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
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sides and a lot of enthusiasm exists on our side to get this deal done for you. So I don't want to -- I want to make sure we don't lose that window of opportunity to kind of get it done in the time frame that you need. We also need to kind of budget our resources, not just capital, but time, so because there are other deals that also are aiming for a year-end close. So please get back to me, either cell (310) 702-0135 or the office, and I look forward to our partnership.)

Q. Sir, did you or Mr. Criswell stand in the way of Mosaic not closing by year end or early January?

A. Absolutely not.

THE CLERK: Your Honor, that would be, after it's transcribed, it will be Exhibit 217. You said that's admitted?

THE COURT: Yes.

THE CLERK: Thank you.

BY MR. LITTLE:

Q. I want to move on to another topic. You heard Mr. Chaney say that there was no detailed discussion of cost overruns at the July 2015 meeting. Do you recall hearing that?

A. Yes.

Q. In fact, the Court can interpret his testimony for

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himself, but his testimony changed between yesterday and today. What was discussed at that July 2015 meeting?

A. Basically, what the update was. You know, that was in the document. It was going through all the issues.

Q. Let's stop there. You say the document?

A. The update from Thannisch and Case.

Q. Exhibit 10?

A. And going through those issues, what they were, what we knew of the cost scenarios at that point, which was over five and definitely more coming. And that we were proposing to raise an additional nine, along with basically the 15 million mezzanine financing.

Q. Now, yesterday when Mr. Chaney was talking about only knowing 1 to $2 million costs in this July meeting when he was talking about for Starwood upgrades, was he confused about which meeting?

A. We did have a meeting in April, which sounded -- that's about the discussion we had at that point in time. We knew there were some scenarios out there and they were in the 1 to $2 million range that we were discussing at that point.

Q. You also heard him say many times that you kept him in the dark and you dodged his questions, is that true?

A. Absolutely not. He had an office ten feet away from my office in our office. He was there every other week

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at least from July -- June, July through early February.

Q. Did he come to you and express all the concerns you heard him say in his testimony?

A. No.

Q. Now, one last topic. You heard Mr. Yount say yesterday that someone on the unsecured creditors committee in the bankruptcy raised some issue about some $11.5 million. Are you involved in the bankruptcy?

A. Yes. I'm the debtor in possession.

Q. And do you have an attorney representing you?

A. Yes.

Q. Have you ever heard anything like that?

A. Absolutely not. And I actually after hearing that yesterday, I spoke to Peter Beneventi, who is our lead counsel, and asked if he's heard of anything of that type, and he confirmed he did not. And he actually sent me an e-mail confirming that as well with all the rest of the legal team that we've never seen or heard of anything of that type.

Q. Now, there was some discussion yesterday about not having audited financials until 2014 for some period of time. Do you have an explanation for that?

A. The 2014, it was a stub year, for lack of a better term. So we had the two entities, New Cal Neva Lodge and Cal Neva Lodge. Cal Neva Lodge came in as the equity holder.

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New Cal Neva Lodge was actually owned by Canyon Capital. So when we took them out in September -- I'm sorry. It was two months prior, July, we had this stub year. So both of those entities were functioning as one as far as financial records went. So we were not able to do fully audited, because we didn't own the entity for that year. So there was not a fully audited financials for New Cal Neva Lodge until early 2014 and that work had been done.

Q. Had there been audited financials performed by an outside auditor for 2015?

A. Yes.

Q. And had both of those years' financials been shared with investors?

A. Yes. Every single number they got us.

Q. And since those audited financials have been provided to investors, has there been any change in any of the way some of the investors have viewed or treated you?

A. Well, you know, I'd say after all of those issues kind of came out and went through that and then having Paul Jamieson, who is part of the IMC, and Phil Busick, they were very active. They actually sat in our offices, I think it was in March, for the better part of a week to ten days. And they took the attitude after that, they actually personally apologized to my entire staff for the way that they had been

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treating them and really kind of gone on our side and basically we all started working for the best interests of the project and get it done.

Q. We've gone over this, there's procedures under the operating agreement to remove CR Cal Neva as managers?

A. Certainly. We can be removed for no reason at all at any point in time.

Q. And to your knowledge, has there ever been any sort of a vote to remove you as managers?

A. No. Not that I'm aware of.

Q. Sir, just so we're clear, why do you believe this project did not get funded and open?

A. Well, I think that the EC committee had approved the Mosaic loan, and if not for, honestly, the IMC, Molly and Mr. Yount, I think that loan would have closed. There was absolutely no reason to have a pre meeting with them. Never heard of a lender doing anything of that type or anyone trying to do that.

This hotel should have opened on Father's Day. Given the closing after the delays, it might have taken a little longer, but we should have been open for the better part of a year now.

MR. LITTLE: Thank you. No further questions.

THE COURT: Mr. Campbell.

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CROSS EXAMINATION

BY MR. CAMPBELL:

Q. Mr. Radovan, you just said that the you believe the Mosaic loan would have closed. Do you have any documents at ally other than what we've seen in this trial where there was an indication that the Mosaic loan was going to close?

A. They wanted to move forward.

Q. Do you have any documents is the question?

A. No.

Q. And when you played the tape -- well, prior to playing the tape or the voicemail, you said that Mr. --

A. Penner.

Q. -- Penner. Your testimony was he had told you that it was going to close by year end?

A. Yes, sir.

Q. Could you play that tape again?

A. Uh-huh.

MR. CAMPBELL: Is that okay, your Honor?

(Voicemail played at this time.)

BY MR. CAMPBELL:

Q. Mr. Penner didn't say that your deal was going to close. He actually said that he has other deals that were going to close towards of end of the year, correct?

A. That is correct. He was referring to our deal in

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that same time frame.

Q. We heard his testimony, he said other deals, didn't he?

A. Uh-huh.

Q. Exhibit 216 was the sheet that was provided that has the book entry between New Cal Neva and Cal Neva?

A. Correct.

Q. Who prepared that?

A. That was done by Lisa Pacey.

Q. At your direction last night?

A. No.

Q. This was a document that was --

A. This has been around since September.

Q. And so it's my understanding that it was a problem with New Cal Neva versus Cal Neva, right?

A. There was a double entry, as I understand. I'm not an accountant, so I'm not going to -- but as I understand, it was a double entry where it showed the $480,000 in two different places.

Q. Isn't it true that the New Cal Neva and the Cal Neva, although separate entities, really kept a consolidated set of books, had one bank account?

A. Yes.

Q. There's no real separation on the money between

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the two entities?

A. There was originally and then once we closed, we always treated them the same.

Q. I just want to make sure again. You understand you're under oath today and you testified under oath that there is absolutely no truth, you've never heard anything in the bankruptcy proceeding about 11.5 million shortfall?

A. I never heard that, never.

Q. If there's a document out there that says that, you haven't seen it?

A. I haven't seen it and our attorney says he has not seen nor heard of it.

Q. And you don't believe you've ever been asked?

A. No.

Q. And likewise under oath, you said that every one of the bankruptcy plans did not include you?

A. That's correct.

Q. So if I pull all of the bankruptcy plans, I can see that you would have no involvement whatsoever in the bankruptcy plan?

A. That is correct.

Q. But in the Langham deal, you were involved in that?

A. The Langham, we would have stayed in. That was

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pre bankruptcy.

Q. But the Langham deal blew apart when the bankruptcy was filed?

A. Correct.

Q. One last area. I believe your testimony was that you were providing all the information to Brandon that they were requiring in the summary, fall of 2015?

A. Anything that he asked for, he would have gotten.

Q. You remember in the October time frame that there was an e-mail exchange between you and Troy Gillespie?

A. Yes.

Q. About request for documents?

A. Uh-huh. Yes.

Q. And didn't Mr. Gillespie request a litany of documents?

A. Yes.

Q. And didn't you admit in the e-mail that everything he asked for, you were at fault and had not provided those?

A. On -- I'm not sure which e-mail you're talking about. When he asked us for information, we got the information as quickly as we could.

Q. Okay. You're saying that in the summer when you met with Mr. Chaney, you were giving him all the information that he needed?

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MR. LITTLE: I don't think that's what he said.
THE WITNESS: Anything he asked for.
MR. LITTLE: Exactly.
BY MR. CAMPBELL:
Q. And did you admit to Mr. Gillespie that in fact or to the IMC group that you had breached the operating agreement by not providing documents?
A. That there were some -- we failed on some of the reporting in September, October. Well, it was October, so September.
Q. And you agree that that failure to provide documents was a breach of the operating agreement? You admit that?
A. It was -- he admitted that, we failed to do that.
Q. Did you admit it?
A. Not that I recall. He was telling me.
MR. CAMPBELL: I just want to use this to refresh his recollection here.
THE CLERK: Did you want that marked? Exhibit 79 marked for identification.
THE COURT: Mr. Little, any objection?
MR. LITTLE: No, your Honor.
THE COURT: 79 is admitted, Ms. Clerk.
BY MR. CAMPBELL:

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Q. Mr. Radovan, this is an e-mail between you and Troy Gillespie. It starts out with some bullet points. Do you see those?

A. Yes.

Q. And then it says at the very last page, IMC group informed Robert verbally that there had been breaches of the OA to date and your verbally acknowledged. And then Mr. Gillespie later asked you in the e-mail, I want you to confirm all of these points. And what do you say?

A. Right here it says, thanks for doing this. I think it reflects our conversation. I'd like to discuss the financing with you as we've done an extensive search. Do you have time in the next week, next day or so to discuss?

Q. So you didn't dispute any of the bullet points that was in Mr. Gillespie's e-mail below?

A. No.

Q. You agreed with them?

A. I suppose so.

MR. CAMPBELL: That's all I have.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. LITTLE:

Q. On page two of this document, this guys's name, Mr. Gillespie, he's telling you that as of late October that

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the cost overruns are $9 million so far, right, $5 million for fire code requirements, 3 million for surprises and accelerated aspects, 1 million for Starwood, 9 million total, right?

A. I don't have the document in front of me, but that sounds about right.

Q. These are his words, not yours, right?

A. Right. Correct.

Q. That's what you forecasted to investors way back in July, right?

A. Correct.

MR. LITTLE: That's all I have, your Honor.

THE COURT: Thank you, Mr. Radovan. You may step down. Let me get my notes up-to-speed. Thank you. Mr. Little.

MR. LITTLE: Your Honor, we rest.

THE COURT: All right. Thank you. Counsel, we'll convene at 9:00 for closing arguments, but beforehand I'd like to make a couple of personal observations, if I may, with your permission.

MR. LITTLE: Yes, your Honor.

THE COURT: These types of cases present unique challenges. They involve complex financial transactions, in this case, an iconic landmark in our nation's history. When

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I was a baby lawyer, I joined a large law firm and I was encouraged to meet one of the senior partners there by the name of Rex Jamieson. He was a legend in the Nevada Bar. And he had a few rules of practice that he wanted to impart upon the young lawyers under his tutelage, many of which I remember to this day.

And this was one of them. He said, in your career, you will handle cases in which there are thousands of dollars in dispute. Then as your career advances, you will handle cases in which tens of thousands of dollars and then hundreds of thousands of dollars and then millions of dollars will be in dispute. But never forget behind every one of these cases is a human being.

These cases present unique challenges to any trier of fact, because often times they involve very good people with the best of motives on all sides. It takes a very special kind of lawyer to handle these types of cases. We have about 11,000 licenses to practice law in the State of Nevada. Of those, probably 8,000 are in state. The largest law firm in our state is the Attorney General's Office. You add up the Clark County District Attorney's Office, the Washoe County District Attorney's Office, the Public Defender's Offices and all the other public offices, probably takes up about a third of all the licenses to practice law.

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But most lawyers don't practice in a court of law. Many of them are transactional lawyers, never step in a courtroom. Many of them do trusts and estates, taxes. Personal injury cases are more likely than not to settle.

So that leaves a very discreet subset of lawyers they call trial lawyers, not litigators, trial lawyers. These are lawyers who have acquired the skill in taking complex cases, synthesizing them down in readily understandable units, and presenting them to any trier of fact, bench or jury. We rely upon these lawyers. Our whole system of justice relies upon these lawyers.

I don't know as I sit here now how this case is going to resolve itself, but I want all sides to know that in this Court's opinion, they have been represented by some of the finest lawyers to come before this Court. And I thank them for their hard work and dedication on behalf of their respective clients.

All right. With that, ladies and gentlemen, I'll see you at 9:00 tomorrow morning. 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 7, 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 977, 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 12th day of October 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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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 **PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW, FOR RELIEF FROM JUDGMENT TO ALTER AND AMEND THE JUDGMENT TO AMEND THE FINDINGS AND FOR NEW TRIAL**

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INTRODUCTION

Judge Flanagan's ruling and award of damages was unmoored from the law, unsupported, and violated Mr. Yount's due process rights. Defendants conceded repeatedly during trial whenever Mr. Yount's counsel objected to the inquiry running afield that they did not plead a counterclaim. Mr. Yount could not have known he faced substantial money damages.

Defendants attempt to justify Judge Flanagan's capricious award by citing various procedural rules. But this case is not about an irreconcilable deficiency within the four corners of defendants' pleading. The procedural rules defendants' rely on to justify their damage award are designed to ameliorate technical errors in a complaint (especially in a notice pleading State). Defendants cannot point to a single instance that would demonstrate that they sought money damages prior to Judge Flanagan's unsupported award. Defendants blew the time to amend under 15(b) and pursuant to the Nevada Appellant Court precedent, failed to show good cause. Now defendants switch to a new theory and contend that 54(c) justifies their damage award. 54(c) is not an end run around 15(b) and due process. Defendants still must demonstrate that Mr. Yount impliedly consented to try a counterclaim and they have failed to do so.

Even if defendants had pled a counterclaim, moreover, the evidence presented at trial cannot support a judgment in favor of defendants or an award of money damages, as a matter of law. Thus, Mr. Yount is entitled amended findings and judgment in Mr. Yount's favor, or at least new trial.

I.

MR. YOUNT'S DUE PROCESS RIGHTS WERE VIOLATED

It is fundamental to the concept of due process that a party be given notice of the claims against him and notice of the specific relief which is sought. Defendants numerous concessions that they only pleaded an affirmative

defense could not have given Mr. Yount notice that millions of dollars were at stake. Even Rules 15(b), 54(c), and 8(c) require advance notice and express or implied consent. These procedural rules must be read together and cannot be used to circumvent due process. Mr. Yount did not consent to try any counterclaims and did not have any notice of a counterclaim against him. Defendants' representations to Mr. Yount that there was no counterclaim against him effectively informed him that his worst day in court would have been a mere dismissal of his claims.

A. Mr. Yount Did Not Consent to Try a Counterclaim

Defendants allege Mr. Yount expressly or impliedly consented to a counterclaim. The test for consent is whether the opposing party had a fair opportunity to defend and could have presented additional evidence had the substance of the amendment been known sooner. *Matter of Prescott*, 805 F.2d 719, 725 (7th Cir. 1986); *Evans Prod. Co. v. W. Am. Ins. Co.*, 736 F.2d 920, 924 (3d Cir. 1984) ("The principal test for prejudice in such situations is whether the opposing party was denied a fair opportunity to defend and to offer additional evidence on that different theory"); *see Born v. Monmouth Cnty. Corr. Inst.*, 458 Fed.Appx. 193, 199 (3d Cir.2012) (affirming the denial of a Rule 15(b) motion at trial to add a demand for punitive damages because it is "unfair and substantially prejudicial to permit the injection of a new and different prayer for relief after trial at the very end of the case") (citation omitted).

Mr. Yount did not have a fair opportunity to defend. Defendants represented to Mr. Yount and the Court, on at least three separate occasions that they did not bring any counterclaims, only an affirmative defense of unclean hands. Further, all of defendants proposed findings, evidence, and testimony related to that affirmative defense. The introduction of evidence related to the affirmative defense could not have given Mr. Yount notice of a counterclaim.

1. Mr. Yount Could Not Have Known that Money Damages Were At Stake

Defendants allege that Mr. Yount consented to a counterclaim of intentional interference with contractual relations because he failed to object to evidence regarding the Mosaic loan. However, defendants themselves expressly stated they had not brought any counterclaims.

> MR. CAMPBELL: Did you file a compulsory counterclaim against Mr. Yount from his lawsuit?
>
> RADOVAN: No.

(Hr'g Tr. 8/31/2017, at 512:18-20.)

Defense counsel further clarified that he was not pursuing any counterclaims but was instead pursuing the affirmative defense of unclean hands.

> MR. LITTLE: Sir, counsel asked you if you had filed a compulsory counterclaim against Mr. Yount in this litigation. You have through me in the pleading filed an affirmative defense for unclean hands, have you not?
>
> RADOVAN: Yes.

(Hr'g Tr. 8/31/2017, at 515:17-21).

Even in Mr. Little's closing arguments he represented to the Court he had not brought any counterclaims.

> MR. LITTLE: 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.

(Hr'g Tr. 9/08/2017, at 1054:16-19.)

It is essential that a litigant understand what is at stake. And here, when Mr. Yount questioned the purpose behind some of the evidence at trial, he was told by defendants that they only plead an affirmative defense. *See Taylor v. Mills*, 892 F. Supp. 2d 124, 138 (D.D.C. 2012) (holding no implied consent even though the defendant responded to the plaintiff's eleventh hour insertion of a hostile work environment claim because that response was cursory and always based on the premise that "Plaintiff did not plead a hostile work environment

claim.") Mr. Yount did not have notice that he could be liable for millions of dollars. Mr. Yount only had notice that his worst case scenario would be dismissal of his claims.

2. The Evidence Related to Defendants' Affirmative Defense Also Related to the Counterclaim

Defendants argue that Mr. Yount impliedly consented because he allowed evidence related to the Mosaic loan to be admitted. However, a defendant fails to give a plaintiff adequate notice of an implied claim when evidence relevant to the new claim is also relevant to the claim originally pled. *McLeod v. Stevens*, 617 F.2d 1038, 1040–41 (4th Cir. 1980) ("But all evidence of harm to McLeod was germane to the equitable relief she sought. Its admission without objection, therefore, cannot be treated as implied consent to the trial of the issue of damages"); *see also Addie v. Kjaer*, 737 F.3d 854, 867 (3d Cir. 2013); *In re Acequia, Inc.*, 34 F.3d 800, 814 (9th Cir. 1994) (quoting *Wesco Mfg. v. Tropical Attractions*, 833 F.2d 1484, 1487 (11th Cir. 1987) (the introduction of evidence arguably relevant to pleaded issues cannot serve to give a party fair notice that new issues entered the case). Implied consent is not established merely because evidence bearing directly on an unpleaded issue was introduced without objection; it must appear that the parties understood the evidence was aimed at the unpleaded issue. *Viox v. Weinberg*, 861 N.E.2d 909, 917 (Ohio Ct. App. 2006). Trial of unpleaded issues by implied consent is not lightly to be inferred under Rule 15(b). *Deere & Co. v. Johnson*, 271 F.3d 613, 622 (5th Cir. 2001).

Defendants spend pages of their motion discussing various trial exhibits, testimony, and proposed findings of fact that allegedly indicate Mr. Yount's consent to try a counterclaim. However, all of this evidence was relevant to defendants' affirmative defense of unclean hands. For instance, defendants allege Mr. Yount had notice of the counterclaim because defendants' proposed findings of fact filed before trial stated, "[t]he evidence shows that plaintiff

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conspired with other investors to interfere with the loan." However, defendants omit that this paragraph falls under the heading "Unclean Hands"[1] and that the same paragraph then indicates, "[t]hus, any alleged damages are offset by the significantly greater damages." Notably, defendants do not request damages but rather request that Mr. Yount's damage award be reduced or barred. A telling sign of an affirmative defense. *See Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764, 766 (2008) (unclean hands affirmative defense may bar relief); *Mona v. Mona Elec. Grp., Inc.*, 176 Md. App. 672, 717, 934 A.2d 450, 476 (2007) (unclean hands may reduce relief to the extent tainted by misconduct).

Thus, Mr. Yount could not have had advanced notice that he faced a counterclaim. The evidence that allegedly demonstrated Mr. Yount's unclean hands was also relevant to prove intentional interference with contractual relations. Accordingly, he could not have expressly[2] or impliedly consented to try the counterclaim.

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B. The Procedural Rules Defendants Rely on Are Not so Broad that a Court May Abandon the Due Process Requirement of Advanced Notice

Defendants contend that Rule 54(c) and 8(c) permit the Court to award damages. The purpose of these procedural rules are to correct technical

---

[1] Defendants' Proposed Findings of Fact And Conclusions of Law, 11:3-9

[2] Defendants also allege Mr. Yount expressly consented to try the counterclaim. However, express consent in generally found by stipulation or may be incorporated in a pretrial order. *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir. 1998) (express consent to trial of an unpleaded issue may be given by stipulation); *Casey v. Lewis*, 43 F.3d 1261, 1269 (9th Cir.1994), *rev'd on other grounds*, *Lewis v. Casey*, 518 U.S. 343, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) ("Express consent may be found in a stipulation or pre-trial order."); *Las Vegas Sands Corp. v. Suen*, No. 64594, 2016 WL 4076421, at *2 (Nev. July 22, 2016)(issue tried with implied consent when party did not object to evidence).Thus, Mr. Yount did not expressly consent to try a counterclaim.

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pleading errors and to permit a court to grant relief on what has been proven rather than what has been pleaded. Even these liberal rules have limits. The application of these rules does not mean that notice and trial by consent are unnecessary. Here, Mr. Yount would be unduly prejudiced and deprived of fair notice if the Court were to award relief under 54(c) or permit redesignation of defendants' affirmative defense as a counterclaim.

1. Rule 54(c) Requires Express or Implied Consent

Rule 54(c) applies where "the allegations properly pled and proven support a theory and type of relief not specified in [ ] demand for judgment." *Pinkley, Inc. v. City of Frederick, MD.*, 191 F.3d 394, 400 (4th Cir. 1999). The purpose of 54(c) is to allow the court to give relief without regard to the constraints of the antiquated and ridged forms of action and to eliminate the theory of pleading doctrine. *Baker v. John Morrell & Co.*, 266 F. Supp. 2d 909, 929 (N.D. Iowa 2003), *aff'd,* 382 F.3d 816 (8th Cir. 2004) (noting a party should recover on valid claim regardless of his counsel's failure to perceive the true basis of the claim at the pleading stage, provided always that a late shift in the thrust of the case will not prejudice the other party in maintaining his defense in the merits). Rule 54(c) has limits and "a party will not be given relief not specified in its complaint where the failure to ask for particular relief so prejudiced the opposing party that it would be unjust to grant such relief." *Cooper v. Gen. Am. Life Ins. Co.*, 827 F.3d 729, 732 (8th Cir. 2016). While Rule 54(c) permits relief on grounds not pleaded, that rule does not go so far as to authorize the granting of relief on issues neither raised nor tried. *Idaho Res., Inc. v. Freeport-McMoran Gold Co.*, 110 Nev. 459, 462, 874 P.2d 742, 744 (1994)(quoting *Combe v. Warren's Family Drive–Inns, Inc.*, 680 P.2d 733, 735–36 (Utah 1984).

The discretion afforded by Rule 54(c) assumes that the entitlement to relief not specifically pled has been tested adversarially, tried by consent or at

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least developed with meaningful notice. *Peterson v. Bell Helicopter Textron, Inc.* 806 F.3d 335 (5th. Cir. 2015)(noting that for the entirety of the litigation through final judgment the party believed it was defending only against a claim for money damages and it had no opportunity to effectively defend itself from injunction request.) Thus, the "relief may be based on a theory of recovery only if the theory was presented in the pleadings or tried with the express or implied consent of the parties." *Idaho Res.,* 110 Nev. at 462 (quoting *Evans Products Co. v. West American Ins. Co.,* 736 F.2d 920 (3d Cir.1984).

As discussed above, Mr. Yount did not expressly or impliedly consent to try a counterclaim. Mr. Yount was unaware that substantial money damages were at stake and it would be unjust to grant such relief. *See Gilbane Bldg. Co. v. Fed. Reserve Bank of Richmond, Charlotte Branch*, 80 F.3d 895, 901 (4th Cir. 1996) (holding that a substantial increase in the defendant's potential ultimate liability can constitute specific prejudice barring additional relief under Rule 54(c) and that the complaint gave no warning that successful prosecution of the action could result in an award of three times the actual damages).

2. Defendants Did Not Mistakenly Plead a Counterclaim as an Affirmative Defense

The purpose of Rule 8(c) is to correct technical pleading errors. *Gallagher's NYC Steakhouse Franchising, Inc. v. N.Y. Steakhouse of Tampa, Inc.*, 2011 WL 6034481, *9 (S.D. N.Y. 2011). Even under Rule 8(c) a party is entitled fair notice of the claims against him. *nVision Global Technology Solutions, Inc. v. Cardinal Health 5, LLC*, 2012 WL 3527376, *29 & n.35 (N.D. Ga. 2012) (noting that defendant may assert equitable estoppel counterclaim as affirmative defense because plaintiff had "fair notice" and failed to demonstrate "prejudice or any other grounds" for denying defendant's request).

Further, a party cannot seek the protection of the misdesignation provision when the Court can determine the claim was not mistakenly plead.

Glob. Healing Ctr., LP v. Powell, No. 4:10-CV-4790, 2012 WL 1709144, at *6 (S.D. Tex. May 15, 2012) (refusing to redesignate counterclaim as defense because original designation "was not a mistake," as made clear by request for affirmative relief and damages); *Las Vegas Dev. Grp., LLC v. SRMOF II 2012-1 Tr., US Bank Tr. Nat'l Ass'n*, No. 2;13-cv-02194, 2018 WL 1073385, at *3 (D. Nev. Feb. 26, 2018) (noting that the affirmative defense could be converted to a counterclaim because the answer contained a prayer for affirmative relief); *Textron Financial Corp. v. Ship and Sail, Inc.*, 2011 WL 344134, *6 (D.R.I. 2011)(noting that because the defendants alleged that they suffered monetary damages as a result of duress inflicted by the plaintiff, and duress is not recognized as an independent cause of action under Rhode Island law, the court treated the counterclaim as a defense raised in the pleading).

Here, defendants did not mistakenly plead a counterclaim as an affirmative defense. Defendants never prayed for money damages nor presented any evidence at trial to substantiate a damage award. While Rule 8(c) is designed to prevent success based on a technicality, it cannot be used to prejudice a party or deprive them of fair notice.

II.

THE EVIDENCE AT TRIAL DOES NOT SUPPORT A JUDGMENT OR AWARD IN FAVOR OF DEFENDANTS

Defendants contend that Mr. Yount is not entitled to amend the judgment or a new trial because the trial evidence supports a judgment in favor of defendants and the damage award. Judge Flanagan expressly applied the unclean hands doctrine. Defendants then jump to the conclusion that Judge Flanagan's finding of unclean hands is the same as a finding of intentional interference with contractual relations. Defendants cannot demonstrate that mere communication with members of the IMC gives rise to tortious conduct.

Further, the damages Judge Flanagan awarded were unsubstantiated. The evidence at trial cannot support the award in favor of defendants.

A. The Evidence Presented at Trial Does Not Support a Finding of Liability

1. A Finding of Unclean Hands Cannot Substantiate a Finding of Intentional Interference

Defendants allege Judge Flanagan's finding that Mr. Yount had unclean hands is the same as finding all six elements of intentional interference with contractual relations. To prove unclean hands a defendant need only show "misconduct" that is unjust or in bad faith. *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764, 766 (2008). The misconduct justifying unclean hands need not be of such a nature as to justify legal proceedings. *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 815, 65 S. Ct. 993, 997, 89 L. Ed. 1381 (1945).

Here, the defendants only needed to prove that some misconduct occurred *i.e.* that Mr. Yount conspired with other investors to interfere with the loan, not actual interference[3] with the contractual relations between Cal Neva and Mosaic. Indeed, the misconduct defendants needed to prove did not even need to give rise to civil or criminal liability.

Judge Flanagan expressly based his award on defendants' affirmative defense of unclean hands. Notably, he mentions the Nevada Supreme Court's two-factor analysis on unclean hands.

> THE COURT: 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

[3] To prove a claim of intentional interference with contractual relations a party must show proof of (1) the existence of a valid contract, (2) the defendant's awareness of the contract, (3) intentional acts intended to disrupt the contractual relationship, (4) actual disruption of the contract and, (5) resulting damage. *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989).

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> misconduct at issue; and, two, the seriousness of the harm caused by the misconduct against the granting of the requested relief.

(Hr'g Tr. 9/08/2017, at 1139:13-19.)The standard for unclean hands is amorphous and a much lower bar than the standard for intentional interference with contractual relations. Accordingly, a finding of unclean hands is not the same as finding that all six elements of intentional interference with contractual relations have been met.

2. Defendants Cannot Prove Mr. Yount Acted Intentionally to Interfere with the Mosaic Loan

Defendants do not cite any authority to support their contention that being in the communication loop with the IMC is an "intentional act." The heart of an intentional interference with contractual relations action is the intentional act that was designed to disrupt a contractual relationship. *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 275, 71 P.3d 1264, 1268 (2003). It is not enough that the actor intended to perform the acts that caused the result—the actor must have intended to cause the result itself. *Seaman's Direct Buying Serv., Inc. v. Standard Oil Co.,* 36 Cal. 3d 752, 765, 686 P.2d 1158, 1164 (1984), overruled on other grounds by *Freeman & Mills, Inc. v. Belcher Oil Co.*, 11 Cal. 4th 85, 900 P.2d 669 (1995).

Defendants criticize Mr. Yount for not doing enough to prevent the Mosaic meeting.[4] There was no action by Mr. Yount that could substantiate a claim for intentional interference. Mr. Yount was not a member of the EC,[5] he did not attend the meeting between the EC and Mosaic, and he never communicated directly with Mosaic. Defendants "solid evidence" of Mr. Yount's

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[4] Knowledge that a tort was going to be committed and the "failure" to prevent it also cannot give rise to tortious conduct. *Wetherton v. Growers Farm Labor Assn.*, 275 Cal.App.2d 168, 176 (1969), disapproved of on other grounds in *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 521 fn.10, 869 P.2d 454, 487 (1994)

[5] Operating Agreement Schedule 8.4

interference, simple e-mail exchanges[6] between Mr. Yount and the IMC, cannot substantiate their claim.

B. Defendants' Damage Award was Unsupported

1. Defendants' Single Unsupported Statement Cannot Substantiate the Damage Award

Defendants argue the trial evidence supports defendants' compensatory damage award and yet the only "evidence" defendants can point to throughout a seven-day trial is a single sentence. One unsupported statement, where defendant seemingly pulls a figure out of thin air, cannot support a damage award. Although the amount of damages need not be mathematically certain, the injured party is required to establish a reasonable basis for ascertaining their damages. *Cent. Bit Supply, Inc. v. Waldrop Drilling & Pump, Inc.*, 102 Nev. 139, 142, 717 P.2d 35, 37 (1986). Radovan did not provide any reasonable basis as to how or why he came up with a 1.6 million dollar figure. He also provides no reasonable basis as to why that figure should apply equally to dissimilarly situated defendants. [7]

2. The Trial Evidence Does Not Support an Award of Management Fees or Development Fees

Defendants also contend that the basis for their lost management fees are "clearly substantiated by the record." As set out more fully in Mr. Yount's Opposition to Defendants' Motion to Amend the Judgment, the financial pro

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[6] Indeed the Nevada Supreme Court has noted that an e-mail exchange cannot even give rise to a civil aiding and abetting claim. *See LVRC Holdings, LLC v. Brekka*, 128 Nev. 915, n.5 , 381 P.3d 636 (2012)(affirming district court's dismissal of civil aiding and abetting claim because the court reasoned receipt of e-mails from was not evidence of substantial assistance, encouragement, or contribution")

[7] *See Also Nev. Cement Co. v. Lemler*, 89 Nev. 447, 450-51, 514 P.2d 1180, 1182 (1973)(noting that since the purpose of a general damage award is to compensate the aggrieved party for damage actually sustained, an identical award to multiple plaintiffs who are dissimilarly situated is erroneous on its face.)

forma, is hearsay[8] and speculative. Evidence must be relevant and admissible to support a party's claim. NRS § 48.015; *Burton v. State,* 84 Nev. 191, 194, 437 P.2d 861, 863 (1968).[9] Defendants' argue, that the financial pro forma substantively proves the actual value of the future lost management fees. For this purpose, the chart is hearsay and does not meet any of the hearsay exceptions. NRS 51.035; NRS 51.135. Defendants cannot use inadmissible hearsay to substantiate their damages.

Furthermore, lost future management fees by their very nature are speculative and therefore to be awardable they must be well substantiated. *Anglo-Iberia Underwriting Mgmt. Co. v. Lodderhose*, 282 F. Supp. 2d 126, 129 (S.D.N.Y. 2003), *as amended* (Oct. 8, 2003). This is particularly true where the damaged party claims lost profits or management fees of a new business. *McDevitt & St. Co. v. Marriott Corp.*, 713 F. Supp. 906, 932 (E.D. Va. 1989), *aff'd in part, rev'd in part on other grounds,* 911 F.2d 723 (4th Cir. 1990)(holding the calculations upon which the projected management fee claim is based—the new hotel's projected revenues and operating profits—are simply too speculative to permit recovery).

Here, calculating defendants' lost future management fees requires a calculation of the Cal Neva's anticipated profits and gross revenues. *McDevitt*, 713 F. Supp. at 932. Defendants did not meet their burden and therefore the trial record cannot support defendants' damage award.

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[8] The financial pro forma was relevant and admissible only to the question of what Mr. Yount reviewed prior to investing, *regardless of whether its contents were accurate*. It is squarely within the record that Mr. Tratner assessed the entire pro forma to determine whether the investment was reasonable overall, not whether the Cal Neva's projections were reasonable.

[9] Defendants Opposition pg. 25

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CONCLUSION

The Court committed errors of law that materially affected the outcome and violated Mr. Yount's due process rights. This Court should grant Mr. Yount's motion to correct the manifest injustice.

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

Dated this 15th day of June, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Daniel F. Polsenberg*

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 2018, I served the foregoing "Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motion for Judgment as a Matter of Law, for Relief from Judgment, to Alter and Amend the Judgment, to Amend the Findings and for New Trial" on counsel by the Court's electronic filing system to the persons and addresses listed below:

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INDEX OF EXHIBITS

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EXHIBIT 1

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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.	)	Case No. CV16-00767
	)	
CRISWELL RADOVAN, et al.,	)	Department 7
	)	
Defendants.	)	
_____	)	

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TRANSCRIPT OF PROCEEDINGS

TRIAL VOLUME III

August 31, 2017

9:00 a.m.

Reno, Nevada

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

004283

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3800 Howard Hughes Parkway
Las Vegas, Nevada

ANDREW WOLF, ESQ.
Attorney at Law
264 Village Blvd.
Incline Village, Nevada

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A. Yes.
Q. -- chatter back and forth?
A. Yes.
Q. With the Incline Men's Group?
A. Yes.
Q. Mr. Yount, Ms. Kingston?
A. Yes.
Q. That's where you're getting the impression that somehow Mr. Yount interfered with the Mosaic loan?
A. That he's part of the group doing it, yes.
Q. And you're claiming that somehow Mr. Yount and the IMC are responsible for you and Mr. Criswell losing millions of dollars, correct?
A. Given that loan being tanked, that is -- I'm just talking about what it's cost us. The rest of the investor group, that could -- you know, we'll see where that ends up, but it's a substantial, substantial amount.
Q. Did you file a compulsory counterclaim against Mr. Yount from his lawsuit?
A. No.
Q. Did you file any lawsuit against the IMC or any of the other investors for interfering with that loan?
A. No. The outcome is not yet determined.
Q. You said the winery sale with Brandon Chaney, and

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already explained this in your testimony, but the delay that Mosaic is talking about here, is that something that is attributable to you or Mr. Criswell?

A. No. We were waiting for approval. You know, as we said in the November meeting, I was given direction, go do X, Y and Z with them. I met with Mosaic and then they agreed to those aspects. We took it back to the committee, tried to do that on the 12th, and nobody wanted to -- it didn't even get to the point of being able to ask for the approval, honestly.

There was too much argument over we should be raising equity, we should be raising this, raising that, do a capital call, these types of things. By the time we got around to the January 27th, we had a structured meeting and asked for the approval of the loan and which was unanimously given.

Q. Sir, counsel asked you if you had filed a compulsory counterclaim against Mr. Yount in this litigation. You have through me in the pleading filed an affirmative defense for unclean hands, have you not?

A. Yes.

Q. So look at Exhibit 149. This is the January third party report for Hall. Go to page three again.

A. Okay.

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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 August 31, 2017, at the hour of TIME, and took verbatim stenotype notes of the proceedings had upon the trial in the matter of GEORGE S. YOUNT, Plaintiff, vs. CRISWELL RADOVAN, et al, Defendant, 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 619, 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 28th day of September 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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Jacqueline Bryant
Clerk of the Court
Transaction # 6731866 : japarici

EXHIBIT 2

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EXHIBIT 2

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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.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

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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:

For the Plaintiff:

DOWNY BRAND
By: RICHARD CAMPBELL, ESQ.
100 W. Liberty
Reno, Nevada

For the Defendant:

HOWARD & HOWARD
By: MARTIN LITTLE, ESQ.
3800 Howard Hughes Parkway
Las Vegas, Nevada

ANDREW WOLF, ESQ.
Attorney at law
264 Village Blvd.
Incline Village, Nevada

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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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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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Jacqueline Bryant
Clerk of the Court
Transaction # 6731866 : japarici

EXHIBIT 3

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EXHIBIT 3

CAL NEVA LODGE, LLC

AMENDED AND RESTATED OPERATING AGREEMENT

Dated: May 1, 2014

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CAL NEVA LODGE, LLC

AMENDED AND RESTATED OPERATING AGREEMENT

This Amended and Restated Operating Agreement (this "Agreement") is made and entered into as of the 1st day of May, 2014 (the "Effective Date"), by and among the parties on the signature pages of this Agreement. Such parties and their respective permitted assignees are herein sometimes referred to individually as a "Member" and collectively as the "Members". All references to the Members will also include their successors and assigns pursuant to Article 12.

BACKGROUND FACTS:

A. On March 13, 2013, CR Cal Neva, LLC, a Nevada limited liability company ("CR"), formed a limited liability company named Cal Neva Lodge, LLC (the "Company") by filing certain Articles of Organization with the Secretary of State of the State of Nevada pursuant to the limited liability company laws of the State of Nevada and entering into an Operating Agreement for the Company.

B. The Members desire to amend and restate the existing Operating Agreement of the Company and admit new Members on the terms set forth herein.

C. Each Member represents that it has sufficient right and authority, without violating or breaching any provisions of law or contract, to execute this Agreement and is not acting on behalf of any undisclosed or partially disclosed principal by such action.

NOW, THEREFORE, in consideration of agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

ARTICLE 1
DEFINITIONS

As used in this Agreement and the attached Exhibits, the following capitalized terms have the meanings stated below and include the plural as well as the singular number.

1.1 "**Accountants**" means the independent certified public accountants selected by the Company.

1.2 "**Act**" means the limited liability company law of the State of Nevada, and all amendments to the Act.

1.3 "**Act of Insolvency**" will be deemed to have occurred if (a) a Member files in any court, in accordance with any statute of the United States or of any state, a petition in bankruptcy or insolvency, or files for the appointment of a receiver or trustee of all or a portion of the Member's property, or makes an assignment for the benefit of creditors or admits in writing its/his/her inability to pay its/his/her debts generally as they become due; or (b) there is filed

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against a Member in any court in accordance with any statute of the United States or of any state, a petition in bankruptcy or insolvency, or for reorganization, or for appointment of a receiver or a trustee of all or a portion of the Member's property, and any order or decree is not vacated, or such appointment is not revoked or terminated and such receiver or trustee discharged, within ninety (90) days after entry or appointment, as the case may be.

1.4 "**Additional Capital Contribution**" means, with respect to the Members, any amounts the Members mutually agree to contribute to the Company as capital contributions pursuant to Section 4.4.

1.5 "**Additional Member**" means any person or entity who acquires an Interest in the Company after the date hereof.

1.6 "**Adjusted Capital Account**" means, with respect to any Member as of the end of any fiscal year, such Member's Capital Account reduced by those anticipated allocations, adjustments and distributions described in Section 1.704-1(b)(2)(ii)(d)(4)-(6) of the Treasury Regulations and increased by an amount that such Member would be obligated to restore pursuant to this Agreement or would be deemed obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations.

1.7 "**Affiliate**" means, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such Person, (iii) any officer, director or general partner of such Person, or (iv) any Person who is an officer, director, general partner, trustee or holder of ten percent (10%) or more of the voting securities of any Person described in clauses (i) through (iii) of this sentence.

1.8 "**Agreement**" means this Amended and Restated Operating Agreement as originally executed and as subsequently amended or supplemented in accordance with the terms herein.

1.9 "**Allocation Regulations**" means Section 1.704-1 and 1.704-2 of the Treasury Regulations as such regulations may be amended and in effect from time to time (whether Temporary or Final form) and any corresponding provisions of succeeding Treasury Regulations.

1.10 "**Articles**" means the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State of the State of Nevada.

1.11 "**Business Day**" means any day that the national banks in Reno, Nevada, are open for business.

1.12 "**Capital Account**" means, with respect to any Member, the Capital Account maintained for such Person in accordance with the following provisions:

1.12.1 To each Member's Capital Account there will be credited such Member's Capital Contributions and Additional Capital Contributions (if any), such Member's distributive

share of Profits and the amount of Company liabilities that are assumed by such Member or that are secured by any Company Assets distributed to such Member.

1.12.2 To each Member's Capital Account there will be debited the amount of cash and the Gross Asset Value of any Company Assets distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

In the event any Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee will succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

In the event the Gross Asset Values of Company Assets are adjusted pursuant to subsection 1.25.2 hereof, the Capital Accounts of all Members will be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the Allocation Regulations and will be interpreted and applied in a manner consistent with such Allocation Regulations. In the event the Manager determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with the Allocation Regulations, the Manager may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Section 13.4 hereof upon the dissolution of the Company. The Manager will adjust the amounts debited or credited to Capital Accounts with respect to any property contributed to the Company by or distributed to a Member and any liabilities that are secured by such contributed or distributed property or that are assumed by the Company or the Member, in the event the Manager determines such adjustments are necessary or appropriate pursuant to the Allocation Regulations. The Manager also will make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Allocation Regulations.

1.13 **"Capital Contribution"** means the total amount of cash or other property contributed to the Company by a Member as capital in accordance with this Agreement; such term includes the Capital Contributions described in Sections 4.2, 4.3 and 4.4. The total amount of Capital Contributions made by the Preferred Members is sometimes referred to herein as the "Preferred Equity."

1.14 **"Code"** means the Internal Revenue Code of 1986, as it may be amended, or any subsequent federal law concerning income tax that is enacted in substitution for, or that corresponds with, such Code.

1.15 **"Company"** means Cal Neva Lodge, LLC.

1.16 **"Company Assets"** means any and all property contributed to or acquired by the Company in accordance with this Agreement, including but not limited to the Property or an interest in Seller, and both tangible and intangible property.

1.17 "**Company Minimum Gain**" has the meaning set forth in Section 1.704-2(d) of the Treasury Regulations for Partnership minimum gain.

1.18 "**Construction Contract**" means the contract with the Contractor to construct the Project on the Property, as approved by the Executive Committee.

1.19 "**Construction Lender**" means the lender who makes a construction loan/mini-permanent loan for construction of the Project.

1.20 "**Construction Loan**" means the construction loan/mini-permanent loan made by the Construction Lender to construct the Project on terms approved by the Executive Committee.

1.21 "**Contractor**" means the general contractor reasonably approved by the Executive Committee engaged by the Company for construction of the Project.

1.22 "**Depreciation**" means, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation will be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, Depreciation will be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

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1.23 "**Fiscal Year**" or "**Year**" means a calendar year (or portion thereof) ending on December 31 of such year.

1.24 "**Governmental Authorities**" means any federal, state, county, municipal or other governmental department or entity, or any authority, commission, board, bureau, court or agency having jurisdiction over the Company Assets, or any portion thereof, and whose approval is necessary for the development of the Property.

1.25 "**Gross Asset Value**" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

1.25.1 The initial Gross Asset Value of any asset contributed by a Member to the Company will be the gross fair market value of such asset, as determined by the contributing Member and the Manager;

1.25.2 The Gross Asset Values of all Company assets will be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a "de minimis" Capital Contribution; (ii) the distribution by the Company to a Member of more than a "de minimis" amount of Company Assets other than money as consideration for an interest in the Company; and (iii) the liquidation of the Company

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within the meaning of the Allocation Regulations; provided, however, that adjustments pursuant to clauses (i) and (ii) above will be made only if the Manager reasonably determine that such adjustments are necessary and appropriate to reflect the relative economic interests of the Members in the Company; and

1.25.3 If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection 1.25.1 or 1.25.2, such Gross Asset Value will thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

1.26 "**Initial Capital Contributions**" shall have the meaning given in Section 4.2 hereof.

1.27 "**Interest**" shall mean a member's entire ownership interest in the Company, including without limitation, its right to distributions of Net Cash from Operations and Net Cash from Sales or Refinancings.

1.28 "**Lender**" means the Construction Lender, and any third party lender(s) subsequently refinancing such indebtedness.

1.29 "**Manager**" means the one (1) Person, who need not be a Member, to whom all or part of the management duties of the Company's business is delegated as provided in Article 9. The initial Manager shall be CR.

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1.30 "**Member**" means each of the parties who has executed this Agreement and each of the parties who may hereafter become Additional or Substitute Members as provided in the Articles and in this Agreement.

1.31 "**Member Minimum Gain**" means an amount with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt was treated as Nonrecourse Liability, determined in accordance with Section 1.704-2(g)(3) of the Treasury Regulations.

1.32 "**Member Nonrecourse Debt**" has the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations for partner nonrecourse debt.

1.33 "**Member Nonrecourse Deductions**" has the meaning set forth in Section 1.7042(i)(2) of the Treasury Regulations for partner nonrecourse deductions. The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Fiscal Year of the Company equals the excess, if any, of the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during such Fiscal Year over the aggregate amount of any distributions during such Fiscal Year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent such distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt determined in accordance with Section 1.704-2(i)(2) of the Treasury Regulations.

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1.34 "**Net Cash From Operations**" means the gross cash proceeds from the Company operations less the portion thereof used to pay or establish reserves for all Company expenses in an amount set forth in the Operating Budget, reserves for property taxes and insurance, interest and principal payments on third party indebtedness, Lender required reserves (including interest and operating expenses), capital improvements, replacements, contingencies, working capital, and other cash requirements, all as set out in the Operating Budget or the Project Budget or as may otherwise be determined by the Manager. "Net Cash From Operations" will not be reduced by depreciation, amortization, cost recovery deductions or similar allowances.

1.35 "**Net Cash From Sales or Financings**" means the net cash proceeds from all sales and other dispositions (other than sales and dispositions of personal property in the ordinary course of business), and all financings of the Property after the repayment of third party indebtedness required in connection with such sale, disposition or financing, less any portion thereof used to pay established reserves for Company obligations and expenses in an amount to be determined by the Manager, but, which shall include reserves for property taxes and insurance, interest and principal payments on third party indebtedness, Lender required reserves for property taxes and insurance, interest and principal payments on third party indebtedness, Lender required reserves (including interest and operating expenses), capital improvements, replacements, contingencies, working capital, and other cash requirements, all as set out in the Operating Budget or Project Budget. "Net Cash From Sales or Financings" will include all principal and interest payments with respect to any note or other obligation received by the Company in connection with sales and other dispositions (other than in the ordinary course of business) of the Property.

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1.36 "**Nonrecourse Deductions**" has the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations. The amount of Nonrecourse Deductions for a Fiscal Year equals the net increase, if any, in the amount of Company Minimum Gain during that Fiscal Year, determined according to the provisions of Section 1.704-2(b)(1) of the Treasury Regulations.

1.37 "**Nonrecourse Liability**" has the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.

1.38 "**Operating Budget**" means the annual operating budget for the Property prepared by the Manager and reasonably approved by the Executive Committee. The Operating Budget for each fiscal year shall be prepared by the Manager and submitted to the Executive Committee for approval no later than November 1 of the preceding fiscal year. In the event that the Executive Committee fails to timely approve an Operating Budget for any given year, the Operating Budget for the preceding year shall remain in effect until the new Operating Budget is approved.

1.39 "**Percentage Interest**" means the percentage of the Company owned by each Member as set forth in Schedule 4.1 attached hereto. The Manager shall cause Schedule 4.1 to be amended and updated to reflect the aggregate Percentage Interests of the Members whenever there are transfers of Interests, Capital Contributions or other events that cause the Percentage Interests to Change.

1.40 "**Person**" means a natural person, corporation, trust, partnership, joint venture, association or other business or other legal entity.

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1.41 **"Preferred Members"** means those Members labeled as such on Schedule 4.1 attached hereto.

1.42 **"Preferred Return"** means a simple annual return on the amount invested by the Preferred Members at the rate of ten percent (10%) per annum from the date the Company receives such investment from a Preferred Member. The Preferred Return shall be cumulative and non-compounded and shall be paid quarterly as available out of Net Cash from Operations and Net Cash from Sales or Financings.

1.43 **"Profits"** and **"Losses"** means, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) will be included in taxable income or loss), with the following adjustments:

1.43.1 any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section 1.43 will be added to such taxable income or loss;

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1.43.2 any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705 (a)(2)(B) expenditures pursuant to Section 1. 704- 1 (b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits or Losses pursuant to this subsection 1.44 will be subtracted from such taxable income or loss;

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1.43.3 any gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

1.43.4 in lieu of the depreciation, amortization and other cost recovery deductions taken in computing such taxable income or loss, there will be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with Section 1.22; and

1.43.5 any items of income, gain, loss or deduction specifically allocated pursuant to Sections 5.2 and 5.3 will not be taken into account in determining Profits or Losses.

1.44 **"Project"** has the meaning set forth in Section 3.1.

1.45 **"Project Budget"** means the budget to be prepared by the Manager and approved by the Executive Committee for the development and construction of the Project. Such budget shall be developed in collaboration with the design and construction team selected to work on the Project.

1.46 **"Property"** means the Cal Neva Resort & Spa located at 2 Stateline Road, Crystal Bay, Nevada 89402, together with any and all land and improvements owned in connection therewith.

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1.47 "**Seller**" means Canpartners Realty Holding Company IV Cal-Neva LLC.

1.48 "**Sponsor Member**" means CR.

1.49 "**Substitute Member**" means any transferee of a Member's Interest who is admitted as a Member in the Company pursuant to Article 12.

1.50 "**Treasury Regulations**" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

ARTICLE 2
ORGANIZATION AND TERM

2.1 **Formation.** The Members formed the Company under and pursuant to the provisions of the Act by filing the Articles on March 13, 2013. The rights and liabilities of the Members will be as provided under the Act, the Articles and this Agreement. The fact that the Articles are on file in the office of the Secretary of State, State of Nevada, will constitute notice that the Company is a limited liability company.

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In order to maintain the Company as a limited liability company under the laws of the State of Nevada, the Company will from time to time take appropriate action, including the preparation and filing of such amendments to the Articles and such other fictitious name certificates, documents, instruments and publications as may be required by law, including, without limitation, action to reflect:

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2.1.1 a change in the Company name;

2.1.2 a correction of false or erroneous statements in the Articles or the desire of the Members to make a change in any statement therein in order that it will accurately represent the agreement among the Members; or

2.1.3 a change in the time for dissolution of the Company as stated in the Articles and in this Agreement.

2.2 **Name.** The business and affairs of the Company will be conducted solely under the name of "Cal Neva Lodge, LLC". The Company will execute and file all assumed or fictitious name certificates required to be filed in the applicable public records of the county in which the Property is located or in any other county in which the Company is doing business.

2.3 **Term.** The term of the Company commenced on March 13, 2013, and will continue in full force and effect until the earliest of the following:

2.3.1 December 31, 2063;

2.3.2 dissolution of the Company approved as a Major Decision pursuant to Section 8.3.2; or

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2.3.3. entry of a decree of judicial dissolution.

2.4 **Registered Agent and Office.** The Company's registered agent and office in Nevada will be Capitol Corporate Services, Inc., 202 S. Minnesota Street, Carson City, Nevada 89703. At any time, the Company may designate another registered agent and/or office.

2.5 **Principal Place of Business.** The principal place of business of the Company will be 2 Stateline Road, Crystal Bay, Nevada 89703. At any time, the Company may establish additional offices. The following items will at all times be maintained at the Company's principal office:

2.5.1 a current list of the full name and last known business, residence or mailing address of each Member and each Manager, both past and present;

2.5.2 a copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

2.5.3 copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;

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2.5.4 copies of this Agreement with all amendments and copies of any writings permitted or required under the Act regarding the obligation of a Member to perform any enforceable promise to contribute cash or property or to perform services as consideration for such Member's Capital Contribution;

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2.5.5 minutes of every annual and special meeting and any meeting ordered pursuant to Section 10.4;

2.5.6 unless contained in this Agreement, a statement prepared and certified as accurate by the Manager of the Company which describes:

(a) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each Member and which each Member has agreed to contribute in the future;

(b) the times at which or events on the happening of which any additional contributions agreed to be made by each Member are to be made;

(c) if agreed upon, the time at which or the events on the happening of which a Member may terminate his membership in the Company and the amount of, or the method of determining, the distribution to which he may be entitled respecting his membership interests and the terms and conditions of the termination and distribution;

(d) any right of a Member to receive distributions which include a return of all or any part of a Member's contribution;

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2.5.7 any written consents obtained from Members pursuant to the Act regarding action taken by Members without a meeting.

Such records are subject to inspection and copying at the reasonable request and at the expense of any Member during ordinary business hours.

2.6 **Other Instruments**. Each Member hereby agrees to execute and deliver to the Company within five (5) days after receipt of a written request therefor, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Company deems necessary, useful or appropriate to comply with any laws, rules or regulations as may be necessary to enable the Company to fulfill its responsibilities under this Agreement.

ARTICLE 3
PURPOSES AND POWERS OF THE COMPANY

3.1 **Purposes**. The overall business, purpose and scope of the Company is to acquire all membership interests of Seller in New Cal-Neva Lodge, LLC, a Nevada limited liability company ("New Cal Neva"). The Company shall purchase the interest of Seller in New Cal Neva with a portion of the Capital Contributions to be raised by the Company. New Cal Neva owns the Property, and it intends to rehabilitate and redevelop the Cal Neva Resort & Spa (the "Project"), and thereafter hold, mortgage, manage, maintain, lease, sell and otherwise use the Project for the production of income and profit. The Company shall serve as the managing member of New Cal Neva.

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3.2 **Authority of Company**. In furtherance of its purpose, but consistent with and subject to the provisions of this Agreement and all applicable laws, the Company is empowered and authorized to do any and all acts and things incidental to, or necessary, appropriate, proper, advisable, or convenient for, the furtherance and accomplishment of the purposes described in Section 3.1 and for the protection and benefit of the Company, including, without limitation:

3.2.1 acquiring fee and leasehold estates in real and personal property and the rights therein or appurtenant thereto, necessary, appropriate or incidental to the ownership, management and maintenance of the Property, including real property adjacent to the Property;

3.2.2 entering into, performing and carrying out contracts and agreements of any kind, and entering into any kind of activity, in connection with, or incidental to, the accomplishment of the purposes of the Company;

3.2.3 securing approvals, permits and consents necessary, appropriate or incidental to the accomplishment of the purposes of the Company, including operating a casino on the Property;

3.2.4 developing and constructing improvements to the Property and dedicating or otherwise conveying portions of the Company Assets as may further the purposes of the Company;

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3.2.5 borrowing money and issuing evidences of indebtedness in furtherance of the Company business and securing any Company indebtedness by mortgage, pledge, security interest or other lien, and otherwise financing or refinancing (defined for purposes of this Agreement to include recast, modified, extended or increased) the Project;

3.2.6 leasing, mortgaging, selling or otherwise disposing of all or any part of the Property for cash, stock, other securities or other property, or any combination thereof;

3.2.7 entering into partnerships, ventures and other business arrangements, and contributing all or any portion of the Company Assets as consideration for same;

3.2.8 to sue and be sued, complain and defend, and participate in administrative or other proceedings, in its name;

3.2.9 to appoint agents of the Company, and define their duties and fix their compensation, if any;

3.2.10 to indemnify a Member or Manager or former Member or Manager, and to make any other indemnification that is authorized by the Articles or by this Agreement in accordance with the Act;

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3.2.11 at the end of the term hereof as provided in Section 2.3, to cease its activities and surrender its certificate of organization;

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3.2.12 to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Company is organized;

3.2.13 to become a member of a general partnership, limited partnership, joint venture or similar association or any other limited liability company; and

3.2.14 doing and performing all other acts and things which may be necessary, appropriate or incidental to the carrying out of the business and purposes of the Company.

3.3 **Certain Transactions**. The Company is expressly permitted in the normal course of its business to enter into transactions with any or all Members or with any Affiliate of any or all Members provided that the Member seeking such a related party transaction receives the prior written approval of the price and other terms of such transaction by all members of the Executive Committee who are not involved in the proposed transaction. Any executory contracts between the Company and Affiliates must be approved by the unanimous vote of the Executive Committee. All Members hereby acknowledge their approval of the Development Services Agreement described in Section 7.4 herein.

3.4 **Adjacent Property**. No Member and no Affiliate of any Member may acquire real property adjacent to the Property unless the Company has been offered the opportunity to acquire such Property and has elected in writing not to do so.

3.5 **Future Phases**. The Members agree that the current definition of the "Project" herein refers to the initial phase involving the repair and rehabilitation of the existing main hotel

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building, tower and several ancillary buildings, including the spa, terrace units and chalet units. It is anticipated that the Company may wish to convert the cabin units on the Property into condo hotel units as part of phase two work ("Phase Two"), if the necessary entitlements for such work can be obtained. If Phase Two is pursued by the Company, the existing Members shall have the right of first offer to provide the necessary equity for Phase Two in the same proportions as the Capital Contributions made by each Member for the phase one work on the Property. Any equity requested of the Members for Phase Two would not be considered to be requested pursuant to a capital call in accordance with Section 4.4. If the Members do not wish to make equity contributions required for Phase Two, they agree to cooperate in the search to find new sources of equity required for such work, as well as new lender financing. Any Capital Contributions that the existing Members elect to make for Phase Two, if any, shall be treated the same as the existing Capital Contributions pursuant to Section 6.2 herein. If it is necessary to bring in new Members to make such Capital Contributions for Phase Two, such admission of new Members shall be in accordance with an amendment to this Agreement approved as a Major Decision pursuant to Section 8.3.12. Development Fees shall be payable to Developer with respect to Phase Two in accordance with Section 7.4 hereof and the Development Services Agreement referenced therein.

ARTICLE 4
MEMBERS, DUTIES, CAPITAL CONTRIBUTIONS AND LOANS

4.1 **Members; Obligation to Update.** All Members of the Company, past and present, their last known business, residence or mailing address, and their Percentage Interests in the Company will be listed on the attached Schedule 4.1. The Manager will be required to update Schedule 4.1 from time to time as necessary to accurately reflect the information therein.

4.2 **Initial Capital Contributions.** The Initial Capital Contributions of the Members are set forth on the attached Schedule 4.2, and the Company acknowledges receipt of such Initial Capital Contributions for the purposes set forth on such Schedule.

4.3 **Future Targeted Capital Contributions.** The Company has raised $8,500,000.00 in Initial Capital Contributions as of the date hereof. The Company desires to raise a total of $20,000,000.00 from current Members and Additional Members, meaning that it will attempt to raise $11,500,000.00 over and above the Initial Capital Contributions (such amount being referred to as the "Future Targeted Capital Contributions"). The Company shall attempt to raise the Future Targeted Capital Contributions by the date specified in the Private Placement Memorandum for the Company dated March 11, 2014, as it may be amended from time to time (the "Future Funding Deadline"). Notwithstanding the foregoing, the minimum amount of Capital Contributions to be raised shall be $8,500,000.00, and the Company shall begin accepting Future Targeted Capital Contributions at such time as total Capital Contributions to the Company would be $8,500,000.00 or more. The Executive Committee further reserves the right to accept mezzanine debt in the approximate amount of $6,000,000.00 plus interest (the "Mezzanine Loan") from a lender (the "Mezzanine Lender") in addition to the Future Targeted Capital Contributions. The terms of any such Mezzanine Loan must be approved by at least four of the five members of the Executive Committee. The Executive Committee may at its discretion elect to raise an amount equal to the Mezzanine Loan through Capital Contributions from Additional Members in lieu of obtaining the Mezzanine Loan. Each new investor who provides any portion of the Future Targeted Capital Contributions shall become a Preferred

Member of the Company upon making such Capital Contributions, and each such new Member shall execute an amendment to this Agreement to reflect its Interest in this Company. At such time, the Manager shall revise and update Schedules 4.1 and 4.2 to reflect all Interests in the Company. The Executive Committee may extend the Future Funding Deadline in its sole discretion. The proposed uses of the Capital Contributions raised by the Company pursuant to Sections 4.2 and 4.3 are set forth in Schedule 4.3 attached hereto and made a part hereof, and the Members hereby approve such uses.

4.4 **Additional Capital Contributions.** Subject to Section 8.3.5 below, at such time or times as the Manager reasonably determines that capital contributions in addition to the Initial Capital Contributions and the Future Targeted Capital Contributions are necessary or desirable in order to fulfill the contemplated objectives of the Company, the Manager shall notify the Members, which notice shall set forth the aggregate amount of the requested contributions, and the Members may, but shall not be obligated to, deposit such amount with the Company within the time period specified in such notice, which shall be based on the reasonably anticipated timing of the capital requirement, in proportion to their respective Capital Account balances. Each such contribution shall be treated the same as any other Capital Contribution to the Company. No Member shall be required to make any Additional Capital Contributions, but if any Member elects not to make its full share of such Additional Capital Contributions, the other Members shall have the option to make the Additional Capital Contribution that such non-funding Member was entitled to make, in proportion to their respective Capital Account balances.

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4.5 **Liability of Member.** Upon the payment by a Member of the Capital Contributions required of it hereunder, such Member will have no further liability or responsibility to the Company or any creditor except to the extent specifically set forth herein.

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4.6 **Duties and Obligations of the Members with Respect to Equity and Loans.** The following will be the general rights, duties and obligations applicable to the Members with respect to equity and loans for the Company:

4.6.1 CR will use its diligent efforts to obtain the Construction Loan.

4.6.2 Any and all documents relating to the Construction Loan and to be executed by the Company will be subject to the prior approval of the Executive Committee.

4.7 **Withdrawals and Interest.** No Member will have the right to:

4.7.1 withdraw his/its Capital Contribution;

4.7.2 receive any return or interest on any portion of his/its Capital Contribution except as otherwise provided herein; or

4.7.3 withdraw from the Company except by transfer of his/its Interest to another party in accordance with Article 13, by resignation in accordance with Section 8.7, or upon the dissolution of the Company.

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4.8 **Return.** No Member will be entitled to the return of all or any part of its Capital Contribution unless and until there remains Company Assets after:

4.8.1 all current liabilities of the Company (except liabilities to Members on account of their Capital Contributions) have been paid;

4.8.2 all amounts due to Members in respect of their share of profits and other gains have been paid; and

4.8.3 the Company has been dissolved without reformation in accordance with Article 13 and Articles of Dissolution have been filed with the Nevada Secretary of State.

For purposes of Section 4.8.1, permanent financing on the Property shall not be deemed a "current liability" of the Company, and the return of all or part of a Member's Capital Contributions pursuant to other provisions of this Agreement may be made prior to full repayment of the permanent financing, as long as such permanent financing is not in default.

ARTICLE 5
ALLOCATIONS OF PROFITS AND LOSSES

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5.1 **Profits and Losses.** Profits and Losses for any Fiscal Year will be allocated among the Members so that the Capital Account of each Member, increased by his/its share of Company Minimum Gain and his/its share of Member Minimum Gain is, as nearly as possible, positive in an amount equal to the cash that the Company would distribute to such Member, or negative in an amount equal to the cash that such Member would contribute to the Company, as the case may be, if (i) the Company liquidated by selling all of its assets for their respective Gross Asset Values, (ii) the proceeds of such sales, and any other cash of the Company, were used to satisfy the Company's debts in accordance with, and to the extent required by, their terms and in the order of priority prescribed by the applicable laws governing creditors' rights, and (iii) either (A) the Company distributed any remaining cash to the Members pursuant to Section 6.2 hereof or (B) the Members contributed to the Company cash in the amount of any remaining Recourse Liabilities of the Company; provided, however, that no Losses will be allocated to any Member for any Fiscal Year to the extent that such Losses would create or increase a deficit in such Member's Adjusted Capital Account.

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5.2 **Special Gross Allocation.** If, after giving effect to the allocations set forth in Section 5.3 hereof, an allocation of Profits or Losses pursuant to Section 5.1 (determined as though no items were allocable pursuant to this Section 5.2) for any Fiscal Year would leave the Capital Account(s), increased by the share(s) of Company Minimum Gain and share(s) of Member Minimum Gain, of any Member(s) short of (less than) the aggregate amount that would be distributed to such Member(s) under the hypothetical circumstances described in Section 5.1 while leaving the Capital Account(s), increased by the share(s) of Company Minimum Gain and share(s) of Member Minimum Gain, of any other Member(s) above (more than) the aggregate amount that would be distributed to such other Member(s) under such circumstances, then items of income or gain will be allocated to the former Member(s), and items of loss or expense will be allocated to the latter Member(s), until either (i) Profits or Losses (determined pursuant to Section 1.43, without regard to the items of income, gain, expense or loss allocated pursuant to this Section 5.2) can be allocated so as to cause each Member's Capital Account, increased by

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such Member's share of Company Minimum Gain and share of Member Minimum Gain to equal the amount that would be distributed to such Member under the hypothetical circumstances described in Section 5.1 or (ii) there are no more items to allocate.

5.3 **Special Allocations**. The following special allocations will be made in the following order:

5.3.1 Items of gross income and gain will be allocated to each Member in an amount and manner sufficient to eliminate, as quickly as possible, any deficit in such Member's Adjusted Capital Account to the extent that such deficit is created or increased by any unexpected adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4)-(6) of the Treasury Regulations. This subsection 5.3.1 and the proviso of Section 5.1 are intended to comply with the "alternative test for economic effect" provisions of Section 1. 704-1 (b)(2)(ii)(d) of the Treasury Regulations and will be interpreted consistently therewith;

5.3.2 If, for a Fiscal Year, there is a net decrease in Member Minimum Gain, then each Member will be allocated items of gross income or gain equal to such Member's share of such net decrease, determined under Section 1.704-2(i) of the Treasury Regulations. However, in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, the preceding sentence will not apply to the extent that the net decrease in Member Minimum Gain results from (i) a capital contribution from such Member which is used to repay a liability of the Company or (ii) a refinancing or lapse of a guarantee of, or any other change in, a liability of the Company that causes such liability to become partially or wholly a Nonrecourse Liability. This subsection 5.3.2 is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(i)(4) of the Treasury Regulations and will be interpreted consistently therewith;

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5.3.3 If, for a Fiscal Year, there is a net decrease in Company Minimum Gain, then each Member will be allocated items of income and gain equal to such Member's share of such net decrease, determined in accordance with Sections 1.704-2(f) and 1.704-2(g) of the Treasury Regulations. However, in accordance with Section 1.704-2(f)(2) of the Treasury Regulations, the preceding sentence will not apply to the extent that the net decrease in Company Minimum Gain results from (i) a Capital Contribution from such Member which is used to pay a liability of the Company or (ii) a refinancing or guarantee of, or any other change in, a liability of the Company that causes such liability to become partially or wholly a Member Nonrecourse Liability for which such Member bears the economic risk of loss. This subsection 5.3.3 is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Treasury Regulations and will be interpreted consistently therewith;

5.3.4 Nonrecourse Deductions for any Fiscal Year will be allocated among the Members pro rata, in accordance with their Percentage Interests;

5.3.5 Member Nonrecourse Deductions for any Fiscal Year will be allocated to the Members who bear the economic risk of loss with respect to the Member Nonrecourse Liability to which such Member Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i)(1) of the Treasury Regulations;

5.3.6 The proviso at the end of Section 5.1, and the allocations set forth in this Section 5.3, other than subsection 5.3.7 (the "Regulatory Allocations") are intended to comply

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with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations will be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Article V. Therefore, notwithstanding any other provision of this Article 5 (other than the Regulatory Allocations), the Manager will make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance, to the extent possible, is equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 5.1 (other than the proviso at the end thereof), 5.2, and subsection 5.3.7. In exercising his discretion under this subsection 5.3.6, the Manager will take into account future Regulatory Allocations under subsections 5.3.2 and 5.3.3 that, although not yet made, are likely to offset other Regulatory Allocations previously made under subsections 5.3.4 and 5.3.5;

5.3.7 It is intended that the amount to be distributed to a Member pursuant to subsection 13.4.3 of this Agreement will equal the amount such Member would receive if liquidation proceeds were instead distributed in accordance with Section 6.2 of this Agreement. This intended distribution amount for a Member is referred to as such Member's "Targeted Distribution Amount". Notwithstanding any preceding provision to the contrary in this Article 5, if upon a termination and liquidation of the Company, any Member's Capital Account balance immediately prior to the distributions to be made pursuant to subsection 13.4.3 of this Agreement (determined tentatively after allocations made for such Fiscal Year under this Article V without regard to this subsection 5.3.7) would be less than such Member's "Targeted Distribution Amount", then, for the current Fiscal Year and, if necessary and to the extent amended tax returns can be filed, for prior Fiscal Years of the Company, such Member will be specially allocated items of income or gain for such years, and items of loss or deduction for such years will be allocated away from such Member to the other Members, until Profits or Losses for the year(s) of termination and liquidation of the Company can be allocated so as to cause each Member's actual Capital Account balance to equal the Targeted Distribution Amount for such Member (and such Profits or Losses will be so allocated pursuant to Sections 5.1 and 5.2). In the event that liquidation distributions are to be made over two (2) or more Fiscal Years, the Manager will exercise their reasonable discretion to determine (i) the aggregate liquidation proceeds likely to be available for distribution pursuant to subsection 13.4.3, and accordingly, each Member's estimated Targeted Distribution Amount and (ii) the appropriate allocations to be made pursuant to this subsection 5.3.7 taking into account allocations of items of income, gain, deduction and loss likely to be made in subsequent years prior to final liquidation and dissolution of the Company. Amended returns will be prepared pursuant to this subsection 5.3.7 to the extent necessary and possible to ensure that the distributions made pursuant to subsection 13.4.3 to each Member equal, as nearly as possible, such Member's Targeted Distribution Amount.

5.4 **Varying Interests of the Members.** Anything contained in this Article V to the contrary notwithstanding, the allocation of Profits, Losses and items of income, gain, expense or loss for any Fiscal Year of the Company during which a Person acquires a Percentage Interest will take into account the Members' varying interests in the Company for such Fiscal Year pursuant to any method permissible under Section 706 of the Code that is selected by the Manager.

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5.5 **Tax Allocations: Code Section 704(c).** In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company, solely for tax purposes, will be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with subsection 1.25.1. In the event the Gross Asset Value of any Company Assets is adjusted pursuant to subsection 1.25.2 hereof, subsequent allocations of income, gain, loss and deduction with respect to such Company Assets will take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations will be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5.5 are solely for purposes of federal, state and local taxes and will not affect, or in any way be taken into account in computing, any Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

5.6 **Tax Matters Partner**

5.6.1 CR is designated a tax matters partner (the "TMP") as defined in Section 6231(a)(7) of the Code, and the Members will take such actions as may be necessary, appropriate, or convenient to effect the designation of CR as TMP. The TMP and the other Members will use their best efforts to comply with the responsibilities outlined in this section and in Sections 6222 through 6232 of the Code (including any Treasury Regulations promulgated thereunder).

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5.6.2 The Members will furnish the TMP with such information as the TMP may reasonably request to permit it to provide the Internal Revenue Service with sufficient information to allow proper notice to the parties in accordance with Section 6223 of the Code.

5.6.3 These provisions will survive the termination of the Company or the termination of any Member's interest in the Company and will remain binding on the Members for a period of time necessary to resolve with the Internal Revenue Service or the Department of the Treasury any and all matters regarding the Federal income taxation of the Company and each of the Members with respect to Company matters.

5.6.4 Notwithstanding the foregoing, the TMP will not litigate or enter into any agreement concerning or settle any tax issue that will be binding on either Member without such Member's prior written consent.

5.7 **Elections**. Company tax elections will be made by CR as the Tax Matters Partner, subject to the prior approval of the Executive Committee. Unless the Members agree otherwise, elections will be made to maximize tax benefits under the regular income tax without regard to the alternative minimum tax under Section 55 of the Code. Notwithstanding anything contained herein to the contrary, the Members agree that no elections will be made by any Member, including the TMP, that could jeopardize the characterization of distributions pursuant to Section 6.2 as other than long term capital gains without the prior approval of all of the Members.

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ARTICLE 6
DISTRIBUTIONS; BOOKS AND RECORDS; AUDITS

6.1 **Frequency of Distributions.** The Company will distribute any Net Cash From Operations not less frequently than quarterly, and will distribute Net Cash From Sales or Financings as promptly as possible.

6.2 **Order and Priority of Distributions of Net Cash From Operations and Net Cash from Sales or Financings.** Net Cash From Operations and Net Cash From Sales or Financings will be distributed in the following order and priority:

6.2.1 To the Preferred Members pro rata based upon the relative share that each Preferred Member contributed to the total of the Preferred Equity, until each such Preferred Member has received its Preferred Return on its Capital Contribution, including amounts accrued from prior periods.

6.2.2 Next, to all Preferred Members pro rata based upon the Percentage Interest owned by each such Preferred Member, until the Preferred Members have received cumulative distributions pursuant to this Section 6.2.2 equal to the Capital Contributions made by each such Preferred Member.

6.2.3 Thereafter, to all Members pro rata based upon the Percentage Interest owned by each such Member.

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6.2.4 Notwithstanding the foregoing, if at the time that all accrued Preferred Returns have been paid to the Preferred Members the total amount of Preferred Returns paid to any of the Preferred Members is less than forty percent (40%) of the Capital Contributions made by such Preferred Members, each Preferred Member with such a shortfall shall be entitled to receive additional distributions of Preferred Returns, prior to any distributions pursuant to Section 6.2.2 above, in an amount equal to (i) 40% of the Capital Contributions made by such Preferred Member minus (ii) the total Preferred Returns previously received by such Preferred Member. After such additional distributions have been paid to the Preferred Members, distributions pursuant to Section 6.2.2 shall then be made. Preferred Returns to each Preferred Member shall thereafter once again begin to accrue on a quarterly basis on any unreturned Capital Contributions of the Preferred Members and be paid as a first priority to each Preferred Member until such time as all Preferred Members have received the full return of their Capital Contributions.

6.2.5 As set forth on Schedule 4.1, the Sponsor Member shall have a Percentage Interest in the Company equal to twenty percent (20%) for its role as sponsor and for its contributions to the asset value of the Project since the purchase of the Property. A 10% Percentage Interest shall be reserved for the Mezzanine Lender, as set forth on Schedule 4.1.

6.2.6 In lieu of the distribution of the Preferred Return as set forth in Section 6.2.1 above, each Preferred Member shall have the option, to be exercised prior to the receipt of any of its Preferred Return, to elect to purchase one Condominium Unit (as described below) for each $1,000,000 of Capital Contributions made by a Preferred Member, at a discount of $500,000 below the list price of each such Condominium Unit (the "Condo Purchase Option").

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For purposes hereof, the Condominium Units are the 28 currently entitled hotel lodge units that are to be converted into for-sale managed residences as part of Phase Two. To exercise a Condo Purchase Option, a Preferred Member must deliver written notice to the Manager specifying which Condominium Unit it wishes to purchase prior to accepting any Preferred Returns. At such time the Company shall enter into a purchase agreement with such Preferred Member for the purchase of the designated Condominium Unit. If a Preferred Member does not exercise a Condo Purchase Option as set forth above, it will be deemed to have elected to receive Preferred Returns with respect to all of its Capital Contribution as set forth in Section 6.2.1 above. If a Preferred Member has made Capital Contributions in excess of $1,000,000 (each $1,000,000 Capital Contribution being referred to herein as an "Preferred Unit"), and such Preferred Member has exercised a Condo Purchase Option with respect to less than all of its Preferred Units, such Preferred Member shall receive a Preferred Return on any of its Preferred Units for which it has not exercised a Condo Purchase Option.

6.3 **Special Distributions to Pay Taxes.** Notwithstanding anything to the contrary set forth herein, the Manager shall distribute to each Member in January of each year as a "Tax Distribution" an amount equal to the sum of the following: (a) the product obtained by multiplying (i) the amount of Profits allocated to such Member in the preceding year times (ii) the greater of (A) the highest marginal federal income tax rate for individuals, or (B) the highest marginal federal income tax rate for taxable corporations, plus (b) any carryover amount from the preceding year as described below, reduced by (c) the amount of all distributions made to such Member with respect to such calendar year; provided that Profits of the Company for any year shall be net of (so as to be reduced by) all Losses of the Company for that year and all Losses of the Company for any prior years which have not then been fully set off against Profits for purposes of determining Tax Distributions under this Section 6.3. After the Company's Profits for each calendar year have been determined, if total distributions to a Member to date with respect to such year do not equal or exceed the federal income tax liability that would be accrued by that Member (assuming that such income is taxed at the greater of (A) the highest marginal federal income tax rate for individuals, or (B) the highest marginal federal income tax rate for taxable corporations) with respect to the Company's Profits for such year (determined as provided above), plus any carryover amount from the preceding year as described below (such total amount, the "Tax Distribution Amount"), then the Manager shall cause the Company to distribute any additional amounts necessary to cause the total distributions to a Member for such year to equal the Tax Distribution Amount, provided that the Company has cash available to make the distributions. If the total distributions to a Member with respect to any year do not equal or exceed the Tax Distribution Amount, the amount of the excess of the Tax Distribution Amount over the total amount of distributions to a Member for such year shall carry forward to, and add to the Tax Distribution Amount for the succeeding taxable year. Any distribution made to a Member under this Section 6.3 shall constitute an advance on distributions required to be made to such Member under Section 6.2, and distributions to a Member under Section 6.2 shall accordingly be suspended until the amount of such advance has been recouped. Notwithstanding the foregoing, no Tax Distributions shall be payable under this Section 6.3 with respect to the year in which the Company is terminated. If upon the termination of the Company, the sum of the distributions received by a Member under Section 6.2 and the Tax Distributions received under this Section 6.3 exceed the amount of the distributions a Member would have been entitled to receive under Section 6.2, the Member receiving such excess distributions shall contribute to the Company the amount of such excess. The preceding sentence is for the exclusive benefit of

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the Members and their permitted assigns and no third party shall be entitled to enforce or rely on such sentence.

6.4 **Books and Records.** At the expense of the Company, the Manager will maintain or cause to be maintained, in accordance with generally accepted accounting principles applied in a consistent manner, and more specifically in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations, adequate and accurate books and records of account in which will be entered all matters relating to the Company, including all income, expenditures, assets and liabilities. The books and records will be maintained at the Company's principal office or at such other location designated by the Manager. The books and records together with all supporting vouchers and data will be open to examination and copying by any Member or its/his duly constituted representative during normal business hours at the Company's principal office. Any Member may at any time request that a firm of independent certified public accountants audit the books and records of the Company, provided that the cost of such audit, if separate from the annual audit described in Section 6.5, will be borne by the Member requesting such audit except that, if the new audit discloses any substantial discrepancy from any regular Company audit, the cost of the audit will be paid by the Company.

6.5 **Audits.** At the expense of the Company, the Manager will cause the Accountants to perform an annual audit of the Company's books and records. Each Member will be furnished with a copy of the audit report on the financial statements of the Company. The financial statements will be prepared on a generally accepted accounting principles basis and will include a balance sheet, a statement of Capital Accounts of the Members, a statement of operations and a statement of changes in financial position. The audit and financial statements will be completed as soon as reasonably practical after the close of the Company's Fiscal Year.

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6.6 **Fiscal Year.** The Fiscal Year of the Company for both reporting and federal income tax purposes will be the Fiscal Year ending on the last day of December.

ARTICLE 7
DEVELOPMENT AND MANAGEMENT OF THE PROPERTY

7.1 **Title to Property.** Unless all of the Members agree otherwise, title to all real and personal property acquired in accordance with this Agreement will be held in the Company's name or in the name of its wholly owned subsidiary, New Cal Neva, as appropriate. All contracts with third parties will be executed in the name of the Company.

7.2 **Construction Contract.** The Construction Contract with the Contractor to perform construction on the Project shall have a guaranteed maximum price with respect to the cost of all structures and other improvements and the fees associated therewith, with all cost savings going to reduce the amount drawn on the Construction Loan. The Contractor will provide the Company with a comprehensive construction guarantee that all work performed will be free from construction defects for a period of one (1) year commencing with the issuance of the certificates of occupancy for each improvement. Additionally, the Contractor will warrant that the construction will be completed substantially in accordance with plans and specifications approved by the Manager and the Construction Lender and in compliance with all construction, environmental and land use requirements of all appropriate Governmental Authorities.

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7.3 **Management of the Project.** Day-to-day management of the Project will be performed by an Affiliate of CR approved by the Executive Committee (the "Management Company"). The management agreement (the "Management Agreement") between the Company and the Management Company will be subject to the reasonable approval of the Executive Committee and will not be subject to change without the reasonable consent of the Executive Committee. The Executive Committee shall use reasonable efforts to complete the negotiation and execution of the Management Agreement within thirty (30) days after the date hereof. The Management Agreement shall contain industry standard provisions for a hotel management agreement and shall be for a term of twenty (20) years, terminable only for cause. All Project employees will be selected and supervised by the Management Company.

7.4 **Development Services Agreement.** Seller shall enter into a "Development Services Agreement" with CR or its Affiliate ("Developer") pursuant to which Developer shall agree to coordinate and oversee the development of the Project. The form of such Development Services Agreement shall be substantially the same as the form that has been provided to each Member as of the date hereof. Pursuant to the Development Services Agreement, Developer shall receive a fee (the "Development Fee") in an amount equal to $60,000.00 per month. Such fees commenced in May, 2013 and shall continue until the grand reopening date of the hotel, subject to the cap on the Development Fee set forth therein, at which time the Management Agreement shall become applicable. CR has advanced approximately $1,667,236.18 in costs related to the Project beginning in early 2013, and CR has received and recontributed to the Company $480,000.00 of its Development Fee as of June 1, 2014. A total of $2,000,000.00 out of such costs and recontributed Development Fees shall serve as the Capital Contribution of CR and shall be part of the Initial Capital Contributions described in Section 4.2 hereof. Such Capital Contribution shall be treated in the same manner as the Capital Contributions of all other Preferred Members hereunder. Any amounts in excess of such $2,000,000.00 that have been or will be advanced to the Company by CR, or that represent Development Fees that are deferred following the June, 2014 Development Fee, shall be paid directly to CR by the Company in the future as set forth in the Development Services Agreement.

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7.5 **Monthly Reports.** CR shall prepare and deliver to the other Members on a monthly basis an executive summary discussing all Project progress and material developments relating to the Company, and it shall also include an unaudited monthly financial statement (including a cash spending summary). CR shall schedule quarterly meetings (which may be by telephone) for the Members to discuss the Project.

ARTICLE 8
MANAGEMENT OF THE COMPANY

8.1 **Management.** The Members have established the Company as a manager-managed limited liability company under the Act. The Members hereby designate CR as the Manager of the Company. CR may not be removed as Manager without the unanimous consent of all Members. Except as stated below with respect to "Major Decisions," Manager may exercise all powers of the Company and may do all such lawful acts and things as are not specifically required by the Act to be exercised or done by the Members. Any Person dealing with the Company may rely on the authority of the Manager in taking any action in the name of the Company without inquiry into the provisions or compliance herewith, regardless of whether that action is actually taken in accordance with the provisions of this Agreement.

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8.2 **Executive Committee.** The Members and Manager have agreed to designate a committee (the "Executive Committee") to make Major Decisions. The Executive Committee's power is limited to making Major Decisions, which the Executive Committee shall do in accordance with this Agreement. Notwithstanding the foregoing, Manager shall have the right to place before the Executive Committee for consideration any significant matter which is not a Major Decision but which Manager would like the Executive Committee to consider. In such cases, the majority vote of the Members of the Executive Committee present or voting by proxy at any such meeting shall decide such matter.

8.3 **Major Decisions.** The following constitute "Major Decisions" as such term is used herein, requiring the approval of four (4) of the five (5) members of the Executive Committee (subject to Section 8.7):

8.3.1 subject to subsections 9.1.2 and 9.4.1, removal of the Manager or election of a new Manager;

8.3.2 the dissolution of the Company;

8.3.3 acquisition of any interest in real property, other than the Company Assets, and any decision to market, sell, transfer, assign or place a lien on all or any part of the Company Assets (except as specifically provided to the contrary in this Agreement);

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8.3.4 any material modification to any developmental approvals obtained from any Governmental Authorities for development of the Property or any portion thereof;

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8.3.5 approving the amount, terms, conditions and provisions of the Construction Loan or any other financing of the Property or additional equity contributions to the Company, including the terms of any guarantees or recourse provisions of any kind with respect to such loans, provided that the terms of the binding letter of intent dated June 26, 2013 with Hall Structured Finance are deemed approved by the Company, and a closing of the Construction Loan pursuant thereto is hereby permitted;

8.3.6 the formation of a partnership or other venture between the Company and a third party;

8.3.7 entering into any and all third party contracts or leases, and, except as described in Sections 7.3 and 7.4, entering into any contract between the Company and a third party that is an Affiliate of a Member;

8.3.8 approval of the Operating Budget and any amendments thereto;

8.3.9 any capital expenditures in excess of One Hundred Thousand Dollars ($100,000) per expenditure or in excess of Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate per annum, unless provided for in the Project Budget or the Operating Budget;

8.3.10 any decision concerning reconstruction or repair in the event of a casualty in excess of Two Hundred Thousand Dollars ($200,000), or any condemnation;

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8.3.11 any decision to pay a Manager, a Member or any other person a salary or other compensation and the amount of such salary or other compensation and other benefits, except as otherwise provided in Sections 7.3 or 7.4 or this Article 8, or pursuant to the Operating Budget or the Project Budget;

8.3.12 the amendment of the Articles or this Agreement. However, if any proposed amendment to the Articles or this Agreement would adversely affect the rights of any class of Member in a manner that is different from the effect on the rights of other classes of Members, then such amendment must also be approved by the Member Representative (as hereinafter defined) of the Executive Committee that was appointed by the Member of the class that will be adversely affected by such amendment; or

8.3.13 any decision to change the status of the Sponsor Member or the Mezzanine Lender into that of a Preferred Member.

8.4 **Designation of Executive Committee**. The Executive Committee shall initially consist of five (5) members. CR shall have the right to designate two (2) members of the Executive Committee, the Preferred Member who has made the largest Capital Contribution of the Preferred Members shall have the right to designate one member of the Executive Committee, and the other two members of the Executive Committee shall be "at large" members and shall be selected by unanimous consent of the other members of the Executive Committee (such members of the Executive Committee being each a "Member Representative" and collectively the "Member Representatives"). The selection of the "at large" members must be approved by at least 67% of the Percentage Interests of the Members of the Company. Any Member Representative may vote by a written proxy delivered to another Member Representative in attendance at a meeting of the Executive Committee. If a member of the Executive Committee dies, resigns or is removed, the person or persons who designated such member shall have the right to designate his or her successor. If the member who dies, resigns or is removed is an "at large" member, his or her replacement shall be selected by unanimous consent of the other members of the Executive Committee, and such selection must be approved by at least 67% of the Percentage Interests of the Members of the Company. Member Representatives need not be residents of the State of Nevada or Members of the Company. Each Member may change its designated Member Representatives effective upon written notice from such Member to the other Members. The initial Member Representatives designated by the Members are set forth in Schedule 8.4 attached hereto. The Manager shall update Schedule 8.4 from time to time to reflect the current Member Representatives of the Executive Committee.

Executive Committee meetings shall be held at least monthly until the reopening of the hotel on the Property and at least quarterly thereafter. Preparatory information necessary for such meetings shall be supplied to the Member Representatives by Manager in advance of the scheduled meeting dates. In addition, all Members will receive (i) reasonable advance notice of each Executive Committee meeting (date, time and place) and (ii) copies of all written information and documentation made available to the Member Representatives of the Executive Committee as provided above. Members will be entitled to attend meetings of the Executive Committee, but only the Member Representatives of the Executive Committee shall be permitted to vote on any matters considered at such meetings by the Executive Committee.

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8.5 **Transactions Between a Member or Manager and the Company.** Except as otherwise provided by applicable law or this Agreement, any Member or Manager may, but will not be obligated to, lend money to the Company, act as surety for the Company and transact other business with the Company and has the same rights and obligations when transacting business with the Company as a person or entity who is not a Member or a Manager.

8.6 **Member Activities.** Any of the Members, their Affiliates and any shareholder, officer, director, partner, employee or other Person holding a legal or beneficial interest in an entity which is a Member or an Affiliate thereof, may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to the ownership, development, construction, operation and management of residential and commercial property similar to the Property provided that no such other venture shall compete with the Project within the Lake Tahoe area.

8.7 **Affiliates and Conflicts of Interest.** The fact that a Member, an Affiliate, or a shareholder or partner of a Member or Affiliate is directly or indirectly interested in, owned, employed or connected with any Person employed by the Company or the Manager, to render or perform a service for the Company or from which the Company or the Manager may buy merchandise, material, services or other property, will not prohibit the Company or the Manager from employing such Person or from purchasing merchandise, material, services or other property therefrom or from otherwise dealing with the Person under reasonable terms and conditions such as would be reflected in an arms-length transaction, provided, all such dealings are communicated to the Members in writing prior to implementation. A Member shall be obligated to disclose to the other Members any potential Conflicts of Interest and must recuse himself or herself with respect to any action of the Members and from any vote on, related to or in connection with any Conflicts of Interest. A "Conflict of Interest" shall mean, with respect to any Member, any conflict of interest involving any such Member and the matter being considered by the Members, including, without limitation, any matter in which a Member or any affiliate thereof or a spouse or immediate family member of such Member (each of the foregoing being hereinafter referred to as a "Restricted Person") would (i) receive any type of compensation, whether in cash or in kind, from the Company or any affiliate of the Company, or any person with which the Company or any affiliate of the Company enters into a transaction, or (ii) acquire property from, sell property to, or enter into transactions with (A) the Company or any affiliate of the Company, or (B) any entity in which any Restricted Person has a voting interest of either ten percent (10%) or more of the total equity of such entity or ten percent (10%) or more of a class of voting equity of such entity. If a Member Representative on the Executive Committee has a Conflict of Interest, that Member Representative shall be recused from voting on the matter being considered by the Executive Committee. In such event, the vote of at least 100% of the remaining non-conflicted Member Representatives on the Executive Committee shall be required to pass any item that is being voted upon by the Executive Committee.

8.8 **Reimbursements.** The Company will reimburse the Members and the Manager for reasonable expenses incurred and paid by any of them in the organization of the Company and as authorized by the Company in the conduct of the Company's business, including, but not limited to, expenses of maintaining an office, telephones, travel, office equipment and secretarial and other personnel as may reasonably be attributable to the Company and any other predevelopment expenses set forth in the Project Budget. Such expenses will not include any expenses incurred in connection with a Member's or a Manager's exercise of its rights as a

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Member or a Manager apart from the authorized conduct of the Company's business. Such reimbursements will be treated as expenses of the Company and will not be deemed to constitute distributions to any Member of profit, loss or capital of the Company.

8.9 **Partition.** While this Agreement remains in effect or is continued, each Member agrees and waives its rights to have any Company Assets partitioned, or to file a complaint or to institute any suit, action or proceeding at law or in equity to have any Company Assets partitioned, and each Member, on behalf of itself, its successors and its assigns hereby waives any such right.

8.10 **Resignations; Retirement.** A Member may not resign from the Company unless (i) he has contributed the full amount of money or other consideration which constitutes his Capital Contribution as required herein; and (ii) following his resignation there will be at least two (2) remaining Members of the Company. The Company may recover damages for breach of this Section 8.10 if any Member violates this Section 8.10 and may offset the Company's damages against any amount owed to a resigning Member for distributions.

ARTICLE 9
MANAGER

9.1 **Manager.**

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9.1.1 The management of the Company's business will be vested in the Manager. The Manager will have the authority to sign agreements and other instruments on behalf of the Company.

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9.1.2 CR shall serve as the initial Manager. Such entity will serve until such time as it resigns or is removed. The Manager may be removed with or without cause by a vote of 80% of the Percentage Interests of the Members other than the Manager. Upon the resignation or removal of the Manager, CR will designate the replacement Manager, subject to the approval of four of the five members of the Executive Committee.

9.1.3 The Manager may engage in other business activities as permitted by Section 8.5 and will be obliged to devote only as much of his time to the Company's business as may be reasonably required in light of the Company's business and objectives. The Manager will perform its duties as a Manager in good faith, in a manner it reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person or entity who so performs its duties will not have any liability by reason of being or having been a Manager of the Company.

9.1.4 The number of Managers will be one (1), who may be an entity or a natural person eighteen (18) years of age or older but who need not be a Member of the Company or a resident of Nevada .

9.1.5 In performing its duties, the Manager will be entitled to rely on information, opinions, reports or statements of the following persons or groups unless it has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

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(a) one or more employees or other agents of the Company whom the Manager reasonably believes to be reliable and competent in the matters presented;

(b) any attorney, public accountant or other person as to matters which the Manager reasonably believes to be within such person's professional or expert competence; or

(c) a committee upon which it does not serve, duly designated in accordance with a provision of this Agreement, as to matters within its designated authority, which committee the Manager reasonably believes to merit competence.

9.1.6 The Manager is an agent of the Company for the purpose of its business, and the act of the Manager, including the execution in the Company name of any instrument for apparently carrying on in the usual way the business of the Company, binds the Company, unless such act is in contravention of the Articles or this Agreement or unless the Manager so acting otherwise lacks the authority to act for the Company and the person with whom it is dealing has knowledge of the fact that it has no such authority.

9.2 **Powers of the Manager.** Subject to the limitations set forth elsewhere in this Agreement, the Manager will have the right and authority to take all actions which the Manager deems necessary, useful or appropriate for the day-to-day management and conduct of the Company's business.

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Subject to Section 8.1, the Manager may exercise all powers of the Company and do all such lawful acts and things as are not by statute, the Act, the Articles or this Agreement directed or required to be exercised or done by a majority in interest of the Members, except that no debt will be contracted or liability incurred by or on behalf of the Company by the Manager except as set forth in the Project Budget or the Operating Budget. All instruments, contracts, agreements and documents providing for the acquisition, mortgage or disposition of the Company Assets will be valid and binding on the Company if executed by the Manager. All instruments, contracts, agreements and documents of whatsoever type executed on behalf of the Company may be executed in the name of the Company by the Manager.

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9.3 **Salaries.** Subject to subsection 8.3.11, the Company may not pay to any Manager, Member or other person a salary as compensation for their services rendered to the Company.

9.4 **Removal of a Manager.**

9.4.1 Subject to the provisions of the Act and subject to the satisfaction of the conditions specified in this Article 9, a vote of 80% of the Percentage Interests of the Members may remove the Manager with or without cause.

9.4.2 The removal of a Manager will become effective on such date as may be specified by CR.

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9.5 **Resignation of a Manager.** A Manager may resign from his position as a Manager at any time by notice to the Members. Such resignation will become effective as set forth in such notice.

9.6 **Vacancies.** Any vacancy occurring in the position of Manager will be filled as set forth in Section 9.1.2.

9.7 **Duties of the Manager.** The Manager will have the following primary duties and responsibilities, with such limitations on their powers as set forth below and elsewhere in this Agreement:

9.7.1 The preparation of the Project Budget and the Operating Budget and expending the capital and revenues of the Company in accordance with such approved budgets;

9.7.2 Negotiating and arranging for all third party equity requirements, the Construction Loan and other loans, and preparing all projections, financial reports and other information or material to be furnished to the lender, in consultation with and subject to the approval of the Executive Committee;

9.7.3 Supervising construction, alterations and improvements with respect to the Project; retaining, terminating and/or hiring the services of engineers, surveyors, appraisers, accountants, attorneys, mortgage brokers, corporate fiduciaries, escrow agents, depositories, custodians, agents for collection, insurers, insurance agents, and such other technical or administrative advisors as reasonably deemed necessary by the Manager to further the purposes of the Company; retaining agents and employees for the Company, including property managers for the Property, and to delegate any of their powers (but not their obligations) to such agents or employees and direct such agents or employees with respect to the implementation of the Manager's decisions and the conduct of day-to-day operations of the Company;

9.7.4 The negotiation, administration, review and coordination of contracts on behalf of the Company for the development of the Project, and the administration and coordination of on-site and offsite improvements, warranty claims and corrective work;

9.7.5 Entering into and executing (i) agreements and any and all documents and instruments customarily employed in the real estate industry in connection with the development and operations of Property; and (ii) all other instruments deemed to be necessary or appropriate to the proper operation of the Property or to perform effectively and properly their duties or exercise their powers hereunder;

9.7.6 Placing or investing Company assets in bank savings and checking accounts, savings and loan associations, commercial paper, government securities, certificates of deposit, bankers' acceptances and other short-term interest-bearing obligations; provided, however, that the Manager will use best efforts to cause uninvested cash reserves of the Company to be placed in interest-bearing accounts or instruments. To the extent funds of the Company are sufficient therefor, the Manager may maintain reserves for operating or other expenses to the extent contemplated in the Operating Budget;

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9.7.7 The performance of other customary development functions, including seeking to obtain all local, state and federal permits, approvals and land use consents and acting as a liaison with all Governmental Authorities having jurisdiction over the development of the Property, and processing all governmental permits and approvals; and authorizing such research reports, economic and statistical data, evaluations, analysis, opinions and recommendations as may be necessary to further the purposes of the Company;

9.7.8 Subject to the other provisions of this Article 9, supervising the marketing and sales of portions of the Property and negotiating and executing contracts, or authorizing others to negotiate and execute contracts for sales of portions of the Property, in consultation with and subject to the approval of the Executive Committee;

9.7.9 Procuring and maintaining insurance policies with such coverage and in such amounts as required by this Agreement or the Loan;

9.7.10 File protests regarding property tax assessments and commence, defend, and settle litigation arising from such protests;

9.7.11 Prepare and deliver to each of the Members periodic reports not less than quarterly of the state of the business and the affairs of the Company as well as quarterly financial statements, and maintain, or cause to be maintained, the books and records;

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9.7.12 Within seventy-five (75) days after the end of each Fiscal Year, or as soon as reasonably practical after the end thereof, cause the Accountants to conduct the audit required herein, and prepare and deliver to each Member a report setting forth in sufficient detail all such information and data with respect to business transactions affected by or involving the Company during such Fiscal Year as will enable the Company and Members to prepare their Federal, state and local income tax returns in accordance with the laws, rules and regulations then prevailing. The Manager will also cause such Accountants to prepare Federal, state or local tax returns required of the Company and file the same; provided, however, that the Manager shall provide all Members with a copy of the proposed tax returns at least fifteen (15) days prior to the filing date or the extended filing date, as applicable. The Manager will also furnish to each Member such other reports on the Company's operations and conditions as may be reasonably requested by any Member;

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9.7.13 Collecting all revenues payable to the Company and depositing all sums collected in the Company's account or accounts in a bank or financial institution selected by the Manager;

9.7.14 Making, or causing to be made, distributions of Net Cash From Operations and Net Cash From Sales and Financings pursuant to Section 6.2; and

9.7.15 Developing, operating, managing and supervising the hotel operations which are developed as part of the Project in accordance with this Agreement.

9.8 **Expenses of Company.** Expenses to carry out the purposes and business of the Company will constitute Company expenditures and, when appropriate, will be paid by the Company from its accounts. Members will be reimbursed for reasonable expenditures made in

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furtherance of Company business, including travel related costs for attending Company meetings.

ARTICLE 10
MEETINGS AND VOTES OF MEMBERS

10.1 **Meetings.** Meetings of the Members will be held each year at the business office of the Company or at such other place as specified from time to time by the Manager. If the Manager specifies another location such change in location will be recorded on the notice calling such meeting. Meetings of the Members may be held in person, by telephone or by video conference.

10.2 **Annual Meetings.** In the absence of a notice from the Manager providing otherwise, the annual meeting of Members of the Company for the transaction of such business as may properly come before the meeting, will be held on the first Wednesday in April at 4:00 p.m. in each fiscal year, if the same be not a legal holiday, and if a legal holiday, then on the next succeeding business day. Failure to hold the annual meeting at the designated time will not work a forfeiture or dissolution of the Company.

10.3 **Special Meetings.** Special meetings of the Members will be scheduled and presided over by the Manager. Special meetings may be called by the Manager or upon the request of Members who hold not less than ten percent (10%) of the voting rights entitled to vote at the meeting provided that requests to approve the admission of Substitute Members may be postponed until the annual meeting of the Members.

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10.4 **Court Ordered Meeting.**

10.4.1 Any court of competent jurisdiction in the State of Nevada may summarily order a meeting to be held:

(a) on application of any Member if an annual meeting was not held within six (6) months after the end of the Company's fiscal year or fifteen (15) months after its last annual meeting, whichever is earlier; or

(b) on application of a Member who participated in a proper call for a special meeting if (i) notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the Manager; or (ii) the special meeting was not held in accordance with the notice.

10.4.2 The court may fix the time and place of the meeting, specify a record date for determining Members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for the meeting or direct that the interests represented at the meeting constitute a quorum for the meeting, and enter other orders necessary to permit the meeting to be held.

10.5 **Notice.**

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10.5.1 Written notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, will be delivered unless otherwise prescribed by the Act, not less than ten (10) days nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Manager or person calling the meeting to each Member of record entitled to vote at such meeting.

10.5.2 Notice to Members of record, if mailed, will be deemed delivered as to any Member when deposited in the United States mail, addressed to the Member with postage prepaid, but, if three (3) successive letters mailed to the last-known address of any Member are returned as undeliverable, no further notices to such Member will be necessary until another address for such Member is made known to the Company.

10.5.3 When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting will be given to each Member entitled to vote at the meeting.

10.6 **Waiver of Notice.**

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10.6.1 When any notice is required to be given to any Member under the provisions of the Act or under the provisions of the Articles or this Agreement, a waiver thereof in writing signed by the person entitled to such notice, whether before, at or after the time stated herein, will be equivalent to the giving of such notice.

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10.6.2 By attending a meeting, a Member:

(a) waives objection to lack of notice or defective notice of such meeting unless the Member, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting;

(b) waives objection to consideration at such meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the Member objects to considering the matter when it is presented.

10.7 **Proxies.** Each Member may designate up to three individuals as proxies, and any proxy designated by a Member shall be authorized to sign approvals, vote or otherwise act on behalf of that Member. Such proxies may be changed at any time upon the discretion of the Member who has named such proxies, provided any such changes shall be specified in a written notice from such Member to all other Members.

10.8 **Voting Procedures.**

10.8.1 The costs of calling and holding the annual meeting of the Members and special meetings called by the Manager will be paid by the Company. Such costs for all other

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meetings called by the Members will be paid by the Members calling the meeting. Each Member will be responsible for its own costs associated with attending and participating in a meeting.

10.8.2 Matters not described in a meeting notice maybe discussed at a meeting if all Members or their authorized representatives are present at the meeting and may be voted upon if the Members or their authorized representatives possessing at least the required percentage of the votes to approve such matter are present at the meeting.

10.9 **Action by Members Without a Meeting.** Unless the Articles, the Act or this Agreement provide otherwise, action required or permitted by the Act to be taken at a Members' meeting, including but not limited to the annual meeting, may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote. Action taken under this Section 10.9 is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

Written consent of all of the Members entitled to vote on any matter has the same force and effect as a unanimous vote of such Members and may be stated as such in any document.

ARTICLE 11
MEMBERS' LIABILITY AND INDEMNITY

11.1 **Members.**

11.1.1 No Member will be liable under a judgment, decree or order of a court, or in any other manner, for the debts, liabilities or obligations of the Company. A Member will have no liability to any other Member and/or the Company when acting pursuant to its authority granted pursuant to the Articles and/or this Agreement except to the extent such Member's acts or omissions constituted willful misconduct or gross negligence of such Member, or violation of Federal, state or local laws. Additionally, a Member will be liable to the Company for any difference between its Capital Contribution actually paid in and the amount promised by any Member as stated in this Agreement or any writing signed by the Member.

11.1.2 If a Member has received the return of any part of its Capital Contribution in violation of this Agreement or the Act, it is liable to the Company for a period of six (6) years thereafter for the amount of the Capital Contribution wrongfully returned.

11.1.3 If a Member has received the return in whole or in part of its Capital Contribution without violation of this Agreement or the Act, that Member is liable to the Company for a period of six (6) years thereafter for the amount of the returned Capital Contribution, but only to the extent necessary to discharge the liabilities of the Company to those creditors who extended credit to the Company during the period the Capital Contribution was held by the Company.

11.2 **Manager.** The Manager does not in any way guarantee the return of any Members' Capital Contribution or a profit for the Members from the Company's business. The Manager will incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture regardless of whether such other business or venture competes with the Company or whether the Manager is active in the management or business of such other

business or venture, provided that the Manager's involvement in such other business or venture is permitted under this Agreement and is not within 50 miles of the Project. Neither the Company nor any of the Members will have any rights by virtue of the Articles, this Agreement or any applicable law in or to the other business ventures of the Manager or to the income, gains, losses, deductions and credits derived therefrom by the Manager unless Manager is in violation of this Article 11.2.

11.3 **Company's Indemnification of Members, Manager, Employees or Agents.** The Company agrees to indemnify its Members, Manager, employees and agents to the fullest extent permitted by law and specifically in the Act, and may purchase insurance to protect the Company's directors, officers, employees and agents.

11.4 **Force Majeure.** Notwithstanding anything in this Agreement to the contrary, a Member or the Manager will not be liable (except for such Member's obligation to contribute or return its Capital Contributions under the Act or this Agreement) for any loss or damage to the Company Assets or operations caused by its failure to carry out any of the provisions of the Articles and/or this Agreement as a result of foreseeable or unforeseeable acts of God or incidents resulting from outside forces, beyond the control of such Member or Manager, such as strikes, labor troubles, riots, fires, weather, floods, acts of a public enemy, insurrections, breakdown or failure of machinery, acts, omissions or delays of governmental authorities and governmental laws, rules, regulations or orders.

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11.5 **Remedies.** The remedies of the Members hereunder are cumulative and will not exclude any other remedies to which a Member may be lawfully entitled. The Members acknowledge that all legal remedies for any breach of this Agreement may be inadequate, and therefore they consent to any appropriate equitable remedy; provided, that any failure of a Member to abide by the terms of this Agreement, including without limitation any vote or consent that should bind a Member, or any other failure to adhere to the terms of this Agreement which cost the Company legal and court costs to enforce same will render the breaching Member liable to the Company for any such fees and costs.

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11.6 **Waiver.** The failure of any Member to insist upon strict performance of a covenant or condition hereunder will not be a waiver of its right to demand strict compliance therewith in the future.

ARTICLE 12
TRANSFERS

12.1 **Transfer Restrictions.** Each Member hereby agrees that its Interests and any economic benefit therein are not transferable except as provided in this Article 12. "Economic benefit" or "benefit" of an Interest will mean an Interest share of the Company's profits or other compensation by way of income and return of contributions but will not include the Company's losses, deductions and credits.

12.2 **Prohibited Transfer.** Except as provided in this Article 12, no Member may sell, transfer, assign or otherwise dispose of or mortgage, hypothecate, or otherwise encumber or permit or suffer any encumbrance of all or any part of its Interests unless approved in writing by Members holding at least 67% of the Percentage Interests in the Company, acting in their

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reasonable discretion, and any attempt to so transfer or encumber any such interest without such approval will be null and void and will not bind the Company or the other Members.

12.3 **Requirements for Transfer.** Transfers of Interests and/or economic benefits therein during any year will become effective as of the date of any required approval by all of the other Members, provided that the transferee and transferor have satisfied all of the requirements of this Article 12. Subject to satisfying the requirements of this Article 12, any such transfer requiring approval of the Members pursuant to this Article 12 will be considered by the Members at the Members' next annual or special meeting. Unless and until the transferee of a Member's Interests is accepted by a Substitute Member pursuant to this Article 12, the transferor Member will remain a Member in the Company and will retain all rights and obligations incident to such status, except to the extent that the transferor agrees to transfer the economic benefits of its Interests as permitted by this Article 12 for transfers of economic benefits without the consent of the other Members. Notwithstanding anything in this Article 12 to the contrary, any transfer by any Member of all or any portion of his or its Interests, from time to time, (i) by operation of law (for instance in the case of a merger) or (ii) to any Affiliate may be accomplished without restriction, right of first offer or consent of the Manager or the other Members. The Interests of the transferring Member will be deemed transferred when the Manager and the other Members have received written notice of such transfer along with the name and address of the transferee and number of Interests transferred.

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Notwithstanding anything to the contrary, any attempted or purported transfer of any Interest or economic benefit therein (including, but not limited to, an adjustment of the right to receive profits or the return of contributions) in violation of the following restrictions will be void ab initio and of no effect:

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12.3.1 No transfer may be made within the meaning of the Code or the regulations thereunder, if such transfer would result in the termination of the Company under the Code;

12.3.2 No transfer may be made except in compliance with or pursuant to an exemption from the registration provisions of the Securities Act of 1933, as amended, and in compliance with or pursuant to an exemption from applicable state securities laws and rules and regulations promulgated thereunder;

12.3.3 No transfer may be made which would cause the Company to become an "investment company" under the Investment Company Act of 1940, as amended;

12.3.4 No transfer may be made which would cause the Company to be deemed to be a "publicly traded partnership" under the Code or would otherwise cause the Company to be treated as an association or corporation for tax purposes under the Code; and

12.3.5 No direct transfer may be made to a minor or incompetent in any respect unless made for their benefit to their guardian, trustee or other legal representative.

12.4 **Company Review.** Prior to the vote of the Members for their approval of the admission of a transferee of Interests as a Substitute Member the transferor may submit a written or oral report of the proposed transfer to the Company for its review. Subject to obtaining an

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opinion of counsel that the restrictions provided in this Article 12 will not be violated by the transfer, the Company will notify the transferor within sixty (60) days after receipt whether or not the proposed transfer violates any of the restrictions contained in this Article 12 and whether or not the transfer consequently may be effected. Any opinion of counsel will be provided at the option of the Company by the transferring parties at their sole expense, will be satisfactory in form and substance to the Company and will be from counsel satisfactory to the Company.

12.5 **Transfers of Economic Benefits Without Members' Approval.** Subject to Sections 12.1 and 12.2, economic benefits in Interests may be transferred in whole or in part without the consent of the Members in the following events:

12.5.1 the transfer as a result of the death of a Member;

12.5.2 the transfer in connection with the entry of a divorce decree for or against a Member;

12.5.3 the transfer as a gift and for no consideration;

12.5.4 the sale or other transfer to related parties after which the ownership of the economic benefits will be effectively unchanged, i.e., intra-family transfers or transfers within an affiliated group;

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12.5.5 the occasional accommodation transfer by a Member; or

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12.5.6 the pledge to a Lender in connection with any Project financing or, after Substantial Completion, any other financing.

12.6 **Transfers with Members' Approval.**

12.6.1 Following satisfaction of the requirements of Sections 12.3 and 12.4, a proposed transfer of Interests requiring the Members' approval will be submitted to the Members for their approval after:

(a) the transferee has executed this Agreement and any other documents and instruments as the Company may require; and

(b) the transferring parties have paid and have agreed to pay, as the Company will determine, all reasonable expenses connected with such request and admission, including, but not limited to, any required opinion of counsel, the legal fees and costs associated with the preparation and filing of all other documents necessary to continue the Company's right to do business in the jurisdictions in which it is then doing business. The Company will not be obligated to justify such expenses and for its convenience in lieu of itemizing such expenses, may select a reasonable amount to cover such expenses.

12.6.2 Upon satisfaction of Sections 12.3, 12.4 and for Interests, 12.6.1, the request for transfer of Interests will be submitted to the Members at the Company's next annual or special meeting. The Members will vote whether or not to approve a proposed transfer of Interests and whether or not a proposed transferee of Interests should be admitted as a Substitute

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Member for the transferor Member to the extent of the Interests proposed to be transferred. If a proposed transferee of Interests is not approved to be a Substitute Member, then subject to the provisions of the proposed transfer, such transferee may nevertheless receive the "economic benefits" of such Interests pursuant to the definition of "economic benefits" set forth in Section 12.1 hereof.

12.6.3 If a proposed transfer of Interests is approved by all of the Members, the transferee will be admitted as a Member and will be vested with all the rights and powers, and be subject to all the restrictions and liabilities of the transferor to the extent of the Interests transferred. Admission of a transferee as a Substitute Member will not relieve the transferor from any obligation or liability that existed on or before the effective date of admission; provided that the transferor will be relieved from obligations and liabilities arising thereafter and arising under existing agreements to the extent that such obligations are to be performed after the effective date of admission or that such liabilities arise thereafter.

12.6.4 If a proposed transfer of Interests is refused by or on behalf of any Member, the proposed transferee of the Member's Interests will not be admitted as a Member and will not have the right to participate in the management of the business and affairs of the Company, provided that such transferring parties may again apply to have the transferee admitted as a Substitute Member.

12.7 **Death of Member; Other Termination of Membership.**

12.7.1 In the event of the death of a Member who is an individual or if a court of competent jurisdiction adjudges a Member to be incompetent to manage his person or his property, followed by a decision by or on behalf of all of the remaining Members to continue the Company rather than allowing it to dissolve, the Member's executor, administrator, guardian, conservator or other legal representative may exercise all of the Member's rights for the purpose of settling his estate or administering his property. If a Member is a corporation, trust or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

12.7.2 In the event of bankruptcy or dissolution of a Member, followed by the continuation of the Company rather than a vote of the Members to dissolve the Company, any successor to the Interests of the affected Member as a result thereof will be deemed to be the transferee of the entire interest of the affected Member and may be admitted at the next annual meeting as a Substitute Member upon satisfaction of the requirements of this Article 12.

12.7.3 The provisions of Article 2 and this Section 12.7 will not cause or require the dissolution of the Company should any of the events described in such Article or Section occur to a person or entity who is not a Member but only possesses economic benefits associated with any Interests.

12.8 **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

ARTICLE 13
TERMINATION AND DISSOLUTION

13.1 **Events Requiring Termination and Dissolution.** The Company will be dissolved and terminated upon the happening of any of the following events:

13.1.1 Expiration of the term of the Company, as set forth in Section 2.3, unless extended by mutual consent all of the Members;

13.1.2 Any event as otherwise specified in this Agreement or in accordance with law;

13.1.3 By the written consent of four of the five members of the Executive Committee pursuant to Section 8.3.2; or

13.1.4 The sale or other disposition of substantially all assets of the Company such that the sole asset of the Company is cash.

13.2 **Management During Liquidation.** In the event of a termination, the rights and obligations of the Members with respect to management of the Company will be continued by the Manager during the period of winding up. The Company Assets will be liquidated as promptly as is consistent with obtaining the fair market value of the assets, and the liquidation will be conducted in compliance with law and sound business practice. The Manager may maintain reasonable reserves to provide for the payment of contingent claims and liabilities. The Manager will be entitled to reimbursement for out-of-pocket expenses incurred in connection with the winding-up and liquidation of the Company. Such reimbursement will be paid as an expense of the Company after all debts to all third parties have been repaid but before any repayment of loans or advances by the Members.

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13.3 **Members' Right to Bid for Assets.** Upon the dissolution and liquidation of the Company, any Member may make a bid or tender on any of the Company Assets. Those assets as are bid upon by a Member will not be sold to a third party unless the bid made by such third party is upon more favorable terms and conditions than the highest and best bid of a Member.

13.4 **Distribution of Liquidation Proceeds.** Liquidation proceeds, to the extent sufficient therefor, will be applied and distributed in the following order:

13.4.1 To the expenses of such liquidation;

13.4.2 To the payment and discharge of all other Company debts and liabilities (other than those to Members), including the establishment of any necessary reserves;

13.4.3 All remaining assets of the Company will be distributed to the Members in the manner set forth in Section 6.2 hereof.

13.5 **Distribution of Company Assets.** The Company shall not distribute any Company Assets to its Members upon the liquidation of the Company other than cash unless all of the Members agree to the distribution by the Company of assets other than cash and the value

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to be assigned to such assets. To the extent assets other than cash are distributed to the Members, such distributions shall be based on the fair market value of the assets distributed.

ARTICLE 14
DISPUTE RESOLUTION

14.1 **Application of Section.** Whenever either the Manager or the Members cannot mutually agree on the resolution of a matter or dispute, the provisions of this Article will apply. The rights and obligations of the Manager with respect to the management of the Company will continue until the dispute is resolved pursuant to this Article 14.

14.2 **Mediation.** In the event of a dispute, any dissatisfied Member will provide notice of the dispute to all of the other Members. The Members will then arrange a meeting to discuss the dispute within ten (10) days of receipt of notice of the dispute. If the dispute cannot be resolved among the Members within thirty (30) days of the meeting to discuss the dispute, then any Member may submit the dispute to mediation by notice to all of the other Members (the "Mediation Notice"). The Member sending such notice shall then have ten (10) days to make a request to a reputable and nationally recognized agency in the State of California which specializes in mediation to select a mediator to assist in resolving the dispute. The costs of the mediator will be shared equally by the Members and all decisions as to date, time and location of mediation meetings shall be made by the mediator. If the dispute cannot be resolved through mediation within ninety (90) days of the Mediation Notice, then, and only then, will the provisions of Section 14.3 apply.

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14.3 **Other Remedies.** If the dispute cannot be resolved pursuant to Section 14.2, then either party may seek whatever remedies are available at law or in equity, subject to any limitations set forth in this Agreement, in state or Federal court situated in Washoe County, Nevada.

ARTICLE 15
AMENDMENTS

15.1 **Proposal of Amendments.** Any amendments to the Articles and this Agreement must be approved by four (4) of the five (5) members of the Executive Committee, subject to the terms of Section 8.3.12.

15.2 **Amendments by TMP.** Notwithstanding any provision of this Agreement, amendments to this Agreement which, in the opinion of counsel to the Company, are necessary to maintain the status of the Company as a tax partnership under federal or state law or for other tax purposes may be made by the TMP without the necessity of the approval of the Executive Committee or the Members.

ARTICLE 16
MISCELLANEOUS

16.1 **Notice.** All notices, requests, consents and other communications required or permitted under this Agreement must be in writing and must be (as elected by the Person giving

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such notice) hand delivered by messenger or courier service, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to CR:	CR Cal Neva, LLC c/o Criswell Radovan, L.L.C. 1336-D Oak Street St. Helena, California 94574 Attn: Robert Radovan Facsimile: 707/963-0513
With copy to:	Powell Coleman & Arnold LLP 8080 North Central Expressway, Suite 1380 Dallas, Texas 75206 Attn: Bruce Coleman, Esq. Facsimile: 214/373-8768
If to other Members:	At the addresses set forth on Schedule 4.1

16.1.1 Each such notice will be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date of a receipt of a clear copy if by telecopy, (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the carrier as not deliverable, as the case may be, if sent by overnight courier service such as Federal Express, and (d) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

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16.1.2 By giving to the other parties at least fifteen (15) days written notice thereof, the parties hereto and their respective successors and assigns will have the right at any time during the term of this Agreement to change their respective addresses and each will have the right to specify as its address any other address within the United States of America.

16.1.3 A transferee of an interest by any Member will be entitled to receive copies of notices hereunder, provided such transferee will have given notice to the Company and all Members of its designated address for purposes of this Section and further provided that such transferee has otherwise complied with the terms and conditions of this Agreement in acquiring its interest hereunder.

16.2 **Governing Law**. This Agreement has been executed and delivered within the State of California, is a contract made under the laws of the State of California , and will be governed by and interpreted in accordance with the laws of the State of California, without regard to conflict of law principles thereunder.

16.3 **Successors**. Except as otherwise specifically provided herein, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

16.4 **Pronouns**. Wherever from the context it appears appropriate, each term stated in either the singular or the plural will include the singular and the plural, and pronouns stated in

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either the masculine, the feminine or the neuter gender will include the masculine, feminine and neuter.

16.5 **Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof.

16.6 **Severability.** If any provision of this Agreement, or the application of such provision to any Person or circumstance, is held invalid, the remainder of the Agreement, or the application of such provision to Persons or circumstances other than those to which it is held invalid, will not be affected hereby.

16.7 **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page, and this Agreement may be executed by the affixing of the signatures of each of the Members to one of such counterpart signature pages, all of which will have the same force and effect as though all of the signatories had signed a single signature page.

16.8 **Entire Agreement; Amendment.** This Agreement embodies and constitutes the entire understandings of the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement unless specifically agreed to by the Members. Except as set forth in Article 15, neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing executed by the Members; provided, however, that if an amendment to this Agreement has been approved as a Major Decision pursuant to Section 8.3.12 above, such amendment may be executed pursuant to powers of attorney previously granted by each Member in the event any of the Members fail to execute such amendment personally.

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16.9 **Attorneys' Fees.** If any Member or Manager commences an action against the other Members and/or Manager to interpret or enforce any of the terms of this Agreement or as the result of a breach by the other Member(s) or Manager(s) of any terms hereof, the losing (or defaulting) Member(s) or Manager(s) will pay to the prevailing Member(s) or Manager(s) reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action (including at the appellate level), whether or not the action is prosecuted to a final judgment.

16.10 **Further Assurances.** Each Member agrees to execute and deliver any and all such other and additional instruments and documents and do any and all such other acts and things as may be necessary or expedient to more fully effectuate this Agreement and to carry on the business contemplated hereunder.

16.11 **Equitable Remedies.** Each of the parties hereto acknowledges and agrees that, in the event of a breach or threatened breach of this Agreement by any Member or the failure of a Member to perform in accordance with the specific terms hereof, the other parties hereto will be irreparably damaged and that monetary damages would not provide an adequate remedy. Accordingly, it is agreed that, in addition to any and all other rights which may be available, at

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law or in equity, the non-breaching parties will be entitled to injunctive relief and/or specifically to enforce the terms and provisions hereof in any action instituted in accordance with Section 16.12.

16.12 **Indemnities.**

16.12.1 The Manager will not be liable for errors in judgment, whether or not disclosed, unless due to gross negligence, willful neglect or intentional misconduct. From and after the Effective Date, the Company will and does hereby indemnify and hold harmless the Manager from and against any and all claims, actions, suits, liabilities, judgments, obligations, losses, penalties, demands, expenses and damages (and all expenses associated therewith, including court costs and attorney's fees at all negotiations, trial and appellate levels) incurred by the Manager in respect of any act or omission to act by the Manager, whether or not such act or omission to act was negligent, including without limitation any such act or omission by them when acting in the good faith belief that they were acting or refraining from acting within the scope of their authority under this Agreement on behalf of the Company or in furtherance of their interests, provided that the foregoing will not entitle the Manager to indemnification for gross negligence, willful neglect or intentional misconduct.

16.12.2 Notwithstanding subsection 16.12.1, a Member will not be liable to the Company or any other Member arising from any act or omission to act, even if involving gross negligence, willful neglect or intentional misconduct, unless claim, action, right of action, suit, investigation, liability, judgment, obligation, loss, penalty, demand, expense or damage therefor is made or otherwise instituted before such Member ceases to be a Member of the Company or before the date of dissolution, winding up and termination of the Company.

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16.13 **Contributions.** In the event that one Member is held severally liable for the debts of the Company, and such liability did not arise out of such Member's assumption of such liability or its negligent or willful act, such Member will be entitled to contribution from the other Members.

16.14 **No Third Party Rights.** The provisions of this Agreement are for the exclusive benefit of the Company and the Members and no other party (including without limitation any creditor of the Company or any Member) will have any right or claim against the Company or any Member by reason of those provisions or be entitled to enforce any of those provisions against the Company or any Member.

16.15 **Reliance on Experts.** For purposes of this Agreement, whenever one of the Members reasonably requires or retains the use of an expert in order to discharge a duty hereunder, such Member's sole responsibility in connection with such duties will be the reasonable reliance upon the advice of the experts, and no Member will be liable on account of any duty or obligation imposed hereunder in the event of a reliance upon professional advice.

16.16 **Submission to Jurisdiction.** Subject to the provisions of Article 14 hereof, each of the Members irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement will be brought in the courts of record of the State of California in Placer County or the courts of the United States with jurisdiction over Placer County, California; (b) consents to the jurisdiction of each such court in any such suit,

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action or proceeding; (c) waives any objection which he/she may have to the laying of venue of any such suit, action or proceeding in any of such courts; (d) consents to service of any court paper by mail, as provided in Section 16.1 hereof, or in such other manner as may be provided under applicable laws or court rules in California. Notwithstanding the provisions of this Section 16.16, the Members acknowledge that before a Member may file legal action against one or more Members, such Member must have complied with the remedies available pursuant to Article 14 of this Agreement.

16.17 **Remedies Cumulative.** The rights and remedies given in this Agreement to a non-defaulting Member or the Company are deemed cumulative, and the exercise of one of such remedies will not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting Member under the provisions of this Agreement or given to a non-defaulting Member by law.

16.18 **No Waiver.** One or more waivers of a breach of any provision of this Agreement by any Member will not be construed as a waiver of a subsequent breach of the same or any other provision, nor will any delay or omission by a non-defaulting Member to seek a remedy for any breach of any provision of this Agreement by a Member be construed as a waiver by the non-defaulting Member of the right to exercise its/his/her remedies and rights with respect to such breach or any subsequent breach, whether similar or not.

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16.19 **Confidentiality.** Except as required in the normal conduct of a Member's business or as required by law, no Member, without the written approval of all Members, whether during continuance of the Company or after its termination, will divulge to any Person not a Member other than its/his/her attorneys, accountants, employees and professional advisers, any information concerning the business of the Company or the content of this Agreement or any other contract or agreement entered into by the Company. A Member may, however, disclose to third parties the existence of the Company and the names of the Members.

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16.20 **Construction.** This Agreement will be interpreted without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

16.21 **Accounts.** In no case will funds of the Company be commingled with funds not belonging to the Company. Withdrawals from any such account or accounts will be made upon the signature or signatures of such Persons as the Manager may designate.

16.22 **Time of the Essence.** Time is of the essence of this Agreement.

16.23 **Time Devoted to Venture.** No Member will be required to devote its/his/her entire time or attention to the business of the Venture, or more time or attention than reasonably required to carry out its/his/her obligations under this Agreement.

16.24 **Exhibits.** All Exhibits, and documents attached thereto, referred to in this Agreement are deemed incorporated herein by reference as if fully set forth in length.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the date first set forth above.

CR CAL NEVA, LLC

By: William T. Criswell
William T. Criswell, President

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IMC INVESTMENT GROUP CNR, LLC,
a Nevada limited liability company

By: _____
Brandon Chaney, Manager

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MUNNERLYN REVOCABLE TRUST dated
September 17, 1997

By: Charles R. Munnerlyn Trustee
Charles R. Munnerlyn, Trustee

By: Judith G. Munnerlyn, Trustee
Judith G. Munnerlyn, Trustee

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PAUL AND EVY PAYE, LLC,
a California limited liability company

By: _____
John Paye, Manager

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CEA VENTURES, LP

By: CEA Holdings, LLC,
General Partner

By: _____
Donna M. Gibson, Managing Member

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OAKDALE AVENUE PARTNERS, LP

By: Oakdale Avenue Management, LLC,
General Partner

By: _____
John F. Miller, Manager

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Leslie P. Busick - TRUSTEE

LESLIE P. BUSICK, Trustee of that certain Trust Agreement dated June 11, 1974, as amended

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THE ERICKSON FAMILY TRUST dated
August 3, 2006

By: _____
Philip L. Erickson, Trustee

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DIXON FAMILY TRUST
DATED NOVEMBER 1, 1994

By: _____, Trustee
Michael A. Dixon, Trustee

By: _____
Sharon L. Dixon, Trustee

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MARTIN FAMILY TRUST
DATED APRIL 20, 2000

By: Carol J. Martin
CAROL J. MARTIN, Trustee

By: David C. Martin
DAVID C. MARTIN, Trustee

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SINATRA FAMILY CAL NEVA INVESTORS

By:_____
Robert A. Finkelstein,
Trustee/Managing Member

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THORPE INVESTMENTS, LP

By: _____
Allen R. Thorpe, General Partner

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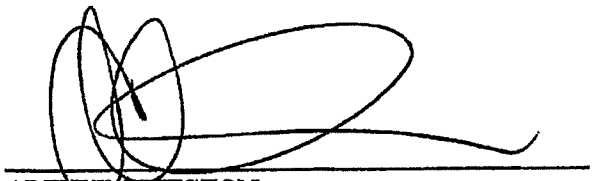

ARTHUR PRIESTON

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MOLLY KINGSTON

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MARIUCCI LIVING TRUST UNDER AGREEMENT DATED JULY 5, 1989, AS AMENDED

By: _____ Trustee
Stephen Ray Mariucci, Trustee

By: _____
Gayle Elaine Mariucci, Trustee
Trustee

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MARRINER REAL ESTATE, LLC,
a Nevada limited liability company

By: _____
Dave Marriner, Manager

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LADERA DEVELOPMENT, LLC

By: _____

Name: James Pickett

Title: Managing Member

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Schedule 4.1

MEMBERS AND INTERESTS

As of November 24, 2014

Members	Business, Residence or Mailing Address	Percentage Owned
1. PREFERRED MEMBERS		
(a) IMC Investment Group CNR, LLC	880 Northwood Blvd. Suite 2 Incline Village, NV 89451	20.49%
(b) CR Cal Neva, LLC	1336-D Oak Street St. Helena, CA 94574	6.83%
(c) Charles R. Munnerlyn and Judith K. Munnerlyn, Trustees of the Munnerlyn Revocable Trust dated September 17, 1997	1731 Marseilles Court San Jose, CA 95138	6.83%
(d) Paul and Evy Paye, LLC	c/o John Paye 15291 Red Dog Road Nevada City, CA 95959	6.19%
(e) CEA Ventures, LP	2000 Brookhill Manor Court Chesterfield, MO 63017	3.41%
(f) Oakdale Avenue Partners, LP	P. O. Box 945 Ross, CA 94957 (Street address: 46 Upper Road Ross, CA 94957)	3.41%
(g) Leslie P. Busick, Trustee	P. O. Box 4150 Incline Village, NV 89450	3.41%
(h) The Erickson Family Trust dated August 3, 2006	1013 Lakeshore Blvd. Incline Village, NV 89451	3.41%
(i) Dixon Family Trust dated November 1, 1994	12778 Lookout Loop Truckee, CA 96161	3.41%

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(j) Martin Family Trust dated April 20, 2000	8 Ladbrook Grove Coto de Caza, CA 92679	3.41%
(k) Sinatra Family Cal Neva Investors	8573 W. Olympic Blvd. Los Angeles, CA 90035	1.71%
(l) Thorpe Investments, LP	390 Park Avenue, 21st Floor New York, New York 10022	1.71%
(m)Arthur Prieston	4503 Great Bear Truckee, CA 96161	1.71%
(n) Molly Kingston	529 Fallen Leaf Way Incline Village, NV 89451	1.71%
(o) Mariucci Living Trust Under Agreement dated July 5, 1989, as amended	15940 Romita Court Monte Sereno, CA 95030	1.71%
(p) Marriner Real Estate, LLC	1545 Debra Lane Incline Village, NV 89450	0.65%

2. SPONSOR MEMBER

CR Cal Neva, LLC	1336-D Oak Street St. Helena, CA 94574	20%

3. MEZZANINE LENDER

Ladera Development, LLC	16475 Bordeaux Drive Reno, Nevada 89511	10%

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Schedule 4.2

CAPITAL CONTRIBUTIONS OF PREFERRED MEMBERS
As of November 24, 2014

IMC Investment Group CNR, LLC	$ 6,000,000
CR Cal Neva, LLC	2,000,000
Charles R. Munnerlyn and Judith K. Munnerlyn, Trustees of the Munnerlyn Revocable Trust dated September 17, 1997	2,000,000
Paul and Evy Paye, LLC	1,812,500
CEA Ventures, LP	1,000,000
Oakdale Avenue Partners, LP	1,000,000
Leslie P. Busick, Trustee	1,000,000
The Erickson Family Trust dated August 3, 2006	1,000,000
Dixon Family Trust dated November 1, 1994	1,000,000
Martin Family Trust dated April 20, 2000	1,000,000
Sinatra Family Cal Neva Investors	500,000
Thorpe Investments, LP	500,000
Arthur Prieston	500,000
Molly Kingston	500,000
Mariucci Living Trust Under Agreement dated July 5, 1989, as amended	500,000
Marriner Real Estate, LLC	187,500
TOTAL	$20,500,000

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Schedule 4.3

USES OF CAPITAL CONTRIBUTIONS

1. Repayment of bridge loan note in the amount of $6,000,000.00, plus accrued interest, due on or before April 30, 2014.

2. Payment to Seller of approximately $10,000,000.00 to redeem its equity interest in New Cal Neva.

3. Provide additional development capital for the Project.

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Schedule 8.4

EXECUTIVE COMMITTEE
As of October 7, 2014

Member	Member Representative
CR	William T. Criswell
CR	Robert Radovan
Preferred Member	Brandon Chaney
At Large	Leslie P. Busick
At Large	Troy Gillespie

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JHenriod@LRRC.com

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Fax (775) 997-7417
RCampbell@RGCLawOffice.com

Attorneys for Plaintiff
George Stuart Yount

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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 **PLAINTIFF'S REPLY TO MARRINERS' OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW, FOR RELIEF FROM JUDGMENT TO ALTER AND AMEND THE JUDGMENT TO AMEND THE FINDINGS AND FOR NEW TRIAL**

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INTRODUCTION

Judge Flanagan's unsupported award of damages to Marriner in an amended order violated Mr. Yount's due process rights. Defendant Marriner never pleaded or proved a counterclaim and yet Judge Flanagan awarded speculative damages to defendant. Defendant attempts to justify his damage award by pointing to various procedural rules. However, even these liberal rules still require advanced notice and an opportunity to defend. Further, this case is not about a "technical error" within the four corners of defendant's pleading. The procedural rules defendant relies on to justify his damage award are designed to ameliorate technical errors in a complaint (especially in a notice pleading State). Defendant cannot point to a single instance that would demonstrate that he sought money damages prior to Judge Flanagan's unsupported award. These procedural rules are not an end run around due process.

Further, the record cannot support a judgment against Mr. Yount or a damage award in favor of defendant. Indeed, even defendant fails to cite to any credible evidence in the record and can only either point to the findings themselves or mischaracterize the record to support his motion. Accordingly, Mr. Yount is entitled amended findings and judgment in Mr. Yount's favor, or at least new trial.

I.

THE COURT COULD NOT HAVE AWARDED DAMAGES TO MARRINER

Defendant contends the Court had authority to render all appropriate relief pursuant to Rule 15(b) and Rule 54(c) because "Judge Flanagan expressly stated Mr. Yount's conduct established liability." Defendant relies on the contention that Rule 15(b) and 54(c) are liberal and broad rules. However, these rules are not so broad as to permit a court to abandon the due process requirement of advanced notice. Further, these procedural rules must be read

together and cannot be used to circumvent due process. The test for consent is whether the opposing party had a fair opportunity to defend and could have presented additional evidence had the substance of the amendment been known sooner. *Matter of Prescott*, 805 F.2d 719, 725 (7th Cir. 1986); *see Born v. Monmouth Cnty. Corr. Inst.*, 458 Fed.Appx. 193, 199 (3d Cir.2012) (affirming the denial of a Rule 15(b) motion at trial to add a demand for punitive damages because it is "unfair and substantially prejudicial to permit the injection of a new and different prayer for relief after trial at the very end of the case") (citation omitted). Mr. Yount did not have advanced notice that substantial money damages were at stake and therefore the Court cannot award damages under 15(b) or 54(c).

A. Mr. Yount Did Not Impliedly Consent to Try a Counterclaim

Defendant contends that both Judge Flanagan and the successor Judge found pursuant to 15(b) that the claim of intentional interference was tried.[1] Neither Judge Flanagan[2] or the successor Judge[3] made the express finding that intentional interference with contractual relations was tried by implied consent.

A trial court abuses its discretion when an amendment of the pleadings violates a party's due process. *Deere & Co. v. Johnson*, 271 F.3d 613, 622 (5th Cir. 2001). A defendant fails to give a plaintiff adequate notice of an implied claim when evidence relevant to the new claim is also relevant to the claim originally pled. *McLeod v. Stevens*, 617 F.2d 1038, 1040–41 (4th Cir. 1980) (noting that all evidence of harm to plaintiff was germane to the equitable relief plaintiff sought and its admission without objection, therefore, cannot be treated as implied consent to the trial of the issue of damages); *Addie v. Kjaer*,

[1] Defendant's Motion 5: 8-10, 14:23-26

[2] Hr'g Tr. 9/08/2017, at 1139:13-19

[3] Judgment, Filed 30/12/2018

737 F.3d 854, 867 (3d Cir. 2013); *In re Acequia, Inc.*, 34 F.3d 800, 814 (9th Cir. 1994) (*quoting Wesco Mfg. v. Tropical Attractions*, 833 F.2d 1484, 1487 (11th Cir. 1987) (the introduction of evidence arguably relevant to pleaded issues cannot serve to give a party fair notice that new issues entered the case). Implied consent is not established merely because evidence bearing directly on an unpleaded issue was introduced without objection; it must appear that the parties understood the evidence was aimed at the unpleaded issue. *Viox v. Weinberg*, 861 N.E.2d 909, 917 (Ohio Ct. App. 2006). Trial of unpleaded issues by implied consent is not lightly to be inferred under Rule 15(b). *Deere & Co. v. Johnson*, 271 F.3d 613, 622 (5th Cir. 2001).

Here, defendant cannot point to any evidence in the record to demonstrate that Mr. Yount expressly or impliedly consented to try a counterclaim.[4] Defendant argues that Mr. Yount's "counsel admitted that the defendants tried their claims of wrongdoing against Yount"[5] because Mr. Campbell stated, "they shifted that focus."[6] Mr. Yount's counsel did not acquiesce to a trial regarding a counterclaim. Rather, he argued that there were no counterclaims against Mr. Yount:

> 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.

(Hr'g Tr. 9/08/2017, at 1016: 9-13.)

[4] Defendant fails to address any of Mr. Yount's Rule 16(b) arguments. He fails to show good cause in deviating from the scheduling order. If Defendant believed he had a viable counterclaim he had a considerable amount of time to amend his pleading. *Nutton v. Sunset Station*, Inc. 357 P.2d 966, 131 Nev. Adv. Op. 34(Nev. Ct. App. 2015).

[5] Defendants Motion 8:9-11

[6] Id.

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Further, Mr. Yount could not have impliedly consented to a try a counterclaim when defendant's counsel reassured him that the Mosaic loan evidence was relevant only to dispute Mr. Yount's prima facie case, not a counterclaim.

> MR. WOLF: So that [the Mosaic meeting] goes to causation of damage. It's Mr. Yount's own inaction in this case…And in hindsight, I don't think he was calculating to hurt himself…I think that contributed to his own damage insofar as his damages relate to the failure and the bankruptcy of the project.

(Hr'g. Tr. 09/08/2017 1074:5-18.)

The defendants' affirmative defense of unclean hands also made notice of any counterclaim centered on the Mosaic loan impossible. And each time Mr. Yount questioned the validity of the Mosaic loan evidence, he was told the defendants had not pleaded a counterclaim but had pleaded the affirmative defense of unclean hands.[7] *See Addie,* 737 F.3d at 867; *Taylor v. Mills*, 892 F. Supp. 2d 124, 138 (D.D.C. 2012) (holding no implied consent even though the defendant responded to the plaintiff's eleventh hour insertion of a hostile work environment claim because that response was cursory and always based on the premise that "Plaintiff did not plead a hostile work environment claim.") While some evidence may have come in that might have been relevant to a counterclaim claim, that introduction cannot justify implied consent to try an unpleaded issue.

B. Rule 54(c) Requires Express or Implied Consent

Rule 54(c) applies where "the allegations properly pled and proven support a theory and type of relief not specified in [ ] demand for judgment." *Pinkley, Inc. v. City of Frederick, MD.*, 191 F.3d 394, 400 (4th Cir. 1999). The

[7] Hr'g Tr. 9/08/2017, at 1054:16-19; Hr'g Tr. 8/31/2017, at 515:17-21

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purpose of 54(c) is to allow the court to give relief without regard to the constraints of the antiquated and ridged forms of action and to eliminate the theory of pleading doctrine. *Baker v. John Morrell & Co.*, 266 F. Supp. 2d 909, 929 (N.D. Iowa 2003), *aff'd,* 382 F.3d 816 (8th Cir. 2004) (noting a party should recover on valid claim regardless of his counsel's failure to perceive the true basis of the claim at the pleading stage, provided always that a late shift in the thrust of the case will not prejudice the other party in maintaining his defense in the merits). Rule 54(c) has limits and "a party will not be given relief not specified in its complaint where the failure to ask for particular relief so prejudiced the opposing party that it would be unjust to grant such relief." *Cooper v. Gen. Am. Life Ins. Co.*, 827 F.3d 729, 732 (8th Cir. 2016). While Rule 54(c) permits relief on grounds not pleaded, that rule does not go so far as to authorize the granting of relief on issues neither raised nor tried. *Idaho Res., Inc. v. Freeport-McMoran Gold Co.*, 110 Nev. 459, 462, 874 P.2d 742, 744 (1994)(quoting *Combe v. Warren's Family Drive–Inns, Inc.*, 680 P.2d 733, 735–36 (Utah 1984).

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The discretion afforded by Rule 54(c) assumes that the entitlement to relief not specifically pled has been tested adversarially, tried by consent or at least developed with meaningful notice. *Peterson v. Bell Helicopter Textron, Inc.* 806 F.3d 335 (5th. Cir. 2015)(noting that for the entirety of the litigation through final judgment the party believed it was defending only against a claim for money damages and it had no opportunity to effectively defend itself from injunction request.) Thus, the "relief may be based on a theory of recovery only if the theory was presented in the pleadings or tried with the express or implied consent of the parties." *Idaho Res.,* 110 Nev. at 462 (quoting *Evans Products Co. v. West American Ins. Co.,* 736 F.2d 920 (3d Cir.1984).

As discussed above, Mr. Yount did not expressly or impliedly consent to try a counterclaim. The purpose of Rule 54(c) is to allow a court to fill in relief,

not new claims. Mr. Yount was unaware that substantial money damages were at stake and it would be unjust to grant such relief. *See Gilbane Bldg. Co. v. Fed. Reserve Bank of Richmond, Charlotte Branch*, 80 F.3d 895, 901 (4th Cir. 1996) (holding that a substantial increase in the defendant's potential ultimate liability can constitute specific prejudice barring additional relief under Rule 54(c) and that the complaint gave no warning that successful prosecution of the action could result in an award of three times the actual damages).

II.

THE RECORD DOES NOT SUPPORT A JUDGMENT IN FAVOR OF MARRINER

A. Defendant's Motion Fails to Point to Any Evidence in the Record of Mr. Yount's Allegedly Wrongful Conduct

Pursuant to Rule 52(b), in a bench trial the Court can amend its findings after the judgment where "the sufficiency of the evidence supporting the findings" is called into question. A trial court is required to amend its findings of fact based on evidence contained in the record. *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986).

Here, rather than cite to evidence in the record, defendant cites to Judge Flanagan's findings to substantiate his argument that evidence in the record supports a judgment in favor of defendants. Defendant essentially argues that Judge Flanagan's findings are supported by Judge Flanagan's findings. For instance, defendant alleges that Mr. Yount intentionally interfered with the Mosaic loan but to support his allegation defendant cites to Judge Flanagan's oral findings.[8] Defendant then contends that Mr. Yount was aware that the IMC intended to interfere with the loan but rather than cite to any testimony in the record to support this erroneous allegation, defendant again points to Judge

[8] Defendant's Motion 14:16-21

Flanagan's findings.[9] Defendant does not support these contentions with any other evidence. Defendant's motion is filled with similar examples.[10]

Further, the only evidence aside from Judge Flanagan's oral findings that defendant cites is three sentences from Marriner describing how the allegations have affected him.[11] And instead of analyzing any of the trial exhibits to demonstrate how the evidence supports a finding of intentional interference with contractual relations, defendant simply states that "Judge Flanagan cited to Trial Exhibits 121, 125, 126, 127, 130, 132, and 133 to demonstrate that the members of the IMC were communicating extensively regarding the Mosaic loan."[12] Accordingly, defendant's motion cannot demonstrate that the evidence in the record supports Judge Flanagan's findings.

B. Mr. Yount's Conduct Was Not Tortious and Cannot Support an Award in Favor of Defendant

Defendant alleges there are "various grounds for affirmative relief" but fails to cite any case law to demonstrate that simply communicating with the Executive Committee ("EC") or IMC is tortious conduct. Defendant generally defines the elements of intentional interference with contractual relations, civil aiding and abetting, and conspiracy. However, defendant fails to provide any analysis as to whether Mr. Yount's mere communication rises to the level of tortious conduct.

1. Defendant's Counsel Conceded That Mr. Yount Did Not Act Intentionally

The heart of an intentional interference with contractual relations action is the intentional act that was designed to disrupt a contractual relationship. *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 275, 71 P.3d 1264, 1268 (2003). If an

[9] Defendant's Motion 11:14-17

[10] Defendant's Opposition 9:5-7

[11] Defendant's Opposition 10:13-17; Hr'g. Tr. 08/29/12 122:13

[12] Defendant's Opposition 12:3-7

actor does not have the intent of causing interference, the actor's conduct does not subject the actor to liability even if the actor's actions have the unintended effect of deterring the third person from dealing with the other. *Seaman's Direct Buying Serv., Inc. v. Standard Oil Co.*, 36 Cal. 3d 752, 765, 686 P.2d 1158, 1164 (1984), *overruled on other grounds by Freeman & Mills, Inc. v. Belcher Oil Co.*, 11 Cal. 4th 85, 900 P.2d 669 (1995). It is not enough that the actor intended to perform the acts that caused the result—the actor must have intended to cause the result itself. *Id.*

Here, defendant alleges Mr. Yount actively participated in interfering with the loan. However, defendant never accused Mr. Yount of intentionally interfering with the Mosaic loan. In fact, Marriner conceded that he did not even have enough information to accuse the IMC of interfering with the loan.[13] He then noted that the only conduct Mr. Yount engaged in was simply communicating with the IMC.[14] Importantly, Marriner's counsel questioned Mr. Yount regarding whether he intended the result of the Mosaic meeting to occur. Mr. Yount testified that he believed the meeting was to put a deal in place, not to tank the loan.

> MR. WOLF: What did you believe was going to happen, transpire in the meeting by the three executive committee members in Sacramento with Mosaic prior to the meeting that Mr. Radovan had scheduled?
>
> MR. YOUNT: I did not know what was going to happen. I believe they were trying to put the deal together, though, but that was just my understanding.
> * * *
> … as far as I know, they [the EC] wanted to save the deal.

[13] MR. LITTLE: Isn't it true that you understood that the IMC group went to Mosaic's office behind Criswell Radovan's back and said something to cause them to pull the plug on the financing?
MARRINER: I heard it as a rumor, but I was not involved.
Hr'g Tr. 08/29/2017 157:21-24, 158:6-7

[14] Hr'g. Tr. 08/29/2017 158:14-24, 159:1

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(Hr'g. Tr. 09/06/2017 767:14-20; 769:6-9.) Defendant cannot support a claim that Mr. Yount intentionally interfered with the Mosaic loan. Defendant's counsel demonstrated at trial that Mr. Yount did not directly act to interfere with the loan and also that Mr. Yount did not intend to "torpedo" the Mosaic loan. Indeed, it makes little sense to find that Mr. Yount intended to disrupt the Mosaic loan. Even defendant's counsel indicated in his closing argument that Mr. Yount did not intend to interfere with the loan.

> MR. WOLF: 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 [IMC People] at the pass and maybe avoid what happened.

(Hr'g Tr. 9/08/2017, at 1073: 20-24.)

Mr. Yount was not a member of the EC,[15] he did not attend the meeting between the EC and Mosaic, and he never communicated directly with Mosaic. The evidence introduced at trial cannot support a finding that Mr. Yount intentionally interfered with the Mosaic loan or intended the result of the Mosaic meeting.

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2. Defendant Fails to Demonstrate That Mere Knowledge a Tort is Going to Be Committed is Sufficient to Prove Tortious Conduct

At most, defendant could accuse Mr. Yount of not doing enough[16] to stop the meeting with Mosaic. However, knowledge that a tort was going to be committed and the "failure" to prevent it is not tortious conduct. *See LVRC Holdings, LLC v. Brekka*, 128 Nev. 915, n.5 , 381 P.3d 636 (2012)(affirming district court's dismissal of civil aiding and abetting claim because the court reasoned receipt of e-mails from was not evidence of substantial assistance, encouragement, or contribution");*Casella v. SouthWest Dealer Services, Inc.*, 157

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[15] Operating Agreement Schedule 8.4

[16] Hr'g Tr. 08/31/2017 499:24, 500:1-3

Cal.App.4th 1127, 1140-1141 (2007); *Wetherton v. Growers Farm Labor Assn.*, 275 Cal.App.2d 168, 176 (1969), *disapproved on another ground in Applied Equip. Corp. v. Litton Saudi Arabia Ltd.,* 7 Cal. 4th 503, 521 fn.10, 869 P.2d 454, 487 (1994)("mere knowledge, acquiescence, or even approval of an act without an agreement to cooperate is not enough.") It is not enough that the accused knew of an intended wrongful act, they had to agree to achieve it. *Choate*, 86 Cal. App. 4th at 333, 103 Cal. Rptr. 2d at 353. Liability for conspiracy and civil aiding and abetting depends on proof that the party intentionally participated with knowledge of the object to be attained. *Casey v. U.S. Bank Nat. Assn*, 127 Cal.App.4th 1138,1145-1146 (2005).

Here, defendant cannot show that Mr. Yount's conduct was tortious. Defendant erroneously contends that Mr. Yount "knew the IMC's objective was to cause Mosaic to 'tear up' the funding commitment."[17] Defendant cannot point to any evidence or testimony that demonstrates this incorrect statement. In fact, the record shows Mr. Yount was in favor of the Mosaic deal.

> MR. WOLF: At that point, in time, just a couple of days before the meeting at Mosaic, you were in favor of the Mosaic deal?
> MR. YOUNT: I was in favor of any deal and that was the only real deal I was aware of.

(Hr'g. Tr. 09/06/2017 766:13-17.) The record further reveals that Mr. Yount thought the Mosaic meeting was to save the deal (*see supra*).[18] The only conduct he was accused of was choosing not to inform Criswell Radovan of the meeting. This conduct simply cannot give rise to liability.

The judgment in favor of defendant was unjustified and defendant fails to direct this Court to any evidence or testimony that can support liability. The legal error is even more severe when combined with the outrageous award of

[17] Defendant's motion 16:14-16

[18] Hr'g. Tr. 09/06/2017 769:6-9

speculative damages that Judge Flanagan unilaterally inserted into an amended order.

C. Marriner's Damage Award Was Not Substantiated

Defendant fails to address Mr. Yount's argument that the Court cannot award speculative damages. Rather, defendant alleges he is entitled to his damage award based on the Real Estate Consulting Agreement. Pursuant to the agreement Marriner would have been paid 3% of the gross revenue of the project.[19]

It is well established that future earnings by their very nature are speculative and therefore to be awardable they must be well substantiated. *Anglo-Iberia Underwriting Mgmt. Co. v. Lodderhose*, 282 F. Supp. 2d 126, 129 (S.D.N.Y. 2003), *as amended* (Oct. 8, 2003). This is particularly true where the calculation of damages involves lost profits of a new business. *McDevitt & St. Co. v. Marriott Corp.*, 713 F. Supp. 906, 932 (E.D. Va. 1989), *aff'd in part, rev'd in part on other grounds,* 911 F.2d 723 (4th Cir. 1990)(holding the calculations upon which the projected management fee claim is based—the new hotel's projected revenues and operating profits—are simply too speculative to permit recovery).

Marriner's lost future earnings under the consulting agreement are inextricably linked to anticipated profits and gross revenues. *McDevitt*, 713 F. Supp. at 932. The Nevada Supreme Court has already articulated how lost profits must be proven. *Knier v. Azores Const. Co.*, 78 Nev. 20, 24, 368 P.2d 673, 675 (1962). "Where the loss of anticipated profits is claimed as an element of damages, the business claimed to have been interrupted must be an established one and it must be shown that it has been successfully conducted for such a length of time and has such a trade established that the profits therefrom are reasonably ascertainable." *Id.*

[19] Defendants Motion 10:20

Here, defendant fails to substantiate how he is entitled to $1.5 million. To calculate Marriner's lost future fees, the defendant would have to prove anticipate gross revenue. Calculating gross revenue of a hotel that never opened is entirely speculative. The successful operation of the Cal Neva would depend on market conditions, average room rates, the hotel's occupancy during certain periods, the hotel's expenses, and several other contingencies. Nevada law is clear to prove anticipated profits with reasonable certainty a party must show the business was established in the market and had been successfully conducted. At trial, defendant did not present any evidence that is of the type to prove future earnings. Thus, Judge Flanagan's award was unsupported and capricious. Unsupportable and speculative damages are clear legal error.

CONCLUSION

The Court committed errors of law that materially affected the outcome and violated Mr. Yount's due process rights. This Court should grant Mr. Yount's motion to correct the manifest injustice.

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

Dated this 15th day of June, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Daniel F. Polsenberg*

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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 2018, I served the foregoing "Plaintiff's Reply to Marriners' Opposition to Plaintiff's Motion for Judgment as a Matter of Law, for Relief from Judgment, to Alter and Amend the Judgment to Amend the findings, and for New Trial" on counsel by the Court's electronic filing system to the persons and addresses listed below:

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/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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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.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

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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:

For the Plaintiff:

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For the Defendant:

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Las Vegas, Nevada

ANDREW WOLF, ESQ.
Attorney at law
264 Village Blvd.
Incline Village, Nevada

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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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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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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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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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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

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EXHIBIT 2

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STEPHANIE KOETTING
CCR #207
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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.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

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TRANSCRIPT OF PROCEEDINGS

TRIAL VOLUME III

August 31, 2017

9:00 a.m.

Reno, Nevada

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

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APPEARANCES:

For the Plaintiff:

RICHARD G. CAMPBELL, ESQ.
Attorney at Law
100 W. Liberty
Reno, Nevada

For the Defendant:

HOWARD & HOWARD
By: MARTIN LITTLE, ESQ.
3800 Howard Hughes Parkway
Las Vegas, Nevada

ANDREW WOLF, ESQ.
Attorney at Law
264 Village Blvd.
Incline Village, Nevada

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January 30, 2016 at the bottom?

A. Yes.

Q. The bottom of page 1 of Exhibit 122?

A. Yes.

Q. And it reads, he said three of the EC is having a meeting with Mosaic in Sac on Monday without CR. Is that legit without CR, without their advanced permission, question mark. Do you see that?

A. Yes.

Q. Do you understand that to be Mr. Yount expressing his feelings or concern about a meeting happening between certain members of the EC and Mosaic without CR's knowledge or permission?

MR. CAMPBELL: Objection. I think the document speaks for itself. He's asking for Mr. Yount's mindset and I think the document speaks for itself.

THE COURT: Sustained.

BY MR. WOLF:

Q. Did Mr. Yount ever share with you prior to the meeting with Mosaic that you were driving to, that there was going to be a meeting between members of the EC and Mosaic in advance of your planned meeting with Mosaic?

A. No.

Q. Do you believe that he should have so informed

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you?

A. Well, those people who knew, certainly somebody should have.

Q. And why do you say that?

A. It was totally unauthorized and, frankly, interference. And, obviously, in the letter that Mosaic said, starts off with, as you know. That is -- so they obviously told Mosaic they were authorized to do that.

Q. So the, as you know, words in the e-mail you received from Mosaic's representative actually was not accurate. You did not know that had happened?

A. Exactly.

Q. When did you become aware of efforts by the IMC group or certain of its members to, for lack of a better word, cut you and Bill Criswell and Criswell Radovan out of the project, out of the --

A. At the time, the first time that was seen was at the second meeting on -- after the EC and member meeting on January 27th. But as we have come to find out in discovery, it started on December 13th or earlier.

Q. And what did you determine began on or before December 13th in regard to efforts to remove you or replace you?

A. That Brandon and Paul had an entire drop box file

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already explained this in your testimony, but the delay that Mosaic is talking about here, is that something that is attributable to you or Mr. Criswell?

A. No. We were waiting for approval. You know, as we said in the November meeting, I was given direction, go do X, Y and Z with them. I met with Mosaic and then they agreed to those aspects. We took it back to the committee, tried to do that on the 12th, and nobody wanted to -- it didn't even get to the point of being able to ask for the approval, honestly.

There was too much argument over we should be raising equity, we should be raising this, raising that, do a capital call, these types of things. By the time we got around to the January 27th, we had a structured meeting and asked for the approval of the loan and which was unanimously given.

Q. Sir, counsel asked you if you had filed a compulsory counterclaim against Mr. Yount in this litigation. You have through me in the pleading filed an affirmative defense for unclean hands, have you not?

A. Yes.

Q. So look at Exhibit 149. This is the January third party report for Hall. Go to page three again.

A. Okay.

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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 August 31, 2017, at the hour of TIME, and took verbatim stenotype notes of the proceedings had upon the trial in the matter of GEORGE S. YOUNT, Plaintiff, vs. CRISWELL RADOVAN, et al, Defendant, 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 619, 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 28th day of September 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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Jacqueline Bryant
Clerk of the Court
Transaction # 6731887 : japarici

EXHIBIT 3

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EXHIBIT 3

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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.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

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TRANSCRIPT OF PROCEEDINGS

TRIAL VOLUME I

August 29, 2017

9:00 a.m.

Reno, Nevada

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

004390

APPEARANCES:

For the Plaintiff:

RICHARD G. CAMPBELL, ESQ.
Attorney at Law
100 W. Liberty
Reno, Nevada

For the Defendant:

HOWARD & HOWARD
By: MARTIN LITTLE, ESQ.
3800 Howard Hughes Parkway
Las Vegas, Nevada

ANDREW WOLF, ESQ.
Attorney at Law
264 Village Blvd.
Incline Village, Nevada

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So being involved, I still think it is one of the best real estate opportunities in North Lake Tahoe and probably in Nevada. When it is -- when it's finally finished, it's going to be sensational. It's a unique location that cannot be duplicated with those views and that location. You know, I'm just sorry that it fell into problems.

Q. I'd like you to tell the Court what it's like to be charged with fraud such as in this case?

THE COURT: I don't think that's necessary.

MR. CAMPBELL: I'll object to that.

BY MR. WOLF:

Q. How have these allegations affected you?

A. I can't even put it into words. It's ruined my life, made it very difficult. I've never in 39 years as a broker, developer, I've been a broker for over 2500 homes, I've never been accused of fraud or lying or cheating. And to have it come from a friend, kind of friend, and I thought we were friendly, but it has ruined my life since the day that lawsuit was filed.

It hurt me that the project failed or was thrown into bankruptcy, because that was my next five years. I had already laid out that I was going to help bring the most -- the dream of bringing the Cal Neva back to life was something

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Radovan's part?
A. No.
Q. And Criswell Radovan are still managers of this project, correct?
A. Correct.
Q. And under the operating agreement, they could have been removed had they done something wrong?
A. That's correct.
Q. Sir, you understood that Mr. Radovan had secured a loan commitment in 2015 from the company we've been talking about, Mosaic, correct?
A. That's what I understand.
Q. And you understood this loan would have replaced the Hall and Ladera loans and provided the additional capital to finish the project?
A. I believe it would have.
Q. And I think you said you understood it provided some cushion to do some things that maybe weren't necessarily needed, but would be nice to do?
A. Yes.
Q. Isn't it true that you understood that the IMC group went to Mosaic's office behind Criswell Radovan's back and said something to cause them to pull the plug on the financing?

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MR. CAMPBELL: Objection, lack of foundation.
THE COURT: How would he know that?
BY MR. LITTLE:
Q. I'll ask him. Did you hear that?
MR. CAMPBELL: Same objection.
THE WITNESS: I heard it as a rumor, but I was not involved.
THE COURT: I'll consider that.
BY MR. LITTLE:
Q. Were you aware that the IMG group were pursuing their own refinancing with Roger Whittemore, Mr. Yount's friend?
A. I understood that they were in discussions with North Light and I had even attempted to put them in touch with North Light through another independent person, but they never responded, but I guess IMC did later.
Q. Sir, are you aware of all the e-mails and correspondence between the IMC group people and Mr. Yount discussing how to oust the Criswell Radovan group and talk about how to deal with the Mosaic loan?
A. I only saw those when I was -- when they delivered the court files. And as I was looking through, I was surprised to see that there was a group kind of talking about removing Criswell Radovan as manager and taking over the

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project.
Q. And securing financing separate and apart from Mosaic?
A. I believe so.
Q. And you understood that Mr. Yount was involved in those communications with the IMG group?
A. There were several e-mails confirming that.
Q. During the time period June-ish, June, July, all the way until when Mr. Yount invested, we heard a lot about in e-mails your name and Mr. Radovan's name come up. Mr. Criswell wasn't involved in any of these discussions, was he?
A. I don't believe he was involved.
Q. In other words, you're not aware of any involvement that Mr. Criswell had with respect to Mr. Yount's investment, are you?
A. Say that again.
Q. You're not aware of any involvement that Mr. Criswell may or may not have had with respect to Mr. Yount's investment?
A. No.
Q. I just have one other brief topic, sir. Counsel had suggested to you that Criswell Radovan needed preapproval from members of this investment group before it could sell

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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 August 29, 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, Plaintiff, vs. CRISWELL RADOVAN, et al., Defendant, 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 203, 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 25th day of September 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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Jacqueline Bryant
Clerk of the Court
Transaction # 6731887 : japarici

EXHIBIT 4

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EXHIBIT 4

CAL NEVA LODGE, LLC

AMENDED AND RESTATED OPERATING AGREEMENT

Dated: May 1, 2014

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CAL NEVA LODGE, LLC

AMENDED AND RESTATED OPERATING AGREEMENT

This Amended and Restated Operating Agreement (this "Agreement") is made and entered into as of the 1st day of May, 2014 (the "Effective Date"), by and among the parties on the signature pages of this Agreement. Such parties and their respective permitted assignees are herein sometimes referred to individually as a "Member" and collectively as the "Members". All references to the Members will also include their successors and assigns pursuant to Article 12.

BACKGROUND FACTS:

A. On March 13, 2013, CR Cal Neva, LLC, a Nevada limited liability company ("CR"), formed a limited liability company named Cal Neva Lodge, LLC (the "Company") by filing certain Articles of Organization with the Secretary of State of the State of Nevada pursuant to the limited liability company laws of the State of Nevada and entering into an Operating Agreement for the Company.

B. The Members desire to amend and restate the existing Operating Agreement of the Company and admit new Members on the terms set forth herein.

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C. Each Member represents that it has sufficient right and authority, without violating or breaching any provisions of law or contract, to execute this Agreement and is not acting on behalf of any undisclosed or partially disclosed principal by such action.

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NOW, THEREFORE, in consideration of agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

ARTICLE 1
DEFINITIONS

As used in this Agreement and the attached Exhibits, the following capitalized terms have the meanings stated below and include the plural as well as the singular number.

1.1 "**Accountants**" means the independent certified public accountants selected by the Company.

1.2 "**Act**" means the limited liability company law of the State of Nevada, and all amendments to the Act.

1.3 "**Act of Insolvency**" will be deemed to have occurred if (a) a Member files in any court, in accordance with any statute of the United States or of any state, a petition in bankruptcy or insolvency, or files for the appointment of a receiver or trustee of all or a portion of the Member's property, or makes an assignment for the benefit of creditors or admits in writing its/his/her inability to pay its/his/her debts generally as they become due; or (b) there is filed

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against a Member in any court in accordance with any statute of the United States or of any state, a petition in bankruptcy or insolvency, or for reorganization, or for appointment of a receiver or a trustee of all or a portion of the Member's property, and any order or decree is not vacated, or such appointment is not revoked or terminated and such receiver or trustee discharged, within ninety (90) days after entry or appointment, as the case may be.

1.4 "**Additional Capital Contribution**" means, with respect to the Members, any amounts the Members mutually agree to contribute to the Company as capital contributions pursuant to Section 4.4.

1.5 "**Additional Member**" means any person or entity who acquires an Interest in the Company after the date hereof.

1.6 "**Adjusted Capital Account**" means, with respect to any Member as of the end of any fiscal year, such Member's Capital Account reduced by those anticipated allocations, adjustments and distributions described in Section 1.704-1(b)(2)(ii)(d)(4)-(6) of the Treasury Regulations and increased by an amount that such Member would be obligated to restore pursuant to this Agreement or would be deemed obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations.

1.7 "**Affiliate**" means, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such Person, (iii) any officer, director or general partner of such Person, or (iv) any Person who is an officer, director, general partner, trustee or holder of ten percent (10%) or more of the voting securities of any Person described in clauses (i) through (iii) of this sentence.

1.8 "**Agreement**" means this Amended and Restated Operating Agreement as originally executed and as subsequently amended or supplemented in accordance with the terms herein.

1.9 "**Allocation Regulations**" means Section 1.704-1 and 1.704-2 of the Treasury Regulations as such regulations may be amended and in effect from time to time (whether Temporary or Final form) and any corresponding provisions of succeeding Treasury Regulations.

1.10 "**Articles**" means the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State of the State of Nevada.

1.11 "**Business Day**" means any day that the national banks in Reno, Nevada, are open for business.

1.12 "**Capital Account**" means, with respect to any Member, the Capital Account maintained for such Person in accordance with the following provisions:

1.12.1 To each Member's Capital Account there will be credited such Member's Capital Contributions and Additional Capital Contributions (if any), such Member's distributive

share of Profits and the amount of Company liabilities that are assumed by such Member or that are secured by any Company Assets distributed to such Member.

1.12.2 To each Member's Capital Account there will be debited the amount of cash and the Gross Asset Value of any Company Assets distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

In the event any Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee will succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

In the event the Gross Asset Values of Company Assets are adjusted pursuant to subsection 1.25.2 hereof, the Capital Accounts of all Members will be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the Allocation Regulations and will be interpreted and applied in a manner consistent with such Allocation Regulations. In the event the Manager determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with the Allocation Regulations, the Manager may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Section 13.4 hereof upon the dissolution of the Company. The Manager will adjust the amounts debited or credited to Capital Accounts with respect to any property contributed to the Company by or distributed to a Member and any liabilities that are secured by such contributed or distributed property or that are assumed by the Company or the Member, in the event the Manager determines such adjustments are necessary or appropriate pursuant to the Allocation Regulations. The Manager also will make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Allocation Regulations.

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1.13 **"Capital Contribution"** means the total amount of cash or other property contributed to the Company by a Member as capital in accordance with this Agreement; such term includes the Capital Contributions described in Sections 4.2, 4.3 and 4.4. The total amount of Capital Contributions made by the Preferred Members is sometimes referred to herein as the "Preferred Equity."

1.14 **"Code"** means the Internal Revenue Code of 1986, as it may be amended, or any subsequent federal law concerning income tax that is enacted in substitution for, or that corresponds with, such Code.

1.15 **"Company"** means Cal Neva Lodge, LLC.

1.16 **"Company Assets"** means any and all property contributed to or acquired by the Company in accordance with this Agreement, including but not limited to the Property or an interest in Seller, and both tangible and intangible property.

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1.17 "**Company Minimum Gain**" has the meaning set forth in Section 1.704-2(d) of the Treasury Regulations for Partnership minimum gain.

1.18 "**Construction Contract**" means the contract with the Contractor to construct the Project on the Property, as approved by the Executive Committee.

1.19 "**Construction Lender**" means the lender who makes a construction loan/mini-permanent loan for construction of the Project.

1.20 "**Construction Loan**" means the construction loan/mini-permanent loan made by the Construction Lender to construct the Project on terms approved by the Executive Committee.

1.21 "**Contractor**" means the general contractor reasonably approved by the Executive Committee engaged by the Company for construction of the Project.

1.22 "**Depreciation**" means, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation will be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, Depreciation will be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

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1.23 "**Fiscal Year**" or "**Year**" means a calendar year (or portion thereof) ending on December 31 of such year.

1.24 "**Governmental Authorities**" means any federal, state, county, municipal or other governmental department or entity, or any authority, commission, board, bureau, court or agency having jurisdiction over the Company Assets, or any portion thereof, and whose approval is necessary for the development of the Property.

1.25 "**Gross Asset Value**" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

1.25.1 The initial Gross Asset Value of any asset contributed by a Member to the Company will be the gross fair market value of such asset, as determined by the contributing Member and the Manager;

1.25.2 The Gross Asset Values of all Company assets will be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a "de minimis" Capital Contribution; (ii) the distribution by the Company to a Member of more than a "de minimis" amount of Company Assets other than money as consideration for an interest in the Company; and (iii) the liquidation of the Company

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within the meaning of the Allocation Regulations; provided, however, that adjustments pursuant to clauses (i) and (ii) above will be made only if the Manager reasonably determine that such adjustments are necessary and appropriate to reflect the relative economic interests of the Members in the Company; and

1.25.3 If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection 1.25.1 or 1.25.2, such Gross Asset Value will thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

1.26 "**Initial Capital Contributions**" shall have the meaning given in Section 4.2 hereof.

1.27 "**Interest**" shall mean a member's entire ownership interest in the Company, including without limitation, its right to distributions of Net Cash from Operations and Net Cash from Sales or Refinancings.

1.28 "**Lender**" means the Construction Lender, and any third party lender(s) subsequently refinancing such indebtedness.

1.29 "**Manager**" means the one (1) Person, who need not be a Member, to whom all or part of the management duties of the Company's business is delegated as provided in Article 9. The initial Manager shall be CR.

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1.30 "**Member**" means each of the parties who has executed this Agreement and each of the parties who may hereafter become Additional or Substitute Members as provided in the Articles and in this Agreement.

1.31 "**Member Minimum Gain**" means an amount with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt was treated as Nonrecourse Liability, determined in accordance with Section 1.704-2(g)(3) of the Treasury Regulations.

1.32 "**Member Nonrecourse Debt**" has the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations for partner nonrecourse debt.

1.33 "**Member Nonrecourse Deductions**" has the meaning set forth in Section 1.7042(i)(2) of the Treasury Regulations for partner nonrecourse deductions. The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Fiscal Year of the Company equals the excess, if any, of the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during such Fiscal Year over the aggregate amount of any distributions during such Fiscal Year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent such distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt determined in accordance with Section 1.704-2(i)(2) of the Treasury Regulations.

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1.34 "**Net Cash From Operations**" means the gross cash proceeds from the Company operations less the portion thereof used to pay or establish reserves for all Company expenses in an amount set forth in the Operating Budget, reserves for property taxes and insurance, interest and principal payments on third party indebtedness, Lender required reserves (including interest and operating expenses), capital improvements, replacements, contingencies, working capital, and other cash requirements, all as set out in the Operating Budget or the Project Budget or as may otherwise be determined by the Manager. "Net Cash From Operations" will not be reduced by depreciation, amortization, cost recovery deductions or similar allowances.

1.35 "**Net Cash From Sales or Financings**" means the net cash proceeds from all sales and other dispositions (other than sales and dispositions of personal property in the ordinary course of business), and all financings of the Property after the repayment of third party indebtedness required in connection with such sale, disposition or financing, less any portion thereof used to pay established reserves for Company obligations and expenses in an amount to be determined by the Manager, but, which shall include reserves for property taxes and insurance, interest and principal payments on third party indebtedness, Lender required reserves for property taxes and insurance, interest and principal payments on third party indebtedness, Lender required reserves (including interest and operating expenses), capital improvements, replacements, contingencies, working capital, and other cash requirements, all as set out in the Operating Budget or Project Budget. "Net Cash From Sales or Financings" will include all principal and interest payments with respect to any note or other obligation received by the Company in connection with sales and other dispositions (other than in the ordinary course of business) of the Property.

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1.36 "**Nonrecourse Deductions**" has the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations. The amount of Nonrecourse Deductions for a Fiscal Year equals the net increase, if any, in the amount of Company Minimum Gain during that Fiscal Year, determined according to the provisions of Section 1.704-2(b)(1) of the Treasury Regulations.

1.37 "**Nonrecourse Liability**" has the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.

1.38 "**Operating Budget**" means the annual operating budget for the Property prepared by the Manager and reasonably approved by the Executive Committee. The Operating Budget for each fiscal year shall be prepared by the Manager and submitted to the Executive Committee for approval no later than November 1 of the preceding fiscal year. In the event that the Executive Committee fails to timely approve an Operating Budget for any given year, the Operating Budget for the preceding year shall remain in effect until the new Operating Budget is approved.

1.39 "**Percentage Interest**" means the percentage of the Company owned by each Member as set forth in Schedule 4.1 attached hereto. The Manager shall cause Schedule 4.1 to be amended and updated to reflect the aggregate Percentage Interests of the Members whenever there are transfers of Interests, Capital Contributions or other events that cause the Percentage Interests to Change.

1.40 "**Person**" means a natural person, corporation, trust, partnership, joint venture, association or other business or other legal entity.

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1.41 **"Preferred Members"** means those Members labeled as such on Schedule 4.1 attached hereto.

1.42 **"Preferred Return"** means a simple annual return on the amount invested by the Preferred Members at the rate of ten percent (10%) per annum from the date the Company receives such investment from a Preferred Member. The Preferred Return shall be cumulative and non-compounded and shall be paid quarterly as available out of Net Cash from Operations and Net Cash from Sales or Financings.

1.43 **"Profits"** and **"Losses"** means, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) will be included in taxable income or loss), with the following adjustments:

1.43.1 any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section 1.43 will be added to such taxable income or loss;

1.43.2 any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705 (a)(2)(B) expenditures pursuant to Section 1. 704- 1 (b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits or Losses pursuant to this subsection 1.44 will be subtracted from such taxable income or loss;

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1.43.3 any gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

1.43.4 in lieu of the depreciation, amortization and other cost recovery deductions taken in computing such taxable income or loss, there will be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with Section 1.22; and

1.43.5 any items of income, gain, loss or deduction specifically allocated pursuant to Sections 5.2 and 5.3 will not be taken into account in determining Profits or Losses.

1.44 **"Project"** has the meaning set forth in Section 3.1.

1.45 **"Project Budget"** means the budget to be prepared by the Manager and approved by the Executive Committee for the development and construction of the Project. Such budget shall be developed in collaboration with the design and construction team selected to work on the Project.

1.46 **"Property"** means the Cal Neva Resort & Spa located at 2 Stateline Road, Crystal Bay, Nevada 89402, together with any and all land and improvements owned in connection therewith.

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1.47 "**Seller**" means Canpartners Realty Holding Company IV Cal-Neva LLC.

1.48 "**Sponsor Member**" means CR.

1.49 "**Substitute Member**" means any transferee of a Member's Interest who is admitted as a Member in the Company pursuant to Article 12.

1.50 "**Treasury Regulations**" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

ARTICLE 2
ORGANIZATION AND TERM

2.1 **Formation.** The Members formed the Company under and pursuant to the provisions of the Act by filing the Articles on March 13, 2013. The rights and liabilities of the Members will be as provided under the Act, the Articles and this Agreement. The fact that the Articles are on file in the office of the Secretary of State, State of Nevada, will constitute notice that the Company is a limited liability company.

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In order to maintain the Company as a limited liability company under the laws of the State of Nevada, the Company will from time to time take appropriate action, including the preparation and filing of such amendments to the Articles and such other fictitious name certificates, documents, instruments and publications as may be required by law, including, without limitation, action to reflect:

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2.1.1 a change in the Company name;

2.1.2 a correction of false or erroneous statements in the Articles or the desire of the Members to make a change in any statement therein in order that it will accurately represent the agreement among the Members; or

2.1.3 a change in the time for dissolution of the Company as stated in the Articles and in this Agreement.

2.2 **Name.** The business and affairs of the Company will be conducted solely under the name of "Cal Neva Lodge, LLC". The Company will execute and file all assumed or fictitious name certificates required to be filed in the applicable public records of the county in which the Property is located or in any other county in which the Company is doing business.

2.3 **Term.** The term of the Company commenced on March 13, 2013, and will continue in full force and effect until the earliest of the following:

2.3.1 December 31, 2063;

2.3.2 dissolution of the Company approved as a Major Decision pursuant to Section 8.3.2; or

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2.3.3. entry of a decree of judicial dissolution.

2.4 **Registered Agent and Office.** The Company's registered agent and office in Nevada will be Capitol Corporate Services, Inc., 202 S. Minnesota Street, Carson City, Nevada 89703. At any time, the Company may designate another registered agent and/or office.

2.5 **Principal Place of Business.** The principal place of business of the Company will be 2 Stateline Road, Crystal Bay, Nevada 89703. At any time, the Company may establish additional offices. The following items will at all times be maintained at the Company's principal office:

2.5.1 a current list of the full name and last known business, residence or mailing address of each Member and each Manager, both past and present;

2.5.2 a copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

2.5.3 copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;

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2.5.4 copies of this Agreement with all amendments and copies of any writings permitted or required under the Act regarding the obligation of a Member to perform any enforceable promise to contribute cash or property or to perform services as consideration for such Member's Capital Contribution;

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2.5.5 minutes of every annual and special meeting and any meeting ordered pursuant to Section 10.4;

2.5.6 unless contained in this Agreement, a statement prepared and certified as accurate by the Manager of the Company which describes:

(a) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each Member and which each Member has agreed to contribute in the future;

(b) the times at which or events on the happening of which any additional contributions agreed to be made by each Member are to be made;

(c) if agreed upon, the time at which or the events on the happening of which a Member may terminate his membership in the Company and the amount of, or the method of determining, the distribution to which he may be entitled respecting his membership interests and the terms and conditions of the termination and distribution;

(d) any right of a Member to receive distributions which include a return of all or any part of a Member's contribution;

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2.5.7 any written consents obtained from Members pursuant to the Act regarding action taken by Members without a meeting.

Such records are subject to inspection and copying at the reasonable request and at the expense of any Member during ordinary business hours.

2.6 **Other Instruments**. Each Member hereby agrees to execute and deliver to the Company within five (5) days after receipt of a written request therefor, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Company deems necessary, useful or appropriate to comply with any laws, rules or regulations as may be necessary to enable the Company to fulfill its responsibilities under this Agreement.

ARTICLE 3
PURPOSES AND POWERS OF THE COMPANY

3.1 **Purposes**. The overall business, purpose and scope of the Company is to acquire all membership interests of Seller in New Cal-Neva Lodge, LLC, a Nevada limited liability company ("New Cal Neva"). The Company shall purchase the interest of Seller in New Cal Neva with a portion of the Capital Contributions to be raised by the Company. New Cal Neva owns the Property, and it intends to rehabilitate and redevelop the Cal Neva Resort & Spa (the "Project"), and thereafter hold, mortgage, manage, maintain, lease, sell and otherwise use the Project for the production of income and profit. The Company shall serve as the managing member of New Cal Neva.

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3.2 **Authority of Company**. In furtherance of its purpose, but consistent with and subject to the provisions of this Agreement and all applicable laws, the Company is empowered and authorized to do any and all acts and things incidental to, or necessary, appropriate, proper, advisable, or convenient for, the furtherance and accomplishment of the purposes described in Section 3.1 and for the protection and benefit of the Company, including, without limitation:

3.2.1 acquiring fee and leasehold estates in real and personal property and the rights therein or appurtenant thereto, necessary, appropriate or incidental to the ownership, management and maintenance of the Property, including real property adjacent to the Property;

3.2.2 entering into, performing and carrying out contracts and agreements of any kind, and entering into any kind of activity, in connection with, or incidental to, the accomplishment of the purposes of the Company;

3.2.3 securing approvals, permits and consents necessary, appropriate or incidental to the accomplishment of the purposes of the Company, including operating a casino on the Property;

3.2.4 developing and constructing improvements to the Property and dedicating or otherwise conveying portions of the Company Assets as may further the purposes of the Company;

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3.2.5 borrowing money and issuing evidences of indebtedness in furtherance of the Company business and securing any Company indebtedness by mortgage, pledge, security interest or other lien, and otherwise financing or refinancing (defined for purposes of this Agreement to include recast, modified, extended or increased) the Project;

3.2.6 leasing, mortgaging, selling or otherwise disposing of all or any part of the Property for cash, stock, other securities or other property, or any combination thereof;

3.2.7 entering into partnerships, ventures and other business arrangements, and contributing all or any portion of the Company Assets as consideration for same;

3.2.8 to sue and be sued, complain and defend, and participate in administrative or other proceedings, in its name;

3.2.9 to appoint agents of the Company, and define their duties and fix their compensation, if any;

3.2.10 to indemnify a Member or Manager or former Member or Manager, and to make any other indemnification that is authorized by the Articles or by this Agreement in accordance with the Act;

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3.2.11 at the end of the term hereof as provided in Section 2.3, to cease its activities and surrender its certificate of organization;

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3.2.12 to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Company is organized;

3.2.13 to become a member of a general partnership, limited partnership, joint venture or similar association or any other limited liability company; and

3.2.14 doing and performing all other acts and things which may be necessary, appropriate or incidental to the carrying out of the business and purposes of the Company.

3.3 **Certain Transactions**. The Company is expressly permitted in the normal course of its business to enter into transactions with any or all Members or with any Affiliate of any or all Members provided that the Member seeking such a related party transaction receives the prior written approval of the price and other terms of such transaction by all members of the Executive Committee who are not involved in the proposed transaction. Any executory contracts between the Company and Affiliates must be approved by the unanimous vote of the Executive Committee. All Members hereby acknowledge their approval of the Development Services Agreement described in Section 7.4 herein.

3.4 **Adjacent Property**. No Member and no Affiliate of any Member may acquire real property adjacent to the Property unless the Company has been offered the opportunity to acquire such Property and has elected in writing not to do so.

3.5 **Future Phases**. The Members agree that the current definition of the "Project" herein refers to the initial phase involving the repair and rehabilitation of the existing main hotel

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building, tower and several ancillary buildings, including the spa, terrace units and chalet units. It is anticipated that the Company may wish to convert the cabin units on the Property into condo hotel units as part of phase two work ("Phase Two"), if the necessary entitlements for such work can be obtained. If Phase Two is pursued by the Company, the existing Members shall have the right of first offer to provide the necessary equity for Phase Two in the same proportions as the Capital Contributions made by each Member for the phase one work on the Property. Any equity requested of the Members for Phase Two would not be considered to be requested pursuant to a capital call in accordance with Section 4.4. If the Members do not wish to make equity contributions required for Phase Two, they agree to cooperate in the search to find new sources of equity required for such work, as well as new lender financing. Any Capital Contributions that the existing Members elect to make for Phase Two, if any, shall be treated the same as the existing Capital Contributions pursuant to Section 6.2 herein. If it is necessary to bring in new Members to make such Capital Contributions for Phase Two, such admission of new Members shall be in accordance with an amendment to this Agreement approved as a Major Decision pursuant to Section 8.3.12. Development Fees shall be payable to Developer with respect to Phase Two in accordance with Section 7.4 hereof and the Development Services Agreement referenced therein.

ARTICLE 4
MEMBERS, DUTIES, CAPITAL CONTRIBUTIONS AND LOANS

4.1 **Members; Obligation to Update.** All Members of the Company, past and present, their last known business, residence or mailing address, and their Percentage Interests in the Company will be listed on the attached Schedule 4.1. The Manager will be required to update Schedule 4.1 from time to time as necessary to accurately reflect the information therein.

4.2 **Initial Capital Contributions.** The Initial Capital Contributions of the Members are set forth on the attached Schedule 4.2, and the Company acknowledges receipt of such Initial Capital Contributions for the purposes set forth on such Schedule.

4.3 **Future Targeted Capital Contributions.** The Company has raised $8,500,000.00 in Initial Capital Contributions as of the date hereof. The Company desires to raise a total of $20,000,000.00 from current Members and Additional Members, meaning that it will attempt to raise $11,500,000.00 over and above the Initial Capital Contributions (such amount being referred to as the "Future Targeted Capital Contributions"). The Company shall attempt to raise the Future Targeted Capital Contributions by the date specified in the Private Placement Memorandum for the Company dated March 11, 2014, as it may be amended from time to time (the "Future Funding Deadline"). Notwithstanding the foregoing, the minimum amount of Capital Contributions to be raised shall be $8,500,000.00, and the Company shall begin accepting Future Targeted Capital Contributions at such time as total Capital Contributions to the Company would be $8,500,000.00 or more. The Executive Committee further reserves the right to accept mezzanine debt in the approximate amount of $6,000,000.00 plus interest (the "Mezzanine Loan") from a lender (the "Mezzanine Lender") in addition to the Future Targeted Capital Contributions. The terms of any such Mezzanine Loan must be approved by at least four of the five members of the Executive Committee. The Executive Committee may at its discretion elect to raise an amount equal to the Mezzanine Loan through Capital Contributions from Additional Members in lieu of obtaining the Mezzanine Loan. Each new investor who provides any portion of the Future Targeted Capital Contributions shall become a Preferred

Member of the Company upon making such Capital Contributions, and each such new Member shall execute an amendment to this Agreement to reflect its Interest in this Company. At such time, the Manager shall revise and update Schedules 4.1 and 4.2 to reflect all Interests in the Company. The Executive Committee may extend the Future Funding Deadline in its sole discretion. The proposed uses of the Capital Contributions raised by the Company pursuant to Sections 4.2 and 4.3 are set forth in Schedule 4.3 attached hereto and made a part hereof, and the Members hereby approve such uses.

4.4 **Additional Capital Contributions.** Subject to Section 8.3.5 below, at such time or times as the Manager reasonably determines that capital contributions in addition to the Initial Capital Contributions and the Future Targeted Capital Contributions are necessary or desirable in order to fulfill the contemplated objectives of the Company, the Manager shall notify the Members, which notice shall set forth the aggregate amount of the requested contributions, and the Members may, but shall not be obligated to, deposit such amount with the Company within the time period specified in such notice, which shall be based on the reasonably anticipated timing of the capital requirement, in proportion to their respective Capital Account balances. Each such contribution shall be treated the same as any other Capital Contribution to the Company. No Member shall be required to make any Additional Capital Contributions, but if any Member elects not to make its full share of such Additional Capital Contributions, the other Members shall have the option to make the Additional Capital Contribution that such non-funding Member was entitled to make, in proportion to their respective Capital Account balances.

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4.5 **Liability of Member.** Upon the payment by a Member of the Capital Contributions required of it hereunder, such Member will have no further liability or responsibility to the Company or any creditor except to the extent specifically set forth herein.

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4.6 **Duties and Obligations of the Members with Respect to Equity and Loans.** The following will be the general rights, duties and obligations applicable to the Members with respect to equity and loans for the Company:

4.6.1 CR will use its diligent efforts to obtain the Construction Loan.

4.6.2 Any and all documents relating to the Construction Loan and to be executed by the Company will be subject to the prior approval of the Executive Committee.

4.7 **Withdrawals and Interest.** No Member will have the right to:

4.7.1 withdraw his/its Capital Contribution;

4.7.2 receive any return or interest on any portion of his/its Capital Contribution except as otherwise provided herein; or

4.7.3 withdraw from the Company except by transfer of his/its Interest to another party in accordance with Article 13, by resignation in accordance with Section 8.7, or upon the dissolution of the Company.

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4.8 **Return.** No Member will be entitled to the return of all or any part of its Capital Contribution unless and until there remains Company Assets after:

4.8.1 all current liabilities of the Company (except liabilities to Members on account of their Capital Contributions) have been paid;

4.8.2 all amounts due to Members in respect of their share of profits and other gains have been paid; and

4.8.3 the Company has been dissolved without reformation in accordance with Article 13 and Articles of Dissolution have been filed with the Nevada Secretary of State.

For purposes of Section 4.8.1, permanent financing on the Property shall not be deemed a "current liability" of the Company, and the return of all or part of a Member's Capital Contributions pursuant to other provisions of this Agreement may be made prior to full repayment of the permanent financing, as long as such permanent financing is not in default.

ARTICLE 5
ALLOCATIONS OF PROFITS AND LOSSES

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5.1 **Profits and Losses.** Profits and Losses for any Fiscal Year will be allocated among the Members so that the Capital Account of each Member, increased by his/its share of Company Minimum Gain and his/its share of Member Minimum Gain is, as nearly as possible, positive in an amount equal to the cash that the Company would distribute to such Member, or negative in an amount equal to the cash that such Member would contribute to the Company, as the case may be, if (i) the Company liquidated by selling all of its assets for their respective Gross Asset Values, (ii) the proceeds of such sales, and any other cash of the Company, were used to satisfy the Company's debts in accordance with, and to the extent required by, their terms and in the order of priority prescribed by the applicable laws governing creditors' rights, and (iii) either (A) the Company distributed any remaining cash to the Members pursuant to Section 6.2 hereof or (B) the Members contributed to the Company cash in the amount of any remaining Recourse Liabilities of the Company; provided, however, that no Losses will be allocated to any Member for any Fiscal Year to the extent that such Losses would create or increase a deficit in such Member's Adjusted Capital Account.

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5.2 **Special Gross Allocation.** If, after giving effect to the allocations set forth in Section 5.3 hereof, an allocation of Profits or Losses pursuant to Section 5.1 (determined as though no items were allocable pursuant to this Section 5.2) for any Fiscal Year would leave the Capital Account(s), increased by the share(s) of Company Minimum Gain and share(s) of Member Minimum Gain, of any Member(s) short of (less than) the aggregate amount that would be distributed to such Member(s) under the hypothetical circumstances described in Section 5.1 while leaving the Capital Account(s), increased by the share(s) of Company Minimum Gain and share(s) of Member Minimum Gain, of any other Member(s) above (more than) the aggregate amount that would be distributed to such other Member(s) under such circumstances, then items of income or gain will be allocated to the former Member(s), and items of loss or expense will be allocated to the latter Member(s), until either (i) Profits or Losses (determined pursuant to Section 1.43, without regard to the items of income, gain, expense or loss allocated pursuant to this Section 5.2) can be allocated so as to cause each Member's Capital Account, increased by

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such Member's share of Company Minimum Gain and share of Member Minimum Gain to equal the amount that would be distributed to such Member under the hypothetical circumstances described in Section 5.1 or (ii) there are no more items to allocate.

5.3 **Special Allocations**. The following special allocations will be made in the following order:

5.3.1 Items of gross income and gain will be allocated to each Member in an amount and manner sufficient to eliminate, as quickly as possible, any deficit in such Member's Adjusted Capital Account to the extent that such deficit is created or increased by any unexpected adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4)-(6) of the Treasury Regulations. This subsection 5.3.1 and the proviso of Section 5.1 are intended to comply with the "alternative test for economic effect" provisions of Section 1. 704-1 (b)(2)(ii)(d) of the Treasury Regulations and will be interpreted consistently therewith;

5.3.2 If, for a Fiscal Year, there is a net decrease in Member Minimum Gain, then each Member will be allocated items of gross income or gain equal to such Member's share of such net decrease, determined under Section 1.704-2(i) of the Treasury Regulations. However, in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, the preceding sentence will not apply to the extent that the net decrease in Member Minimum Gain results from (i) a capital contribution from such Member which is used to repay a liability of the Company or (ii) a refinancing or lapse of a guarantee of, or any other change in, a liability of the Company that causes such liability to become partially or wholly a Nonrecourse Liability. This subsection 5.3.2 is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(i)(4) of the Treasury Regulations and will be interpreted consistently therewith;

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5.3.3 If, for a Fiscal Year, there is a net decrease in Company Minimum Gain, then each Member will be allocated items of income and gain equal to such Member's share of such net decrease, determined in accordance with Sections 1.704-2(f) and 1.704-2(g) of the Treasury Regulations. However, in accordance with Section 1.704-2(f)(2) of the Treasury Regulations, the preceding sentence will not apply to the extent that the net decrease in Company Minimum Gain results from (i) a Capital Contribution from such Member which is used to pay a liability of the Company or (ii) a refinancing or guarantee of, or any other change in, a liability of the Company that causes such liability to become partially or wholly a Member Nonrecourse Liability for which such Member bears the economic risk of loss. This subsection 5.3.3 is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Treasury Regulations and will be interpreted consistently therewith;

5.3.4 Nonrecourse Deductions for any Fiscal Year will be allocated among the Members pro rata, in accordance with their Percentage Interests;

5.3.5 Member Nonrecourse Deductions for any Fiscal Year will be allocated to the Members who bear the economic risk of loss with respect to the Member Nonrecourse Liability to which such Member Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i)(1) of the Treasury Regulations;

5.3.6 The proviso at the end of Section 5.1, and the allocations set forth in this Section 5.3, other than subsection 5.3.7 (the "Regulatory Allocations") are intended to comply

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with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations will be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Article V. Therefore, notwithstanding any other provision of this Article 5 (other than the Regulatory Allocations), the Manager will make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance, to the extent possible, is equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 5.1 (other than the proviso at the end thereof), 5.2, and subsection 5.3.7. In exercising his discretion under this subsection 5.3.6, the Manager will take into account future Regulatory Allocations under subsections 5.3.2 and 5.3.3 that, although not yet made, are likely to offset other Regulatory Allocations previously made under subsections 5.3.4 and 5.3.5;

5.3.7 It is intended that the amount to be distributed to a Member pursuant to subsection 13.4.3 of this Agreement will equal the amount such Member would receive if liquidation proceeds were instead distributed in accordance with Section 6.2 of this Agreement. This intended distribution amount for a Member is referred to as such Member's "Targeted Distribution Amount". Notwithstanding any preceding provision to the contrary in this Article 5, if upon a termination and liquidation of the Company, any Member's Capital Account balance immediately prior to the distributions to be made pursuant to subsection 13.4.3 of this Agreement (determined tentatively after allocations made for such Fiscal Year under this Article V without regard to this subsection 5.3.7) would be less than such Member's "Targeted Distribution Amount", then, for the current Fiscal Year and, if necessary and to the extent amended tax returns can be filed, for prior Fiscal Years of the Company, such Member will be specially allocated items of income or gain for such years, and items of loss or deduction for such years will be allocated away from such Member to the other Members, until Profits or Losses for the year(s) of termination and liquidation of the Company can be allocated so as to cause each Member's actual Capital Account balance to equal the Targeted Distribution Amount for such Member (and such Profits or Losses will be so allocated pursuant to Sections 5.1 and 5.2). In the event that liquidation distributions are to be made over two (2) or more Fiscal Years, the Manager will exercise their reasonable discretion to determine (i) the aggregate liquidation proceeds likely to be available for distribution pursuant to subsection 13.4.3, and accordingly, each Member's estimated Targeted Distribution Amount and (ii) the appropriate allocations to be made pursuant to this subsection 5.3.7 taking into account allocations of items of income, gain, deduction and loss likely to be made in subsequent years prior to final liquidation and dissolution of the Company. Amended returns will be prepared pursuant to this subsection 5.3.7 to the extent necessary and possible to ensure that the distributions made pursuant to subsection 13.4.3 to each Member equal, as nearly as possible, such Member's Targeted Distribution Amount.

5.4 **Varying Interests of the Members.** Anything contained in this Article V to the contrary notwithstanding, the allocation of Profits, Losses and items of income, gain, expense or loss for any Fiscal Year of the Company during which a Person acquires a Percentage Interest will take into account the Members' varying interests in the Company for such Fiscal Year pursuant to any method permissible under Section 706 of the Code that is selected by the Manager.

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5.5 **Tax Allocations: Code Section 704(c).** In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company, solely for tax purposes, will be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with subsection 1.25.1. In the event the Gross Asset Value of any Company Assets is adjusted pursuant to subsection 1.25.2 hereof, subsequent allocations of income, gain, loss and deduction with respect to such Company Assets will take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations will be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5.5 are solely for purposes of federal, state and local taxes and will not affect, or in any way be taken into account in computing, any Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

5.6 **Tax Matters Partner**

5.6.1 CR is designated a tax matters partner (the "TMP") as defined in Section 6231(a)(7) of the Code, and the Members will take such actions as may be necessary, appropriate, or convenient to effect the designation of CR as TMP. The TMP and the other Members will use their best efforts to comply with the responsibilities outlined in this section and in Sections 6222 through 6232 of the Code (including any Treasury Regulations promulgated thereunder).

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5.6.2 The Members will furnish the TMP with such information as the TMP may reasonably request to permit it to provide the Internal Revenue Service with sufficient information to allow proper notice to the parties in accordance with Section 6223 of the Code.

5.6.3 These provisions will survive the termination of the Company or the termination of any Member's interest in the Company and will remain binding on the Members for a period of time necessary to resolve with the Internal Revenue Service or the Department of the Treasury any and all matters regarding the Federal income taxation of the Company and each of the Members with respect to Company matters.

5.6.4 Notwithstanding the foregoing, the TMP will not litigate or enter into any agreement concerning or settle any tax issue that will be binding on either Member without such Member's prior written consent.

5.7 **Elections**. Company tax elections will be made by CR as the Tax Matters Partner, subject to the prior approval of the Executive Committee. Unless the Members agree otherwise, elections will be made to maximize tax benefits under the regular income tax without regard to the alternative minimum tax under Section 55 of the Code. Notwithstanding anything contained herein to the contrary, the Members agree that no elections will be made by any Member, including the TMP, that could jeopardize the characterization of distributions pursuant to Section 6.2 as other than long term capital gains without the prior approval of all of the Members.

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ARTICLE 6
DISTRIBUTIONS; BOOKS AND RECORDS; AUDITS

6.1 **Frequency of Distributions.** The Company will distribute any Net Cash From Operations not less frequently than quarterly, and will distribute Net Cash From Sales or Financings as promptly as possible.

6.2 **Order and Priority of Distributions of Net Cash From Operations and Net Cash from Sales or Financings.** Net Cash From Operations and Net Cash From Sales or Financings will be distributed in the following order and priority:

6.2.1 To the Preferred Members pro rata based upon the relative share that each Preferred Member contributed to the total of the Preferred Equity, until each such Preferred Member has received its Preferred Return on its Capital Contribution, including amounts accrued from prior periods.

6.2.2 Next, to all Preferred Members pro rata based upon the Percentage Interest owned by each such Preferred Member, until the Preferred Members have received cumulative distributions pursuant to this Section 6.2.2 equal to the Capital Contributions made by each such Preferred Member.

6.2.3 Thereafter, to all Members pro rata based upon the Percentage Interest owned by each such Member.

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6.2.4 Notwithstanding the foregoing, if at the time that all accrued Preferred Returns have been paid to the Preferred Members the total amount of Preferred Returns paid to any of the Preferred Members is less than forty percent (40%) of the Capital Contributions made by such Preferred Members, each Preferred Member with such a shortfall shall be entitled to receive additional distributions of Preferred Returns, prior to any distributions pursuant to Section 6.2.2 above, in an amount equal to (i) 40% of the Capital Contributions made by such Preferred Member minus (ii) the total Preferred Returns previously received by such Preferred Member. After such additional distributions have been paid to the Preferred Members, distributions pursuant to Section 6.2.2 shall then be made. Preferred Returns to each Preferred Member shall thereafter once again begin to accrue on a quarterly basis on any unreturned Capital Contributions of the Preferred Members and be paid as a first priority to each Preferred Member until such time as all Preferred Members have received the full return of their Capital Contributions.

6.2.5 As set forth on Schedule 4.1, the Sponsor Member shall have a Percentage Interest in the Company equal to twenty percent (20%) for its role as sponsor and for its contributions to the asset value of the Project since the purchase of the Property. A 10% Percentage Interest shall be reserved for the Mezzanine Lender, as set forth on Schedule 4.1.

6.2.6 In lieu of the distribution of the Preferred Return as set forth in Section 6.2.1 above, each Preferred Member shall have the option, to be exercised prior to the receipt of any of its Preferred Return, to elect to purchase one Condominium Unit (as described below) for each $1,000,000 of Capital Contributions made by a Preferred Member, at a discount of $500,000 below the list price of each such Condominium Unit (the "Condo Purchase Option").

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For purposes hereof, the Condominium Units are the 28 currently entitled hotel lodge units that are to be converted into for-sale managed residences as part of Phase Two. To exercise a Condo Purchase Option, a Preferred Member must deliver written notice to the Manager specifying which Condominium Unit it wishes to purchase prior to accepting any Preferred Returns. At such time the Company shall enter into a purchase agreement with such Preferred Member for the purchase of the designated Condominium Unit. If a Preferred Member does not exercise a Condo Purchase Option as set forth above, it will be deemed to have elected to receive Preferred Returns with respect to all of its Capital Contribution as set forth in Section 6.2.1 above. If a Preferred Member has made Capital Contributions in excess of $1,000,000 (each $1,000,000 Capital Contribution being referred to herein as an "Preferred Unit"), and such Preferred Member has exercised a Condo Purchase Option with respect to less than all of its Preferred Units, such Preferred Member shall receive a Preferred Return on any of its Preferred Units for which it has not exercised a Condo Purchase Option.

6.3 **Special Distributions to Pay Taxes.** Notwithstanding anything to the contrary set forth herein, the Manager shall distribute to each Member in January of each year as a "Tax Distribution" an amount equal to the sum of the following: (a) the product obtained by multiplying (i) the amount of Profits allocated to such Member in the preceding year times (ii) the greater of (A) the highest marginal federal income tax rate for individuals, or (B) the highest marginal federal income tax rate for taxable corporations, plus (b) any carryover amount from the preceding year as described below, reduced by (c) the amount of all distributions made to such Member with respect to such calendar year; provided that Profits of the Company for any year shall be net of (so as to be reduced by) all Losses of the Company for that year and all Losses of the Company for any prior years which have not then been fully set off against Profits for purposes of determining Tax Distributions under this Section 6.3. After the Company's Profits for each calendar year have been determined, if total distributions to a Member to date with respect to such year do not equal or exceed the federal income tax liability that would be accrued by that Member (assuming that such income is taxed at the greater of (A) the highest marginal federal income tax rate for individuals, or (B) the highest marginal federal income tax rate for taxable corporations) with respect to the Company's Profits for such year (determined as provided above), plus any carryover amount from the preceding year as described below (such total amount, the "Tax Distribution Amount"), then the Manager shall cause the Company to distribute any additional amounts necessary to cause the total distributions to a Member for such year to equal the Tax Distribution Amount, provided that the Company has cash available to make the distributions. If the total distributions to a Member with respect to any year do not equal or exceed the Tax Distribution Amount, the amount of the excess of the Tax Distribution Amount over the total amount of distributions to a Member for such year shall carry forward to, and add to the Tax Distribution Amount for the succeeding taxable year. Any distribution made to a Member under this Section 6.3 shall constitute an advance on distributions required to be made to such Member under Section 6.2, and distributions to a Member under Section 6.2 shall accordingly be suspended until the amount of such advance has been recouped. Notwithstanding the foregoing, no Tax Distributions shall be payable under this Section 6.3 with respect to the year in which the Company is terminated. If upon the termination of the Company, the sum of the distributions received by a Member under Section 6.2 and the Tax Distributions received under this Section 6.3 exceed the amount of the distributions a Member would have been entitled to receive under Section 6.2, the Member receiving such excess distributions shall contribute to the Company the amount of such excess. The preceding sentence is for the exclusive benefit of

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the Members and their permitted assigns and no third party shall be entitled to enforce or rely on such sentence.

6.4 **Books and Records.** At the expense of the Company, the Manager will maintain or cause to be maintained, in accordance with generally accepted accounting principles applied in a consistent manner, and more specifically in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations, adequate and accurate books and records of account in which will be entered all matters relating to the Company, including all income, expenditures, assets and liabilities. The books and records will be maintained at the Company's principal office or at such other location designated by the Manager. The books and records together with all supporting vouchers and data will be open to examination and copying by any Member or its/his duly constituted representative during normal business hours at the Company's principal office. Any Member may at any time request that a firm of independent certified public accountants audit the books and records of the Company, provided that the cost of such audit, if separate from the annual audit described in Section 6.5, will be borne by the Member requesting such audit except that, if the new audit discloses any substantial discrepancy from any regular Company audit, the cost of the audit will be paid by the Company.

6.5 **Audits.** At the expense of the Company, the Manager will cause the Accountants to perform an annual audit of the Company's books and records. Each Member will be furnished with a copy of the audit report on the financial statements of the Company. The financial statements will be prepared on a generally accepted accounting principles basis and will include a balance sheet, a statement of Capital Accounts of the Members, a statement of operations and a statement of changes in financial position. The audit and financial statements will be completed as soon as reasonably practical after the close of the Company's Fiscal Year.

6.6 **Fiscal Year.** The Fiscal Year of the Company for both reporting and federal income tax purposes will be the Fiscal Year ending on the last day of December.

ARTICLE 7
DEVELOPMENT AND MANAGEMENT OF THE PROPERTY

7.1 **Title to Property.** Unless all of the Members agree otherwise, title to all real and personal property acquired in accordance with this Agreement will be held in the Company's name or in the name of its wholly owned subsidiary, New Cal Neva, as appropriate. All contracts with third parties will be executed in the name of the Company.

7.2 **Construction Contract.** The Construction Contract with the Contractor to perform construction on the Project shall have a guaranteed maximum price with respect to the cost of all structures and other improvements and the fees associated therewith, with all cost savings going to reduce the amount drawn on the Construction Loan. The Contractor will provide the Company with a comprehensive construction guarantee that all work performed will be free from construction defects for a period of one (1) year commencing with the issuance of the certificates of occupancy for each improvement. Additionally, the Contractor will warrant that the construction will be completed substantially in accordance with plans and specifications approved by the Manager and the Construction Lender and in compliance with all construction, environmental and land use requirements of all appropriate Governmental Authorities.

7.3 **Management of the Project.** Day-to-day management of the Project will be performed by an Affiliate of CR approved by the Executive Committee (the "Management Company"). The management agreement (the "Management Agreement") between the Company and the Management Company will be subject to the reasonable approval of the Executive Committee and will not be subject to change without the reasonable consent of the Executive Committee. The Executive Committee shall use reasonable efforts to complete the negotiation and execution of the Management Agreement within thirty (30) days after the date hereof. The Management Agreement shall contain industry standard provisions for a hotel management agreement and shall be for a term of twenty (20) years, terminable only for cause. All Project employees will be selected and supervised by the Management Company.

7.4 **Development Services Agreement.** Seller shall enter into a "Development Services Agreement" with CR or its Affiliate ("Developer") pursuant to which Developer shall agree to coordinate and oversee the development of the Project. The form of such Development Services Agreement shall be substantially the same as the form that has been provided to each Member as of the date hereof. Pursuant to the Development Services Agreement, Developer shall receive a fee (the "Development Fee") in an amount equal to $60,000.00 per month. Such fees commenced in May, 2013 and shall continue until the grand reopening date of the hotel, subject to the cap on the Development Fee set forth therein, at which time the Management Agreement shall become applicable. CR has advanced approximately $1,667,236.18 in costs related to the Project beginning in early 2013, and CR has received and recontributed to the Company $480,000.00 of its Development Fee as of June 1, 2014. A total of $2,000,000.00 out of such costs and recontributed Development Fees shall serve as the Capital Contribution of CR and shall be part of the Initial Capital Contributions described in Section 4.2 hereof. Such Capital Contribution shall be treated in the same manner as the Capital Contributions of all other Preferred Members hereunder. Any amounts in excess of such $2,000,000.00 that have been or will be advanced to the Company by CR, or that represent Development Fees that are deferred following the June, 2014 Development Fee, shall be paid directly to CR by the Company in the future as set forth in the Development Services Agreement.

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7.5 **Monthly Reports.** CR shall prepare and deliver to the other Members on a monthly basis an executive summary discussing all Project progress and material developments relating to the Company, and it shall also include an unaudited monthly financial statement (including a cash spending summary). CR shall schedule quarterly meetings (which may be by telephone) for the Members to discuss the Project.

ARTICLE 8
MANAGEMENT OF THE COMPANY

8.1 **Management.** The Members have established the Company as a manager-managed limited liability company under the Act. The Members hereby designate CR as the Manager of the Company. CR may not be removed as Manager without the unanimous consent of all Members. Except as stated below with respect to "Major Decisions," Manager may exercise all powers of the Company and may do all such lawful acts and things as are not specifically required by the Act to be exercised or done by the Members. Any Person dealing with the Company may rely on the authority of the Manager in taking any action in the name of the Company without inquiry into the provisions or compliance herewith, regardless of whether that action is actually taken in accordance with the provisions of this Agreement.

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8.2 **Executive Committee.** The Members and Manager have agreed to designate a committee (the "Executive Committee") to make Major Decisions. The Executive Committee's power is limited to making Major Decisions, which the Executive Committee shall do in accordance with this Agreement. Notwithstanding the foregoing, Manager shall have the right to place before the Executive Committee for consideration any significant matter which is not a Major Decision but which Manager would like the Executive Committee to consider. In such cases, the majority vote of the Members of the Executive Committee present or voting by proxy at any such meeting shall decide such matter.

8.3 **Major Decisions.** The following constitute "Major Decisions" as such term is used herein, requiring the approval of four (4) of the five (5) members of the Executive Committee (subject to Section 8.7):

8.3.1 subject to subsections 9.1.2 and 9.4.1, removal of the Manager or election of a new Manager;

8.3.2 the dissolution of the Company;

8.3.3 acquisition of any interest in real property, other than the Company Assets, and any decision to market, sell, transfer, assign or place a lien on all or any part of the Company Assets (except as specifically provided to the contrary in this Agreement);

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8.3.4 any material modification to any developmental approvals obtained from any Governmental Authorities for development of the Property or any portion thereof;

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8.3.5 approving the amount, terms, conditions and provisions of the Construction Loan or any other financing of the Property or additional equity contributions to the Company, including the terms of any guarantees or recourse provisions of any kind with respect to such loans, provided that the terms of the binding letter of intent dated June 26, 2013 with Hall Structured Finance are deemed approved by the Company, and a closing of the Construction Loan pursuant thereto is hereby permitted;

8.3.6 the formation of a partnership or other venture between the Company and a third party;

8.3.7 entering into any and all third party contracts or leases, and, except as described in Sections 7.3 and 7.4, entering into any contract between the Company and a third party that is an Affiliate of a Member;

8.3.8 approval of the Operating Budget and any amendments thereto;

8.3.9 any capital expenditures in excess of One Hundred Thousand Dollars ($100,000) per expenditure or in excess of Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate per annum, unless provided for in the Project Budget or the Operating Budget;

8.3.10 any decision concerning reconstruction or repair in the event of a casualty in excess of Two Hundred Thousand Dollars ($200,000), or any condemnation;

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8.3.11 any decision to pay a Manager, a Member or any other person a salary or other compensation and the amount of such salary or other compensation and other benefits, except as otherwise provided in Sections 7.3 or 7.4 or this Article 8, or pursuant to the Operating Budget or the Project Budget;

8.3.12 the amendment of the Articles or this Agreement. However, if any proposed amendment to the Articles or this Agreement would adversely affect the rights of any class of Member in a manner that is different from the effect on the rights of other classes of Members, then such amendment must also be approved by the Member Representative (as hereinafter defined) of the Executive Committee that was appointed by the Member of the class that will be adversely affected by such amendment; or

8.3.13 any decision to change the status of the Sponsor Member or the Mezzanine Lender into that of a Preferred Member.

8.4 **Designation of Executive Committee**. The Executive Committee shall initially consist of five (5) members. CR shall have the right to designate two (2) members of the Executive Committee, the Preferred Member who has made the largest Capital Contribution of the Preferred Members shall have the right to designate one member of the Executive Committee, and the other two members of the Executive Committee shall be "at large" members and shall be selected by unanimous consent of the other members of the Executive Committee (such members of the Executive Committee being each a "Member Representative" and collectively the "Member Representatives"). The selection of the "at large" members must be approved by at least 67% of the Percentage Interests of the Members of the Company. Any Member Representative may vote by a written proxy delivered to another Member Representative in attendance at a meeting of the Executive Committee. If a member of the Executive Committee dies, resigns or is removed, the person or persons who designated such member shall have the right to designate his or her successor. If the member who dies, resigns or is removed is an "at large" member, his or her replacement shall be selected by unanimous consent of the other members of the Executive Committee, and such selection must be approved by at least 67% of the Percentage Interests of the Members of the Company. Member Representatives need not be residents of the State of Nevada or Members of the Company. Each Member may change its designated Member Representatives effective upon written notice from such Member to the other Members. The initial Member Representatives designated by the Members are set forth in Schedule 8.4 attached hereto. The Manager shall update Schedule 8.4 from time to time to reflect the current Member Representatives of the Executive Committee.

Executive Committee meetings shall be held at least monthly until the reopening of the hotel on the Property and at least quarterly thereafter. Preparatory information necessary for such meetings shall be supplied to the Member Representatives by Manager in advance of the scheduled meeting dates. In addition, all Members will receive (i) reasonable advance notice of each Executive Committee meeting (date, time and place) and (ii) copies of all written information and documentation made available to the Member Representatives of the Executive Committee as provided above. Members will be entitled to attend meetings of the Executive Committee, but only the Member Representatives of the Executive Committee shall be permitted to vote on any matters considered at such meetings by the Executive Committee.

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8.5 **Transactions Between a Member or Manager and the Company.** Except as otherwise provided by applicable law or this Agreement, any Member or Manager may, but will not be obligated to, lend money to the Company, act as surety for the Company and transact other business with the Company and has the same rights and obligations when transacting business with the Company as a person or entity who is not a Member or a Manager.

8.6 **Member Activities.** Any of the Members, their Affiliates and any shareholder, officer, director, partner, employee or other Person holding a legal or beneficial interest in an entity which is a Member or an Affiliate thereof, may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to the ownership, development, construction, operation and management of residential and commercial property similar to the Property provided that no such other venture shall compete with the Project within the Lake Tahoe area.

8.7 **Affiliates and Conflicts of Interest.** The fact that a Member, an Affiliate, or a shareholder or partner of a Member or Affiliate is directly or indirectly interested in, owned, employed or connected with any Person employed by the Company or the Manager, to render or perform a service for the Company or from which the Company or the Manager may buy merchandise, material, services or other property, will not prohibit the Company or the Manager from employing such Person or from purchasing merchandise, material, services or other property therefrom or from otherwise dealing with the Person under reasonable terms and conditions such as would be reflected in an arms-length transaction, provided, all such dealings are communicated to the Members in writing prior to implementation. A Member shall be obligated to disclose to the other Members any potential Conflicts of Interest and must recuse himself or herself with respect to any action of the Members and from any vote on, related to or in connection with any Conflicts of Interest. A "Conflict of Interest" shall mean, with respect to any Member, any conflict of interest involving any such Member and the matter being considered by the Members, including, without limitation, any matter in which a Member or any affiliate thereof or a spouse or immediate family member of such Member (each of the foregoing being hereinafter referred to as a "Restricted Person") would (i) receive any type of compensation, whether in cash or in kind, from the Company or any affiliate of the Company, or any person with which the Company or any affiliate of the Company enters into a transaction, or (ii) acquire property from, sell property to, or enter into transactions with (A) the Company or any affiliate of the Company, or (B) any entity in which any Restricted Person has a voting interest of either ten percent (10%) or more of the total equity of such entity or ten percent (10%) or more of a class of voting equity of such entity. If a Member Representative on the Executive Committee has a Conflict of Interest, that Member Representative shall be recused from voting on the matter being considered by the Executive Committee. In such event, the vote of at least 100% of the remaining non-conflicted Member Representatives on the Executive Committee shall be required to pass any item that is being voted upon by the Executive Committee.

8.8 **Reimbursements.** The Company will reimburse the Members and the Manager for reasonable expenses incurred and paid by any of them in the organization of the Company and as authorized by the Company in the conduct of the Company's business, including, but not limited to, expenses of maintaining an office, telephones, travel, office equipment and secretarial and other personnel as may reasonably be attributable to the Company and any other predevelopment expenses set forth in the Project Budget. Such expenses will not include any expenses incurred in connection with a Member's or a Manager's exercise of its rights as a

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Member or a Manager apart from the authorized conduct of the Company's business. Such reimbursements will be treated as expenses of the Company and will not be deemed to constitute distributions to any Member of profit, loss or capital of the Company.

8.9 **Partition.** While this Agreement remains in effect or is continued, each Member agrees and waives its rights to have any Company Assets partitioned, or to file a complaint or to institute any suit, action or proceeding at law or in equity to have any Company Assets partitioned, and each Member, on behalf of itself, its successors and its assigns hereby waives any such right.

8.10 **Resignations; Retirement.** A Member may not resign from the Company unless (i) he has contributed the full amount of money or other consideration which constitutes his Capital Contribution as required herein; and (ii) following his resignation there will be at least two (2) remaining Members of the Company. The Company may recover damages for breach of this Section 8.10 if any Member violates this Section 8.10 and may offset the Company's damages against any amount owed to a resigning Member for distributions.

ARTICLE 9
MANAGER

9.1 **Manager.**

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9.1.1 The management of the Company's business will be vested in the Manager. The Manager will have the authority to sign agreements and other instruments on behalf of the Company.

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9.1.2 CR shall serve as the initial Manager. Such entity will serve until such time as it resigns or is removed. The Manager may be removed with or without cause by a vote of 80% of the Percentage Interests of the Members other than the Manager. Upon the resignation or removal of the Manager, CR will designate the replacement Manager, subject to the approval of four of the five members of the Executive Committee.

9.1.3 The Manager may engage in other business activities as permitted by Section 8.5 and will be obliged to devote only as much of his time to the Company's business as may be reasonably required in light of the Company's business and objectives. The Manager will perform its duties as a Manager in good faith, in a manner it reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person or entity who so performs its duties will not have any liability by reason of being or having been a Manager of the Company.

9.1.4 The number of Managers will be one (1), who may be an entity or a natural person eighteen (18) years of age or older but who need not be a Member of the Company or a resident of Nevada .

9.1.5 In performing its duties, the Manager will be entitled to rely on information, opinions, reports or statements of the following persons or groups unless it has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

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(a) one or more employees or other agents of the Company whom the Manager reasonably believes to be reliable and competent in the matters presented;

(b) any attorney, public accountant or other person as to matters which the Manager reasonably believes to be within such person's professional or expert competence; or

(c) a committee upon which it does not serve, duly designated in accordance with a provision of this Agreement, as to matters within its designated authority, which committee the Manager reasonably believes to merit competence.

9.1.6 The Manager is an agent of the Company for the purpose of its business, and the act of the Manager, including the execution in the Company name of any instrument for apparently carrying on in the usual way the business of the Company, binds the Company, unless such act is in contravention of the Articles or this Agreement or unless the Manager so acting otherwise lacks the authority to act for the Company and the person with whom it is dealing has knowledge of the fact that it has no such authority.

9.2 **Powers of the Manager.** Subject to the limitations set forth elsewhere in this Agreement, the Manager will have the right and authority to take all actions which the Manager deems necessary, useful or appropriate for the day-to-day management and conduct of the Company's business.

Subject to Section 8.1, the Manager may exercise all powers of the Company and do all such lawful acts and things as are not by statute, the Act, the Articles or this Agreement directed or required to be exercised or done by a majority in interest of the Members, except that no debt will be contracted or liability incurred by or on behalf of the Company by the Manager except as set forth in the Project Budget or the Operating Budget. All instruments, contracts, agreements and documents providing for the acquisition, mortgage or disposition of the Company Assets will be valid and binding on the Company if executed by the Manager. All instruments, contracts, agreements and documents of whatsoever type executed on behalf of the Company may be executed in the name of the Company by the Manager.

9.3 **Salaries.** Subject to subsection 8.3.11, the Company may not pay to any Manager, Member or other person a salary as compensation for their services rendered to the Company.

9.4 **Removal of a Manager.**

9.4.1 Subject to the provisions of the Act and subject to the satisfaction of the conditions specified in this Article 9, a vote of 80% of the Percentage Interests of the Members may remove the Manager with or without cause.

9.4.2 The removal of a Manager will become effective on such date as may be specified by CR.

9.5 **Resignation of a Manager.** A Manager may resign from his position as a Manager at any time by notice to the Members. Such resignation will become effective as set forth in such notice.

9.6 **Vacancies.** Any vacancy occurring in the position of Manager will be filled as set forth in Section 9.1.2.

9.7 **Duties of the Manager.** The Manager will have the following primary duties and responsibilities, with such limitations on their powers as set forth below and elsewhere in this Agreement:

9.7.1 The preparation of the Project Budget and the Operating Budget and expending the capital and revenues of the Company in accordance with such approved budgets;

9.7.2 Negotiating and arranging for all third party equity requirements, the Construction Loan and other loans, and preparing all projections, financial reports and other information or material to be furnished to the lender, in consultation with and subject to the approval of the Executive Committee;

9.7.3 Supervising construction, alterations and improvements with respect to the Project; retaining, terminating and/or hiring the services of engineers, surveyors, appraisers, accountants, attorneys, mortgage brokers, corporate fiduciaries, escrow agents, depositories, custodians, agents for collection, insurers, insurance agents, and such other technical or administrative advisors as reasonably deemed necessary by the Manager to further the purposes of the Company; retaining agents and employees for the Company, including property managers for the Property, and to delegate any of their powers (but not their obligations) to such agents or employees and direct such agents or employees with respect to the implementation of the Manager's decisions and the conduct of day-to-day operations of the Company;

9.7.4 The negotiation, administration, review and coordination of contracts on behalf of the Company for the development of the Project, and the administration and coordination of on-site and offsite improvements, warranty claims and corrective work;

9.7.5 Entering into and executing (i) agreements and any and all documents and instruments customarily employed in the real estate industry in connection with the development and operations of Property; and (ii) all other instruments deemed to be necessary or appropriate to the proper operation of the Property or to perform effectively and properly their duties or exercise their powers hereunder;

9.7.6 Placing or investing Company assets in bank savings and checking accounts, savings and loan associations, commercial paper, government securities, certificates of deposit, bankers' acceptances and other short-term interest-bearing obligations; provided, however, that the Manager will use best efforts to cause uninvested cash reserves of the Company to be placed in interest-bearing accounts or instruments. To the extent funds of the Company are sufficient therefor, the Manager may maintain reserves for operating or other expenses to the extent contemplated in the Operating Budget;

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9.7.7 The performance of other customary development functions, including seeking to obtain all local, state and federal permits, approvals and land use consents and acting as a liaison with all Governmental Authorities having jurisdiction over the development of the Property, and processing all governmental permits and approvals; and authorizing such research reports, economic and statistical data, evaluations, analysis, opinions and recommendations as may be necessary to further the purposes of the Company;

9.7.8 Subject to the other provisions of this Article 9, supervising the marketing and sales of portions of the Property and negotiating and executing contracts, or authorizing others to negotiate and execute contracts for sales of portions of the Property, in consultation with and subject to the approval of the Executive Committee;

9.7.9 Procuring and maintaining insurance policies with such coverage and in such amounts as required by this Agreement or the Loan;

9.7.10 File protests regarding property tax assessments and commence, defend, and settle litigation arising from such protests;

9.7.11 Prepare and deliver to each of the Members periodic reports not less than quarterly of the state of the business and the affairs of the Company as well as quarterly financial statements, and maintain, or cause to be maintained, the books and records;

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9.7.12 Within seventy-five (75) days after the end of each Fiscal Year, or as soon as reasonably practical after the end thereof, cause the Accountants to conduct the audit required herein, and prepare and deliver to each Member a report setting forth in sufficient detail all such information and data with respect to business transactions affected by or involving the Company during such Fiscal Year as will enable the Company and Members to prepare their Federal, state and local income tax returns in accordance with the laws, rules and regulations then prevailing. The Manager will also cause such Accountants to prepare Federal, state or local tax returns required of the Company and file the same; provided, however, that the Manager shall provide all Members with a copy of the proposed tax returns at least fifteen (15) days prior to the filing date or the extended filing date, as applicable. The Manager will also furnish to each Member such other reports on the Company's operations and conditions as may be reasonably requested by any Member;

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9.7.13 Collecting all revenues payable to the Company and depositing all sums collected in the Company's account or accounts in a bank or financial institution selected by the Manager;

9.7.14 Making, or causing to be made, distributions of Net Cash From Operations and Net Cash From Sales and Financings pursuant to Section 6.2; and

9.7.15 Developing, operating, managing and supervising the hotel operations which are developed as part of the Project in accordance with this Agreement.

9.8 **Expenses of Company.** Expenses to carry out the purposes and business of the Company will constitute Company expenditures and, when appropriate, will be paid by the Company from its accounts. Members will be reimbursed for reasonable expenditures made in

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furtherance of Company business, including travel related costs for attending Company meetings.

ARTICLE 10
MEETINGS AND VOTES OF MEMBERS

10.1 **Meetings.** Meetings of the Members will be held each year at the business office of the Company or at such other place as specified from time to time by the Manager. If the Manager specifies another location such change in location will be recorded on the notice calling such meeting. Meetings of the Members may be held in person, by telephone or by video conference.

10.2 **Annual Meetings.** In the absence of a notice from the Manager providing otherwise, the annual meeting of Members of the Company for the transaction of such business as may properly come before the meeting, will be held on the first Wednesday in April at 4:00 p.m. in each fiscal year, if the same be not a legal holiday, and if a legal holiday, then on the next succeeding business day. Failure to hold the annual meeting at the designated time will not work a forfeiture or dissolution of the Company.

10.3 **Special Meetings.** Special meetings of the Members will be scheduled and presided over by the Manager. Special meetings may be called by the Manager or upon the request of Members who hold not less than ten percent (10%) of the voting rights entitled to vote at the meeting provided that requests to approve the admission of Substitute Members may be postponed until the annual meeting of the Members.

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10.4 **Court Ordered Meeting.**

10.4.1 Any court of competent jurisdiction in the State of Nevada may summarily order a meeting to be held:

(a) on application of any Member if an annual meeting was not held within six (6) months after the end of the Company's fiscal year or fifteen (15) months after its last annual meeting, whichever is earlier; or

(b) on application of a Member who participated in a proper call for a special meeting if (i) notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the Manager; or (ii) the special meeting was not held in accordance with the notice.

10.4.2 The court may fix the time and place of the meeting, specify a record date for determining Members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for the meeting or direct that the interests represented at the meeting constitute a quorum for the meeting, and enter other orders necessary to permit the meeting to be held.

10.5 **Notice.**

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10.5.1 Written notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, will be delivered unless otherwise prescribed by the Act, not less than ten (10) days nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Manager or person calling the meeting to each Member of record entitled to vote at such meeting.

10.5.2 Notice to Members of record, if mailed, will be deemed delivered as to any Member when deposited in the United States mail, addressed to the Member with postage prepaid, but, if three (3) successive letters mailed to the last-known address of any Member are returned as undeliverable, no further notices to such Member will be necessary until another address for such Member is made known to the Company.

10.5.3 When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting will be given to each Member entitled to vote at the meeting.

10.6 **Waiver of Notice.**

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10.6.1 When any notice is required to be given to any Member under the provisions of the Act or under the provisions of the Articles or this Agreement, a waiver thereof in writing signed by the person entitled to such notice, whether before, at or after the time stated herein, will be equivalent to the giving of such notice.

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10.6.2 By attending a meeting, a Member:

(a) waives objection to lack of notice or defective notice of such meeting unless the Member, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting;

(b) waives objection to consideration at such meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the Member objects to considering the matter when it is presented.

10.7 **Proxies.** Each Member may designate up to three individuals as proxies, and any proxy designated by a Member shall be authorized to sign approvals, vote or otherwise act on behalf of that Member. Such proxies may be changed at any time upon the discretion of the Member who has named such proxies, provided any such changes shall be specified in a written notice from such Member to all other Members.

10.8 **Voting Procedures.**

10.8.1 The costs of calling and holding the annual meeting of the Members and special meetings called by the Manager will be paid by the Company. Such costs for all other

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meetings called by the Members will be paid by the Members calling the meeting. Each Member will be responsible for its own costs associated with attending and participating in a meeting.

10.8.2 Matters not described in a meeting notice maybe discussed at a meeting if all Members or their authorized representatives are present at the meeting and may be voted upon if the Members or their authorized representatives possessing at least the required percentage of the votes to approve such matter are present at the meeting.

10.9 **Action by Members Without a Meeting.** Unless the Articles, the Act or this Agreement provide otherwise, action required or permitted by the Act to be taken at a Members' meeting, including but not limited to the annual meeting, may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote. Action taken under this Section 10.9 is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

Written consent of all of the Members entitled to vote on any matter has the same force and effect as a unanimous vote of such Members and may be stated as such in any document.

ARTICLE 11
MEMBERS' LIABILITY AND INDEMNITY

11.1 **Members.**

11.1.1 No Member will be liable under a judgment, decree or order of a court, or in any other manner, for the debts, liabilities or obligations of the Company. A Member will have no liability to any other Member and/or the Company when acting pursuant to its authority granted pursuant to the Articles and/or this Agreement except to the extent such Member's acts or omissions constituted willful misconduct or gross negligence of such Member, or violation of Federal, state or local laws. Additionally, a Member will be liable to the Company for any difference between its Capital Contribution actually paid in and the amount promised by any Member as stated in this Agreement or any writing signed by the Member.

11.1.2 If a Member has received the return of any part of its Capital Contribution in violation of this Agreement or the Act, it is liable to the Company for a period of six (6) years thereafter for the amount of the Capital Contribution wrongfully returned.

11.1.3 If a Member has received the return in whole or in part of its Capital Contribution without violation of this Agreement or the Act, that Member is liable to the Company for a period of six (6) years thereafter for the amount of the returned Capital Contribution, but only to the extent necessary to discharge the liabilities of the Company to those creditors who extended credit to the Company during the period the Capital Contribution was held by the Company.

11.2 **Manager.** The Manager does not in any way guarantee the return of any Members' Capital Contribution or a profit for the Members from the Company's business. The Manager will incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture regardless of whether such other business or venture competes with the Company or whether the Manager is active in the management or business of such other

business or venture, provided that the Manager's involvement in such other business or venture is permitted under this Agreement and is not within 50 miles of the Project. Neither the Company nor any of the Members will have any rights by virtue of the Articles, this Agreement or any applicable law in or to the other business ventures of the Manager or to the income, gains, losses, deductions and credits derived therefrom by the Manager unless Manager is in violation of this Article 11.2.

11.3 **Company's Indemnification of Members, Manager, Employees or Agents.** The Company agrees to indemnify its Members, Manager, employees and agents to the fullest extent permitted by law and specifically in the Act, and may purchase insurance to protect the Company's directors, officers, employees and agents.

11.4 **Force Majeure.** Notwithstanding anything in this Agreement to the contrary, a Member or the Manager will not be liable (except for such Member's obligation to contribute or return its Capital Contributions under the Act or this Agreement) for any loss or damage to the Company Assets or operations caused by its failure to carry out any of the provisions of the Articles and/or this Agreement as a result of foreseeable or unforeseeable acts of God or incidents resulting from outside forces, beyond the control of such Member or Manager, such as strikes, labor troubles, riots, fires, weather, floods, acts of a public enemy, insurrections, breakdown or failure of machinery, acts, omissions or delays of governmental authorities and governmental laws, rules, regulations or orders.

11.5 **Remedies.** The remedies of the Members hereunder are cumulative and will not exclude any other remedies to which a Member may be lawfully entitled. The Members acknowledge that all legal remedies for any breach of this Agreement may be inadequate, and therefore they consent to any appropriate equitable remedy; provided, that any failure of a Member to abide by the terms of this Agreement, including without limitation any vote or consent that should bind a Member, or any other failure to adhere to the terms of this Agreement which cost the Company legal and court costs to enforce same will render the breaching Member liable to the Company for any such fees and costs.

11.6 **Waiver.** The failure of any Member to insist upon strict performance of a covenant or condition hereunder will not be a waiver of its right to demand strict compliance therewith in the future.

ARTICLE 12
TRANSFERS

12.1 **Transfer Restrictions.** Each Member hereby agrees that its Interests and any economic benefit therein are not transferable except as provided in this Article 12. "Economic benefit" or "benefit" of an Interest will mean an Interest share of the Company's profits or other compensation by way of income and return of contributions but will not include the Company's losses, deductions and credits.

12.2 **Prohibited Transfer.** Except as provided in this Article 12, no Member may sell, transfer, assign or otherwise dispose of or mortgage, hypothecate, or otherwise encumber or permit or suffer any encumbrance of all or any part of its Interests unless approved in writing by Members holding at least 67% of the Percentage Interests in the Company, acting in their

reasonable discretion, and any attempt to so transfer or encumber any such interest without such approval will be null and void and will not bind the Company or the other Members.

12.3 **Requirements for Transfer.** Transfers of Interests and/or economic benefits therein during any year will become effective as of the date of any required approval by all of the other Members, provided that the transferee and transferor have satisfied all of the requirements of this Article 12. Subject to satisfying the requirements of this Article 12, any such transfer requiring approval of the Members pursuant to this Article 12 will be considered by the Members at the Members' next annual or special meeting. Unless and until the transferee of a Member's Interests is accepted by a Substitute Member pursuant to this Article 12, the transferor Member will remain a Member in the Company and will retain all rights and obligations incident to such status, except to the extent that the transferor agrees to transfer the economic benefits of its Interests as permitted by this Article 12 for transfers of economic benefits without the consent of the other Members. Notwithstanding anything in this Article 12 to the contrary, any transfer by any Member of all or any portion of his or its Interests, from time to time, (i) by operation of law (for instance in the case of a merger) or (ii) to any Affiliate may be accomplished without restriction, right of first offer or consent of the Manager or the other Members. The Interests of the transferring Member will be deemed transferred when the Manager and the other Members have received written notice of such transfer along with the name and address of the transferee and number of Interests transferred.

Notwithstanding anything to the contrary, any attempted or purported transfer of any Interest or economic benefit therein (including, but not limited to, an adjustment of the right to receive profits or the return of contributions) in violation of the following restrictions will be void ab initio and of no effect:

12.3.1 No transfer may be made within the meaning of the Code or the regulations thereunder, if such transfer would result in the termination of the Company under the Code;

12.3.2 No transfer may be made except in compliance with or pursuant to an exemption from the registration provisions of the Securities Act of 1933, as amended, and in compliance with or pursuant to an exemption from applicable state securities laws and rules and regulations promulgated thereunder;

12.3.3 No transfer may be made which would cause the Company to become an "investment company" under the Investment Company Act of 1940, as amended;

12.3.4 No transfer may be made which would cause the Company to be deemed to be a "publicly traded partnership" under the Code or would otherwise cause the Company to be treated as an association or corporation for tax purposes under the Code; and

12.3.5 No direct transfer may be made to a minor or incompetent in any respect unless made for their benefit to their guardian, trustee or other legal representative.

12.4 **Company Review.** Prior to the vote of the Members for their approval of the admission of a transferee of Interests as a Substitute Member the transferor may submit a written or oral report of the proposed transfer to the Company for its review. Subject to obtaining an

opinion of counsel that the restrictions provided in this Article 12 will not be violated by the transfer, the Company will notify the transferor within sixty (60) days after receipt whether or not the proposed transfer violates any of the restrictions contained in this Article 12 and whether or not the transfer consequently may be effected. Any opinion of counsel will be provided at the option of the Company by the transferring parties at their sole expense, will be satisfactory in form and substance to the Company and will be from counsel satisfactory to the Company.

12.5 **Transfers of Economic Benefits Without Members' Approval.** Subject to Sections 12.1 and 12.2, economic benefits in Interests may be transferred in whole or in part without the consent of the Members in the following events:

12.5.1 the transfer as a result of the death of a Member;

12.5.2 the transfer in connection with the entry of a divorce decree for or against a Member;

12.5.3 the transfer as a gift and for no consideration;

12.5.4 the sale or other transfer to related parties after which the ownership of the economic benefits will be effectively unchanged, i.e., intra-family transfers or transfers within an affiliated group;

12.5.5 the occasional accommodation transfer by a Member; or

12.5.6 the pledge to a Lender in connection with any Project financing or, after Substantial Completion, any other financing.

12.6 **Transfers with Members' Approval.**

12.6.1 Following satisfaction of the requirements of Sections 12.3 and 12.4, a proposed transfer of Interests requiring the Members' approval will be submitted to the Members for their approval after:

(a) the transferee has executed this Agreement and any other documents and instruments as the Company may require; and

(b) the transferring parties have paid and have agreed to pay, as the Company will determine, all reasonable expenses connected with such request and admission, including, but not limited to, any required opinion of counsel, the legal fees and costs associated with the preparation and filing of all other documents necessary to continue the Company's right to do business in the jurisdictions in which it is then doing business. The Company will not be obligated to justify such expenses and for its convenience in lieu of itemizing such expenses, may select a reasonable amount to cover such expenses.

12.6.2 Upon satisfaction of Sections 12.3, 12.4 and for Interests, 12.6.1, the request for transfer of Interests will be submitted to the Members at the Company's next annual or special meeting. The Members will vote whether or not to approve a proposed transfer of Interests and whether or not a proposed transferee of Interests should be admitted as a Substitute

Member for the transferor Member to the extent of the Interests proposed to be transferred. If a proposed transferee of Interests is not approved to be a Substitute Member, then subject to the provisions of the proposed transfer, such transferee may nevertheless receive the "economic benefits" of such Interests pursuant to the definition of "economic benefits" set forth in Section 12.1 hereof.

12.6.3 If a proposed transfer of Interests is approved by all of the Members, the transferee will be admitted as a Member and will be vested with all the rights and powers, and be subject to all the restrictions and liabilities of the transferor to the extent of the Interests transferred. Admission of a transferee as a Substitute Member will not relieve the transferor from any obligation or liability that existed on or before the effective date of admission; provided that the transferor will be relieved from obligations and liabilities arising thereafter and arising under existing agreements to the extent that such obligations are to be performed after the effective date of admission or that such liabilities arise thereafter.

12.6.4 If a proposed transfer of Interests is refused by or on behalf of any Member, the proposed transferee of the Member's Interests will not be admitted as a Member and will not have the right to participate in the management of the business and affairs of the Company, provided that such transferring parties may again apply to have the transferee admitted as a Substitute Member.

12.7 **Death of Member; Other Termination of Membership.**

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12.7.1 In the event of the death of a Member who is an individual or if a court of competent jurisdiction adjudges a Member to be incompetent to manage his person or his property, followed by a decision by or on behalf of all of the remaining Members to continue the Company rather than allowing it to dissolve, the Member's executor, administrator, guardian, conservator or other legal representative may exercise all of the Member's rights for the purpose of settling his estate or administering his property. If a Member is a corporation, trust or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

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12.7.2 In the event of bankruptcy or dissolution of a Member, followed by the continuation of the Company rather than a vote of the Members to dissolve the Company, any successor to the Interests of the affected Member as a result thereof will be deemed to be the transferee of the entire interest of the affected Member and may be admitted at the next annual meeting as a Substitute Member upon satisfaction of the requirements of this Article 12.

12.7.3 The provisions of Article 2 and this Section 12.7 will not cause or require the dissolution of the Company should any of the events described in such Article or Section occur to a person or entity who is not a Member but only possesses economic benefits associated with any Interests.

12.8 **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

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ARTICLE 13
TERMINATION AND DISSOLUTION

13.1 **Events Requiring Termination and Dissolution.** The Company will be dissolved and terminated upon the happening of any of the following events:

13.1.1 Expiration of the term of the Company, as set forth in Section 2.3, unless extended by mutual consent all of the Members;

13.1.2 Any event as otherwise specified in this Agreement or in accordance with law;

13.1.3 By the written consent of four of the five members of the Executive Committee pursuant to Section 8.3.2; or

13.1.4 The sale or other disposition of substantially all assets of the Company such that the sole asset of the Company is cash.

13.2 **Management During Liquidation.** In the event of a termination, the rights and obligations of the Members with respect to management of the Company will be continued by the Manager during the period of winding up. The Company Assets will be liquidated as promptly as is consistent with obtaining the fair market value of the assets, and the liquidation will be conducted in compliance with law and sound business practice. The Manager may maintain reasonable reserves to provide for the payment of contingent claims and liabilities. The Manager will be entitled to reimbursement for out-of-pocket expenses incurred in connection with the winding-up and liquidation of the Company. Such reimbursement will be paid as an expense of the Company after all debts to all third parties have been repaid but before any repayment of loans or advances by the Members.

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13.3 **Members' Right to Bid for Assets.** Upon the dissolution and liquidation of the Company, any Member may make a bid or tender on any of the Company Assets. Those assets as are bid upon by a Member will not be sold to a third party unless the bid made by such third party is upon more favorable terms and conditions than the highest and best bid of a Member.

13.4 **Distribution of Liquidation Proceeds.** Liquidation proceeds, to the extent sufficient therefor, will be applied and distributed in the following order:

13.4.1 To the expenses of such liquidation;

13.4.2 To the payment and discharge of all other Company debts and liabilities (other than those to Members), including the establishment of any necessary reserves;

13.4.3 All remaining assets of the Company will be distributed to the Members in the manner set forth in Section 6.2 hereof.

13.5 **Distribution of Company Assets.** The Company shall not distribute any Company Assets to its Members upon the liquidation of the Company other than cash unless all of the Members agree to the distribution by the Company of assets other than cash and the value

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to be assigned to such assets. To the extent assets other than cash are distributed to the Members, such distributions shall be based on the fair market value of the assets distributed.

ARTICLE 14
DISPUTE RESOLUTION

14.1 **Application of Section.** Whenever either the Manager or the Members cannot mutually agree on the resolution of a matter or dispute, the provisions of this Article will apply. The rights and obligations of the Manager with respect to the management of the Company will continue until the dispute is resolved pursuant to this Article 14.

14.2 **Mediation.** In the event of a dispute, any dissatisfied Member will provide notice of the dispute to all of the other Members. The Members will then arrange a meeting to discuss the dispute within ten (10) days of receipt of notice of the dispute. If the dispute cannot be resolved among the Members within thirty (30) days of the meeting to discuss the dispute, then any Member may submit the dispute to mediation by notice to all of the other Members (the "Mediation Notice"). The Member sending such notice shall then have ten (10) days to make a request to a reputable and nationally recognized agency in the State of California which specializes in mediation to select a mediator to assist in resolving the dispute. The costs of the mediator will be shared equally by the Members and all decisions as to date, time and location of mediation meetings shall be made by the mediator. If the dispute cannot be resolved through mediation within ninety (90) days of the Mediation Notice, then, and only then, will the provisions of Section 14.3 apply.

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14.3 **Other Remedies.** If the dispute cannot be resolved pursuant to Section 14.2, then either party may seek whatever remedies are available at law or in equity, subject to any limitations set forth in this Agreement, in state or Federal court situated in Washoe County, Nevada.

ARTICLE 15
AMENDMENTS

15.1 **Proposal of Amendments.** Any amendments to the Articles and this Agreement must be approved by four (4) of the five (5) members of the Executive Committee, subject to the terms of Section 8.3.12.

15.2 **Amendments by TMP.** Notwithstanding any provision of this Agreement, amendments to this Agreement which, in the opinion of counsel to the Company, are necessary to maintain the status of the Company as a tax partnership under federal or state law or for other tax purposes may be made by the TMP without the necessity of the approval of the Executive Committee or the Members.

ARTICLE 16
MISCELLANEOUS

16.1 **Notice.** All notices, requests, consents and other communications required or permitted under this Agreement must be in writing and must be (as elected by the Person giving

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such notice) hand delivered by messenger or courier service, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to CR:	CR Cal Neva, LLC c/o Criswell Radovan, L.L.C. 1336-D Oak Street St. Helena, California 94574 Attn: Robert Radovan Facsimile: 707/963-0513
With copy to:	Powell Coleman & Arnold LLP 8080 North Central Expressway, Suite 1380 Dallas, Texas 75206 Attn: Bruce Coleman, Esq. Facsimile: 214/373-8768
If to other Members:	At the addresses set forth on Schedule 4.1

16.1.1 Each such notice will be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date of a receipt of a clear copy if by telecopy, (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the carrier as not deliverable, as the case may be, if sent by overnight courier service such as Federal Express, and (d) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

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16.1.2 By giving to the other parties at least fifteen (15) days written notice thereof, the parties hereto and their respective successors and assigns will have the right at any time during the term of this Agreement to change their respective addresses and each will have the right to specify as its address any other address within the United States of America.

16.1.3 A transferee of an interest by any Member will be entitled to receive copies of notices hereunder, provided such transferee will have given notice to the Company and all Members of its designated address for purposes of this Section and further provided that such transferee has otherwise complied with the terms and conditions of this Agreement in acquiring its interest hereunder.

16.2 **Governing Law**. This Agreement has been executed and delivered within the State of California, is a contract made under the laws of the State of California , and will be governed by and interpreted in accordance with the laws of the State of California, without regard to conflict of law principles thereunder.

16.3 **Successors**. Except as otherwise specifically provided herein, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

16.4 **Pronouns**. Wherever from the context it appears appropriate, each term stated in either the singular or the plural will include the singular and the plural, and pronouns stated in

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either the masculine, the feminine or the neuter gender will include the masculine, feminine and neuter.

16.5 **Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof.

16.6 **Severability.** If any provision of this Agreement, or the application of such provision to any Person or circumstance, is held invalid, the remainder of the Agreement, or the application of such provision to Persons or circumstances other than those to which it is held invalid, will not be affected hereby.

16.7 **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page, and this Agreement may be executed by the affixing of the signatures of each of the Members to one of such counterpart signature pages, all of which will have the same force and effect as though all of the signatories had signed a single signature page.

16.8 **Entire Agreement; Amendment.** This Agreement embodies and constitutes the entire understandings of the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement unless specifically agreed to by the Members. Except as set forth in Article 15, neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing executed by the Members; provided, however, that if an amendment to this Agreement has been approved as a Major Decision pursuant to Section 8.3.12 above, such amendment may be executed pursuant to powers of attorney previously granted by each Member in the event any of the Members fail to execute such amendment personally.

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16.9 **Attorneys' Fees.** If any Member or Manager commences an action against the other Members and/or Manager to interpret or enforce any of the terms of this Agreement or as the result of a breach by the other Member(s) or Manager(s) of any terms hereof, the losing (or defaulting) Member(s) or Manager(s) will pay to the prevailing Member(s) or Manager(s) reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action (including at the appellate level), whether or not the action is prosecuted to a final judgment.

16.10 **Further Assurances.** Each Member agrees to execute and deliver any and all such other and additional instruments and documents and do any and all such other acts and things as may be necessary or expedient to more fully effectuate this Agreement and to carry on the business contemplated hereunder.

16.11 **Equitable Remedies.** Each of the parties hereto acknowledges and agrees that, in the event of a breach or threatened breach of this Agreement by any Member or the failure of a Member to perform in accordance with the specific terms hereof, the other parties hereto will be irreparably damaged and that monetary damages would not provide an adequate remedy. Accordingly, it is agreed that, in addition to any and all other rights which may be available, at

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law or in equity, the non-breaching parties will be entitled to injunctive relief and/or specifically to enforce the terms and provisions hereof in any action instituted in accordance with Section 16.12.

16.12 **Indemnities.**

16.12.1 The Manager will not be liable for errors in judgment, whether or not disclosed, unless due to gross negligence, willful neglect or intentional misconduct. From and after the Effective Date, the Company will and does hereby indemnify and hold harmless the Manager from and against any and all claims, actions, suits, liabilities, judgments, obligations, losses, penalties, demands, expenses and damages (and all expenses associated therewith, including court costs and attorney's fees at all negotiations, trial and appellate levels) incurred by the Manager in respect of any act or omission to act by the Manager, whether or not such act or omission to act was negligent, including without limitation any such act or omission by them when acting in the good faith belief that they were acting or refraining from acting within the scope of their authority under this Agreement on behalf of the Company or in furtherance of their interests, provided that the foregoing will not entitle the Manager to indemnification for gross negligence, willful neglect or intentional misconduct.

16.12.2 Notwithstanding subsection 16.12.1, a Member will not be liable to the Company or any other Member arising from any act or omission to act, even if involving gross negligence, willful neglect or intentional misconduct, unless claim, action, right of action, suit, investigation, liability, judgment, obligation, loss, penalty, demand, expense or damage therefor is made or otherwise instituted before such Member ceases to be a Member of the Company or before the date of dissolution, winding up and termination of the Company.

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16.13 **Contributions.** In the event that one Member is held severally liable for the debts of the Company, and such liability did not arise out of such Member's assumption of such liability or its negligent or willful act, such Member will be entitled to contribution from the other Members.

16.14 **No Third Party Rights.** The provisions of this Agreement are for the exclusive benefit of the Company and the Members and no other party (including without limitation any creditor of the Company or any Member) will have any right or claim against the Company or any Member by reason of those provisions or be entitled to enforce any of those provisions against the Company or any Member.

16.15 **Reliance on Experts.** For purposes of this Agreement, whenever one of the Members reasonably requires or retains the use of an expert in order to discharge a duty hereunder, such Member's sole responsibility in connection with such duties will be the reasonable reliance upon the advice of the experts, and no Member will be liable on account of any duty or obligation imposed hereunder in the event of a reliance upon professional advice.

16.16 **Submission to Jurisdiction.** Subject to the provisions of Article 14 hereof, each of the Members irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement will be brought in the courts of record of the State of California in Placer County or the courts of the United States with jurisdiction over Placer County, California; (b) consents to the jurisdiction of each such court in any such suit,

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action or proceeding; (c) waives any objection which he/she may have to the laying of venue of any such suit, action or proceeding in any of such courts; (d) consents to service of any court paper by mail, as provided in Section 16.1 hereof, or in such other manner as may be provided under applicable laws or court rules in California. Notwithstanding the provisions of this Section 16.16, the Members acknowledge that before a Member may file legal action against one or more Members, such Member must have complied with the remedies available pursuant to Article 14 of this Agreement.

16.17 **Remedies Cumulative.** The rights and remedies given in this Agreement to a non-defaulting Member or the Company are deemed cumulative, and the exercise of one of such remedies will not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting Member under the provisions of this Agreement or given to a non-defaulting Member by law.

16.18 **No Waiver.** One or more waivers of a breach of any provision of this Agreement by any Member will not be construed as a waiver of a subsequent breach of the same or any other provision, nor will any delay or omission by a non-defaulting Member to seek a remedy for any breach of any provision of this Agreement by a Member be construed as a waiver by the non-defaulting Member of the right to exercise its/his/her remedies and rights with respect to such breach or any subsequent breach, whether similar or not.

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16.19 **Confidentiality.** Except as required in the normal conduct of a Member's business or as required by law, no Member, without the written approval of all Members, whether during continuance of the Company or after its termination, will divulge to any Person not a Member other than its/his/her attorneys, accountants, employees and professional advisers, any information concerning the business of the Company or the content of this Agreement or any other contract or agreement entered into by the Company. A Member may, however, disclose to third parties the existence of the Company and the names of the Members.

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16.20 **Construction.** This Agreement will be interpreted without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

16.21 **Accounts.** In no case will funds of the Company be commingled with funds not belonging to the Company. Withdrawals from any such account or accounts will be made upon the signature or signatures of such Persons as the Manager may designate.

16.22 **Time of the Essence.** Time is of the essence of this Agreement.

16.23 **Time Devoted to Venture.** No Member will be required to devote its/his/her entire time or attention to the business of the Venture, or more time or attention than reasonably required to carry out its/his/her obligations under this Agreement.

16.24 **Exhibits.** All Exhibits, and documents attached thereto, referred to in this Agreement are deemed incorporated herein by reference as if fully set forth in length.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the date first set forth above.

CR CAL NEVA, LLC

By: William T. Criswell
William T. Criswell, President

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IMC INVESTMENT GROUP CNR, LLC,
a Nevada limited liability company

By: _____
Brandon Chaney, Manager

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MUNNERLYN REVOCABLE TRUST dated
September 17, 1997

By: Charles R. Munnerlyn Trustee
Charles R. Munnerlyn, Trustee

By: Judith G. Munnerlyn, Trustee
Judith G. Munnerlyn, Trustee

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PAUL AND EVY PAYE, LLC,
a California limited liability company

By: _____
John Paye, Manager

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CEA VENTURES, LP

By: CEA Holdings, LLC,
General Partner

By: _____
Donna M. Gibson, Managing Member

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OAKDALE AVENUE PARTNERS, LP

By: Oakdale Avenue Management, LLC,
General Partner

By: _____
John F. Miller, Manager

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Leslie P. Busick - TRUSTEE

LESLIE P. BUSICK, Trustee of that certain Trust Agreement dated June 11, 1974, as amended

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THE ERICKSON FAMILY TRUST dated
August 3, 2006

By: _____
Philip L. Erickson, Trustee

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DIXON FAMILY TRUST
DATED NOVEMBER 1, 1994

By: _____, Trustee
Michael A. Dixon, Trustee

By: _____
Sharon L. Dixon, Trustee

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MARTIN FAMILY TRUST
DATED APRIL 20, 2000

By: Carol J. Martin
CAROL J. MARTIN, Trustee

By: David C. Martin
DAVID C. MARTIN, Trustee

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SINATRA FAMILY CAL NEVA INVESTORS

By:_____

Robert A. Finkelstein,
Trustee/Managing Member

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THORPE INVESTMENTS, LP

By: _____
Allen R. Thorpe, General Partner

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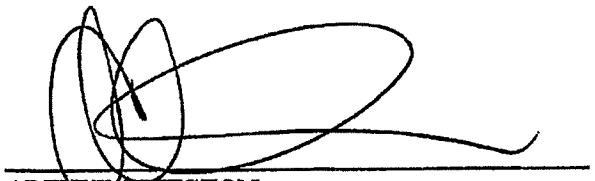

ARTHUR PRIESTON

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MOLLY KINGSTON

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MARIUCCI LIVING TRUST UNDER AGREEMENT DATED JULY 5, 1989, AS AMENDED

By: _____ Trustee
Stephen Ray Mariucci, Trustee

By: _____
Gayle Elaine Mariucci, Trustee
Trustee

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MARRINER REAL ESTATE, LLC,
a Nevada limited liability company

By: _____
Dave Marriner, Manager

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LADERA DEVELOPMENT, LLC

By: _____

Name: James Pickett

Title: Managing Member

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Schedule 4.1

MEMBERS AND INTERESTS

As of November 24, 2014

Members	Business, Residence or Mailing Address	Percentage Owned
1. PREFERRED MEMBERS		
(a) IMC Investment Group CNR, LLC	880 Northwood Blvd. Suite 2 Incline Village, NV 89451	20.49%
(b) CR Cal Neva, LLC	1336-D Oak Street St. Helena, CA 94574	6.83%
(c) Charles R. Munnerlyn and Judith K. Munnerlyn, Trustees of the Munnerlyn Revocable Trust dated September 17, 1997	1731 Marseilles Court San Jose, CA 95138	6.83%
(d) Paul and Evy Paye, LLC	c/o John Paye 15291 Red Dog Road Nevada City, CA 95959	6.19%
(e) CEA Ventures, LP	2000 Brookhill Manor Court Chesterfield, MO 63017	3.41%
(f) Oakdale Avenue Partners, LP	P. O. Box 945 Ross, CA 94957 (Street address: 46 Upper Road Ross, CA 94957)	3.41%
(g) Leslie P. Busick, Trustee	P. O. Box 4150 Incline Village, NV 89450	3.41%
(h) The Erickson Family Trust dated August 3, 2006	1013 Lakeshore Blvd. Incline Village, NV 89451	3.41%
(i) Dixon Family Trust dated November 1, 1994	12778 Lookout Loop Truckee, CA 96161	3.41%

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(j) Martin Family Trust dated April 20, 2000	8 Ladbrook Grove Coto de Caza, CA 92679	3.41%
(k) Sinatra Family Cal Neva Investors	8573 W. Olympic Blvd. Los Angeles, CA 90035	1.71%
(l) Thorpe Investments, LP	390 Park Avenue, 21st Floor New York, New York 10022	1.71%
(m)Arthur Prieston	4503 Great Bear Truckee, CA 96161	1.71%
(n) Molly Kingston	529 Fallen Leaf Way Incline Village, NV 89451	1.71%
(o) Mariucci Living Trust Under Agreement dated July 5, 1989, as amended	15940 Romita Court Monte Sereno, CA 95030	1.71%
(p) Marriner Real Estate, LLC	1545 Debra Lane Incline Village, NV 89450	0.65%

2. SPONSOR MEMBER

CR Cal Neva, LLC	1336-D Oak Street St. Helena, CA 94574	20%

3. MEZZANINE LENDER

Ladera Development, LLC	16475 Bordeaux Drive Reno, Nevada 89511	10%

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Schedule 4.2

CAPITAL CONTRIBUTIONS OF PREFERRED MEMBERS
As of November 24, 2014

IMC Investment Group CNR, LLC	$ 6,000,000
CR Cal Neva, LLC	2,000,000
Charles R. Munnerlyn and Judith K. Munnerlyn, Trustees of the Munnerlyn Revocable Trust dated September 17, 1997	2,000,000
Paul and Evy Paye, LLC	1,812,500
CEA Ventures, LP	1,000,000
Oakdale Avenue Partners, LP	1,000,000
Leslie P. Busick, Trustee	1,000,000
The Erickson Family Trust dated August 3, 2006	1,000,000
Dixon Family Trust dated November 1, 1994	1,000,000
Martin Family Trust dated April 20, 2000	1,000,000
Sinatra Family Cal Neva Investors	500,000
Thorpe Investments, LP	500,000
Arthur Prieston	500,000
Molly Kingston	500,000
Mariucci Living Trust Under Agreement dated July 5, 1989, as amended	500,000
Marriner Real Estate, LLC	187,500
TOTAL	$20,500,000

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Schedule 4.3

USES OF CAPITAL CONTRIBUTIONS

1. Repayment of bridge loan note in the amount of $6,000,000.00, plus accrued interest, due on or before April 30, 2014.

2. Payment to Seller of approximately $10,000,000.00 to redeem its equity interest in New Cal Neva.

3. Provide additional development capital for the Project.

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Schedule 8.4

EXECUTIVE COMMITTEE
As of October 7, 2014

Member	Member Representative
CR	William T. Criswell
CR	Robert Radovan
Preferred Member	Brandon Chaney
At Large	Leslie P. Busick
At Large	Troy Gillespie

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EXHIBIT 5

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EXHIBIT 5

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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.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

TRANSCRIPT OF PROCEEDINGS

TRIAL VOLUME V

September 6, 2017

1:30 p.m.

Reno, Nevada

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

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APPEARANCES:

For the Plaintiff:

RICHARD G. CAMPBELL, ESQ.
Attorney at Law
100 W. Liberty
Reno, Nevada

For the Defendant:

HOWARD & HOWARD
By: MARTIN LITTLE, ESQ.
3800 Howard Hughes Parkway
Las Vegas, Nevada

ANDREW WOLF, ESQ.
Attorney at Law
264 Village Blvd.
Incline Village, Nevada

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sure you get your workout today with all the binders.

A. You just have to be patient. There's four books to go through. 120. I'm here.

Q. So in the middle of the Exhibit 120 is your e-mail, I believe, to Paul Jamieson, correct?

A. Correct.

Q. January 28th, 2016 at 11:06 a.m., you wrote, I believe any deal Roger or others propose that doesn't at least make all investors whole will be rejected in favor of the Mosaic deal, which is sounding better and better. Your review, Paul?

A. Yes.

Q. At that point in time, just a couple of days before the meeting at Mosaic, you were in favor of the Mosaic deal?

A. I was in favor of any deal and that was the only real deal I was aware of.

Q. In the same time frame, you became aware that a group of the executive committee, three members of the executive committee were going to have a pre-meeting with Mosaic, right?

A. Pre-meeting?

Q. A meeting before a regularly scheduled meeting?

A. Yes.

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Q. Why wasn't your place to say? To alert the manager of the -- the managers of the development that an unauthorized meeting was going to happen with the lender of the loan that was your only hope to get paid off? Why didn't you feel some obligation to inform them?

A. I trusted that the EC had enough reason on their part to, and they wanted to, as far as I know, wanted to save the deal, too, that they would -- they felt it was the best route, and I trusted the EC a lot more than I trusted Mr. Criswell and Mr. Radovan.

Q. But at the point in time of the meeting with Mosaic, you already knew that the EC and the people you were corresponding with, this so called team, were bent on removing Criswell and Radovan as managers, potentially suing them, potentially removing their membership interests. Why were you concerned about sharing that with them, sharing the meeting with them when you knew that was the motivation behind this group that you were trying to distance yourself from?

A. I disagree with your opening part of that question where you said that they were bent on removing Mr. Criswell or Mr. Radovan or CR. I think that was one of the options they were considering. Any which way that made the deal is what I wanted, a financing deal.

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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 6, 2017, at the hour of 1:30 p.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 845, 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 10th day of October 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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Howard & Howard Attorneys PLLC
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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' REPLY TO PLAINTIFF'S OPPOSITION TO 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 file this Reply to their Motion to Amend Judgment to include lost management and development fees, consistent with the Amended Order filed on September 15, 2017.

This Reply 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 20 day of June, 2018.

HOWARD & HOWARD ATTORNEYS PLLC

By: _____

Martin A. Little, Esq.
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,

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff's opposition is largely a regurgitation of arguments from his Motion for Judgment as a Matter of Law ("Plaintiff's Motion"), including a continued unfounded attack on Judge Flanagan's decision to award damages to Defendants (hereafter, the "Award"). In fact, Plaintiff goes so far as to say the Award was "unmoored from the law and the record." The reality—as demonstrated in Defendants' Opposition to Plaintiff's Motion—is that the Award was solidly anchored by the overwhelming evidence of Plaintiff's collusion with the IMC Group to sabotage the Mosaic Loan and oust Defendants from the Project, which Judge Flanagan emphasized in his findings:

> This Court has documented dozens of email exchanges between Mr. Young 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 [Defendants], that deal was dead. That testimony is unequivocal, there was never an attempt by the IMC to

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> resurrect it, despite the open invitation by Mosaic to re-introduce the loan.

See Tr., p. 1140:1-11.

Despite Plaintiff's transparent attempt to act shocked and surprised by the Award, the record is clear that his interference with the Mosaic Loan and Defendants' resultant damages were a major focus of the trial, including substantial testimony on this issue in Plaintiff's own case in chief. If fact, Plaintiff even called Brandon Cheney—a member of the IMC Group—to try to downplay his involvement with the torpedoing of the Mosaic Loan. Moreover, when Defendants put on evidence of their damages, Plaintiff's only objection was "lack of foundation"—not that he was being sandbagged by an unpled counterclaim.

Importantly, the Award was completely justified by Nevada Rules of Civil Procedure 8(c), 15(b), and 54(c). In fact, in *Magill v. Lewis*, 74 Nev. 381, 333 P.2d 717 (1958), the Nevada Supreme Court recognized that Rule 54(c) implements the general principle of Rule 15, that in a contested case, **"a judgment is to be based on what has been proved, rather than what has been pleaded."** *Id.* at 388. (emphasis added). As explained below, Plaintiff completely ignores Rules 8 and 54, and instead attempts to mislead this Court with his butchered interpretation of Rule 15(b), which plainly states:

> [w]hen issues not raised by pleadings are tried by express or implied consent of the parties, **they shall be treated in all respects as if they had been raised in the pleadings…but failure to amend does not affect the result of the trial of these issues.**

(emphasis added). Collectively, these rules allow the Court to go beyond the pleadings and enter judgment based on what has been proved-- precisely what Judge Flanagan did in his well-reasoned decision from the bench.

Finally, although the thrust of Plaintiff's opposition is focused on the underlying basis for the Award, Plaintiff also alleges the record cannot justify the lost management and development fees sought in Defendants' Motion to Amend. Plaintiff is mistaken. Although Judge Flanagan did not quantify the lost management or development fees he awarded to Defendants, the basis for those awards was squarely in the record, as was the amount of the development fee. The only thing left to be quantified is the amount of the lost management fee, which can be quantified post trial pursuant to NRCP 52(b) with evidence already in the record; in particular, the pro forma in Trial Exhibit 4, which Plaintiff admits his own expert

vetted and found reasonable.

II.

THE RECORD AND APPLICABLE LAW JUSTIFY THE AWARD

Plaintiff's primary attack on this Motion overlaps with the arguments he raised in Plaintiff's Motion; namely, his contention that the Award cannot stand because his conduct was not tortious and Defendants never pled affirmative claims against him. For sake of brevity, Defendants will not restate every point raised in their Opposition to Plaintiff's Motion, and instead incorporate those arguments by reference. However, certain points raised by Plaintiff in his opposition to this Motion warrant further discussion.

A. JUDGE FLANAGAN CORRECTLY RULED THAT PLAINTIFF'S CONDUCT WAS TORTIOUS.

Plaintiff contends that he was faulted simply for being "aware of" IMC's intentions to sabotage the Mosaic Loan and "not doing enough to stop it". *See* Motion, p. 3:1-9. He then cites to a few cases that suggest liability for interference, conspiracy and/or aiding and abetting will not lie without some level of active participation on his part. Plaintiff's interpretation of the evidence against him could not be more self-serving and flawed.

In fact, although Plaintiff may not have attended the Mosaic meeting, the evidence overwhelmingly demonstrated that he was conspiring with IMC to sabotage that loan and oust Defendants from the Project. Importantly, Judge Flanagan based the Award on "dozens of email exchanges between Mr. Yount and the IMC and their efforts to undermine the Mosaic loan". *See* Tr., p. 1140:1-3. Among others, these emails included:

- **Trial Exhibit 109:** Email exchange between IMC and Plaintiff before the secret meeting with Mosaic sharing information "for our eyes only".
- **Trial Exhibit 110:** Email exchange between IMC and Plaintiff—referring to themselves as "Team" and discussing their "divide and conquer approach".
- **Trial Exhibit 115:** Email exchange between IMC's Brandon Cheney and Plaintiff shortly before the secret Mosaic meeting wanting to talk about Robert Radovan of Criswell Radovan.

- **Trial Exhibit 118:** Plaintiff's email to IMC discussing the ousting of Criswell Radovan and that "we must be extra careful not to underestimate these two tomorrow".
- **Trial Exhibit 119:** Email exchange between Plaintiff and IMC where they are proposing to use Plaintiff's claim and threat of lawsuit as a coercive means to get Criswell Radovan to leave the Project.
- **Trial Exhibit 120:** Email exchange between Plaintiff and IMC just days before the secret meeting with Mosaic discussing financing that Plaintiff had helped arrange through Northlight's Roger Wittenberg, with whom Plaintiff had a prior relationship.
- **Trial Exhibit 121:** Email exchange between Plaintiff and IMC referencing the fact IMC was planning to secretly meet with Mosaic that Monday without Criswell Radovan's knowledge or consent.
- **Trial Exhibit 122:** Email exchange between IMC and Plaintiff making it clear that Criswell Radovan did not know of the Mosaic meeting and referencing the fact IMC was getting a letter of intent from another equity party (i.e., someone other than Mosaic).
- **Trial Exhibit 124:** Email from Mosaic to Radovan sent a few hours after IMC secretly met with Mosaic saying they are backing out of the loan and tearing up the term sheet.
- **Trial Exhibit 126:** Email exchange with Plaintiff referencing the secret Mosaic meeting as a "good meeting", and discussing that Criswell Radovan must immediately resign and cede their 20% interest or "face swift civil and criminal action".
- **Trial Exhibit 127:** Email from Plaintiff to IMC asking for input on his legal strategy against Criswell Radovan.
- **Trial Exhibit 130:** Less than a week after the Mosaic loan was torpedoed, Plaintiff and IMC are discussing another potential investor.

- **Trial Exhibit 131:** Less than a week after the Mosaic loan was torpedoed, IMC and Plaintiff are discussing a replacement developer to replace Criswell Radovan and making sure "not [to] discuss with others outside this email list".
- **Trial Exhibit 132:** Email exchange between Plaintiff and IMC shortly after the Mosaic loan was torpedoed asking about another investment group.
- **Trial Exhibit 133:** Plaintiff email to IMC—after the Mosaic loan was torpedoed—describing one of the IMC members as "our hero!".
- **Trial Exhibit 142:** Email exchange between Plaintiff and IMC—approximately 1.5 months after the Mosaic loan was torpedoed—agreeing to a "good cop/bad cop routine" against Criswell Radovan.

Despite Plaintiff's best efforts to distance himself from IMC, this **stipulated** evidence painted a clear picture of Plaintiff and IMC actively conspiring to oust Defendants from this Project under extortionist threats, along with their calculated plans to substitute their own financing for the Mosaic Loan. In fact, Judge Flanagan wisely noted that there was never an attempt by IMC or Plaintiff to resurrect the Mosaic Loan after Mosaic tore up the executed term sheet on the very day IMC secretly met with its representatives -- despite the open invitation by Mosaic to reintroduce that loan. *See* Tr., September 8, 2016, pp. 52-53. This incriminating fact cuts sharply against Plaintiff's contention that he wanted the Mosaic Loan to come to fruition. *See* Motion, p. 4:8-10.

Moreover, Plaintiff points to an email where he allegedly questioned the legitimacy of the secret Mosaic meeting, and contends this fact exculpates him from liability. Judge Flanagan, however, specifically considered and rejected this innocuous email against the overwhelming weight of evidence discussed above, including the "dozens of email exchanges between [Plaintiff] and the IMC in their efforts to undermine the Mosaic loan". *See* Transcript, September 8, 2017, pp. 52-53.

In short, Judge Flanagan not only heard and weighed all of this documentary evidence, but also the credibility of each of the witnesses who testified before him on the interference claim. Having done so, Judge Flanagan was best-suited to decide whether Plaintiff's conduct was tortious. His decision was meticulously detailed and supported by substantial evidence.

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Unquestionably, Plaintiff knew a prospective contractual relationship existed between Cal Neva Lodge and Mosaic. Plaintiff intended to harm and disrupt this relationship without privilege or justification, and his conduct resulted in significant harm to Defendants and the other Project investors. This conduct provides ample justification for the Award.

B. PLAINTIFF IGNORES CRITICAL CIVIL RULES AND MISAPPLIES OTHERS.

Plaintiff also attacks this Motion by re-stating his position that Defendants never pleaded a counterclaim, and then goes out on a limb by contending this is absolutely fatal to the Award. Plaintiff could not be more wrong. As explained below, Plaintiff's contention is based on an incorrect reading of NRCP 15(b), as well as his inexplicable ignorance of NRCP 8 and 54(c), all three of which independently justify the Award to Defendants.

1. Regardless of the Formality of the Initial Pleadings, the Parties Extensively Litigated and Tried the Issue of Plaintiff's Interference by Express and/or Implied Consent.

The evidence overwhelmingly demonstrates that the issue of Plaintiff's interference with the Mosaic Loan was tried by consent and was a major focus of the trial. This issue was thoroughly addressed in Defendants' Opposition to Plaintiff's Motion. For the sake of brevity, Defendants adopt and incorporate by reference those sections of their opposition dealing with Plaintiff's trial by consent.

2. Under Rule 15(b), Issues Tried by Express or Implied Consent SHALL be Treated in All Respects as if Raised in the Pleadings.

Plaintiff erroneously contends that the Award cannot hold because Defendants never sought leave to amend to assert a counterclaim; that it is now too late to do so; and, regardless, Defendants could not satisfy a "good cause" standard for such an amendment. *See* Opposition, pp. 7-10. Plaintiff's interpretation of Rule 15 is squarely at odds with its plain and unambiguous language:

> **[w]hen issues not raised by pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.** Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues **may** be made upon motion of any party at any time even after judgment**; but failure so to amend does not affect the result of the trial of these issues** (emphasis added).

Thus, contrary to Plaintiff's argument, there is no requirement that Defendants seek leave to amend to assert a counterclaim that was tried by express consent. In fact, Rule 15 clearly states that it "shall be treated in all respects as if they had been raised in the pleadings … [and] failure so to amend does not affect the result of the trial of these issues."

Moreover, there is no question that Plaintiff had adequate notice of this claim. Indeed, before trial, Defendants' proposed Findings of Fact and Conclusions of Law contained a finding that Plaintiff's **"intentional interference has damaged the Defendants far in excess of Plaintiff's $1 Million investment."** *See* Exhibit 3 to Defendants' Opposition to Plaintiff's Motion. At the outset of trial, Plaintiff stipulated to the admissibility of dozens of emails pertaining solely to the intentional interference claim, including 3 exhibits of his own (Ex: 55, 58 and 59). During trial, Plaintiff's interference with the Mosaic Loan was a central theme for nearly every witness who testified, including witnesses that Plaintiff's counsel called in his case in chief. This is perhaps best demonstrated by Plaintiff's counsel's questioning of Plaintiff and Plaintiff's star witness, Brandon Cheney from the IMC Group, on this key topic.

For example, on page 585 of Volume III of the trial transcript, Plaintiff's counsel asked Plaintiff: "Did you ever conspire to somehow undermine the Mosaic Loan?" Plaintiff and his counsel then began a colloquy lasting 16 pages trying to downplay and explain away the damning emails showing his active involvement. *See* Tr., pp. 585-601.

Plaintiff's counsel then called Brandon Cheney from IMC and questioned him extensively on the Mosaic Loan—all in an effort to try to undermine Defendants' allegation that IMC and Plaintiff conspired to torpedo that Project refinancing. *See* Tr., Vol. V and VI, pp. 837-843; 857-865. For example, on page 842 of the transcript, Plaintiff's counsel asked Mr. Cheney if he and his partners went into the secret meeting with Mosaic "to somehow torpedo the Mosaic Loan". Plaintiff's counsel then asked Mr. Cheney if Plaintiff did anything to interfere with the Mosaic Loan. *See* Tr., pp. 862:24-863:7. Plaintiff's counsel went so far as to introduce a brand new exhibit as "impeachment evidence" to try to rebut Robert Radovan's testimony from the prior day about Plaintiff sabotaging the Mosaic Loan. *See* Tr., pp. 860:22-861:21.

Perhaps most telling of Plaintiff's notice and acquiescence came when Defendants'

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counsel examined Robert Radovan about how Defendants had been damaged by Plaintiff and IMC's interference:

> Q. [by Defendants' counsel] Sir, can you quantify how C.R. Cal-Neva has been damaged by Mr. Yount and IMC's interference?
>
> Mr. Campbell: Objection, lack of foundation.
>
> The Court: Sustained. I'm sorry, overruled. Go ahead.

See Transcript of proceedings, Vol. III, p. 493:6-24. Importantly, Plaintiff's counsel's only objection to this line of questioning was one of "foundation"—not that Plaintiff was somehow being blind-sided or ambushed by a trial on the issue of his interference with the Mosaic Loan and the resultant damages to Defendants.[1]

Plaintiff also contends that he lacked adequate notice of the Counterclaim because the same evidence used to prove it was also relevant to Defendants' affirmative defenses. This contention completely ignores Rules 8, 15 and 54, each of which authorizes the Award based on what had been proved rather than what has been pleaded. If a trial judge cannot award damages for the same acts that support an affirmative defense, then Rules 8, 15 and 54 have no meaning. It would be one thing for Plaintiff to claim some sort of notice violation if this claim came out of left field, but this is a situation where Plaintiff stipulated to the admissibility of dozens of emails pertaining solely to the intentional interference claim, including three exhibits of his own; he consented to presentation of testimony on the intentional interference claim through nearly every witness, including several called in his case-in-chief; and he failed to object to the presentation of damages for his intentional interference. Under these circumstances, Plaintiff cannot be allowed to claim he was denied due process.

3. Plaintiff Ignores NRCP 8 and 54.

Importantly, Plaintiff put all his eggs in Rule 15's basket, while completely ignoring Judge Flanagan's authority to award damages to Defendants under Rules 8 and 54. Worse, he completely ignores the first sentence of the very provision he is relying on. That sentence clearly

[1] Plaintiff's contention that "Mr. Yount's counsel always objected when the inquiry deviated toward any counterclaim of Mr. Yount's interfering" is blatantly false. As Plaintiff's citation to the record demonstrates, Mr. Campbell only objected once-- during closing arguments. *See* Tr., September 8, 2017, at 1016:9-13.

states that "[w]hen issue not raised by the pleadings are tried by express or implied consent of the parties, they **shall be** treated in all respects as if they had been raised in the pleadings."

NRCP 8 provides an additional basis for the Award. It clearly allows an affirmative defense to be converted to a counterclaim. *See* NRCP 8(c) ("When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation."); *Las Vegas Dev. Grp., LLC v. SRMOF II 2012-1* Tr., No. 2:13-cv-02194, 2018 BL 65566 at *4 (D. Nev. Feb. 26, 2018) (The Court, relying on Fed. R. Civ. P. 8(c)(2), construed an affirmative defense as a counterclaim in the interest of justice and judicial efficiency.); *see also, Schettler v. Ralron Capital Corp.*, 128 Nev. 209, 223 n.7 (2012) (Nevada Supreme Court finds that "NRCP 8(c) requires the court to treat [Plaintiff's] counterclaims as affirmative defenses…").

Even more compelling than NRCP 8 or 15(b), **NRCP 54(c) provides: "[e]very other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings."** "The Nevada Supreme Court recognized the liberal nature of NRCP 54(c) by confirming 'Under the liberalized rules of pleading,' a final judgment must grant the relief a party is entitled to, even where the prayer for relief did not ask for such relief." *Magill v. Lewis*, 74 Nev. 381, 387 88, 333 P.2d 717, 720 (1958). *Magill* recognized that Rule 54(c) "implements the general principle of Rule 15(c), that in a contested case a judgment is to be based on what has been proved rather than what has been pleaded." *Magill*, 74 Nev. at 388; *see also, Grouse Creek Ranches v. Budget Fin. Corp.,* 87 Nev. 419, 427, 488 P.2d 917, 923 (1971) (NRCP 54(c) authorized the district court to amend the pleadings to grant a primary lien where the objecting party joined issue on the matter and suffered no prejudice); *Rental Dev. Corp. of Am. v. Lavery*, 304 F.2d 839, 842 (9th Cir. 1962) (Finding no prejudice to defendant lessor as a result of plaintiff lessee's failure to include a request for cancellation of the lease in plaintiff's complaint since it was permissible for the Court to order cancellation of the lease based on the issues framed by the pleadings and trial proceedings).

In this case, there is no basis for this Court to upset Judge Flanagan's decision to award damages to Defendants. This issue was thoroughly tried by EXPRESS consent of both parties.

This Court has already determined, pursuant to NRCP 63, that the proceedings in this case could be completed without prejudice to any of the parties, and that there was no reason or need to recall witnesses. Not only was Judge Flanagan's Award justified under the above civil rules, but it is supported by substantial evidence in the record. Judge Flanagan ruled from the bench for nearly two hours. His findings demonstrate how carefully he weighed all of the evidence, as well as the credibility of witnesses who testified before him. His Award is entitled to great deference since he had the opportunity to not only judge the credibility of witnesses from their statements, but from their demeanor while testifying live before him. His Award is the opposite of the knee-jerk reaction that Plaintiff would have this Court believe.

4. Lost Development and Management Fees were Questions of Fact During Trial.

Plaintiff also contends that lost development or management fees were not alleged or raised during trial and, therefore, should not be awarded. Obviously, this cannot be not true since Judge Flanagan specifically awarded Defendants their "lost management fees" and "lost development fees", and did not magically pull those terms out of thin air.

To the contrary, aside from the loss of Defendants' equity investment in the Project and their business reputation, there was testimony that Plaintiff's interference caused Radovan and Criswell at least $1.6 Million each in terms of lost revenues they would have received (*i.e.*, lost investment and development fees). *See* Testimony of Robert Radovan, Trial Vol. III, p. 493. He also testified they worked two years on the Project without salary. *Id.*

In terms of lost Development Fees, the evidence at trial showed that Criswell Radovan was the developer of the subject Project, entitled to a $1.2 Million Development Fee, payable in monthly installments of $60,000.00 *See,* Confidential Private Placement Memorandum, Trial Ex. 3, p. 8. Criswell Radovan earned all of its Development Fee, but "recontributed to the Company $480,000.00 of its Development Fee as of 6/01/14." *See* Section 7.4 of the Amended and Restated Operating Agreement, Trial Ex. 5; *see also,* the Trial Testimony of William Criswell, Trial Vol. I, pp. 186-188. Importantly, Criswell Radovan was not repaid its Development Fee before the Project failed. See, Trial Testimony of Robert Radovan, Trial Vol. IV., pp. 953-956.

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Accordingly, pursuant to the Amended Order, the Judgment should be amended to include an award of $480,000.00 to Criswell Radovan. The basis and amount of this damage award was clearly in the record.

In terms of the lost Management Fee award, the basis for that award was also clearly substantiated by the record – leaving only the amount to be calculated. Indeed, the Financial Pro Forma which forms the basis for this damage was not only thoroughly vetted by several additional experts in the hotel industry, including Starwood Hotel and Resorts, but according to testimony at trial, by Plaintiff's own accountant, Ken Tratner, who caused the Pro Forma to be analyzed by a hospitality expert for reasonableness. Based on this review, accountant Tratner gave Plaintiff the go ahead to invest. See, Trial Testimony of Ken Tratner, Trial Vol VI., pp 849-850, 855. As articulated in Defendants' Motion to Amend Judgment, the evidence at trial showed that Criswell and Radovan had a binding agreement with Cal-Neva Lodge that they would manage the operations of the property for a period of at least 10 years and with options for Criswell and Radovan to renew for an additional 10 years following completion and opening of the property. This fact is reflected in the Confidential Private Placement Memorandum, Trial Ex. 3, (recognizing that Cal-Neva Lodge will enter to a hotel management agreement with Criswell Radovan or its affiliate; in fact, that agreement had been entered into and was approved by the Executive Committee at the initial closing of their investment) 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"). So, once again, the basis for the damage award was clearly substantiated in the record below, leaving only the amount to be determined (no different than an attorney's fee award).

Accordingly, Plaintiff's contention is without merit.

III.
THE RECORD DOES JUSTIFY THE DAMAGES DEFENDANTS SEEK BY WAY OF THIS MOTION TO AMEND

Plaintiff next contents that there was insufficient proof to substantiate an award of lost development or management fees. This contention is misplaced.

In fact, as discussed above, the basis for this Award was squarely grounded in the record,

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as was the amount of the lost development fee, leaving only the amount of lost management fees to be quantified. Pursuant to NRCP 52(b), the Court may make additional findings and amend the judgment accordingly, which is unquestionably what Judge Flanagan intended when he awarded Defendants these damages but did not quantify them.

A. The Financial Pro Forma in Trial Exhibit 4 is Admissible.

Defendants' lost management fees are based on the financial Pro Forma found in Trial Exhibit 4, which Plaintiff contends is inadmissible. Not only does this contention ignore the fact that this Pro Forma was stipulated into evidence by Plaintiff without qualification (and therefore is fully admissible), but it clearly fits within the business records exception to the hearsay rule. *See* NRS 51.135 ("A memorandum, report, record or compilation of data, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity …is not inadmissible under the hearsay rule unless the source of the information …indicate a lack of trustworthiness"). Here, there was testimony that this document was prepared and provided to prospective investors, including Plaintiff, in connection with this Project. *See* Transcript, pp. 32, 342. This is one of the core business records for this Project and clearly fits this exception to the hearsay rule.

In fact, in terms of trustworthiness, Trial Exhibit 25 shows this 10 year Pro Forma was sent directly to Plaintiff and his CPA. Plaintiff's CPA admittedly had this Pro Forma reviewed by a hospitality expert and was told the projections were reasonable; in fact, Plaintiff's accountant gave Plaintiff the go ahead to invest based on this review. *See* trial testimony of Ken Tratner, Vol. VI, pp. 849-50, 855. Thus, this Pro Forma is not only admissible, but its projections were verified by Plaintiff's expert as being reasonable and trustworthy. Thus, Plaintiff's objections to the Pro Forma found in Trial Exhibit 4 ring hollow.

B. Lost Management Fees are Not Speculative.

Inexplicably, Plaintiff contends the financial Pro Forma is speculative, yet freely admits his own expert "assessed the entire Pro Forma … to determine whether the investment was reasonable overall". *See* Plaintiff's Opposition, p. 12. This analysis included looking at the

revenue numbers and making sure they made sense and were reasonable. *See* Tratner testimony, pp. 849-50. The lost management fee calculation is based on the revenue projections from this Pro Forma, which Plaintiff concedes his expert vetted and found reasonable. Moreover, these revenue projections were reviewed, accepted and used as the basis for financial commitments to the Project by, among others, Starwood Luxury Hotel Collection and Hall Financial, which financed the Project. Thus, from a purely factual standpoint, Plaintiff's speculation argument is without merit.

Moreover, Defendants can and have proven the amount of their lost management fees with reasonable certainty.[2] The management fee is derived from two components: gross revenues and profit. Gross revenues are estimated based on comparable revenues of similar hotels in the immediate market—an accessible and reliable piece of information in the hotel industry. Profits are a reflection of how each property is managed and is reliable since it was based on the performance of Starwood properties.

The cases Plaintiff cites on this subject are completely inapposite. For example, they cite *Knier v. Azores Const. Co.*, 78 Nev. 20; 368 P.2d 673 (1962) for the proposition that where the loss of anticipated profits is claimed as an element of damages, the business claim to have been interrupted must be an established one, and it must be shown that has been successfully conducted for such a length of time and has such a trade established, that the profits herefrom are reasonably ascertainable. Importantly, *Knier* was distinguished in *Bader v. Cerri*, 96 Nev. 352, 357; 609 P.2d 314, 318 (1980), overruled on other grounds by *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d 1043 (2000), which says "The rule against the recovery of uncertain damages generally is directed against uncertainty as to the existence or cause of damage rather than to measure or extent. *Fireman's Fund Ins. Co. v. Shawcross*, 84 Nev. 446, 442 P.2d 907 (1968); *Knier v. Azores Constr. Co.,* 78 Nev. 20, 368 P.2d 673 (1962). However, if there is evidence that damage resulted from the defendant's wrongful act and a reasonable method for ascertaining the extent of damage is offered through testimony, the fact that some uncertainty exists as to the actual

[2] In fact, Defendants' 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. The more recent projection found in the 2015 forecast dated December 15, 2015 and prepared by Orion Hospitality, an outside consultant in the hospitality industry, supports a much higher loss of management fee award.

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amount of damage sustained, does not preclude recovery. *Brown v. Lindsay,* 68 Nev. 196, 228 P.2d 262 (1951). It is sufficient if the evidence adduced will permit the jury to make a fair and reasonable approximation. *Frank Bond & Son, Inc. v. Reserve Minerals Corp.,* 65 N.M. 257, 335 P.2d 858 (1959)."

Plaintiff also cites *McDevitt & St. Co. v. Marriott Corp.*, 713 F. Supp. 906, 932 (E.D. Va. 1989), *aff'd in part, rev'd in part on other grounds,* 911 F.2d 723 (4th Cir. 1990), for the proposition that a new hotel's projected revenues and operating profits are simply too speculative to permit recovery. This is case is distinguishable because it is based on an application of Virginia law which "precludes recovery for anticipated or lost profits where, as here, the party seeking recovery is a new business." *McDevitt,* citing *LaVay Corp. v. Dominion Federal Savings & Loan Ass'n*, 830 F.2d 522, 529 (4th Cir.1987), *cert. denied*, 484 U.S. 1065, 108 S. Ct. 1027; 98 L. Ed. 2d 991 (1988); *Coastland Corp. v. Third Nat'l Mortgage Co.*, 611 F.2d 969, 977–78 (4th Cir.1979); *Mullen*, 213 Va. at 768–69, 195 S.E.2d at 700; *see also, Pennsylvania State Shopping Plazas, Inc. v. Olive*, 202 Va. 862; 120 S.E. 2d 372, 377 (1961); *933 *Sinclair Refining Co. v. Hamilton & Dotson*, 164 Va. 203, 178 S.E. 777, 780 (1935). Nevada has no such restriction on prohibiting an award of lost revenue to a new businesses.

In this case, Plaintiff does not dispute that his CPA had a hospitality expert review and approve the projected revenues in the financial Pro Forma contained in Trial Exhibit 4. Plaintiff cannot have its hospitality expert thoroughly vet these financial projections, and then contend that those same projections cannot be used as a basis for determining lost management fees with reasonable certainty.

Plaintiff also takes shots at Defendants' management of this Project to support his argument that the Pro Forma calculations were too uncertain to support a damage calculation. Contrary to his bald allegations, the evidence actually showed that Radovan and Criswell were extremely experienced hotel developers. In fact, Judge Flanagan found their professional background in construction and hotel development to be "impressive". *See* Transcript, p. 1102. Also, the Project was not "flailing" as Plaintiff baldly asserts, but rather, was hit with a series of unexpected change orders—which is not uncommon on any remodel job (particularly of a project

of this age and complexity). These project overruns were to be covered by the Mosaic Loan, which was supportable given the strong net revenue projections. Sadly, Yount and IMC's actions prevented the Project from obtaining this financing, which Judge Flanagan correctly found led to the demise of the Project. Thus, the only thing that prevented the Pro Forma revenue calculations from coming to fruition was Yount and IMC's own bad acts.

C. Plaintiff's Attack on Judge Flanagan is Self-Serving and Baseless.

Lastly, Plaintiff tries to undercut Defendants' Motion by attacking Judge Flanagan and the soundness of his Award. Of course, it should not be lost on this Court that Plaintiff has a massive axe to grind against Judge Flanagan, since he not only lost his affirmative case, but was called out on his egregious bad acts. Naturally, Plaintiff is going to disagree with Judge Flanagan's Award. That disagreement, however, does not translate into the Award being unsound and unworthy of considerable deference. Judge Flanagan was a sophisticated trial lawyer and judge. Even a cursory review of his lengthy decision shows the careful attention he spent weighing the evidence and witnesses' credibility. Plaintiff may not like Judge Flanagan's Award, but the underlying basis for it was clearly established by record evidence, and the amount is simply a calculation that can and should be handled through Defendants' post-trial Motion to Amend Judgment under Rule 52(b).

Although unnecessary, if this Court believes additional evidence is necessary to support any of the damage awards, the remedy is to hold an evidentiary hearing to address those issues—not to toss out the award of damages altogether.

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III.

CONCLUSION

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

DATED this 20 day of June, 2018.

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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: June 18th, 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' REPLY TO PLAINTIFF'S OPPOSITION TO 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 June 20th, 2018 at Las Vegas, Nevada.

An Employee of HOWARD & HOWARD ATTORNEYS PLLC

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IN THE SECOND JUDICIAL DISRICT COURT OFTHE 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 RANDOVAN, LLC, a Nevada Limited liability company; CR CAL NEVA, 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

MOTION TO AMEND THE PLEADINGS TO CONFORM TO THE EVIDENCE AND JUDGMENT

David Marriner and Marriner Real Estate, LLC (hereinafter collectively referred to as "Marriner"), by and through their attorney Mark G. Simons of SIMONS LAW, PC,

hereby submit the following Motion to Amend the Pleadings to Conform to the Evidence and Judgment.

DATED this 21st day of August, 2018.

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MARK G. SIMONS
Attorneys for David Marriner and Marriner Real Estate, LLC

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I. BASIS OF MOTION.

NRCP 15(b) provides: "**[w]hen issues not raised by pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.**" (emphasis added). NRCP 54(c) states, "**[e]very other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.**" (emphasis added). Marriner's Answer did not assert a formally designated counterclaim, however, Marriner expressly tried and obtained judgment on its claims that Yount intentionally interfered with its business relationships.

Specifically, Judge Flanagan entered judgment in Marriner's favor and against George Stuart Yount, individually and in his capacity as owner of the George Yount, IRA ("Yount"), arising out of Yount's activities. The evidence established at trial demonstrates that Yount conspired and aided and abetted others for the purpose of harming Marriner and the other named defendants ("Defendants" unless otherwise specified). As demonstrated herein, the Court should grant the relief requested and enter its order amending Marriner's pleadings to conform to the evidence and the Judgment.

II. JUDGE FLANAGAN'S DECISION.

This matter came on before the late Chief Judge Patrick Flanagan for a bench trial on August 29 through September 8, 2017. After assessing the evidence and credibility of all witnesses, Judge Flanagan issued an oral decision on the record on

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September 8, 2017.[1] Judge Flanagan entered a sweeping decision in favor of defendants Marriner, Criswell Radovan, LLC ("Criswell Radovan"), CR Cal Nevada, LLC ("CR Cal Nevada"), Cal Neva Lodge, LLC ("Cal Neva"), Robert Radovan ("Radovan") and William Criswell (Criswell"), and dismissed Yount's claims against these defendants with prejudice as being baseless.

Judge Flanagan specifically found that Yount actively conspired with another investor, IMC Investment Group ("IMC"), to intentionally interfere with and sabotage the loan the defendants had lined up with Mosaic (the "Mosaic Loan") to fund the completion of the legendary Cal Neva Hotel in Lake Tahoe (the "Project"). Judge Flanagan expressly found "[t]hat [the] Mosiac [Loan] would have closed by year end and that all parties would have been paid. The project would be up, operational, and a spectacular success." Exh. 1, p. 1131:11-13.

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Judge Flanagan found that defendants were all damaged by Yount's and IMC's interference with the Mosaic Loan, which interference ultimately led to the demise of the Project. In his ruling, Judge Flanagan stated:

> **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**.
>
> . . .

[1] Excerpts of the trial transcript of the issued decision are attached hereto as **Exhibit 1,** see pp. 1090-1141. See also **Exhibit 2,** Affidavit of Mark G. Simons ("Simons' Aff.") at ¶4.

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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.**
>
> **[IMC and Yount] had no foresight in this. It's tragic. So the counterclaim from the defendants is granted.**

Id. at 1139:13-1140:21 (emphasis added).

Judge Flanagan then awarded defendants Radovan and Criswell $1.5 million each in compensatory damages, two year's salary, management fees, attorneys' fees and costs.[2] Id. at 1140:13-22, 1140:1-3, and p. 1140:20–1141:1-3. A week later, on September 15, 2017, Judge Flanagan issued a separate Amended Order clarifying his damage award and including lost development fees to Radovan. *See* Amended Order, dated September 15, 2017, **Exhibit 3** hereto.[3]

At trial, the defendants introduced extensive evidence demonstrating that Yount's claims were baseless because he received exactly what he paid for and as Judge Flanagan stated:

> **In this case, it was a simple transaction . . . and most importantly, Mr. Yount got what he wanted, which was a founders share.**

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[2] Judge Flanagan also awarded PCA and Cal Neva its attorneys' fees and costs of suit, and Criswell Radovan and CR Cal Neva, its lost development fees in addition to their attorneys' fees and costs of suit.

[3] See also Simons' Aff., at ¶5.

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Id. at p. 1132:21-24 (emphasis added).[4] However, in rendering judgment for the defendants on their counterclaims, Judge Flanagan (and this Court upon review), found that it was Yount's and the IMC's intent "to kill this [Mosaic Loan]" and did in fact kill the loan. Again, it was undisputed that had the Mosaic Loan funded, the project would have been a huge success.[5]

In rendering his decision, Judge Flanagan found that Yount's involvement and his correspondence regarding the Project would be used by the IMC "as leverage encouraging everyone to be a cohesive group and using Mr. Yount as the IMC's spokesperson." Id. at 1121:5-8. In discussing Yount's and the IMC's "plan" to destroy the Mosaic Loan, Trial Exhibit 119 specifically referenced the "plan" to confront defendant Criswell Radovan and if it won't voluntarily agree to give up control, then Yount will step in and "urge" them to reconsider.

Judge Flanagan cited to additional Trial Exhibits 121,[6] 125,[7] 126,[8] 127,[9] 130,[10] 131,[11] 132,[12] and 133,[13] to demonstrate that Yount and the members of the IMC were

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[4] Yount's counsel conceded at the close of trial that Yount contracted for and did in fact receive a founders share even though the share received was from a different source than originally contemplated. Exh. 1, TT, p. 996:8-19 ("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: Functionally, there is no difference.").

[5] See Exh. 1, TT 1139:22-24 (with the loan from Mosaic "this project would have succeeded. That is undisputed. Mr. Chaney agrees, Mr. Yount agrees, everyone agrees that money would have covered all the costs and the debts.").

[6] Attached hereto as **Exhibit 4,** (Trial Exhibits 121), Yount communicating with member of IMC and Molly Kingston about the IMC's conduct in disrupting the funding of the Mosaic loan. See also Simons' Aff., at ¶6.

[7] Attached hereto as **Exhibit 5**, (Trial Exhibits 125), Yount communicating with Molly Kingston about the IMC's conduct in disrupting the funding of the Mosaic loan. See

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communicating extensively regarding the Mosaic Loan and the intention to cause the Mosaic Loan to not fund. Id., p. 1121:9-10.

Judge Flanagan, and this Court upon review, found that the evidence was overwhelming that Yount "**was [in] cahoots with this cabal involving certain members of the IMC**, and that he testified he was not opposed to the removal of" the managers of the project. Id. at p. 1121:1-4 (emphasis added). Judge Flanagan, and this Court upon review, found that it was Yount's and the IMC's intent "to kill" the Mosaic Loan and Yount and the IMC did in fact kill the loan. Yount knew that the Mosaic Loan was the only exit strategy for the Project and without it, the Project was certain to fail and all the Defendants would sustain millions of dollars in damages. Id., pp. 1121:23-24.

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also Simons' Aff., at ¶7.

[8] **Attached hereto as Exhibit 6**, (Trial Exhibits 126), Yount communicating with Molly Kingston about the interference with the funding of the Mosaic loan and best option is to "sell the project". See also Simons' Aff., at ¶8.

[9] **Attached hereto as Exhibit 7**, (Trial Exhibits 127), Yount communicating with IMC about his investment into the LLC. See also Simons' Aff., at ¶9.

[10] **Attached hereto as Exhibit 8**, (Trial Exhibits 130), Yount communicating with IMC about his investment into the LLC. See also Simons' Aff., at ¶10.

[11] **Attached hereto as Exhibit 9**, (Trial Exhibits 131), Yount communicating with IMC about replacement financing to take the place of the Mosaic Loan. See also Simons' Aff., at ¶11.

[12] **Attached hereto as Exhibit 10**, (Trial Exhibits 132), Yount communicating with IMC about replacement financing to take the place of the Mosaic Loan. See also Simons' Aff., at ¶12.

[13] **Attached hereto as Exhibit 11**, (Trial Exhibits 133), Yount communicating with IMC about replacement financing to take the place of the Mosaic Loan calling a member of the IMC "our hero". See also Simons' Aff., at ¶13.

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Judge Flanagan recounted the "**dozens of e-mail exchanges between Mr. Yount and the IMC and their efforts to undermine the Mosaic loan.**" Id. at 1140:1-3. Judge Flanagan also cited to Trial Exhibit 124, which was the concluding email, he found it had been successful in destroying the LLC's funding solution with the Mosaic Loan. **Exhibit 13.**[14] As a result of Yount's and the IMC's secretive and wrongful conduct, Mosaic stated that it was going to "tear up the executed term sheet" to fund the loan to the LLC. Exh. 1, p. 1126:11-12.

III. AUTHORITY OF THE COURT TO AMEND PLEADINGS AND/OR ENTER JUDGMENT ACCORDING TO PROOF.

A. COURT'S AUTHORITY PURSUANT TO NRCP 15(b).

NRCP 15(b) provides: "[w]hen issues not raised by pleadings are tried by express or implied consent of the parties, **they shall be treated in all respects as if they had been raised in the pleadings**." (emphasis added). In the present case, Judge Flanagan expressly stated that Yount's conduct "for the intentional interference with the contractual relations between Mosiac and Cal Neva LLC" established liability for Yount. Exh. 1, p. 1139:20-22.

The application of this rule is an extremely powerful tool to be used by the Court when evidence is presented to the Court establishing legal rights and remedies that exist, but for whatever reason, were not technically plead in an action. "The purpose of Rule 15(b) is to align the pleadings to conform to the issues actually tried." Cole v. Layrite Prod. Co., 439 F.2d 958, 961 (9th Cir. 1971). Amendments to conform to proof are perfectly proper and courts should be liberal in allowing such amendments. *See* Brean v. Nevada Motor Co., 51 Nev. 100, 269 P. 606, 606 (Nev. 1928) ("courts should

[14] See also Simons' Aff., at ¶14.

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be liberal in allowing such amendments . . . ."). When a party is moving to amend its pleadings to conform to the evidence presented at trial under NRCP 15(b), the liberal policy to amend when "justice so requires" is the proper standard. Byrd v. Brandeburg, 922 F. Supp. 60, 65 (N.D. Ohio 1996) (post trial motion "to amend is an issue addressed to the discretion of the trial court and is to be freely given when justice so requires.").

Judge Flanagan's decision as well as this Court's decision to grant relief to Marriner based upon the evidence presented at trial and the issues established by the evidence at trial rests in the sound discretion of the Court. Cole v. Layrite Prod. Co., 439 F.2d 958, 961 (9th Cir. 1971) ("It is well settled that the amendment of pleadings to conform to proof under Rule 15(b) of the Federal Rules of Civil Procedure rests in the sound discretion of the trial court. Sackett v. Beaman, 399 F.2d 884 (9th Cir. 1968); Caddy-Imler Creations, Inc. Caddy, 299 F.2d 79 (9th Cir. 1962).").[15] Amendments to conform to proof are perfectly proper and courts are to be liberal in allowing such amendments.

Pursuant to NRCP 15(b), Judge Flanagan was fully authorized and empowered to grant judgment in Mariner's favor based upon the issues tried during the seven (7) day bench trial. Judge Flanagan properly granted relief to the defendants as supported by the evidence and issues tried at trial. "[T]he general principle of Rule 15[b], [is] that in a contested case the judgment is to be based on **what has been proved** rather than what has been pleaded." Magill v. Lewis, 74 Nev. 381, 388, 333 P.2d 717, 720 (1958)

[15] Executive Mgmt. v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (recognizing that federal decisions involving the federal civil procedure rules are persuasive authority when this court examines its equivalent rules).

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(emphasis added). As such, this motion must be granted because "what has been proved" is that Yount intentionally interfered with Marriner's contractual relationships causing Marriner, as well as all the Defendants, severe damage.

Judge Flanagan's decision was not arbitrary or capricious and clearly did not exceed the bounds of law or reason. Skender v. Brunsonbuilt Constr. & Dev. Co., 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) ("An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason."). Instead, Judge Flanagan engaged in a thoughtful, well-reasoned and well-supported analysis of the facts and issues that were presented at trial. This Court also exercised its authority in also rendering the same findings and conclusions as Judge Flanagan. Accordingly, on these grounds the motion should be granted.

B. COURT'S AUTHORITY PURSUANT TO NRCP 54(c).

NRCP 54(c) states, "**[e]very other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.**" (Emphasis added). "The Nevada Supreme Court recognized the liberal nature of NRCP 54(c) by confirming 'Under the liberalized rules of pleading,' a final judgment must grant the relief a party is entitled to, even where the prayer for relief did not ask for such relief." Magille v. Lewis, 74 Nev. 381, 387-88, 333 P.2d 717, 720 (1958).

In Magill, the Nevada Supreme Court analyzed the breadth and power of Rule 54(c) in relation to claims and relief that had not been pled by a party. The Nevada Supreme Court stated NRCP 54(c) grants the Court the authority and power to supersede any "particular legal theory of counsel" and that the legal theories of counsel

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are subordinate to the power of the Court to grant relief in favor of a party "whether demanded or not" as follows:

> "'**Particular legal theories of counsel then are subordinated to the court's right and duty to grant the relief to which the prevailing party is entitled whether demanded or not. If a party has proved a claim for relief the court will grant him that relief to which he is entitled on the evidence regardless of the designation of the claim or the prayer for relief. The prayer for relief may be of help as indicating the relief to which the plaintiff may be entitled, but it is not controlling, and the question is not whether the plaintiff has asked for the proper remedy but whether he is entitled to any remedy.**'"

Id. at 388, 333 P.2d at 720 (emphasis added) (citation omitted).

Accordingly, NRCP 54(c) is another powerful rule that allows a judge, as a trier of fact, to grant relief to a party even if the party did not affirmatively seek such relief in its pleadings. NRCP 54(c) therefore vests the Court with broad authority and discretion to render relief "whether demanded or not". The law is absolutely clear that Judge Flanagan, as well as this Court, is not constrained, limited or restricted by the pleadings or even the "legal theories of counsel" when granting judgment in a case.

Instead, it is the express purpose and function of the Court to "grant the relief to which the prevailing party is entitled whether demanded or not." Therefore, it is entirely irrelevant whether or not any particular counterclaim for relief was asserted in the pleadings and/or whether or not the Defendants even affirmatively asked the Court for relief. It is the duty and function of the Court to "grant [a party] that relief to which he is entitled on the evidence regardless of the designation of the claim or the prayer for relief . . . ." Again, on these grounds this motion should be granted.

C. NRCP 8(c).

There is no dispute that the Defendants asserted the defense of unclean hands to describe Yount's wrongful interference with the Mosaic Loan as an affirmative

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defense to Yount's claims. It is undisputed that the foundational premise of the Defendants' defense was Yount's intentional interference. There is clearly no dispute that Defendants would be trying this issue. Accordingly, Yount was clearly on notice at all times that Defendants would be presenting evidence of Yount's interference with the Mosaic Loan. NRCP 8(c) recognizes this situation and states: "[w]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation." Accordingly, pursuant to Rule 8(c), Judge Flanagan, and this Court, acted properly in granting affirmative relief to the Defendants even though their defense was not articulated as an affirmative claim. *See e.g.*, Las Vegas Dev. Grp., LLC v. SRMOF II 2012-1 Tr., US Bank Tr. Nat'l Ass'n, 2018 WL 1073385, at *3 (D. Nev. 2018) (under 8(c), the "affirmative defense and prayer for relief were neither designated as a counterclaim. . . . [however] the Court will construe them as such in the interest of justice and judicial efficiency."). Again, on these grounds this motion should be granted.

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D. STANDARD OF REVIEW.

This Court is also not bound or limited to any labels or theories articulated by the parties and/or by Judge Flanagan for the granting of the relief afforded to Marriner. This is because it is undisputed that a reviewing court will affirm relief granted by a trial court on **any** theory that was supported in the record, even if the theory was never stated. As stated by the United States Supreme Court in Jaffke v. Dunham, 352 U.S. 280, 281, 77 S. Ct. 307, 308, 1 L. Ed. 2d 314 (1957): "A successful party in the District Court may sustain its judgment on any ground that finds support in the record."

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The decisions of a trial court are always sustained when there is evidence in the record supporting the relief granted even if the trial judge did not specifically apply the correct label supporting the relief requested and even if a wrong label for the claim was articulated by the trial court. Applying this rule of law, it is stated:

> "In reviewing decisions of the district court, we may affirm on any ground finding support in the record. If the decision below is correct, it must be affirmed, even if the district court relied on the wrong grounds or wrong reasoning."

Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp., 982 F.2d 363, 367 (9th Cir.1992) (quoting Jackson v. Southern Cal. Gas Co., 881 F.2d 638, 643 (9th Cir.1989)).

This substantive rule of law is also followed and applied by the Nevada Supreme Court. Cockrell v. Cockrell, 84 Nev. 537, 539, 445 P.2d 30, 31 (1968) (affirming judgment based upon both unpled and pled claims because "[u]nder either theory the record supports the judgment of the trial court."). In the present case, overwhelming evidence supports the relief of intentional interference that Judge Flanagan articulated and relied upon in rendering his judgment. *See e.g.*, Martinez v. Maruszczak, 123 Nev. 433, 438–39, 168 P.3d 720, 724 (2007) ("Substantial evidence supports the district court's findings of fact at issue in this matter; thus, we will not disturb them on appeal."). Again, on these grounds this motion should be granted.

IV. EVIDENCE AND ADMISSIONS THAT MARRINER'S AFFIRMATIVE CLAIMS WERE DISCLOSED AND TRIED TO CONCLUSION.

The evidence overwhelmingly demonstrates that the issue of Yount's interference with the Mosaic Loan was "in play" from the moment of the Defendants' answer, through discovery, through pre-trial motion practice and was the major focus of the trial.

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