

Case No. 74275

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**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.

Electronically Filed  
Mar 05 2019 09:00 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**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

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**APPELLANT'S APPENDIX**

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48	Trial Transcript – Volume 7	09/08/17	9 10	2134–2250 2251–2298

1 damages.

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

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

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

12 DATED this 9 day of March 2018.

13   
14 DISTRICT COURT JUDGE

15 Submitted by:

16  
17 INCLINE LAW GROUP, LLP

18 Andrew N. Wolf, Esq.

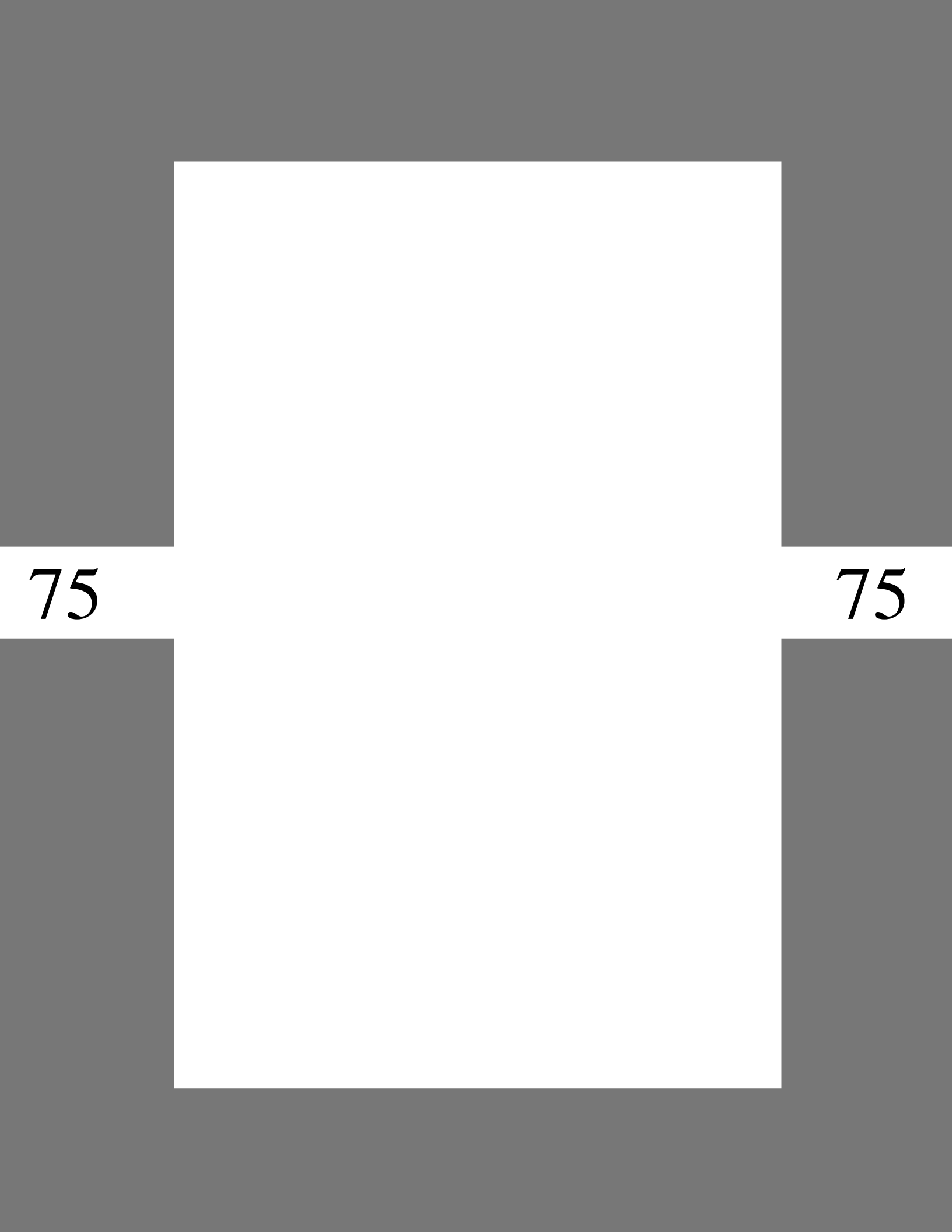
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22 DISTRICT COURT

23 WASHOE COUNTY, NEVADA

24 GEORGE STUART YOUNT, individually  
25 and in his capacity as owner of  
26 GEORGE YOUNT IRA,

27 Plaintiff,

28 *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 OPPOSITION TO  
MARRINER'S MOTION TO AMEND THE  
PLEADINGS TO CONFORM TO THE  
EVIDENCE AND JUDGMENT**



## INTRODUCTION

A year after trial ended and several months after this Court entered judgment, Marriner files an ambiguous motion to “Amend the Pleadings to Conform to the Evidence and Judgment.” This motion is virtually a verbatim copy and paste of “Marriner’s 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.” Marriner does not provide any procedural rule that would give this Court jurisdiction to adjudicate this untimely motion. This Court only has limited jurisdiction over its previous judgment and the time to amend the findings or the judgment has passed. Any such motion would have to have been filed by March 27, 2018—ten judicial days after notice of entry of the judgment was served.

The trial court loses jurisdiction over a case when it enters judgment and the time for altering, amending, or vacating it has expired. See *Foster v. Dingwall*, 126 Nev. 49, 54, 228 P.3d 453, 456 (2010). After a final judgment has been entered, a court has limited jurisdiction, invoked by timely motion, over its previous rulings. It does not have jurisdiction for any purpose or motion. This applies to rules or motions that read in isolation appear to have no time limit. Marriner’s “cut and paste” motion attempts to repurpose old arguments and is procedurally deficient. This untimely request demonstrates Marriner’s acknowledgement of the weakness of his case. Accordingly, it should be denied.

In addition to the procedural bar to Marriner’s motion, the motion also fails to put forth any relevant evidence. Rather, Marriner relies on copy and pasted arguments made by Criswell Radovan in their opposition to Mr. Yount’s motion for a new trial. Arguments made by separate defendants cannot be repurposed to support Marriner’s untimely motion. Marriner’s motion should be

denied.<sup>1</sup>

## I.

### **MARRINER IS INELIGIBLE TO AMEND HIS PLEADING TO RAISE AFFIRMATIVE CLAIMS POST- TRIAL**

#### **A. A Trial Court Has Limited Jurisdiction After a Final Judgment Has Been Entered**

The trial court loses jurisdiction over a case when it enters final judgment. *SFPP, L.P. v. Second Judicial Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 718 (2007); see *Foster v. Dingwall*, 126 Nev. 49, 54, 228 P.3d 453, 456 (2010); *Ex parte Caremark Rx, LLC*, 229 So. 3d 751, 757 (Ala. 2017); *Renovaship, Inc. v. Quatremain*, 208 So. 3d 280 (Fla. Dist. Ct. App. 2016); *HSBC Bank USA, N.A. v. Reed*, 76 So. 3d 965, 966 (Fla. Dist. Ct. App. 2011); *Lowenthal v. McDonald*, 367 Ill. App. 3d 919, 922, 856 N.E.2d 1118, 1121 (Ill. Dist. Ct. App. 2006). The narrow exception is the rule that provides the court with jurisdiction to relieve a party from the act of finality of judgment in a narrow range of circumstances. *Romero v. Wells Fargo Bank, N.A.*, 209 So. 3d 633 (Fla. Dist. Ct. App. 2017). A party seeking relief must strictly comply with the jurisdictional time limit, and like other jurisdictional time limits, it may not be extended. NRCp 52(b); NRCp 59(e); *Romero*, 209 So. 3d at 633.

After a final judgment has been entered, a court has limited jurisdiction, invoked by a timely motion, over its previous judgment. *Burgess v. Burgess*, 205 N.C. App. 325, 328, 698 S.E.2d 666, 669 (N.C. Dist. Ct. App. 2010). A trial court's jurisdiction is not extended for all purposes. *Hinton v. Iowa Nat. Mut.*

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<sup>1</sup> Criswell Radovan filed a Joinder to the subject Motion. Marriner's motion has copied and pasted large portions of Criswell Radovan's "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." Thus, Mr. Yount incorporates by reference his "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" and his Reply in support.

1 *Ins. Co.*, 317 So. 2d 832, 835 (Fla. Dist. Ct. App. 1975) (“Court can take no  
2 proceedings in cause, except to enforce, correct, or vacate judgment or decree,  
3 after it becomes final”); *WBCMT 2007-C33 Office 7870, LLC v. Bar J Ranch-  
4 Kemper Pointe LLC*, No. A-13-04126, 2018 WL 1718719 (Ohio Com. Pl. Mar. 26,  
5 2018) (“trial court’s jurisdiction continues until entry of a final judgment on the  
6 merits, at which point the court is divested of jurisdiction over the merits save  
7 limited post-judgment motions authorized by statute or the civil rules.”).

8 Further, even motions filed under rules that, when read in isolation,  
9 appear to have no time limit, must be filed while the court still has jurisdiction.  
10 *Brasier v. United States*, 229 F.2d 176, 177 (10th Cir. 1955) (“the filing of the  
11 appeal deprived the trial court of jurisdiction to allow amendments to the  
12 pleadings”); *Triple Five of Minnesota, Inc. v. Simon*, 404 F.3d 1088, 1095 (8th  
13 Cir. 2005) (holding that the district court properly declined to rule on 15(b)  
14 motion because it lacked jurisdiction to do so); *Peraino v. Cty. of Winnebago*, 101  
15 N.E.3d 780, 786 (Ill. Ct. App. 2018) (noting that because respondent did not file  
16 a motion directed toward judgment the court lost jurisdiction to hear motion  
17 that was based on a rule that did not appear to have a time limit); *see also*  
18 *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 970 (Nev.  
19 App. 2015) (noting that the rules of civil procedure must be read together and  
20 not in isolation); *In re T.G.*, 68 S.W.3d 171, 176 (Tex. App. 2002) (holding that a  
21 “motion for new trial or to modify, correct, or reform the judgment, or a motion  
22 that has the same effect, is the only means by which a party may extend... the  
23 trial court’s plenary power over its judgment.”).

24 Here, Marriner’s motion is untimely. Any such motion would have to have  
25 been filed by March 27, 2018—ten judicial days after notice of entry of the  
26 judgment was served. NRCP 52(b); NRCP 59(e). Marriner has even missed the  
27 six-month deadline of Rule 60(b). His motion fails to indicate under what  
28 procedural rule he brings his motion. *See Goodman v. Heublein, Inc.*, 682 F.2d

1 44, 46 (2d Cir. 1982) ("Rule 54(c) merely authorizes entry of a judgment that  
2 affords the relief to which a plaintiff is entitled, even if he has not requested  
3 such relief in his pleadings. Yet, it provides no authority for ignoring the time  
4 limits for amending judgments that have already been entered"). Regardless,  
5 under any procedural rule his motion is untimely. Accordingly, this Court  
6 should deny Marriner's motion to amend the pleadings to conform to the  
7 evidence and the judgment.

8 **B. Even Where the Court has Limited**  
9 **Jurisdiction, a Party Cannot Raise**  
10 **Untimely New Grounds for Post-Judgment Relief**

11 A post judgment motion cannot raise new grounds for relief after the  
12 expiration of the time provided by court rule. *United States v. Holt*, 170 F.3d  
13 698, 703 (7th Cir. 1999) (holding that allowing an untimely motion would defeat  
14 the express language of the rule, and would create a back door through which  
15 defendants could raise additional grounds for a new trial long after the period  
16 had expired); *Arkwright Mutual Ins. Co. v. Phila. Elec. Co.*, 427 F.2d 1273,  
17 1275-76 (3rd Cir. 1970) (noting the trial court properly refused to consider  
18 additional reasons that were submitted more than two years after original  
19 motion); *Conrad v. Graf Bros., Inc.*, 412 F.2d 135, 137 (1st Cir. 1969) (holding  
20 that the district court properly denied party's attempt to amend timely new  
21 trial motion to include additional grounds, where amendment was not sought  
22 until several weeks later); *Massaro v. U.S. Lines Co.*, 198 F. Supp. 845, 848  
23 (E.D. Pa. 1961) (noting that the district court could not consider alleged  
24 excessiveness of verdict as ground for new trial when such ground was not filed  
25 within ten-day period although motion for new trial had been filed within ten  
26 days after entry of judgment); *Francis v. Southern Pac. Co.*, 162 F.2d 813, 818  
27 (10th Cir. 1947) (rejecting as untimely a ground raised for the first time in  
28 amended motion filed more than 40 days after entry of judgment).



1 A district court lacks authority to grant a post judgment motion on  
2 reasons assigned after the period for filing. *Russell v. Monongahela Ry. Co.*, 262  
3 F.2d 349, 354 (3d Cir. 1958). Any additional grounds in support of the motion  
4 must be served within the time limit as established by the rules. *Dotson v.*  
5 *Clark Equip. Co.*, 805 F.2d 1225, 1228 (5th Cir. 1986); *Conrad v. Graf Bros.*, 412  
6 F.2d 135 (1st Cir. 1969) (holding attempted amendment to motion for new trial  
7 several weeks after original motion for new trial was properly denied as  
8 untimely); *Fine v. Paramount Pictures*, 181 F.2d 300, 303 (7th Cir. 1950)  
9 (holding that the court may not grant motion for new trial for reason assigned  
10 after 10-day period for filing and serving motion has expired); *Bucantis v.*  
11 *Midland-Ross Corp.*, 81 F.R.D. 623, 624 (E.D. Pa. 1979); *see also Matter of Vecco*  
12 *Const. Indus., Inc.*, 33 B.R. 757, 759 (Bankr. E.D. Va. 1983) (holding party  
13 objections raised in response could not be treated as matters raised in an  
14 affirmative motion and party failed to file affirmative motion within 10 day  
15 period); *Thurman v. Star Electric Supply, Inc.* 283 So. 2d 212 (La. 1973)  
16 (holding a post judgment motion by one defendant does not operate as if it were  
17 a motion on behalf of all defendants).

18 Here, Marriner filed an untimely motion raising new grounds for relief.  
19 Marriner brings his motion a year after trial has ended and several months  
20 after the judgment has been entered. This Court cannot entertain Marriner's  
21 untimely motion.

## 22 II.

### 23 MARRINER DOES NOT RAISE ANY ARGUMENTS THAT APPLY TO HIM

24 In addition to the untimeliness of Marriner's motion, Marriner does not  
25 raise any arguments that are relevant to whether he pleaded a counterclaim.  
26 Marriner attempts to repurpose arguments by copy and pasting his previous  
27 Opposition to Mr. Yount's motion for a new trial as well as Criswell Radovan's  
28 Opposition to Mr. Yount's motion for a new trial. As such, Marriner's motion

only contains arguments of Criswell Radovan's conduct. Marriner fails to argue what he introduced and how he pleaded a counterclaim.

**A. Mr. Yount Did Not Consent To Try a Counterclaim Brought By Marriner**

Rule 15(b) requires express or implied consent to try an unpleaded claim. *Essex v. Guarantee Ins. Co.*, 89 Nev. 583, 585, 517 P.2d 790, 791 (1973). 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). 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). 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. *Addie v. Kjaer*, 737 F.3d 854, 867 (3d Cir. 2013).

**1. *Marriner Fails to Point to Any Evidence That Mr. Yount Consented to Try a Counterclaim Brought By Marriner***

Marriner spends pages discussing various aspects of pretrial motions and trial; most of which appear to be directly lifted from Criswell Radovan's "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" as well as Criswell Radovan's "Opposition to Plaintiff's Motion for Limited Post Judgment Discovery." [Defendants' Opp. to Mot. for Judgment as a Matter of Law, 9-14; Defendants' Opp. to Mot. for Post-Trial Discovery 2-6.] Marriner's borrowed arguments prove fatal because Marriner failed to demonstrate that Mr. Yount impliedly consented to a counterclaim brought by Marriner (as opposed to a counterclaim allegedly brought by Criswell Radovan). Marriner is a separate independent defendant, represented by his own counsel. Mr. Yount alleged different claims against Marriner and Marriner asserted his

1 own affirmative defenses. Indeed, Marriner even asserted cross-claims against  
2 Criswell Radovan. Thus, to be entitled to damages Marriner must demonstrate  
3 that he pleaded and proved a counterclaim.

4 For instance, Marriner contends Mr. Yount must have had notice that  
5 Marriner brought a counterclaim against him and then cites to Criswell  
6 Radovan's motion for summary judgment and Criswell Radovan's proposed  
7 findings of fact and conclusions of law, alleging both use the term  
8 "interference."<sup>2</sup> However, Marriner's proposed findings of fact and conclusions of  
9 law are completely devoid of such language.<sup>3</sup> Rather, Marriner's proposed  
10 findings of fact, filed the eve before trial, refer to Marriner's affirmative defense  
11 of "independent investigation," alleging that Mr. Yount made his own  
12 investigation of the Cal Neva and thus did not rely on Marriner's  
13 misrepresentations.<sup>4</sup>

14 Similarly, Marriner filed his own motion for summary judgment. The crux  
15 of Marriner's motion for summary judgment was the affirmative defense based  
16 on Mr. Yount's "independent investigation."<sup>5</sup> Neither the Mosaic loan nor any  
17 alleged interference is mentioned in Marriner's motion for summary judgment.  
18 Marriner fails to point to any examples of pre-trial notice of the counterclaim of  
19 intentional interference with contractual relations brought by Marriner.

20  
21 <sup>2</sup> The use of the word "interfere" does not give a plaintiff notice of a  
22 counterclaim to satisfy due process. The phrase Criswell Radovan use to  
23 describe unclean hands does not contain any of the six elements of intentional  
interference with contractual relations.

24 <sup>3</sup> Marriner's Proposed Findings of Fact and Conclusions of Law, August 25,  
25 2017, 9:1-8

26 <sup>4</sup> *Id.*

27 <sup>5</sup> Defendant David Marriner and Marriner Real Estate, LLC's 's Motion for  
28 Summary Judgment or in the Alternative, Partial Summary Judgment, June  
28, 2017, 8:21-28, 9:1-6

1 Instead, Marriner wholly relies on motions and pleadings filed by separate,  
2 dissimilarly situated defendants represented by different counsel.

3                   **2.     *Marriner Fails to Show Mr. Yount***  
4                   ***Consented to a Counterclaim at Trial***

5           Marriner further relies on Criswell Radovan's arguments that Mr. Yount  
6 impliedly consented to try a counterclaim at trial but fails to demonstrate how  
7 Criswell Radovan's arguments benefited Marriner in proving his own  
8 counterclaim. As set forth more fully in the post-trial motions between Mr.  
9 Yount and Criswell Radovan, the evidence of the Mosaic loan was relevant to  
10 Criswell Radovan's affirmative defense of unclean hands.<sup>6</sup>

11           Marriner did not know about the Mosaic loan meeting or any alleged  
12 efforts to undermine the financing to bring such a counterclaim.

13           MR. LITTLE: Isn't it true that you understood that the IMC group went to  
14 Mosaic's office behind Criswell Radovan's back and said something to  
15 cause them to pull the plug on the financing?

16           MR. CAMPBELL: Objection, lack of foundation.

17           THE COURT: How would he know that?

18           \*    \*    \*

19           MR. MARRINER: I heard it as a rumor, but I was not involved.

20           (Hr'g Tr. 8/29/2017 157:21–24, 158:1–7, Ex. 1.) Marriner testified that he did  
21 not find out about the emails and any alleged interference until “they delivered  
22 the court files.”<sup>7</sup>

23           Further, Marriner's counsel used the Mosaic loan only to argue Mr.  
24 Yount's claims failed because he caused his own damages. Mr. Yount could not  
25 have impliedly consented to a try a counterclaim when Marriner's counsel

26           <sup>6</sup> See “Plaintiff's Opposition to Defendants' Motion to Amend Judgment” for  
27 further argument regarding implied consent and the affirmative defense of  
28 unclean hands.

<sup>7</sup> Hr'g Tr. 8/29/2017 158:17–24, Ex. 1.



1 reassured him that the Mosaic loan evidence was relevant only to dispute Mr.  
2 Yount's prima facie case, not a counterclaim.

3 MR. WOLF: So that [the Mosaic meeting] goes to causation  
4 of damage. It's Mr. Yount's own inaction in this case... I think  
5 that contributed to his own damage insofar as his damages relate  
6 to the failure and the bankruptcy of the project.

6 (Hr'g. Tr. 09/08/2017 1074:5-18, Ex. 2.)

7 Further, Mr. Yount's counsel did not acquiesce to a trial regarding a  
8 counterclaim. Rather, he argued that there were no counterclaims against Mr.  
9 Yount.<sup>8</sup> The evidence of the Mosaic loan was used by Criswell Radovan to prove  
10 their affirmative defense of unclean hands and by Marriner to break the chain  
11 of causation. Mr. Yount could not have had advanced notice that he faced a  
12 counterclaim.

13 **B. The Procedural Rules Marriner Relies**  
14 **on Are Not So Broad That a Court May Abandon**  
15 **the Due Process Requirement of Advanced Notice**

16 Marriner also recycles the Rule 54(c) and Rule 8(c) arguments. These  
17 rules still require advanced notice and implied consent. As noted, he fails to  
18 point to any evidence of Mr. Yount's implied consent to a counterclaim brought  
19 by Marriner.

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

21 Marriner argues that Judge Flanagan had authority to award him  
22 damages under Rule 54(c). Rule 54(c) authorizes a Court to award relief not  
23 specifically requested where "the allegations properly pled and proven support a  
24 theory and type of relief not specified in [ ] demand for judgment." *Pinkley, Inc.*  
25 *v. City of Frederick, MD.*, 191 F.3d 394, 400 (4th Cir. 1999). Rule 54(c) has  
26 limits and "a party will not be given relief not specified in its complaint where  
27 the failure to ask for particular relief so prejudiced the opposing party that it

28 <sup>8</sup> Hr'g Tr. 9/08/2017, at 1016: 9-13, Ex. 2.

1 would be unjust to grant such relief.” *Cooper v. Gen. Am. Life Ins. Co.*, 827 F.3d  
2 729, 732 (8th Cir. 2016). While Rule 54(c) permits relief on grounds not pleaded,  
3 that rule does not go so far as to authorize the granting of relief on issues  
4 neither raised nor tried. *Idaho Res., Inc. v. Freeport-McMoran Gold Co.*, 110  
5 Nev. 459, 462, 874 P.2d 742, 744 (1994)(quoting *Combe v. Warren's Family*  
6 *Drive-Inns, Inc.*, 680 P.2d 733, 735–36 (Utah 1984).

7 As discussed above, Mr. Yount did not expressly or impliedly consent to  
8 try a counterclaim. The purpose of Rule 54(c) is to allow a court to fill in relief,  
9 not new claims. Mr. Yount was unaware that substantial money damages were  
10 at stake and it would be unjust to grant such relief. *See Gilbane Bldg. Co. v.*  
11 *Fed. Reserve Bank of Richmond, Charlotte Branch*, 80 F.3d 895, 901 (4th Cir.  
12 1996) (holding that a substantial increase in the defendant’s potential ultimate  
13 liability can constitute specific prejudice barring additional relief under Rule  
14 54(c) and that the complaint gave no warning that successful prosecution of the  
15 action could result in an award of three times the actual damages).

16 **2. *Marriner Did Not Mistakenly Plead***  
17 ***a Counterclaim as an Affirmative Defense***

18 Marriner contends that he has mistakenly pleaded an affirmative defense  
19 as a counterclaim under 8(c). The purpose of Rule 8(c) is to correct technical  
20 pleading errors. *Gallagher's NYC Steakhouse Franchising, Inc. v. N.Y.*  
21 *Steakhouse of Tampa, Inc.*, 2011 WL 6034481, \*9 (S.D. N.Y. 2011). Even under  
22 Rule 8(c) a party is entitled fair notice of the claims against him. *nVision Global*  
23 *Technology Solutions, Inc. v. Cardinal Health 5, LLC*, 2012 WL 3527376, \*29 &  
24 n.35 (N.D. Ga. 2012) (noting that defendant may assert equitable estoppel  
25 counterclaim as affirmative defense because plaintiff had “fair notice” and failed  
26 to demonstrate “prejudice or any other grounds” for denying defendant’s  
27 request). Further, a party cannot seek the protection of the misdesignation  
28 provision of Rule 8(c) when the Court can determine the claim was not

1 mistakenly pleaded. *Glob. Healing Ctr., LP v. Powell*, No. 4:10-CV-4790, 2012  
2 WL 1709144, at \*6 (S.D. Tex. May 15, 2012) (refusing to redesignate  
3 counterclaim as defense because original designation “was not a mistake,” as  
4 made clear by request for affirmative relief and damages); *Las Vegas Dev. Grp.,*  
5 *LLC v. SRMOF II 2012-1 Tr., US Bank Tr. Nat’l Ass’n*, No. 2:13-cv-02194, 2018  
6 WL 1073385, at \*3 (D. Nev. Feb. 26, 2018) (noting that the affirmative defense  
7 could be converted to a counterclaim because the answer contained a prayer for  
8 affirmative relief).

9 Here, Marriner contends that “there is no dispute that the Defendants  
10 asserted the defense of unclean hands.” [Mot. 9: 27–28.] However, Marriner did  
11 not assert the defense of unclean hands. Rather, Marriner asserted the  
12 affirmative defense of “independent investigation” which alleged that Marriner  
13 could not be liable because Mr. Yount conducted his own independent  
14 investigation.<sup>9</sup> The affirmative defense of “independent investigation” is not  
15 even remotely similar to a counterclaim of intentional interference with  
16 contractual relations. Thus, Marriner cannot argue that his affirmative defense  
17 was mistakenly pleaded as a counterclaim.

18 Further, in support of Marriner’s affirmative defense, his counsel spent a  
19 significant portion of the trial discussing *Blanchard v. Blanchard*, which held  
20 that in an action for fraud, an independent investigation charges a party with  
21 knowledge of the facts.<sup>10</sup> 108 Nev. 908, 839 P.2d 1320, 1323 (1992). As noted  
22 above, Marriner cannot rely on claims asserted by other independent parties to  
23 justify his damage award. Marriner never prayed for money damages nor  
24 presented any evidence at trial to substantiate a damage award. While Rule

25 \_\_\_\_\_  
26 <sup>9</sup> Defendant David Marriner and Marriner Real Estate, LLC’s Answer to Second  
27 Amended Complaint and Cross-Claim for Indemnity, Contribution and  
28 Declaratory Relief Re Apportionment of Fault, October 24, 2016 9:20–21.

<sup>10</sup> Hr’g Tr. 09/08/2017, 1073:5–7, Ex. 2.

1 8(c) is designed to prevent success based on a technicality, it cannot be used to  
2 prejudice a party or deprive them of fair notice.

3 **C. Mr. Yount did Not Judicially Admit**  
4 **That Defendants Pled Counterclaims**

5 Marriner argues that Mr. Yount judicially admitted defendants pleaded a  
6 counterclaim because Mr. Yount's motion uses language quoted from Criswell  
7 Radovan's findings of fact and language from Judge Flanagan's findings.  
8 Judicial admissions are defined as deliberate, clear, unequivocal statements by  
9 a party about a concrete fact within that party's knowledge. *Reyburn Lawn &*  
10 *Landscape Designers, Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 343, 255 P.3d 268,  
11 276 (2011). Theories of law and legal opinions are not judicial admissions. *See*  
12 *id.*; *MacDonald v. Gen. Motors Corp.*, 110 F.3d 337, 341 (6th Cir. 1997).

13 Here, simply quoting language used at trial is not a judicial admission  
14 that defendants pleaded a counterclaim. Application of this language to law is  
15 necessary to make Mr. Yount's legal argument that he did not impliedly consent  
16 to a counterclaim. As clearly noted in several post-judgment motions, Criswell  
17 Radovan's theory under the affirmative defense of unclean hands was that Mr.  
18 Yount "conspired to interfere." Criswell Radovan's use of the word  
19 "interference" is not sufficient to give Mr. Yount notice of a multi-element  
20 counterclaim. Thus, Mr. Yount could not have had notice of a counterclaim that  
21 was substantially similar to the affirmative defense. Citing to the record and  
22 use of Criswell Radovan's phrasing is in no way an admission that any  
23 counterclaims were pleaded.

24 **III.**

25 **THE RECORD DOES NOT SUPPORT MARRINER'S CONTENTION THAT HE**  
26 **PLEADED AND PROVED A COUNTERCLAIM**

27 Marriner does not apply the record as it relates to him. Regardless, the  
28 record cannot support Marriner's argument that he pleaded and proved  
intentional interference with contractual relations. There is good reason why



1 Marriner never pleaded the counterclaim against Mr. Yount; it would have been  
2 baseless.

3 **A. Marriner Did Not Prove Mr. Yount's**  
4 **Conduct Was Tortious**

5 Marriner alleges his pleadings should be amended because he properly  
6 pleaded and proved a counterclaim. In an action for intentional interference  
7 with contractual relations, a plaintiff must establish: (1) a valid and existing  
8 contract; (2) the defendant's knowledge of the contract; (3) intentional acts  
9 intended or designed to disrupt the contractual relationship; (4) actual  
10 disruption of the contract; and (5) resulting damage. *J.J. Indus., LLC v.*  
11 *Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).

12 Marriner never accused Mr. Yount of having any discussions himself with  
13 Mosaic or even of suggesting it. Rather, Marriner alleges Mr. Yount did not do  
14 enough to prevent the meeting between members of Cal Neva Lodge LLC's  
15 Executive Committee ("EC") and Mosaic after he became aware of the EC's  
16 intentions to attend the meeting without Criswell Radovan. Marriner fails to  
17 cite any case law to demonstrate that simply communicating with the Executive  
18 Committee ("EC") or the Incline Men's Club ("IMC") is tortious conduct.

19 **1. *Marriner's Counsel Conceded That***  
20 ***Mr. Yount Did Not Act Intentionally***

21 The heart of an intentional interference with contractual relations action  
22 is the intentional act that was designed to disrupt a contractual relationship.  
23 *J.J. Indus.*, 119 Nev. at 275, 71 P.3d at 1268. If an actor does not have the  
24 intent of causing interference, the actor's conduct does not subject the actor to  
25 liability even if the actor's actions have the unintended effect of deterring the  
26 third person from dealing with the other. *Seaman's Direct Buying Serv., Inc. v.*  
27 *Standard Oil Co.*, 36 Cal. 3d 752, 765, 686 P.2d 1158, 1164 (Cal. 1984),  
28 *overruled on other grounds by Freeman & Mills, Inc. v. Belcher Oil Co.*, 11 Cal.  
4th 85, 900 P.2d 669 (Cal. 1995). It is not enough that the actor intended to

1 perform the acts that caused the result—the actor must have intended to cause  
2 the result itself. *Id.*

3 Here, Marriner alleges Mr. Yount intentionally interfered with the loan.  
4 However, Marriner's counsel demonstrated at trial that Mr. Yount did not act to  
5 interfere with the loan and that Mr. Yount did not intend to "torpedo" the  
6 Mosaic loan. Marriner's counsel even indicated in his closing argument that Mr.  
7 Yount did not intend to interfere with the loan.

8 MR. WOLF: I don't believe Mr. Yount conspired to interfere with  
9 that loan however he had an opportunity, he knew the meeting that was  
10 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.

11 (Hr'g Tr. 9/08/2017, at 1073: 20–24, Ex. 2.)

12 Marriner never accused Mr. Yount of intentionally interfering with the  
13 Mosaic loan. Mr. Yount testified that he believed the meeting was to put a deal  
14 in place, not to tank the loan.<sup>11</sup> The evidence introduced at trial cannot support  
15 a finding that Mr. Yount intentionally interfered with the Mosaic loan or  
16 intended the result of the Mosaic meeting.

17 **2. Marriner Failed to Demonstrate That**  
18 **Mere Knowledge a Tort is Going to Be**  
19 **Committed is Sufficient to Prove Tortious Conduct**

20 At most, Marriner could accuse Mr. Yount of not doing enough<sup>12</sup> to stop  
21 the meeting with Mosaic. However, knowledge that a tort was going to be  
22 committed and the "failure" to prevent it is not tortious conduct. *See LVRC*  
23 *Holdings, LLC v. Brekka*, 128 Nev. 915, n.5 , 381 P.3d 636 (2012) (unpublished)  
24 (affirming district court's dismissal because the court reasoned receipt of e-  
25 mails was not evidence of substantial assistance, encouragement, or  
26 contribution"); *Wetherton v. Growers Farm Labor Assn.*, 275 Cal.App.2d 168,

27 <sup>11</sup> Hr'g. Tr. 09/06/2017 767:14–20; 769:6–9, Ex. 3.

28 <sup>12</sup> Hr'g Tr. 08/31/2017 499:24, 500:1–3, Ex. 4.

1 176 (Cal. Dist. Ct. App.1969), *disapproved on another ground in Applied Equip.*  
2 *Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 521 fn.10, 869 P.2d 454, 487  
3 (Cal. 1994) (“mere knowledge, acquiescence, or even approval of an act without  
4 an agreement to cooperate is not enough.”).

5 Here, Marriner cannot show that Mr. Yount’s conduct was tortious. In  
6 fact, the record shows Mr. Yount was in favor of the Mosaic deal.<sup>13</sup>

7 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?

8 MR. YOUNT: I was in favor of any deal and that was the only real deal I  
was aware of.

9 (Hr’g. Tr. 09/06/2017 766:13–17, Ex. 3.) The record further reveals that Mr.  
10 Yount thought the Mosaic meeting was to save the deal.<sup>14</sup> The only conduct he  
11 was accused of was choosing not to inform Criswell Radovan of the meeting.  
12 This conduct simply cannot give rise to liability.

13 Marriner fails to direct this Court to any evidence or testimony that can  
14 support liability. He instead points to various emails, which merely  
15 demonstrate that Mr. Yount was in the communication loop with members of  
16 the EC and the IMC. Marriner cannot support his argument to amend the  
17 pleadings to include a counterclaim that he failed to prove. *Gottwals v. Rencher*,  
18 60 Nev. 35, 98 P.2d 481 (1940) (holding that the denial of a motion for leave to  
19 file amended complaint after trial court’s decision was proper where amended  
20 complaint would have injected a different issue into the action and would have  
21 necessitated a new trial.)

22 **C. Marriner Failed To Prove Damages**  
23 **and Relies on a Single Speculative Document**

24 Marriner further alleges that he proved damages. He contends that the  
25 single document introduced, the Real Estate Consulting Agreement, adequately  
26

27 <sup>13</sup> Hr’g. Tr. 09/06/2017 766:13–17, Ex. 3.

28 <sup>14</sup> Hr’g. Tr. 09/06/2017 769:6–9, Ex. 3.

1 proved his damages. Pursuant to the agreement, Marriner would have been  
2 paid 3% of the gross revenue of the project.

3 It is well established that future earnings by their very nature are  
4 speculative and therefore to be awardable they must be well substantiated.  
5 *Anglo-Iberia Underwriting Mgmt. Co. v. Lodderhose*, 282 F. Supp. 2d 126, 129  
6 (S.D.N.Y. 2003). This is particularly true where the calculation of damages  
7 involves lost profits of a new business. *McDevitt & St. Co. v. Marriott Corp.*, 713  
8 F. Supp. 906, 932 (E.D. Va. 1989), *aff'd in part, rev'd in part on other grounds*,  
9 911 F.2d 723 (4th Cir. 1990) (holding the calculations upon which the projected  
10 management fee claim is based—the new hotel's projected revenues and  
11 operating profits—are simply too speculative to permit recovery).

12 Marriner's lost future earnings under the consulting agreement are  
13 inextricably linked to anticipated profits and gross revenues. *McDevitt*, 713 F.  
14 Supp. at 932. The Nevada Supreme Court has already articulated how lost  
15 profits must be proven. *Knier v. Azores Const. Co.*, 78 Nev. 20, 24, 368 P.2d 673,  
16 675 (1962). "Where the loss of anticipated profits is claimed as an element of  
17 damages, the business claimed to have been interrupted must be an established  
18 one and it must be shown that it has been successfully conducted for such a  
19 length of time and has such a trade established that the profits therefrom are  
20 reasonably ascertainable." *Id.*

21 Here, Marriner fails to substantiate how he is entitled to \$1.5 million. He  
22 solely relies on the Real Estate Consulting Agreement, which provides that  
23 Marriner would be paid 3% of the gross revenue of the project. To calculate  
24 Marriner's lost future fees, the defendant would have to prove anticipate gross  
25 revenue. Marriner did not introduce any expert testimony to discuss how the  
26 projected gross earnings were calculated and whether the projections were  
27 reliable. Calculating gross revenue of a hotel that never opened is entirely  
28 speculative. The successful operation of the Cal Neva would depend on market



1 conditions, average room rates, the hotel's occupancy during certain periods, the  
2 hotel's expenses, and several other contingencies. Accordingly, Marriner is not  
3 entitled to these speculative damages.

4 CONCLUSION

5 Marriner has failed to demonstrate he is entitled to any of the relief  
6 requested in his motion. Marriner's motion is untimely and fails to make any  
7 relevant arguments. Rather than introduce his own arguments and evidence, he  
8 relies solely on the arguments of Criswell Radovan. Marriner never pleaded  
9 unclean hands and never accused Mr. Yount of interfering with the Mosaic loan.  
10 Marriner's counsel conceded in his closing arguments that he did not believe  
11 Mr. Yount intended to interfere with the Mosaic loan. Any of Criswell  
12 Radovan's arguments are inapplicable to Marriner. This untimely motion  
13 should be denied.

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

16 Dated this 24th day of September, 2018.

17 LEWIS ROCA ROTHGERBER CHRISTIE LLP

18  
19 By: Adrienne B. Lomeli for 14486  
20 DANIEL F. POLSENBERG (SBN 2376)  
21 JOEL D. HENRIOD (SBN 8492)  
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22 RICHARD G. CAMPBELL, JR. (SBN 1832)  
23 THE LAW OFFICE OF RICHARD G. CAMPBELL, JR.  
24 333 Flint Street  
Reno, Nevada 89501  
Phone (775) 384-1123

25 *Attorneys for Plaintiff*  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2018, I served the foregoing "Plaintiff's Opposition to Defendants' Motion to Disqualify" on counsel by the Court's electronic filing system to the persons and addresses listed below:

MARTIN A. LITTLE  
ALEXANDER VILLAMAR

HOWARD & HOWARD  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, Nevada 89169

MARK G. SIMONS  
SIMONS LAW, PC  
6490 S. McCarran Blvd., #20  
Reno, Nevada 89509



An Employee of Lewis Roca Rothgerber Christie LLP

INDEX OF EXHIBITS

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1	Excerpts of Trial Transcript, Volume 1, dated August 29, 2017	5
2	Excerpts of Trial Transcript, Volume 7, dated September 8, 2017	6
3	Excerpts of Trial Transcript, Volume 5, dated September 6, 2017	6
4	Excerpts of Trial Transcript, Volume 3, dated August 31, 2017	4

# EXHIBIT 1

# EXHIBIT 1

1 4185  
2 STEPHANIE KOETTING  
3 CCR #207  
4 75 COURT STREET  
5 RENO, NEVADA  
6

7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 IN AND FOR THE COUNTY OF WASHOE  
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 GEORGE S. YOUNT, et al., )  
12 Plaintiffs, )  
13 vs. ) Case No. CV16-00767  
14 CRISWELL RADOVAN, et al., ) Department 7  
15 Defendants. )  
16 \_\_\_\_\_ )

17  
18 TRANSCRIPT OF PROCEEDINGS

19 TRIAL VOLUME I

20 August 29, 2017

21 9:00 a.m.

22 Reno, Nevada  
23

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

1 Radovan's part?

2 A. No.

3 Q. And Criswell Radovan are still managers of this  
4 project, correct?

5 A. Correct.

6 Q. And under the operating agreement, they could have  
7 been removed had they done something wrong?

8 A. That's correct.

9 Q. Sir, you understood that Mr. Radovan had secured a  
10 loan commitment in 2015 from the company we've been talking  
11 about, Mosaic, correct?

12 A. That's what I understand.

13 Q. And you understood this loan would have replaced  
14 the Hall and Ladera loans and provided the additional capital  
15 to finish the project?

16 A. I believe it would have.

17 Q. And I think you said you understood it provided  
18 some cushion to do some things that maybe weren't necessarily  
19 needed, but would be nice to do?

20 A. Yes.

21 Q. Isn't it true that you understood that the IMC  
22 group went to Mosaic's office behind Criswell Radovan's back  
23 and said something to cause them to pull the plug on the  
24 financing?

1 MR. CAMPBELL: Objection, lack of foundation.

2 THE COURT: How would he know that?

3 BY MR. LITTLE:

4 Q. I'll ask him. Did you hear that?

5 MR. CAMPBELL: Same objection.

6 THE WITNESS: I heard it as a rumor, but I was not  
7 involved.

8 THE COURT: I'll consider that.

9 BY MR. LITTLE:

10 Q. Were you aware that the IMG group were pursuing  
11 their own refinancing with Roger Whittemore, Mr. Yount's  
12 friend?

13 A. I understood that they were in discussions with  
14 North Light and I had even attempted to put them in touch  
15 with North Light through another independent person, but they  
16 never responded, but I guess IMC did later.

17 Q. Sir, are you aware of all the e-mails and  
18 correspondence between the IMC group people and Mr. Yount  
19 discussing how to oust the Criswell Radovan group and talk  
20 about how to deal with the Mosaic loan?

21 A. I only saw those when I was -- when they delivered  
22 the court files. And as I was looking through, I was  
23 surprised to see that there was a group kind of talking about  
24 removing Criswell Radovan as manager and taking over the

1 STATE OF NEVADA           )  
                                  ) ss.  
2 County of Washoe        )

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

6       That I was present in Department No. 7 of the  
7 above-entitled Court on August 29, 2017, at the hour of 9:00  
8 a.m., and took verbatim stenotype notes of the proceedings  
9 had upon the trial in the matter of GEORGE S. YOUNT,  
10 Plaintiff, vs. CRISWELL RADOVAN, et al., Defendant, Case  
11 No. CV16-00767, and thereafter, by means of computer-aided  
12 transcription, transcribed them into typewriting as herein  
13 appears;

14       That the foregoing transcript, consisting of pages 1  
15 through 203, both inclusive, contains a full, true and  
16 complete transcript of my said stenotype notes, and is a  
17 full, true and correct record of the proceedings had at said  
18 time and place.

19  
20       DATED: At Reno, Nevada, this 25th day of September 2017.

21  
22                               S/s Stephanie Koetting  
23                               STEPHANIE KOETTING, CCR #207  
24



# EXHIBIT 2

# EXHIBIT 2

1 4185  
2 STEPHANIE KOETTING  
3 CCR #207  
4 75 COURT STREET  
5 RENO, NEVADA  
6

7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 IN AND FOR THE COUNTY OF WASHOE  
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 GEORGE S. YOUNT, et al., )  
12 Plaintiffs, )  
13 vs. ) Case No. CV16-00767  
14 CRISWELL RADOVAN, et al., ) Department 7  
15 Defendants. )  
16 \_\_\_\_\_ )

17  
18 TRANSCRIPT OF PROCEEDINGS

19 TRIAL VII

20 September 8, 2017

21 9:00 a.m.

22 Reno, Nevada  
23

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

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

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

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

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

8 THE COURT: Go ahead.

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

18 THE COURT: Clearly none.

19 MR. CAMPBELL: 51.

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

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

1           That's exactly what he was doing here. He was  
2 talking to people he trusted, Peter Grove, his own CPA. He  
3 wasn't relying on Mr. Marriner for project information. He  
4 was going to Mr. Radovan. He was going to his own CFO to  
5 evaluate that information. So we believe all the elements to  
6 either negate reliance or to carry the defense under  
7 Blanchard are established through the facts of this case.

8           And I appreciate that the Court was familiar with  
9 that August 3rd e-mail. Mr. Marriner, I'm talking to Radovan  
10 directly now, I'm really not looking to you for information,  
11 thanks for calling me, in so many words.

12           So with that, there's been a lot of talk of the  
13 Mosaic deal and how it was torpedoed. I share the same view  
14 as Mr. Little that if there were damages from this  
15 investment, it's not from -- he got a Cadillac. He got a new  
16 Cadillac. There's no evidence of a difference in value. If  
17 it's because the project failed, the project failed in the  
18 aftermath, after the investment, after the Mosaic loan was  
19 interfered with.

20           I don't believe Mr. Yount conspired to interfere  
21 with that loan, however, he had an opportunity, he knew the  
22 meeting that was about to happen was probably not legit, in  
23 his words, and he had an opportunity to head off the CR  
24 people at the pass and maybe avoid what happened, which is

1 the Mosaic loan being --

2 THE COURT: The IMC people?

3 MR. WOLF: Yes.

4 THE COURT: Not the CR. You transposed.

5 MR. WOLF: Yes. Thank you. So that goes to  
6 causation of damage. It's Mr. Yount's own inaction in this  
7 case. He's pointing fingers at defendants for inaction and  
8 failing to inform. He was aware of a very critical event  
9 about to happen that is probably spelled the doom of this  
10 project.

11 And in hindsight, I don't think he was calculating  
12 to hurt himself, in hindsight you can look back and say, wow,  
13 you knew this, you knew it was legit. You asked people if it  
14 was legit. You didn't step up and say anything. And since  
15 we're all here in hindsight looking back at what everybody  
16 did, I think that contributed to his own damage insofar as  
17 his damages relate to the failure and the bankruptcy of the  
18 project.

19 So in sum, your Honor, I don't believe any fraud  
20 elements have been established. I don't believe they've been  
21 established by clear and convincing evidence. Mr. Marriner  
22 did not handle Mr. Yount's funds. The funds were handled by  
23 others. And given the serious burden of proof, I believe  
24 there should be a defense judgment in favor of Marriner on

1 STATE OF NEVADA           )  
                                  ) ss.  
2 County of Washoe        )

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

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

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

19  
20       DATED: At Reno, Nevada, this 13th day of October 2017.

21  
22                               S/s Stephanie Koetting  
23                               STEPHANIE KOETTING, CCR #207  
24

# EXHIBIT 3

# EXHIBIT 3

1 4185  
2 STEPHANIE KOETTING  
3 CCR #207  
4 75 COURT STREET  
5 RENO, NEVADA  
6

7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 IN AND FOR THE COUNTY OF WASHOE  
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 GEORGE S. YOUNT, et al., )  
12 Plaintiffs, )  
13 vs. ) Case No. CV16-00767  
14 CRISWELL RADOVAN, et al., ) Department 7  
15 Defendants. )  
16 \_\_\_\_\_ )

17  
18 TRANSCRIPT OF PROCEEDINGS

19 TRIAL VOLUME V

20 September 6, 2017

21 1:30 p.m.

22 Reno, Nevada  
23

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



1 sure you get your workout today with all the binders.

2 A. You just have to be patient. There's four books  
3 to go through. 120. I'm here.

4 Q. So in the middle of the Exhibit 120 is your  
5 e-mail, I believe, to Paul Jamieson, correct?

6 A. Correct.

7 Q. January 28th, 2016 at 11:06 a.m., you wrote, I  
8 believe any deal Roger or others propose that doesn't at  
9 least make all investors whole will be rejected in favor of  
10 the Mosaic deal, which is sounding better and better. Your  
11 review, Paul?

12 A. Yes.

13 Q. At that point in time, just a couple of days  
14 before the meeting at Mosaic, you were in favor of the Mosaic  
15 deal?

16 A. I was in favor of any deal and that was the only  
17 real deal I was aware of.

18 Q. In the same time frame, you became aware that a  
19 group of the executive committee, three members of the  
20 executive committee were going to have a pre-meeting with  
21 Mosaic, right?

22 A. Pre-meeting?

23 Q. A meeting before a regularly scheduled meeting?

24 A. Yes.

1 Q. And you were concerned, your words, that is this  
2 legit?

3 A. Yes.

4 Q. And so if you were concerned about the legitimacy  
5 of that meeting, if you had formed the belief at this point  
6 in time that this was your one and only shot to get your  
7 money back, why didn't you tell Mr. Criswell or Mr. Radovan  
8 that the meeting with Mosaic, the one that they were not part  
9 of planning or attending, why didn't you tell them it was  
10 happening?

11 A. Because I did not trust Mr. Criswell or  
12 Mr. Radovan after December the 12th. So why would I tell  
13 them anything?

14 Q. What did you believe was going to happen,  
15 transpire in the meeting by the three executive committee  
16 members in Sacramento with Mosaic prior to the meeting that  
17 Mr. Radovan had scheduled?

18 A. I did not know what was going to happen. I  
19 believe they were trying to put the deal together, though,  
20 but that's just was my understanding.

21 Q. Now, you've suggested in your testimony today that  
22 the loan was not torpedoed. What do you think happened after  
23 that meeting other than the loan being tanked or rescinded?  
24 Do you think there was some path forward with Mosaic after

1           Q.     Why wasn't your place to say? To alert the  
2 manager of the -- the managers of the development that an  
3 unauthorized meeting was going to happen with the lender of  
4 the loan that was your only hope to get paid off? Why didn't  
5 you feel some obligation to inform them?

6           A.     I trusted that the EC had enough reason on their  
7 part to, and they wanted to, as far as I know, wanted to save  
8 the deal, too, that they would -- they felt it was the best  
9 route, and I trusted the EC a lot more than I trusted  
10 Mr. Criswell and Mr. Radovan.

11          Q.     But at the point in time of the meeting with  
12 Mosaic, you already knew that the EC and the people you were  
13 corresponding with, this so called team, were bent on  
14 removing Criswell and Radovan as managers, potentially suing  
15 them, potentially removing their membership interests. Why  
16 were you concerned about sharing that with them, sharing the  
17 meeting with them when you knew that was the motivation  
18 behind this group that you were trying to distance yourself  
19 from?

20          A.     I disagree with your opening part of that question  
21 where you said that they were bent on removing Mr. Criswell  
22 or Mr. Radovan or CR. I think that was one of the options  
23 they were considering. Any which way that made the deal is  
24 what I wanted, a financing deal.

1 STATE OF NEVADA           )  
                                  ) ss.  
2 County of Washoe        )

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

6       That I was present in Department No. 7 of the  
7 above-entitled Court on September 6, 2017, at the hour of  
8 1:30 p.m., and took verbatim stenotype notes of the  
9 proceedings had upon the trial in the matter of GEORGE S.  
10 YOUNT, et al., Plaintiffs, vs. CRISWELL RADOVAN, et al.,  
11 Defendants, Case No. CV16-00767, and thereafter, by means of  
12 computer-aided transcription, transcribed them into  
13 typewriting as herein appears;

14       That the foregoing transcript, consisting of pages 1  
15 through 845, both inclusive, contains a full, true and  
16 complete transcript of my said stenotype notes, and is a  
17 full, true and correct record of the proceedings had at said  
18 time and place.

19  
20       DATED: At Reno, Nevada, this 10th day of October 2017.

21  
22                               S/s Stephanie Koetting  
23                               STEPHANIE KOETTING, CCR #207  
24

# EXHIBIT 4

# EXHIBIT 4

1 4185  
2 STEPHANIE KOETTING  
3 CCR #207  
4 75 COURT STREET  
5 RENO, NEVADA  
6

7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 IN AND FOR THE COUNTY OF WASHOE  
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 GEORGE S. YOUNT, et al., )  
12 Plaintiffs, )  
13 vs. ) Case No. CV16-00767  
14 CRISWELL RADOVAN, et al., ) Department 7  
15 Defendants. )  
16 \_\_\_\_\_ )

17  
18 TRANSCRIPT OF PROCEEDINGS

19 TRIAL VOLUME III

20 August 31, 2017

21 9:00 a.m.

22 Reno, Nevada  
23

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

1 January 30, 2016 at the bottom?

2 A. Yes.

3 Q. The bottom of page 1 of Exhibit 122?

4 A. Yes.

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

9 A. Yes.

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

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

17 THE COURT: Sustained.

18 BY MR. WOLF:

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

23 A. No.

24 Q. Do you believe that he should have so informed

1 you?

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

4 Q. And why do you say that?

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

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

12 A. Exactly.

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

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

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

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



1 STATE OF NEVADA           )  
                                  ) ss.  
2 County of Washoe        )

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

6       That I was present in Department No. 7 of the  
7 above-entitled Court on August 31, 2017, at the hour of TIME,  
8 and took verbatim stenotype notes of the proceedings had upon  
9 the trial in the matter of GEORGE S. YOUNT, Plaintiff, vs.  
10 CRISWELL RADOVAN, et al, Defendant, Case No. CV16-00767, and  
11 thereafter, by means of computer-aided transcription,  
12 transcribed them into typewriting as herein appears;

13       That the foregoing transcript, consisting of pages 1  
14 through 619, both inclusive, contains a full, true and  
15 complete transcript of my said stenotype notes, and is a  
16 full, true and correct record of the proceedings had at said  
17 time and place.

18  
19       DATED: At Reno, Nevada, this 28th day of September 2017.

20  
21                               S/s Stephanie Koetting  
22                               STEPHANIE KOETTING, CCR #207  
23  
24

76

76

1 **3795**

2 Mark G. Simons, Esq., NSB No. 5132  
3 SIMONS LAW, PC  
4 6490 S. McCarran Blvd., #C-20  
5 Reno, Nevada, 89509  
6 Telephone: (775) 785-0088  
7 Facsimile: (775) 785-0087  
8 Email: [mark@mgsimonslaw.com](mailto:mark@mgsimonslaw.com)

9 *Attorneys for David Marriner and*  
10 *Marriner Real Estate, LLC*

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
12 **IN AND FOR THE COUNTY OF WASHOE**

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

**CASE NO.: CV16-00767**

**DEPT. NO.: B7**

16 Plaintiff,

17 vs.

18 CRISWELL RANDOVAN, LLC, a Nevada  
19 Limited liability company; CR CAL NEVA,  
20 a Nevada Limited liability company;  
21 ROBERT RADOVAN; WILLIAM  
22 CRISWELL; CAL NEVA LODGE, LLC, a  
23 Nevada limited liability company;  
24 POWELL, COLEMAN and ARNOLD,  
25 LLP; DAVID MARRINER; MARRINER  
26 REAL ESTATE, LLC, a Nevada limited  
27 liability company; NEW CAL-NEVA  
28 LODGE, LLC, a Nevada limited liability  
company and DOES 1-10,

Defendants.

**REPLY IN SUPPORT OF 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,

1 hereby submit the following reply in support of the Motion to Amend the Pleadings to  
2 Conform to the Evidence and Judgment.

3 **I. BASIS OF MOTION.**

4 Marriner's motion is premised on the undisputed fact that Judge Flanagan  
5 rendered judgment in Marriner's favor for \$1.5 million. This Court subsequently  
6 reviewed the entirety of the record, including the entirety of the trial transcript and Judge  
7 Flanagan's extensive findings of fact and conclusions of law, and also concluded that  
8 judgment in favor of Marriner was appropriate and warranted.<sup>1</sup>

10 Marriner's motion establishes beyond any dispute, that George Stuart Yount,  
11 individually, and in his capacity as owner of the George Yount, IRA ("Yount") conspired  
12 and aided and abetted others for the purpose of harming Marriner and along with all the  
13 other named defendants. Judge Flanagan, and this Court upon review, found that the  
14 evidence was overwhelming that Yount **"was [in] cahoots with this cabal involving**  
15 **certain members of the IMC . . . ."** Judge Flanagan, and this Court upon review,  
16 found that it was Yount's and the IMC's intent "to kill" the Mosaic Loan and Yount and  
17 the IMC did in fact kill the loan. Yount knew that the Mosaic Loan was the only exit  
18 strategy for the Project and without it, the Project was certain to fail and all the  
19 Defendants would sustain millions of dollars in damages. Judge Flanagan recounted  
20 the **"dozens of e-mail exchanges between Mr. Yount and the IMC and their efforts**  
21 **to undermine the Mosaic loan."** Judge Flanagan also cited to Trial Exhibit 124, which  
22 he found was the "concluding email" that culminated in Yount's successful destruction  
23 of the LLC's funding solution with the Mosaic Loan.  
24  
25  
26

27  
28 <sup>1</sup> In addition, Judge Flanagan and this Court also confirmed the judgment in favor of the  
additional Criswell and Radovan defendants.

1 **II. BASIS OF OPPOSITION.**

2 Yount's opposition argues the following: (1) the motion is untimely; (2) Marriner  
3 does not raise any arguments that apply to him; and (3) the record does not support  
4 that Marriner "pleaded and proved" a counterclaim. These arguments all lack merit and  
5 do not prohibit the granting of the motion as requested.  
6

7 **A. MARRINER'S MOTION IS NOT UNTIMELY.**

8 Yount argues that Marriner's motion is untimely and that the Court has been  
9 divested of jurisdiction to render the relief request. Opp., pp. 3-6. As discussed below,  
10 this argument is baseless. Initially, the express language of NRCP 15(b), states that  
11 "amendment of the pleadings as may be necessary to cause them to conform to the  
12 evidence and to raise these issues **may be made upon motion of any party at any**  
13 **time, even after judgment . . . .**" Yount glosses over this express language and acts  
14 like it has no application. Contrary to Yount's argument, this language means exactly  
15 what it says, a motion to amend to conform to the pleadings may be filed "at any time,  
16 even after judgment." There is no preclusionary time limit contained in the rule and  
17 there is no termination of the right to file this motion in the event an appeal is filed. This  
18 is because a motion to conform is treated as simply a collateral matter relating to the  
19 Judgment and as such, is not affected by an appeal.  
20

21 Although Yount relies upon a few vague references to a trial court being divested  
22 of jurisdiction to consider a motion to amend the pleadings after an appeal has been  
23 filed, the extra-judicial cases cited by Marriner do not address what was sought to be  
24 amended in those cases and therefore those cases provide no guidance or  
25 precedential value to this Court. Marriner does agree that as a general rule, "a timely  
26 notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in  
27  
28

1 [the supreme] court.” Rust v. Clark County Sch. Dist., 103 Nev. 686, 688, 747 P.2d  
2 1380, 1382 (1987).

3 However, an appeal does not divest the trial court to enter orders and consider  
4 post-judgment motions to conform the pleadings to the evidence and judgment. For  
5 instance, in Shelley v. Union Oil Co. of California, 203 F.2d 808, 809 (9th Cir. 1953) the  
6 court stated the exception to the general rule that motions to conform are treated as  
7 collateral matters as follows:  
8

9 [I] is entirely proper under rule 15(b), as well as under the practice long  
10 recognized by the courts generally, **to permit amendments to conform to the**  
11 **proof; and the amendment may be made at anytime, even after judgment. . .**  
12 **. Even on appeal the pleading may be deemed amended in such cases.**

13 Id. (emphasis added).

14 Under well-established law, this Court still retains the jurisdiction to rule on  
15 collateral matters. As stated in Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d  
16 525, 529-530 (2006):

17 Although, when an appeal is perfected, the district court is divested of  
18 jurisdiction to revisit issues that are pending before this court, **the district court**  
19 **retains jurisdiction to enter orders on matters that are collateral to and**  
20 **independent from the appealed order, i.e., matters that in no way affect the**  
21 **appeal's merits.**

22 Id. (emphasis added). The issue then before this Court is that Marriner’s motion seeks  
23 a ruling on a collateral matter. A simple reading of Marriner’s motion demonstrates that  
24 it is not seeking in any fashion to “change the judgment” or alter the merits of the  
25 appeal. Instead, Marriner’s motion solely seeks the procedural act of conforming the  
26 pleadings to be consistent with Judge Flanagan’s decision and judgment and this  
27 Court’s decision and judgment. Stated another way, this motion is procedural and not  
28 substantive because Judge Flanagan and this Court have already ruled that the issue

1 of Yount's intentional interference was "expressly tried" by the parties. The present  
2 motion to confirm in no way alters or changes the trial court's or this Court's previous  
3 rulings in any substantive manner, instead, the procedural application of NRCP 15 is  
4 being invoked—which procedural application is expressly provided for in NRCP 15's  
5 express language that such motion may be brought **"upon motion of any party at any  
6 time, even after judgment . . . ."**

8 Further, Yount's motion fails to address, and therefore concedes, that NRCP  
9 54(c)'s provisions are directly applicable as Marriner's motion demonstrates. Clearly,  
10 Judge Flanagan and this Court found in entering the decisions and Judgment in this  
11 case that the issue of Yount's intentional interference was established at trial and  
12 supported affirmative relief in favor of Marriner. That analysis and conclusion is  
13 inescapable.

15 The Nevada Supreme Court clearly has stated NRCP 54(c) grants the Court the  
16 authority and power to supersede any "particular legal theory of counsel" and that the  
17 legal theories of counsel are subordinate to the power of the Court to grant relief in  
18 favor of a party "whether demanded or not" as follows:

20 **"Particular legal theories of counsel then are subordinated to the**  
21 **court's right and duty to grant the relief to which the prevailing party is**  
22 **entitled whether demanded or not. If a party has proved a claim for relief**  
23 **the court will grant him that relief to which he is entitled on the evidence**  
24 **regardless of the designation of the claim or the prayer for relief. The**  
25 **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."**

26 Magille v. Lewis, 74 Nev. 381, 388, 333 P.2d 717, 720 (1958) (emphasis added)

27 (citation omitted). NRCP 54(c) therefore vested Judge Flanagan and this Court with  
28

1 broad authority and discretion to render relief “whether demanded or not” by Marriner.  
2 Again, whether or not relief was specifically requested by Marriner is not relevant to  
3 NRCP 54(c)’s application!  
4

5 As the Nevada Supreme Court states: whether or not Marriner “asked for the  
6 proper remedy but whether he is entitled to any remedy.” The application of NRCP  
7 54(c) is undisputed by Yount and Judge Flanagan, as well as this Court, was not  
8 constrained, limited or restricted by Marriner’s pleadings or even the “legal theories of  
9 counsel” at trial when granting judgment in Marriner’s favor in this case.

10 Accordingly, there is no prohibition on this Court from granting the requested  
11 relief since Marriner’s motion addresses a collateral matter that merely recognizes and  
12 addresses this Court’s and Judge Flanagan’s foundational decision that Yount’s  
13 wrongful conduct was tried by all parties and the award of relief was warranted “whether  
14 demanded or not”. Accordingly, the motion is procedural and does not affect the  
15 substance of the Judgment, does not affect any evidence supporting the Judgment and  
16 does not affect any supporting findings of fact and conclusions of law rendered by  
17 Judge Flanagan or this Court.  
18

19  
20 **B. ALL ARGUMENTS APPLY TO MARRINER.**

21 Strangely, Yount argues that Marriner’s arguments do not apply to him. Yount’s  
22 argument fails to address that Judge Flanagan’s and this Court’s decisions applied  
23 directly to Marriner. Further, Yount entirely ignores that NRCP 54(c) applies to the relief  
24 awarded to Marriner “whether demanded or not”. Marriner was awarded damages of  
25 \$1.5 million based upon Yount’s egregious and wrongful conduct. Every argument  
26 presented in Marriner’s opening motion does apply to Marriner as well as the other  
27 named defendants.  
28



1 First, Yount's judicial admissions apply equally to Marriner as they do to **all**  
2 **defendants**. Specifically, Young admits that:

3 **Defendants answered and asserted . . . that Mr. Yount conspired with other**  
4 **investors to interfere with the Project's refinancing loan.**

5 See Exh. 13, excerpt of Yount's Mot. Post Judg. Disc., pp. 2:23-3:2. Yount's admission  
6 does not differentiate between defendants. Then, Yount judicially admitted that  
7 discovery in the case "focused" on "communications between Mr. Yount and that Judge  
8 Flanagan specifically ruled on the very issue that Yount judicially admits was asserted  
9 by "the Defendants" (again not differentiating between the defendants) and upon which  
10 discovery focused by affirmatively stating:

12 [Judge Flanagan] concluded that "but for the intentional interference with  
13 the contractual relations between Mosaic and Cal Neva, LLC the project  
14 would have succeeded."

15 Id. p, 5: 7-9 (citing Trial Transcript, p. 1139:20-22).

16 Similarly, Yount's intentional interference with the Mosaic Loan was a central  
17 issue in this case as detailed in the Motion for Summary Judgment. Yount's intentional  
18 interference applied to **all defendants**. Again, the issue of Yount's intentional  
19 interference was identified as a critical issue of proof early in this case and applied to  
20 Yount's conduct towards **all defendants**.

22 Second, the Defendants' August 25, 2017, Proposed Findings of Fact and  
23 Conclusions of Law articulating Yount's intentional interference applied to **all**  
24 **defendants**. It is logically unclear how the facts of Yount's intentional interference  
25 could be different for different defendants when they all were harmed by the exact  
26 same wrongful interference by Yount.

28 Third, at trial, Yount consented to trying the issue of his intentional interference

1 as to **all defendants**. Yount's consent to try the issue of his intentional interference  
2 began when Yount stipulated into evidence all of Defendants' trial exhibits. Documents  
3 admitted at trial are admitted for **all parties**, not just certain selected parties.  
4 Accordingly, the extensive number of emails relied upon by Judge Flanagan to  
5 demonstrate Yount's deceitful and wrongful conduct applied equally to Marriner as to all  
6 other defendants.  
7

8 All witnesses and **all defendants** were questioned at trial as to Yount's  
9 intentional interference with the Mosaic Loan and the damages sustained. Marriner  
10 was specifically questioned extensively about the basis of his claim and his resulting  
11 damages. The Court's award of \$1.5 million to Marriner ties exactly to the harm  
12 Marriner testified he sustained as a result of Yount's wrongful conduct and which was  
13 documented in exhibits that were stipulated into evidence at trial. Marriner's contractual  
14 relationships with the Project were tried, admitted at trial, discussed in extensive detail  
15 at trial along with the harm Marriner sustained by the loss of the Mosaic Loan.  
16

17 Driving this point home, Yount also testified and admitted he was fully aware of  
18 Marriner's business and financial relationship with the LLC and was in "constant  
19 communications" with Marriner about the project. Exh. 1, p. 1111:4-8. Yount testified  
20 he was fully aware that the IMC and Mr. Chaney intended to interfere with the LLC's  
21 contractual relationship to obtain the Mosaic Loan. Yount attended IMC meetings and  
22 "was considered by all to be a member" of the IMC. Id., pp.1120:24-1121:1. Yount was  
23 fully aware of the IMC's intention to block the Mosaic Loan from funding so the project  
24 would collapse and that Yount even acknowledged that such conduct by the IMC was  
25 not appropriate. Id., p. 1114:18-20; *see also* Exh. 18, Trial Exhibit 122 (Yount  
26  
27  
28

1 concerned that the IMC's meeting with Mosaic to derail the LLC's funding was secret  
2 and not "legit").

3 Judge Flanagan, and this Court on review, found that the evidence presented  
4 was overwhelming that Yount "**was [in] cahoots with this cabal involving certain**  
5 **members of the IMC**, and that he testified he was not opposed to the removal of" the  
6 managers of the project. Judge Flanagan, and this Court upon review, found that it was  
7 Yount's and the IMC's intent "to kill" the Mosaic Loan and Yount and the IMC did in fact  
8 kill the loan. Yount knew that the Mosaic Loan was the only exit strategy for the Project  
9 and without it, the Project was certain to fail and **all the defendants** would sustain  
10 millions of dollars in damages. The foregoing demonstrates that the issue of the  
11 Mosaic Loan and Yount's interference was clearly an issue tried at trial and the  
12 evidence was so overwhelming as to Yount's egregious and intentional conduct,  
13 causing serious and crippling harm, Judge Flanagan rendered judgment against Yount.

14  
15  
16 Fourth, Yount's counsel admits that the "focus" of the trial was on Yount's  
17 intentional interference. Yount's opposition seems to imply that the "focus" of the trial  
18 was something other than Yount's interference. It was not. Simply stated, Yount  
19 admits that **all defendants** tried the factual issues of Yount's wrongful participation,  
20 collusion and agreement with the IMC to destroy the funding of the Mosaic Loan. That  
21 wrongful conduct was clear, unmistakable and formed the basis of Judge Flanagan's  
22 judgment against Yount.

23  
24  
25 Fifth, this Court affirmed that Judge Flanagan's decision and findings applied to  
26 **all defendants**. There was no carve out or differentiation of Marriner's right to  
27 judgment as distinct from all other defendants. All defendants sustained harm as a  
28 result of Yount's harmful and intentional conduct.

1 Accordingly, as demonstrated, all arguments presented in Marriner's motion  
2 apply to **all defendants**. Judge Flanagan's decision and this Court's affirmation of  
3 such decision and entry of judgment all confirm that Yount's intentional interference  
4 harmed **all defendants**.

6 **C. YOUNT MISTATES MARRINER'S POSITION.**

7 Yount misstates Marriner's arguments to this Court. Yount claims that Marriner  
8 argues he "pleaded and proved" intentional interference. Opp., p. 13:24-28. If that  
9 were the case, Marriner's motion to conform the evidence to the pleadings would be  
10 unnecessary and superfluous. Marriner's motion is premised on the contention that  
11 although a claim for affirmative relief was not formally plead, the evidence at trial  
12 supported and demonstrated Yount's intentional interference, Marriner's harm and the  
13 validity of the Judgment rendered in this case against Yount.

15 Equally baseless, Yount claims that Marriner did not prove Yount's conduct was  
16 tortious. Id., p. 14:2-3. Yount then claims that "Marriner fails to direct this Court to any  
17 evidence or testimony that can support liability." Id., p.16:13-14. Contrary to Yount's  
18 contention, Marriner's motion is replete with fact after fact after fact demonstrating  
19 Yount's tortious conduct--was tortious conduct proven at trial by overwhelming  
20 evidence. See Mot., Arg., IV.D and E. This Court reviewed the entirety of the trial  
21 transcript and Judge Flanagan's findings and conclusions and affirmed the entirety of  
22 Judge Flanagan's rulings. Id. at F. To claim that Yount's tortious conduct was not  
23 proven at trial and/or not laid out in Marriner's motion is a nonsensical and baseless  
24 argument.

27 Yount also claims that Marriner's damages were speculative. Opp., pp. 16-17.  
28 Since Judge Flanagan and this Court found that Marriner's damages were \$1.5 million,

1 based upon the admitted evidence introduced at trial, Marriner's damages were clearly  
2 not speculative.

3 Yount also claims that the evidence did not support a finding of damages.  
4 Contrary to Yount's characterization, Judge Flanagan specifically addressed this very  
5 contention and held:  
6

7 **In this case, but for the intentional interference with the contractual**  
8 **relations between Mosaic and Cal Neva LLC, this Project would have**  
9 **succeeded. That is undisputed.**

10 Exh. 1 at 1139 (emphasis added). Because the evidence that the Project "would have  
11 succeeded" is "undisputed", that means the evidence supports Judge Flanagan's ruling  
12 and the damages sustained by Marriner is also undisputed.

13 Judge Flanagan, and this Court upon review, found that it was Yount's and the  
14 IMC's intent "to kill" the Mosaic Loan and Yount and the IMC did in fact kill the loan—  
15 which wrongful conduct caused all the defendants harm. Yount also specifically knew  
16 that the Mosaic Loan was the only exit strategy for the Project and without it, the Project  
17 was certain to fail and all the defendants would sustain millions of dollars in damages.  
18 Id., pp. 1121:23-24.

19  
20 In Frantz v. Johnson, 16 Nev. 455, 469, 999 P.2d 351, 360 (Nev. 2000) the  
21 Nevada Supreme Court described proof of damages as follows:

22 With respect to proof of damages, we have held that a party seeking  
23 damages has the burden of providing the court with an evidentiary basis upon  
24 which it may properly determine the amount of damages. . . . Further, we have  
25 noted that damages need not be proven with mathematical exactitude, and that  
26 the mere fact that some uncertainty exists as to the actual amount of damages  
27 sustained will not preclude recovery.

28 Based upon this clearly articulated standard, Marriner's damages were proven at trial  
since there was an established evidentiary basis to quantify Marriner's damages.

1 Judge Flanagan and this Court on review found that the evidence was undisputed that  
2 Yount wrongfully interfered and that Marriner sustained legally and factually quantifiable  
3 damages. Accordingly, Yount's argument fails.

4 **III. CONCLUSION.**

5  
6 The record is abundantly clear that Yount individually and "in cahoots" with the  
7 IMC, actively participated in "killing" the Mosaic Loan. If the Mosaic Loan would have  
8 funded, it is "undisputed" that the Project would have succeeded and all defendants  
9 would have received all payments due to them. Judge Flanagan found that Yount's  
10 conduct was both egregious and tragic and thus imposed liability on Yount for his  
11 wrongful and harmful actions. Therefore, it is respectfully requested that this Court  
12 grant Marriner's motion and enter its order conforming Marriner's Answer to include the  
13 counterclaim for intentional interference.  
14

15 **AFFIRMATION:** This document does not contain the social security number of  
16 any person.

17 DATED this 15<sup>th</sup> day of October, 2018.

18  
19 SIMONS LAW, PC  
20 A Professional Corporation  
21 6490 S. McCarran Blvd., #C-20  
22 Reno, Nevada, 89509

23   
24 MARK G. SIMONS  
25 Attorneys for David Marriner and  
26 Marriner Real Estate, LLC  
27  
28

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS LAW, PC and that on this date I caused to be served a true copy of **REPLY IN SUPPORT OF MOTION TO AMEND THE PLEADINGS TO CONFORM TO THE EVIDENCE AND JUDGMENT** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

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

Richard G. Campbell, Jr.  
Attorneys for George Stuart Yount IRA et al.

Daniel Polsenberg  
Joel Henriod  
Attorneys for George Stuart Yount

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 15 day of October, 2018.

  
\_\_\_\_\_  
Employee of Simons Law, PC

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1 4185

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4  
5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 THE HONORABLE EGAN WALKER, DISTRICT JUDGE

8 --o0o--

9 GEORGE S. YOUNT, ET AL,

10 Plaintiff,

Case No. CV16-00767

11 vs.

Dept. No. 7

12 CRISWELL RADOVAN, ET AT,

13 Defendant.

14 \_\_\_\_\_/

15 TRANSCRIPT OF PROCEEDINGS

16 HEARING ON MOTIONS

17 Tuesday, December 20, 2018

18  
19  
20  
21  
22  
23  
24 Reported by:

EVELYN J. STUBBS, CCR #356

## APPEARANCES:

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Reno, Nevada 89503

1 RENO, NEVADA; TUESDAY, DECEMBER 20, 2018; 2:00 P.M.

2 --o0o--

3  
4 THE COURT: Miss Clerk, would you please announce the  
5 case.

6 THE CLERK: Yes, Your Honor. Case No. CV16-00767 the  
7 matter of Yount et al versus Criswell. Matter set for a hearing  
8 on motions.

9 Counsel, please state your appearances.

10 MS. BRANTLEY-LOMELI: Adrienne Brantley-Lomeli on  
11 behalf of Plaintiff George Stuart Yount.

12 THE COURT: Good afternoon.

13 MR. POLSENBERG: Good afternoon, Your Honor. Dan  
14 Polsenberg.

15 MR. CAMPBELL: Good afternoon, Your Honor. Rick  
16 Campbell on behalf of the Younts.

17 MR. LITTLE: Good afternoon, Your Honor, Martin Little.  
18 I was trial counsel for all of the defendants except for  
19 Mr. Marriner and his company.

20 THE COURT: Thank you.

21 MR. SIMONS: Good afternoon, Your Honor, Mark Simons.  
22 I represent David Marriner and Marriner Real Estate. And in the  
23 courtroom today is Mr. Marriner. I was not trial counsel. I  
24 came subsequent.

1           THE COURT: I've got you beat. I wasn't the trial  
2 judge.

3           Let me, I guess, set the table for our discussion. In  
4 observing that -- not with any facetious intent, but I hope,  
5 Counsel, you have had an opportunity to dialog with your clients  
6 about this reality, which we all know: If there's a recipe for  
7 disaster in any endeavor in life -- sinking ships, planes in  
8 combat, trials -- it's to have three judges, three trial judges  
9 touch the same case. Are you sure you want me to do this?

10          MR. SIMONS: While people are gathering their thoughts,  
11 I'll step in. I think from my client's perspective, I don't  
12 think we have a choice. We need to move forward.

13          MR. POLSENBERG: Judge, why don't we take a break.

14                               (Recess taken.)

15          THE COURT: The parties who have previously identified  
16 themselves are present in court. We've taken an opportunity for  
17 reflection. Has that reflection percolated into any resolution?

18          MR. POLSENBERG: It's percolated, but not into a  
19 resolution. And, you know, the parties have gotten together two  
20 or three times.

21          THE COURT: Once with the Supreme Court, once with  
22 Mr. Eisenberg --

23          MR. POLSENBERG: And Mr. Eisenberg, twice in front him.

24          THE COURT: Well, I feel compelled to place a few

1 things into the record before we begin. And I'm prepared to make  
2 some decisions today. I'm aware there is an appeal pending  
3 before the Nevada Supreme Court; I'm aware that the parties  
4 stipulated to extend the period for briefing until January,  
5 pending what I was going to do here.

6 I'd invite you all to consider this reality, however:  
7 Both sides at this juncture are asking me to do something with  
8 what Judge Polaha did confirming Judge Flanagan's work. So each  
9 side is asking me to make changes.

10 In my view, if I make any changes or either of those  
11 changes or some version of both of those changes, we guarantee  
12 ourselves doing this twice.

13 Here's what I mean by that. The Nevada Supreme Court  
14 has jurisdiction over the judgment that's been entered. I cannot  
15 effect that judgment and their jurisdiction over it, and I would  
16 not intend to. If I make changes to that which is operative  
17 before them, unless they simply dismiss their jurisdiction, they  
18 will either confirm or deny what's been done.

19 If that's different than what I do, we're doing it  
20 again. If it's not different than what I do and I make changes,  
21 there will inevitably be an appeal. That appeal will result in  
22 an affirmation, and not of my work, and we will do it again. I  
23 think that's a recipe for madness. That's my personal opinion  
24 about it. I appreciate you all being patient with me saying it.

1           Assuming that doesn't result finally in any  
2 resolutions, let's move a pace. There's a number of motions that  
3 need to be heard. I assure you I've read assiduously all things  
4 in this file. Whether they're all in my head or not is something  
5 altogether different. And I offer no presumptions about that.

6           There are nine outstanding motions and various replies  
7 and oppositions that need some resolution. And I'm going to  
8 begin in the order of my choosing. The first one I'd like to  
9 begin with is the Motion to Disqualify Plaintiff's Counsel.  
10 That's actually the fourth in order, if you will, of the filings.  
11 That was lodged initially on March 27th.

12           Mr. Polsenberg, I don't know if you or Ms. Brantley or  
13 Mr. Campbell are going to be the principal target of my  
14 questioning.

15           Sir.

16           MR. POLSENBERG: I was going to argue everything, until  
17 you just said that. So now maybe I'll make one of the two of  
18 them answer questions.

19           THE COURT: I was just going to see if you were going  
20 to throw that, I'm sure, extraordinarily, intelligent, capable  
21 young attorney to your left under the bus.

22           MR. POLSENBERG: Exactly what I was saying.

23           THE COURT: Well, I'll leave that between you and her,  
24 I suppose.

1           What I'd like to do stylistically, Counsel, I don't  
2 want to squash the art of advocacy. I know you'll have some  
3 prepared remarks, but I really have some questions I'd like  
4 answered first before we get into the arguments. So I'd like to  
5 begin with some questions to make sure we're all working on the  
6 same operative facts and then give you the opportunity to argue.

7           MR. POLSENBERG: And that's why I brought Adrienne and  
8 Rick along, because Adrienne has read the entire trial transcript  
9 and Rick lived through it. So I may call on them for individual  
10 questions.

11          THE COURT: Okay. In general, though, I'll expect one  
12 of you to argue or answer a particular issue. I'll give you some  
13 latitude, given the representation you just made.

14          So perhaps we can begin in this way, Mr. Polsenberg.  
15 We can all agree -- I know you would all be too polite to do it,  
16 but we can all agree, look, I'm just a knuckle-dragging former  
17 prosecutor with a lot of trial experience. And so I'm kind of  
18 slow on the uptake, but I need to understand a few things  
19 factually about this Motion to Disqualify.

20          If I understand the lay of the land, Mr. Polsenberg,  
21 you -- and I'm referring to your law firm, not to you  
22 personally -- represented them prior to trial in this case on  
23 issues related to this property.

24          MR. POLSENBERG: Not in this case.

1 THE COURT: Prior to this case, I said.

2 MR. POLSENBERG: Oh, I'm sorry. Yes.

3 THE COURT: And after you're client now lost to them at  
4 trial in this case, he hired you against your former clients.

5 MR. POLSENBERG: Yes. But that's not the distinction  
6 in the rule.

7 THE COURT: Well, Mr. Polsenberg, we will get to the  
8 niceties of the rule. I just want to make sure I'm understanding  
9 the lay of this land, because candidly it does not feel very  
10 comfortable to me, quite honestly. It feels anathema, in fact,  
11 to the general rules under which we all operate. Now, I've got  
12 some very pointed questions for your colleagues related to issues  
13 of laches, but I just want to make sure we were on the same sheet  
14 of music.

15 I have reviewed, for example, some of the billing  
16 inquiries. And you characterize Lewis Roca's representation of  
17 the entities on the other side of the room as incidental and  
18 minor. And if I may, did that representation include billing in  
19 excess of \$123,000?

20 MR. POLSENBERG: Yes.

21 THE COURT: Here's why I ask. Simple math at \$400 an  
22 hour would result in a figure in excess of 300 hours of work. Is  
23 that true?

24 MR. POLSENBERG: I'm not good at math, so I'll just



1 take your word for it.

2 THE COURT: All right. So let's assume it's in excess  
3 of 300 hours of work. That work involved formation of the  
4 entities involved here, correct? Review of some of the loans  
5 that preceded -- the Hale loan, for example, that preceded the  
6 issues in dispute here; did it not?

7 MR. POLSENBERG: Yes. The gaming -- it involved the  
8 gaming lease and it involved an opinion letter regarding the deed  
9 of trust that was related to the loans.

10 THE COURT: To two of the loans, correct?

11 MR. POLSENBERG: Yes.

12 THE COURT: Those two loans are incidental facts  
13 related to this controversy; are they not? Because Mr. Yount's  
14 claim was these folks didn't tell me the true financial picture  
15 when I invested. Isn't that true?

16 MR. POLSENBERG: I don't think they even rise to  
17 incidental to what is now before the Court, because what is now  
18 before the Court is the so-called counterclaim. And that  
19 involved Mosaic either lending or restructuring loans.

20 THE COURT: Right.

21 MR. POLSENBERG: The fact that there were loans is a  
22 fact that is part of the case, but any detail of those is not a  
23 critical factor in this case.

24 THE COURT: But at the heart of the complaint by your

1 former clients would be: I necessarily spoke with my attorneys  
2 about funding related to this project. Right?

3 MR. POLSENBURG: No and no. No, there was no complaint  
4 by them; and no, the discussions they had with us simply involved  
5 an opinion letter under Nevada law to assist their California  
6 counsel on whether the deed of trust was proper under Nevada law.

7 THE COURT: Well, you properly anticipated one of my  
8 questions. You asked them, of course, if they would mind if you  
9 represented Mr. Yount, did you not?

10 MR. POLSENBURG: No.

11 THE COURT: Why not?

12 MR. POLSENBURG: Because I don't think it -- when we  
13 did the conflict search it was a prior matter. We didn't  
14 represent them anymore, and it was not a substantially related  
15 case.

16 THE COURT: Let's pause there. There has been  
17 Mr. Criswell's Motion to Disqualify. Mr. Criswell, as I  
18 understand it, complains, "They were my attorneys previously."  
19 If I understand the lay of the land, Mr. Little had to know as of  
20 June of 2017 that they were involved in this alleged contract  
21 because of a related or an unrelated employment -- piece of  
22 employment related litigation, right?

23 MR. LITTLE: I didn't remember that, no. Candidly,  
24 Your Honor.

1           THE COURT: Well, whether it was in your memory banks  
2 or not, you were at least constructively charged with that  
3 knowledge. Correct?

4           MR. LITTLE: Perhaps. I'd have to go back and look at  
5 the file. I know that we took over the Mullan file from  
6 somebody. I don't recall who. And I think that matter had  
7 closed before I moved over to the Howard and Howard law firm and  
8 I was wrapped up in this trial.

9           So it is a very narrow issue.

10          THE COURT: That then raised the issue of a potential  
11 conflict in October, right?

12          MR. LITTLE: Yes, sir.

13          THE COURT: They then appeared with you at a settlement  
14 conference with Mr. Eisenberg when you knew about the alleged  
15 conflict, right?

16          MR. LITTLE: I thought the conflict issue came up at  
17 the first settlement conference with Mr. Eisenberg.

18          THE COURT: That was in December.

19          MR. LITTLE: Yeah. We were sitting there in December,  
20 and -- because what I had represented to my clients is that they  
21 had retained Mr. Polsenberg. I didn't say the law firm. I said,  
22 you know, "He's a top appellate attorney in the state." And  
23 that's what I represented. When we got to the settlement  
24 conference with Mr. Eisenberg -- my client can correct me if I'm

1 wrong -- there was a sign-in sheet. And it said, "Lewis and  
2 Roca," and that's when they said to me for the first time, "Oh,  
3 my gosh. They were our attorneys. They were our go-to Nevada  
4 counsel on this project."

5 THE COURT: And then you had a settlement conference?

6 MR. LITTLE: And then we had a settlement conference,  
7 and that's when I sent the letter, right after that.

8 THE COURT: You sent a letter.

9 MR. LITTLE: Yes, sir.

10 THE COURT: I assume had you reached a settlement,  
11 there would be no complaint about the alleged conflict.

12 MR. LITTLE: Fair.

13 THE COURT: The letter is sent. And then the motion is  
14 filed in March.

15 MR. LITTLE: Yes, sir.

16 THE COURT: How is that not subject to laches?

17 MR. LITTLE: Well, I think we have to look at it in two  
18 periods, right? The first period leading up to the December  
19 conference, I didn't know from my clients that the Lewis Roca law  
20 firm had represented them and represented them to that extent.  
21 Certainly it was the situation that I explained: The sign-in  
22 sheet; Lewis and Roca; they explained it. As soon as they did  
23 that, the next day, I believe, is when I sent the e-mail to  
24 Mr. Polsenberg or his associate saying, "Hey, this is conflict.

1 Will you guys withdraw?"

2           They sat on it for a while. Wanted to consider it. I  
3 don't know how long that period of time took. Eventually they  
4 got back to me and said, "No, we're not going to do it." I think  
5 there was about a four- or five-week period of time before I  
6 filed the motion. And candidly, Your Honor, that was just the  
7 timing issue of it, because I was busy, I was doing it as fast as  
8 I could.

9           THE COURT: I appreciate there are timing issues, and I  
10 appreciate there a differences between actual knowledge and  
11 constructive knowledge. But I find it -- I'm as uncomfortable  
12 with the delay in raising this issue as I am with the issue. I  
13 find it -- unseemly is maybe too strong a word. I just find it,  
14 to outside observers, outside of the legal profession and all of  
15 us, discomfoting that your clients would have had them as an  
16 attorney when, against Mr. Yount, and then he would hire the  
17 people who beat him against your clients. I think citizens in  
18 the community -- that's not a legal standard -- are deeply  
19 distressed with that sort of thing. That's the level of  
20 discomfort I have.

21           But by the same token, this is a strategic move. I  
22 don't believe there is an actual discomfort related to this  
23 conflict of interest, given the prodrome of events. If, when  
24 first learning of it, even at the settlement conference, your

1 clients said, "Wait a minute. Wait a minute. Wait a minute. We  
2 can't have them now working against us when they were our  
3 attorneys before."

4 "We'll roll the dice. We'll go to settlement. If we  
5 reach a settlement, great. Mores the better. No complaint. No  
6 harm, no foul. We will engage in the briefing schedule that  
7 Judge Polaha laid out, and no harm, no foul. We'll get all the  
8 way to March, and after -- if memory serves -- Judge Polaha's  
9 order, and then we'll raise an issue related conflict." That  
10 seems unfair.

11 MR. LITTLE: Well, I can assure Your Honor there was no  
12 tactical advantage, there was no ulterior motive for that, other  
13 than just timing.

14 In terms of the settlement conference, I had flown up  
15 from Southern Nevada. The clients had come in from California  
16 for that settlement conference. Mr. Campbell was there. You  
17 know, that's when the issue was raised. I guess, could we have  
18 walked out there? Sure. I don't think that that settlement  
19 conference lasted very long to begin with.

20 But sure, Your Honor, I guess you're right. We could  
21 have walked out as a matter of principle and said, "We want to  
22 address this issue first." I hadn't even researched the issue,  
23 written the letter to counsel yet. I think it was the next day  
24 that I did that. And, like I said, the delay between when they

1 said, "No, we're staying in," and me filing a motion was just a  
2 matter of my schedule. And I apologize. I wish I had acted  
3 quicker. But there was no bad motive/ulterior motive/tactical  
4 advantage there for doing that.

5 THE COURT: Mr. Polsenberg.

6 MR. POLSENBERG: Thank you, Your Honor. We responded  
7 in seven days. And the reason it took seven days to respond is  
8 because we culled what information we could. I brought the  
9 general counsel of the firm in, looked at the situation, compared  
10 it to the rules.

11 You know, it may be a lay person's belief that if I  
12 ever hired a lawyer, that lawyer could never be against me. If  
13 that were actually a law in Nevada, I never would have been in  
14 the Wynn case, because at some point before the Wynn had hired my  
15 firm. But they didn't hire -- we currently weren't representing  
16 the Wynn and we currently weren't representing these people, and  
17 they weren't substantial related where I obtained information  
18 that gave me an unfair advantage.

19 They cite the Waid case. And in the Waid case, the  
20 attorney, Noel Gage, had defended Vestin on a Ponzi scheme. I  
21 couldn't remember the word, a Ponzi scheme. And then after that  
22 case was over, the other plaintiffs' suing the Vestin, he  
23 defended the Vestin in the prior case on the Ponzi scheme, other  
24 plaintiffs brought Noel Gage in late to the case. But since he

1 already knew about what the Ponzi scheme was at Vestin, he came  
2 in and named all new witnesses, because he knew what went on in  
3 that client involving the actual issue involved in the case.

4 That gave that client an unfair advantage. And that's  
5 why the Supreme Court said no, he couldn't be in the second case.  
6 This isn't the situation here. We talk about lay reaction to  
7 appearances, but they have to show more than that. They'd have  
8 so show what kind of information it would be that we'd get out of  
9 those prior representations that would give us an unfair  
10 advantage.

11 In the employment matter, all we did was file an  
12 answer. And we had to withdraw, because the clients were being  
13 uncommunicative and not working with us.

14 THE COURT: It was curious -- I'm sorry for  
15 interrupting. But it was curious in that regard. Some of the  
16 billing invoices attached to the Lewis Roca related to that. For  
17 example, June of 2016 have interesting notes that probably don't  
18 mean anything outside the context of that case. But they include  
19 the short phrases we all use when billing. Funding status.

20 For example, 6-1-2016: Draft and reviewed e-mail to H.  
21 Hall regarding X Ruland (phonetic). That's the name of the  
22 plaintiff in that case.

23 Funding status. I don't know what funding status is  
24 referring to, but it causes me an itch.



1           The very next entry on June 2nd, a variety of entries,  
2 telephone conference with John Moore regarding 16.1 extension.  
3 I'm assuming that's the 16.1 extension in that case. And funding  
4 status, .2; review and respond to email from H. Hill regarding  
5 update finding settlement, .2.

6           It just causes me itch. And I think that's the point  
7 of the three-factor test of Waid, is that I'm not supposed to  
8 dive too deeply into the actual confidential communications, but  
9 make a factual determination regarding the scope of the former  
10 representation and whether it's reasonable to infer that the  
11 confidential information would have been given to a lawyer  
12 representing the client in those matters.

13           Your thoughts.

14           MR. POLSENBERG: Well, I don't know what "funding  
15 status" means either. As you can see this case didn't get very  
16 far. And point 2 is not a very --

17           THE COURT: Substantial.

18           MR. POLSENBERG: Yes. I have to tell you, when I saw  
19 what was going on in the Waid case, that made my blood just go  
20 chill, where this lawyer on the other side knows all about our  
21 so-called Ponzi scheme. We don't have that same kind of  
22 situation here. They don't even try to make any kind of analysis  
23 as to what it would have been that we would have received that  
24 would have given us an unfair advantage.

1           So I don't think they've made out a prima facie case,  
2 and especially under the Waid case. And yes, I was going to talk  
3 about the delay and the waiver and the latches, but I think  
4 you've addressed that.

5           THE COURT: Well, it's Mr. Little's motion. I want to  
6 give you an opportunity, Mr. Little. I've telegraphed my  
7 thoughts, and I want to give you an opportunity to develop any  
8 factual representations you want to make or additional argument.

9           MR. LITTLE: Thank you, Your Honor. You're obviously  
10 very well versed on the motion, so I won't take too much time.

11           Obviously, under the case law, the law firm opposing  
12 the motion, Lewis and Roca, has the burden of showing they don't  
13 possess or have access to sources of confidential information.  
14 And the standard is if there's any doubt in Your Honor's mind,  
15 those doubts have to be resolved against them and in favor of us.

16           The focus here is not whether they have actual access  
17 to confidential information, but whether there's a realistic  
18 possibility that they do. I think Mr. Polsenberg misspoke on one  
19 part. In terms of what's before Your Honor today, certainly the  
20 financing and what is talking about Mosaic is not an issue, but  
21 as I understand the appeal from Judge Flanagan's decision and his  
22 amend order, they're appealing the whole kit and caboodle,  
23 including the defense verdict in our favor. And those issues  
24 certainly do involve financing. Your Honor, was dead on.

1           Mr. Yount was alleging that we misrepresented the  
2 sources of the financing --

3           THE COURT: The exhibit you used to support damages,  
4 was an exhibit used basically to impeach Mr. Yount in terms of  
5 the knowledge he had about the status of financing.

6           MR. LITTLE: Right.

7           THE COURT: I get it. I understand.

8           MR. LITTLE: But there's another important point here,  
9 Your Honor. If you look at their billing records they were  
10 looking at all of the operative agreements in this case,  
11 including the operating agreement, which is -- that agreement was  
12 cited some 110 times in this case. That is a very important  
13 document.

14           Mr. Campbell was making the argument in this case,  
15 which is now up on appeal, that the transaction was void because  
16 the operating agreement wasn't followed. And that's a document  
17 that they reviewed. They reviewed the business plan. So I think  
18 they certainly -- you know, nine different attorneys over a  
19 two-year period of time who go to Nevada counsel who were  
20 representing my clients on these issues on this project, I don't  
21 think that they've met their burden. Their burden is that they  
22 don't have access to this information. I don't think they have.

23           THE COURT: Mr. Little, the heats about to get turned  
24 up. And here's what I mean by that. I actually view this as a

1 fairly close call, because I think as I look at the Waid factors,  
2 it would beg common sense, to my mind, to believe that the scope  
3 of the former representation did include conversations about  
4 plenary financing. All the financing that might occur.  
5 Particularly when financing was -- crumbling is not the word I  
6 want to use, but becoming problematic, when they learned that the  
7 sewer line repair was going to cost a whole lot more money than  
8 it actually cost, for example. That time line, if I understand  
9 it, seems to correspond with the period of what I'm going to call  
10 dual representation. So I can get to the point where it's  
11 reasonable to infer that confidential information may have been  
12 exchanged.

13 Here's the problem you have with me. You cited Brown  
14 versus Eighth Judicial District with the proposition that doubts  
15 regarding disqualification should generally be resolved in favor  
16 of disqualification. Period.

17 What does it say? What does the quote that you took  
18 from the case actually say? I don't know if you have the case in  
19 front of you.

20 MR. LITTLE: I don't, Your Honor.

21 THE COURT: It's not a memory test, and I don't blame  
22 you for that.

23 MR. LITTLE: No.

24 THE COURT: The whole quote is this: While doubts

1 should generally be resolved in favor of disqualification, see  
2 Cronin at 640, 781 P. 2d at 1153, Hull 513 F. 2d at 571, parties  
3 should not be allowed to misuse motions for disqualification as  
4 instruments of harassment or delay.

5           You should know that one of the bugaboos of my  
6 position, which I'm very privileged to have, is in a case like  
7 this across nine motions with probably 400 string sites, when  
8 counsel are sloppy about their citations to relevant precedence,  
9 it makes me very grumpy. And it colors the lens through which I  
10 see the motion. And to my eye, when I know that there's a  
11 significant delay, and the issue of laches is hanging and there  
12 was a settlement conference in which no complaint was made about  
13 the alleged conflict, which may have resolved the case in plenary  
14 fashion, and then I see a quote like that, you know which way I'm  
15 going, if you want to respond.

16           MR. LITTLE: Only other than what I say before, that,  
17 Your Honor, we were not -- my delay had nothing to do with  
18 tactical advantage. There's no harassment here. It's simply a  
19 matter of the smell test. My client, they had paid them a lot of  
20 money. They had represented them for two years. And it just  
21 didn't feel right that they were now taking a position adverse  
22 than when they were their go-to counsel.

23           I raised the issue the day after I learned of it.  
24 Should I have had constructive notice when I was at my prior law

1 firm? I can't dispute that. You know, I didn't have actual  
2 notice. I didn't remember that issue. When Mr. Polsenberg got  
3 involved I didn't know that the law firm had represented them  
4 before. That issue, I think I explained how it came up at the  
5 settlement conference. And I brought it up to them immediately.  
6 When they took their position I moved as quickly as I could to  
7 file the motion. I should have brought it faster. I apologize  
8 for that.

9 It wasn't to secure any sort of tactical advantage or  
10 anything like that. I don't know that anything was going on in  
11 that time period that serves as a prejudice to anyone. But I  
12 understand your position.

13 THE COURT: Well, you did yourself service by the  
14 demeanor in which you responded to a district judge saying, "I'm  
15 about to turn up the heat." It doesn't change, to my eye, the  
16 intellectual observations that I've made, however. So here's the  
17 way I come down on this motion. And it's a messaging to all of  
18 you, the way the day is going to proceed. And I invite you at  
19 any appropriate break to consider this for your clients.

20 First, I find pursuant to Waid, when the prior  
21 representation by Lewis, Roca and Rothgerber of these defendants  
22 included specific legal advice about the source and adequacy, for  
23 example, of funding, and then the later trial in this case was --  
24 had as a central issue the source and adequacy of funding, the

1 first Waid factor is satisfied. It is reasonable to infer that  
2 these defendants engaged in confidential communications with  
3 their lawyers.

4 I realize Lewis Roca is a giant firm with disparately  
5 graphically situated offices. I doubt those officers had actual  
6 conversations with each other about litigation like this. That  
7 matters not. That knowledge is constructively charged throughout  
8 the firm. And it is reasonable to infer that some confidential  
9 information may have been given, and that it was maybe marginally  
10 relevant to the issues raised in the present litigation. But I  
11 deny the motion, because of the issue related to the prodrome,  
12 I'm calling it; the sequence of events related to how the issue  
13 of a so-called conflict was raised, and my belief that it is as  
14 much a tactical decision as it is a substantive decision about a  
15 real complaint about confidential information.

16 So for that reason, I deny the Motion to Disqualify,  
17 and I direct Mr. Polsenberg that you and your office craft an  
18 order denying that motion.

19 MR. POLSENBERG: Thank you, Your Honor.

20 THE COURT: The next issue I'd like to go to is the  
21 Plaintiff's Motion for Judgment as a Matter of Law, for Relief  
22 from Judgment, to Alter and Amend the Judgment, to Amend the  
23 Findings, and for a New Trial. I guess we'll get a relatively  
24 small -- easy for me to say -- issue out of the case -- out of

1 the way.

2 I've not had the privilege of working with many of you  
3 before, but you all should know I will remember you. And I think  
4 I will remember in good ways. But if anyone in this case or any  
5 other case in front of me files a motion exceeding the page  
6 length of the pretrial order, I'm simply going to strike it. I'm  
7 not going to look at it. I'm not going to read it. I'm going to  
8 strike it.

9 This motion exceeds more than 20 pages, and closes in  
10 on 25 pages. Is that the end of the world? No. But it is,  
11 again, a matter of no small irritation to me when, for example,  
12 the plaintiffs complain that the pretrial order NRCP 16(b)  
13 preclude the defendants from saying that they can amend the  
14 pleadings after the date lodged in the pretrial order and then  
15 don't follow the pretrial order. That's a matter of no small  
16 frustration to me. Anybody want to respond to that?

17 Let me say it again. A part of your argument,  
18 Mr. Polsenberg --

19 MR. POLSENBERG: Yes, sir.

20 THE COURT: -- about whether or not they should be able  
21 to amend the judgment, the pleadings, the allegations against  
22 your clients or otherwise is that 15(b), NRCP 15 shouldn't apply,  
23 because there was a pretrial order in this case saying the date  
24 certain to amend pleadings was a date last year at the same time



1 that you fail to comply with the pretrial order in the pleading  
2 length.

3 MR. POLSENBURG: And, Judge, are saying that our Motion  
4 for Judgment as a Matter of Law exceeded the page limit?

5 THE COURT: Yes.

6 MR. POLSENBURG: I've got a 15-page motion.

7 THE COURT: Well, we can parse about that. Whether  
8 it's that motion or another motion to which it applies. I'm not  
9 going to strike it. I just want to send the message. Don't  
10 expect that from a judge's point of view I won't use the rules  
11 that you try to use against each other against you. Because  
12 there is a motion that you have filed that does exceed the page  
13 limit. And it was a matter of no small irritation to me.

14 MR. POLSENBURG: And I apologize for that. And a lot  
15 of these motions have an awful lot of briefing. And I apologize  
16 for that at a certain level as well.

17 But the distinction between Rule 15 and Rule 16 --

18 THE COURT: Let's not go there yet.

19 MR. POLSENBURG: All right.

20 THE COURT: So I'm not going to striking this or any  
21 other motion today, but going forward, please be warned. If you  
22 don't skew to the admonition that I think it was Mark Twain who  
23 said, "If you want me to give you 20 pages on any subject, give  
24 me a couple of hours; if you want me to give your five pages on

1 any subject, give me a couple of weeks." I expect you to spend a  
2 couple of weeks.

3 MR. POLSENBERG: Very good, Your Honor.

4 THE COURT: Thank you. So as to the Plaintiff's Motion  
5 for Judgment, here's my first concern Mr. Polsenberg, and you  
6 touched it on already. Aren't you in essence asking me to act as  
7 a intermediate court of appeals?

8 MR. POLSENBERG: When you came out and you started  
9 talking about anything you do really doesn't matter, because the  
10 Supreme Court is going to have to address all that, that really  
11 got me thinking.

12 There is Nevada case law saying that a replacement  
13 district judge has an obligation to correct the improper rulings  
14 by the prior judge. Now we raised that in front of Judge Polaha.  
15 And Judge Polaha, I think, took the same approach that you did,  
16 and said, "The issue in front of me really is, is there enough  
17 under Rule 52." And even though the law in Nevada has veered to  
18 the point where a replacement judge has to make things right, I  
19 understand that you're coming in essentially after the judgment.  
20 There are a lot postjudgment motions going on.

21 So I do understand what you are saying. And although  
22 there are in some contexts the authority of a district judge,  
23 whether the same judge as the trial judge or another one, to have  
24 to review the trial to determine whether the factors are there.

1 Rule 59 has an element of discretion involved. I'm not sure that  
2 discretion really comes up here, because my arguments are purely  
3 legal. So --

4 THE COURT: Well, it's a --

5 MR. POLSENBERG: -- two answers.

6 THE COURT: Go ahead.

7 MR. POLSENBERG: Number one, when you came out and said  
8 that, I thought, wow, that's a great observation. And my other  
9 answer is, but, yeah, I'd really like you to rule on these  
10 motions.

11 THE COURT: Well, of course.

12 MR. POLSENBERG: But I do understand. I do think in  
13 this case -- forgive me for interrupting. I think you are right;  
14 whichever you rule, this case is going to go up on appeal.

15 THE COURT: And I just wonder if all of your collective  
16 thoughts -- I mean, I know that I have some of the very best  
17 lawyers in the state in front of me, so I don't mean to  
18 second-guess any of you, but I just wonder if your clients  
19 understand that they're going to double their litigation costs by  
20 this process, and their litigation costs have not been  
21 insubstantial to date. And someone is going to lose, and lose  
22 badly after the dust settles after I do whatever I do and  
23 whatever the Supreme Court does. And it just seems a curious use  
24 of resources.

1 I'm just going to leave it at that. We beat that  
2 horse.

3 MR. POLSENBERG: Yeah. I think it's a really good  
4 observation. I think what we were trying to do was get it  
5 resolved early enough. I think probably part of what we were  
6 doing is trying to get our arguments articulated so the two sides  
7 could talk about resolution without having to bother the Supreme  
8 Court. But I do think your observations was spot on, Judge.

9 THE COURT: Well, I appreciate that. I don't want to  
10 be spot on so much as I want to try to help both sides of this  
11 room get to a resolution. And that's why I'm going to make  
12 judgments, because in the end, that's my job.

13 The next question I have, and then I promise I'll shut  
14 up and let you do whatever advocacy you like, but I think this  
15 will help your advocacy in front of me, is why doesn't the  
16 language of Rule 54 begin and end my decision as regards your  
17 complaints and the defendant's request?

18 And here's what I mean. It says, "Except as to a party  
19 against whom a judgment is entered by default, every final  
20 judgment shall grant the relief to which the party in whose favor  
21 it is rendered is entitled, even if the party has not demanded  
22 such relief in the party's pleadings."

23 Because your compliant with Judge Flanagan -- and let  
24 us pause for a moment.

1           Mr. Polsenberg, I'm beginning to get to know you. You  
2 strike me as a person, who like me, skews to respect for the  
3 position, whether you like the person or not. We all must  
4 respect the position of a district judge.

5           I was a little touchy about some of the criticisms you  
6 offered of my former colleague, Judge Flanagan. I'm not going to  
7 say anything else about it, except to say, I didn't see him  
8 operating. And I don't know why he couldn't do exactly what he  
9 did, in light of that admonition under the Rules of Civil  
10 Procedure. Please.

11           MR. POLSENBERG: May I first address Pat Flanagan. He  
12 was a close friend of mine, partner of mine and Rick's for many  
13 years. We were on the Board of Governors together. We were  
14 drinking buddies back when we both drank. And I have a great  
15 deal of respect for him. And I have a respect for all judges.  
16 And actually, I like almost all judges. So I don't mean anything  
17 as a criticism in that sense. I do think he made legal errors in  
18 this case.

19           THE COURT: Well, there are legal errors in every case.  
20 Can we agree? No case is perfect.

21           MR. POLSENBERG: Mr. Jemison, you notice at one point  
22 in the transcript Judge Flanagan starts talking about Rex  
23 Jemison. And Rex Jemison some said that every -- and Bob Rose,  
24 when he was on the Supreme Court -- no trial is perfect. Right.

1 But I think these rise to the level of reversible legal error.

2 And 54(c) I think is a very interesting rule. It's  
3 from the federal -- you know, we just steal the federal rules.  
4 And 54(c) makes a lot more sense in federal court than it does  
5 here. And the reason for that is 54(c) has two parts. You read  
6 the second part. The first part is in a default the plaintiff  
7 can only recover what is in the prayer for relief.

8 And there are a number of reasons for that. One of  
9 them actually ties in with Rule 8. And that is that a defendant  
10 getting the complaint could say, you know, I don't even need to  
11 answer this, because I know I'm liable and I know I'm liable for  
12 that amount. So I don't mind the judgment being entered.

13 Then the second sentence goes further. But our state  
14 Rule 8 is different, in that it says that you do not set out as  
15 specific claim for relief in money damages. What you ask for is  
16 in excess of \$10,000. There are a number of reasons for that  
17 going back many years. One is so that you don't use the  
18 complaint to generate publicity.

19 I used to argue on the rules committee that we should  
20 change that number. 10,000 was picked when it was the  
21 jurisdictional amount in federal court. It's still 10,000, but  
22 it's just in excess of \$10,000. So a state court judge has no  
23 prayer for relief that restricts a money damages case, because we  
24 don't articulate anything other than "in excess of \$10,000." So

1 I don't think there's really a whole lot of need in state court  
2 for that second sentence.

3 And the federal courts are very clear that what we're  
4 looking at here is, okay if they went under one theory, can they  
5 recover under another theory? If they were asking for certain  
6 relief, can they recover a different relief?

7 That's not what happened here. They didn't have a  
8 prayer for relief. They had an affirmative defense. So they  
9 didn't even have a demand for judgment. And the federal cases  
10 have made clear that 54(c) does not get around the fact that the  
11 issue had to have been tried by express or implied consent.

12 THE COURT: And I accept that your point is, look,  
13 while there have may have been some conversations about my  
14 client, Mr. Yount's, knowledge of the financing and some  
15 accusation that he was, in Judge Flanagan's words, with cahoots  
16 with the rest of the Incline Men's Club, how was he to know that  
17 he would walk into court hoping to get a money judgment in his  
18 favor and walk out of court having to pay millions. You know,  
19 4.5 plus attorney's fees and costs, now a request for another  
20 five-odd million dollars. I get that from a due process  
21 perspective. But isn't that a different question? Isn't that a  
22 question of damages?

23 And as one of the defendant's acknowledges, at most,  
24 around you entitled to a new hearing related to what the damages

1 may be. Because didn't he impliedly know that their claim was --  
2 to all parties in the room, please be thick skinned. I mean to  
3 defame no one. But their claim was he was just a lying officious  
4 intermeddler who squirreled the financing for this deal for  
5 reasons nobody can fathom.

6 MR. POLSENBERG: But that was their affirmative defense  
7 for not having to pay the million dollars.

8 THE COURT: I know you say it was an affirmative  
9 defense, but we all know -- I, of course, see things through my  
10 lens of experience the way we all do, but I've gone to the close  
11 of evidence in a first-degree murder case and amended the  
12 pleadings. We all know that anyone can at any time seek to  
13 adjust the claim for relief to the evidence actually adduced,  
14 because trials are living, breathing things. They go in  
15 directions we don't expect.

16 You can't honestly say that your client and his counsel  
17 didn't know and expect that walking in he would hope for money  
18 and walking out he could have to pay money. Right?

19 MR. POLSENBERG: Well, no, we didn't expect that. And  
20 I got to commend Rick. I mean, he repeatedly objected. He  
21 objected even to this being an affirmative defense. He objected  
22 to it that there wasn't a counterclaim. He asked the defendants,  
23 are you asserting a counterclaim on this. And Marriner went so  
24 far as to concede that there was an intentional --



1 THE COURT: Let me ask -- and I apologize for talking  
2 over --

3 MR. POLSENBERG: Judge, we've done this before. You  
4 know I enjoy it.

5 THE COURT: Why did you opine that Judge Flanagan's  
6 identical damage award to the three individual defendants of  
7 1.5 million was evidence of his prejudice? Meaning Judge  
8 Flanagan's prejudice. Why did you opine that?

9 MR. POLSENBERG: I think it's evidence of excessive  
10 damages arising from passion and prejudice. And this is an  
11 argument that we have raised in many trials. Last I'm argued it  
12 in the Supreme Court was about two and a half weeks ago. Where a  
13 jury verdict came in and awarded 7.5 and 7.5. And we said look,  
14 the fact that they are identical numbers shows a lack of  
15 reflection, which is indicative of passion and prejudice.

16 THE COURT: All right. One other question that I have  
17 curiosity about: You at one point in the -- in your response to  
18 their opposition, I believe, indicate that your client would have  
19 had to consent to a counterclaim in this case. What did you mean  
20 by that?

21 MR. POLSENBERG: Rule 15(b) and the federal cases under  
22 54(c) talk about how issues have to be tried by consent, either  
23 expressed or implied.

24 THE COURT: Right. So -- I apologize. 15(a) says,

1 "Otherwise a party may amend the party's pleading only by leave  
2 of the Court or written consent." But isn't the next phrase,  
3 "and leave shall be freely granted or given when justice so  
4 requires"?

5 MR. POLSENBERG: Right. And that's when we get into  
6 the Nutter case, where Judge Tao explained the distinction  
7 between 15 and 16. I've had Ninth Circuit cases on this very  
8 point, where, yes, a district court should freely grant up to the  
9 point where there's a deadline under Rule 16. And after that,  
10 there's a higher and more stringent standard.

11 And 15(a) is not the same as 15(b). That doesn't mean  
12 that amendment should be freely granted to conform to the  
13 evidence, unless you meet the requirements of 15(b).

14 We did not consent. There are cases that say the  
15 parties has to understand what's being tried, and let it go and  
16 acquiesce, impliedly or expressly consent to a claim being tried.  
17 But when the evidence is coming in relevant to something else,  
18 it's relevant to their affirmative defense. That doesn't mean  
19 that we are consenting to a counterclaim.

20 THE COURT: Other argument you wanted to offer in light  
21 of either my comments or that you haven't had an opportunity to  
22 offer?

23 MR. POLSENBERG: This motion is the motion that during  
24 the settlement conference I said to Bob Eisenberg and to Marty,

1 this is our motion for everything. So it is, I think, the  
2 critical motion in the case. Although I think it ties in a lot  
3 with the Rule 27 motion.

4 I think if you were going to take the approach that  
5 everything is going to wind up needing to be decided by the  
6 Supreme Court anyway and it is a waste of the parties' resources  
7 and the Court's resources to have to go through and have to  
8 address all these issues, I think we should still address the  
9 Rule 27 issue.

10 And the Rule 27 issue goes exactly to the notion that  
11 there wasn't an interference here. So let me go through all  
12 that. We've already discussed this, that they raised an  
13 affirmative defense. Unclean hands. But unclean hands is an  
14 equitable defense. It's an defense to a claim in equity. If we  
15 were bringing an action here saying we want X number of shares or  
16 we want them to have to perform things in a certain way, some  
17 kind of injunctive relief action, that's when this would apply.  
18 But it doesn't apply. This affirmative defense doesn't apply in  
19 this case, because it's not equitable. And I don't think they've  
20 shown enough for this even to be an affirmative defense here.

21 Look what they argued. They didn't argue that this was  
22 a claim for damages. We objected to this being raised. We  
23 objected to it being raised an a claim for damages. They denied  
24 it was a counterclaim. They denied under oath that they had ever

1 asserted a counterclaim.

2           Marriner even comes in and says, "Look the purpose of  
3 this affirmative defense is to get an offset." So there was  
4 nothing there ever telling us about an affirmative defense. And,  
5 you know, they -- remember it's unclean hands versus intentional  
6 infliction -- or intentional interference with contractual  
7 relations. And they don't have a claim for interference.  
8 They've got the wrong parties here.

9           The first thing that you have to do is show what the  
10 contract is that's being interfered with. And it looks like  
11 they're saying the contract is Cal-Neva's future contract with  
12 Mosaic to have a loan. You get the wrong parties here. They  
13 can't be suing. Cal-Neva would have to sue.

14           THE COURT: What about the e-mails, including  
15 Exhibit 124 that Judge Flanagan lasered in on, both in his oral  
16 pronouncement and in questions during your trial, that he, Judge  
17 Flanagan, clearly believe showed that Mr. Yount was at the switch  
18 when the torpedo was launched to the Mosaic financing.

19           MR. POLSENBERG: Man, I sure do not read Exhibit 124  
20 that way at all. The way I read 124 is that Mosaic is saying  
21 that -- one of the e-mails in that string, Sterling Johnson, he's  
22 talking about C.R. being uncommunicative, having concerns with  
23 their management, talking about it being a little bit of a mess.  
24 And that they were waiting for three of months for C.R. to

1 respond. Paul Jamison in his e-mail in that chain says that the  
2 mess is C.R. being unresponsive. And Radovan even says in the  
3 e-mail in that chain that -- that Mosaic is irritated by their  
4 sluggishness.

5 It all goes to show it isn't my client that's doing  
6 this. They're having problems, which is why I think you need to  
7 grant the Rule 27 motion, to let us have the discovery from these  
8 individuals from Mosaic, because I think that will show that this  
9 so-called interference was not the cause of the brawl. The brawl  
10 was because Mosaic was not dealing with them anymore because they  
11 were not doing a good job.

12 But let me go back to my point about the wrong parties.  
13 This contract -- first of all, the first element of intentional  
14 interference is that you have to have a valid and existing  
15 contract. There wasn't an existing contract. They're saying  
16 there was interference with negotiations for a contract, but  
17 that's not an intentional interference. And who is the contract  
18 with. It's the loan contract between Cal-Neva and Mosaic. The  
19 cause of action belongs to Cal-Neva, not to them, as  
20 individual -- I'll call them shareholders.

21 And there claim is against another shareholder. Can  
22 Cal-Neva sue somebody with an ownership interest in the entity,  
23 because that person expressed an -- and I'm assuming facts here  
24 that I do not believe to be the facts that were proven. But let

1 me just say, if somebody with an ownership interest goes to the  
2 business entity and says: I do not like the terms of that loan,  
3 that can't be intentional interference with the contract. And  
4 they even admit, Marriner admits that there wasn't any intent to  
5 interfere.

6 In fact, Marriner in the briefs in the district court  
7 called it inaction. There's no such cause of action as  
8 intentional inaction. It has to be an actual interference. And  
9 that didn't exist in this case. What they really seem to be  
10 saying is that a steward didn't do something to be prevent other  
11 people from slowing down and stopping this loan.

12 THE COURT: Well, by my count though, there are  
13 16 pages of trial transcript about e-mails back and forth. And  
14 I've read more e-mails than I care to read already. But I  
15 realize that there are intellectual arguments about the limits of  
16 what you understood their theory of a claim to be or otherwise.

17 But don't you agree, there's no real dispute that the  
18 defendant's theory in defending the case was that your client had  
19 done things affirmatively wrong, including his involvement by  
20 their theory with the Mosaic loan.

21 MR. POLSENBERG: That was their strategy to make us  
22 look bad by saying that all the stuff about the Mosaic loan. And  
23 we objected. We pointed out it wasn't a counterclaim and we  
24 objected saying it's not even a valid affirmative defense.

1           THE COURT: And so what then of the issues of judicial  
2 economy? And here's why I began with the comments I began.

3           I get it that your complaint, as I've already said, is  
4 about due process notice to your client about the remedies that  
5 would be given by Judge Flanagan to the defendants in a loss by  
6 him. But why in the world would we have a system where at the  
7 end of seven days in a bench trial where a central issue was the  
8 actions of Mr. Yount, we would then have to have another seven or  
9 multiday trial to determine what those actions meant. Isn't that  
10 why 15 and 54 exist?

11           See to me, from the bench perspective, I don't want any  
12 of you to have do this again, let alone do it two or three more  
13 times, which is the path we seem to be upon, quite candidly. And  
14 I can understand completely, speaking as a trial judge why Judge  
15 Flanagan would say, "Look, I'm aware of NRCP 15 and NRCP 54. I'm  
16 hearing the witnesses. They're talking about the central facts  
17 and issues in this case."

18           We trial judges have a saying: Be careful what you ask  
19 for. And that's clearly what Judge Flanagan did where Mr. Yount  
20 is concerned. I will reflect to you, I don't find that  
21 offensive, but please convince me --

22           MR. POLSENBERG: Here's why I find it so offensive. We  
23 did not know that this was going to be a claim against us. If we  
24 had known it was a claim against us, we would have done things

1 different, both in discovery and in trial. Which is why I'm  
2 asking you to let me depose these people from Mosaic.

3 In our brief we talked about proportionality.  
4 Proportionality is a huge issue now, when it comes to discovery.  
5 Commissioner Ayres has talked about it. You don't do more  
6 discovery than you need to do. The discovery that you would do  
7 facing an affirmative defense, which honestly doesn't even apply  
8 in a damages case, would be much more limited than the discovery  
9 you would do defending against an intentional interference.

10 So we didn't do that discovery. We kept checking  
11 during trial, make sure it wasn't a counterclaim, and it wasn't.  
12 If the judge -- and the judge -- he certainly should have done it  
13 before closing arguments. If a judge is going to say, "I'm going  
14 to convert this claim that doesn't exist into a claim that does  
15 exist," at that point the trial should have stopped and reopened  
16 discovery and allowed us to do these things.

17 And it makes my record on appeal for what really  
18 happened here. So you're saying would a judge need to do  
19 something for another seven days? Yes. I don't think it would  
20 take seven more days of trial, but I do think that evidence would  
21 have been necessary. I think the whole case -- I don't think  
22 there is an intentional infliction of emotional -- intentional  
23 interference.

24 THE COURT: I know where you're going.



1 MR. POLSENBERG: Thank you, Judge.

2 An intentional interference with contractual  
3 relationships claim here. I do not think that there is one. But  
4 if there is one and we didn't know about it, that is a denial of  
5 due process and we need a new trial. And if you ordered a new  
6 trial, unlike in the federal system, a grant or denial of a new  
7 trial is appealable in Nevada.

8 THE COURT: Let me tell you, maybe this will help for  
9 this and subsequent motions. I have no intention -- let me say  
10 that again -- I have no intention of disturbing or setting aside  
11 Judge Flanagan's findings that the seven causes of action brought  
12 by Mr. Yount were not proven. I have no intention of setting  
13 that aside.

14 Let me help more in this way. The struggle I have  
15 after a lot of hours and a lot of conversations with my law  
16 clerk, Ms. Bolin, who's behind you all and I introduced to you by  
17 this reference, and my administrative assistant Tony Clark's  
18 daughter who's also a lawyer, a career law clerk to Brian  
19 Sandoval for a while and a formidable attorney herself. All of  
20 that leads me to this conclusion and I hate saying this. I have  
21 found every way possible to uphold anything that my predecessor  
22 has done, not only because I thought he was a fine judge and a  
23 fine lawyer, it just makes sense. The last thing we should have  
24 is a system where if you get a new judge, you get a new look at

1 the facts.

2 But I can't say on this record how he got to  
3 1.5 million. There's no findings of fact or conclusions of law  
4 that have ever been entered by either Judge Flanagan or Judge  
5 Polaha.

6 And let me put this in the record. I don't know if you  
7 all know this. I didn't see it in the minutes or anything  
8 recorded I've seen, but after Judge Flanagan died and after I was  
9 appointed, I had a brief contact with Judge Polaha. And Judge  
10 Polaha said, "Look, I'm up to my eyeballs in this" -- I won't  
11 tell you the word he used -- "case."

12 MR. POLSENBERG: I know Judge Polaha, and I know what  
13 word he said.

14 THE COURT: And he said, "I've already read the  
15 transcripts. I'll just do you a solid, and I'll finish the thing  
16 that I set upon to do."

17 It speaks volumes of him, and I greatly appreciate it.  
18 But it was after he did that, that I said it would make sense  
19 that I take the case back, not to get yet a third look at the  
20 facts. That's just madness.

21 But I can't say, from my own independent review, how  
22 Judge Flanagan got to 1.5, 1.5, 1.5. And the record doesn't  
23 reveal it. And I know the Supreme Court is going to say the same  
24 thing. And that's why I don't want to do this. And where I'm

1 going, my inclination at the end of day, without cutting through  
2 all of the arguments on the rest of these motions would be to set  
3 a damages hearing. A hearing where I would allow proof related  
4 to claims by the defendants made against Mr. Yount and allow  
5 Mr. Yount to answer those claims. Not so much in a new trial  
6 setting, but in a setting related to if there are damages, what  
7 are they.

8 Because, for example, I forget the exhibit number, but  
9 the financial spreadsheet used to establish that 1.6 somehow is  
10 close to 1.5. That was introduced at trial really to impeach  
11 Mr. Yount. And that's a prediction by a financial analyst to  
12 what might be earned in the future.

13 Well, no offense to Mr. Yount, anybody coming into this  
14 case knew -- nobody was guaranteed to make a dollar. And nobody  
15 has made a dollar, as a matter of fact about it.

16 MR. POLSENBERG: Well, none of the parties.

17 THE COURT: Touche.

18 So I can't say that I have any confidence -- and  
19 please, Judge Flanagan forgive me. But I just can't say I have  
20 any confidence about how he got where he got. And that is  
21 troublesome to me. And so the kind of the where I'm going at the  
22 end of the day, if there's relief that's to be granted, I'm not  
23 setting aside any judgment. I'm not going to amend the findings,  
24 because there aren't any findings that I can find to amend, quite

1 honestly. I know what he said in his oral presentation, but you  
2 all know better than I, and I know from the Mack litigation that  
3 what a judge says and what goes into the order are two different  
4 things.

5 And it's intended to be that way, so that Judge  
6 Flanagan can do what he did, which is say, you know what, now  
7 that I've said what I've said, I'm going to go back and reread  
8 the transcript, which he did, and then I'm going to make some  
9 more factual findings, which he did.

10 And I've done the same thing.

11 MR. POLSENBERG: Well, it's -- Rick's father-in-law,  
12 Charley Springer, used to quote Karl Llewellyn, who wrote the  
13 book *Judicial Opinions*. And Karl Llewellyn thinks that judges  
14 should write their own findings of fact and conclusions of law.

15 THE COURT: Show your homework.

16 MR. POLSENBERG: Because it's, as Llewellyn says, the  
17 rassling with ideas instead of just coming up with an answer.  
18 It's the having to work it all out where a judge realizes what's  
19 really going on.

20 THE COURT: All right. So I've tipped my hand about an  
21 awful lot. I just want to know if there's any other argument you  
22 want to make related to this particular motion.

23 MR. POLSENBERG: My next index card said speculative  
24 damages, but I think we've addressed that.

1 Thank you, Your Honor.

2 THE COURT: Mr. Little? Mr. Simons?

3 MR. SIMONS: Your Honor, I'm going to have the first  
4 go. May I use the podium, please.

5 THE COURT: You certainly may. Although I want you to  
6 be comfortable. The great thing about bench issues like this, is  
7 I can give you latitude. And standing where you're standing, I  
8 couldn't not walk around a courtroom. Mills Lane used to get  
9 furious at me. I say Mills, because he was in this courtroom  
10 when I first tried cases in Washoe County. And he would get so  
11 mad. He would say, "Mr. Walker, would you please stay over  
12 there."

13 MR. POLSENBERG: A little raspier, Judge.

14 THE COURT: Yeah, you're right.

15 MR. SIMONS: All right. In anticipation of my  
16 opportunity to get to speak to you, I got so excited I threw  
17 water all over the table.

18 THE COURT: I've done the same thing.

19 MR. SIMONS: That's the kind of impact you have on me,  
20 after you've just given opposing counsel a little bit of a hard  
21 time.

22 I'm going to start off by apologizing. If I violated  
23 any rules or miscited any case, it was not intentional, and I  
24 apologize.

1           Now I'm going to step to the big picture. And again,  
2 I'm looking at it a little bit like you, and as appellant  
3 counsel, because I wasn't there. So I have to look at what  
4 transpired, what are occurred in the case. So I'm going to  
5 address the merits of the plaintiff's motion, which is the "I'm  
6 going to throw everything in in the kitchen sink motion." Which  
7 if I was in that position, I would do too.

8           So I'm not criticizing that. I'm saying there's a lot  
9 of information. But we've got to step back a little bit, because  
10 right off the bat you pointed out, there's an appeal.

11           Now diving deeper into this case, I realized we have an  
12 issue. And I wrote some timelines to get us all focused on the  
13 issues. And where I'm going to come at this is we have some  
14 timing issues with regard to the plaintiff's motion, and then  
15 I'll get into subjective matters brought by the plaintiff's  
16 motion.

17           We know -- and if I may approach the Court. I don't  
18 think this had been placed in the record. And this is the  
19 Supreme Court's order that came down.

20           Your Honor, may I approach?

21           THE COURT: Yes, please. And approach freely.

22           MR. SIMONS: Thank you, Your Honor.

23           Now this is the order on August 24th, 2018. Why this  
24 order was written by the Supreme Court was because counsel --

1 MR. POLSENBERG: Your Honor, please forgive me, but I  
2 don't know which motion we're on.

3 MR. SIMONS: Your motion. It goes to whether it should  
4 even be considered by the Court.

5 MR. POLSENBERG: I don't recall them briefing this.

6 THE COURT: Do you want to respond?

7 MR. SIMONS: And here's one of the issues, is opposing  
8 counsel has the duty to ensure that his motions are timely. And  
9 opposing counsel didn't advise the Court that we have an issue, a  
10 major issue with the timeliness of their motion.

11 MR. POLSENBERG: I didn't know they had an issue.

12 MR. SIMONS: You should know, Counsel.

13 THE COURT: Hang on. Hang on.

14 MR. POLSENBERG: I'm going to object to an argument  
15 that isn't in the briefs.

16 THE COURT: I appreciate that, and I wondered when your  
17 objection was coming. I'm going give you some latitude,  
18 Mr. Simons. I was surprised at the shuffle between you and  
19 Mr. Little, and I wondered when your objection was going to come.  
20 But I'm nonetheless going to give you some latitude.

21 MR. POLSENBERG: Thank you, Your Honor.

22 MR. SIMONS: I want to bring to this Court's attention,  
23 and if you have an issue or there's an issue, I propose we do  
24 some blind briefing at the end. But we don't just get to avoid

1 this, we don't just get to ignore this issue, because you started  
2 out with your hearing on "I have a jurisdictional issue, because  
3 the Supreme Court has this case up on appeal." So that is what  
4 the overlying and overarching concern we have to deal with. It's  
5 not going away.

6 MR. POLSENBERG: Here's why I have a problem with him  
7 raising that: It's clear under Honeycutt versus Honeycutt and  
8 Foster versus Dingwall, you have the authority to hear these  
9 motions. And you'd have to -- may have to certify, if you do a  
10 certain thing, or you could just deny -- you have the  
11 jurisdiction to hear and deny my motions and their motions.

12 So if they had briefed this, I would have been able to  
13 point that out to them.

14 THE COURT: If there's a prejudice that inures to your  
15 client by this unbriefed argument, I'll give you an opportunity  
16 to respond. I'm curious to know, candidly, where he's going.  
17 And it may be helpful, because I did, in fairness to me, ask.  
18 And I did in my own shorthanded, however blunt way it was, do you  
19 all really want me to do this, because I have serious concerns.

20 So I'm sorry. I'll overrule the objection. Go ahead.

21 MR. SIMONS: And I'm go to go to the timing and deal  
22 with the Honeycutt, because I think Honeycutt doesn't apply.

23 This order, which the Court can take judicial notice  
24 of, is almost -- and I think it will apply as law of the case



1 now, because this is an appellate decision coming down telling us  
2 what's going on in the underlying case.

3 The amended order, September 15, says, "Resolved all  
4 claims by and against all parties." And this is what the Nevada  
5 Supreme Court said, because Mr. Polsenberg went up there to the  
6 Nevada Supreme Court, filed a motion to say, "Supreme Court, what  
7 is the jurisdiction on this case? Do you have it or can we keep  
8 doing stuff down in the state court?" Because there was this  
9 March 12th, 2018, judgment.

10 And so opposing counsel asked what is the effect of  
11 this judgment versus the -- so but knowing that this appellate --  
12 excuse me, amended order was entered, opposing counsel took the  
13 correct approach and filed an appeal. Timely filed the appeal.  
14 No tolling motions were filed, no motions to amend, no Rule 50  
15 motions, no Rule 60 motions. And why is that important? Because  
16 the motions that you're presented to now all had -- except for  
17 the Rule 60, all have ten-day triggers. You file from the entry,  
18 not from the notice of entry, but from the decisional aspect of  
19 your -- you've got your clock starts ticking.

20 So what then happens, is we know, March 12, 2018, the  
21 judgment, the formal judgment was entered. And then there was  
22 immediately an Amended Notice of Appeal.

23 Thereafter, Codefendant's Motion to Amend was filed and  
24 Yount's various motions were file on March 30th. August 21st,

1 we, on behalf of Marriner, filed a motion, which is under a  
2 different rule, which is under 15. And I'll get into that when  
3 it's my turn to deal with that motion. But then we have the  
4 Supreme Court's decision. And the Court has said that the  
5 time -- that this appeal was timely, that, at that point,  
6 divested the Court of jurisdiction. There was no tolling motion,  
7 because the Court looked at the docket -- the Supreme Court  
8 looked at the docket in the case and realized no motions in fact  
9 says that this Court didn't have jurisdiction to grant the  
10 motions as adopting the appeal.

11 Again, now this brings us into the Honeycutt line of  
12 cases. The Honeycutt line of cases starts with what do we do if  
13 there is a, quote, timely motion filed and there's an appeal? So  
14 the Court can consider it, and if inclined, certify it and you  
15 take it up.

16 And Honeycutt, the case originally started on a motion  
17 to remand in the Supreme Court. Then after that, we got the Mack  
18 versus Manley case. And then it says, "What jurisdiction does  
19 the district court have if the appeal is filed?" And that's the  
20 case that says, "Look, district court, you have collateral  
21 issues." And we all know --

22 THE COURT: That was my case.

23 MR. SIMONS: There you have it. You know the  
24 collateral aspect. If you're going to change or alter, you don't

1 get to do that, because those issues are up.

2 So then what comes after is Foster versus Dingwall.  
3 And Mr. Polsenberg, that's his case. 2010, in walks Judge  
4 Hardesty. Justice Hardesty wrote the decision. And what he says  
5 or the Court says in that was to clarify the rule. And the rule  
6 is that there has to be timely motions or you're barred. Still  
7 get the collateral aspect of it.

8 So what I'm getting at is there is a major timing issue  
9 that the Supreme Court has told us applies in this case. I don't  
10 know -- I don't know the answer, but what I think the answer is,  
11 the motions to amend, both -- and this goes against my cocounsel,  
12 this motion to amend, as well as the plaintiff's motion to amend,  
13 new trial, et cetera, they're all untimely. They can't even be  
14 considered, because we have been told on August 24th that this  
15 was the triggering event.

16 Now I don't think that applies to my position, because  
17 I'm under a different rule. And opposing counsel, their motions  
18 were under 50(b), although they just throw that in there. There  
19 was actually no argument and there's no support on 50(b). 52, 59  
20 and 60, all those, except for 60, which is the six month, if you  
21 look at the six-month, Rule 60 says it's six months from when  
22 notice of entry or the effective order was entered.

23 If we look at the dates, they are outside six months  
24 when Yount filed this motion on the rule 60. All the 59 and 52

1 motions and 50, all have 10-day triggers. That's a problem,  
2 because if the Court is contemplating granting any of the  
3 plaintiff's motions, we've got a timing issue whether that would  
4 even be an effective motion.

5 I bring that to your Court's attention because we have  
6 an issue, and I'm not going to sit here and make arguments to you  
7 and mislead you, since there's a strong likelihood that this case  
8 is going up on appeal, since it already has been appealed.

9 Now moving --

10 MR. POLSENBERG: Your Honor, if I can renew my  
11 objection. He had the time to draw up little charts and look up  
12 all these cases, and he hasn't properly raised this. I have got  
13 the file in the trunk of my car, because I don't think I was  
14 strong enough today to carry it. So I mean I can't address this  
15 on the fly.

16 THE COURT: Nor can I. I don't think Mr. Simons is  
17 acting in bad faith, because I think my question, as I meant it  
18 to, triggered some cogitation among legal minds.

19 I'm going to hit the pause button for a minute. I  
20 believe it's my obligation at any juncture to offer messages like  
21 this to litigants:

22 So, to Mr. Radovan, Mr. Criswell, Mr. Coleman and to  
23 the Younts, this way madness lies. When you have some of the  
24 better attorneys in the state who can't decide which law at what

1 time applies, and there was an intervening death of the chief  
2 judge of the district, who did not get to record written findings  
3 of fact and conclusions of law, nothing good is going to follow.  
4 That's all I can guarantee.

5 I began where I'm going to say again, I think we should  
6 end, which is the less I do right now, the better. If and until  
7 the Supreme Court acts, I believe all I'm going to do is build in  
8 layer upon layer upon layer, because I've already messaged to you  
9 folks a judgment as to the claims by the plaintiff against the  
10 defendants, I am not going to touch, I'm not going to disturb.  
11 The resulting damages from the decision of Judge Flanagan to find  
12 on a claim, or claims, against the plaintiff is not anathema to  
13 my understanding of the law. The how much anybody is going to  
14 get out of it is. And that's going to require a trial, for lack  
15 of a better term. And that trial is going to involve discovery,  
16 because I'm likely to grant postjudgment discovery for the  
17 reasons Mr. Polsenberg has identified in his motion. Because  
18 candidly, as the finder of the fact I want to know what the  
19 Mosaic people are going to say about what Yount did or didn't say  
20 to them, because that to me is a part of the damages nexus.  
21 That's a reopening of the evidence. That may be for not,  
22 depending on what the Supreme Court does.

23 So is there not a way we can pause, perhaps, and think,  
24 using the collective legal experience here, about how best to

1 proceed. And I think that was Mr. Simons's point. He's not  
2 making the same point I'm making intellectually, but I think that  
3 was his point.

4 Mr. Polsenberg.

5 MR. POLSENBERG: Your Honor, may I have a copy of this  
6 chart?

7 THE COURT: Sure. You sure can.

8 MR. POLSENBERG: Do you have a copy?

9 MR. SIMONS: It's right there. That's all I have.

10 MR. POLSENBERG: Can I have that copy?

11 MR. SIMONS: No, you can't.

12 MR. POLSENBERG: Can I take --

13 MR. SIMONS: You can take a picture of it with your  
14 phone. And actually, all of the detail on that is out of the  
15 Court's order that I handed to you.

16 MR. POLSENBERG: Thank you.

17 MR. LITTLE: Your Honor, may I have one minute to speak  
18 with my client?

19 THE COURT: You certainly may. I would suggest, folks,  
20 that we perhaps take a recess to give people time to let the dust  
21 settle and talk to their clients, because, candidly, I don't know  
22 why this case hasn't settled. I'm not going to get in the middle  
23 of it, unless you ask me to get in the middle of it, other than  
24 to observe -- Bob Eisenberg is one of the finest attorneys in the

1 state, and in my experience, little though it may be, one of the  
2 finer settlement arbiters in this State. And I don't know what  
3 happened in those conversations.

4 But this way, meaning me, the third district judge to  
5 have his fingers on this case and is own opinions about things,  
6 this way madness lies. That's all I can say. So let's take  
7 15 minutes.

8 MR. SIMONS: Before we take that break, can I ask for a  
9 little bit of clarification on what you just said?

10 THE COURT: Sure.

11 MR. SIMONS: Given that we don't have what appears to  
12 be any motion, and under Rule 63 Judge Polaha was given the  
13 opportunity to reopen the evidence and certified that he did not  
14 need to render his decision. And we don't have a Rule 63  
15 considered -- a motion on 63 or any motion that would trigger  
16 that type of relief of reopening the evidence, especially since  
17 the case is up on an appeal based upon a closed record.

18 I'm at a loss here as to how this Court could engage in  
19 that process.

20 THE COURT: Well, you may be right. I'll be as honest  
21 as I can possibly be. I've looked at the appellate case. I  
22 haven't seen this order. I honestly had not seen it. I don't  
23 think opposing counsel had seen it until you handed it to us.

24 MR. SIMONS: Oh, he's seen it. It's his order. He got

1 that.

2 THE COURT: Well, I honestly hadn't read it. And as I  
3 peruse it, and it says: The appeal is properly before this Court  
4 from the Amended Notice of Appeal as well. The motions to amend  
5 and for a new trial, which are the motions we are talking about  
6 right now -- filed after the amended notice of appeal do not toll  
7 the time to appeal and are not relevant to this Court's  
8 jurisdiction. Indeed the district court has been divested of its  
9 jurisdiction to grant the motions as of the docketing of this  
10 appeal.

11 Last time I checked, that's says: District Judge,  
12 stop.

13 MR. POLSENBERG: No, we -- and here's why the case  
14 doesn't settle, because we get surprise issues like this. This  
15 is the opportunistic way this case has been litigated. And --  
16 and when I argued about Honeycutt -- and I'm just doing this off  
17 the top of my head. I didn't expect any of this to come up  
18 today. They didn't bother to let me know.

19 The -- I said you have the jurisdiction to hear and  
20 deny motions. I think that's consistent with the Supreme Court  
21 saying "not to grant."

22 THE COURT: Well, candidly, I think the Supreme Court  
23 would, for example, certify questions to me like should they be  
24 recused or excused; is there a conflict of interest. I'm



1 comfortable having made that decision, because I think the  
2 Supreme Court wants the trial court to make that decision, quite  
3 honestly.

4 MR. POLSENBERG: Usually they do.

5 THE COURT: And I could see the Supreme Court saying:  
6 Well, Judge Walker has said his inclination is to reopen the  
7 evidence for purposes of damages. I could see them sort of  
8 buying that question as well. I just don't want to exceed my  
9 jurisdiction, which is Mr. Simons's point, and I don't want to do  
10 anything to make anything worse than I think they already are.

11 MR. POLSENBERG: And I don't want to argue an issue  
12 that nobody's briefed.

13 MR. SIMONS: I'll argue the merits. I won't attack  
14 personal counsel. But when counsel says this is gamesmanship on  
15 my side, this gentleman is the one who filed the opposition to my  
16 motion saying the trial court loses jurisdiction over a case when  
17 it enters final judgment and it goes up on an appeal. That's  
18 what the plaintiff said.

19 THE COURT: Hang on. Hang on. We're not going to fall  
20 down that rabbit hole, gentlemen. I'm not going to let it happen  
21 in front of me. And if either of you rises to the bait, you'll  
22 do so at your own jeopardy.

23 We're going to take a break. I'll let you talk to your  
24 clients. I'm going to think about this, because my inclination

1 now is to pause this proceeding and require you all to brief this  
2 issue, because I think that's the safest way to proceed.

3 MR. POLSENBERG: That makes sense.

4 THE COURT: But again, I offer to your collective  
5 clients what Mr. Polsenberg was acknowledging is the only people  
6 making money on this case are the attorneys and me. We're all  
7 getting paid. No one else is guaranteed to get paid out of this  
8 case.

9 And when you have this much collective wisdom in the  
10 room and we can't even agree on what jurisdiction I have, you  
11 should run from that. You should choose to control your destiny  
12 by reaching an agreement. That's all I'm going to say.

13 MR. POLSENBERG: Very smart, Judge. And I do love a  
14 man who quotes Lear.

15 THE COURT: We'll be in recess.

16 (Recess Taken)

17 THE COURT: We are back on the record in CV16-00767,  
18 George Stuart Yount versus Criswell Radovan, et al. All parties  
19 are present with their respective counsel.

20 Here's what I intend to do: I was first made aware of  
21 an order from the Nevada Supreme Court that was issued  
22 August 24th, 2018. The last sentences of which seem to me an  
23 unequivocal comment on my jurisdiction; jurisdiction is  
24 jurisdiction is jurisdiction. It doesn't matter if you stipulate

1 to waive it, stipulate to invoke it, if either of those decisions  
2 are wrong, I don't have it. My job as district court judge is to  
3 be quick, decisive, and the words of Peter Breen, wrong.

4 I don't intend to do anything further in this case.  
5 I'll give you all opportunity to brief why you think I may have  
6 jurisdiction to act. I may or may not act upon that jurisdiction  
7 if I agree with it. I have made oral pronouncements today. I  
8 don't intend to matriculate those into writing, if and until the  
9 Nevada Supreme Court tells me I should or you all convince me I  
10 have remaining jurisdiction.

11 Mr. Polsenberg.

12 MR. POLSENBERG: Thank you, Your Honor. I think you  
13 have jurisdiction to hear my Rule 27 motion, because if Rule 27  
14 expressly says the district court can order discovery while the  
15 case is on appeal.

16 THE COURT: I decline to exercise that jurisdiction if  
17 I have it. Again, my rationale, for whatever it's worth, is  
18 this: Now that the Supreme Court has jurisdiction over this  
19 case, they're going to make, presumably, whatever decision they  
20 make. My suspicion is that some version of that decision will  
21 involve comment on the lack of findings of fact and conclusions  
22 of law in the previous judge's orders.

23 I can only tell you all that when we go to the district  
24 court judges meetings and the Supreme Court talks to us district

1 judges, again and again and again they have indicated to us that  
2 if we don't show our homework, they're going to at least remand  
3 for further findings.

4 Because I think they will share my view of the record  
5 in this case as to calling into question, for example, how the  
6 \$1.5 million damage amounts were calculated, I suspect this case  
7 is coming back. And I intend to do nothing until -- if and until  
8 that or something else happens or I'm told to by the Supreme  
9 Court.

10 MR. POLSENBERG: Very good. Thank you, Your Honor.

11 THE COURT: I apologize for the waste of time.

12 MR. SIMONS: Didn't waste anybody's time, Your Honor.

13 You said you're going to order further briefing. Is  
14 that a standing order? Do you want us to give you --

15 THE COURT: I invite you to brief. I suggest you reach  
16 an agreement about whether or not that is simultaneous briefing,  
17 what I think you call blind briefing or not. But the way I'm  
18 laying the table for you all is I don't intend to take any other  
19 action, notwithstanding the outstanding matters in this case.  
20 And I'm going to code them as resolved, because of the order you  
21 provided to me of August 28th.

22 MR. SIMONS: Fair enough.

23 THE COURT: We may have to resurrect them if I get  
24 further instruction from the Supreme Court. If in the meantime

1 you all want to engage in briefing, and I invite you to that, but  
2 I don't order it, that you seek -- through which you seek to  
3 convince me that I have some remaining Honeycutt jurisdiction,  
4 I'll read it. I don't know what I'm going to do about it. I'll  
5 read it.

6 Thank you all very much. I wish you all happy  
7 holidays.

8 (Proceedings Concluded at 3:50 p.m.)

9 --o0o--

1 STATE OF NEVADA           )  
                                  ) ss.  
2 COUNTY OF WASHOE       )

3  
4                   I, EVELYN J. STUBBS, official reporter of the  
5 Second Judicial District Court of the State of Nevada, in and for  
6 the County of Washoe, do hereby certify:

7                   That as such reporter I was present in Department No. 7  
8 of the above court on Tuesday, December 20, 2018, at the hour of  
9 2:00 p.m. of said day, and I then and there took stenotype notes  
10 of the proceedings had and testimony given therein upon the  
11 HEARING ON MOTIONS of the case of GEORGE S. YOUNT, ET AL,  
12 Plaintiff, vs. CRISWELL RADOVAN, ET AT, Defendant, Case No.  
13 CV16-00767.

14                   That the foregoing transcript, consisting of pages  
15 numbered 1 to 61, inclusive, is a full, true and correct  
16 transcript of my said stenotype notes, so taken as aforesaid, and  
17 is a full, true and correct statement of the proceedings had and  
18 testimony given therein upon the above-entitled action to the  
19 best of my knowledge, skill and ability.

20                   DATED: At Reno, Nevada, this 16th day of January,  
21 2019.

22                                   /s/ Evelyn Stubbs  
23                                   EVELYN J. STUBBS, CCR #356  
24

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## Non-Jury Trial Exhibits

PLTF: **George S. Yount et al.**PATY: **Richard G. Campbell, Jr., Esq.**DEFT: **Criswell Radovan et al.**DATY: **Martin Little, Esq. & Andrew Wolf, Esq.**

Case No: CV16-00767 Dept. No: 7 Clerk: Kim Oates Date: August 29, 2017

Exhibit No.	Party	Description	Marked	Offered	Admitted
✓ 1	Plaintiff	Real Estate Consulting Agreement Cal NevaLodge Development			
✓ 2	Plaintiff	Email from Yount to Dave Marriner re: Cal Neva Lodge Business Plan			
2 3	Plaintiff	Private Placement Memorandum			
✓ 4	Plaintiff	CalNeva Resort & Casino Confidential Offering Memorandum			
✓ 5	Plaintiff	Cal Neva Lodge, LLC Amended and Restated Operation Agreement			
6	Plaintiff	Email from Marriner to Yount re: Cal Neva Progress Pictures and Video			
7	Plaintiff	Email from Yount to Marriner re: Cal Neva			
8	Plaintiff	Email from Marriner to Yount re: Cal Neva			
9	Plaintiff	Email from Marriner to Yount re: "Confidential" Cal Neva Founders Equity			
10	Plaintiff	CalNeva Renovation Monthly Status Report			
11	Plaintiff	Email from Marriner to Yount re: Cal Neva			
12	Plaintiff	Email from Marriner to Yount re: Cal Neva			
13	Plaintiff	Email from Peter Grove to Yount re: Cal Neva			
14	Plaintiff	Email from Marriner to Yount re: Cal Neva			

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Exhibit No.	Party	Description	Marked	Offered	Admitted
15	Plaintiff	Email from Yount to Marriner re: Cal-Neva/Progress Report (Confidential)			
16	Plaintiff	Email from Marriner to Younts re: Cal-Neva/Progress Report (Confidential)			
17	Plaintiff	Email from Yount to Robert Radovan re: Cal Neva			
18	Plaintiff	Email from Robert Radovan to Yount re: Cal Neva			
19	Plaintiff	Email from Yount to Ken Tratner re: Potential 401k Investment for Stu			
20	Plaintiff	Email from Robert Radovan to Yount re: Debt			
21	Plaintiff	Cal Neva Lodge Investment Notes			
22	Plaintiff	Email from Marriner to Yount re: Cal Neva			
23	Plaintiff	Email from Yount to Ken Tratner re: Cal Neva			
24	Plaintiff	Email from Robert Radovan to Yount re: Questions			
25	Plaintiff	Email from Pete Dordick to Yount, et al re: Calneva			
26	Plaintiff	Email from Yount to Pete Dordick, et al re: Calneva			
27	Plaintiff	Email from Yount to Ken Tratner re: Cal Neva			
28	Plaintiff	Email from Yount to Peter Grove re: Cal Neva			
29	Plaintiff	Email from Yount to Marriner re: Cal Neva Founder's Membership			
30	Plaintiff	Email from Marriner to Yount re: Application forms for your self-directed IRA			

Exhibit No.	Party	Description	Marked	Offered	Admitted
31	Plaintiff	Email from Doug Driver to Yount re: Cal Neva			
32	Plaintiff	Email from Marriner to Yount re: Cal Neva			
33	Plaintiff	Email from Heather Hill to Bruce Coleman re: Cal Neva Equity			
34	Plaintiff	Email from Yount to Doug Driver re: Cal Neva			
35	Plaintiff	Email from Heather Hill to Yount & Radovan re: Cal Neva			
36	Plaintiff	Email from Robert Radovan to Yount re: (no subject)			
37	Plaintiff	Email from Yount to Marriner re: Cal Neva			
38	Plaintiff	Email from Heather Hill to Cheri Montgomery re: Cal Neva Investment – Mr. Yount			
39	Plaintiff	Email from Marriner to Younts re: Cal Neva Founder's Ownership			
40	Plaintiff	Acceptance of Subscription			
41	Plaintiff	Email from Yount to Marriner re: Cal Neva			
42	Plaintiff	Email from Cheri Montgomery to Doug Driver re: Signed documents for – Cal Neva investment – Mr. Yount			
✓ 43	Plaintiff	140784.00 Cal Neva Tower Renovation Contract Change Orders - 8 -14			
✓ 44	Plaintiff	Email from Heather Hill to Anthony Zabit, et al re: Financials by quarter through Q3			
45	Plaintiff	Email from Marriner to Robert Radovan & William Criswell re: Questions from Financial Mtg			
46	Plaintiff	Email from Yount to Bill Criswell re: FW:			

Exhibit No.	Party	Description	Marked	Offered	Admitted
47	Plaintiff	Email from Yount to Marriner re: Cal Neva Progress Report (Confidential)			
48	Plaintiff	Email from Yount to Paul Jameson re: Cal Neva Progress Report (Confidential)			
49	Plaintiff	Email from Heather Hill to <u>jasperreddog@gmail.com</u> , et al re: Executive Committee Meeting/Call Dec 18, 2015			
50	Plaintiff	Email from Paul Jameson to Yount re: Cal-Neva Investment			
51	Plaintiff	Email from William Criswell to Yount re: Cal Neva-Investment			
52	Plaintiff	Email from Paul Jameson to Anthony Zabit, et al re: Agenda and materials – missing items			
53	Plaintiff	Email from Bruce Coleman to William Criswell and Robert Radovan re: Proposed Amendment to Operating Agreement			
54	Plaintiff	Email from Heather Hill to Anthony Zabit, et al re: Additional items for the call today			
55	Plaintiff	Email from Paul Jameson to Yount, Heather Bacon and Geri Yount re: Follow up			
56	Plaintiff	Email from Yount to Heather Hill, et al re: Meeting Minutes Jan 8, 2016			
57	Plaintiff	Email from Heather Hill to Marriner, Robert Radovan and William Criswell re: January 19 <sup>th</sup> 11am (PT) Executive Committee & Member call			
58	Plaintiff	Email from Yount to Molly Kingston re: Cal Neva			
59	Plaintiff	Email from Paul Jameson to Yount re: January 27 <sup>th</sup> Cal Neva Monthly Meeting			
60	Plaintiff	Email from Marriner to Jeremy Page re: January 27 <sup>th</sup> Cal Neva Monthly Meeting			

Exhibit No.	Party	Description	Marked	Offered	Admitted
61	Plaintiff	Email from Robert Radovan to Bruce Coleman re: January 27 <sup>th</sup> Cal Neva Monthly Meeting			
62	Plaintiff	Email from Yount to Marriner re: January 27 <sup>th</sup> Cal Neva Monthly Meeting			
63	Plaintiff	Email from William Criswell to Yount re: Assignment of Interest in Cal Neva Lodge, LLC			
64	Plaintiff	Email from William Criswell to Heather Hill re: Stewart Yount Documents			
65	Plaintiff	Email from Bruce Coleman to Yount re: Assignment of Interest in Cal Neva Lodge, LLC			
66	Plaintiff	Email from Yount to Bruce Coleman re: Assignment of Interest in Cal Neva Lodge, LLC			
67	Plaintiff	Email from Yount to Coleman re: Assignment of Interest in Cal Neva Lodge, LLC			
68	Plaintiff	Email from Radovan to Paul Jameson re: Savage & Sons			
69	Plaintiff	Email from Yount to Robert Radovan and Bill Criswell re: Yount Cal Neva Investment			
70	Plaintiff	Email from Bruce Coleman to William Criswell re: Yount IRA Investment			
71	Plaintiff	Email from Bruce Coleman to Yount re: Yount IRA Investment			
72	Plaintiff	Email from Yount to Bruce Coleman re: January 27 Cal Neva Monthly Meetings			
73	Plaintiff	Email from Radovan to Criswell re: Stuart Yount Complaint			
74	Plaintiff	Email from Robert Radovan to William Criswell re: Yount v. Criswell Radovan, LLC, et al.			

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Exhibit No.	Party	Description	Marked	Offered	Admitted
75	Plaintiff	Email from Heather Hill to Criswell & Radovan re: Yount/Marriner			
76	Plaintiff	Email from Ali P. Hamidi to Marriner re: Yount law suit			

## Non-Jury Trial Exhibits

PLTF: GEORGE S. YOUNT, et al.

PATY: Rick Campbell, Esq.

DEFT: CRISWELL RADOVAN, et al.

DATY: Martin Little, Esq. &amp; Andrew Wolf, Esq.

Case No. : CV16-00767

Dept. No. 7

Clerk: Kim Oates

Date: August 29, 2017

Exhibit No.	Party	Description	Marked	Offered	Admitted
100	Defendant	Email string Yount to Driver (2/21/14) re Cal Neva NDA (Yount, Exhibit 49) GSY002644-2646			
101	Defendant	Cal Neva Funding Status (4/23/14) chart (Marriner, Exhibit 21)			
102	Defendant	Email string Yount to Radovan (7/29/15) (Yount, Exhibit 59)			
103	Defendant	Email string Yount to Tratner (8/8/15) re potential 401k investment for Stu (GSY004677-4679)			
104	Defendant	Email string Yount to Tratner (8/17/15) re Calneva (GSY000856-857)			
105	Defendant	Email string Marriner to Yount (9/16/15) chart (Marriner, Exhibit 30)			
106	Defendant	Email string Marriner to Yount (10/1/15) chart (Marriner, Exhibit 31)			
107	Defendant	Wiring Instructions Criswell Radovan, LLC (Yount, Exhibit 71)			
108	Defendant	Email transmittal from Montgomery/Premier Trust to Driver (10/14/15) re signed documents for Cal Neva investment – Mr. Yount (Coleman, Exhibit 36)			
109	Defendant	Email Chaney to investors Racich, et al. (12/17/15) re Cal Neva information on Drop Box (GSY000350)			
110	Defendant	Email Jameson to Busick, et al (12/22/15) re Investor Action List (GSY000296-298)			
111	Defendant	Correspondence from Cannito/PENTA to Cal-Neva Lodge and TDS, Inc. (12/31/15) re Demand for Evidence of Adequate Financial Arrangements and Notice of Right to Stop Work Pursuant to NRS 624.610(1) (GSY001815-1816)			
112	Defendant	Email Young to Jameson (1/7/16) re PENTA letter (GSY001817)			
113	Defendant	Email string Jameson to Hill, et al., (1/7/16) re Agenda and materials-missing items, and equity table (GSY002068-2069)			
114	Defendant	Email Jameson to Criswell, et al (1/22/16) re CR and preferred majority discussion pre-EC meeting 1/27 at IMC			

## Non-Jury Trial Exhibits

PLTF: GEORGE S. YOUNT, et al.

PATY: Rick Campbell, Esq.

DEFT: CRISWELL RADOVAN, et al.

DATY: Martin Little, Esq. &amp; Andrew Wolf, Esq.

Case No. : CV16-00767

Dept. No. 7

Clerk: Kim Oates

Date: August 29, 2017

115	Defendant	Email Chaney to Young (1/24/16) re discussion about Robert (Yount, Exhibit 79)			
116	Defendant	Email string Jameson to Yount (1/25/16) re "My Notes" (GSY004648)			
117	Defendant	Email string Gibson to Marriner, et al. (1/26/16) re Cal Neva Monthly Meeting (GSY 004548-4557)			
118	Defendant	Email Jameson to Yount (1/26/16) re CR (Yount, Exhibit 81) (GSY002999)			
119	Defendant	Email Jameson to Busick (1/27/16) re Cal Neva Meeting next week (Yount, Exhibit 82) (GSY002584-2587)			
120	Defendant	Email Jameson to Yount (1/28/16) re Rogert – North Light (Yount, Exhibit 83) (GSY004721)			
121	Defendant	Email Yount to Jameson (1/30/16) re talk with Jeremy (GSY005040)			
122	Defendant	Email string Jameson to Yount (1/31/16) re talk with Jeremy (Yount, Exhibit 84) (GSY004797-4798)			
123	Defendant	Email string Criswell to Hill re Assignment of Interest in LLC with attached documents (Coleman, Exhibit 40) (CR000212-219)			
124	Defendant	Email string Jameson to Radovan, et al. (2/2/16) re Interim EC report re 2/1 Mosaic loan meeting (page 76-80)			
125	Defendant	Email from Yount to Kingston (2/2/16) re "utterly confused" re meeting with Mosaic 2/1 (GSY004841)			
126	Defendant	Email from Kingston to Yount (2/2/16) re "novel approach" [Confidential] re CR (GSY001805)			
127	Defendant	Email string Jameson to Yount (2/2/16) re assignment of interest in Cal Neva Lodge, LLC (Yount, Exhibit 86) (GSY002172-2175)			
128	Defendant	Email string Yount to Kingston (2/2/16) re "novel approach" [Confidential] re letter to shareholders re CR (Yount, Exhibit 85) (GSY004654-4655)			
129	Defendant	Email string S Yount to G Yount(2/3/16) re Interim EC report re 2/1 Mosaic loan meeting (Yount, Exhibit 87) (GSY000903-908)			

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## Non-Jury Trial Exhibits

PLTF: GEORGE S. YOUNT, et al.

PATY: Rick Campbell, Esq.

DEFT: CRISWELL RADOVAN, et al.

DATY: Martin Little, Esq. &amp; Andrew Wolf, Esq.

Case No. : CV16-00767

Dept. No. 7

Clerk: Kim Oates

Date: August 29, 2017

130	Defendant	Email string Jameson to Yount (2/5/16) re Sharing Roger info – perhaps Boulder Bay summary (GSY004947)			
131	Defendant	Email string Yount to Jameson (2/5/16) re potential new developers (Yount, Exhibit 88) (GSY004690-4691)			
132	Defendant	Email string Jameson to Yount (2/14/16) re Paramount-inv (GSY004668-4669)			
133	Defendant	Email string Jameson to Yount (2/26/16) re “another day!?!?!?” re 5M agreement (Yount, Exhibit 89) (GSY002072-2073)			
134	Defendant	Email string Jameson to Chaney et al. (2/28/16) re Cal Neva EC Report on Financing (GSY00161-162)			
135	Defendant	Purchase and Sale Agreement Feb __, 2016, Global Bancorp and New Cal Neva (GSY002446-2473)			
136	Defendant	Email string (3/8/16) Kingston to Yount re EC voting members excluding CR (GSY04154-4158)			
137	Defendant	Correspondence Chaney to Radovan and Criswell (3/11/16) re Formal Notice of Breach of Cal Nev Lodge Operating Agreement (GSY001820-1822)			
138	Defendant	Email G Yount to Hill et al (3/14/16) re Cal Neva March 15, 2016 monthly reporting			
139	Defendant	Email Kingston to Yount (3/14/16) re lack of progress (GSY004619-4621)			
140	Defendant	Email string Yount to Kingston (3/14/16) re lack of progress (accidental response to confidential email instead of EC email) (Yount, Exhibit 90)(GSY0004602-4605)			
141	Defendant	Email string Yount to Busick (3/14/16) re lack of progress, re Paul’s commission (GSY0004626-4631)			
142	Defendant	Email string Yount to Jameson (3/15/16) re Important Disclosure to Cal Neva Lodge, LLC Membership (Yount, Exhibit 91) (GSY002044-2047)			
143	Defendant	Email string Jameson to G Yount (3/16/16) re meeting 3/17/16 (GSY005050)			

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## Non-Jury Trial Exhibits

PLTF: GEORGE S. YOUNT, et al.

PATY: Rick Campbell, Esq.

DEFT: CRISWELL RADOVAN, et al.

DATY: Martin Little, Esq. &amp; Andrew Wolf, Esq.

Case No. : CV16-00767

Dept. No. 7

Clerk: Kim Oates

Date: August 29, 2017

144	Defendant	Email string S Yount to G Yount (3/18/16) re notice as discussed (GSY004650)			
145	Defendant	Email string Yount to Kingston (3/23/16) re Len Savage – reach out (GSY004638)			
146	Defendant	Email string Jameson to Yount (3/25/16) re Cal Neva (GSY002276-2279)			
147	Defendant	Executive Summary re CalNeva Hotel & Casino – Phase 2 (GSY000124)			
148	Defendant	CalNeva Resort – Forecast spreadsheet 2015-2024 (GSY000301-302)			
149	Defendant	Marx/Okubo Monthly Progress Report No. 14 re Cal-Neva Resort and Spa dated 1/26/16 (GSY00419-439)			
150	Defendant	Exhibit 2 to Defendant's Opposition to Motion for Summary Judgment – Promissory Note from New Cal-Neva Lodge, LLC to Ladera Development, LLC dated 9/30/14 in the amount of \$6,000,000 (10 pages)			
151	Defendant	Color charge code spreadsheet/summary for Cal-Neva Hotel (2/1/16) (5 pages)			
152	Defendant	Unconditional Waiver and Release Upon Progress Payment (12/24/14) re Cal Neva Tower Renovation by PENTA Building Group (CR 000351-360)			
153	Defendant	Applications and Certificates for Payment (CR00361-628)			
154	Defendant	Second Amended Complaint filed 9/27/16 (18 pages)			
155	Defendant	Exhibit 6 to Plaintiff's Opposition to Defendant's Motion for Summary Judgment (Affidavit of George Stuart Yount)			
156	Defendant	Schedule of Cal Neva Unsecured Claims			

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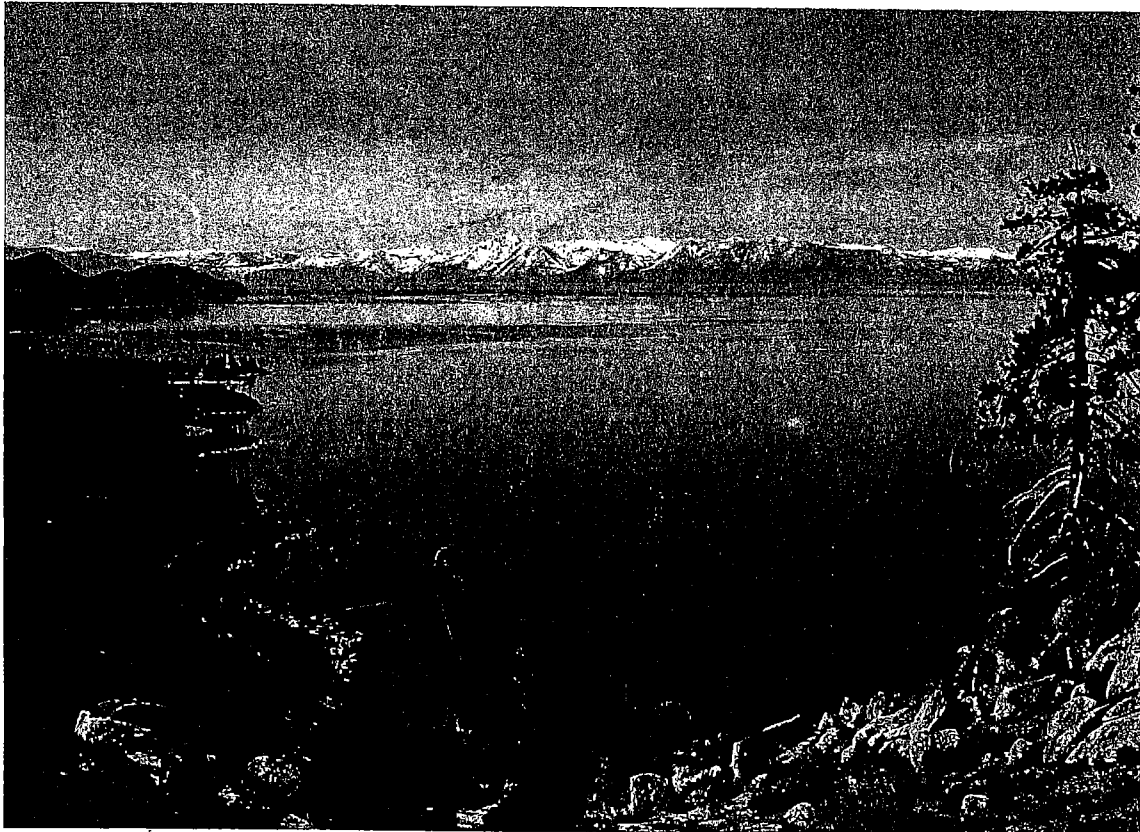
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# Ca|NeVa

RESORT & CASINO

LOCATED ON THE NORTH SHORE OF LAKE TAHOE

CONFIDENTIAL OFFERING MEMORANDUM



CRISWELL RADOVAN, LLC  
March 2014

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### EXHIBITS

- A Financial Pro Forma
- B Development Budget
- C Market Comparables – Excerpt from PKF Appraisal
- D The Historic Cal Neva Resort



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### SUMMARY

- Criswell Radovan, LLC acquired the legendary Cal Neva hotel in Lake Tahoe in April 2013. This time next year, we will re-open this property after a \$32 million renovation, bringing back a true icon. For investors, the pricing is such that a refinancing of the hotel after the remodel could repay all equity principal in about three years.
- The Cal Neva hotel, founded in 1926, is the oldest casino in the U.S. and saw its heyday in the 1960s when it was owned by Frank Sinatra and became a popular destination among the Hollywood and political elite. The property will feature 191 guest rooms among its tower, chalets, and cabins. It also enjoys a non-restricted gaming license for a 17,000 s.f. casino; 16,000 feet of meeting space, a full service spa, a 350 seat showroom, the famous Circle Bar, Press restaurant, and a Dean & DeLuca market.
- The property has been offered the opportunity to become a member of the Starwood Luxury Collection, keeping its historic identity, but utilizing the power of the Starwood network for reservations, marketing, and group sales.
- Set on almost 14 acres overlooking Lake Tahoe, the property has just over 9 acres in Nevada and 4.5 acres in the State of California in the North Shore area of Lake Tahoe. It is a 45 minute drive from the Reno-Tahoe airport, about 3.5 hours by car from San Francisco, and about 90 minutes by car from Sacramento. In addition to being less than 400 feet from the water, the Cal Neva is within 30 minutes of the Northstar, Squaw, Incline, and Alpine Meadows ski areas, as well as several smaller ski resorts such as Diamond Peak at Incline Village.
- The property also has 28 two-bedroom units that it has banked with the TRPA, with the plan to permit them as for-sale managed residences. The residences will be 1,250 s.f. on average, all in the state of Nevada, and can be used for either establishing residency or rented as part of the hotel inventory. Those permits will be pursued promptly after closing and may require some level of additional financing to complete. In addition to the roughly \$12-16 million in incremental profit these units bring to the equity owners, they add 56 keys of inventory to the operating performance of the resort.
- The \$13 million purchase price that Criswell Radovan got from the seller represents a cost of only \$59,361 per room (on 219 rooms), or less than a fifth of the replacement cost of the building on the most conservative estimates.
- While the building needs cosmetic improvements and a complete re-launch of the management and marketing of the property, there are no structural issues of concern, and the previous owner spent over \$10M upgrading all of the kitchen and service areas to support group business. The cost of the recent upgrades alone roughly matches the price to buy the entire property.
- Based on the very good structural and "back of house" condition of the property, the hotel can be renovated and re-opened for about \$32 million renovation cost, with about 12 months for the upgrade.
- The Criswell Radovan team has a long a proven track record in the luxury hotel space, including several significant historic rehabilitations. The Ritz Carlton in San Francisco and the Aetna Springs project in Napa Valley (currently in development) show CR's understanding of

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both the creative sensitivity in planning as well as the marketing power of restoring these historic hotels. Criswell Radovan's work on the Calistoga Ranch project in Napa Valley (ranked #1 hotel in California and #5 in the U.S. by U.S. News and World Report) in addition to those other properties demonstrates its success in developing one-of-a-kind properties in markets with very high barriers to entry.

- The project will initially be capitalized with \$20 million of equity and \$35 million of debt. The \$29 million senior loan is interest only at 9% for the first 3 years, and an amortizing mini-perm for 2 additional years if needed. Assuming the hotel can be refinanced in 2017, the property should repay both the investors' equity and the construction loan with a \$60 million permanent loan. That loan would be supported by a healthy coverage ratio of 1.4x from the first years.
- Financial Highlights:
  - Targeted return of investor principal in 4 years
  - Total project returns are projected above \$90 million, or a 4.5x equity multiple, if it is sold in Year 7 of operations, before any contribution from the Phase II condo units.
  - Long-term annuity stream of \$2-2.5 million in cash flow available for distribution if the asset is held.
  - Phase II converts 28 current cabin suites into 2-bedroom condo hotel units, bringing the unit count to 247, all of which are 2 hotel keys of additional guests on property. The condo hotel units are not included in the Phase I financing, but they could bring an incremental \$35M+ of revenue and \$12-16 million of profit potential to the project.

## OPERATING PLAN

### *Positioning*

The Hotel at Cal Neva enjoys a strong sense of place and identity created by its high-profile history of close to 90 years. One of the most striking things about this opportunity is the nostalgia and popularity it enjoys throughout the San Francisco bay area and the northern California region. This is not just a rooms upgrade to take market share from the Hyatt or improve the hotel's ADR – the notion of "*bringing back the Cal Neva*" has an immediate resonance with people, and done right, it would be a game-changer in the North Lake Tahoe Market. There is nothing in the market with the kind a character that this hotel offers, and the ability to bring music and other major live entertainment as well as upscale gambling entertainment to an otherwise sleepy night-life scene in North Lake Tahoe, gives it a market niche all to itself.

The difference between South Lake Tahoe and North Lake Tahoe in terms of audience and character is a distinct one. North Lake Tahoe is where most of the ski areas are, so the focus is primarily on outdoor recreation such as skiing, biking, hiking, and boating on the Lake. There are a few local bars and nicer restaurants by the ski areas, but no one focal point for evening entertainment. Because South Lake Tahoe has considerable gambling activity but only Heavenly as a major ski area, it is more of a "party" destination and attracts a different demographic. South Lake Tahoe is also harder to get to as a drive-to destination from San Francisco, so most of the bay area target demographic will be found in North Lake Tahoe.

Because of this pattern, the Cal Neva has the ability to create a buzz-worthy dining and evening entertainment experience that is unique in its market. It has access to all of the ski, Lake and other sporting activities of the other North Lake Tahoe lodging options, but unlike its peers, the Cal Neva is also a destination in its own right. The views and setting on the lake mean that it will remain the

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wedding and group business attraction that it has always been, but with a reputation for being a fun, hip, and high quality destination hotel, it also becomes a frequent haunt of the bay area 30-50's F.I.T. customer – and probably the greater Los Angeles area as well.

The sustaining theme in this redevelopment is that we are "bringing back" the Cal Neva. We are not replicating hotels in other markets like Las Vegas or Los Angeles, and we are not just creating a Tahoe ski/lake/wedding joiner. Given the low purchase price for the asset and the existing rooms (all with lake views) and gaming licenses, an investor would do well with simple update and re-opening; the reputation and legacy of the Cal Neva, however demands more than that, and we will succeed many times over by being authentic to the place and an original in a classic mountain-area market.

### **Branding and Management**

While it is common practice for a hotel to seek a "flagged" operator to brand a new hotel and give it marketing momentum into its opening, well-known historic properties are less likely to be given a brand, even if they are operated by one of the major operating companies. In those cases, the operator might be a sub-brand ("by Four Seasons," for example), but the legacy name remains. Examples of such historic icons include the Hotel Del Coronado in San Diego, San Ysidro Ranch in Santa Barbara, Blackberry Farm outside Knoxville, and Calistoga Ranch in Napa Valley. Where a property comes with a strong reputation already, the remaining reason to use a third party operator is to bring the technical expertise needed to ensure that the opening and operations to stability are done as well as possible. Given the depth of experience we have assembled in our current team with previous experience designing, developing, owning and operating comparable hotels, we sought a marketing partner that could complement us in marketing but allow us to manage our own bottom line.

Starwood has offered Cal Neva a term sheet to join its Luxury Collection of hotels after an extensive due diligence and interview period. The basic framework is a 5% license fee on rooms revenue and 2% of F&B, in exchange for being a member of the luxury collection of hotels, group sales support, marketing support, and participation in Starwood's reservation system. We will retain control over our staffing and P&L, and the brand will be a "soft brand," secondary to the Cal Neva as the property's identity. We think this partnership will help with our ramp-up to stabilization, as well as with our mid-week and shoulder season occupancy targets where an independent hotel has more vulnerability. The Starwood brand should also be a plus for future re-financing of the construction loans.

The following excerpt from Starwood's website describes the complementary positioning that this brand brings to a historic property like the Cal Neva. It enjoys the soft brand of Starwood's quality and service standard in the Luxury Collection, while keeping its authenticity as a stand-alone property.

*The Luxury Collection is a collection of hotels and resorts offering unique, authentic experiences that evoke lasting, treasured memories. For the global explorer, The Luxury Collection offers a gateway to the world's most exciting and desirable destinations. Each hotel and resort is a unique and cherished expression of its location; a portal to the destination's indigenous charms and treasures. Magnificent decor, spectacular settings, impeccable service and the latest modern conveniences combine to provide a uniquely enriching experience. Originated in 1906 under the CIGA brand as a collection of Europe's most celebrated and iconic properties, today The Luxury Collection brand is a glittering ensemble of more than 85 of the world's finest hotels and resorts in more than 30 countries in bustling cities and spectacular destinations around the world. The Luxury Collection includes award-winning properties that continuously exceed guest expectations by offering unparalleled service, style and class while celebrating each hotel's distinctive heritage and unique character. All of these hotels, many of them centuries old, are internationally recognized as being among the world's finest.*

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Florent Gateau joined the team last May as the COO to oversee the operations planning, technical services, and the pre-opening hiring and training. With his experience with Rosewood as a brand and pre-opening strong-identity properties like Las Ventanas and The Setai in Miami Beach, Florent immediately understood how to re-create the Cal Neva story in a modern way. The General Manager will be hand-picked by Florent and will work side by side with him in the pre-opening phase to ensure consistency in the service infrastructure we are setting up. In the pre-opening period, he and the GM will hire the department managers, and that group will, in turn, fully staff and train the hotel personnel prior to the soft opening.

## PROJECT STATUS

Criswell Radovan, through affiliate Cal Neva Lodge, LLC, bought the property in April 2013 from Canyon Capital, who had taken it back in foreclosure in 2009. Canyon took back seller financing in the form of passive preferred equity in the venture. Criswell Radovan also obtained bridge financing of \$6 million which it used as the equity to close on the property and complete the entire pre-development phase on the property. While that acquisition and pre-development financing was relatively expensive, it allows the new equity investors to invest at an unusually low risk level for a development opportunity.

- The senior and mezzanine loans have committed term sheets and can close very quickly after the equity closes. We have completed due diligence and drafted loan documents on the senior loan, allowing a closing in 30-45 days after the equity closes.
- ✓ • The development budget is based on full design documents, allowing for a high degree of certainty. The GMP contract has been negotiated with PENTA, and we can finish the last of the value engineering work and sign the final GMP within 30 days.
- We have building permits in hand for all work on the site and buildings to do the renovation.
- The COO and Starwood are both on board (Starwood has issued a term sheet, but we are not yet in contract) to begin marketing and operations planning immediately upon commencement of the construction.
- We have had several meetings with the TRPA about the condo units, and they expect an application soon. They have indicated that approving those additional units should be a ministerial process.
- The roof on the tower was replaced prior to the winter season.
- Finally, the model room has been built (FF&E install to be done in late Mar. or early Apr.), so investors can experience the larger bathrooms, raised hallway ceiling height, floor-to-ceiling windows, and other guest room features in person.

The prior owner had accomplished two things during his tenure that have been quite valuable to us as new owners. First, he entitled 50 new units of condo hotel inventory, which lapsed unvested a few years ago, but which paved the way for the TRPA to be able to re-entitle the 28 units we will be submitting with an expedited process. He did a full environmental review, and the project was approved with no significant impact. Furthermore, we would not be increasing the unit count above already build cabins that are in tear-down condition right now. Second, he modernized the hotel's infrastructure for its group business, with over \$10 million spent to update the kitchens and other back-of-house service facilities. One will note that the current purchase price is roughly equivalent to what was spent only five years ago on the facility upgrades alone. That sunk cost means that the funds we will spend on this renovation will be almost entirely put into guest experience improvements and amenities rather than infrastructure, BOH, or structural spending.



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The renovation of the resort will be implemented with a goal of re-opening the hotel within 12-13 months of construction commencement. Our development budget is \$32 million for the initial phase, including financing cost, although we have a few add-scope items that would improve the F&B outlets if an additional \$1.5-2 million is available. The design work completed in 2013 has accomplished the following major objectives:

- Bring the rooms and common area up to the level that is consistent with our brand and price positioning, ideally adding floor-to-ceiling windows in the rooms and increasing the bathroom sizes;
- Improve the entry experience;
- Transform the "dead space" between the Indian Room and the Circle Bar with a destination-quality restaurant with a two-story window wall;
- Replace the old pool with a furnished terrace outside the restaurant (which can also provide outdoor seating capacity in good weather);
- Add a new pool and large deck to the lower edge of the property looking over the lake;
- Convert the lower meeting rooms next to the new deck into a more casual, 3-meal a day restaurant with wrap-around views of the lake;
- Re-program the lower amenity floors' use of meeting, fitness, retail, and private function space; and
- Give a meaningful upgrade to the layout and look and feel of the main floor, including the gaming areas and celebrity showroom.

#### LOCATION

The Lake Tahoe Basin is located 15 miles south of Truckee, California, 200+ miles northwest of San Francisco, and 36 miles southwest of Reno. The Nevada/California border bisects the lake. The Reno airport, an easy 35-45 minute drive to the property, not only serves a number of major markets with direct flights, but it is also slated to undergo a major renovation in the next few years, bringing even more tourism and group travel to the North Lake Tahoe area.

Access to and around the Lake Tahoe Basin is good and, for the most part, open to traffic all year. Inclement weather and heavy snowfall sometimes restricts access to the area during winter months, but major thoroughfares throughout the Basin are rarely closed. The entire 78-mile perimeter of the lake has asphalt paved state and federal highways.

The Cal Neva is located 400 feet from the North Shore of Lake Tahoe in what is known as the "Incline Village/ Gold Coast" north Tahoe sub-market. The Property is situated four miles from Incline Village, eight miles from the Northstar-at-Tahoe resort, and 17 miles from Squaw Valley USA. The Property straddles the California/ Nevada state line and is situated on almost 14 acres. Of that property, 4,051 acres are located in Placer County, California.

A majority of the Cal Neva's facilities are located on the Nevada side of the Property, including 200+ guest rooms, the casino, the Circle Bar, the restaurant, and the spa. The Phase II managed residences would be located entirely in the State of Nevada.

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#### TIMELINE

Apr. 2013	Close on equity and on property purchase
May-Dec. 2013	Engage full team, design product and program; permitting; arrange debt financing
Sep. 2013	Close the property for renovation
Mar. 2014	Close on permanent equity
April/May	Close on construction loans and begin full construction work
Feb.-Apr. 2014	Pre-opening hiring and training
May 2015	Re-open hotel
2017	Re-finance construction loan and investor equity with permanent debt

#### SOURCES AND USES OF FUNDS

The following budget shows a summary of the development budget for the resort as currently designed and permitted. The initial 191 room remodel will be paid for with the current financing, and it can close on the construction loans with as little as \$14 million of the equity. The additional equity we are raising will accomplish several important goals:

- Ensure that excess contingency is available for any scope changes or budget issues that would require funding under the completion guaranty, as well as to provide for an operating loss subsidy for first year debt service if needed. In order to make sure no investor is asked to fund additional capital to complete the Project as proposed, we will keep a substantial portion of these funds in reserve until we are close to substantial completion. As we reach construction and first year milestones, more of this capital will be released with board approval to commence work on the other opportunities.
- Certain scope changes have been identified as highly recommended by the design team and would be priority allocations of additional equity. First among these items are a small, open

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kitchen downstairs in the Press restaurant and upgrading the program for the market to work better for Dean & Deluca. We believe that such enhancements, if feasible, will translate into higher revenue at those outlets.

- The managed residences need to go through some basic entitlement and permitting work, and we will need a model unit before we can commence pre-sales. While we do not want to start selling units until the hotel is open and driving the sales leads for us, it is possible that with a well-run program of pre-sales and development planning, we could get these units built by 2016 with little or no additional equity.
- Finally, the Fairwinds property down the beach is an ancillary opportunity, described in a separate plan, but additional funds would allow it to be renovated and used for additional rental, club program, or marketing purposes. These funds can be spent at any point in the development timeline and are not tied to the hotel's renovation.

Sources and Uses of Funds	
<b>Sources</b>	
Preferred Equity	\$ 20,000,000
Mezzanine Loan (Incl. InL Reserve)	\$ 8,896,000
Construction Loan/Mini-Perm	\$ 29,000,000
<b>Total Sources</b>	<b>\$ 55,896,000</b>
<b>Uses</b>	
Purchase Price	\$ 13,000,000
Architecture & Engineering	\$ 1,592,000
Construction Costs	\$ 18,700,000
FF&E/OS&E	\$ 6,259,250
Development Soft Costs, inc. Pre-Opening	\$ 4,318,000
Financing Costs & Fees	\$ 5,713,498
Contingency	\$ 1,147,039
<b>Total Uses</b>	<b>\$ 50,729,787</b>
<b>Sources/Uses</b>	<b>\$ 5,166,213</b>

Uses of Additional Equity	
Equity Available if \$20M Raised	\$ 5,166,213
Add-Scope for F&B Venues, Finishes, VE Items	\$2,500,000
Condo Units Devel. Equity	\$2,000,000
Fairwinds Estate Costs & Upgrades	\$666,213

Metrics	
CR Purchase price / key	\$59,361
Remodel Cost / Key	\$167,625
<b>Total Project Cost / Key</b>	<b>\$265,601</b>

## HOTEL FEATURES

### Rooms

The hotel tower is seven stories tall and has approximately 178 guest accommodations split among 90 standard rooms, 70 executive rooms, and 18 suites. There are another five cabins and 8 terrace units

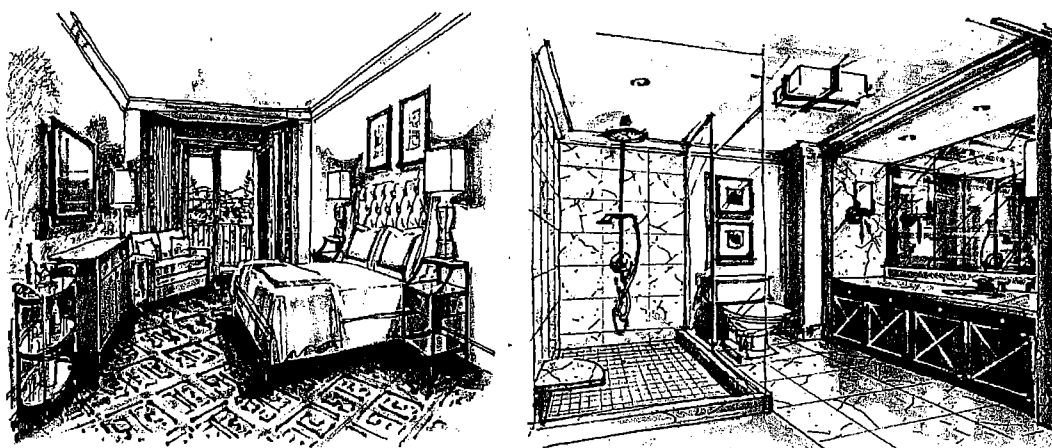
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around the property which will be part of the first phase of the renovation. Between the tower suites and the terrace units, there are a total of 26 suites in the Phase I renovation. When the Phase II managed residences are built, they will all be 2-bedroom units with one suite and one lock-off unit (1,250 s.f. per residence), so we should have 28 luxury suites plus another 28 standard rooms to add to the inventory within the first few years.

We will retain and remodel the well-known cabins 3, 4, and 5 on the California side known as the private cabins used by Frank Sinatra, JFK, and Marilyn Monroe in the past.

While the rooms are about 400 s.f., they will be finished out to five-star luxury quality in every other respect, as will all of the common areas. The product quality will be comparable to that of the Ritz Carlton, but with a look and feel that is less about the mountain setting and more about the Cal Neva's own personality and history.

Due to the Property's location on a peninsula on Crystal Bay and the tower's positioning, spectacular lake views are offered on each side of every floor. None of the property's competitors have a view of the lake, as Hyatt's beach area is limited to the Lone Eagle Grill restaurant, and the guest rooms are set back in a tower across the street. Our other competitors are on-mountain properties, which is an advantage during ski season but is a major disadvantage during both the summer peak season and during the shoulder seasons. The addition of floor-to-ceiling windows in all of the guest rooms will play to the Cal Neva's unique location relative to Crystal Bay and its exceptional views.



### *The Casino*

The Cal Neva features a newly expanded 17,000 sq. ft. casino floor. The casino is currently operated by Strategic Gaming, a third-party management company, under a space lease agreement. Strategic Gaming is in negotiations to continue as the gaming lessee after the renovation.

The Cal Neva casino is renowned as holding the oldest active continual use gaming license in the United States, and gaming has been a very prominent part of the resort's reputation and legacy going back to the 1920's.

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While a non-restricted Nevada gaming license certainly adds to the financial appeal of this property, our approach in working with our gaming partner and designing the space will be to ensure that the gambling matches the personality of the rehabilitated resort and the sophistication of the brand, such that it provides a complementary form of on-site entertainment but feels distinctly more upscale in character than the Reno and South Lake Tahoe gambling peer group.

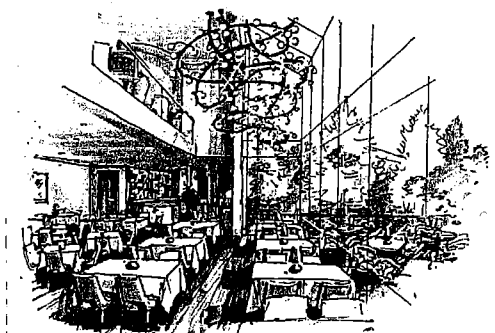
### *Casino Bar*



### *Restaurants and Bars*

We have a license deal under negotiation with Leslie Rudd to help with the branding and program of both our fine dining venue and the market building at the front entrance. The restaurant next to the Circle Bar will be a PRESS Restaurant, modeled after the very successful PRESS that Rudd created in St. Helen, CA. The provisions market will be a Dean and DeLuca, serving prepared foods, picnic provisions, gourmet market fare, and wine and gift items both to guests and to our Incline Village neighbors. It will serve baked goods and coffee in the morning, picnic supplies and casual lunch during the day, and low-key dinner options for families and, of course, wine and treats at all times.

### *Circle Bar Restaurant*



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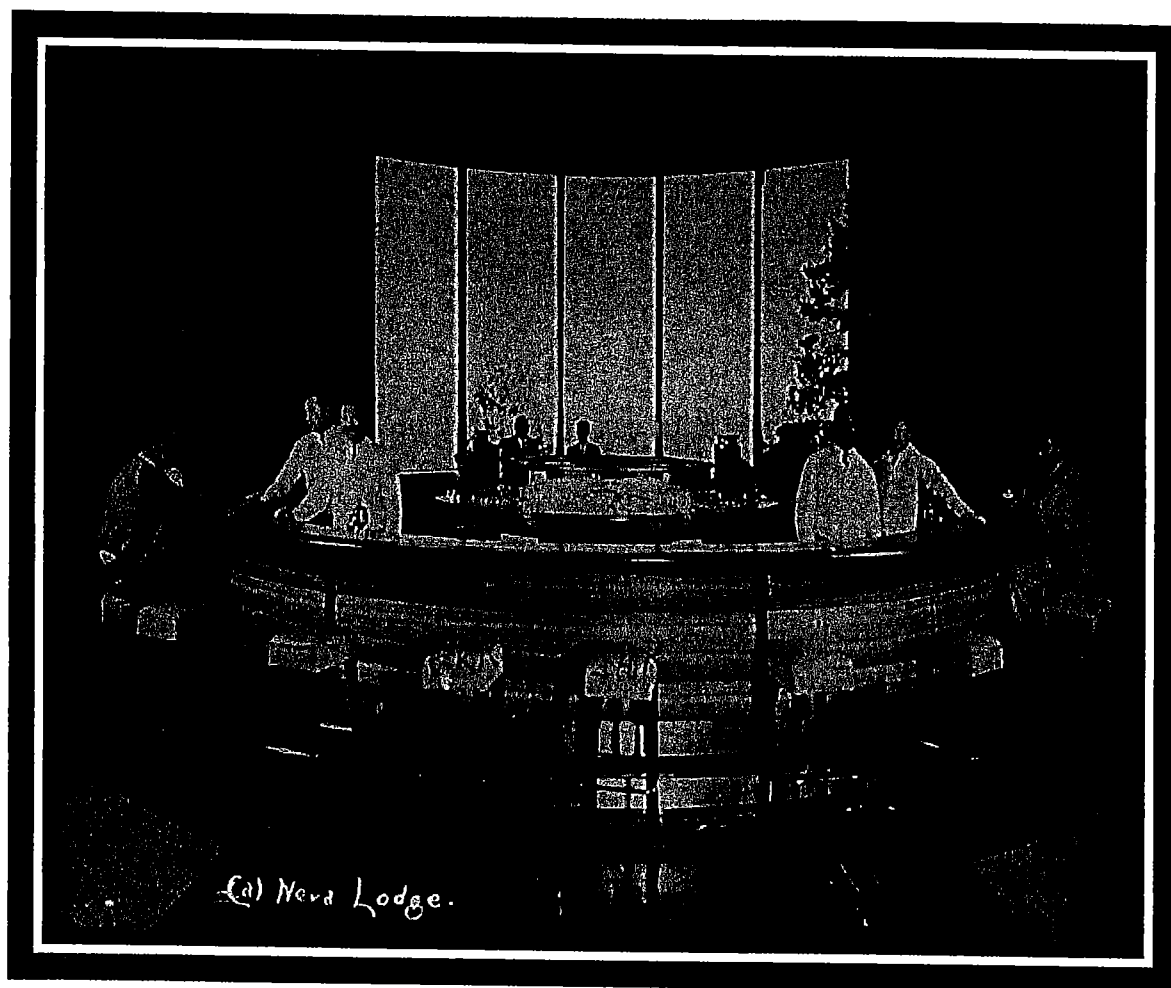
The PRESS restaurant story is told by the company this way:

*It was a rainy Sunday afternoon in Paris, when six friends in the wine business gathered at L'Ami Louis for lunch. The unassuming style of L'Ami Louis belies the fact that it is a favorite of serious foodies. Although the restaurant prepares few items, every dish is executed simply but to perfection. After a leisurely lunch, one of the men raised his glass in a toast, "To great wine, great food, and time to enjoy great friends." This simple wish resonated deeply for Leslie Rudd and provided the inspiration for the creation of PRESS.*

*Deeply ingrained in its California roots, the restaurant imbues a laid-back, yet refined sense of style and taste. The menu celebrates local freshness, featuring a highly curated selection of the finest seasonal produce and highest quality cuts of meat, seafood and poultry picked daily. Cooked to perfection and complimented by an extensive list of Napa Valley's most brilliant wines, every dish is a sumptuous celebration of epicurean delight.*



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The Circle Bar has hosted guests from all over the world and is one of the most famous features of the historic property. In the renovation plan, the lounge will become the host area for the PRESS restaurant and will act as additional seating area with limited menu service adjacent to the main Circle Bar. The restaurant will be directly underneath the Circle Bar area with two-story windows looking out to the lake and will connect in to the Circle Bar for its entry experience. It will also have lower level doors opening out to the new outdoor terrace level.

In a market so under-served by high quality dining options, we strive to not only create a destination quality dinner restaurant for our guests, but also to be a major draw among locals – both residents and Lake Tahoe visitors alike. The restaurant will hold 60 seats inside, and about the same number of seats outside in the warmer seasons. The state line runs right through the restaurant, both inside and out.

In the renovation plan, the space formerly used as the restaurant on the main level will be used as a ballroom (or meeting rooms if divided), and the three-meal restaurant for the hotel will be relocated to the lowest floor overlooking the new deck to maximize the lake views for the restaurant. The main, three-meal restaurant will connect to the Pool Bar and Club, a large deck and pool area directly overlooking the lake that will be an additional F&B outlet in the warmer months and could be a

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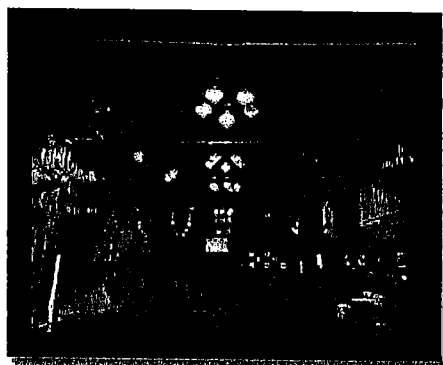
considerably popular draw in the peak summer season. The food quality and selection will be similar to a Houston's or a Rutherford Grill – casual, but still consistent with our guests' expectations of quality.

#### *Event /Meeting Space*

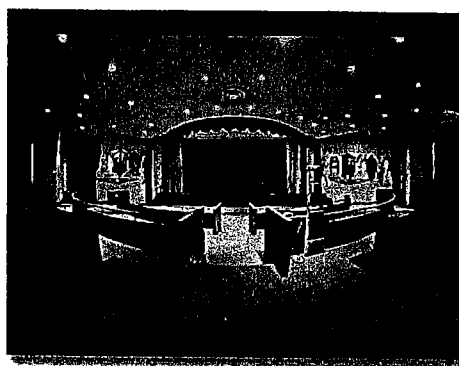
The Cal Neva features 16,000 square feet of full-service meeting and convention space and can accommodate everything from intimate meetings to grand scale events. The largest venue at the Property is the Frank Sinatra Celebrity Showroom. Built by Frank Sinatra, the Celebrity Showroom was home to many of America's most renowned celebrities, sports figures, and politicians. Today, the Showroom's unique tiered set up and acoustically perfect surroundings make it ideal to update for intimate concerts and shows, as well as hosting conferences, presentations, and banquets during the day. It may also be able to be used for sports betting or movies as alternative programming.

The Cal Neva also features the famous Indian Room. This room's large granite fireplace is separated by the California/ Nevada state line and serves as the museum anchor of the resort. Burned to the ground in 1937, this room was built as a mirror image of the previous lodge. The room is available for private functions as well as hotel events.

Weddings are extremely popular at the Property due to the scenery and natural beauty of the surrounding Lake Tahoe landscape, as well as the well-known history of the resort. The property at one time was host to more than 500 weddings per year, and weddings will continue to be a major appeal of this resort. We will emphasize quality over sheer quantity of events, but both weddings and private group events will be a major driver of shoulder season business and should help our occupancy targets year-round.



Indian Room



Frank Sinatra Celebrity Showroom



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## MARKET OVERVIEW

### *North Lake Tahoe Market*

With a total population of 65,000 and approximately 3 million visitors each year, tourism booms as the area's main source of income, and visitors and locals alike bask in the outdoor and indoor recreational options. In addition to the skiing, snowboarding, and other winter sports it attracts in the winter months, the area has several destination-quality golf courses and spectacular hiking and mountain biking terrain for the summer months. In addition to the mountain activities, Lake Tahoe itself offers boating and other water-oriented activities that make its summer season even stronger than a typical mountain-area resort. In this market, slope access is actually less strong for overall occupancy strength than lake access, and other than the Hyatt's beach and dock, the views from Cal Neva make it one of the best hotels for proximity to Lake Tahoe. The overall Reno-Tahoe region had 5.3 million occupied room nights in 2011, with almost 15,000 hotel rooms, over 2,000 motel rooms, 560 timeshare units, and 750 private vacation rentals for visitors to the area.

The nearby project Martis Camp, offering custom lots, built homes, and golf and recreational amenities, is a good benchmark for the strength of this market. Despite having a large number of lots to sell in a very difficult market, the project is now close to sellout and achieved prices in the \$1.5-2.5 million range for most of the built homes. Combined with the home prices we see in the Incline Village area just a few minutes from the hotel, it is not hard to establish that the bay area regulars who come to North Lake Tahoe, especially around the Northstar and Incline Village area, are a large and very well-off group.

### *Competition*

Please see Exhibit C, Market Analysis, for a detailed excerpt from the project's appraisal which describes the competitive set, their recent performance, and the expected rate and occupancy performance they used for Cal Neva based on that review of the local peer hotels.

### TEAM

#### *Sponsor/Developer*

**Criswell Radovan, LLC:** The Criswell Radovan team has over 50 years of combined real estate ownership and development experience, especially in the hotel and hospitality industry, and has earned a reputation for creating opportunities in markets with high-barriers to entry. The team has worked with some of the industry's top consultants and planners in areas such as architecture, marketing communications, sales management, construction management, and land planning. They also have long-standing relationships with virtually all of the hotel operators in the hotel industry, from luxury boutiques to large-scale operations.

Projects developed by Criswell Radovan include the following:

- **Aetna Springs and Lake Luciana in Napa Valley:** These two sister projects are located in the Pope Valley area of California's Napa Valley wine country and span over more than 4,000 acres. Still in development, Aetna Springs boasts a 9-hole golf course in continuous play since the 1870's that was recently restored by Tom Doak of Renaissance Golf Design. It also has a new clubhouse designed by Scott Johnson. The historic resort, built in 1891, is listed on the national register of historic places and is home to some of Bernard Maybeck's first commissions. The resort will be under construction later this year and should be open with 80 keys, golf, spa/pool, vineyard, and winery amenities in 2016. Lake Luciana is a private home community with vineyard estates averaging 80 acres in size and surrounding a large lake and

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commercial vineyard. The two properties offer close to 50 estate lots for sale in addition to the resort asset.

- **Museum Tower:** In an owner representative capacity, Criswell Radovan oversaw the design and development of a 42-story luxury residential condominium project in Dallas. Scott Johnson designed the building, and it completed construction in Dec. 2012 with sales averaging \$800/s.f. in the Dallas, TX market.
- **Calistoga Ranch:** a luxury hotel and private residence club opened in May 2004. The project worked within its existing RV zoning to create award-winning park model designs for lodging units that were not only compliant, but which embraced a low-touch approach to integrating with the campground-like setting. In January 2013, U.S. News and World Report ranked Calistoga Ranch the #1 hotel in California and #5 in the country. At the end of the year, it was reported to be the highest price per key hotel sale in 2013, at \$1.1 million per room.
- **Four Seasons, Dublin:** a 250-room hotel in Dublin, Ireland, that opened in 2001. Criswell Radovan, acting as the development manager for the owner, negotiated a 250-year ground lease with the Royal Dublin Society. Criswell Radovan's introduction of Four Seasons to the project resulted in the first large, luxury hotel in Dublin.
- **Broken Top:** a 2,000 acre master-planned private golf community in Bend, Oregon. The first phase contained a Weiskopf/Morish course (voted one of the ten best new private courses) with a clubhouse (winner of AIA design award) and 367 homes. The balance was developed as one of Oregon's first Destination Resorts.
- **The Valley Club:** a 700 acre master planned private golf community in Sun Valley, Idaho. This Hale Irwin course was the first private course in Sun Valley, offering a clubhouse and 99 two-acre home sites. The memberships were sold from \$30,000-\$120,000 each.

Prior to forming Criswell Radovan with Robert in 1996, Bill Criswell directly owned and operated two comparable hotels: Old Bahama Bay on Grand Bahama Island and Mahogany Run on St. Thomas in the U.S. Virgin Islands. Mr. Criswell has been a significant owner of 13 high-end or luxury hotels, several of which he also developed. The brands he worked with included Regent (The Dorchester Hotel in London), Rosewood, Ritz Carlton, Four Seasons, Auberge, Hyatt, and Westin. A number of these hotels have been ranked at various times among the top hotels and resorts in their regions or even the world. Those more prestigious hotels included The Dorchester in London; The Remington, Houston (now the St. Regis); The Four Seasons, Dublin; The Ritz Carlton, San Francisco; Calistoga Ranch in Napa Valley; Mahogany Run, U.S. Virgin Islands; Old Bahama Bay, the Bahamas; and The Westin Hotels in Los Cabos, Puerto Vallarta, and Cancun. Some of these properties had restaurants or spas which were separately ranked as best in class.

Mr. Criswell's other development work prior to 1996 was as founder/owner of Criswell Development Company, which was ranked among the twenty largest development companies in the U.S. Its main focus was primarily in office, hotel, and multi-family residential development. Criswell Development owned, developed, and managed over 3 million s.f. of class A office space, including the 60-story, internationally recognized Fountain Place building in Dallas, TX. The 1.2 million s.f. tower was designed by I.M. Pei and won the top national AIA award for architecture. The company also owned, developed, and managed approximately 3,000 condominium and apartment units.

Prior to his partnership with Bill Criswell in 1996, Robert Radovan founded and managed a design, engineering and construction company in Southern California which worked on projects of varying sizes from large commercial to individual residential projects. Some of the noted projects were the Ritz Carlton Hotel in Pasadena, the Peninsula Hotel in Beverly Hills and Old Town San Diego where the company performed engineering and construction services in both union and non-union capacities. Residential projects were also completed, although many were no less complicated, such as the Danny Devito's estate in Beverly Hills and the Allen Paulson estates in Beverly Hills and Bonsall, CA. Robert was also a member of the Navy SEAL teams earlier in his career.

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Bill and Robert are joined by Brandyn Iverson in Criswell Radovan, a JD/MBA with considerable financial and legal experience in both public and private companies including CNET, Wilson Sonsini, and The Walt Disney Company. She has worked with them for over 14 years, beginning with the Calistoga Ranch project in 1999, and handles many of the business planning, financial management, investor relations, and legal oversight of the team's projects.

### **Hal Thannisch: Technical Services - Pre-Opening and Design Consulting**

Hal Thannisch served as development executive for both Rosewood Hotels and Ritz-Carlton Hotels for a decade. As a leader in his field for 25 years, he possesses the global vision, broad experience and proven technical expertise required to redefine the international standards for "destination-making" in a hotel experience.

The internationally acclaimed Las Ventanas al Paraíso in Los Cabos, Mexico is one of Thannisch's most notable successes in luxury hospitality development. Beginning with a raw site on the beautiful coast of the Baja California peninsula, he orchestrated the creation of what has now been named the Best Hotel in the World by several notable travel and hospitality industry publications and organizations. He continues to make extraordinary contributions to the development of sought-after hotel hotels by crafting environments that provide an exquisite ambiance and a total guest experience. More recently, Mr. Thannisch has been the primary advisor to the Pellas Development Group in Nicaragua creating the self-managed Mukul Golf and Beach Hotel at Guacalito De La Isla as a luxury boutique hotel.

Among Mr. Thannisch's more noteworthy projects are the following:

- Hotel Cap Juluca, Anguilla, BVI (renovation)
- Las Ventanas al Paraíso, Cabo San Lucas, México
- The Bel-Air Hotel at Costa Careyes, Jalisco, Mexico
- The Ritz-Carlton Hotel, Kapalua, Maui, Hawaii
- Guacalito de la Isla (1,500 Acres), Rivas, Nicaragua
- Santa Elena (4,500 Acrea), Guanacaste, Costa Rica
- Pelican Hill Hotel & Golf Club, Newport Beach, California
- The Georgian Hotel & Golf Club, Atlanta, Georgia
- Las Radas Golf Hotel at El Escorial, Madrid, Spain
- Spanish Waters Hotel, Curacao, Netherlands Antilles
- The Grand Hotel, Atlanta, Georgia (renovation; currently the Four Seasons Hotel)
- Holiday Inn Hotel and Casino, Aruba, Netherlands Antilles
- The Bel-Air Hotel at El Tamarindo & Golf Club, Jalisco, Mexico
- The Hotel Bel-Air, Isla Mazatlan, Mazatlan, Mexico
- The Crescent Court Hotel, Spa and Dining Club, Dallas, Texas
- Mukul Hotel at Guacalito, Rivas, Nicaragua
- St. Regis, Atlanta, Georgia
- Sunset Beach Renovations, Al Khobar, Saudi Arabia
- Hotel Bel Air, Bel-Air, California
- The Ritz-Carlton Hotel, Aspen, Colorado
- Hotel Arts, Barcelona, Spain (Ritz Carlton)
- Casa Madrona, Sausalito, California
- Sorbas Canyon & Golf Club, Andalucía, Spain
- Angostura Hotel & Golf Club, Tobago
- Hotel Hana-Maui & Hana Ranch Master Plan, Hana, Maui, Hawaii
- St. Andrews Hotel on the Old Course, St. Andrews, Fife, Scotland
- The Hideout at Flitner Ranch, Cody, Wyoming

C O N F I D E N T I A L

### **Chief Operating Officer and Technical Services - Florent Gateau**

Florent Gateau is currently the founder of New World Concept Group. A talented and enthusiastic hospitality professional with 15 years of upper-level management experience, Gateau has been responsible for the operations of some of the most luxurious properties in the Americas.

Mr. Gateau began advising for Mukul resort in Nicaragua with their opening launch this year and for National Hotel as a consultant when he was brought on to oversee a \$15 million renovation of the hotel for the past 2 years.

Prior to the National Hotel, he spent a year as Managing Director of One Bal Harbour Resort, Spa & Residences in nearby Bal Harbour, where he helped ownership take their newly acquired property to a Small Luxury Hotels of the World.

Prior to One Bal Harbour, Florent was the opening general manager at the Viceroy Miami at Icon in Brickell, Florida from 2008 to 2010; this included the launch of the 1800 unit Icon Brickell for the related group and all of the residential amenities, from conceptualizing of the spa to the nightclub venue and bringing in Michael Psilakis and Donatella Arpaia as the culinary concept for EOS, the signature dining venue.

Before Viceroy, Mr. Gateau was the Managing Director of Acqualina in Sunny Isles, Florida, from 2006-2008; he came in after the opening, back to Rosewood Hotels and helped in the relaunch of the Condo Hotel and Resort amenities,

Florent Gateau was the opening Hotel Manager of The Setai in Miami Beach from 2004 to 2006. He helped create the brand with Manvinder Puri, the regional VP for GHM hotels. The branding and concepts were all customized to create the luxury leader of the Miami Beach market place.

Before coming back to Miami, Gateau enjoyed a successful run with Rosewood Hotels and Resorts, including Hotel Manager of the renowned Mansion on Turtle Creek in Dallas and as opening team and Resort Manager of Las Ventanas al Paraiso, Baja California Sur in Los Cabos, Mexico from 1997-2003. Florent was instrumental in the creation of the destination resort in the beginning of the Los Cabos area.

### ***Design and Construction Team:***

#### **General Contractor- PENTA Building Group:**

Founded in 2000, The PENTA Building Group is a commercial general contractor, with offices in Las Vegas, Reno, Phoenix, Los Angeles, Palm Desert, and Tulsa. As a general contractor, construction manager, and concrete subcontractor, they partner with every member of the development, design, and construction team to build a variety of projects ranging in size and scope. PENTA provides services on a Construction Manager at Risk (CMAR) basis, with preconstruction services (budgeting, scheduling, BIM, constructability review, etc.) commencing early in the design phase, under a traditional general contractor arrangement, or on a Design-Build basis. PENTA has successfully delivered nearly \$4 billion in projects since its inception with more than \$3 billion of this work being in CMAR, hospitality, and gaming projects.

PENTA was selected for the Cal Neva project based largely on their experience base in the North Lake Tahoe market, and both the relationships and pricing knowledge that come with that experience. They recently finished the renovation of the Hyatt Regency Lake Tahoe, including 376 guest rooms, meeting rooms, and three meal restaurant. Other reasons PENTA was particularly impressive included their strong project controls on both schedule and cost, bonding capacity, and the fact that there has been no litigation with an owner in their 13 years of existence.

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**Architect – Peter W. Grove, Collaborative Design Studios:**

Peter has 30 years of experience designing award winning public and private projects including the recent remodel of the Hyatt Lake Tahoe in Incline Village, Aspen Terrace (Addition, Spa and Remodel), the recently completed Northstar at Tahoe Zephyr Lodge, the Heavenly Lake Tahoe Tamarack Lodge, and the Renovation and Addition to the Tenaya Lodge at Yosemite. Peter was also the principal in charge and actively involved in the previous Cal Neva redesign effort for the previous ownership group. Because of that prior role, he not only has considerable working knowledge of the property, but he also worked on the previous condominium entitlements and will be a key asset in our phase II planning and permitting work.

**Interior Design – Paul Duesing, Paul Duesing Partners:**

Paul Duesing has built an unparalleled reputation in the hospitality industry over the course of 25 years. Paul and his partners are a highly sought after group of interior designers in the industry, and are considered pioneers in bringing a lifestyle-focused approach to luxury resort properties on a unique "personal" scale. A roster of the world's great names in hospitality — such as The Ritz Carlton, Four Seasons, One & Only, St. Regis, Rosewood and many others — has entrusted their most prestigious projects to Paul and his talented team of interior designers.

Paul's aim is to design and develop each project with an eye toward the guest's experience from the moment he/she first approaches the property down to the smallest of details. Examples of his handiwork include the trademark Cabo resort Las Ventanas Al Paraiso. He also created the sumptuous environments at the One & Only Palmilla Resort and Spa, one of Mexico's most prestigious resorts. Other signature projects include the Claridges Hotel in London, the Grand Hotel du Cap-Ferrat in Saint Jean Cap-Ferrat, France, and many other projects including the Royal Livingstone Hotel at Victoria Falls, Zambia.

**Landscape Architect – Don Brinkerhoff, Lifescapes International**

No firm speaks the language of landscape more eloquently than Lifescapes International. Guided by founder Donald Brinkerhoff, and managed by a seasoned senior principal team, Lifescapes is an internationally recognized leader of innovative and creatively designed landscaped environments which consistently entertain and delight their clients and, in turn, their customers. Over the past five decades, Lifescapes has designed some of the world's most iconic landscapes, including destination resorts, casinos, residential communities, golf courses and retail/lifestyle centers. Within just the Las Vegas market, Lifescapes has created destination hotel landscape designs for some of the area's most iconic properties: The Bellagio, The Venetian (including Tao Beach), Wynn Las Vegas, Caesar's Palace, The Mirage, and Encore Las Vegas. Other work includes private communities, golf course resorts, themed environments, commercial, and international commissions.

**FINANCIAL HIGHLIGHTS**

- The project will be capitalized with \$20 million in equity and \$35 million in debt, for total capitalization of \$55 million.
- The Phase I development budget is just under \$51 million, or \$32 million net of land and financing cost. The acquisition price for the property, along with all transaction and financing costs of the acquisition and the \$3 million funded for the first year of pre-development, is \$18 million. We expect to use close to \$19 million for the construction hard cost on the renovation, including all site work. FF&E and OS&E are budgeted at \$6 million, leaving about \$8 million for the remaining development soft costs, including architecture, engineering, development services, financing costs and fees, and contingency.
- The \$29 million construction loan will be interest only at 9% during the first 3 years, then amortizing as a mini-perm for a total term of five years. We plan to refinance that loan in 2017 for about \$60 million,

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which could mean the return of close to or all of the cash equity to the investors as soon as the hotel achieves stabilization.

- The hotel opens with an ADR of \$300 in early summer 2015, growing to a rate of \$350+ after stabilization. Occupancy is assumed to be 62% on a stabilized basis, consistent with the seasonality of the area as well as the property's ability to sell to groups and weddings to keep a fairly high and stable base of occupancy.
- Guest spending on food and beverage purchases is expected to be over \$200 per occupied room upon stabilization, before even factoring in the revenue from guest spending to use the club yacht, the celebrity showroom tickets and drink sales, or spending at the casino.
- The property can support a loan of \$60M even after only two years of operations with debt service coverage of 1.4x.
- We chose not to pursue the condominium entitlements before work commences on the renovation of the main hotel, as the financial success of this investment requires a prompt re-opening of the hotel. If we are successful in re-entitling the 56 keys, or 28 two-bedroom condominium units on the site (full ownership with rental program for the hotel), the financial returns could be substantially higher than forecast in this plan, especially if we are able to pre-sell a majority of those units to support their construction financing. A pro forma on the condo hotel opportunity projects a roughly \$15 million potential profit opportunity on unit sale.

# CAL NEVA HOTEL - \$35M Debt / \$20M Equity

## Assumptions and Summary

(Figures in Actual Amounts)

Key Assumptions	
Number of Keys Phase I Remodel*	191
Number of Keys Purchased/Entitled	219
Acquisition Date	April 2013
Construction Start Date (Yr 0)	Apr. 2014
Construction Duration	12 mos.
Remodel Completion Date	Apr. 2015
Opening Date (Yr 1)	May 2015
Rooms ADR	300
Rooms Occupancy*	65%
Stabilization Year (Yr 3)	2017
Rooms ADR	350
Rooms Occupancy	62%
Refinance Year (Yr 3)	2017
Room ADR	350
Room Occupancy	62%
NOI Before Debt Service	\$ 6,426,041
Cap Rate	7.0%
Value at Refinance	\$ 91,800,585
LTV	65%
Perm. Loan Amount	\$ 59,670,380
Annual Payment	\$ 4,667,818
Exit Year (Yr 7)	
Room ADR	394
Room Occupancy	62%
NOI Before Debt Service	\$ 7,344,357
Cap Rate	6.5%
Hotel Value	\$ 112,990,109
Perm Loan Balance	\$ 54,912,569
Net Proceeds from Sales	\$ 58,077,541
Mgmt Fees	
Base Fee =	3% of Revenue
Incentive Fee	0% of NOI Before Reserves and Debt Service
Property Tax Rate	2.000%
Assessed Value upon Completion	\$30,000,000

Sources and Uses of Funds	
Sources	
Preferred Equity	\$ 20,000,000
Mezzanine Loan (Incl. Int. Reserve)	\$ 6,896,000
Construction Loan/Mini-Perm	\$ 29,000,000
<b>Total Sources</b>	<b>\$ 55,896,000</b>
Uses	
Purchase Price	\$ 13,000,000
Architecture & Engineering	\$ 1,592,000
Construction Costs	\$ 18,700,000
FF&E/OS&E	\$ 6,259,250
Development Soft Costs, Inc. Pre-Opening	\$ 4,318,000
Financing Costs & Fees	\$ 5,713,498
Contingency	\$ 1,147,039
<b>Total Uses</b>	<b>\$ 50,729,787</b>
<b>Sources/Uses</b>	<b>\$ 5,166,213</b>

Uses of Additional Equity	
Equity Available if \$20M Raised	\$ 5,166,213
Add-Scope for F&B Venues, Finishes, VE Item	\$2,500,000
Condo Units Devel. Equity	\$2,000,000
Fairwinds Estate Costs & Upgrades	\$666,213

Metrics	
CR Purchase price / key	\$59,361
Remodel Cost / Key	\$167,625
<b>Total Project Cost / Key</b>	<b>\$265,601</b>

Debt	
Mezzanine Loan	
Amount	\$ 6,896,000
Interest Rate	12.00%
Term (Yrs)	3
Type	Int. Only
Interest Reserve	\$ 896,000
Construction Loan/Mini-Perm	
Amount	\$ 29,000,000
Interest Rate	9.00%
Term (Yrs)	5
Type	I/O for 3 yrs. 25 yr. amort. yrs 4-5
Permanent Loan	
Amount	\$ 59,670,380
Rate	6.0%
Term (Yrs)	10
Amortization (yrs)	25
Type	25 yr amort w/ balloon pmt yr 10
Origination Fees	3%
Total Fees	\$ 1,790,111
Annual Pmt.	\$ 4,667,818
Balance at Exit (Yr. 7)	\$ 54,912,569

# CAL NEVA HOTEL 10-Year Proforma P&L

(Figures in Actual Amounts)

	FY 1	FY 2	FY 3	FY 4	FY 5	FY 6	FY 7	FY 8	FY 9	FY 10
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
<b>REVENUES:</b>										
ROOMS	\$ 8,491,880	46%	\$ 10,961,126	55%	\$ 14,371,747	54%	\$ 15,704,395	54%	\$ 17,100,816	54%
FOOD & BEVERAGE	\$ 6,650,461	79%	\$ 7,272,767	78%	\$ 7,770,071	75%	\$ 8,243,269	75%	\$ 8,745,284	75%
SPA & SALON	\$ 200,000	2%	\$ 200,000	1%	\$ 200,000	1%	\$ 200,000	1%	\$ 200,000	1%
GROUP EVENTS/CONCERT	\$ 300,000	2%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%
GAMING LEASE**	\$ 300,000	2%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%
CLUB YACHT (TBD)	\$ 127,278	1%	\$ 209,417	1%	\$ 215,578	1%	\$ 222,043	1%	\$ 228,705	1%
MOD	\$ 60,000	0%	\$ 61,800	0%	\$ 63,654	0%	\$ 65,564	0%	\$ 67,531	0%
RETAIL LEASES	\$ 18,367,314	100%	\$ 25,165,428	100%	\$ 26,770,425	100%	\$ 27,573,338	100%	\$ 28,400,744	100%
TOTAL	\$ 18,367,314	100%	\$ 25,165,428	100%	\$ 26,770,425	100%	\$ 27,573,338	100%	\$ 28,400,744	100%
<b>DEPARTMENTAL EXPENSES:</b>										
ROOMS	\$ 2,462,538	29%	\$ 3,769,504	27%	\$ 3,592,937	25%	\$ 3,700,725	25%	\$ 3,811,747	25%
FOOD & BEVERAGE	\$ 6,650,461	79%	\$ 7,272,767	78%	\$ 7,770,071	75%	\$ 8,243,269	75%	\$ 8,745,284	75%
SPA & SALON	\$ 200,000	2%	\$ 200,000	1%	\$ 200,000	1%	\$ 200,000	1%	\$ 200,000	1%
GROUP EVENTS/CONCERT	\$ 300,000	2%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%
GAMING LEASE**	\$ 300,000	2%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%
CLUB YACHT (TBD)	\$ 127,278	1%	\$ 209,417	1%	\$ 215,578	1%	\$ 222,043	1%	\$ 228,705	1%
MOD	\$ 60,000	0%	\$ 61,800	0%	\$ 63,654	0%	\$ 65,564	0%	\$ 67,531	0%
RETAIL LEASES	\$ 18,367,314	100%	\$ 25,165,428	100%	\$ 26,770,425	100%	\$ 27,573,338	100%	\$ 28,400,744	100%
TOTAL	\$ 18,367,314	100%	\$ 25,165,428	100%	\$ 26,770,425	100%	\$ 27,573,338	100%	\$ 28,400,744	100%
<b>DEPARTMENTAL PROFITS:</b>										
ROOMS	\$ 6,029,342	71%	\$ 10,751,622	73%	\$ 11,178,810	75%	\$ 11,403,670	75%	\$ 11,899,032	75%
FOOD & BEVERAGE	\$ 1,657,615	20%	\$ 2,051,299	22%	\$ 2,590,024	25%	\$ 2,667,724	25%	\$ 2,915,095	25%
SPA & SALON	\$ 200,000	2%	\$ 200,000	1%	\$ 200,000	1%	\$ 200,000	1%	\$ 200,000	1%
GROUP EVENTS/CONCERT	\$ 300,000	2%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%
GAMING LEASE**	\$ 300,000	2%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%	\$ 300,000	1%
CLUB YACHT (TBD)	\$ 127,278	1%	\$ 209,417	1%	\$ 215,578	1%	\$ 222,043	1%	\$ 228,705	1%
MOD	\$ 60,000	0%	\$ 61,800	0%	\$ 63,654	0%	\$ 65,564	0%	\$ 67,531	0%
RETAIL LEASES	\$ 18,367,314	100%	\$ 25,165,428	100%	\$ 26,770,425	100%	\$ 27,573,338	100%	\$ 28,400,744	100%
TOTAL	\$ 18,367,314	100%	\$ 25,165,428	100%	\$ 26,770,425	100%	\$ 27,573,338	100%	\$ 28,400,744	100%
<b>OVERHEAD EXPENSES</b>										
GENERAL & ADMIN	\$ 1,102,039	6%	\$ 1,509,926	6%	\$ 1,606,226	6%	\$ 1,654,412	6%	\$ 1,704,045	6%
SALES & MARKETING	\$ 1,836,731	10%	\$ 2,516,643	10%	\$ 2,411,634	9%	\$ 2,202,683	8%	\$ 2,272,060	8%
REPAIRS & MAINT.	\$ 918,366	5%	\$ 1,006,617	4%	\$ 1,070,817	4%	\$ 1,102,942	4%	\$ 1,136,930	4%
UTILITIES	\$ 367,346	2%	\$ 503,399	2%	\$ 535,409	2%	\$ 569,015	2%	\$ 595,058	2%
TOTAL	\$ 4,224,482	23%	\$ 5,536,394	22%	\$ 5,854,085	20%	\$ 6,055,708	20%	\$ 6,266,050	20%
<b>GROSS OPERATING PROFIT:</b>	\$ 4,286,790	23%	\$ 7,702,222	31%	\$ 9,112,151	34%	\$ 9,418,905	34%	\$ 9,701,472	34%
<b>FIXED CHARGES</b>										
TAXES	\$ 600,000	3%	\$ 600,000	2%	\$ 600,000	2%	\$ 600,000	2%	\$ 600,000	2%
INSURANCE	\$ 200,000	1%	\$ 200,000	1%	\$ 212,180	1%	\$ 216,545	1%	\$ 225,102	1%
BASE MANAGEMENT FEE	\$ 551,018	3%	\$ 754,983	3%	\$ 803,113	3%	\$ 827,206	3%	\$ 852,022	3%
TOTAL	\$ 1,351,018	7%	\$ 1,560,983	6%	\$ 1,615,293	6%	\$ 1,643,752	6%	\$ 1,677,124	6%
<b>NET OPERATING INCOME:</b>	\$ 2,947,771	16%	\$ 6,141,239	24%	\$ 7,496,858	28%	\$ 7,775,154	28%	\$ 8,024,348	28%
CAP EX RESERVE	\$ 387,346	2%	\$ 754,983	3%	\$ 1,070,817	4%	\$ 1,102,942	4%	\$ 1,136,930	4%
NOI AFTER RESERVE:	\$ 2,560,425	14%	\$ 5,386,256	21%	\$ 6,426,041	24%	\$ 6,672,212	24%	\$ 6,887,418	24%
<b>DEBT SERVICE</b>										
CONSTRUCTION LOAN	\$ 1,522,500	8%	\$ 2,610,000	10%	\$ 2,610,000	10%	\$ 2,610,000	10%	\$ 2,610,000	10%
MEZZANINE LOAN	\$ 462,720	3%	\$ 827,520	3%	\$ 827,520	3%	\$ 827,520	3%	\$ 827,520	3%
PERMANENT LOAN	\$ 2,005,220	11%	\$ 3,437,520	14%	\$ 3,437,520	13%	\$ 3,437,520	13%	\$ 3,437,520	13%
TOTAL	\$ 4,000,440	22%	\$ 6,875,040	27%	\$ 6,875,040	26%	\$ 6,875,040	26%	\$ 6,875,040	26%
<b>NOI AFTER DEBT SERVICE:</b>	\$ 859,985	5%	\$ 1,971,216	8%	\$ 2,811,017	10%	\$ 3,004,636	10%	\$ 3,150,898	10%
INCENTIVE MGMT FEE	\$ 294,777	2%	\$ 614,126	2%	\$ 749,696	3%	\$ 777,315	3%	\$ 802,435	3%
OPER DEFICIT RESERVE	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	0%
NET OF FOR DISTRIBUTION	\$ 565,208	3%	\$ 1,357,090	5%	\$ 2,061,321	8%	\$ 2,227,321	8%	\$ 2,348,463	8%
DSCR	1.29	1.57	1.87	1.43	1.46	1.52	1.57	1.62	1.68	1.71

\* Group events and concerts assume revenue from site fees only and includes all private parties and weddings in addition to the Cashier's Showroom. Pending a partnership with a concert promoter, we assume only that we get a reasonable site fee and that all costs (other than security) and revenue from music events goes to the promoter. Events on the club yacht are included in the line of business.

\*\* Gaming operation will be leased to a licensed gaming operator who will pay a monthly base lease and will keep all revenue from gaming. The gaming economics may change once we identify our partner for the casino operation.



# CAL NEVA HOTEL - \$35M Debt / \$20M Equity

## Phase II - 28 Managed Residences for Sale

### Proposed Program

Two - Bedroom (w.Lockoff) Units (2 keys ea.)	28 Units	1,250 nsf /Unit	35,000 NSF
Efficiency Factor	12.0%		4,200 SF
Add'l Common Areas			1,500 SF
Parking Garages	0 Cars	350 sf/Car	0 SF
<b>TOTAL AREA (GSF)</b>			<b>40,700 GSF</b>

### Development Cost Forecast

#### Condominiums

Land & Pre-Development			\$ 50,000
Design Development			\$ 400,000
Construction (NSF)	35,000 /NSF	\$400 /NSF	\$ 14,000,000
Construction Efficiency Factor (GSF)	5,700 /SF	\$200/SF	\$ 1,140,000
Fixtures, Furnishings and Equipment		\$40,000/unit	\$ 1,120,000
Operating Supplies & Equipment			\$ 210,000
Pre-Opening			\$ 75,000
Development & Financing			\$ 2,100,000
Marketing (plus 7.5% cost of sales below)			\$ 1,000,000
Contingency			\$ 500,000
<b>Total Development Cost Forecast - Hotel</b>			<b>\$ 20,595,000</b>

### Residential Sales Forecast

#### Income from Sales

Net Saleable Area		35,000 NSF
Price per NSF		\$1,200
Reimbursement of FF&E + Mark Up	15.0%	\$1,288,000
Gross Sales Income		\$43,288,000
Cost of Sales	7.5%	(\$3,246,600)
Founder Member Discounts (\$500K/unit)		(\$3,500,000)
<b>Net Income from Sales</b>		<b>\$36,541,400</b>

### Net Profit

**\$15,946,400**

### Notes:

Estimates for pricing \$850-\$1650 / sf range  
 Northstar lodging condos \$850/sf, Ritz Carlton \$1000/sf, Incline Village Lakefront over \$1500/sf  
 Estimates for absorption 2.5 units/mth  
 Pre-sales will be required to support construction financing.  
 The for-sale units could be developed at any time (with the hotel renovation, 1yr after, 3yrs after, etc...)  
 Assume Buyers reimburse Developer for FF&E at closing (developer would have to capitalize up front)

If these units were built as hotel suites and not sold, a reasonable estimate could be made to support their contributing an additional \$1.5M NOI to the bottom line at stabilization, which over 10yrs with inflation (est. \$18M), plus a disposition at a 7% Cap Rate on \$2M NOI after 10yrs of inflation would add \$28.5M to the asset value. Net of construction cost, these 28 suites could still add almost \$10M in profit to the venture.

# CAL NEVA HOTEL - \$35M Debt / \$20M Equity

## **Investor Returns** (Figures in Actual Amounts)

### Cash Flow Waterfall

	Apr 2014-Apr. 2015	May Open 2015	2016	2017	2018	2019	2020	2021	TOTAL
	Develop Period	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	
Period									
Annual Net Cash Flow		230,428	1,334,740	2,238,835	1,225,079	1,418,066	1,616,842	1,821,582	9,935,571
CF From Loan Refinancing (End of Yr. 3)				59,670,380					
Annual Net Cash Flow		280,428	1,334,740	61,909,215	1,225,079	1,418,066	1,616,842	1,821,582	69,605,951

### Senior Loan Balance

	29,000,000	28,719,572	27,384,832	25,145,997					
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### Mezzanine Loan Balance

	6,896,000	6,896,000	6,896,000	6,896,000					
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### EXIT VALUATION - YEAR 7

Hotel Value	\$ 112,990,109
Perm Loan Balance	\$ 54,912,569
Net Proceeds from Sales	\$ 58,077,541

### Total Distributions with Exit

Total Project	(20,000,000)	-	-	27,628,383	1,225,079	1,418,066	1,616,842	59,899,123	91,787,492
Return									
Equity Multiple									
IRR									

### Total Distributions - Yr. 7 Exit - Condo Sales Contribute \$16M Net Profit from Sales

Net Profit from Condo Sales	(20,000,000)	-	-	15,946,400					
Total Project Return				43,574,783	1,225,079	1,418,066	1,616,842	59,899,123	107,733,892
Return									
Equity Multiple									
IRR									

Note: Condo Units also contribute 56 keys of inventory with both rental program use and on-property spending by owners and guests. No P&L contribution is shown in this n

NOTE: 2015 is only a 7-month period, so this annual IRR will be improved on a monthly calculation.

# CalNeva Hotel

Lake Tahoe, Nevada

Cost Summary		Total Project	% of Total
10000	Total Land & Pre-Development Costs	\$ 13,000,000	25.6%
20000	Total Design Costs	\$ 1,592,000	3.1%
30000	Total Construction Costs	\$ 18,700,000	36.9%
40000	Total Fixtures, Furnishings, And Equipment Costs (FFE)	\$ 4,691,000	9.2%
50000	Total Operating Supplies and Equipment Costs (OSE)	\$ 1,568,250	3.1%
60000	Total Pre-Opening Costs	\$ 1,600,000	3.2%
70000	Total Development and Financing Costs	\$ 7,713,498	15.2%
80000	Total Development Contingency	\$ 1,147,039	2.3%
90000	Total Carry	\$ 718,000	1.4%
<b>TOTAL DEVELOPMENT COSTS (Budget)</b>		<b>\$ 50,729,787</b>	<b>100.0%</b>

Account	Category Description	Budget Total Project
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## 10000 Pre-Development Costs // Land Acquisition

10100	Land Acquisition Costs - Hotel	
10101	Acquisition Costs	\$ 13,000,000
10102	Miscellaneous	\$ -
10103	Transaction Costs and Fees	
10100	<b>Total Land Acquisition Costs</b>	<b>\$ 13,000,000</b>

10200	Pre-Development Costs - Hotel	
10201	Planning Review / Use Permit (refer to Permits, Insurance, Taxes)	\$ -
10202	Building Permits (Refer to Permits Insurance, Taxes)	\$ -
10203	Other	\$ -
10200	<b>Total Pre-Development Costs</b>	<b>\$ -</b>

10300	Pre-Development Costs - Miscellaneous	
10301	Events	\$ -
10302	Miscellaneous	\$ -
10303	Reimbursable Expenses	\$ -
10300	<b>Total Miscellaneous</b>	<b>\$ -</b>

10000	<b>Total Pre-Development Costs</b>	<b>\$ 13,000,000</b>
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## 20000 Design Costs

20100	Civil Engineer	
20101	Civil Engineer - Basic Fee	\$ 75,000
20102	Civil Engineer - Reimbursable Expenses	\$ 5,000
20103	Civil Engineer - Additional Services / Contingency	\$ -
20100	<b>Total Civil Engineer</b>	<b>\$ 80,000</b>

21000	Landscape Design & Planning	
21001	Landscape Architect - Basic Fee	\$ 275,000
21002	Landscape Architect - Reimbursable Expenses	\$ 25,000
21003	Additional Services / Contingency	\$ -
21000	<b>Total Landscape Design &amp; Planning</b>	<b>\$ 300,000</b>

21100	Architect (Incl MEP, Struc)	
21101	Architect - Basic Fee	\$ 400,000
21102	Architect - Initial Services - TRPA Studies	\$ 50,000
21103	Architect - Reimbursable Expenses	\$ 50,000
21104	Architect - Additional Services / Contingency	\$ -
21100	<b>Total Architect - Historian</b>	<b>\$ 500,000</b>

21200	Structural Engineer	
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CalNeva Hotel Casino

Account	Category Description	Budget
		<b>Total Project</b>
21201	Structural Engineer - Basic Fee	Incl.
21202	Structural Engineer - Reimbursable Expenses	Incl.
21203	Structural Engineer - Additional Services	Incl.
21200	<b>Total - Structural Engineer</b>	\$ -
21300	<b>MEP / Fire Protection Engineer</b>	
21301	MEP / Fire Engineer - Basic Services	Incl.
21302	MEP / Fire Engineer - Reimbursable Expenses	Incl.
21303	MEP / Fire Engineer - Additional Services / Contingency	Incl.
21300	<b>Total - MEP / Fire Protection Engineer</b>	\$ -
21400	<b>Interior Designer</b>	
21401	Interior Designer - Basic Fee	\$ 384,000
21402	Interior Designer - Reimbursable Expenses	\$ 100,000
21403	Interior Designer - Renderings, Special Projects	\$ 20,000
21404	Interior Designer - Additional Services / Contingency	\$ -
21400	<b>Total - Interior Designer</b>	\$ 504,000
22100	<b>Spa Consultant</b>	
22101	Spa Consultant - Basic fee	\$ -
22102	Spa Consultant - Reimbursable Expenses	\$ -
22103	Spa Consultant - Additional Services / Contingency	\$ -
22100	<b>Total - Spa Consultant</b>	\$ -
22200	<b>Kitchen / Laundry Consultant</b>	
22301	Kitchen / Laundry Consultant - Basic Fee	\$ 28,000
22302	Kitchen / Laundry Consultant - Reimbursable Expenses	\$ 5,000
22303	Kitchen / Laundry Consultant - Additional Services / Contingency	\$ -
22300	<b>Total - Kitchen / Laundry Consultant</b>	\$ 33,000
22300	<b>Lighting Consultant</b>	
22301	Lighting Design Consultant - Basic Fee	\$ 120,000
22302	Lighting Design Consultant - Reimbursable Expenses	\$ 10,000
22303	Lighting Design Consultant - Additional Services / Contingency	\$ 5,000
22300	<b>Total - Lighting Design Consultant</b>	\$ 135,000
22500	<b>Signage / Graphics</b>	
22501	Signage Graphics Design - Basic fee	\$ 15,000
22502	Signage Graphics Design - Reimbursable Expenses	\$ 5,000
22503	Signage / Graphics Design - Additional Services / Contingency	\$ -
22500	<b>Total - Hold</b>	\$ 20,000
22600	<b>Liquidation Services</b>	
22601	Liquidation Services	\$ -
22602	Hold	\$ -
22603	Hold	\$ -
22600	<b>Total - Hold</b>	\$ -
22700	<b>Hold</b>	
22701	Hold	\$ -
22702	Hold	\$ -
22700	<b>Total - Hold</b>	\$ -
29000	<b>Miscellaneous Consultants</b>	
29001	Specialty Consultants	\$ 20,000
29000	<b>Total - Miscellaneous Consultants</b>	\$ 20,000
20000	<b>Total Design Costs</b>	\$ 1,592,000
30000	<b>Construction Costs</b>	
30000	<b>General Contractor</b>	
30001	19000 - GC Fees	3.0% \$ 500,000
30002	18000 - Insurance	1.0% \$ 250,000

## CalNeva Hotel Casino

Account	Category Description	Budget		
		Total Project		
30003	17010 - Construction Contingency	\$		650,000
30000	Total - General Contractor	\$		1,400,000
31000	General Requirements			
31001	Supervision and General Conditions	\$		1,000,000
31000	Total - General Requirements	\$		1,000,000
32000	General Construction			
32001	Sitework / Landscaping / Porte Cochere	\$		1,000,000
32002	Pool / Pool Deck / Hardscape	\$		1,300,000
32003	Abatement / Demolition	\$		800,000
32004	Tower Rooms	\$		7,200,000
32005	Low Buildings / Lodge	\$		3,800,000
32006	Tower Roofs & Mansard	\$		450,000
32007	Low Building Roofs	\$		250,000
32008	General R&M	\$		1,500,000
32000	Total - General Construction	\$		16,300,000
	Sub-Total Construction Costs	\$		17,300,000
30000	Total Construction Costs	\$		18,700,000
40000	Fixtures, Furnishings & Equipment (FFE/E) Costs - Hotel			
40100	FFE - Accommodation Units	Keys	\$/Key	Extended
40101	Tower Guestrooms - King - Typical	118 Keys	\$12,000	\$ 1,416,000
40102	Tower Guestrooms - D/D - Typical	42 Keys	\$13,000	\$ 546,000
40103	Tower Suites	18 Keys	\$22,000	\$ 396,000
40104	Terrace Units	8 Keys	\$27,000	\$ 216,000
40105	Cabins	5 Keys	\$12,000	\$ 60,000
40106	Corridors	0 Keys	Incl.	\$ 30,000
40100	Total FFE - Accommodation Units	191 Keys	\$13,948	\$ 2,664,000
40200	FFE - Public Areas			
40201	Reception Area / Lobby		\$	25,000
40202	Indian Room		\$	25,000
40203	Casino		\$	30,000
40204	Casino Lounge / Bar		\$	50,000
40205	Showroom		\$	35,000
40206	Meeting Rooms		\$	35,000
40207	Three Meal Restaurant		\$	250,000
40208	Circle Bar / Circle Bar Restaurant		\$	250,000
40209	Public Area Circulation / Lounge		\$	35,000
40210	Miscellaneous (Kid's Club, Arcade, Etc)		\$	20,000
40200	Total FFE - Public Areas		\$	755,000
40300	FFE - Back-of-House			
40301	Miscellaneous - Tools, Radios, etc.		\$	25,000
40302	Vehicles			Leased
40300	Total FFE - Back-of-House		\$	25,000
40600	FFE - Equipment - Hotel			
40601	FFE - Kitchen(s), Bars		\$	350,000
40602	FFE - Laundry Equipment		\$	-
40603	FFE - Communication / PBX		\$	75,000
40604	FFE - Safety & Security Systems		\$	25,000
40605	FFE - Boat Amenity (Furnishings)		\$	-
40606	FFE - Model Room (Incl. Construction)		\$	150,000
40600	Total FFE - Equipment		\$	600,000
40700	FFE - Miscellaneous			
40701	FFE - Purchasing Company Fees		\$	162,000
40702	FFE - Purchasing Company Fees			Incl. Above
40703	FFE - Purchasing Company Reimbursable Expenses		\$	20,000

## CalNeve Hotel Casino

Account	Category Description	Budget
		<b>Total Project</b>
40704	FFE - Taxes	\$ 400,000
40704	FFE - Installation Costs	65,000
40700	<b>Total FFE - Miscellaneous</b>	\$ 647,000
40000	<b>Total Fixtures, Furnishings &amp; Equipment</b>	\$ 4,691,000
50000	<b>Operating Supplies &amp; Equipment (OSE) Costs - Hotel</b>	
50100	<b>General</b>	
50101	OSE - Rooms / China & Glass	Incl.
50102	OSE - Rooms / Linen	Incl.
50103	OSE - Rooms / Cleaning Supplies	Incl.
50104	OSE - Rooms / Guest Supplies	Incl.
50105	OSE - Rooms / Printing & Stationery	Incl.
50106	OSE - Rooms / Carts (Interior)	Incl.
50107	OSE - Rooms / Cleaning Equipment	Incl.
50108	OSE - Rooms / Allowance	\$ 850,000
50109	OSE - F&B / Paper Supplies	Incl.
50110	OSE - F&B / Menus	Incl.
50111	OSE - F&B / Printing & Stationery	Incl.
50112	OSE - F&B / Banquet Equipment	Incl.
50113	OSE - F&B / China	Incl.
50114	OSE - F&B / Glass	Incl.
50115	OSE - F&B / Silver	Incl.
50116	OSE - F&B / Chafers & Serving Equipment	Incl.
50117	OSE - F&B / Linen	Incl.
50118	OSE - F&B / Kitchen Fuel	Incl.
50119	OSE - F&B / Cleaning Supplies	Incl.
50120	OSE - F&B / Guest Supplies	Incl.
50121	OSE - F&B / Audio - Video (Showroom Upgrades)	\$ 75,000
50122	OSE - F&B / Carts	\$ 20,000
50123	OSE - F&B / Allowance	\$ 100,000
50124	OSE - General Allowance	\$ 100,000
50100	<b>Total OSE - General</b>	\$ 1,145,000
50200	<b>Spa</b>	
50201	OSE - Spa Equipment Allowance	\$ 55,000
50202	OSE - Spa / Facial Supplies	Incl.
50203	OSE - Spa / Manicure - Pedicure Equipment	Incl.
50204	OSE - Spa / Manicure - Pedicure Supplies	Incl.
50205	OSE - Spa / Fitness Equipment	Incl.
50206	OSE - Spa / Group Exercise	Incl.
50207	OSE - Spa / Testing Equipment	Incl.
50208	OSE - Spa / Aquatics Equipment	Incl.
50209	OSE - Spa / Other	Incl.
50210	OSE - Spa / Massage - Hydrotherapy	Incl.
50211	OSE - Spa / Storage Equipment	Incl.
50212	OSE - Spa / Linens	Incl.
50213	OSE - Systems / Computer Software	\$ 100,000
50214	OSE - Systems / Computer Hardware (Incl. Cabling)	\$ 50,000
50215	OSE - Systems / POS	\$ 75,000
50216	OSE - Misc. / Televisions, Alarm Radios, Etc.	\$ 750.00 \$ 143,250
50200	<b>Total</b>	\$ 423,250
50000	<b>Total Operating Supplies &amp; Equipment</b>	\$ 1,568,250
60000	<b>Pre-Opening Costs</b>	
60100	<b>Marketing - Hotel</b>	
60150	Pre-Opng. - Marketing / Public Relations	\$ 1,000,000
60100	<b>Total - Pre-Opening - Marketing</b>	\$ 1,000,000
60200	<b>Working Capital - Hotel</b>	
60250	Pre-Opng. - Miscellaneous	\$ 250,000

## CalNeva Hotel Casino

Account	Category Description	Budget
		Total Project
60200	Total Pre-Opening Working Capital	\$ 250,000
60300	Admin. General Hotel	
60350	Pre-Opng. - General Line Item	\$ 350,000
60300	Total Pre-Opening Admin. General	\$ 350,000
60000	Total Pre-Opening Costs	\$ 1,600,000
70000	Development & Financing Costs	
70100	Development Expenses - Hotel	
70101	General & Administrative	\$ 250,000
70102	Development Fees	\$ 1,200,000
70103	Permits, Taxes, Insurance	\$ 550,000
70104	Open	\$ -
70100	Total Development Expenses	\$ 2,000,000
70200	Financing Costs - Hotel	
70201	Legal	\$ 75,000
70202	Financing Costs, Fees	\$ 1,430,000
70203	Title Insurance	Incl.
70204	Bond Fees	Incl.
70205	Clark Loan Interest	\$ 1,476,658
70206	Canyon Loan Interest	\$ 515,987
	Mezzanine Loan Interest (12 months funded by loan)	\$ 896,000
70207	Development Loan Interest (Reserve)	\$ 1,319,853
70200	Total Financing Costs	\$ 5,713,498
70000	Total Development & Financing Costs	\$ 7,713,498
80000	Development Contingency - Hotel	
80100	Development Contingency	
80101	Development Contingency	\$ 1,147,039
80102	Other Contingency	\$ -
80100	Total Development Contingency	\$ 1,147,039
80000	Total Contingency	\$ 1,147,039
90000	Carry	
90100	Operations During Construction / Shortfalls	
90101	Operating Loss Subsidy	\$ 400,000
90102	Operations During Construction - Utilities	\$ 250,000
90103	Operations During Construction - Temp Staff	\$ 48,000
90104	Operations During Construction - Fees	\$ 10,000
90105	Operations During Construction - Ongoing Maintenance / Security Contracts	\$ 10,000
90100	Total Pre-Opening and Operating Shortfalls	\$ 718,000
90000	Total Carry	\$ 718,000
100000	TOTAL DEVELOPMENT COSTS	\$ 50,729,787

**EXHIBIT C**  
**HOTEL MARKET ANALYSIS**



## **A. INTRODUCTION**

As a hotel includes a going-concern business as well as real property, the market value of a lodging facility is a direct function of the supply and demand for hotel rooms within the market. Accordingly, an analysis of the local area lodging market is a key component of the valuation process.

Presented in the following text is a brief overview of the national lodging market. Following this discussion, we present an analysis of the historical performance of the identified competitive market of properties located in the Lake Tahoe area. In addition, we have also presented the historical performance of comparable regional destination resorts. Also presented are our projections of the future performance of the competitive market and the Subject for the next ten years of operation.

## **B. NATIONAL MARKET OVERVIEW**

In addition to PKF Consulting, our Firm contains a research division, PKF Hospitality Research. PKF Hospitality Research owns the database for *Trends® in the Hotel Industry*, the statistical review of U.S. hotel operations which first appeared in 1935 and has been published every year since. Beginning in 2007, PKF unveiled its powerful *Hotel Horizons®*, an economics-based hotel forecasting model that projects five years of supply, demand, occupancy, ADR, and RevPAR for the U.S. lodging industry with a high degree of accuracy. *Hotel Horizons®* reports are published on a quarterly basis for 50 markets and six national chain-scales.

Based on information compiled in the *June – August 2013 National Edition of Hotel Horizons®*, RevPAR for the U.S. lodging market grew by 5.4 percent in 2010, 8.2 percent in 2011, and 6.8 percent in 2012. As a point of comparison, RevPAR declined by 16.7 percent in 2009, the largest percentage decline since PKF Research began tracking lodging performance in 1935. This significant drop was a direct result of the severe national and global recession which began in the fall of 2007 and lasted well into 2009. Further, it resulted in a 40.0 percent decrease in hotels' net operating income ("NOI"), subsequently impacting hotel values throughout the nation. For the next four years, the overall U.S. lodging market is projected to achieve RevPAR growth rates of approximately 6.1 percent, 7.7 percent, 8.5 percent, and 5.3 percent respectively, with ADR gains leading these increases. Beginning in 2017, RevPAR growth is anticipated to taper to long-term averages.

Upon completion of the renovation, the Subject will be positioned as an upper upscale, full-service casino resort. The RevPAR for this segment experienced a decline of (17.7) percent in 2009, slightly above the nation-wide average. RevPAR for this segment increased 6.0 percent in 2010, 6.6 percent in 2011, and 6.6 percent in 2012. PKF Research is projecting RevPAR growth of 7.0 and 7.5 percent in 2013 and 2014, respectively. Going forward, RevPAR is projected to increase 8.0 percent in 2015, before tapering to long-run averages.

The Subject is also identified as a Resort Hotel. In 2009, RevPAR for U.S. Resort Hotels declined 18.6 percent over prior year levels; above the decline experienced by the overall U.S. hotel market. Modest RevPAR growth of 3.6 percent was achieved in 2010 before more health RevPAR growth of 10.1 and 7.1 percent was experienced in 2011 and 2012, respectively. In

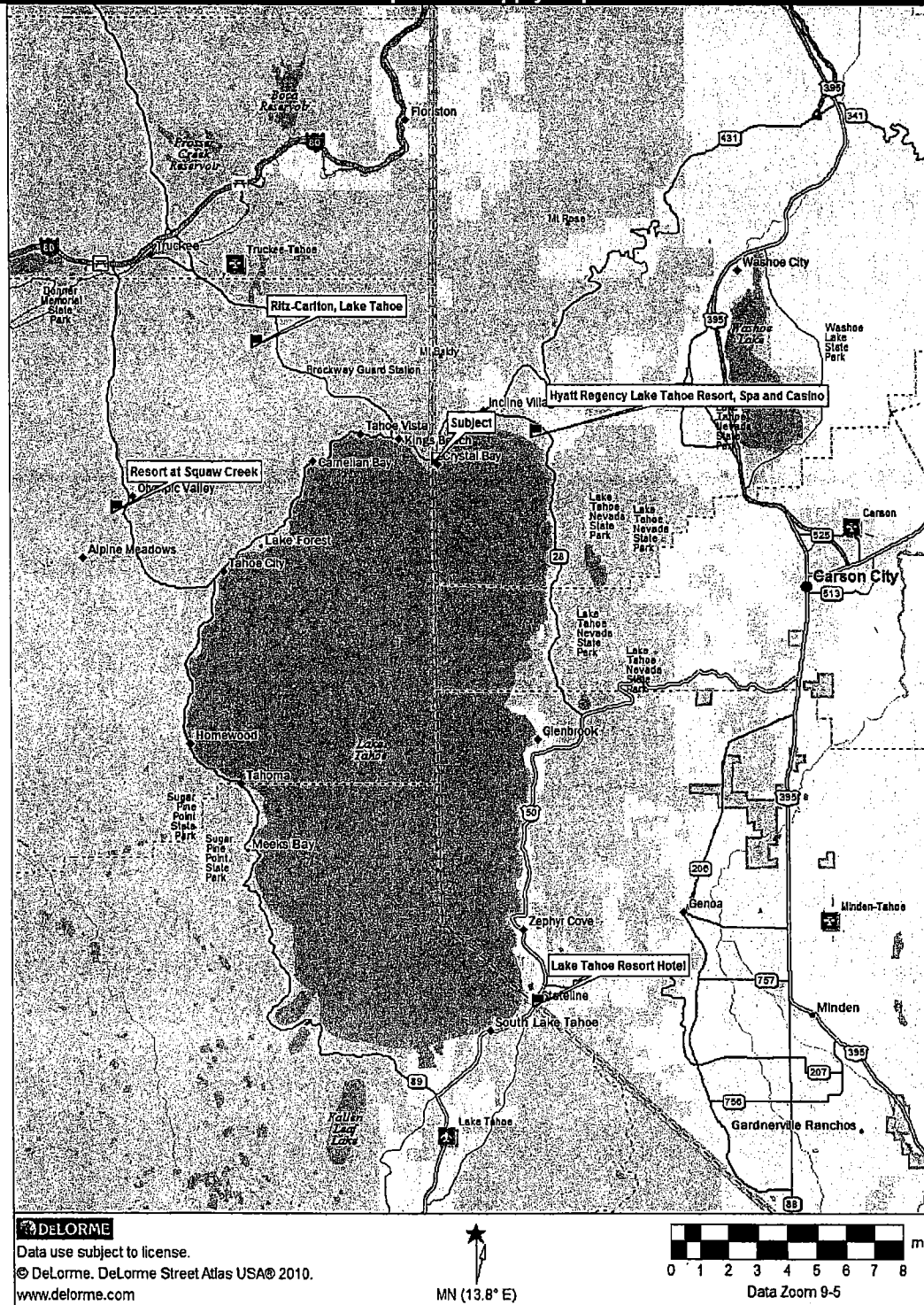
2013 and 2013, the Resort Hotel segment is projected to increase at approximately 8.0 percent per annum before tapering to long-run averages.

### **C. COMPETITIVE HOTEL MARKET ANALYSIS**

As noted, the Subject will be classified as an upper upscale hotel and will, therefore, compete primarily with other upper upscale and luxury hotels and resorts located throughout the Lake Tahoe area. In this analysis, we have excluded the Subject from the overall historical market performance to better illustrate the supply, demand, and ADR trends of the other five upper upscale and luxury lodging facilities that the Subject will more directly compete with upon completion of the renovation.

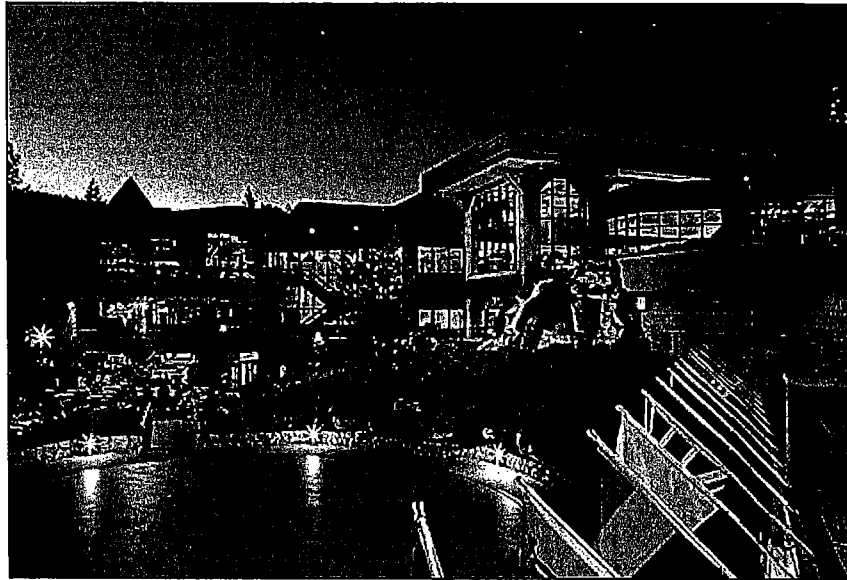
Based on our research, we have identified five properties as representing the primary local competitive market. The total number of rooms in the competitive supply is 1,598. Competitive properties were identified on the basis of location, room product offered, guest type, rate structure, and overall quality. The following table provides a brief summary of the competitive properties. A map and additional information on each individual property is presented on the following pages.

<b>Cal Neva Resort Hotel &amp; Casino Summary of Competitive Hotels</b>			
<b>Property</b>	<b>Location</b>	<b>Number of Rooms</b>	<b>Year Opened</b>
Resort at Squaw Creek	Squaw Valley, CA	344	1990
Ritz-Carlton Highlands Lake Tahoe	Truckee, CA	170	2009
Embassy Suites South Lake Tahoe	South Lake Tahoe, CA	398	1991
Hyatt Regency Lake Tahoe	Incline Village, NV	422	1975
<b>Total</b>		<b>1,334</b>	<b>-</b>

**Competitive Supply Map**


004911

004911

**Resort at Squaw Creek**


<p><b>Address:</b> 400 Squaw Creek Road Squaw Valley, CA</p> <p><b>Distance from the Subject:</b> 17.4 miles</p> <p><b>Rooms:</b> 344</p> <p><b>Date Opened:</b> December 1990</p>	<p><b>Amenities:</b></p> <ul style="list-style-type: none"> <li>• Spa at Squaw Creek – 10 treatment rooms, spa boutique, dry saunas, steam rooms</li> <li>• Fitness center</li> <li>• Sweet Potatoes Deli</li> <li>• Chuck Wagon barbecue (winter)</li> <li>• The Oasis poolside bar (summer)</li> <li>• Six Peaks Grille</li> <li>• Sandy's Pub</li> <li>• Mountain Pizzeria (winter)</li> <li>• 33,000 SF of indoor and 14,750 SF of outdoor meeting space</li> <li>• 18-hole championship golf course</li> <li>• Cross country ski center and fly fishing center</li> <li>• Ice skating rink</li> <li>• 3 outdoor heated swimming pools, whirlpools, and waterslide</li> <li>• Shopping promenade</li> <li>• On-property chair lift</li> </ul> <p>Mountain Buddies children's program</p>
<p><b>Note:</b> The Resort at Squaw Creek is located approximately 17 miles southwest of the Subject in Squaw Valley, and recently completed a \$53 million renovation. It is an independently-operated luxury condominium hotel. The Resort achieved an occupancy level below the competitive market average and an ADR slightly above the competitive market average in 2012.</p>	<p><b>Compared to the Subject (after renovation):</b></p> <p>Location: Inferior</p> <p>Physical Condition: Superior</p> <p>Guestroom Product: Comparable</p> <p>Amenities: Comparable</p>

**Ritz-Carlton, Lake Tahoe**

**Address:**

13031 Ritz Carlton Highlands Court  
 Truckee, CA

**Distance from the Subject:** 10.5 miles

**Rooms:** 170

**Date Opened:** December 2009

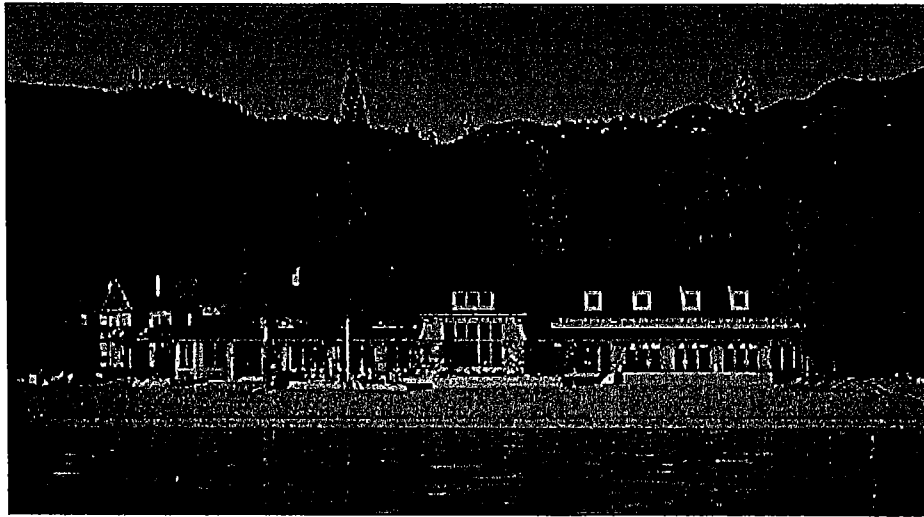
**Amenities:**

- Fitness center
- Business center
- Manzanita restaurant
- The Living Room bar
- Mountainblue café
- The Ritz-Carlton Spa – 13 treatment rooms
- 15,000 SF of indoor and 15,000 SF of outdoor meeting space
- Outdoor heated pool and adult spa lap pool
- On-site ski shop, Bloom Boutique
- Seasonal intermountain gondola

**Note:** The Ritz-Carlton, Lake Tahoe is located approximately 11 miles northwest of the Subject in Incline Village. It is affiliated with Marriott Hotels & Resorts as a luxury property. It is the smallest and the newest property in the competitive set. In 2012 the Ritz-Carlton achieved an occupancy level slightly below the competitive market average and an ADR above the competitive market average. It should be noted that the Ritz-Carlton achieves one of the highest ADR levels in the competitive market.

**Compared to the Subject (after renovation):**

Location: Inferior  
 Physical Condition: Superior  
 Guestroom Product: Superior  
 Amenities: Superior

**Hyatt Regency Lake Tahoe Resort, Spa and Casino**
**Address:**

111 Country Club Drive  
 Incline Village, NV 89451

**Distance from the Subject:** 4.8 miles

**Rooms:** 422

**Date Opened:** July 1975

**Amenities:**

- Business center
- Stillwater Spa – 16 treatment rooms, salon
- Hyatt Stay Fit gym
- Camp Hyatt daycare
- Lake Tahoe Casino
- Golf course
- Gift shop, sport shop
- Lone Eagle Grille
- Sierra Café
- Tahoe Provisions
- Lakeside Beach Bar and Grill
- Stillwater Pool Bar and Grille
- Lone Eagle Lounge Great Room
- Sports Bar, Lobby Bar, Pier 111 Bar
- Cutthroat Saloon
- Outdoor dining and lounge
- 50,000 SF of indoor and 25,000 SF of outdoor meeting space
- Lagoon-style pool and 2 whirlpools
- Pier and outdoor fire pits

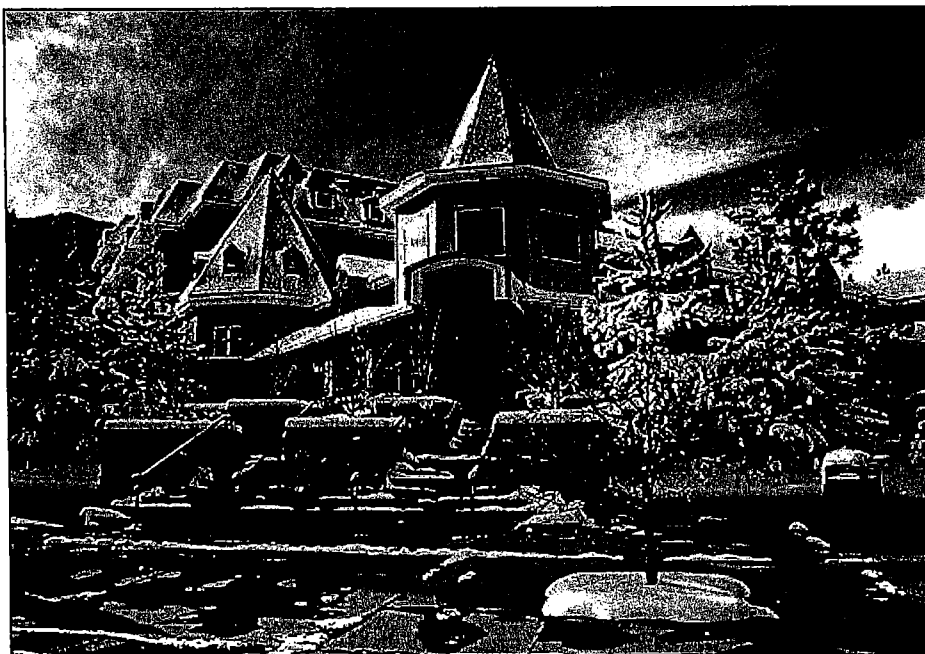
**Note:** The Hyatt Regency Lake Tahoe Resort is located approximately 5 miles northeast of the Subject in Incline Village. It is affiliated with Hyatt Hotels as a luxury property. It is the largest property in the competitive as well as the oldest next to the Subject. In 2012, the Hyatt Regency achieved an occupancy level and ADR above the competitive market average.

**Compared to the Subject (after renovation):**

Location: Superior  
 Physical Condition: Comparable  
 Guestroom Product: Inferior  
 Amenities: Comparable

004914

004914

**Lake Tahoe Resort Hotel (formerly the Embassy Suites South Lake Tahoe)**
**Address:**

4130 Lake Tahoe Boulevard  
 South Lake Tahoe, CA

**Distance from the Subject:** 28.6 miles

**Rooms:** 398

**Date Opened:** December 1991

**Amenities:**

- Complimentary breakfast and manager's reception
- Heated indoor pool and whirlpool
- Fitness center
- Nightly manager's reception
- Echo Restaurant
- 10,000 square feet of meeting space
- Heavenly Ski/Snowboard Shop, gift shop
- In-room massage

**Note:** The Embassy Suites Lake Tahoe Hotel & Ski Resort is located approximately 29 miles south of the Subject in South Lake Tahoe, California. It was previously affiliated with Hilton Hotels as an upper upscale property until April 2013 when the hotel lost its flag. The Embassy Suites currently operates as an independent hotel. In 2012, the Hotel achieved an occupancy level slightly above the competitive market average and an ADR far below the competitive market average.

**Compared to the Subject:**

Location: Comparable  
 Physical Condition: Inferior  
 Guestroom Product: Inferior  
 Amenities: Inferior

**D. CHANGES IN SUPPLY**

According to discussions with city officials, local developers, and general managers of lodging facilities in the area, we have identified one property in the South Lake Tahoe area that is currently in the planning stages. This property is the proposed 154-room Edgewood Resort which will be located along the south shore of Lake Tahoe in Stateline, Nevada. The hotel will be situated on the southern portion of the existing Edgewood Tahoe Golf Course development and will represent a luxury, mixed-use resort. The projected opening date of this project is January 1, 2017. As the Subject will represent an upper upscale hotel upon completion of the extensive renovation, competing with upper upscale and luxury hotels, we have included this addition in our projections of supply and demand for the local competitive lodging market.

**E. HISTORICAL MARKET PERFORMANCE****1. Historical and Projected Performance of the Competitive Market**

Presented in the following table is a summary of the historical performance of the identified competitive market, excluding the Subject, for the past six years (2007 to 2012), as well as for year-to-date ("YTD") June 2012 and 2013.

Cal Neva Resort, Spa & Casino Historical Performance of the Competitive Market									
Year	Annual Supply	Percent Change	Occupied Rooms	Percent Change	Market Occupancy	ADR	Percent Change	RevPAR	Percent Change
2007	427,780	-	256,494	-	60.0%	\$214.29	-	\$128.49	-
2008	427,780	0.0%	250,562	-2.3%	58.6%	\$218.47	2.0%	\$127.96	-0.4%
2009	429,970	0.5%	217,093	-13.4%	50.5%	\$215.76	-1.2%	\$108.94	-14.9%
2010	486,910	13.2%	258,924	19.3%	53.2%	\$217.32	0.7%	\$115.56	6.1%
2011	486,910	0.0%	263,237	1.7%	54.1%	\$219.39	1.0%	\$118.61	2.6%
2012	486,910	0.0%	259,898	-1.3%	53.4%	\$224.07	2.1%	\$119.60	0.8%
<b>CAGR</b>	<b>2.6%</b>	<b>-</b>	<b>0.3%</b>	<b>-</b>	<b>-</b>	<b>0.9%</b>	<b>-</b>	<b>-1.4%</b>	<b>-</b>
YTD Jun '12	243,455	-	118,447	-	48.7%	\$210.96	-	\$102.64	-
YTD Jun '13	243,455	0.0%	137,585	16.2%	56.5%	\$227.89	8.0%	\$128.79	25.5%

Source: PKF Consulting USA

As noted in the table above, supply for the competitive market increased at a compound annual growth rate ("CAGR") of 2.6 percent over the past six years. Despite the reduction in available rooms at the Resort at Squaw Creek from 352 to 344 rooms in 2009, overall market supply increased 0.5 percent as a result of the opening of the 170-room Ritz-Carlton Highlands Lake Tahoe in December 2009. Due to the annualized opening of the Ritz-Carlton, market supply increased an additional 13.2 percent in 2010.



Over the past six years, demand for the competitive market increased at a CAGR of 0.3 percent, as occupancy fluctuated between approximately 51 and 60 percent. In 2008, demand declined 2.3 percent before experiencing a significant decline of 13.4 percent in 2009 as a result of the economic downturn. As the economy began to show signs of recovery, the number of occupied rooms increased 19.3 percent in 2010, resulting in a market occupancy of 53.2 percent. It is worth noting, this significant growth in demand was also attributable to the increased supply of hotel rooms available during the peak summer and winter months as a result of the annualized opening of the Ritz-Carlton. During these peak months, hotels typically operate near capacity due to the increase of leisure demand in the local market. In 2011, while demand further increased 1.7 percent, occupancy remained approximately six percentage points below 2007 levels. Through year-end 2012, demand decreased 1.3 percent over prior year levels, resulting in a market occupancy of 53.4 percent. Demand increased a significant 16.2 percent through YTD June 2013, with occupancy increasing from 48.7 to 56.5 percent, coinciding with the positive impacts of a strong economy, particularly in the San Francisco Bay Area.

Unlike the large fluctuations in market occupancy over the past six years, average daily rate ("ADR") experienced modest fluctuations as rates ranged from approximately \$214 to \$224 since 2007. In 2008, ADR increased two percent to \$218.47. In 2009, coinciding with the economic downturn, managers of competitive hotels were forced to slightly discount room rates in order to stimulate demand. However, given the high seasonality of the local market, demand remained strong during the summer and winter months, limiting the discounting in ADR to the weaker off-season shoulder months. As a result, ADR declined a modest 1.2 percent in 2009, significantly less relative to the rest of the nation. In 2010 and 2011, ADR growth remained modest at 0.7 and one percent, respectively, as managers continued to focus on attracting higher levels of demand. ADR increased 2.1 percent through year-end 2012, resulting in an ADR of \$224.07 in 2012, the highest rate achieved over the six-year period. Through YTD June 2013, ADR increased a significant 8.0 percent over prior year levels.

Due to fluctuations in both market occupancy and ADR, revenue per available room ("RevPAR") decreased at a CAGR of 1.4 percent over the six-year period. During this period, RevPAR ranged from approximately \$109 to \$128. Through YTD June 2013, RevPAR increased a significant 25.5 percent over prior year levels as a result of healthy increases in both occupancy and ADR.

In the following table, we have provided an overview of the individual market performance for the competitive properties for year-end 2012. Due to the confidential nature of this information, we have hidden their identities and presented their information in random order.

Competitive Properties' Individual Performance - 2012			
Property	Occupancy	ADR	RevPAR
Hotel A	High 40s	High \$220s	Low \$110s
Hotel B	Low 50s	Low \$360s	High \$180s
Hotel C	Mid 50s	High \$220s	Mid \$120s
Hotel D	Mid 50s	Low \$160s	Low \$90s
<b>Average</b>	<b>53.4%</b>	<b>\$224.07</b>	<b>\$119.60</b>
Source: PKF Consulting USA			

The majority of demand accommodated by the local lodging market is from the transient leisure market segment (approximately 60- 70 percent) with group demand comprising the remaining balance. Within the local competitive market, the Subject is considered most comparable to the Hyatt Regency with regard to location, given the hotel's positioning along the northern shore of Lake Tahoe. With regard to product quality, the Subject Hotel will be considered most comparable to the Ritz-Carlton, which currently represents the newest luxury lodging product in the local competitive market. It is worth noting, the Hyatt Regency and Ritz-Carlton have historically represented the market leaders in occupancy and ADR, respectively. Given the Subject Hotel's location and proposed upper upscale lodging product upon completion of the renovation, it is anticipated to perform in line or above the occupancy and ADR levels achieved by the Hyatt and Ritz-Carlton.

Presented below is the projected growth in supply, demand, ADR, and RevPAR for the identified competitive market over the seven-year period 2013 to 2019. Also presented is the actual performance for 2012.

Cal Neva Resort, Spa & Casino Projected Performance of the Competitive Market									
Year	Annual Supply	Percent Change	Occupied Rooms	Percent Change	Market Occupancy	ADR	Percent Change	RevPAR	Percent Change
2012	486,910	0.0%	259,898	-1.3%	53%	\$224.07	2.1%	\$119.60	0.8%
2013	486,910	0.0%	280,700	8.0%	58%	\$242.00	8.0%	\$139.51	16.6%
2014	486,910	0.0%	282,400	0.6%	58%	\$261.00	8.0%	\$151.38	8.5%
2015 <sup>1</sup>	556,625	14.3%	322,800	14.3%	58%	\$279.00	7.0%	\$161.80	6.9%
2016	556,625	0.0%	322,800	0.0%	58%	\$296.00	6.0%	\$171.66	6.1%
2017 <sup>2</sup>	612,835	10.1%	355,400	10.1%	58%	\$308.00	4.0%	\$178.62	4.1%
2018	612,835	0.0%	355,400	0.0%	58%	\$317.00	3.0%	\$183.84	2.9%
2019	612,835	0.0%	355,400	0.0%	58%	\$327.00	3.0%	\$189.64	3.2%
<b>CAGR</b>	<b>3.9%</b>	<b>-</b>	<b>4.0%</b>	<b>-</b>	<b>-</b>	<b>5.1%</b>	<b>-</b>	<b>5.2%</b>	<b>-</b>
<sup>1</sup> Assumed opening date of the Subject on January 1, 2015									
<sup>2</sup> Assumed opening date of the proposed Edgewood Hotel on January 1, 2017									
Note: Numbers may not foot due to rounding									
Source: PKF Consulting USA									

As noted, we project the renovation of the Subject to be complete by January 1, 2015. The addition of the 191-room Subject results in an increase of 14.3 percent in supply in 2015. As discussed, we have also included the addition of the 154-room proposed Edgewood Hotel, which is projected to be open and available for occupancy by January 1, 2017, resulting in an increase in supply of 10.1 percent. Despite the additions of the renovated Subject and the proposed Edgewood Hotel, market occupancy is projected to remain stable at 58 percent as these properties are readily absorbed into the market. As a point of reference, while the Subject represents an increase in supply of 14.3 percent, it also represents existing rooms in the overall Lake Tahoe lodging market and, therefore, is not expected to materially impact the overall market performance. A



## Cal Neva Resort, Spa & Casino

stabilized occupancy of 58 percent is deemed reasonable based on the seasonality in the local market and long-term average performance trends.

As stated above, we forecast that ADRs in the competitive market will increase above inflation over the next five years of operation. Through YTD June 2013, ADR increased 8.0 percent over prior year levels. This growth is projected through year-end 2013 as well as in 2014. Thereafter, ADR growth is projected to taper. Specifically, we project ADR growth of 7.0, 6.0, and 4.0 percent in 2015, 2016, and 2017, respectively. This ADR growth is deemed reasonable as the competitive market operates at a stabilized occupancy level of 58 percent and the underlying fundamentals of the primary feeder markets in Northern California remain strong. This ADR growth results in an ADR of \$308 in 2017 value dollars, an approximately \$84 increase over 2012 levels. Thereafter, we project ADR to increase at 3.0 percent per annum.

RevPAR is projected to increase 16.6 percent through year-end 2013, below the increase in RevPAR of 25.5 percent achieved through YTD June 2013 by the competitive market. Between 2014 and 2016, RevPAR is projected to increase between approximately 6.0 and 9.0 percent per annum, in line with the national average for resort hotels as presented earlier. Thereafter, RevPAR is projected to increase at approximately 3.0 percent per annum, consistent with our projections of ADR growth for the competitive market.

### 2. Historical Performance of the Subject

Presented in the following table is the historical performance of the Subject over the past five years of operation. Additionally, we have included management's 2013 reforecast, which is based on five months of data. It should be noted that this historical performance information is based on a lack of necessary capital upgrades, portions of the Subject not in full operation, and the lack of qualified management.

Cal Neva Resort, Spa & Casino Historical Performance of the Subject									
Year	Annual Supply	Percent Change	Occupied Rooms	Percent Change	Occupancy Percentage	ADR	Percent Change	RevPAR	Percent Change
2008	72,635	-	20,120	-	27.7%	\$108.01	-	\$29.92	-
2009	72,635	0.0%	12,871	-36.1%	17.7%	\$95.56	-11.5%	\$16.91	-43.5%
2010	72,635	0.0%	17,371	35.0%	23.9%	\$104.97	9.8%	\$25.09	48.3%
2011	72,635	0.0%	22,840	31.4%	31.4%	\$88.96	-15.3%	\$27.93	11.3%
2012	72,635	0.0%	23,227	1.6%	31.9%	\$83.05	-6.6%	\$26.49	-5.2%
<b>CAGR</b>	<b>0.0%</b>	<b>-</b>	<b>3.6%</b>	<b>-</b>	<b>-</b>	<b>-6.4%</b>	<b>-</b>	<b>-3.0%</b>	<b>-</b>
'13 Reforecast	72,635	0.0%	25,886	11.7%	35.6%	\$77.61	-6.6%	\$27.66	4.4%
Source: PKF Consulting USA									

The Subject's occupancy remained below 32 percent over the past five years, which is approximately 14 percentage points below the six-year low occupancy level achieved by the competitive market. This unfavorable performance can be attributable to the fact that the Subject has been mismanaged in past years while the Resort was being listed for sale. Furthermore, these relatively low occupancy levels, which are significantly lower than most hotels located throughout the Lake Tahoe region, can be attributable to the condition of the property. Based on five months of actual data in 2013, management projects the Subject to achieve an occupancy level of 35.6 percent through year-end 2013.

Over the past five years, ADR for the Subject decreased at a CAGR of 6.4 percent. As a result of the economic downturn, ADR at the Subject decreased 11.5 percent in 2009, resulting in an ADR of approximately \$96. While ADR increased approximately 10.0 percent in 2010, the declines in rate achieved in 2011 and 2012 resulted in an ADR level of approximately \$83, which is roundly \$20 below 2010 levels. Based on five



## Cal Neva Resort, Spa & Casino

months of actual data, management estimates ADR to decreased 6.6 percent to \$77.61, a \$5 decline over prior year levels.

As a result of the aforementioned fluctuations in occupancy and ADR, RevPAR for the Subject decreased at a CAGR of 3.0 percent over the past five years. Management estimates the Subject to achieve RevPAR of approximately \$27 through year-end 2013, in line with the performance through year-end 2012.

### F. ESTIMATED PERFORMANCE OF THE SUBJECT – UPON COMPLETION OF THE RENOVATION

#### 1. Occupancy

In order to project the future occupancy levels of the Subject, we have estimated the level of patronage by market segment that can be reasonably captured. The extent to which the Subject can capture demand from each market segment was estimated by performing a fair share penetration analysis. A hotel's fair share is defined as the number of available rooms divided by the total supply of available rooms in the competitive market, including the Subject. Factors indicating the Subject would possess competitive advantages suggest a market penetration in excess of 100 percent of fair share, while competitive weaknesses are reflected in penetration less than 100 percent.

In projecting the Subject's future penetration upon completion of the renovation in January 2015, we noted the following competitive advantages.

- *The Subject will represent the newest upper upscale, full-service lodging facility in the Lake Tahoe area benefiting from an excellent location on Lake Tahoe in Crystal Bay, Nevada;*
- *The Subject represents one of the smaller properties within the competitive market, benefiting the performance of the hotel in terms of occupancy during the off season;*
- *The Subject features unique facilities such as the Celebrity Showroom and Frank Sinatra's secret tunnel. Furthermore, the Subject is an iconic property in Northern California that is rich in history, an important selling point for the resort; and,*
- *Upon completion of the planned \$32,200,000 renovation (approximately \$169,000 per room based on 191 guestrooms) to the Subject's guestrooms, public areas, and exterior, the Subject will benefit from a more attractive lodging product, operating as an upper upscale, full-service resort, heightening the Subject's overall appeal.*

In review of the attributes affecting the renovated Cal Neva Resort, Spa & Casino and after analysis of the competitive market, the Subject is projected to perform above its fair share, penetrating the market on a stabilized basis at 103 percent. A penetration rate of approximately 103 percent results in a stabilized occupancy of **60 percent** first achieved in 2017, the Subject's third full year of operation as a renovated, repositioned, upper upscale hotel. We are of the opinion that a stabilized occupancy level of 60 percent is appropriate for the Subject given its relatively small size at 191 rooms when compared to the individual hotels comprising the competitive market, which range between 170 and 422 rooms. This occupancy level positions the Subject above the 422-room Hyatt Regency located in Incline Village, which is a short distance from the Subject in Crystal Bay. In addition to representing a smaller property, it is anticipated that the Subject will attract more than its fair share of demand given all of the amenities and special features proposed at the Subject, including the Celebrity Showroom where group events and concerts will be held, the numerous food and beverage facilities, the brand new casino, and the appealing pool area features, to name a few. While demand for the Lake Tahoe lodging market is typically highest during the summer and winter months due to the outdoor activities available during these periods, the Subject is projected to benefit from demand associated with the group events and concerts in the Celebrity Showroom during the shoulder periods,



## Cal Neva Resort, Spa & Casino

primarily Fall and parts of Winter. The stabilized market segmentation for the Subject is projected to be approximately 70 percent transient and 30 percent group.

### 2. Average Daily Rate

In order to project the future ADR of the Subject upon completion of the extensive renovation, we first estimated a *hypothetical* ADR if the Subject were renovated and open today. In doing so, we have reviewed the actual ADRs achieved by each of the competitive hotels over the last six years as well as our general knowledge about the performance of upper upscale and luxury resorts located in mountain resort destinations throughout the western United States. Based on the aforementioned analysis of the competitive market, we are of the opinion that the Subject could achieve a hypothetical annual ADR of \$285 stated in 2013 value dollars. This would position the Subject (upon completion of the renovation) approximately \$120 above the lowest rated property in the competitive market and approximately \$150 below the highest rated property in the competitive market. We are of the opinion that this hypothetical ADR of \$285 in 2013 value dollars is appropriate given the waterfront location of the Resort in the north shore of Lake Tahoe and its "like new" hotel product. Furthermore, as the property is projected to undergo an approximately \$32.2 million renovation, we are of the opinion that this hypothetical ADR is reasonable.

After concluding to a hypothetical ADR, we then projected ADR growth of the market based on current trends. As previously discussed, we project ADR for the competitive market to increase "ramp down" from 8.0 percent in 2013 and 2014 to 3.0 percent in 2019. The following table details the projected ADR of the Subject for the first five years of operation as an upper upscale hotel.

Cal Neva Resort, Spa & Casino Projected Performance									
Year	Hypothetical ADR	Market Growth	Introductory Discount	Actual ADR	Percent Change	Subject Occupancy	Subject Penetration	RevPAR	Percent Change
2013	\$285.00	-	-	-	-	-	-	-	-
2014	\$308.00	8%	-	-	-	-	-	-	-
2015	\$330.00	7%	6%	\$312.00	-	55%	95%	\$171.60	-
2016	\$350.00	6%	2%	\$343.00	10%	58%	100%	\$198.94	16%
2017	\$364.00	4%	0%	\$364.00	6%	60%	103%	\$218.40	10%
2018	\$375.00	3%	0%	\$375.00	3%	60%	103%	\$225.00	3%
2019	\$386.00	3%	0%	\$386.00	3%	60%	103%	\$231.60	3%

<sup>1</sup> Assumed opening date of the Subject on January 1, 2015  
 Note: Numbers may not foot due to rounding  
 Source: PKF Consulting USA

We are of the opinion that the renovated and repositioned Subject could have achieved an average daily rate of approximately \$285 in 2013, under the hypothetical assumption that it was renovated and open in 2013 and stabilized. For the purpose of this analysis, we have accounted for a 6.0 percent introductory discount from the hypothetical ADR in 2015 and a 2.0 percent introductory discount in 2016, resulting in an ADR of \$312 projected in the Subject's first year of operation and \$343 in the Subject's second year of operation. This introductory discount is projected as the hotel is reintroduced into the Lake Tahoe lodging market. Presented in the following table is a summary of our projected occupancy and ADR for the Subject over the first ten years of operation as a renovated, upper upscale, full-service boutique resort.

**Cal Neva Resort, Spa & Casino**
**Projected Future Performance**
**Calendar Year Projections**

<b>Year</b>	<b>Occupancy</b>	<b>ADR</b>	<b>Percent Change</b>
2015	55.0%	\$312.00	-
2016	58.0%	\$343.00	10%
2017	60.0%	\$364.00	6%
2018	60.0%	\$375.00	3%
2019	60.0%	\$386.00	3%
2020	60.0%	\$398.00	3%
2021	60.0%	\$410.00	3%
2022	60.0%	\$422.00	3%
2023	60.0%	\$435.00	3%
2024	60.0%	\$448.00	3%

Note: Average daily rates rounded to the whole dollar

Source: **PKF Consulting USA**

On a stabilized basis, we estimate the Subject's ADR to be \$323 stated in 2013 value dollars. This ADR is determined by discounting (deflating) the future ADR of the hotel on a stabilized basis (approximately \$375 in 2018) at 3.0 percent annually to 2012.

This ADR of \$323 in 2013 value dollars, along with a stabilized occupancy of 60 percent, has been used as the basis for our stabilized year cash flow forecast presented in Section V.

Although it is possible that the Subject will experience growth in occupancy and ADRs above those estimated in this report, it is also possible that sudden economic downturns, unexpected additions to the room supply, or other external factors will force the property below the selected point of stability. Consequently, the estimated occupancy and ADR levels are representative of the most likely potential operations of the Subject over the projected holding period based on our analysis of the market as of the date of this appraisal.

## EXHIBIT D THE HISTORIC CAL NEVA RESORT

Since its development in 1926, the Cal Neva has served as a focal point for social activity on the North Shore of Lake Tahoe. The Property has had a long list of colorful owners from wealthy real estate developers to reputed organized crime figures to Ole Blue Eyes, Frank Sinatra. The Cal Neva has also played host to a long line of entertainers, politicians and social elites from around the world.

The Cal Neva is unique in America as it is one of the few developed properties that is located in two states.

The original Cal Neva Lodge was built in 1926 by wealthy San Francisco businessman, Robert P. Sherman, who used the Lodge as a guesthouse for his friends and real estate clients. The Lodge was patterned after Frank Bacon's log cabin in the hit Broadway play "LIGHTNIN'," starring Will Rogers. The Cal Neva quickly became the playground for celebrities and socialites who wanted to escape the public eye. (In fact, one of the most notorious features of the resort is the set of tunnels constructed so Frank Sinatra and other guests in need of a discreet exit could go directly from the showroom to their private cottages.)

The original Cal Neva Lodge burned to the ground on May 17, 1937 and was rebuilt in just over thirty days. 500 men were employed to work around the clock to finish the new building, including the now famous Indian Room, Circle Bar, and the main casino area.

The Indian Room, known then as the Wigwam Room, had three wigwams on the state line. Moose and deer heads as well as bear skins adorned the walls, and on the right side near the entrance, a massive fireplace was constructed and flanked by large boulders that brought the outside in. The dining-showroom was on the California side and featured many of the great stars of the day.

Rumors circulate about the property having lookouts for California lawmen coming. The property supposedly allowed gaming in the Wigwam room on both sides of the border. If the California lawmen were spotted all the gaming was quickly moved to the Nevada side of the property.

The Cal Neva Lodge survived many owners during the early years, but none were as famous or visible as Frank Sinatra, who purchased the Cal Neva and was licensed on September 20, 1960. He did extensive remodeling, and the Celebrity Showroom was built on the Nevada side with a helicopter pad on top of it. The helicopter pad was used only while Sinatra owed the Cal Neva Lodge. The Cal Neva Lodge filled to capacity during the summer months when Frank Sinatra owned and opened it. He booked big name entertainers for the Indian Room and for the Celebrity Showroom. Among Sinatra's guests were Marilyn Monroe, Judy Garland, Peter Lawford, and the Kennedy family.

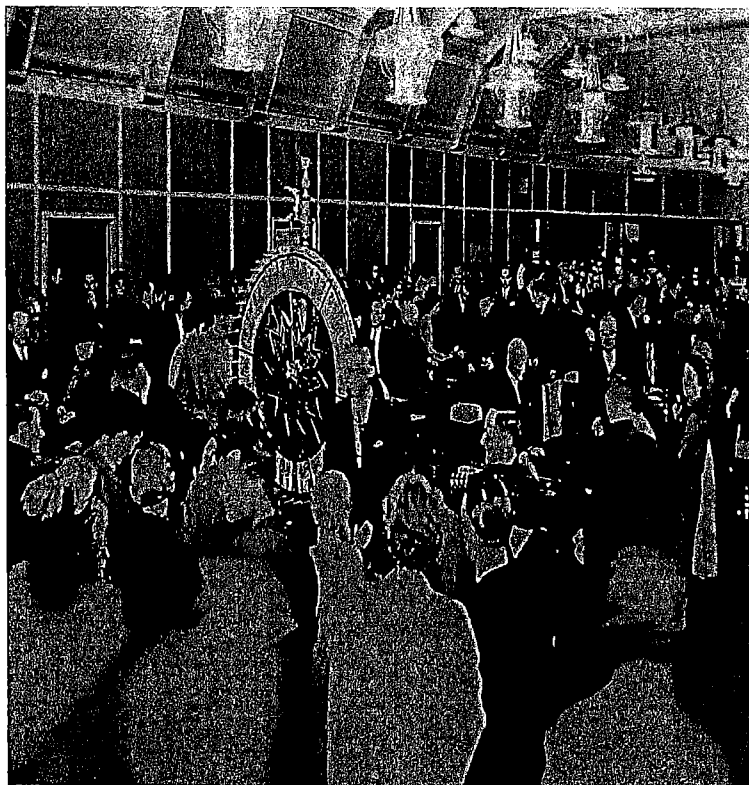
The world famous Circle Bar was decorated by Sinatra, who personally selected stuffed animals that graced the near ceiling-level shelf that circled the room, and each animal was named after one of his pals. Hollywood followers were enamored with Sinatra and the "Rat-Pack," an unforgettable fraternity that aligned itself with the White House and controversial celebrities.

Troubles arose in 1963 when the McGuire Sisters were appearing at the Cal Neva Lodge. Sam Giancana, a reputed underworld figure who was in Nevada's Black Book of unwanted casino guests, visited Phyllis McGuire at the Lodge. The ensuing controversy with the Nevada Gaming Control Board resulted in the revocation of Sinatra's license on October 22, 1963.

In 1970, the Property underwent extensive renovations that included the construction of the Tower, and in 1985, after Charles Bluth acquired the Property, the Resort was renovated again and converted into the full-service resort, casino, and wedding/honeymoon facility that it was for next 25 years. Charles Bluth sold the Property in 2005 to the developer who ultimately deeded it to Canyon, and it was essentially open solely to keep the permits active pending a major renovation since that 2005 sale. The Property was closed in Sept. 2013 to begin roof repairs, model room, and abatement work in preparation for the full construction start.

### *More on the Colorful History of the Cal Neva*

- *Cal-Neva Lodge is the oldest originally licensed casino in the United States.*
- *Robert P. Sherman, owner/co-founder of the early Cal Neva, gained initial fame for his football prowess, having fielded the longest punt return in UC Berkley history (105 yards), a record that still stands today.*
- *Judy Garland may have never been discovered by MGM (and never made The Wizard of Oz) if she had not accidentally left a hat box at Cal Neva and had gone back to retrieve it. Her unplanned return to the Lodge (in June 1935) caused her to meet Lew Brown (a lyricist) and Al Rosen, a talent scout who then began the arduous task of marketing her to the movie studios. He eventually introduced her to Jack Robins who then saw her potential and encouraged Lois B. Mayer to audition Judy himself.*
- *Frank Sinatra's first performance on a Cal Neva stage happened in late July, 1958 when he climbed up on stage (in the Indian Room) and jammed with his first professional employer, Harry James and his wife, Betty Grable.*
- *Sinatra was only approached to invest in the Lodge after being asked in May of 1960 if he would perform there. When he discovered a major shareholder had passed away in February of that same year, he realized he had an opportunity to buy a portion of the casino interest (25%).*
- *On July 27<sup>th</sup>, 1963, Sam Giancana had a fist-fight with the road manager of the McGuire Sisters, which ultimately caused Sinatra to lose the Lodge. Phyllis McGuire had a nervous breakdown in the days following the incident and she was unable to perform for several months thereafter.*
- *Frank Sinatra, eighth owner of the Lodge, was the first and only person who ever had a gaming license revoked on the basis of associating with a person listed in the "Black Book" of undesirable people maintained by the Nevada Gaming Commission.*
- *The last member of the Rat Pack to perform at the Lodge was Dean Martin, whose final appearance was in May of 1977 in the Celebrity Room.*







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# **SUBSCRIPTION BOOKLET**

*(for Founding Members)*

**CAL NEVA LODGE, LLC**

## SUBSCRIPTION INSTRUCTIONS

EACH POTENTIAL INVESTOR WHO WISHES TO SUBSCRIBE FOR FOUNDERS UNITS MUST COMPLETE, EXECUTE AND RETURN TO THE COMPANY THE FOLLOWING DOCUMENTS CONTAINED IN THIS SUBSCRIPTION BOOKLET (AS APPLICABLE):

- (1) A Subscription Agreement;
- (2) A Member Signature Page and Power of Attorney;
- (3) A Certificate of Nonforeign Status (for Members who are individuals);
- (4) A Certificate of Nonforeign Status (for Members who are entities);
- (5) Investor's Instructions to Escrow and Wire Transfer Information; and
- (6) IRS Form W-9.

**ALSO, IF APPLICABLE, PLEASE DELIVER THE FOLLOWING:**

IF THE POTENTIAL INVESTOR IS A TRUST, INCLUDE A COPY OF THE TRUST AGREEMENT.

IF THE POTENTIAL INVESTOR IS A PARTNERSHIP, INCLUDE A COPY OF THE SIGNED PARTNERSHIP AGREEMENT, AND A COMPLETED SUBSCRIPTION AGREEMENT FOR **EACH** PARTNER.

IF THE POTENTIAL INVESTOR IS A CORPORATION, INCLUDE A COPY OF THE BOARD RESOLUTION DESIGNATING THE CORPORATE OFFICER AUTHORIZED TO SIGN ON BEHALF OF THE CORPORATION AND AUTHORIZING THE INVESTMENT AND THE CORPORATION'S MOST RECENT FINANCIAL STATEMENTS.

IF POTENTIAL INVESTOR IS A LIMITED LIABILITY COMPANY, INCLUDE A COPY OF THE SIGNED OPERATING AGREEMENT AND THE ARTICLES OF ORGANIZATION OR CERTIFICATE OF FORMATION, AS FILED, AND A COMPLETED SUBSCRIPTION AGREEMENT FOR **EACH** MEMBER AND **EACH** MANAGER.

## SUBSCRIPTION AGREEMENT

TO: **CAL NEVA LODGE, LLC,**  
a Nevada limited liability company  
c/o CR Cal Neva, LLC  
1336-D Oak Street  
St. Helena, California 94574

Potential Investor:

The undersigned (the "**Purchaser**"), by completing and executing this Subscription Agreement and the Member Signature Page and Power of Attorney, hereby tenders this subscription and applies for the purchase of the number of Founders Units (the "**Founders Units**") of **CAL NEVA LODGE, LLC**, a Nevada limited liability company (the "**Company**"), set forth below the Purchaser's signature hereto, at a price of \$1,000,000 per Founders Unit (the "**Purchase Price**"). The Purchaser hereby acknowledges receipt of a copy of the Company's Confidential Private Placement Memorandum, dated **March 11, 2014** (the "**Memorandum**").

The Purchaser (or, if the Purchaser is signing in a fiduciary capacity, the person or persons for whom the fiduciary is signing) hereby represents and warrants to the Company that:

(a) The Purchaser is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended (the "**Securities Act**"). The specific category or categories of "accredited investor" applicable to the Purchaser are as follows:

A. AND B. ARE APPLICABLE TO INDIVIDUALS (Please INITIAL applicable blanks):

- A. \_\_\_\_\_ The Purchaser is a natural person and has a net worth, either alone or with the Purchaser's spouse, of more than \$1,000,000 (*excluding* the value of Purchaser's primary residence).
- B. \_\_\_\_\_ The Purchaser is a natural person and had income in excess of \$200,000 (\$300,000 including income of spouse) during each of the previous two years and expects to have income in excess of such amounts during the current year.

C. THROUGH F. ARE APPLICABLE TO NON-INDIVIDUALS (Please INITIAL applicable blanks):

- C. \_\_\_\_\_ The Purchaser is a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Founders Units, and the purchase is directed by a person meeting the criteria described in Subsection (g) below.
- D. \_\_\_\_\_ The Purchaser is an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 that either (i) has its investment decisions made by a plan fiduciary, as defined by Section 3(21) of such Act, which is a bank, savings and loan association, insurance company or a registered investment adviser, or (ii) has total assets in excess of \$5,000,000 or, if a self-directed plan, the investment decisions are made solely by persons who are accredited investors as described herein.
- E. \_\_\_\_\_ The Purchaser is an entity (*excluding* a trust **UNLESS** it is a revocable grantor trust) in which all of the equity owners are accredited investors within categories A and B above.

F. \_\_\_\_\_ The Purchaser is a corporation, or a partnership, not formed for the specific purpose of acquiring the Founders Units, with total assets in excess of \$5,000,000.

(b) The Purchaser understands that the Company has not registered the Founders Units under the Securities Act, or qualified the Founders Units under the applicable securities laws of any state, in reliance on exemptions from registration and qualification, and the Purchaser understands that such exemptions depend in large part on the Purchaser's investment intent at the time the Purchaser acquires the Founders Units;

(c) The Founders Units subscribed for herein will be acquired for the Purchaser's own account, for investment and not for resale or distribution to any person, corporation, or other entity, and the Purchaser has no intention of distributing or reselling the Founders Units;

(d) The Purchaser acknowledges that any disposition of the Founders Units is subject to restrictions imposed by federal and state law and that the certificates representing the Founders Units will bear a restrictive legend. The Purchaser also recognizes that the Founders Units cannot be disposed of by the Purchaser, absent registration and qualification, or an available exemption from registration and qualification, and that no undertaking has been made with regard to registering or qualifying the Founders Units in the future. The Purchaser understands that the availability of an exemption in the future will depend in part on circumstances outside the Purchaser's control and that the Purchaser may be required to hold the Founders Units for a substantial period. The Purchaser recognizes that no public market exists with respect to the Founders Units and no representation has been made to the Purchaser that such a public market will exist at a future date. The Purchaser understands that no state securities administrator or commissioner has made any finding or determination relating to the fairness for investment of the Founders Units and that no such administrator or commissioner has or will recommend or endorse the Founders Units;

(e) The Purchaser has not seen or received any advertisement or general solicitation with respect to the sale of the Founders Units;

(f) The Purchaser believes, by reason of the Purchaser's business or financial experience, that the Purchaser is capable of evaluating the merits and risks of this investment and of protecting the Purchaser's interest in connection with this investment;

(g) The Purchaser acknowledges that prior to acquiring the Founders Units, the Purchaser has been provided with financial and other written information about the Company and the terms and conditions of the offering. The Purchaser has been given the opportunity by the Company to obtain such information and ask such questions concerning the Company, the Founders Units and the Purchaser's investment as the Purchaser felt necessary, and to the extent the Purchaser took such opportunity, the Purchaser received satisfactory information and answers. If the Purchaser requested any additional information which the Company possessed or could acquire without unreasonable effort or expense which was necessary to verify the accuracy of the financial and other written information furnished to the Purchaser by the Company, such additional information was provided to the Purchaser and was satisfactory. In reaching the conclusion to acquire the Founders Units, the Purchaser has carefully evaluated the Purchaser's financial resources and investment position and the risks associated with this investment, and the Purchaser acknowledges that the Purchaser is able to bear the economic risks of this investment. The Purchaser further acknowledges that the Purchaser's financial condition is such that the Purchaser is not under any present necessity or constraint to dispose of the Founders Units to satisfy any existing or contemplated debt or undertaking;

(h) The Purchaser hereby accepts full and sole responsibility for all state and federal tax consequences which may result from the Purchaser's acquisition of the Founders Units;

(i) The Purchaser, if subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), has taken into consideration the diversification requirements of ERISA prior to making an investment in the Founders Units;

(j) The Purchaser, if executing this Subscription Agreement and the Member Signature Page and Power of Attorney in a representative or fiduciary capacity, has full power and authority to execute and deliver this Subscription Agreement, the Operating Agreement and the Member Signature Page and Power of Attorney on behalf of the subscribing individual, partnership, trust, estate, corporation, or other entity for whom the Purchaser is executing such

documents, and such individual, partnership, trust, estate, corporation, or other entity has full right and power to perform pursuant to such documents and to become a member in the Company pursuant to the Operating Agreement;

(k) The Purchaser has thoroughly read the Memorandum and all documents attached thereto, and understands the contents of such documents. The Purchaser is familiar with the Company's business objectives and financial arrangements in connection therewith and believes the Founders Units that the Purchaser is purchasing are the kind of securities that the Purchaser wishes to hold for investment and that the nature and purchase price of the Founders Units are consistent with the Purchaser's investment program. No representations or warranties have been made to the Purchaser regarding this investment contrary to those contained in the Memorandum and attached documents, and the Purchaser agrees to inform the Company if the Purchaser learns that any statements made to the Purchaser in connection with the Purchaser's investment in the Company are untrue. The information set forth herein is true and correct;

(l) The Purchaser acknowledges and agrees that the Purchaser is not entitled to cancel, terminate or revoke this Subscription Agreement or any of the Purchaser's agreements hereunder and that this Subscription Agreement and any other agreements made hereby shall survive Purchaser's death or disability; and

(m) The Purchaser has such knowledge and experience in financial and business matters and in investments to be capable of evaluating the merits and risks of the investment in the Founders Units.

In addition, the Purchaser:

- (1) Understands that the Founders Units being acquired will be governed by the Operating Agreement;
- (2) Understands that the Company shall have the right to accept or reject this subscription in whole or in part in its sole and absolute discretion;
- (3) Understands that no public market for the Founders Units exists, or is likely to develop, and that it may not be possible to liquidate this investment readily, if at all, in the case of an emergency or for any other reason;
- (4) Understands that the Founders Units are subject to transfer restrictions as set forth in the Operating Agreement;
- (5) Acknowledges that to extent desired the Purchaser has consulted with the Purchaser's financial, business and tax advisers before executing this Subscription Agreement;
- (6) Acknowledges and agrees that a breach by the Purchaser of any of the Purchaser's representations made herein which results in a loss by the Company of the exemptions from registration and qualification requirements under applicable federal and state securities laws will cause the Purchaser to be liable to the Company for all damages and losses caused thereby;
- (7) If the consideration to be delivered is cash, Purchaser agrees to deliver the Purchase Price via bank wire transfer to the Company (or directly to the designated third-party escrow for the benefit of the Company, as applicable), see wire transfer instructions attached hereto, no later than three days after delivery of email notice by the Company to the Purchaser (the "Funding Notice") and acknowledges that the Purchaser's failure to timely deliver the Purchase Price will materially and adversely affect the Offering, the other investors and the Company and that the Purchaser will be responsible for all damages and losses that result from the Purchaser's failure to timely deliver the Purchase Price; and
- (8) Acknowledges and agrees that any funds delivered by the Purchaser to a designated third-party escrow for the benefit of the Company will be delivered to the Company (not Purchaser) upon either the termination or successful closing of the Offering, and that such funds will be returned to Purchaser by the Company only if the Company at the time of termination has not accepted subscriptions of at least \$14,000,000 (the "Offering Minimum").

This Subscription Agreement and all rights hereunder, shall be governed by, and interpreted in accordance with, the laws of the State of Nevada.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Purchaser has duly executed and delivered this Subscription Agreement effective as of the date set forth below.

Date: \_\_\_\_\_, 2014

[CORPORATION/TRUST]

**"PURCHASER"**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

Taxpayer ID No.: \_\_\_\_\_

Subscription Amount: \$ \_\_\_\_\_

Number of Founders Units (\$1,000,000 Each): \_\_\_\_\_

I hereby confirm that the trust named above is a revocable grantor trust in which each of the grantors is an individually accredited investor as described in Sections (a) A. or B. of this Subscription Agreement.

By: \_\_\_\_\_

Title: \_\_\_\_\_



IN WITNESS WHEREOF, the Purchaser has duly executed and delivered this Subscription Agreement effective as of the date set forth below.

Date: \_\_\_\_\_, 2014 .

**"PURCHASER"**

**[INDIVIDUAL]**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Address: \_\_\_\_\_  
\_\_\_\_\_

**EMAIL ADDRESS:** \_\_\_\_\_

Soc. Sec. #s: \_\_\_\_\_  
\_\_\_\_\_

**Subscription Amount:** \$ \_\_\_\_\_

**Number of Founders Units (\$1,000,000 Each):** \_\_\_\_\_

**ACCEPTANCE OF SUBSCRIPTION**

**THE FOREGOING SUBSCRIPTION IS HEREBY ACCEPTED FOR \_\_\_\_\_ FOUNDERS UNITS.**

**DATED: \_\_\_\_\_, 2014**

**CAL NEVA LODGE, LLC**

**By: CR CAL NEVA, LLC, a Nevada limited liability  
company, Manager**

**By: \_\_\_\_\_**

**Title: \_\_\_\_\_**

## MEMBER SIGNATURE PAGE AND POWER OF ATTORNEY

**CAL NEVA LODGE, LLC,**  
a Nevada limited liability company

The undersigned, desiring to become a Member of **CAL NEVA LODGE, LLC**, a Nevada limited liability company (the "**Company**") hereby agrees to all of the terms and conditions of the Amended and Restated Operating Agreement of the Company (the "**Operating Agreement**") referred to, described in, and attached as an Exhibit to, the Company's Confidential Private Placement Memorandum dated **March 11, 2014** (the "**Memorandum**"), and agrees to be bound thereby. Any capitalized term contained herein that is not defined herein shall have the meaning set forth in the Operating Agreement.

The undersigned further grants to the Manager of the Company (the "**Manager**"), a special Power of Attorney irrevocably making, constituting and appointing the Manager as the undersigned's attorney-in-fact with full power of substitution with power and authority to act in the undersigned's name and on the undersigned's behalf, to execute, acknowledge and swear to in the execution, acknowledgment, and filing of documents which shall include, by way of illustration but not of limitation, the following:

- (a) The Operating Agreement of the Company, any amendments to the foregoing which, under the laws of the State of California or the laws of any other state, are required to be executed or filed or which the Company deems to be advisable to execute or file;
- (b) Any other instrument or document which may be required to be filed by the Company under the laws of any state or by any governmental agency;
- (c) Any instrument or document which may be required to effect the continuation of the Company, the admission of an additional or substituted Members, or the dissolution and termination of the Company (provided the continuation, admission or dissolution and termination are in accordance with the terms of the Operating Agreement) or to reflect any reduction in the amount of capital contributions of the Members; and
- (d) Any other documents deemed by the Manager to be necessary for the business of the Company.

The Power of Attorney granted hereby is a special Power of Attorney coupled with an interest, is irrevocable, shall survive the death or incapacity of the undersigned and is limited to the matters set forth herein. This special Power of Attorney may be exercised by the Manager, acting for the undersigned by a facsimile signature of the Manager; this Power of Attorney shall survive an assignment by the undersigned of all or any portion of the undersigned's Founders Units, but only until the assignee of the Founders Units is recognized as the owner of the Founders Units as set forth in the Operating Agreement.

[Signature Page Follows]

THIS SUBSCRIPTION IS FOR \_\_\_\_\_ FOUNDERS UNITS (\$1,000,000.00 EACH).

TOTAL INVESTMENT AMOUNT: \$ \_\_\_\_\_

Executed on \_\_\_\_\_, 2014, at \_\_\_\_\_.

\_\_\_\_\_  
Signature of Subscriber

\_\_\_\_\_  
Signature of Subscriber

Social Security Nos.: \_\_\_\_\_

Driver's License Nos. \_\_\_\_\_

Email Address: \_\_\_\_\_

Home Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip: \_\_\_\_\_

Home Phone: ( ) \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip: \_\_\_\_\_

Business Phone: ( ) \_\_\_\_\_

**REGISTRATION:**

**PLEASE PRINT YOUR NAME(S) EXACTLY AS YOUR FOUNDERS UNITS ARE TO BE REGISTERED:**

**TITLE REGISTRATION PREFERENCE**

**CHECK ONE**

- A. \_\_\_\_\_ Individual Ownership  
 B. \_\_\_\_\_ Joint Tenants with Right of Survivorship (**ALL MUST SIGN**)  
 C. \_\_\_\_\_ Trust (Date Trust Established \_\_\_\_\_)  
 D. \_\_\_\_\_ Partnership  
 E. \_\_\_\_\_ Community Property  
 F. \_\_\_\_\_ Tenants in Common (**ALL MUST SIGN**)  
 G. \_\_\_\_\_ Corporation  
 H. \_\_\_\_\_ Limited Liability Company  
 I. \_\_\_\_\_ Other \_\_\_\_\_

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From: Paul Jameson <pjameson@elevateig.com>  
 Sent: Sunday, January 31, 2016 1:56 PM  
 To: Stuart Yount  
 Cc: Geri Yount  
 Subject: Re: Talk w/Jeremy

But to be clear they do not know this particular meeting is happening. The EC can decide if it wants to share...  
 Only the EC is going to be in attendance

Paul Jameson  
 Elevate Investment Group  
 pjameson@elevateig.com  
 775-200-7547

On Sat, Jan 30, 2016 at 7:06 PM, Paul Jameson <pjameson@elevateig.com> wrote:

Yes it is approved. They may not be pleased about it, but they authorized such discussions. What makes it imperative is what we have heard from mosaic about their opinion of CR... this meeting is critical for our benefit, and frankly, for CR's benefit as well if they want us to consider such an expensive loan.

I've heard the shark reputation elsewhere too. That said, if we get the terms we want, then it doesn't matter how shark-like a lender is. That only applies to inexperienced borrowers from my perspective.

Agreed on appraisal most likely, but let's just get the appraisal before making commitments to any financing party. I'm pressing for the revision to be complete next week.

Correct on the cost for construction increasing, but I believe much of the soft cost is fluff that can be cut out entirely.

Lastly, we should be getting an LOI from an equity party before Wednesday. This is one who would be friendly and favorable, and I believe Hall and Penta would stay in if this party were to enter. I also had a great call with Roger yesterday and can fill you in when you are back.

Paul Jameson  
 Elevate Investment Group  
 pjameson@elevateig.com  
 775-200-7547

On Sat, Jan 30, 2016 at 4:56 PM, Stuart Yount <syount@fortifiber.com> wrote:

1. He said 3 of the EC is having a mtg w/Mosaic in Sac on Mon, without CR. Is that legit without CR without their advance permission?
2. He said he's been told that Mosaic are "sharks" & will want the project to go broke, flush us investors out &



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take it for themselves.

3. He said there's no way the redone appraisal will come up to what's needed to get the needed \$71m funding, we'll still be underfunded.

4. If we miss summer, as now expected, \$71m won't be adequate either.

Stuart Yount  
Chairman & CEO  
Fortifiber Corporation  
300 State Route 28  
Box 308  
Crystal Bay, NV 80402  
(775) 843-0486

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**From:** Paul Jameson <paul.g.jameson@gmail.com>  
**Sent:** Tuesday, February 2, 2016 9:55 AM  
**To:** Robert Radovan; Heather Hill  
**Cc:** Anthony Zabit; Arthur Prieston; Brandon Chaney; CEA Ventures, LP; Chris Gibson; Dave & Carol; Dave Marriner; Geri Yount; Jeremy Page; Jim Davis; Joan Davis; John Paye; Les Busick; Michael Dixon; Molly Kingston; Munnerlyn Revocable Trust; Oakdale Ave. Partners, LP; Phil Busick; Sharon Dixon; Sinatra Family; Steve Kegel; Steve Mariucci; The Erickson Family Trust; Thorpe Investments, LP; Tim Racich; William Criswell; William Gibson; Stuart Yount; jeff@connorgp.com; James Pickett; Lisa Pacey-Willis; Troy Gillespie; judy.munnerlyn@gmail.com; Pete Dordick  
**Subject:** Re: Interim EC report regarding 2/1 Mosaic loan meeting

Thank you Robert,

The email from Heather forced the hand to provide a report as a duty to the members.

Let's talk about this tomorrow so we follow through on our commitment to the members to not volley emails back and forth.

I called you earlier, I'd suggest we send out an agenda to all attendees today for tomorrow's call.

Regards,

Paul

On Tue, Feb 2, 2016 at 09:35 Robert Radovan <[robert@criswellradovan.com](mailto:robert@criswellradovan.com)> wrote:

Paul,

At the direction of the Executive Committee (EC) and the members, CR scheduled a meeting with Mosaic for 5pm Monday and all EC members confirmed their attendance in person or by phone. The earlier meeting you had was not an EC meeting with Mosaic.

As I have noted numerous times, Mosaic has been irritated by our sluggishness over the past few months, which CR was directed to do by the EC on several different occasions, as referenced by meeting minutes.

Their concerns regarding budget are to understand "cost to complete". The entire purpose of their loan was to bring added capital into the project.

Mosaic had already agreed to the higher loan at \$51 million and a 2.5 year term. PKF was revising the appraisal for the added value. They had not subscribed any value to Fairwinds or the condo/TAU conversion or added keys.

Why was the meeting held when the EC had already scheduled and confirmed the Mosaic meeting.

Robert

**From:** Paul Jameson <[paul.g.jameson@gmail.com](mailto:paul.g.jameson@gmail.com)>

**Date:** Tue, 2 Feb 2016 07:53:26 -0800

To: Heather Hill <Heather@criswellradovan.com>

Cc: Anthony Zabit <azabit@dimension4.com>, Arthur Prieston <aprieston@priestongroup.com>, Brandon Chaney <brandon1536@gmail.com>, "CEA Ventures, LP" <dmgibson5@gmail.com>, Chris Gibson <chris.gibson@twainfinancial.com>, Dave Martin <daveandcarol1@cox.net>, Dave Marriner <marrinertahoe@gmail.com>, Geri Yount <geriattahoe@fortifiber.com>, Jeremy Page <jpage@elevateig.com>, Jim Davis <jcddx1@gmail.com>, Joan Davis <Joandavisartstudios@gmail.com>, John Paye <jasperreddog@gmail.com>, Les Busick <lbusick@gmail.com>, Michael Dixon <miked@dfsinc.com>, Molly Kingston <mkingston@arrowinvest.com>, Munnerlyn Revocable Trust <charlesrm@comcast.net>, "Oakdale Ave. Partners, LP" <TectaJohn@comcast.net>, Phil Busick <philbusick@gmail.com>, Robert Radovan <robert@criswellradovan.com>, Sharon Dixon <sdixon875@gmail.com>, Robert Finkelstein <rfinkelstein@raf-ltd.com>, Steve & Vicki Kegel <skegel@tahoemountainresorts.com>, Steve Mariucci <smariucci@comcast.net>, The Erickson Family Trust <phil@inclineholding.com>, "Thorpe Investments, LP" <athorpe@hf.com>, Tim Racich <Tim@calpacproperties.com>, Bill Criswell <bill@criswellradovan.com>, William Gibson <wgibson@cfmlogistics.com>, Yount <Syount@fortifiber.com>, Jeff Pickett <jeff@connorgp.com>, James Pickett <jpickett@laderaventures.com>, Lisa Pacey-Willis <LisaP@criswellradovan.com>, Troy Gillespie <troygillespie10@yahoo.com>, "judy.munnerlyn@gmail.com" <judy.munnerlyn@gmail.com>, Pete Dordick <pete@criswellradovan.com>

Subject: Interim EC report regarding 2/1 Mosaic loan meeting

All,

Your representatives on the Executive Committee ("EC") had an informative, constructive and very positive meeting with Mosaic. Only members of the EC and representatives for Mosaic were in attendance. More details will be provided on the EC call tomorrow, and we encourage everyone to attend.

(Overall, yesterday's meeting was a step towards, rather than away from, a near-term deal with Mosaic. Interim report from EC:

- The 'mess' they reference is primarily CR's unresponsiveness over last few months
- Other concerns they raised were cost overruns, delays, and lack of CR transparency
- As the EC has suggested previously, Mosaic would be interested in a new term sheet
- Mosaic seemed refreshed by the transparent, focused and productive discussion
- The 'ripped up' term sheet waives the IMM fee Mosaic says it is currently owed

As Arthur pointed out in the last EC meeting, the current appraisal does not allow for a large enough loan from Mosaic to complete the project. Given that fact and Hall's default letter they submitted yesterday, these talks that accelerate a refinancing are the linchpin to saving the project.

This Wednesday the EC, being led by CR, will provide more details to all who attend the call.

Signed,

Your EC representatives

On Mon, Feb 1, 2016 at 4:31 PM, Heather Hill <Heather@criswellradovan.com> wrote:

Sent on behalf of Robert as he is currently traveling:

Please see the email below from the Mosaic team. Per the Executive Committee and Member meeting on Jan 27th Robert scheduled a meeting and call for today at 5pm with Mosaic and the Executive Committee to which all members agreed they would be available. In light of the below email the meeting at 5pm is canceled.

Heather

Begin forwarded message:

**From:** Sterling Johnson <sj@mosaicrei.com>  
**Date:** February 1, 2016 at 2:36:54 PM PST  
**To:** "Robert@CRISWELLRADOVAN.COM" <Robert@CRISWELLRADOVAN.COM>  
**Cc:** Ethan Penner <ep@mosaicrei.com>, Vicky Schiff <vs@mosaicrei.com>  
**Subject:** CalNeva Meeting

Dear Robert,

As you know, Ethan and I were in Sacramento this morning to visit with a group who represented themselves as investors with you in CalNeva. They were interested in hearing about the history of Mosaic's involvement in CalNeva with you and we explained our deal with you. We told them how we met you, we told them that we issued a term sheet, and we told them that you executed it and the day you executed it.

We also told them that for the better part of three months we have not heard much from you or your team. They went on to explain a little of the history of the deal from their perspective, and to tell you the truth, there seems to be a little bit of a mess right now. We are going to take a step back, tear up the executed term sheet, give the you and the ownership time to figure things out on your own and at the right moment, if you desire, reintroduce the deal to Mosaic.

Given this, it really doesn't make sense to meet today.

All the best,

Sterling Johnson

VP | Investments

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