your Honor, we know that he didn't bother to ask another question about costs of the budget before he invested. But the evidence again proves that Robert's forecast, and mind you, this was a forecast that Robert was relying on Penta to provide him with, that turned out to be pretty darn accurate, your Honor.

We went through the pay applications, Exhibit 153, end of July, change orders 2.5 million, end of August 4.6 million, end of September, $9.2 million. Right there. We went over the change orders, Exhibit 43, same thing.

We went over the Mark Zakuvo third party report, which is Exhibit 149, same thing. At the time that Mr. Yount

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closed his investment, the project was over budget by $9 million.

He's made a big fuss, even though Robert's representations were accurate, he's made a big fuss over the fact that we didn't tell him the cost had gone up from 5 or 6 to 9. Let's not forget the fact that Mr. Yount was radio silent for the better part of two months. The testimony you heard, we had no faith that he was going to the able to close and that's why we turned our sights elsewhere, your Honor.

But during this two months, he was being asked if he had other questions. He was being asked by Dave Marriner to take progress tours, your Honor. So the reality is the costs were exactly as predicted. So there was no reason we're going to rush out and update them. They're right where Robert told them they would be.

Now, your Honor, they're trying to point that to December budget and try to allude to the fact that it was really $20 million over budget. Your Honor, respectfully, that's a misleading argument. We went over the facts. The budget was over by $9 million when he invested. That's the change orders, the pay application.

If you look at the $70 million figure in that December budget that they used to say we're $20 million over, of course you have to subtract the $55 million in financing

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that we had in place back in 2014.

So that means you're really only 15 to $16 million over budget in December, and of that, he knew ten and a half million dollars of it. So we're really talking about 4 or $5 million extra in December. And what did you hear about that, your Honor? You heard the executive committee wanted to increase the budget, that's their decision, to deal with new change orders that saw that came in in November, December. They wanted more money to do some elective things to make the project better. Not that we're required to do it, but it's better to do it now when the walls are open than two years from now.

THE COURT: The show kitchen.

MR. LITTLE: Yeah. They wanted some extra cushion. Look what we've been faced with. This was an old project.

THE COURT: It's a new project.

MR. LITTLE: It's a new project, but an old building and we faced some hurdles, clearly, and they wanted more cushion. So, your Honor, there was no evidence that there were any material misrepresentations about cost overruns, budget that he can show that we knew or believed were untrue and there certainly was no justifiable reliance.

Second, his big claim is we misrepresented the

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schedule. Trying to understand his claim, he claims, yeah, I knew it was being pushed off into 2016, but I thought that was because of tourism.

Your Honor, respectfully, that argument is -- it almost borders on the absurd. The only evidence he's relying on is an e-mail he sent his own accountant, purportedly documenting a conversation he said he had with Robert. You heard Robert's testimony. Robert said, tourism was a factor, but construction costs were, too. That's common sense. We have all of these changes that is affecting the schedule.

I won't go into too much detail, but you remember in his cross, I think showed that argument made no sense. Specifically, he's claiming the premise for this belief was this conversation he had with Robert in August. But if you step back and look at the notes from July that he had, he knew that the project was already bumped out to April by then and he hadn't had this conversation with Robert. So how did that change? And then if it's really because of tourism, why is tourism moving it out even further? It doesn't make a lot of sense, your Honor.

The reality is he didn't -- that's another point, the reality is he didn't rely on anything that Robert said. We saw Exhibit 28, a week after he claims he and Robert had this call, he went to the architect and said, hey, what's the

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deal with the schedule? And, conveniently, he doesn't remember what the architect said. But, again, whatever he told him didn't dissuade him from investing.

And, your Honor, most importantly, we have Exhibit 36, the October 10th e-mail from Robert where he asked him about the schedule and Robert says, soft opening in April and grand opening on Father's Day. It doesn't say anything about tourism or weather.

Again, your Honor, why would we misrepresent the reason for schedule changes at the same time we're inviting him to come walk the project where he's going to learn that information? It makes no sense, your Honor.

In short, no material misrepresentation about the schedule, no justified reliance, no proof that we knew or believed any such statement was false.

He says we misrepresented the status of financing, however, the evidence shows he knew from multiple sources, not just us, that the project was in fund raising mode, meaning we didn't have fund raising. He admitted he never asked a single question. He didn't ask who we were talking to. He didn't ask what the terms of the loan are. Nothing. He's a sophisticated businessman and investor, and obviously knows that financing on a project of this complication and this scale, there's no sure shots there.

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In fact, if you go back to the agreements he signed, it says very clearly, you understand that we may seek financing and there's no certainties or guarantees there, and if it doesn't happen, you can lose your investment. He said he understood that.

Again, he was prompted throughout this process, even though he was radio silent, they kept getting back in touch with him, hey, how are things going? Do you need any information from us?

But, your Honor, you heard it from the horse's mouth yesterday in that phone message. Both sides, not only our side, but Mosaic, according to the CEO, had been working hard on that loan. They were enthusiastic about closing as they believed. This is the same time period. Now, there is no fraud about financing here. We believe that we have secured good long-term financing for the investment.

If you look at page 202 of his deposition, he admits he has no evidence that we misrepresented the status of financing. Rightly so, because we didn't.

Lastly, your Honor, in terms of fraud, he claims we misrepresented the financial health of the project, that we knew it was tanking when he invested, and this was a fire sale, and his so-called bait and switch theory. Of course, with 20, 20 hindsight, it's pretty easy to make an argument

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that we must have known that the project was tanking when he invested, but that's not the standard by which we're to be judged.

You have to look at what did we reasonably believe back when he invested? And, again, all we have to do is put our common sense hats on and that question is easily answered, Les Busick investing. That doesn't happen if this project is believed by people to be tanking. The phone message about the status of the Mosaic loan, that's our mindset, your Honor. That doesn't support any sort of their theory that we know the project is tanking.

We know from Exhibit 13 the architect is optimistic about the project. We know there's plenty of money left on the Hall loan to pay contractors. In fact, we know that Penta and subs were current on all payments at the time that Mr. Yount invested. We know they were working hard. There were no threats that had been made for a slow down or a work stoppage at that point in time.

We know that CR Cal Neva put money back into the project. Why do that if it's tanking? And we know that the costs were in line with what Robert had projected they would be back in July.

So all of this evidence, your Honor, points to the fact that the project was believed to be on track when

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Mr. Yount invested. And there's simply no evidence that the project was failing and this was any sort of a fire sale.

And, importantly, Mr. Yount admitted this on page 93 of his deposition. I asked him, question, do you have any evidence that Criswell Radovan sold you one of their shares because they knew the project was in trouble? No, it just seems obvious to me. Your Honor, that's not clear and convincing evidence.

Now, you hit on a good point with Mr. Campbell, and that's with respect to the sale. The evidence is we only intended to have a million dollar skin in the game. I mean, that's in multiple places. It's in the private placement memorandum, it's in one of the cap tables, Exhibit 101, it's in the Ladera loan. Everybody had this information. They knew that we were going to have $1 million skin in the game and at some point in time we were going to sell one of our shares. So there's no red flag in us selling Mr. Yount one of our shares.

You pointed out, he's a highly influential member of Lake Tahoe community. He lives right next door. He's prominent. Who wouldn't want him involved in the project? And the guy had just spent the better part of the four months trying to get funded.

For all of these reasons, your Honor, Mr. Yount's

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fraud and punitive damage causes of action must fail. There there's no clear and convincing evidence of any material misrepresentations or omissions. There's no clear and convincing proof that we intended to deceive him. There's no clear and convincing proof that he justifiably relied.

Let's switch gears and talk about the two causes of action against Mr. Coleman. That's the seventh and the fourth claims for relief. And both of those claims, your Honor, assume a duty and a breach of duty, neither of which exist in this case, your Honor.

In fact, if you look at their trial statement and paragraph three of their proposed findings of fact, you'll see their entire claim against Mr. Coleman's firm is premised on an untrue fact. It's premised on the fact that he received a copy of Mr. Yount's subscription package and those escrow instructions and he disregarded them.

But that wasn't the evidence at trial, your Honor. The evidence was unequivocal that he never received this package on the escrow instructions. And they didn't have any evidence to controvert that.

In fact, the only thing that Mr. Coleman was told was that Mr. Yount was buying one of CR Cal Neva's shares and he had a good faith basis for that belief. We have Exhibit 33, which was the e-mails. This isn't something that

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we're making up. There's an e-mail to him saying, CR Cal Neva is going to sell Mr. Yount one of its shares and we would like to use your trust account. This was a normal purchase and sale agreement. He's a transactional lawyer. This stuff happens all the time. He had no evidence to the contrary. And the facts played out exactly like this. There's no red flags whatsoever in this case that would lead his firm to believe that the transaction was anything different.

Now, let's talk about Mr. Yount's breach of contract claim. It's the first cause of action. It's against two bankrupt entities, which he doesn't have relief from stay, so there is a stay there. It's also against CR Cal Neva and Criswell Radovan LLC. Now, according to his testimony, and counsel agreed, he believed his contract was with Cal Neva Lodge, which obviously is in bankruptcy and subject to the stay. It's fundamental that you can't have a breach of contract against a person or entity that is not party to that contract, which necessarily means this cause of action doesn't fit as pled against the Criswell Radovan entities. He's basically trying to put a square peg in a round hole. It just doesn't fit.

THE COURT: Can you address the alter ego argument made by Mr. Campbell?

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MR. LITTLE: Absolutely. This is the first time we're hearing about that. Alter ego is something that is required to be pled, your Honor. It's nowhere in his second amended complaint. There are no allegations. This is trial by ambush. You cannot bring up an alter ego theory at trial. If he wants to make some alter ego theory, he needs to get a judgment and then go file a lawsuit claiming that.

You can't spring that at somebody at trial. There's no expert testimony. No accountant came in and said they ignored corporate formalities. They had separate LLCs that were formed for each transaction, normal things that real estate companies do in the investment business. There's no evidence of that. And more importantly, it hasn't been pled. It's trial by ambush. You can't do that.

But counsel has argued that, well, what about the fact that Mr. Yount thought he was buying a different founders share? Your Honor, that doesn't give him recourse or the right to unwind his sale, because this had no material effect on the underlying exchange of performance. It's form over substance.

He wanted to buy a founders share in Cal Neva, and I think you backed counsel into agreeing, that's exactly what he got. There is no difference. Testimony was, they are equivalent. There's 20 shares, each of them have the same

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rights and obligations. He got one of those founders shares, so he has no damages in this case to the extent that there is any rights under a cause of action, which we don't think there are. There are no damages, because he got everything that he wanted to. He's in the identical position he would have been had he beaten Mr. Busick to the punch and bought that share instead of one from CR Cal Neva.

And under the operating agreement, which he read and understood, paragraph 4.7, Exhibit 5, he knew he had no right to demand to be bought out. Once you buy a share, you're a shareholder, and you're in there. We think his breach of contract cause of action fails.

Which brings us to the last cause of action for conversion. That has been pled against CR Cal Neva, Criswell Radovan LLC and the two individuals. Of course, your Honor, this is an intentional tort that requires proof of a wrongful exercise of dominion and control of property, which cannot be justified or legally excused.

I'm going to talk about those elements in a minute, but before I do so, I want to point out and make clear that this cause of action has zero basis against the two individuals. The evidence at trial showed that CR Cal Neva had Mr. Yount's money wired to Criswell Radovan LLC to satisfy a loan and several hundred thousand dollars and were

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put back into the project.

No evidence was presented in this trial that Robert or Bill got any part of that and irrespective of that, even if they did, that's not a legal basis to sue them for conversion over money that went to an entity Criswell Radovan LLC.

If they could be sued because money hypothetically flowed from the share to them, theoretically you could follow that change everywhere, and see whatever bills did Criswell Radovan pay with it. Did they pay for their land? You can't bring those people in. His cause of action for conversion is against the person who got the money, Criswell Radovan LLC. That's the law, your Honor.

Now, let's talk about the meat and bones of this cause of action. We've already shown that irrespective of the elements, he suffered no damages, because he got a founders share and that's exactly what he wanted. So I think right now there you win the analysis and the claim must be dismissed. But if you go past that, we've already disproved the bait and switch theory, which is the entire premise for this sale being wrongful and not justified.

And let's examine that for a moment, your Honor. You talked about it and you're right, the testimony was clear that Robert thought that David told him and Dave thought

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Robert had told him. There's no evidence that there was any intent there to conspire and defraud Mr. Yount. Each just thought the other did it.

If we look at Exhibit 33, there's evidence in the record to support the fact that that was our good faith belief. Exhibit 33, the e-mail to -- from Criswell Radovan to Mr. Coleman, it shows that we genuinely believed we were selling him one of our shares. And it also asks, how do we -- asking the attorney, how do we paper the transaction? Obviously, common sense, we're not trying to defraud if we're asking our attorney how to paper it.

The reality is Mr. Coleman didn't get back to Criswell Radovan until after Mr. Yount had already closed and funded, by which point we knew that or were told that we had to get this approval, which you heard the testimony, we always in good faith believed that we had the approval and right to sell one of our shares. But our attorney tells us, well, you have to follow this formality.

We've gone through that, your Honor. Section 12.2 of the operating agreement is clear that approval is not a prerequisite to closing the transaction. Just the opposite. To make sure he's an accredited in investor, he has to sign the document, and then you get approval at the annual meeting.

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And they argue that based on Mr. Chaney's evidence that there's no way that the members would have approved Mr. Yount. Common sense, your Honor, that is a ridiculous, preposterous argument. We've seen the e-mails. He is designated as the co -- what was the word they used -- co-spokesperson. He was welcomed into this group of investors. There's absolutely no evidence that they wouldn't have approved Mr. Yount. And, regardless, Mr. Coleman told you the operating agreement is clear that even if he didn't get approval, he still holds all the economic benefits of the investment.

The reality and the other point is, your Honor, which I think is a significant point, Mr. Yount chose to rescind this transaction on a false assumption before -- in fact long before he even claims he knew that he bought a different founders share. He was trying to get out before then. So he's now coming to Court using this situation as an excuse to try to get out. But, your Honor, it's a red herring, because the sale wasn't wrongful and it certainly isn't something that is excused by law. And, again, he suffered no damages.

Which brings me back to my last point, which is at the beginning I said we need to talk about what the case isn't before we talk about what it is. We're at that point

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now and this is a case where Mr. Yount got exactly what he bargained for. He wanted a founders share, he got a founders share. And if he has any damages, which we don't believe he has, he's caused the damages by getting in bed with the Mosaic people and --

THE COURT: The IMC.

MR. LITTLE: IMC. Thank you. It's nonsense. I'm not going to go through the e-mails. It's all in our defendant's exhibits. It's nonsense to believe he distanced himself from that and he didn't want any part of it. There's e-mails about a cohesive unit. He's acknowledging, not them, he's acknowledging that they're going to be good cop, bad cop. He's having one-on-one conversations with the IMC group in the days leading up to their secret meeting.

And they clearly know that about that secret meeting. There's alarm bells going off in his mind that doesn't seem like something that is probably good, it might be interference with a contract. It is interference with a contract and he didn't do anything to stop it. And that's because he testified and he knew that those people who he was listening to, the IMC people, weren't proponents of Mosaic. They wanted their own financing. They were looking at their own financing.

And that's why they stalled Mosaic and they went

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to them. And they want to have you believe that it's lack of faith in Criswell Radovan. You heard the phone message. Does that sound like they had lack of faith in us? Absolutely not. Is it a mere coincidence that the very day that IMC meets with Mosaic, that they send a letter terminating the term sheet and completely backing out?

And if you want to believe their story that we love Mosaic, of course, why would we try to sink it? If Mosaic invited those people that they met with at IMC, let's go back and let's have more discussions. You heard the evidence. They didn't do that. They didn't want Mosaic. They wanted their own financing and they're responsible for where this project is, your Honor. And Mr. Yount was part of that. And to sit here and say he wasn't is disingenuous. It's in the documents.

And, your Honor, importantly, we pled -- we haven't sued him for a counterclaim, but we have pled affirmative defenses and whether you call it --

THE COURT: Unclean hands.

MR. LITTLE: Unclean hands, estoppel, waiver, contributory fault, it's all the same failure to mitigate damages, all roads lead to the same path. He put himself in the position he is now. He not only caused himself to lose potentially this $1 million, he's cost CR Cal Neva over

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$2 million in damages. More importantly, he's caused all of these investors to be in the position they're at now. So unless your Honor has further questions.

THE COURT: No, I don't.

MR. LITTLE: Thank you.

THE COURT: Thank you. Mr. Wolf. Everybody, stand up.

MR. WOLF: We've had the technology cart here all week and so I'm going to use it just to say that I did.

THE COURT: Go ahead, Mr. Wolf.

MR. WOLF: Thank you, your Honor. I want to thank the Court and the staff for giving us much support and comfort as we need to prepare our cases and find the search for complete -- complete the search for truth. We appreciate you adjusting your schedule on the fly for us, because we didn't estimate our time so well.

THE COURT: That's all right.

MR. WOLF: I want to start before I delve into some of these prepared items, this case involves the intersection or the boundary between negligent tort and intentional tort. For this case to succeed against Marriner, against him only, claims for fraud and securities fraud are alleged in addition to punitive damages, the Court would have to go from finding some sort of inadvertent or negligence

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which went over the line into intentional conduct. I don't think the evidence supports that and I think a good illustration might apply, because we're in this business transaction context.

It might be hard to discern that boundary. In a real simple case, an auto personal injury case, if someone is looking at their cell phone or for whatever inadvertence runs into a pedestrian, that is negligence, lack of due care. If someone sees the pedestrian and knows them and knows they have an ax to grind or whatever motive they have, and they turn the steering wheel and hit that person, now we've crossed the line into criminality and intentional tort.

This case doesn't present any of those contours. There's no evidence of that effort to turn the wheel and to hit somebody intentionally. Anything that is at fault here is humans doing things and maybe making mistakes, but there's certainly no evidence of malicious, wilful action to harm another person.

So, as I said, the claims we have against David Marriner individually and Marriner Real Estate LLC are limited to common law fraud, securities fraud and punitive damages.

The fraud elements are false statement of past or present fact. Our trial statement indicates opinions or

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estimates of future things are not facts upon which a fraud claim can be premised. The stated fact must be known or believed by the defendant to be false. There must be scienter, s-c-i-e-n-t-e-r, there must be reliance and damages actually cause by the reliance.

Securities fraud is largely the same. There has to be an untrue statement of a material fact or failure to state a material fact necessary to make earlier statements not misleading in light of circumstances under which they were made.

There needs to be scienter, reliance, the purchase of the security and under the statutory framework a tender of the security back to the defendant or to the issuer.

The burden of proof is by clear and convincing evidence. That's each and every element. You know, the goal line for the plaintiff is to prove everything, both the damages, the causation of the damages, the reliance, the falsity, the knowledge of falsity, the guilty motive, all of those things must be proven by clear and convincing evidence. That applies to the substantive claims against Marriner and Marriner Real Estate, LLC as well as the punitive damages claim.

This is an example of a Ninth Circuit model civil jury instruction, what does clear and convincing evidence

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mean? And when a party has the burden of proving by clear and convincing evidence, it means the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard, of course, than proof by preponderance of the evidence. And that's Ninth Circuit model instruction 1.7 and it cites cases from the Ninth Circuit and the United States Supreme Court.

Our own Supreme Court has used the following language most recently in 2015 to describe what the clear and convincing burden is, and this is Ferguson versus Las Vegas Municipal Police Department, 131 Nevada Advanced Opinion 94 from 2015 and a prior case in re discipline of Drakulich.

So it starts with talking about the definition from the 1890s where the Court has held that clear and convincing evidence must be satisfactory proof that is so strong and cogent to satisfy the mind and conscience of a common man and to so convince him to act with that conviction in the matters of highest concern and importance to his own interest.

So that's a nice illustration. I think it helps clarify what it means to have evidence establishing every element to be highly probable. So preponderance is you just have to outweigh the other side a little bit. I mean,

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preponderance, you have to have evidence of a prima facie case, and if there's countervailing evidence, you have to outweigh the other side. That's a balancing. Highly probable is a different, a conviction that it's highly probable that the events occurred, I think, is an extremely high burden and it doesn't allow as much latitude for a court or if there was a jury to connect dots where evidence doesn't exist in the record.

We talked about the motor vehicle accident. Let's go to the elements of fraud, must be proven that any information given by Mr. Marriner to Mr. Yount was false when it was given. We're not talking about knowledge, just falsity of information at the time that it was delivered by Marriner to Yount. Mr. Marriner provided July 15th status report. There's no evidence in the record that that statement was false.

There are statements about project completion and opening. Those statements came from others. There's no information that at the time any of that information was conveyed by Mr. Radovan or by Mr. Grove to Mr. Yount that that was false. And, again, the project opening is an estimation of a future event. It's typically not suitable for a fraud allegation. It's not a statement of a present or past fact.

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The only substantive project documents that Mr. Yount received from Mr. Marriner are the July 2015 monthly status report, the PPM, and the confidential offering memorandum. And Exhibit 8 is the e-mail under which those are transmitted. And Mr. Yount confirmed in his testimony that there were these few documents that Mr. Marriner provided him and he wasn't even sure if the offering memorandum came from Mr. Marriner or not.

All of these documents were prepared by others who happened to be experts operating at the request of Criswell Radovan. So we had the status report was prepared by the construction manager. The offering documents were prepared by securities lawyers. So Mr. Marriner delivered information, none of which has been shown to be false, in around July 2015.

And there's no knowledge of any false information, there's no proof that Mr. Marriner knew that anything was false in these documents that had no false information. Maybe that's chasing my tail a little bit.

THE COURT: Tautology.

MR. WOLF: Tautology, yes. None of the evidence presented has shown that Mr. Marriner knew or believed that information given by Marriner to Yount or by Radovan to Yount or by anyone else to Mr. Yount was false when it was given or

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needed correction at a later time.

The July 2015 status report, the project budget completion opening e-mails that we looked at, there's just no direct proof that Mr. Marriner had a guilty state of mind that he knew something being provided to Mr. Yount was inaccurate, intending to swindle Mr. Yount.

There's also no indirect proof. There's no contemporaneous e-mails. There's no -- nothing that would connect the dots in a -- with clear and convincing evidence that Mr. Marriner knew anything was false in any of the information provided to Mr. Yount.

The notion of a bait and switch is really overplaying the issue. There was a decision at the last minute to sell the CR founders share when two investors funded almost simultaneously and the cap on the PPM, the offering was reached.

So the notion that a bait and switch was being perpetrated, they didn't know back in July or August or even through part of September that Mr. Busick might be investing. Nobody knew that Mr. Yount was investing until he signed and delivered his documents on October 13th of 2015.

So the idea that there was a bait and switch is really overselling the hand, overplaying the hand here of what the information is. There was a circumstance where the

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cap had been reached and a decision was made, well, we could sell him one of our shares.

On the element, the claim element intent to induce reliance, your Honor, Yount has not proven that Marriner intended to induce Yount to invest by providing false information. He provided a project tour, accompanied by a Penta representative. He provided the progress report. And I won't recount the exhibit numbers. I'm confident that the Court is aware of what they are. Marriner had no reason to not believe that what Radovan provided to Mr. Yount was up-to-date and accurate.

We have the e-mail with the questions and answers, the one that talks about the increase in the mezzanine loan and several other questions answered by Mr. Radovan. There's nothing in there that suggests that Marriner knew it was false and there's no information suggesting that he doubted anything that Mr. Radovan was providing to Mr. Yount.

Importantly, Marriner and just about everyone else, but Mr. Tratner, was unaware of Mr. Yount's undisclosed to anyone else erroneous understanding that the intended use of the $9 million that would result from increasing the mezzanine loan was for things other than change orders. So he -- throughout this trial, we've heard Mr. Yount say that, well, I thought it was really 5 million in change orders,

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maybe 5 to 6 million at times, he said, and I thought the other four was a rainy day fund or was for other stuff. He didn't share that with Mr. Radovan, Mr. Criswell or Mr. Marriner. It was essentially this undisclosed belief that he had and nobody looking from the outside into this little fish bowl or globe would know that Mr. Yount had a misperception of the purpose of the $9 million.

Just at about the same time as the 9 million figure is mentioned in that -- in Exhibit 18, I believe it is, he had just received the monthly status report that listed the items, certainly without numbers. But the delivery of the status report coincided, you know, within a few days of the e-mail with the questions and answers that talked about we need $9 million to cover a variety of new expenses.

Likewise, Mr. Marriner and everyone else but Ken Tratner was unaware of Mr. Yount's undisclosed belief that the only reason for delaying opening was marketing reasons or sales considerations or concerns about the weather. The reason I -- the reason it's important to talk about what -- about these things is if Mr. Yount has -- is harboring ideas or has undisclosed impressions of what the information is, we can't fault the defendants for not correcting those when they're in e-mails between Mr. Yount and the CPA. These came

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to light later in discovery that this is what he was thinking.

But when you roll back to the date of the transaction, Mr. Yount was not sharing, and it wasn't evident to everyone else that he thought the delays were marketing based or sales based or that the $9 million was to have half for now and half for a rainy day fund later.

The absence of any indication to the defendants in that regard negates the notion of intent to provide false information or intent to not correct false information.

Now, before he invested, Mr. Yount's understanding of the cost overruns and budget impacts, there's the listing in the July monthly status report. There's Mr. Groves' e-mail that Mr. Little mentioned a moment ago. We're trying to get our arms around the construction costs. Construction costs are exceeding the budget and they, we are trying to get our arms around it and keep it in check. So, you know, that's an important statement, that we're over budget and we don't know quite how deep we are over budget. We're trying to figure it out.

Mr. Yount's e-mail just two days later, as I understand it you're over budget by more than 5 million so far. Where will that and likely more funding needs come from? This is mentioned in Exhibit 14 and Exhibit 48.

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Mr. Radovan's e-mail, July 25th, we're increasing the mezz loan by 9 million to cover the added cost of regulatory and code requirements, which changed or were added by the two counties and TRPA which we deal with. We've also added costs for predevelopment of the condo units is also included within this.

Now, I believe Mr. Radovan testified that the predevelopment costs referenced here was in the order of 2 to $300,000. It was maybe conceptual site planning, you know, not going to construction documents or any kind of construction work.

The July 25th e-mail to Mr. Yount doesn't support the notion that we had about $5 million of cost overruns and the rest was for a rain a day. The clear import of this is we've got added costs and it's 9 million bucks.

Mr. Yount's deposition testimony, which we've talked about before is that he agreed and that he understood the project was 10 million over budget in July 2015. And the quote at page 149 of his deposition, and this is Mr. Little questioning him comparing two of the documents that we compared during our trial, so it looks like as of this date, which was late July, it was your understanding the project was at least $10 million over budget from what was represented back in 2014? Answer, I guess that's what that

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would indicate.

Now, there's been various statements from Mr. Yount as to what he believed the change orders were, but during trial, I don't have the transcript in front of me, I would ask the Court to look back on August 31, 2017 at about 2:40 p.m., according to that clock right there, that Mr. Yount said Robert told him there were no more than nine million in change orders, which is a different statement than there was only 5 to 6.

You know, other testimony we have from Mr. Yount was that he read and understood and agreed to all the legal boilerplate in all of these massive offering documents, Exhibits 3, 4, and 5. If I can, I will find --

THE COURT: Mr. Wolf, I'm going to have to recess right now. We'll pick it up at ten after 1:00. I have a judge's meeting at 12:00 that I have to preside over.

It's my desire to issue a ruling today. I don't want to cut off anybody's allocution. But I'm familiar with the testimony and I'm familiar with the transcripts. I'm familiar with the exhibits. It would assist me if you would focus on the elements of the causes of action and why they fail or why they should succeed. And it's my desire to issue a ruling at 2:00 this afternoon. So within that time period, try and focus your arguments on those causes of action. That

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would be the best assistance to me.

MR. WOLF: Thank you, your Honor.

THE COURT: Mr. Little, you stand.

MR. LITTLE: No. Can we leave our stuff here?

THE COURT: Yes. That's fine. Court's in recess.

(A lunch break was taken.)

THE COURT: Mr. Wolf, you have the floor.

MR. WOLF: Thank you, your Honor. In order to speed up my presentation and following the Court's thoughts at the end of the morning session, I'll focus on elements of the claims, or the absence of evidence supporting elements of the claims, perhaps.

One of the claims -- both of the claims for fraud are premised on misrepresentation of fact and concealment or failure to provide additional information.

The private placement memorandum text that's on the screen that's part of the investment risks, disclosed that there could be affects on the business plan and the profitability and success of the entities due to budgetary and cost overruns.

So the very foundational documents, there's a disclosure that there could be cost overruns that could damage the company's prospects. That's on page nine of the private placement memorandum in this provision under risk

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factors, insufficient funding and dilution.

Now, in order to establish that Marriner failed to disclose material information, Mr. Yount would have to show that there was material information that he had that was at variance with what Mr. Yount might have had and failed to disclose it. But if you look at what Marriner's understanding of the cost overruns was and what Mr. Yount knew at the time, there really was never any divergence in the two.

Marriner started at the same place with the July 2015 monthly status report. He had a copy of Radovan's e-mail, Exhibit 18, explaining the purpose of the mezzanine loan. Marriner, like Mr. Yount, did not receive further monthly status reports before Mr. Yount invested. Mr. Marriner toured the site with Mr. Busick in September 2015.

The upshot of that tour was that it confirmed that the work identified in the July status report was being performed and so the -- that put a positive view that the information they had back in July was consistent with the facts on the site in September.

Mr. Marriner, he saw nothing to suggest that what Yount had so far up to that point was different from the reality that he saw in September. And it's important throughout the e-mail strings, Mr. Marriner continued to

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offer site tours to Mr. Yount, even within a few days of his investment. So there was no effort to conceal the status of construction or the progress at the site. And there's simply no evidence that Mr. Marriner had knowledge of project difficulties different, you know, in magnitude or character than what Mr. Yount already knew.

So I don't believe there's evidence to support that, the element of the wing, if you will, of the fraud claims that are based on failure to disclose material information that would have corrected previous information.

Now, it's important if we talk to causation, even if we assume, if the Court wasn't persuaded that there was -- if the Court was persuaded there was false information and that it was withheld improperly, there's still not a causal nexus between anything Mr. Marriner did and the fate of Mr. Yount's money.

The testimony is undisputed that Mr. Marriner never handled the delivery of the investment documents or the funds. It's also undisputed that Marriner had no connection to the escrow itself. He wasn't a party to the correspondence where the funds or documents were delivered. He wasn't a party to the correspondence between Mr. Coleman's office and the Criswell Radovan staff. And Mr. Marriner had every right to assume that if some other formalities were

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indeed required, that those were being handled by the attorney who was handling the funds and the documents.

Now, certainly, a large piece of Mr. Yount's claim against Marriner is the failure to indicate to Mr. Yount that Mr. Busick had invested. You heard testimony from all parties over the conversation, particularly from Mr. Marriner and Mr. Radovan, about their conversation about the so-called perfect storm and you saw some deposition testimony in that regard.

When Mr. Radovan told Mr. Marriner, hey, that's okay, we have another $1 million founders share that we can sell, Marriner had no reason to doubt the validity of that statement. He had no reason to believe that a founders share, as the Court characterized it, a new Cadillac owned by Criswell Radovan was any different than a new Cadillac owned by the original issuer.

So Marriner had no reason to believe nor is there any evidence before the Court that a CR share, founders share to be delivered to Mr. Yount in this aftermath of the Busick investment would damage Mr. Yount in any way, would have any rights or value different than the shares that Mr. Busick purchased.

One observation I don't think has been made and I'd like to point it out is I think you can argue that

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Mr. Yount was put in a better position acquiring a million dollar share from CR after Mr. Busick had put a million and a half dollars into the company by buying his shares before Mr. Yount. Why do I say that? If Mr. Yount put in a million, the company would have a million dollars. When Mr. Busick funded, he bought a million and a half, the company had the extra half a million dollars to work with or use for whatever purpose. So the transfer of the CR share to Mr. Yount, it didn't reduce the funds in the company and the company wound up with actually more money than it would have had Yount funded first.

Turning to the issue of damages, there is no evidence, including any expert witness opinion, that the CR founders share was of lesser value. The Court observed it's a new Cadillac versus a new Cadillac. There's no expert witness testimony. There's not even anything that is, you know, indirectly relied on by Mr. Yount.

Market information, for example, attempts to sell, there's simply nothing in the record to show that the share Mr. Yount received was of lesser value than that which he expected he was purchasing. That means there's no damages from the sequence. And the assertion that he wouldn't have bought it, the assertion that -- it's all just speculation, and speculation, the law is clear in Nevada, the Court cannot

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award damages based on speculative evidence.

One of our defenses, and Mr. Little already covered this, is the independent investigation. And there's two different ways you can view the independent investigation. One is that it negates the fraud element of reliance. If someone is tire-kicking so carefully and independently evaluating facts so thoroughly to the point where they're not relying on the person that provided them the information, the Court can conclude as a factual matter that person didn't rely. That's a different -- so that's using the independent investigation to negate the reliance element.

The Blanchard case is talking about taking it a step further, if someone conducts the independent investigation, then they're going to be charged with everything they would have learned had they completed that investigation diligently.

In this case, in my brief cross examination of Mr. Yount, you know, he used the words in his -- he explained the defense in his own words when he said, trust but verify. He explained what that means. President Reagan didn't trust his counterparty in the arms negotiations. He wanted mechanisms by which we could verify what the Soviet Union was doing at the time.

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That's exactly what he was doing here. He was talking to people he trusted, Peter Grove, his own CPA. He wasn't relying on Mr. Marriner for project information. He was going to Mr. Radovan. He was going to his own CFO to evaluate that information. So we believe all the elements to either negate reliance or to carry the defense under Blanchard are established through the facts of this case.

And I appreciate that the Court was familiar with that August 3rd e-mail. Mr. Marriner, I'm talking to Radovan directly now, I'm really not looking to you for information, thanks for calling me, in so many words.

So with that, there's been a lot of talk of the Mosaic deal and how it was torpedoed. I share the same view as Mr. Little that if there were damages from this investment, it's not from -- he got a Cadillac. He got a new Cadillac. There's no evidence of a difference in value. If it's because the project failed, the project failed in the aftermath, after the investment, after the Mosaic loan was interfered with.

I don't believe Mr. Yount conspired to interfere with that loan, however, he had an opportunity, he knew the meeting that was about to happen was probably not legit, in his words, and he had an opportunity to head off the CR people at the pass and maybe avoid what happened, which is

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the Mosaic loan being --

THE COURT: The IMC people?

MR. WOLF: Yes.

THE COURT: Not the CR. You transposed.

MR. WOLF: Yes. Thank you. So that goes to causation of damage. It's Mr. Yount's own inaction in this case. He's pointing fingers at defendants for inaction and failing to inform. He was aware of a very critical event about to happen that is probably spelled the doom of this project.

And in hindsight, I don't think he was calculating to hurt himself, in hindsight you can look back and say, wow, you knew this, you knew it was legit. You asked people if it was legit. You didn't step up and say anything. And since we're all here in hindsight looking back at what everybody did, I think that contributed to his own damage insofar as his damages relate to the failure and the bankruptcy of the project.

So in sum, your Honor, I don't believe any fraud elements have been established. I don't believe they've been established by clear and convincing evidence. Mr. Marriner did not handle Mr. Yount's funds. The funds were handled by others. And given the serious burden of proof, I believe there should be a defense judgment in favor of Marriner on

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all the claims, including punitive damages. And I'll close with that. I'd be happy if there's any question that the Court has that I haven't covered relative to Mr. Marriner, I welcome the opportunity to answer it.

THE COURT: Mr. Wolf, I think you covered all the questions the Court has.

MR. WOLF: Thank you very much, your Honor.

THE COURT: Thank you, counsel. Mr. Campbell.

MR. CAMPBELL: Good afternoon, your Honor.

THE COURT: Good afternoon, counsel.

MR. CAMPBELL: I'm going to trial to stick to your admonition, but I think there were some things that were in the closing argument that I have to --

THE COURT: The field is wide open. Don't feel any constraints. We were able to resolve everything. Let me just say, I've said it before, and I'll say it again, the sun will not set today until everybody has had an opportunity to tell me everything they think is important for me to make a decision. So with that, wide open, Mr. Campbell.

MR. CAMPBELL: Let's talk about Mr. Marriner to start and the elements of fraud. We know the elements of fraud both under the statute and under the caselaw in Nevada are material omissions of a material fact can in fact be fraud.

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The Blanchard case, both Mr. Little and Mr. Wolf didn't cite the entirety of the Blanchard case. We've argued this in our motions, your Honor. But as you probably well know, the Blanchard case also held that a plaintiff making an independent investigation will be charged with the knowledge of the fact which reasonable diligence would have disclosed, but an independent investigation will not preclude reliance where the falsity of the defendant's statement is not apparent from the inspection. The plaintiff is not competent to judge the facts without express expert assistance, or where the defendant has superior knowledge about the matter in this issue.

So the Blanchard case doesn't completely bar Mr. Yount just because he did some investigation in this case or failed to do any investigation. You know, the part about the site inspection is a big failure. Well, a site inspection clearly would not have indicated the amount of the project over budget or the fact that the Mosaic or another loan or capital infusion was not garnered that the project was not going to finish, if at all.

And it certainly wouldn't have -- any further inspection certainly would have not told Mr. Yount that the PPM was in fact full and he could no longer buy under the PPM, which was his understanding all along.

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Let's talk about what the evidence showed in this case. Marriner knew the project was 9 to $10 million over budget in September. He also knew in July Mr. Yount had been told and had put it in his documents that it was five plus million over budget. So there's a spread there. Mr. Marriner knew that and he never told Mr. Yount about that.

He also knew that without additional financing from Mosaic or a capital infusion, that this project was not going to move forward. It didn't have the funds to do so. And he knew that Mr. Yount had only been told in July about a possible refi. So Mr. Marriner had express knowledge of an important, material fact that we're switching now from a mezz refinance to a total refinance with a lot more additional debt taken on the project.

And, finally, the most important part, Marriner knew, he called it a perfect storm. And counsel's argument that he didn't know what -- if and when Yount was ever going to fund is totally belied by the evidence.

In his e-mail, in Exhibit Number 34, Mr. Marriner on October 1st says, thank you for working so hard on this funding. We are excited to have you on our team. He knew on October 1st that this was going to happen. And he also knew that Busick had funded. And he knew that it was a perfect storm. And he went to Radovan. Radovan told him, keep

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quiet. He didn't say, I'm going to sell the CR share. He said, I'll call him. And told said, keep quiet, don't talk to them.

That's the fundamental misinformation or failure to tell Mr. Yount, because they're telling -- they're saying Mr. Yount hasn't proven his damages, there's no evidence that he was damaged, or there's no evidence that he wouldn't have investigated. He testified that if he found out this information, he would not have invested. That's the best proof there is as to whether or not he would have gone forward.

THE COURT: How do you reconcile that testimony with the e-mails sent by Mr. Yount on December 13th and several days later in which he demands his $1 million back? However, he goes on to say in that very e-mail that once his confidence is restored in management, he'll reinvest.

MR. CAMPBELL: I think the e-mail said he would think about it if he was provided with documents.

THE COURT: He said that on at least two occasions.

MR. CAMPBELL: On that point, your Honor, he didn't know about the bait and switch. He did not know about that until the end of January. The record is pretty clear on that. So at this time, he thought he had been defrauded.

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Mr. Criswell said, look, give us a couple of weeks to show you the documents. He said, no, I don't want a couple of weeks, I want my money back. Because at that point, he did not know about what was disclosed at that meeting.

So the real impetus of what irked him was when he later found out about the bait and switch. And that was not -- I mean, the record is clear, that happened at the end of January.

THE COURT: All right.

MR. CAMPBELL: So I think that the -- what Marriner knew, what he knew what Mr. Yount had been told of back in January and his complete failure to notify Mr. Yount is a material omission, I think both under general fraud and the securities fraud. And, again, I read the statute, I don't agree with Mr. Little, the NRS exemption applies to registration. It does not exempt fraudulent acts for sale of securities as well as a securities.

THE COURT: I think that we can all agree that nothing exempts fraudulent acts.

MR. CAMPBELL: That's correct, your Honor. Let's move to CR. I think Mr. Little is trying to deflect the Court's attention from what really matters here. Having Mr. Busick testify or having some other members of the investment group testify, what has that got to do with what

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Mr. Yount was told on October 12th, 10th or any time before that time? We didn't need to bring those witnesses in to prove that they were defrauded. This case is about what Mr. Yount was told, what he was not told, what he would have done had he been told. And Busick's testimony or IMC or Molly Kingston testimony doesn't change that fact.

Again, it's an attempt to deflect the Court's attention from what really transpired here, what was told and not told to Mr. Yount. Again, that's another red herring.

Same with the Mosaic loan. You know, the supposition, Mr. Little talks about you can't have a case on supposition. The supposition that somehow Mr. Yount interfered or could have prevented this is nothing more than just supposition.

We know what happened with Mosaic through their own words and we know Mr. Yount wasn't in the meetings, wasn't involved in that. Again, it's an after-the-fact deal. Mr. Yount would have never invested in this project in the first place.

THE COURT: He never would have invested in the project in the first place?

MR. CAMPBELL: With the knowledge that was withheld from him.

THE COURT: That he was buying a CR share?

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MR. CAMPBELL: That he was buying a CR share instead of a PPM, that the project was 9 to $10 million over budget, or that it needed financing or it wasn't going to move forward.

THE COURT: All right.

MR. CAMPBELL: With those three things, his testimony was, I wouldn't have never invested. It couldn't be any clearer and that's pretty good proof of what he was thinking and what he was doing and it's documented by his later e-mails.

So what happened later, I mean he was damaged when he tendered his money under a false pretense. And to talk about -- and then the damages about what happened later on, well, one, Mr. Yount never got a share or a certificate or even a signature page for the PPM.

It's been two years since this transaction almost, October 13th of 2015. Has there ever been a call for a shareholder meeting to approve that transfer? No. So he doesn't have a full share. Under the operating agreement, that transaction is null and void. The operating agreement could not have been clearer.

THE COURT: But the operating agreement also requires Mr. Yount to execute the documents in order to consummate the deal. And the evidence here in front of the

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Court is that he refused to do that.

MR. CAMPBELL: Refused to do what?

THE COURT: Sign the documents to -- that would be submitted to the other founders to approve the share.

MR. CAMPBELL: He refused to sign documents that were untrue, the documents saying that there was a mistake when he executed the subscription agreement, the documents saying that it was the parties' intent all along to have him buy a CR scare. That's the documents that he refused to sign.

THE COURT: All right.

MR. CAMPBELL: If you look a Mr. Coleman's e-mail --

THE COURT: Let me go back and check that.

MR. CAMPBELL: Look at -- that was his testimony. He didn't -- he never refused. He said, I'm not signing these documents. This is not what transpired. This is not what was told to me. He said, I'm not going to sign documents that have false statements in them.

THE COURT: All right. I'll go back and check on it. I appreciate the correction.

MR. CAMPBELL: And I think that goes to the conversion claim also. I'll address the elements of that right now, your Honor, too. As you know, conversion is a

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distinct and intentional act of dominion over, wrongfully exerted, an act committed in denial inconsistent with the rights of another, an act committed in derogation, exclusion or defiance of the owner's rights, and causation and damages.

As I said, Mr. Yount was damaged at best. Even if you assume that transfer took place, since it's never been approved, all he's got is a restricted share that somehow he would get economic benefits. But clearly, it's not the same as a full membership share under the operating agreement. It's limited. He can't participate in the management. It's all spelled out in section 12.3.

Even if you assume that there was a transfer and the other thing was null and void, he does have damages. One, he has damages because he never would have invested in the first place. Two, if you assume he had some kind of a share, it's a very restricted share, far different than what he bargained for.

Mr. Little said, well, conversion is an intentional tort and somehow there was a mistake up front and so Mr. Criswell and Mr. Radovan could not have intended to convert his money. Well, how about when there was never a vote, Mr. Yount never signed any documents, he refused to sign the false documents, and the deal is null and void, and then he demands his money back. Criswell Radovan

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intentionally did not give it back to him. That's the intent in the conversion. They did not return it when they were not entitled to have it.

If they were under mistaken belief, which I don't believe they were, but even if you assume they were under some kind of a mistaken belief that he had agreed to purchase the share in the first place, this back end, there was -- it was obvious the deal was null and void, he wouldn't agree to it, and they never got shareholder approval.

So there's the intent you need for conversion. They got his money under false pretenses and they didn't give it back when they knew he didn't agree to this deal. So you've got your elements of conversion.

Mr. Little also says that Mr. Yount's deposition testimony proves somehow that he didn't prove his case. Well, Mr. Yount's deposition testimony isn't evidence in this case. The evidence in this case is what Mr. Yount testified to in Court and what Mr. Radovan testified and Mr. Marriner testified and to what the documents say.

And those documents are -- those documents and that testimony is that Mr. Yount was never told about the 10 million plus budget overruns. He was never told about the Mosaic loan or any other loan and having to refinance before the project was going forward. And he was never told about

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the switch in the CR share from the PPM.

All of those are material omissions or omissions of material fact and Mr. Yount has testified if he had known that, he would not have gone forward. That's the fraud claim, I think, is established by that testimony, not what Mr. Yount may have said at the end of a seven- or eight-hour deposition.

And the 10 million over budget, I think that's out of context. I think Mr. Yount cleared that up in his testimony in trial and the evidence. We've got $5 million plus, which he put in his e-mail. We have a $50 million budget. But if we raise 20 million, we add another 5 to that, so 50 plus 5 and 5, that's 60. Clearly that's where the 60 number was in his mind. If he said something in his deposition when shown the budget, I think it was a mistake and I think he fully clarified that in his deposition.

Finally, let's to the breach of duty against Powell, Coleman and Arnold. As you know in the complaint, I've alleged two different breaches, the negligence and the fiduciary duty. Excuse me, your Honor, if I lumped in the findings of fact, I probably did that because he was named in the punitive damage claim, too, for fraud.

THE COURT: All right.

MR. CAMPBELL: It was not intentional. These are

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the only two causes of action that I'm going after him for. He's the designated escrow agent, Mr. Yount thought he was the designated escrow agent, and the money was transferred into his bank account.

As an escrow agent under the laws of Texas where he was, you know, the Powers versus United Services that we submitted in our brief, attorney acting as an escrow agent has a fiduciary duty both as an attorney and an escrow agent, and that fiduciary duty, everybody is familiar with what the fiduciary duty is.

Secondly, the duty he had as an attorney for the PPM and having money deposited into his trust account was a duty owed to Mr. Yount, a duty that he acknowledged in his documents where he sent to Mr. Yount the agreement, that as a condition of closing, you have to get, you know, you have to get preapproval. He didn't have any -- he didn't have that preapproval and he essentially closed that transaction on behalf of his clients when he, without any approval, without any documentation other than his client saying so, released Mr. Yount's money.

So I see a clear breach of both the negligence standard and the fiduciary duty standard that would have been imposed on Mr. Coleman. So, you know, by saying he didn't have any duty, I don't buy that whatsoever, your Honor. He

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had some high duties as an attorney, a fiduciary, and having money in his trust account. So I don't think he can back away from that.

It's clear those duties should have run to Mr. Yount and it's clear that one of the proximate causes of Mr. Yount not having his money now or not having it in his IRA was Mr. Coleman releasing it to his client without the proper authority. The bar rules clearly state, when money goes into your trust account, you only release it when the party is entitled to receive it. That's the language of the bar rules. Criswell Radovan was not entitled to receive it at that point.

THE COURT: Why not? Wasn't it their share?

MR. CAMPBELL: Because there was no approval by the other members, there was no document evidencing the transaction, Mr. Yount had never agreed to it.

THE COURT: All right.

MR. CAMPBELL: It's like saying that, let's set up a real estate escrow, but there's no real estate documents, there's no purchase agreement, there's no -- nothing to document it. You've got to have some proof other than your client telling you it's okay.

THE COURT: Let's reverse the transaction. Let's just say that Criswell Radovan wanted to buy a founders share

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and Mr. Yount had two shares and he has an LLC, Infinity Yount LLC. And he hires a very good Reno lawyer to handle the fiscal transaction. Mr. Criswell wires off a million dollars out of his account. Of course, just like here, where do you want to send it to? And they said, well, send it to my lawyer. And even though the share is held in the LLC, they send it to the lawyer.

The Reno lawyer then says to his client, Mr. Yount, where should I send that? And his client says, well, you know, that LLC owes me about a million bucks. It's going to have to pay me back anyway, so why don't you just send it to me? It's my share. And the lawyer, the Reno lawyer sends it to, according -- follows his client's instructions, sends it to his client.

Mr. Criswell then acquires a founders share. How has that Reno lawyer breached the fiduciary duty if he's followed the instructions of his client to send the money where the client wanted it to be sent.

MR. CAMPBELL: Because there's simply no evidence or no basis for Mr. Coleman to do that at that time. He's telling his clients that you have to -- you have to paper this transaction. He later attempts to paper the transaction. So he knows what needs to be done. And yet knowing what he needs to be done, knowing the duty he had, he

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goes ahead and releases it anyway without any paper work.

THE COURT: The breach is the lack of paper work?

MR. CAMPBELL: Breach is the duty, the duty that he had as an escrow holder, as an attorney, and as a fiduciary. The duty that he had is to make sure that the underlying transaction is right.

THE COURT: Okay.

MR. CAMPBELL: You just can't suppose, make a supposition that it's right and it's been agreed to. Especially when you think, Mr. Yount -- I mean, all the money that Criswell Radovan had in any of these documents is from under the PPM. And so how does -- you know, just because CR told him it was not part of the PPM, does he ever confirm with Mr. Yount, do you want to confirm that you agreed to this? He knows who Mr. Yount is. What would have been so bad about confirming? I've been told that you agreed to this kind of a deal, I want to make sure before I release the money that everybody is signed off and we're in agreement. Never happened. It should have happened.

THE COURT: That's true.

MR. CAMPBELL: It should have happened. It didn't. He just willy-nilly did it without any confirmation, other than his client when he was on the other side of the representation in a conflict of interest representing the

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members of the LLC, including Mr. Yount if he was going to buy in.

THE COURT: All right.

MR. CAMPBELL: Again, your Honor --

THE COURT: I understand.

MR. CAMPBELL: -- I think it's their breach. Thank you.

THE COURT: Thank you, Mr. Campbell. All right. I'd like to take a few minutes to gather my thoughts and look at Blanchard again and go through a couple of the e-mails. So I'll do my best to get back here at quarter after. All right. Court's in recess.

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(A break was taken.)

THE COURT: I apologize. Good lawyers give judges a lot to think about. This is an important case to all sides. So I wanted to make sure I viewed everything and pulled the Blanchard case, reviewed the cases cited by counsel, had an opportunity to listen to very good arguments by very good lawyers and the Court has listened to the testimony in this case.

Mr. Marriner testified first. He's a realtor and he met Mr. Radovan at the Fairwinds Estates sometime in February of 2014. He was hired on as a consultant to raise approximately $5 million to fund the development of the Cal

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Neva and that's Exhibit 1. He was not involved in the sale of securities. He invested in Cal Neva Lodge LLC. He never told any investor that he had investigated any representation in the operating agreement.

He met Mr. Yount in 1996 at a barbecue. He considered him a friend and that's not unusual up in a close community like Incline Village. They met at lunch sometime in June and Mr. Yount inquired, how is the project going? Mr. Marriner offered to take him on a tour of the Cal Neva site.

He had told Mr. Yount that they were looking to open on December 12th, which was the 100th anniversary of Frank Sinatra's birthday. And he sent Mr. Yount the latest executive committee reports. Told Mr. Yount at that time that the opening date was still 12/12/2015. And he also told that there was 1.5 million, the last tranche available for investment under the PPM.

He forwarded Exhibit 3, which was the PPM, to Mr. Yount. He also sent the latest construction report, which was July, and Exhibit 8 to Mr. Yount. Again, he stated they were looking at a target date for opening of December 12th. This is sometime in June that these discussions and e-mails took place.

He sent Mr. Yount the term sheets through an

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e-mail, which is Exhibit 11. In those term sheets are disclaimers. Mr. Yount testified he read those. And on Exhibit 12, Mr. Marriner sent another e-mail to Mr. Yount asking if he had any questions. And Mr. Yount responded with some questions and they were directed to Mr. Radovan.

Exhibit 12 is the July status report, which contains the change orders and the impact those change orders had on the development of the project. Exhibit 14 is another e-mail from Mr. Marriner to Mr. Yount saying that Mr. Radovan will get back to Mr. Yount to answer all of those questions that he had raised. And Exhibit 18 is an e-mail from Mr. Radovan to Mr. Yount, which was cced to Mr. Marriner, which responded to the 11 questions asked by Mr. Yount. They discussed a $15 million mezzanine loan to cover the change orders, as well as potential upgrades and expanding the scope of construction.

Mr. Marriner was never involved in the financing of this project. He was not involved with the executive committee, the construction committee, and he was not privy to the figures being bantered about amongst those entities.

Mr. Marriner never gave Mr. Yount any specific numbers on the change orders. Mr. Marriner was never involved with Hall or the business discussions regarding potential financing by Hall. Mr. Marriner has a background

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in construction and clearly knows that unless you have capital, the project dies. Mr. Marriner never spoke to Mr. Yount regarding the destination of his $1 million investment.

Exhibit 29, which is the e-mail string from August to September 28th, Mr. Marriner was trying to be helpful in assisting Mr. Yount in moving money around. He sent an e-mail, which is Exhibit 30, which states that Robert hopes to close out the funding very soon.

Mr. Marriner never spoke to Mr. Yount regarding the Mosaic loan. Mr. Marriner testified that Hall still had $5 million to loan, that they were looking at a $15 million mezzanine loan, and that Mosaic loan was still in the works, and he believed the project was still on schedule.

He talked about a perfect storm, that is, simultaneous investments of Mr. Yount and Mr. Busick. However, he was informed by Mr. Radovan that CR still had another funding membership available under the PPM.

Two weeks afterwards, Mr. Yount invested in Cal Neva Lodge LLC. Mr. Marriner testified that there is no difference between the two shares, that is, the shares of Mr. Busick and the shares of CR Cal Neva. But he was told by Mr. Radovan that he would take -- that Mr. Radovan would take care of the plaintiff's investment.

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Mr. Marriner was clear in his testimony that this is not a security. This was a real estate investment. Mr. Marriner knew that through -- that Mr. Radovan had an additional founding membership available for Mr. Yount.

Mr. Marriner knew that the Mosaic $50 million loan was the best solution for financing and taking this project to closure of construction.

After the December 12th meeting, Mr. Marriner testified that there was a general feeling among the investors for a need for more transparency and greater financial reports, more frequent financial reports. He knew that $8.6 million in cost overruns were there for work that had already been done and was proposed in the future.

On cross examination by Mr. Wolf, Mr. Marriner reiterated in an e-mail dated August 3rd, 2015, that Mr. Yount was dealing directly with Mr. Radovan and it was a hand-off from -- by Mr. Marriner of Mr. Yount to Mr. Radovan.

Mr. Marriner testified that Mr. Yount conducted due diligence between July 25th and August 3rd, spoke to Peter Grove, the architect, who coincidentally is or was the architect for Mr. Yount's personal residence. Mr. Marriner testified that the information provided to Mr. Yount was fair and was accurate.

Mr. Marriner testified that Mr. Yount knew that

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Mr. Radovan needed more money and he attempted to help by engaging the Wittenbergs and Boulder Bay as potential investors. Mr. Marriner testified that there was no false information provided to Mr. Yount and he had sent all the executive committee reports to Mr. Yount and that he had no reason to doubt the veracity of the information contained therein. Exhibit 10, the construction summary was given to Mr. Yount before he invested and Mr. Yount was fully advised as to the status of the project.

Mr. Marriner testified as to Mr. Busick's site visit, and at that time, the tower was finished or approximately 95 percent done. Mr. Busick was on the executive committee. He was one of the original, if not the original investor in this project. He had a background in construction.

Mr. Marriner testified that there was a lot of activity on that site. That Mr. Busick appeared pleased with the progress with construction. That Mr. Busick felt they could make the opening. Lee Mason, a representative of Penta Construction, also appeared to be excited, as was Mr. Marriner. It looked as if the project was close to being finished. It appeared to be a very good job.

On September 30th, Mr. Marriner testified that there was no adverse information to be shared with Mr. Yount.

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That there was no indication of a problem at that time.

As to the CR share, Mr. Marriner testified that he was pleased to have a share available for Mr. Yount. That there was no indication that CR was, quote, bailing out, close quote, of the project. That the CR shares were part of the original 20 founding shares and there were no differences between the CR shares and the other shares.

Mr. Marriner testified he was very excited about this project. He labeled it as, quote, sensational, close quote, project. And he was devastated professionally and personally over the loss of this project, this lawsuit, his reputation, and his friends.

On cross examination by Mr. Little, he pointed out in Exhibit 3 that Exhibit 3 contained a disclosure that this was not a security and explained the risk of such a speculative investment.

Mr. Marriner pointed out his background in construction and testified that renovating old properties raise common problems, that this was a fluid project, and the monthly status reports, which is Exhibit 10, were prepared by third parties. And on page 16 of Exhibit 10 identifies the adverse impact some of these changes had, particularly the sewer, on the project's progress and that the information contained therein was accurate.

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Exhibit 14 was identified as an e-mail, which demonstrated that Mr. Yount knew of the debt. Exhibit 13 was an e-mail from Mr. Yount's architect, Peter Grove, who termed the project to be very good. Mr. Yount's CPA reviewed the investment. The testimony is Mr. Yount never asked for any additional information.

Exhibit 27 is an e-mail from the -- from Mr. Yount to his CPA, which demonstrates that Mr. Yount knew that the opening was being pushed back to March. Exhibit 36 is an e-mail three days before Mr. Yount's investment, which demonstrates he knew the opening was for Father's Day.

Mr. Yount took a site visit with Mr. Lee Mason and questioned whether or not the change orders were necessary. There did not appear to be any red flags and Mr. Marriner felt optimistic about the project. Exhibit 37 is an e-mail dated October 10th, which introduced the new general manager and the chef to the investors.

Mr. Marriner testified to the deal with Starwood in which the Cal Neva Lodge would be added to the Starwood's luxury collection. And he testified that it certainly did not look like the project was about to fail.

Mr. Marriner found no improprieties by Criswell Radovan and that in fact Criswell Radovan was still in charge of this project. Mr. Marriner testified that there was no

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involvement by Mr. Criswell in Mr. Yount's investment.

Mr. Marriner testified that selling of the CR founders share was not taking money out of the company and the transfer was specifically authorized by Exhibit 5, section 12.1, 12.3, 12.4, and 12.6.2.

On redirect, Mr. Marriner again walked through the financials, Exhibit 4 and Exhibit 60, which was an e-mail by Mr. Marriner to all the investors.

Mr. Criswell testified, testified that he was a partner in CR LLC, which was a limited liability company used as conduit to move money into and out of a particular project. That he had a separate LLC for each project when the project was funded. And that CR Cal Neva LLC was the manager of an SPE.

He testified that they purchased the Cal Neva for $13 million in a joint venture with Canyon and walked through that transaction. He testified that CR had $2 million into the project.

He testified that the construction budget was prepared by third parties, Hal Thannisch, Penta Construction, and perhaps the architect. Nevertheless, it was outside sources.

Mr. Criswell testified that his daughter invested $220,000 to cover short-term debts. That CR was to receive a

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development fee of $60,000 a month with a cap of 2.2 million.

Mr. Criswell testified to a July 2015 executive committee meeting wherein the parties discussed the budget shortfall of 2.5 to 5 million. They discussed financing options. They discussed the Ladera loan. And in order to meet future and present needs, they discussed the mezzanine loan. And in August and September, the parties discussed a total refinance of the project.

Mr. Criswell testified on October 10th he became aware of the Busick investment and that Mr. Yount funded several days later. Mr. Criswell testified that Mr. Radovan asked for his consent to sell a CR founders share to Yount. Everyone, apparently, everybody wanted to have Mr. Yount participate in the Cal Neva project.

Exhibit 33 is from Heather Hill, an employee of CR, to Bruce Coleman, who is the general counsel for Criswell Development Corporation in the past. Mr. Criswell testified that he believed he never needed prior approval for the Yount transaction and that he had in fact prior approval for that transfer and that there was no discussion of securities fraud.

Mr. Criswell testified to the 12/12 executive committee meeting before the party, which meeting was expanded to include all the investors, who were told that the

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project was over budget due to cost overruns. Mr. Criswell wanted the executive committee's approval for the Mosaic loan with changes to at least get a conditional commitment.

The executive committee did not approve the Mosaic loan at that time. They asked Mr. Radovan to hold off to see if they couldn't explore other options.

Mr. Criswell testified that the cost overruns were discussed in July and the discussions in the December meeting centered on Mosaic's loan. Mr. Criswell testified that the IMC, Incline Men's Club, the largest investor at $6 million in this project disagreed with his approach. However, Mr. Criswell testified that those were the only dissidents and the rest of the investors -- the rest of the investors approved of their approach to Mosaic.

At that party, Mr. Criswell reached out to Mr. Yount and Mr. Criswell testified that Mr. Yount told him that he didn't know about all of these cost overruns and extra expenses and the financial condition of the project. Mr. Criswell testified that they probably could have done a better job reporting to investors about the financing and the status of the construction.

Mr. Criswell testified that the EC was provided monthly budget reports and they were prepared by Thannisch and Penta. Mr. Criswell testified he saw the cost overruns

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in the September report, which was before Mr. Yount invested in the project.

Mr. Criswell testified that they were looking at a December 12th substantial completion date. That they still had $9 million from Hall to complete or that they had the option to raise additional capital from the investors.

Exhibit 46 is an e-mail from Mr. Yount requesting the return of his $1 million investment. Ms. Clerk, can I have Exhibit 43?

Mr. Criswell testified that he told Mr. Yount that he would try and find someone to buy his share and that he felt this was going to be very easy to find other investors. However, Mr. Criswell testified that Mr. Yount had already been provided all of this information beforehand.

Mr. Criswell testified that CR had advanced $900,000 over time reflected in journal entries. And that Mr. Yount's money was spent paying past due bills on the Cal Neva, as well as other Criswell Radovan projects.

Exhibit 49 is an e-mail packet with material dated 12/17/15. It shows in big black bold title page, 35 million in debt, 20 million in equity, $55 million project. This is important, because throughout these proceedings there's been an allegation that these numbers were not shared and were misleading. The Court finds that these numbers provided by

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the defendants were remarkably accurate and it's spot on.

Mr. Criswell testified that afterwards he found out that Mr. Yount wanted a preferred share. However, he testified that is what he got, because the Criswell -- the CR share was a founders share.

On cross examination by Mr. Little, Mr. Criswell testified that Mr. Radovan told the executive committee of the cost overruns and a number of 9.3 million and that they needed financing. There was a number of 10.5 million discussed as well.

Mr. Criswell testified that there's no difference between a CR share, founders share, and the share Mr. Busick purchased.

Mr. Criswell testified to his professional background in construction and hotel development, which is impressive. He had developed the Four Seasons Hotel in Dublin, wineries in Napa, other resorts that are award winning.

He testified to meeting Mr. Radovan while Mr. Criswell was serving in the Navy as a supervisor for the Navy Special Operations and Mr. Radovan was a United States Navy Seal. Impressive credentials for any individual.

Mr. Criswell testified he never met Mr. Yount before his investment and that the information provided to

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Mr. Yount was truthful and accurate. That CR was authorized to sell the two founders shares. And on redirect, when shown Exhibit 4 on page nine, demonstrated that there was an interest reserve for the loan and that the CR share was the same founders share as that bought by Mr. Busick.

That the information was given to the plaintiff was accurate and consistent with the information that Mr. Radovan gave to the executive committee and Mr. Yount, which included monthly reports, financial documents, and that the numbers were consistent.

Mr. Criswell testified that the Ladera agreement required CR to keep $1 million in the project. Exhibit 150, page three, section five, showed that there was no prepayment penalty on the Ladera loan.

Mr. Criswell testified that Mr. Yount was not prevented from asking for any documents or information. And that Mr. Busick's $1.5 million investment went into the project and indeed was more advantageous than the investment by Mr. Yount, because it infused an additional half million dollars into the project.

Mr. Wolf cross-examined Mr. Criswell and demonstrated that the pro forma had projected a $51 million project, that the change orders were anticipated, and that the added scope included a new kitchen and the condo

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development.

Mr. Radovan testified as to Exhibit 5, Exhibit 4, the guaranteed maximum price contract, Exhibit 1, and stated that he was aware of Mr. Yount's interest in this project in July and he was aware that Mr. Yount had been given Exhibits 3, 4 and 5.

Mr. Radovan testified he knew the Hall loan was out of balance in July of 2015 and that he knew the opening would have to be pushed back because of the sewer pipe and other change orders and the requirements imposed by Starwood.

He testified that he told Mr. Yount's CPA that the opening was pushed back because of the construction issues and he told Mr. Yount about the scheduled pushback. Exhibit 36, which is the e-mail of October 10th to Mr. Yount's architect, Peter Grove, and to his CPA regarding pushing back the dates of the opening. This was two days before Mr. Yount's investment.

Mr. Radovan testified he told Mr. Yount that they were raising $9 million because they knew more change orders were coming. Mr. Radovan testified to a conversation he had with Mr. Yount's CPA in August. That he doesn't know if Mr. Marriner knew of the pushback dates. In deposition, he did correct that testimony and stated that Mr. Marriner did know of the pushback dates.

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Mr. Radovan testified to the Mosaic loan that was in the works as of -- in September of 2015. That they were looking at a high 40 million of dollars. The project was looking for different options for financing, including a capital call, which was discussed in April.

Mr. Radovan testified that the issues relating to the tower were 95 percent complete and the restaurant was 85 percent complete.

Mr. Radovan testified that the executive committee agreed to take the loan up in early November seeking an additional $16 million in debt.

Throughout this time, Mr. Radovan testified he was vaguely aware of Mr. Yount's interest in the project. Exhibit 29 is an e-mail between Mr. Yount and Mr. Marriner and there was no indication that the plaintiff would invest in the project. It had been three to four months of inactivity by Mr. Yount.

Mr. Yount was in the process of trying to extricate the money out of his 401K, but as everybody testified, there was radio silence between the parties during this time.

Mr. Radovan testified that he spoke to Mr. Busick after Labor Day, who expressed some interest in investing in the $1.5 million tranche, as well as, and this is important,

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three to four other potential investors. They had a meeting in Napa at the defendant's office in Napa with Mr. Busick's son. And, subsequently, on the 29th, the Busicks invested.

Mr. Radovan testified that the CR Cal Neva had as available a founders share under the PPM. That it was the same as the founders share Busick purchased.

In Exhibit 33, the assistant, which I believe is Ms. Hill, discussed a swap agreement, and Mr. Radovan wanted to know if there was anything required to properly effectuate the transfer of the CR founders share to Mr. Yount who was seeking to purchase a founders share.

It required under Exhibit 5, the operating agreement, which is article 12.2 and 12.3, one, that Mr. Yount sign the PPM; two, that the transfer be approved at the next meeting or annual meeting, or in writing; and, three, even if it was not approved, the buyer would keep the beneficial interest.

Mr. Coleman testified that he was counsel for Mr. Criswell back in 1982 and he had met Mr. Radovan in 2000. They had formed CR and worked on 20 projects. There were only two projects in litigation and two in bankruptcy back in the '80s. But most importantly, those were not CR projects.

Mr. Coleman testified that he was contacted regarding the Cal Neva project and with Brandon Iverson

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formed several LLCs and the operating agreement.

Exhibit 3, Exhibit 5 were discussed. Section 7.4 of Exhibit 5, demonstrates that CR put in $2 million into the project for two shares and there was a journal error of $480,000, which was subsequently reconciled.

Mr. Coleman testified that the subscription agreement advises the investors that this is not a security. It is a private placement memorandum. And that they must be a qualified investor. Mr. Coleman testified that there were no written escrow instructions.

Exhibit 33 is an e-mail from Ms. Hill to Mr. Coleman discussing the transfer. Exhibit 33 is an e-mail dated October 2nd and he had said that -- excuse me -- Mr. Coleman had heard that Mr. Busick was interested in increasing his investment and that CR was selling one of their two shares.

Exhibit 42 is the e-mail regarding Mr. Yount's investment. Money came into Mr. Coleman's escrow account and went out the next day.

Mr. Coleman was questioned as to whether this was a swap, was this an assignment of the CR per the operating agreement? Mr. Coleman was emphatic, it was neither. It was simply CR selling their share. It was simply Mr. Yount buying a member's share and stepping into the shoes of CR and

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becoming a member.

The effective date was backdated so as to give Mr. Yount every day of interest he was due under the agreement.

On cross examination by Mr. Little, Mr. Coleman testified he was instructed to wire Mr. Yount's money to CR. He says this was simply a common transaction of one owner selling a share to a buyer. He testified under -- as to Exhibit 5, section 12.3, that the approval was at, quote, the next member meeting, close quote. 12.4 required approval, quote, after the transferee executes the documents, close quote. That there was no preapproval needed and that CR share is a founders share. And under 12.6.2, even if the transfer is not approved, that Mr. Yount would still have the economic benefit of the $1 million investment. That this was simply a personal, private transaction.

On redirect, Mr. Radovan was called back to the stand. He testified that he told Mr. Yount about the $9 million in change orders in July. He had a conversation with Mr. Yount regarding the change orders and Exhibit 18. He had a conversation regarding the transfer and sent documents to Mr. Yount. In October and November, the company was not out of money. The company was paying the contractors.

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There was some testimony on cross examination -- excuse me -- direct examination that the general manager hadn't been paid, Thannisch hadn't been paid $90,000, Paul Dosick hadn't been paid $90,000, North Star Demo had a claim for asbestos removal of $96,000. However, Mr. Radovan explained that those changes came in after November. And up until that time, the company was paying its contractors. That this was not a failing operation.

Mr. Radovan testified the debt was disclosed to the members in the November meeting. The members were aware of the 9 to $10 million in cost overruns, the July report numbers were updated and the members were told of the $51 million Mosaic loan.

The members discussed financing for months. Mr. Radovan asked the EC for approval of the Mosaic loan. Mr. Radovan met with Mosaic in December. And, finally, the executive committee approved the Mosaic loan in December. They set up a meeting between Mosaic and CR.

Mr. Radovan testified that this was not a troubled project, that they had money, that it was staffed, that they had Starwood on aboard. That this should have been opened but for the interference of certain members of the executive committee with the loan with Mosaic.

Mr. Little cross-examined Mr. Radovan regarding

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Exhibit 3, stating that it was not updated because upon advice of securities counsel must have been the same document provided to all investors, and, again, the disclaimers were discussed.

Mr. Radovan testified that the answers and information given to Mr. Yount were truthful. That the opening was moved before Mr. Yount invested. That the project was not failing. They had 100 people on site. They had a chef, they had a general manager. And, in fact, Mr. Busick walked the project and invested more money.

Mr. Radovan testified that everyone wanted Mr. Yount as a member. He was a neighbor, he was a community leader, a pillar of the community in one person. And there's nothing in the record that would contradict that description of Mr. Yount. Mr. Radovan was excited about the project and that the CR shares were no different than the founders shares.

Mr. Yount took the stand and he testified to his background, the fact that he had lived in Lake Tahoe for 20 years, attended UNR. He had worked with Peter Grove, the architect, for some 40 years.

He testified that in the spring of 2014, he spoke with Mr. Marriner regarding the Cal Neva project, but he was not interested at that time in investing. However, he

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testified in June of 2015, he became interested and reached out to Mr. Marriner because his 401K fund was available for investment.

Mr. Yount testified that he was in, quote, constant communication, close quote, with Mr. Marriner up until the time of the investment. That he walked the site with Mr. Marriner, who according to Mr. Yount appeared to be very knowledgeable about the project.

He received the e-mail, which is Exhibit 8 after the tour and was told that 1.5 million equity was still available under the PPM, which entitled him to certain priorities and to purchase a cabin. Mr. Yount testified he reviewed the PPM, which is Exhibit 3, reviewed the confidential offer memorandum, Exhibit 4, and signed the amended and restated operating agreement, which he read, which is Exhibit 5.

Exhibit 11 was the financial material e-mail from Mr. Marriner. Exhibit 12 was the e-mail from Mr. Marriner regarding questions. Mr. Yount testified that he thought that Mr. Marriner was trying to sell a founders share under the PPM and that he had questions about the project.

Exhibit 13 is an e-mail from Mr. Peter Groves rating the project's chances of success as very good. That he, being Peter Grove, was very impressed with the management

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team. In that e-mail, he was advised of cost overruns, which the parties were trying to -- which the developers were trying to get their arms around. Exhibit 15 is an e-mail stating that the cost overruns were $9 million in cost overruns. There was no information on the change of schedule and Exhibit 34 is an e-mail string regarding the 401K.

On October 3rd, Mr. Yount decided to make the investment. He testified in July, he did not know of the refinance and would not have invested had he did.

Mr. Marriner wanted Mr. Yount to reach out to Roger Wittenberg for refinance or investment. Mr. Wittenberg is not an investor, operated an investment vehicle called North Light. Mr. Yount testified that he was never told that the loan was out of balance.

Most importantly, Mr. Yount testified that had he been told the loan was out of balance he, quote, would have been concerned and would have inquired more, close quote. Not that he would pull the investment, not that he would refuse to invest, but that he would have inquired more and he would have been concerned.

A series of e-mails, Exhibits 35, 36, 38 recount the investment documents. Importantly was an e-mail sent by Mr. Yount's CFO. Ms. Clerk. I sent the wire instructions to both of you and Premier. They were very close -- excuse

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me -- they were very clear and they are attached again. I'm concerned with this round-about e-mail string about wire instructions, a great opportunity to send $1 million to the wrong person. Okay. Kreskin couldn't have called it better.

Exhibit 40 is Mr. Radovan's acceptance of Mr. Yount's $1 million for the founders shares. Mr. Yount testified that he would not have invested because the sale of this one share by CR was a clear indication, quote, that the project was going to die and the developer was trying to get out, close quote.

Again, Mr. Yount testified about the 12/12 party. But I circle back to that comment Mr. Yount testified to about not willing to invest because of the sale of CR's share. It contradicts his e-mail to Mr. Radovan on December 13th when he demanded his $1 million investment to be returned. However, he said that once there was financial stability and faith in the management, that they, he and his wife, would reconsider investing again. There was some argument made that Mr. Yount was straddling the fence, wanted in, wanted out. I think this e-mail by Mr. Yount could support that characterization.

Mr. Yount testified that it would have been insane to undermine the Mosaic loan and that the Exhibits 47 -- excuse me -- the e-mail exhibits were simply to try to calm

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down the IMC. Mr. Yount testified he never spoke to Mosaic. That he wanted to get paid and he testified he still does. He still wants to get paid as do everybody.

Exhibit 50 is an e-mail from Mr. Criswell dated 12/16. Mr. Yount testified that he thought the Mosaic loan was imminent and he wanted the project to succeed. He described the executive committee meeting on December 12th as rousing. But there was a discussion about trying to get his money paid back or at least reflect his investment through a note, which never occurred, or at least this Court has no evidence of that.

Exhibit 58 is an e-mail from Mr. Yount to Molly Kingston regarding the bus going off the road or in the ditch and how they couldn't continue with the project with CR as developers.

59 is an e-mail dated January 25th to Paul Jamieson and he was aware of the CR share and the PPM share and called it a bait and switch. Exhibit 122 is an e-mail regarding the IMC meeting with the Mosaic in which Mr. Yount expressed some concern.

Exhibit 62 an e-mail from Mr. Yount to Mr. Marriner stating that he was not, quote, fully informed, close quote, about the financials. Mr. Yount testified to a meeting with Mr. Criswell in the Hyatt lobby on December

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27th, where they discussed memorializing his investment with the note. Mr. Criswell testified that he assured Mr. Yount that they would buy his note back, buy his share back, once they had been made whole from the Cal Neva.

Mr. Yount testified that he never wanted to participate in the Cal Neva Lodge going forward. He just wanted to get his money back, and that's memorialized in Exhibit 69.

On cross examination by Mr. Little, Mr. Yount testified that he is the CEO of two corporations that are involved in acquisition and development, that he has built two homes and he has considerable experience with cost overruns and delays. That Mr. Yount considers himself to be a sophisticated investor. That he sits on several boards. He sits on the board of the TRPA. That he appreciates the risks in all investments and that he utilized a CFO and a CPA in evaluating this investment.

He was shown Exhibit 3 wherein the disclaimers clearly stated this was not a security, that there was a risk of insufficient funding, and there was a risk of losing the entire investment.

Exhibit 13 was the e-mail from his architect, Peter Grove, wherein they discuss the cost overruns, fundraising and the management and likelihood of success,

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which the e-mail -- which the architect indicated was pretty good. He was aware of the information given to the CPA who gave Mr. Yount a green light to invest.

He was aware of the compensation of the manager. On page 11 of the Exhibit 4, forward looking statements. Page three, subsection iii, he read and understood those provisions. Page 14 of the subscription agreement contained the documents, he was aware of those. He was and is an accredited investor. Under Exhibit 42, section B, he was aware that the founders share was not registered. He read and understood that. Section G, he read and understood that. Page three, he read and understood that section.

We move to the escrow instructions, and in Exhibit 4 and 5, he read and understood that, particularly the schedule 4.3. Exhibit 4, which is page eight, he realized that the time line for opening was off at the time of his investment.

He was in possession of Exhibit 10, the July construction status report. He saw other construction status reports. And he realized that Exhibit 10 was prepared by a third party.

He testified it was reasonable to rely upon the construction manager's reports. He testified he knew the budget was being adversely impacted at the time of his

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investment. He testified he never had any contact with William Criswell, just Mr. Radovan.

He testified that Mr. Radovan spoke to him regarding the delays. And there was an e-mail after Mr. Yount had toured the site. Mr. Yount testified that Mr. Marriner offered on a number of occasions to take him on another site tour and spoke to him about the delays, but Mr. Yount did not take up that offer.

Mr. Yount testified that he didn't have any questions of the defendants and that he never asked for anything that the defendants didn't give him.

He testified to Exhibit 13, which is the e-mail from Peter Grove, the architect, regarding the cost overruns and their attempts to get their arms around them. That Mr. Yount testified that he was open to get more information. And Exhibit 28 demonstrates Mr. Yount was aware of the change in opening, also demonstrated by his deposition on page 160.

Mr. Yount testified that the CPA gave him no pause or cause for not investing in the project. Mr. Yount testified that Les Busick is a friend, knew he was an investor, and he knew he sat on the executive committee. Mr. Yount received a list of the other investors and that the delay in funding his investment was because of the 401K.

Mr. Yount admitted that from September 1st to the

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date of his investment, there was only one e-mail between him and the developers. Exhibit 14, which is a July 19th, 2015 e-mail demonstrates that the parties were aware of at least $5 million in cost overruns. Exhibit 15, which is a July 22nd e-mail, again, restated the fact that there would be $5 million or more in overruns.

Exhibits 18 and 21 are Mr. Radovan's responses to Mr. Yount's questions and Mr. Yount's notes, which is Exhibit 21, which demonstrated that the developers had $2 million in founders shares and that the developers wanted to raise 10.5 million between the debt and equity. He admitted that it was told there was 5 to $6 million in cost overruns and maybe others, up to $3 million in contingency funds needed.

Exhibit 153, which is an e-mail dated July 27th, 2015, is a summary of the cost overruns. Exhibit 27 is an e-mail between the CPA and the Mr. Yount advising him that the opening had been pushed back. And Exhibit 21 was Mr. Yount's notes confirming that.

Mr. Yount testified after the break that the sale by Criswell Radovan of that founders share signals the project in trouble. But he admitted he was not a commercial developer. He never had any money in commercial developments. He was unaware that hotels often run two years

in the red.

Exhibit 33 is an e-mail dated October 7th, 2015. When contrasted with Mr. Yount's deposition at page 93 and 105, he was asked, what about the difference in the shares? He couldn't point to any.

On page 222 of his deposition, Mr. Yount testified that the defendants never obstructed the plaintiffs due diligence. They provided the documents and information whenever asked. And that Mr. Yount admitted that he was not the only potential investigator for the $1.5 million share that was opened.

Exhibit Number 54, which is the second amended complaint served by Brandon Chaney during the course of some mediation. Mr. Yount testified that nobody told him to serve -- he did not tell Mr. Chaney to serve the complaint.

However, if you look at the complaint, page four, paragraph 15, contradiction, the evidence shows that the contractors were paid. Paragraph 18, the evidence shows that the project was over budget. Paragraph 20, there was a mistake in the -- it was a typographical mistake. In paragraph 21, Penta had been paid. And as to the scheduled opening, defendant knew it had been pushed back.

Mr. Yount testified he never wanted to participate in the Cal Neva project after the December meeting. And he

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had discussed replacing Criswell Radovan, but he was not part of the IMC or IMC's efforts to replace Criswell Radovan.

However, Exhibit 50, the e-mail with Paul Jamieson discussing our team. Exhibit 55 is an e-mail with Mr. Radovan regarding the IMC. Exhibit 58 is an e-mail from Molly Kingston from the IMC declaring a divorce. Exhibit 59 is an e-mail to Paul Jamieson for approval, asking Mr. Jamison's approval to send an e-mail to get Criswell Radovan out.

Exhibit 109 is an e-mail regarding a drop box for your eyes only. Exhibit 110 is an e-mail to Paul Jamieson specifically instructing it not to be shared with CR, discussing our team to which Mr. Radovan had never disavowed. Exhibit 114 is an e-mail demanding a meeting. Exhibit 115 is an e-mail discussing this with Robert -- regarding a discussion with Robert.

118 is an e-mail with Paul Jamieson regarding the infamous meeting with Mosaic. 119 is an e-mail to Busick with Paul Jamieson's meeting with -- with Paul Jamieson regarding a meeting with IMC. 120, 121, 122, all of these e-mails involve Mr. Yount and members of the IMC.

Mr. Yount testified that he didn't hold himself out as a member, that he distanced himself from the IMC, but, however, he attended executive committee meetings. He was

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considered by all to be a member, and certainly by the e-mail string was cahoots with this cabal involving certain members of the IMC, and that he testified he was not opposed to the removal of CR as manager of this project.

Exhibit 119 talks about talking points and using Mr. Yount's letter as leverage encouraging everybody to be a cohesive group and using Mr. Yount as the IMC's spokesperson, quote, unquote.

This is demonstrated as well on Exhibits 121, 125, 126, 127, 130, 131, 132, 133 in which members of the IMC -- strike that -- in which I believe Ms. Molly Kingston is referred to as our hero by Mr. Yount and to keep it up.

Mr. Wolf cross-examined and talked about trust and verify, President Reagan's admonition with the Russians, I think it was the Salt Treaty. But in cross examination by Mr. Wolf, Mr. Yount testified that he has no evidence that CR doesn't have hotel experience. I'm going to resist -- strike that.

And despite the e-mail of 12/13 about the wheels were coming off the bus, there were a number of investors, that they were looking at a refinance of the mezzanine and a refinance of the entire project. And that the Mosaic loan was the only exit strategy, and this is Mr. Yount's testimony, was the only exit strategy to get their money back

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and that he was in favor of it.

However, Mr. Yount testified that he didn't mean to undermine the Mosaic loan, but that he was not interested -- strike that -- but simply monitoring it. He under cross examination of Mr. Wolf, he acknowledged the risk factors, the answers given by Mr. Radovan to the questions, and under Exhibit 153, the payment application and the numbers were close to what Mr. Radovan had told Mr. Yount. And he knew that other investors were looking at the investment in the Cal Neva.

On cross examination by Mr. Little, Mr. Yount testified that CR Cal Neva had executed a term sheet of $47 million in late October, which was to close in 30 days, and that was true. And that Mr. Radovan's testimony regarding the executive committee and Mosaic was true. And Mr. Yount testified that those loans would cover all the debt and that the project would have been completed.

Mr. Yount testified he didn't torpedo the loan. He didn't want Mosaic, however, he never tried to resurrect the Mosaic loan.

Brandon Chaney testified. He was a member of the Incline Men's Club and met Mr. Marriner in 2014 regarding the Cal Neva. The Incline Men's Club is the largest investor in the project with $6 million collectively invested. His role

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was to represent the investors -- excuse me -- he testified that Mr. Marriner's role was to represent the investment, he vouched for the developers and told everyone the construction budget was on schedule. He assured the Incline Men's Club that this wouldn't go over budget.

He testified that Mr. Yount was on the executive committee -- excuse me -- the witness, Mr. Chaney, was on the executive committee, because it was the largest investor and the duties of the executive committee was to represent the members to guide the project.

However, he also testified he did not regularly attend meetings of the executive committee. He testified to the July Fairwinds meeting where Mr. Radovan gave an overview to the EC.

There were several problematic aspects of Mr. Chaney's testimony. Mr. Chaney testified that the PPM was disorganized and it was clear that the managers were not knowledgeable about the money. He testified that Mr. Radovan had oversubscribed the PPM. Well, that was wrong. And he testified that Mr. Radovan had taken money from Busick and Mr. Yount. Well, the evidence shows that was wrong, too.

Mr. Chaney testified that he was concerned with the sale of the Radovan -- the CR share, because he wanted to have the defendants to have some skin in the game. Well, the

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evidence shows that they did. And they were concerned about the defendant's using the money to pay other debts. Well, the evidence shows that the money was sent to CR, who used it to pay not just other CR debts, but close to $300,000 in debts owed to the project.

He testified that he had heard of Mosaic from Mr. Radovan in October of 2015 and they were going to refinance the entire project. That Mr. Radovan had provided a term sheet, but that Mr. Chaney didn't know Mosaic.

In November of 2015, Mr. Chaney testified that Mosaic pushed back. Well, that's belied by the voicemail of Mr. Penner, CEO of Mosaic, which indicated in the end of November they were very anxious and enthusiastic about the loan.

Mr. Chaney testified that the entire executive committee met with Mosaic, who had asked for the meeting with Mr. Chaney and Mr. Busick and Mr. Jamieson and without CR. This was curious, because why would Mosaic reach out to Mr. Chaney, who claimed he didn't know anybody at Mosaic?

When asked who called him for this important meeting, Mr. Chaney could only remember the first name, didn't know the last name. Again, why would Mosaic, who had been involved with both Mr. Criswell and Mr. Radovan since September of 2014 in trying to get this loan in the works

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reach out to somebody who admittedly didn't know him to have a meeting without Mr. Criswell or Mr. Radovan present? I believe there was some testimony that there may have been a family connection or familiarity between Mr. Criswell and the Halls. It just did not make sense.

Mr. Tratner testified out of order, but he testified he looked at the investment on behalf of Mr. Yount. He was sent the updated financial projections, the profit and loss. He spoke to Mr. Radovan regarding forecasting prospective, the profit and loss.

On cross examination from Mr. Little, he was shown Exhibit 19, and he testified that this was 1 million of a $60 million project, testified to the PPM, Mr. Yount's notes with the updated information. And that Mr. Radovan said, quote, please let me know if you need any more info, close quote. Mr. Little cross-examined him and said that the defendants answered all of his questions.

Mr. Chaney resumed the stand and testified about Exhibit 122. And despite the fact, this is another curious fact about Mr. Chaney's testimony, despite the fact that he realized that the Mosaic loan was the best chance for this project to go to completion and get everybody paid, they never pursued it. He claimed on his testimony that CR never pursued Mosaic. Well, that's wrong. And that's demonstrated

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by Mr. Penner's voicemail indicating that in November that Mosaic was still interested. As a matter of fact, Ms. Clerk, number two.

THE CLERK: Yes, your Honor.

THE COURT: Last paragraph, we also told them that for the better part of three months, we have not heard much from the team. They went on to explain a little of the history of the deal from their perspective, and to tell you the truth, there seems to be a little bit of a mess right now. Let's underline, underline these last two words. We are going to take a step back, tear up the executed term sheet, tear up the executed term sheet, the deal, the loan that would have saved this project. It had been executed. Give you and the ownership time to figure things out on your own, and at the right moment, if you desire, reintroduce the deal to Mosaic. That's all. Thank you, Ms. Clerk.

When confronted with the audit, Mr. Chaney testified, although the records appeared to be a mess, the auditor did not find any improprieties, although he did testify that this was phase one of the audit. However, most tellingly, he didn't want to do phase two, because it cost money. He could have, perhaps should have, but it cost money to do an audit on a deal worth almost $60 million.

He also testified that there were other options,

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Colombia Pacific, Langham. That they hired a broker to pitch the project, but there was a lack of confidence in CR.

They talked about the winery litigation between Mr. Radovan and himself, and it's clear he was bitter and it's clear he was prejudiced and it's clear he's biased against Mr. Radovan, and as Mr. Campbell rightly pointed out, perhaps he had every right to be. But that bias is there. That bitterness is there.

He has been found personally liable for tortious interference with a contract, with a verdict in the form of $6.4 million. He wasn't subpoenaed. He volunteered to testify here, because as he said, quote, I have a story to tell, close quote.

He testified that he did call David Marriner up, doesn't recall the exact words, but he told him to give back the commission or bad things would happen. And this was before his testimony at trial. Mr. Chaney testified he told Mr. Marriner to do the right thing, get on the right side. And as far as other members of the IMC calling Mr. Marriner, he testified that, quote, it could have happened, close quote. But all he wanted Mr. Marriner to do was open your eyes.

Mr. Chaney admitted that two years later, CR is still the manager of the Cal Neva. That although there were

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procedures and a process in place that could have removed them, no such move has been made to date. And that CR is still trying to finance the Cal Neva.

As far as Mr. Chaney and Mr. Radovan go back, Mr. Chaney testified that he had to buy out Mr. Radovan and he settled the lawsuit by paying Mr. Radovan for his share.

Also troubling in Mr. Chaney's testimony is the fact that he claims he was kept in the dark. He wasn't aware of these cost overruns and financials were kept from him. That the third parties Penta and Thannisch, their conclusions or reports were tarnished because they were paid by the defendant, which is not true.

However, he admitted that he used the CR offices in the summer of the 2015 and he was there about once every other week for two or three days and he had talked to Mr. Radovan all the time. But despite that, he was clueless as to the cost overruns and that Mr. Radovan never provided him with any answers to his questions.

Once again, he testified to the Mosaic telephone call by a Howard and he called Mr. Chaney for the first time and told him, are you aware that -- this is Howard, are you aware of the $1 million break-up fee? Why would somebody from Mosaic call, why would this Howard call Mr. Chaney to discuss a term of an agreement which was shared by

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Mr. Radovan sometime before in the term sheet? Mr. Chaney testified he didn't know Mosaic, he didn't know Howard. This is troubling.

Also, Exhibit 129, which is an e-mail, which outlines the reasons why Mosaic is backing away, curiously, they are identical to Mr. Chaney's issues with Criswell Radovan and this Court cannot find that is coincidental.

On cross examination by Mr. Wolf, Mr. Chaney admitted to calling Mr. Marriner up in late July to do the right thing. Mr. Marriner hung up on him. The telephone call with Mr. Radovan -- in his telephone call with Mr. Marriner, Mr. Chaney called the bankruptcy a disaster, demanded that Mr. Marriner give back all of his commissions.

Mr. Little took Mr. Chaney on cross examination, talked about the Straight Shot suit, spoliation of evidence, and to some extent this Court understands that Mr. Summer was perhaps a rogue employee left over from the prior company acquired by Teleconnex and he worked out of his home.

But he also testified that Mosaic called the executive committee, because Mr. Radovan had not called back. However, that's contradicted by the voicemail in November. Mr. Chaney testified that the break-up fee was news to him, although he had been provided the term sheet prior to this.

Also, Mr. Chaney made what can only be described

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as disturbing comment regarding the Washoe County Sheriff's Office. He testified that the Ladera loan was in default and that the IMC members were only aware of a sheriffs sale of their membership interest the day before the sheriff was to execute on the membership interest. However, the sheriff held off executing on that judgment, because the Incline Village people were very important people in this community. This Court finds that testimony incredible.

Finally, Mr. Radovan took the stand in rebuttal and talked about the $480,000 in development fees. He never told Bruce Chaney that he took $480,000 in fees and that he never took $480,000 until development fees, that that was a double entry, which was subsequently corrected.

That any disbursement had to be approved by Hall and that Hall paid 90 percent of the disbursements and that they needed Hall's approval for any disbursement, significant disbursement. Mr. Radovan testified that he pursued funding until the bankruptcy and that Criswell -- that under any of these circumstances, any of these scenarios, Criswell Radovan would not be involved in the project, but that no one has come up with an option. The entire reason for the refinancing was the cost overruns.

He played and this is Exhibit 217, the e-mail -- excuse me -- the voicemail of Ethan Penner dated

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November 19th at 2:55 p.m., in which he stated there's a lot of enthusiasm regarding the deal and please get back to me, close quote. That Mr. Radovan was not an impediment to the Mosaic deal. That Mr. Chaney had offices in or had an office in Mr. Radovan's and Mr. Criswell's office in Napa. That they are the debtor in possession and they have audited financials and all the members received audited financials and Paul Jamison and Busick has changed sides. This Court finds that really has no bearing on this case, this Court's decision.

That Mosaic would have closed by year end and that all the parties would have been paid. The project would be up, operational, and a spectacular success.

All right. The Court adopts the findings of facts as set forth in the defendants' statements of Mr. Little and Mr. Wolf.

As to the first cause of action, breach of contract, Cal Neva LLC is in bankruptcy and under the protection of the bankruptcy court, therefore, the claim against Cal Neva Lodge LLC is dismissed.

Basic contracts principles on the breach of contract require for an enforceable contract, an offer and acceptance and a consideration. However, CR Cal Neva LLC and Criswell Radovan LLC are not parties to the contract of the

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