

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.

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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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1           **A.     YOUNT’S JUDICIAL ADMISSIONS.**

2           Yount has judicially admitted that from day-one, when the Defendants answered,  
3 Defendants asserted that Yount “conspired with other investors to interfere with the  
4 Project’s financing.” Specifically, in Yount’s Motion for Post Judgment Discovery, Yount  
5 admits as follows:  
6

7           **Defendants answered and asserted . . . that Mr. Yount conspired with other**  
8 **investors to interfere with the Project’s refinancing loan.**

9           **Exhibit 13**, excerpt of Yount’s Mot. Post Judg. Disc., pp. 2:23-3:2.<sup>16</sup>

10           In addition, Yount judicially admitted that discovery in the case “focused” on  
11 “communications between Mr. Yount and the investors that allegedly conspired to  
12 interfere with the Mosaic loan.” *Id.*, p.3:3-6. Yount further admits that Judge Flanagan  
13 specifically ruled on the very issue that Yount judicially admits was pled by the  
14 Defendants in their answer and upon which discovery focused by affirming:  
15

16                       [Judge Flanagan] concluded that “but for the intentional interference with  
17 the contractual relations between Mosaic and Cal Neva, LLC the project  
would have succeeded.”

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

19           A judicial admission is a statement of fact in the proceedings that bars a party  
20 from later attempting to contest or repudiate such fact. St. Paul Mercury Ins. Co. v.  
21 Frontier Pacific Ins. Co., 111 Cal.App.4th 1234, 1248, 4 Cal.Rptr.3d 416, 428-429 (Cal.  
22 Ct. App. 2003) (“[a]dmissions of material facts made in an opposing party’s pleadings  
23 are binding on that party as ‘judicial admissions.’”); 29A Am. Jur. 2d Evidence § 783  
24 (July 2010) (“A judicial admission is a party’s unequivocal concession of the truth of a  
25 matter, and removes the matter as an issue in the case. It is a voluntary concession of  
26  
27

28           <sup>16</sup> See also Simons’ Aff., at ¶15.

fact by a party or a party's attorney during judicial proceedings."); 32 C.J.S. Evidence § 628 (May 2010) ("Admissions in a pleading have the effect of withdrawing a fact from issue and eliminating the necessity of proof relating to the fact so admitted . . . .")

In Reyburn Lawn & Landscape Designers, Inc. v. Plaster Development Co., Inc., 127 Nev. 331, 255 P.3d 268, 276-277 (2011) the Nevada Supreme Court articulated that judicial admissions are "deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." In the present case, Yount admits that from the very first day the Defendants' answered, the issue of Yount's intentional interference was plead as the primary focus of Defendants' claims in this proceeding. Accordingly, Yount's judicial admissions require that Marriner's motion be granted.

#### **B. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.**

Defendants also demonstrated that Yount's intentional interference with the Mosaic Loan a central issue in this case with their Motion for Summary Judgment which details the following:

Unfortunately, [Plaintiff] also involved himself with a select group of investors who actively meddled in the financing efforts to try to supplant their own financing. In the spring of 2016, these investors (with Plaintiff's involvement) went behind Criswell Radovan's back and sabotaged the loan Criswell Radovan had lined up with Mosaic to fund the remaining construction.

See **Exhibit 14**, excerpts of Defendants' Mot. for Sum. Jud., ¶128 of the Statement of Undisputed Facts.<sup>17</sup> Again, the issue of Yount's intentional interference was identified as a critical issue of proof in this case.

#### **C. DEFENDANTS' PROPOSED FINDINGS.**

In Defendants' August 25, 2017, Proposed Findings of Fact and Conclusions of

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<sup>17</sup> See also Simons' Aff., at ¶16.

1 Law, Defendants stated:

2 [Mr. Yount] involved himself with a select group of investors who actively  
3 meddled in the financing efforts to try to supplant their own financing. In the  
4 spring of 2016, these investors (with Plaintiffs involvement) went behind Criswell  
5 Radovan's back and sabotaged the loan Criswell Radovan had lined up with  
6 Mosaic to fund the remaining construction.

7 Yount was aware of the **interference** when it occurred.

8 Yount's alleged damages result in whole or in part from the interference in the  
9 Mosaic loan.

10 See **Exhibit 15**, excerpt of Defendants' August 25, 2017 Proposed Findings of Facts  
11 and Conclusions of Law, p. Page 7 (emphasis added).<sup>18</sup>

12 The evidence shows that Plaintiff conspired with certain other investors to not  
13 only interfere with, but ultimately sink the Project's major refinancing loan with  
14 Mosaic which would have bailed this Project out. This **intentional interference**  
15 has damaged the Defendants far in excess of Plaintiffs \$1 Million investment.

16 Exh. 15, page 11 (emphasis added). Again, the issue of Yount's intentional  
17 interference was identified as a critical issue of proof at trial again demonstrating that  
18 Yount's interference was expressly tried.

#### 19 **D. THE TRIAL.**

20 The trial transcript overwhelmingly demonstrates that Defendants' affirmatively  
21 tried their claim for Yount's interference and that this claim was tried by **express**  
22 consent. Indeed, Yount's consent to try this issue began when Yount **stipulated** into  
23 evidence all of Defendants' trial exhibits—the vast majority of which were emails that  
24 Judge Flanagan correctly documented as "email exchanges between Mr. Yount and the  
25 IMC and their efforts to undermine the Mosaic loan." See Exh. 1, p. 1140:1-3.

26 Among others, these emails include the following:

- 27 • **Trial Exhibit 109:** Email exchange between IMC and Yount before the

28 <sup>18</sup> See also Simons' Aff., at ¶17.



secret meeting with Mosaic sharing information “for our eyes only”.

- **Trial Exhibit 110:** Email exchange between IMC and Yount —referring to themselves as “Team” and discussing their “divide and conquer approach”.
- **Trial Exhibit 115:** Email exchange between IMC’s Brandon Cheney and Yount shortly before the secret Mosaic meeting wanting to talk about Robert Radovan of Criswell Radovan.
- **Trial Exhibit 118:** Yount’s email to IMC discussing the ousting of Criswell Radovan and that “we must be extra careful not to underestimate these two tomorrow”.
- **Trial Exhibit 119:** Email exchange between Yount and IMC where they are proposing to use Yount’s claim and threat of lawsuit as a coercive means to get Criswell Radovan to leave the Project.
- **Trial Exhibit 121:** Email exchange between Yount and IMC referencing the fact IMC was planning to secretly meet with Mosaic that Monday without Criswell Radovan’s knowledge or consent.
- **Trial Exhibit 122:** Email exchange between IMC and Yount making it clear that Criswell Radovan did not know of the Mosaic meeting and referencing the fact IMC was getting a letter of intent from another equity party (*i.e.*, someone other than Mosaic).
- **Trial Exhibit 124:** Email from Mosaic to Radovan the very day IMC secretly met with Mosaic saying they are backing out of the loan and tearing up the term sheet.
- **Trial Exhibit 126:** Email exchange with Yount referencing the secret Mosaic meeting as a “good meeting”, and discussing that Criswell Radovan must immediately resign and cede their 20% interest or “face swift civil and criminal action”.
- **Trial Exhibit 127:** Email from Yount to IMC asking for input on his legal strategy against Criswell Radovan.
- **Trial Exhibit 130:** Less than a week after the Mosaic loan was torpedoed, Yount and IMC are discussing another potential investor.
- **Trial Exhibit 131:** Less than a week after the Mosaic loan was torpedoed, IMC and Yount are discussing a replacement developer to replace Criswell Radovan and making sure “not [to] discuss with others outside this email list”.

- **Trial Exhibit 132:** Email exchange between Yount and IMC shortly after the Mosaic loan was torpedoed asking about another investment group.
- **Trial Exhibit 133:** Yount email to IMC—after the Mosaic loan was torpedoed—describing one of the IMC members as “our hero!”.
- **Trial Exhibit 142:** Email exchange between Yount and IMC—approximately 1.5 months after the Mosaic loan was torpedoed—agreeing to a “good cop/bad cop routine” against Criswell Radovan.

Yount also presented three (3) of his own trial exhibits (Exhibits 55, 58 and 59) to respond to the Defendants’ interference claim:

- **Trial Exhibit 55:** Email between Yount and IMC two weeks before the Mosaic Loan was torpedoed talking about other refinancing options.
- **Trial Exhibit 58:** Email from Yount to Molly Kingston the week before Mosaic Loan was torpedoed saying “there is no way to the finish line with these developers.”
- **Trial Exhibit 59:** Email exchange between Yount and IMC a few days before the Mosaic Loan was torpedoed stating “we need to get more investors on board with their removal.”

Yount’s stipulation to the admissibility of the foregoing emails, and his introduction and use of rebuttal emails to contest and challenge the claims of interference, establishes that Yount expressly as well as impliedly consented to the trial of this issue. These are the very emails and surrounding testimony that were thoroughly weighed by Judge Flanagan and supported his damage award:

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

Exh. 1, p. 1140:1-11 (emphasis added).

Yount’s counsel specifically questioned Yount on the issue of his intentional

1 interference attempting to present contrary evidence seeking to defend or excuse  
2 Yount's behavior. Specifically, Yount's and Defendants' counsel employed creative  
3 terms such as "tanking" and "torpedoing" the Mosaic Loan to engage in questioning at  
4 trial as follows:

5  
6 Q [By Plaintiff's counsel to Mr. Yount]. Mr. Yount, you've been in the  
7 courtroom, you heard Mr. Radovan and Mr. Little's discussion about  
participating with the IMC in some kind of plan or scheme, right?<sup>19</sup>

8 Q [By Plaintiff's counsel to Mr. Yount]. Did you ever conspire to somehow  
9 undermine the Mosaic loan?<sup>20</sup>

10 Q [By Defendants' counsel to Mr. Yount]. I also understood from your  
11 testimony that you distanced yourself from the IMC folks and played no  
role in their effort to torpedo the loan?<sup>21</sup>

12 Q [By Defendants' counsel to Mr. Yount]. You weren't referring to the secret  
13 Mosaic torpedo meeting?

14 A [Mr. Yount]. As far as I know, there was no such meeting. You keep  
15 trying to put things in my mouth about torpedoing things, but it's just not  
what I know.<sup>22</sup>

16 Q [By Defendants' counsel to Mr. Yount]. Now, you've suggested in your  
17 testimony today that the loan was not torpedoed. What do you think  
18 happened after that meeting other than the loan being tanked or  
19 rescinded? Do you think there was some path forward with Mosaic after  
the meeting? <sup>23</sup>

20 This line of questioning by Yount's own attorney along with Defendants' counsel

21  
22 <sup>19</sup> Id., p. 585:9-11.

23 <sup>20</sup> Id., p. 585:16-17.

24 <sup>21</sup> Id., p. 727:19-21.

25 <sup>22</sup> Id., p. 734:18-22.

26 <sup>23</sup> Id., pp. 767:21-24, 768:1-9.

1 demonstrates that the issue of Yount's interference, aka "tanking" and "torpedoing" the  
2 Mosaic Loan, was in fact extensively litigated at trial.

3 In addition, Yount called Brandon Cheney from the IMC Group to testify on this  
4 key topic. For example, Yount's counsel asked Yount: "Did you ever conspire to  
5 somehow undermine the Mosaic loan?" Id., p. 585. Yount and his counsel then began  
6 a colloquy lasting 16 pages trying to downplay and explain away the damning emails  
7 showing his active involvement. Id., pp. 585-601. Yount was also questioned  
8 extensively on the Mosaic Loan—all in an effort to try to undermine Defendants'  
9 allegation that IMC and Yount conspired to torpedo that Project refinancing. Id. pp.  
10 837-843 and 857-865. As another example, Yount's counsel asks Mr. Cheney if he and  
11 his partners went into the secret meeting with Mosaic "to somehow torpedo the Mosaic  
12 loan?" Id., p. 842. Yount's counsel then asked Mr. Cheney if Yount did anything to  
13 interfere with the Mosaic Loan. Id., pp. 862:24-863:7. Yount's counsel introduced a  
14 brand-new exhibit as alleged "impeachment evidence" to rebut Radovan's testimony  
15 from the prior day about sabotaging the Mosaic loan:  
16  
17

18 Q. Did you receive a letter through the course of your dealings with Mr.  
19 Radovan that was sent from Mosaic to Mr. Radovan about terminating  
20 the loan going forward?

21 A. Yes.

22 MR. CAMPBELL: Your Honor, I have a new exhibit. I believe it's an  
23 impeachment exhibit. **It goes directly to the heart of the evidence that we've**  
24 **heard today from Mr. Radovan as to the -- as to what happened with the**  
25 **Mosaic loan. Mr. Chaney provided it to me. I did not get it in discovery. It was**  
26 **not provided in the CR discovery. But I think it goes to the heart of the matter**  
27 **and it should be admitted as an impeachment witness.**

28 THE COURT: Show it to counsel. You can provide it to the clerk.

THE CLERK: Exhibit 77 marked for identification.

1 THE COURT: Mr. Little.

2 . . .

3 MR. WOLF: I have no further comment on it.

4 THE COURT: All right. Thank you. 77 is admitted.

5 Id., pp. 860:22-861:21.

6 As shown, Yount's counsel's own statements affirmed that the Mosaic Loan was  
7 the "heart" of "the evidence" at trial. Yount's attorney even asked for and received  
8 permission to use a previously undisclosed document at trial to address the evidence of  
9 the Mosaic Loan and Yount's interference. It is suggested this clearly, unequivocally  
10 and dispositively demonstrates that Yount's interference was a critical issue at trial, was  
11 tried by express consent and, therefore, Marriner's motion should be granted as  
12 requested.  
13

14 Of further note, Yount's conspiracy with IMC to interfere with the Mosaic Loan  
15 was also addressed thoroughly by Defendants' counsel on cross examination of nearly  
16 every witness, most notably with Yount, Radovan and Mr. Cheney. Importantly, Yount's  
17 counsel **did not object to this line of questioning**, and, instead, **stipulated into**  
18 **evidence dozens of emails that pertain solely to this issue** of Yount's interference in  
19 the Mosaic Loan as discussed above. There was only one event wherein Yount's  
20 counsel objected to the examined Robert Radovan about how CR Cal Nevada had  
21 been damaged by Yount and IMC's interference, however, the objection did not go to  
22 the subject matter—instead it was a foundational objection.  
23  
24

25 Q. [By Defendants' counsel]. Sir, can you quantify how CR Cal Neva has  
26 been damaged by Mr. Yount and IMC's interference?

27 Mr. Campbell: Objection, lack of foundation.

28 THE COURT: Sustained. I'm sorry, overruled. Go ahead.

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1 Id., p. 493:6-24. Again, Yount's counsel's only objection to this line of questioning was  
2 one of "foundation"—not that Yount was somehow being blindsided or ambushed by a  
3 trial on the issue of his interference with the Mosaic Loan and the resultant damages to  
4 Defendants.

5  
6 Similarly, Marriner was questioned extensively about the basis of his claim and  
7 his resulting damages. Marriner testified he was hired as a consultant to raise money  
8 for the development of the LLC. Id., pp. 1090:23-1091:1. See also **Exhibit 16**<sup>24</sup>, Trial  
9 Exhibit 1 (Real Estate Consulting Agreement Cal Neva Lodge Development between  
10 LLC and Marriner). Marriner also testified that the Project was "sensational" and he  
11 was "devastated professionally and personally over the loss of this project, this lawsuit,  
12 his reputation and his friends." Exh. 1, 1096:8-12.

13  
14 Marriner also testified that the Project was going to be his next five years of work  
15 and provided other testimony regarding the harm he sustained by the failure of the  
16 project. Id., p.122:13. Marriner described the harm that Yount's false accusations had  
17 caused to him and said it "ruined my life." Id., p.122:15. Marriner also described the  
18 loss of the Project caused by Yount as "a nightmare." Id., p. 123:2.

19  
20 Pursuant to the terms of Trial Exhibit 1 Marriner was entitled to be paid 3% of the  
21 gross revenue of the project equating to \$1.3 million. (Total value of projects at  
22 \$43,288,000 X 0.03 = \$1,298,640). Exh. 16. As a result of the failure of the Mosaic  
23 Loan to fund, the Project collapsed and, in addition to the lost income above, Marriner  
24 lost his equity stake shown in be \$187,500. See **Exhibit 17**<sup>25</sup>, Trial Exhibit No. 5 (Cal  
25

26  
27 <sup>24</sup> See also Simons' Aff., at ¶18.

28 <sup>25</sup> See also Simons' Aff., at ¶19.

1 Neva Lodge, LLC Amended and Restated Operating Agreement, Schedule 4.2 showing  
2 capital contributions "Marriner Real Estate, LLC \$187,500"). In addition, Marriner also  
3 lost his right to an Honorary Founding Membership, and potential compensation for  
4 other consulting work. Exh. 16, (page 2, last line; page 3, "additional Work").

5  
6 Thus, the Court's award of \$1.5 million to Marriner ties exactly to the harm  
7 Marriner testified he sustained as a result of Yount's wrongful conduct and which was  
8 documented in an exhibit that was stipulated into evidence at trial: \$1,298,640 in lost  
9 sales commissions, \$187,500 in lost capital and lost founding membership. Marriner's  
10 contractual relationships with the Project were tried, admitted at trial, discussed in  
11 extensive detail at trial along with the harm Marriner sustained by the loss of the Mosaic  
12 Loan.

13  
14 Yount also testified and admitted he was fully aware of Marriner's business and  
15 financial relationship with the LLC and was in "constant communications" with Marriner  
16 about the project. Exh. 1, p. 1111:4-8. Yount testified he was fully aware that the IMC  
17 and Mr. Chaney intended to interfere with the LLC's contractual relationship to obtain  
18 the Mosaic Loan. Yount attended IMC meetings and "was considered by all to be a  
19 member" of the IMC. Id., pp.1120:24-1121:1. Yount was fully aware of the IMC's  
20 intention to block the Mosaic Loan from funding so the project would collapse and that  
21 Yount even acknowledged that such conduct by IMC was not appropriate. Id., p.  
22 1114:18-20; *see also* **Exhibit 18**<sup>26</sup>, Trial Exhibit 122 (Yount concerned that the IMC's  
23 meeting with Mosaic to derail the LLC's funding was secret and not "legit").  
24

25  
26 Judge Flanagan, and this Court on review, found that the evidence presented  
27 was overwhelming that Yount "**was [in] cahoots with this cabal involving certain**  
28

1 **members of the IMC**, and that he testified he was not opposed to the removal of" the  
2 managers of the project. Exh. 1, p. 1121:1-4 (emphasis added). Judge Flanagan, and  
3 this Court upon review, found that it was Yount's and the IMC's intent "to kill" the  
4 Mosaic Loan and Yount and the IMC did in fact kill the loan. Yount knew that the  
5 Mosaic Loan was the only exit strategy for the Project and without it, the Project was  
6 certain to fail and all the Defendants would sustain millions of dollars in damages. Id., p  
7 1121:23-24. The foregoing demonstrates that the issue of the Mosaic Loan and  
8 Yount's interference was clearly an issue tried at trial and the evidence was so  
9 overwhelming as to Yount's egregious and intentional conduct, causing serious and  
10 crippling harm, Judge Flanagan rendered judgment in Defendants' favor.

11  
12  
13 Consistent with the legal principles and Rules discussed herein, in Padilla v.  
14 Ghuman, 183 P.3d 653, 658 (Colo. Ct. App. 2007), the court stated: "a trial court has  
15 the duty to consider an issue raised by the evidence even though the matter was not  
16 pled and no formal application was made to amend." In Padilla, the Court held:

17  
18 Here, plaintiffs failed to object when [defendant] testified that defendants were  
19 overcharged due to plaintiffs' wrongful use of default interest in their calculation  
20 of the cure amount. If they had objected, the court could have granted  
21 defendants leave to amend their pleadings or a continuance to enable plaintiffs  
22 to meet the evidence. Because plaintiffs failed to give the trial court an  
23 opportunity to address their contention that the evidence of overpaid interest was  
24 at variance with the pleadings, they cannot complain on appeal of defendants'  
25 failure to amend their pleadings.

26 Id. Similar to Padilla, in the instant case, except for a belated after-the-fact objection  
27 during closing arguments, Yount failed to object to both the presentation of evidence of  
28 the interference claim and the damages sustained by Marriner (or any of the  
Defendants) as a result of Yount's interference. Consequently, any objection to this

---

<sup>26</sup> See also Simons' Aff., at ¶20.



1 motion would, therefore, be baseless and unsupportable.

2 **E. ADMISSION THAT THE "FOCUS" OF THE TRIAL WAS YOUNT'S**  
 3 **INTENTIONAL INTERFERENCE WITH THE MOSAIC LOAN.**

4 The Mosaic loan and a simple key word search of the trial transcripts reveals that  
 5 the term "Mosaic" was used over 300 times. Clearly this fact alone demonstrates that  
 6 the trial did in fact focus on the Mosaic Loan and Yount's intentional interference with  
 7 that loan. Further, at trial, Yount's counsel admitted that the Defendants tried their  
 8 claims of wrongdoing against Yount for his participation, collusion and secret conduct to  
 9 cause the Mosaic Loan to collapse and on the last day of trial, Yount's counsel  
 10 conceded to Judge Flanagan the following:

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

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

18 **THE COURT: Just a minute here. Go ahead.**

19 **MR. CAMPBELL: They shifted that focus.** What I believe the facts have  
 20 shown in this case, I think, let's go back and focus on what really happened on  
 the October 13<sup>th</sup> time frame.

21 Exh. 1, p. 983:2-17 (emphasis added). Simply stated, the defendants tried the factual  
 22 issues of Yount's wrongful participation, collusion and agreement with the IMC to  
 23 destroy the funding of the Mosaic Loan. That wrongful conduct was clear,  
 24 unmistakable and formed the basis of Judge Flanagan's judgment against Yount.

25 ///

26 ///

27 ///

1           **F.     THIS COURT’S ANALYSIS CONFIRMED JUDGE FLANAGAN’S**  
2           **FINDINGS AND JUDGMENT.**

3           Due to Judge Flanagan’s unfortunate passing, this Court “reviewed the trial  
4 transcript in its entirety and the exhibits referenced in the transcript.” See **Exhibit 19**<sup>27</sup>,  
5 Judgment, dated March 12, 2018, p. 3:1-2. Specifically, on page 3 of the Judgment,  
6 this Court stated:

7                     The Court has reviewed the trial transcript in its entirety and the exhibits  
8 referenced in the transcript and in Judge Flanagan’s ruling. Pursuant to NRCP  
9 63, the court here certifies its familiarity with the record. Moreover, given the  
10 status of the case at the time of Judge Flanagan’s passing (evidence closed,  
11 closing argument completed and a ruling from the bench on the merits, followed  
12 by his written Amended Order), and the detailed extent of Judge Flanagan’s  
ruling from the bench and his subsequent Amended Order dated September 8,  
2017, the court has determined pursuant to NRCP 63, that the proceedings in  
this case may be completed as set forth herein without prejudice to the parties.

13           Exh. 19, p.3:1-8. Of critical note, under NRCP 63, this Court had the discretion to recall  
14 witnesses and reopen the evidence if the Court deemed Judge Flanagan’s decision  
15 was erroneous, not supported by the evidence, procedurally improper or if any other  
16 fashion was defective. However, affirming the validity of Judge Flanagan’s decision,  
17 and the judgments rendered in the Defendants’ favor against Yount, this Court held  
18 there was “no need or reason to recall witnesses.” Id., p.3:9. In so ruling, this Court  
19 determined it could conclude Judge Flanagan’s decision and orders after trial and enter  
20 judgment “without prejudice to the parties.” Id., p.3:8.

21           This Court’s independent analysis of the transcript as well as the detailed  
22 analysis, factual findings and conclusions of law also determined that Yount’s claims  
23 failed for lack of evidentiary support. Id., p.3:16-18. This Court itself has already  
24  
25  
26

27  
28           <sup>27</sup> See also Simons’ Aff., at ¶21.

1 determined that Judge Flanagan's entry of judgment was appropriate and warranted by  
2 the evidence. Accordingly, on this ground alone this motion should also be granted.

3 **V. THE COURT'S AUTHORITY TO RENDER ALL APPROPRIATE RELIEF**  
4 **REGARDLESS OF THE ALLEGATIONS CONTAINED IN THE FORMAL**  
5 **PLEADINGS.**

6 Yount's unclean hands, as demonstrated by his willful interference in  
7 sabotaging the Mosaic Loan is precisely what prevented completion of the Project  
8 causing all of the financial damage upon which Marriner's claim is based. Judge  
9 Flanagan's oral findings, his Amended Order along with this Court's Judgment imposed  
10 liability upon Yount for Marriner's damages in the amount of \$1.5 million. Again, while  
11 Marriner did not formally plead a counterclaim for intentional interference, the evidence  
12 elicited at trial established the evidentiary and legal basis for this relief in favor of  
13 Marriner.  
14

15 The evidence demonstrated that all the Defendants had contractual relationships  
16 that hinged on the funding of the Mosaic Loan. These contractual relationships and  
17 right to payment were known and were admitted and examined at trial. If the Mosaic  
18 Loan would have funded, as it was scheduled to do, but for the interference of Yount  
19 and the IMC, all the defendants would have been paid in full. Judge Flanagan and this  
20 Court found that the evidence was undisputed that Yount was "in cahoots" with the IMC,  
21 that Yount was treated as a "member" and a "spokesperson" for the IMC, and was  
22 included in all the secret emails communicating the IMC's malicious intent and plan to  
23 destroy the Mosaic Loan funding.  
24

25 Under the authority vested in the Court pursuant to NRCP 15(a), NRCP 54(c)  
26 and NRCP 8(c), Judge Flanagan was authorized to render judgment in favor of Marriner  
27 for Yount's intentional interference with the Mosaic Loan. The tort of intentional  
28

1 interference with contract has been generally defined by the Nevada Supreme Court in  
2 the case of Sutherland v. Gross, 105 Nev. 192, 196, 772 P.2d 1287 (Nev. 1989) as  
3 follows:

4 To establish intentional interference with contractual relations, the plaintiff  
5 must show: (1) a valid and existing contract; (2) the defendant's knowledge of the  
6 contract; (3) intentional acts intended or designed to disrupt the contractual  
7 relationship; (4) actual disruption of the contract; and (5) resulting damage.

8 Id., at 1290.

9 In the present case, Judge Flanagan found that Yount did in fact intentionally  
10 interfere with the Mosaic Loan for the purpose of disrupting that loan. Actual disruption  
11 occurred and Marriner sustained quantifiable damages which Judge Flanagan awarded  
12 and this Court affirmed. Judge Flanagan specifically found that the elements of a claim  
13 for intentional interference were established at trial. Exh. 1, p. 1139:20-22 ("but for the  
14 intentional interference with the contractual relations between Mosaic and Cal Neva  
15 LLC . . .").

16 This Court also thoroughly examined the trial transcript and the exhibits admitted  
17 at trial and examined the trial transcript to determine if the issues were tried by express  
18 and/or implied consent. This Court has also implicitly found that pursuant to NRCP  
19 15(a), NRCP 54(c) and/or NRCP 8(c) that the claim of intentional interference was in  
20 fact tried and the appropriate relief granted to Marriner even though such relief had not  
21 been articulated in any pleading. Based upon the foregoing, the Motion must be  
22 granted as to this claim.

## 23 VI. CONCLUSION.

24 The record is abundantly clear that Yount individually and "in cahoots" with the  
25 IMC, actively participated in "killing" the Mosaic Loan. Judge Flanagan found that  
26  
27  
28

1 Yount's conduct was both egregious and tragic imposed liability on Yount for his  
2 wrongful and harmful actions. Therefore, it is respectfully requested that this Court  
3 grant Marriner's motion and enter its order conforming Marriner's Answer to include the  
4 counterclaim for intentional interference.  
5

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

8 DATED this 21<sup>st</sup> day of August, 2018.

9 SIMONS LAW, PC  
10 A Professional Corporation  
11 6490 S. McCarran Blvd., #C-20  
12 Reno, Nevada, 89509

13   
14 MARK G. SIMONS  
15 Attorneys for David Marriner and  
16 Marriner Real Estate, LLC  
17  
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26  
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# 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 **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 21 day of August, 2018.

  
Employee of Simons Law, PC

**EXHIBIT LIST**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
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# EXHIBIT 1

004519

004519

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

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

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

11           MR. CAMPBELL: I'll object to that.

12 BY MR. WOLF:

13           Q.    How have these allegations affected you?

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

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

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

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 with the appraisals, everything with them. Then they  
2 decided, this is like 4:00 in the afternoon, we're not going  
3 to give you the other extension. Do what you need to do. We  
4 filed Chapter 11 then on that date to avoid foreclosure.

5 BY MR. LITTLE:

6 Q. Sir, can you qualify how CR Cal Neva has been  
7 damaged by Mr. Yount and IMC's interference?

8 MR. CAMPBELL: Objection, lack of foundation.

9 THE COURT: Sustained. I'm sorry. Overruled. Go  
10 ahead.

11 THE WITNESS: I can tell you personally, you know,  
12 this thing is going to cost Bill and I at least 1.6 million,  
13 revenues that would have come to our operating company, a  
14 million dollars a year, roughly. Bill nor I have not been  
15 paid one penny in the last two years, which has dramatically  
16 cost us.

17 And the entire time, you know, me and my staff and  
18 Bill, we have worked tirelessly without getting paid, despite  
19 all of the, sorry, crap, worked to protect everyone's  
20 interests. And it's been a huge, huge toll on myself, my  
21 family. As Dave talked about it the other day, it's been  
22 unbelievably difficult, not just the capital side of it is  
23 devastating, and this never should have happened. This came  
24 from a couple of people trying to steal a project.

1           A.     We're working hard.

2           Q.     Yeah. The second sentence says, we've all been  
3 shocked regarding the recent announcement about the cost  
4 overruns. Is that an accurate assessment of the mood in the  
5 meeting?

6           A.     Shocked is an understatement, yes. It's hard for  
7 me to understand how he can be that close to the project and  
8 be shocked.

9           Q.     Mr. Yount, you've been in the courtroom, you heard  
10 Mr. Radovan and Mr. Little's discussion about participating  
11 with the IMC in some kind of plan or scheme, right?

12          A.     Yes. I was shocked, immensely shocked by those  
13 comments.

14          Q.     The comments you heard in court today?

15          A.     Yes.

16          Q.     Did you ever conspire to somehow undermine the  
17 Mosaic loan?

18          A.     That would be insane. I was going to get paid if  
19 the Mosaic loan went through. All I did was try to calm the  
20 IMC and do anything I could to make sure that the project got  
21 funded, because as soon as it would have gotten funded, CR  
22 would have been paid their \$900,000 and they would have paid  
23 me the \$1 million on my share that I never got back.

24          Q.     Isn't that what Mr. Criswell told you in the

1 e-mail he sent you the next day after the meeting?

2 A. Yes. I was surprised they weren't thanking me for  
3 helping to calm them as much as I had, including trying to  
4 get them not to confront Mosaic themselves. And including  
5 talking to Jeremy Page after his outburst they spoke of  
6 earlier and telling him he was out of line and off base and  
7 after that he no longer participated at all. He left it up  
8 to Paul Jamieson.

9 Q. Okay. Did you have conversations with the other  
10 members of the LLC related to the Mosaic loan itself?

11 A. You mean the IMC?

12 Q. IMC, yes.

13 A. Yes, there was conversation, but I didn't  
14 participate in trying to change anything or condoning that  
15 meeting that they had.

16 Q. In fact, you saw the testimony earlier that you  
17 had actually asked whether they could even do that meeting,  
18 right?

19 A. Did I what, sir?

20 Q. Whether they could even do that meeting?

21 A. It seemed out of line to me, which is why I raised  
22 the question. As we said, I'm no attorney and I'm not a  
23 member of the EC, but I just don't think that was an  
24 appropriate thing to do from what I was reading or hearing.

1 Q. And did you attend the meeting with Mosaic?

2 A. No, not at all. I've never spoken to anyone in  
3 person or on the phone or any e-mail directly with Mosaic.

4 Q. And you never took any actions whatsoever with any  
5 of the other members to somehow undermine the Mosaic loan?

6 A. Not a chance. It would be to my detriment. Why  
7 would I do that? I didn't care who funded, as long as  
8 somebody funded it so they would get their money and I would  
9 get mine.

10 Q. Was that your position pretty consistently?

11 A. Very consistently.

12 Q. And that would be since December?

13 A. Yes, since December 12th.

14 Q. And that was your position in January?

15 A. Yes.

16 Q. And how about February?

17 A. Yes. How about today? Yes.

18 Q. Let's look at Exhibit Number 50.

19 A. All right. You want me to start at the back  
20 again?

21 Q. Sure.

22 A. Okay.

23 Q. And on the very first, go all the way to the back,  
24 the 2677 document?



1 A. 2677, yes.

2 Q. Okay. That was the e-mail earlier we talked about  
3 Mr. Criswell and --

4 A. That was the December 16th e-mail.

5 Q. Yes. Mr. Criswell tells you, as you will see in  
6 the information you will be receiving this week and in the  
7 coming weeks, will show that Criswell Radovan has lent over  
8 900 to the Cal Neva project, which is expected to be repaid  
9 as soon as the project has new financing funded from the debt  
10 equity or some combination thereof?

11 A. Yes.

12 Q. Was that your understanding of the source of funds  
13 that might pay you back?

14 A. When they got that those funds paid, he would pay  
15 me back. Not that I agreed with that, but that was their  
16 stance.

17 Q. And what was your understanding of the status of  
18 the Mosaic loan in this December time frame?

19 A. I thought it was still imminent.

20 Q. Let's go back on the same e-mail, Exhibit Number  
21 50.

22 A. Where am I going, 50?

23 Q. Exhibit number 50. Let's look at the first page  
24 of that.

1 A. Yes.

2 Q. Mr. Jamieson says, you and I are on the same page.  
3 The approach is key to turning this project around. So you  
4 had been talking to Mr. Jamieson about what?

5 A. About making the project a success, getting it  
6 refunded so it could continue on and so I could get paid and  
7 get out.

8 Q. Let's put this at January 8th now.

9 A. What exhibit?

10 Q. January 8th, I'm just referring to a time frame.  
11 By January 8th, it would have been after the holidays?

12 A. Yes.

13 Q. Were you aware then about the CR's purported sale  
14 to you?

15 A. No.

16 Q. Okay. And if you can look at Exhibit Number 54?

17 A. Yes.

18 Q. Did you see that -- I see you're cced on this.  
19 Did you see the cap table that is attached to that?

20 A. I did.

21 Q. Did you review it?

22 A. Did I review it?

23 Q. Yes, the cap table.

24 A. Yes.

1 Q. And do you see something missing from the cap  
2 table?

3 A. Yes, me.

4 Q. Did you ask somebody about that?

5 A. I believe I did. I don't remember if I called Mr.  
6 Marriner or Mr. Radovan, but I was upset that I did not -- I  
7 was not on the table.

8 Q. Okay. And did either of them respond to you?

9 A. I don't remember.

10 Q. Okay. Let's go to Exhibit Number 55.

11 A. Okay.

12 Q. This is another Paul Jamieson to Stuart Yount.  
13 For the Court, tell us who Paul Jamieson is?

14 A. Paul Jamieson is a member of the IMC and one of  
15 the investors.

16 Q. You didn't know Mr. Jamieson before December 12th?

17 A. No. Except for maybe seeing him at a meeting, but  
18 not outside any of the Cal Neva stuff.

19 Q. So Mr. Jamieson is sending an e-mail to you.  
20 Roger, who would that be?

21 A. Roger Wittenberg.

22 Q. Heather?

23 A. Heather is his step daughter who runs the  
24 Biltmore.

1 Q. And then Geri is your wife?

2 A. Geri is my wife.

3 Q. Sitting in the back, suffering through this?

4 A. 47 years.

5 Q. What is Mr. Jamieson telling this group here?

6 What happened that precipitated this e-mail?

7 A. I believe he spoke with Mr. Wittenberg, who he  
8 knew prior to me. I don't know if it's before I knew  
9 Mr. Wittenberg, but he knew -- I was not the introduction to  
10 him, to Mr. Wittenberg. I believe they had done some work  
11 together years prior and I don't know the detail of it.

12 Q. And he says, thank you for putting together the  
13 meeting to discuss the Cal Neva. Did you put together the  
14 meeting?

15 A. I don't think I put together the meeting. I am  
16 listed in the to column, but Roger, I could have, I don't  
17 recall that. I may well have told Roger, I believe, Paul  
18 Jamieson wants to speak to you about it.

19 Q. Were you in that meeting?

20 A. No.

21 Q. Do you know what the conversations with North  
22 Light centered around?

23 A. Probably financing. They were the financier of  
24 the Biltmore and Boulder Bay Redevelopment.

1 Q. Did you follow-up with Mr. Jamieson on this e-mail  
2 about North Light as a viable refinancing option?

3 A. I may well have. I don't remember. I was not  
4 really in it.

5 Q. Were you in any discussions with Roger or North  
6 Light to follow up on the details of some kind of a  
7 refinance?

8 A. Never with North Light. I talked with Roger  
9 fairly frequently, because he's a good friend and he's on my  
10 Board of Directors and I know him well, but -- and he told me  
11 that he was already well aware of Paul Jamieson and knew him  
12 well.

13 Q. So it would be fair to say Mr. Jamieson was  
14 looking at different options for financing?

15 A. Absolutely.

16 Q. Go to Exhibit Number 56.

17 A. All right.

18 Q. This is an e-mail from you. And I assume this is  
19 pretty much all the investment group and management in the  
20 cc. In the cc, it's the investment group and the management?

21 A. I believe so.

22 Q. And you put in quotes about the discussion of the  
23 previously circulated equity table.

24 A. Yes.

1 Q. Are you quoting from the minutes of the meeting?

2 A. I believe so.

3 Q. Were you at that meeting?

4 A. I believe so.

5 Q. Okay.

6 A. Which -- January 8th?

7 Q. Yes.

8 A. Yes, I believe I was.

9 Q. Was that the first executive meeting that you  
10 attended?

11 A. No. I believe there was one in December within a  
12 couple of weeks of the December 12th situation and I flew to  
13 St. Helena and met with -- that EC meeting, EC and  
14 shareholder meeting I attended in person.

15 Q. And that was an executive committee meeting?

16 A. Yes, but it included shareholders. It wasn't just  
17 the executive committee.

18 Q. And you heard Mr. Radovan, the shareholders were  
19 pretty much always welcome into the executive committee  
20 meetings?

21 A. Yes, that's what he said. Yes.

22 Q. You found that to be true?

23 A. Yes, I did.

24 Q. What happened in that December executive meeting

1 you attended?

2 A. I didn't attend that one -- oh, the second one.  
3 I'm sorry. Yes, that was, again, a rousing discussion of the  
4 concerns we all had and what they were doing about it.

5 Q. Did Mr. Radovan or Mr. Criswell give you any  
6 update on the Mosaic progress?

7 A. They probably did. I don't remember the details.

8 Q. Let's go to the next executive committee that you  
9 believe you attended. What was the discussion about a note  
10 to be made to you?

11 A. It was some discussion about because I had nothing  
12 to show for them agreeing to pay me back or owing me money or  
13 anything that they might at least start with pretty much  
14 useless piece of paper that would say they did.

15 Q. So this would have stemmed out of your  
16 conversations with Mr. Criswell about getting paid back?

17 A. Yes.

18 Q. And then the highlighted portion below with the  
19 three question marks is your question about what's going on  
20 with the note, so to speak?

21 A. Yes.

22 Q. Let's look at Exhibit Number 58. And this is an  
23 e-mail string between you and Molly Kingston. Who is Molly  
24 Kingston?

1 A. Yes.

2 Q. Who is Molly Kingston?

3 A. Who is Molly Kingston? She's a shareholder.

4 Q. You heard the testimony, she was one of the  
5 shareholders in the December 12th meeting?

6 A. Absolutely.

7 Q. Was she upset?

8 A. She's very upset. She's not a member of the IMC.

9 Q. So, I mean, the language in here is pretty  
10 self-explanatory?

11 A. Yes.

12 Q. What were you talking to Molly about at the end of  
13 January in regards to CR's continuation in the project?

14 A. She was concerned that whether the people that had  
15 driven the bus off the cliff could -- should be driving the  
16 bus when it's resurrected from the bottom of the cliff.  
17 Which did not make a whole lot of sense to either of us, but,  
18 again, my concern was getting paid.

19 Q. You said, I totally agree there's no way to the  
20 finish line with these developers, thanks?

21 A. Yes.

22 Q. And that was your feeling at this time?

23 A. Yes.

24 Q. Why?



1           A.     Because they had driven the bus off the cliff and  
2     it was in terrible financial shape and I believe mismanaged  
3     and so why would you continue with the people who did that?

4           Q.     And in her e-mail to you down below, she says,  
5     everyone wants them out, not only for their performance on  
6     this project, but they have a reputation and history of  
7     running projects into the ground?

8           A.     That's what she said. I was not aware of that.

9           Q.     But you hadn't been talking to all the other  
10    members about forcing them out?

11          A.     No.

12          Q.     This is just an e-mail between you and her?

13          A.     Yes.

14          Q.     But you agreed at that time?

15          A.     I agree with the concept. That was one potential  
16    solution if they didn't get the Mosaic loan funded and pay  
17    me.

18          Q.     Then if you go to Exhibit Number 59?

19          A.     59. Okay.

20          Q.     We're now up to January 25th?

21          A.     Yes.

22          Q.     And this appears to be you -- you had sent a draft  
23    e-mail to Mr. Jamieson, right?

24          A.     Yes.

1 Q. By January 25th, 2015, if you look at your draft  
2 response, it appears -- are you now aware of the switch from  
3 buying a PPM share to a CR share?

4 A. Yes. I'm aware of the bait and switch.

5 Q. How did you find out about that?

6 A. I believe Mr. -- in fact, I know Mr. Criswell told  
7 me in a meeting with Mr. Criswell and Mr. Radovan I believe  
8 at the lobby of the Hyatt Regency Lake Tahoe. It was a side  
9 meeting to see -- one of their CR Cal Neva meetings with the  
10 executive committee and the shareholders they wanted to  
11 attend.

12 Q. Okay. And how did that subject come up?

13 A. He told me that is what is being done and I said,  
14 I was never told that. I never had any discussion whatsoever  
15 of buying a CR share. And I told them why that would bother  
16 me greatly and I would not accept that.

17 Q. And did you continue on those discussions about  
18 remedying that situation?

19 A. What was that?

20 Q. Did you continue in the discussion with  
21 Mr. Criswell and Radovan about how to remedy that situation?

22 A. Pay me my money.

23 Q. Did they talk about a note at that time?

24 A. I don't recall.

1 Q. So you send a draft response to Mr. -- or a draft  
2 e-mail to Mr. Jamieson?

3 A. Correct.

4 Q. Why did you send that draft to him?

5 A. Because I wanted to see if he thought it was  
6 appropriate. I had been communicating with he and the IMC  
7 and Molly since that December 12th event. That's where we  
8 then got to know each other and we were all very upset.

9 Q. When you say you had been communicating with the  
10 IMC, it looks like primarily Paul Jamieson, right?

11 A. He was kind of heading it up.

12 Q. I don't see any e-mails with Brandon Chaney?

13 A. Yeah.

14 Q. Or any of the other members, right? It was  
15 primarily Mr. Jamieson?

16 A. Once Jeremy got rather aggressive in the meeting  
17 with Mr. Radovan mentioned, I told him he was off base and  
18 needed to tone down his threatening style. And that's when  
19 he pretty well left me and everything there, too. But also  
20 Paul Jamieson was on the executive committee. And he was a  
21 minor stockholder compared to Brandon Chaney and Jeremy and  
22 some of the others.

23 Q. And the Incline Men's Club was the single largest  
24 investor in the PPM?

1 A. I believe so, \$6 million, as I understood it.

2 Q. Hold on a second. Let's go to 122 now, Mr. Yount.

3 A. All right.

4 Q. This centers around the meeting of the Incline  
5 Men's Club with Mosaic, correct?

6 A. Yes.

7 Q. And what was your understanding of that meeting?  
8 Let me ask you this, how did you find out that the Incline  
9 Men's Club was going --

10 A. I believe Paul Jamieson told me.

11 Q. And did you have some concerns about that?

12 A. I did. As I said in there, my number one is, the  
13 meeting without CR, is that legit without CR and without  
14 their advanced permission?

15 Q. And then you wrote that you heard that Mosaic are  
16 sharks. Where had you heard that?

17 A. I don't remember for sure, but I believe it was  
18 Molly might have said that. But that's only a vague  
19 recollection.

20 Q. And then you go on, on number three, he said  
21 there's no way the redone appraisal will come with needed to  
22 get the 71 million funding. We'll still be unfunded. What  
23 are you talking about there?

24 A. I believe the condition under the Mosaic loan was

1 an appraisal that would substantiate the loan they were going  
2 to give. And I don't -- and there was a lot of concern of it  
3 coming up with the 71 million, which is what it would have  
4 taken, I believe, to fully fund what they were looking for,  
5 CR was looking for, I should say.

6 Q. Had you seen the Mosaic loan term sheets, anything  
7 like that?

8 A. Some of the meetings, they would have term sheets  
9 that I would see brief at the meeting, yes.

10 Q. And somehow you knew about there was some kind of  
11 a condition in the Mosaic loan about an appraisal?

12 A. Yes.

13 Q. And so what you're saying here is there needed to  
14 be an appraisal for that loan to close, is that what you're  
15 trying to say?

16 A. I'm trying to say that what they thought -- what  
17 they were espousing they would get would probably not be  
18 gotten if couldn't -- CR, by the way, probably not be  
19 obtained if the appraisal did not come up to this level of 71  
20 million.

21 Q. And then in Mr. Jamieson's e-mail above that, he's  
22 kind of responding to your e-mail about the Mosaic situation?

23 A. Yes. Is there a question?

24 Q. Just looking. Let's go now to Exhibit Number 61?

1 A. 61?

2 Q. Yes, sir. This is the same e-mail that you had  
3 asked Paul Jamieson to pass on in the draft, right, at the  
4 bottom of that first page?

5 A. I believe so.

6 Q. Okay. Did you get a response from Mr. Marriner  
7 immediately after that to --

8 A. I don't recall. I imagine there was a response.  
9 I don't know that.

10 Q. And if we go to Exhibit Number 62? Does this  
11 refresh your recollection?

12 A. Yes.

13 Q. As to whether Mr. Marriner responded?

14 A. Mr. Marriner has responded at that point, and he  
15 says, Robert will need to explain why our investment was  
16 changed from taking 1 million of the available 1.5 that you  
17 signed up to fill to selling you one of their 2 million.

18 Q. And --

19 A. I was under the impression that you were fully  
20 informed regarding the details of that change. I am very  
21 upset that your transaction was so poorly executed. You want  
22 me to go further?

23 Q. No. That's good. You weren't fully informed,  
24 though?

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

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

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

14 That the foregoing transcript, consisting of pages 1  
15 through 619, 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 DATED: At Reno, Nevada, this 28th day of September 2017.

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

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           A.     I don't believe I do.

2                   MR. LITTLE: May I approach, your Honor? Thank  
3 you. May I approach the witness, your Honor?

4                   THE COURT: You may.

5 BY MR. LITTLE:

6           Q.     Let's go to page 53 of your deposition.

7           A.     Yes, Mr. Little.

8           Q.     I'm going to read from line 22 on 53 over to the  
9 first line.

10          A.     22?

11          Q.     Yes.

12          A.     Okay.

13          Q.     Sir, I asked you the question, and since the end  
14 of January when you learned what Criswell Radovan or CR  
15 Nevada intended to sell you, you haven't held yourself out as  
16 an investor in the project? Next page, answer, correct. Did  
17 I read that correctly?

18          A.     Yes.

19          Q.     I also understood from your testimony that you  
20 distanced yourself from the IMC folks and played no role in  
21 their effort to torpedo the loan?

22                   MR. CAMPBELL: Objection, I think it  
23 mischaracterizes the testimony.

24                   THE COURT: Mr. Little.

1 interest in meeting with Arthur?

2 A. He's one of the shareholders, I believe. I don't  
3 remember his last name, but I believe he's an attorney, but  
4 not acting as an attorney.

5 Q. Arthur wasn't a potential lending source?

6 A. I'm sorry, sir?

7 Q. Was Arthur a potential lending source?

8 A. A potential what, sir?

9 Q. Lending source, financing source.

10 A. Not -- I don't believe so. He might have known  
11 people, but I don't believe he was a lending source.

12 Q. You say above, the disaster seems to not only to  
13 continue, but also to escalate in severity and you have an  
14 exclamation point. Do you see that?

15 A. Because of the January 27th meeting, the second  
16 meeting that day that I thought was a disaster and not at all  
17 pleased with.

18 Q. You weren't referring to the secret Mosaic torpedo  
19 meeting?

20 A. As far as I know, there was no such meeting. You  
21 keep trying to put things in my mouth about torpedoing  
22 things, but it's just not what I know.

23 Q. Well, you were aware that they met behind Criswell  
24 Radovan's back?

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 the meeting?

2 A. Possibly not. I got the feeling that the Mosaic  
3 meeting was a desperation move on Mosaic to possibly put the  
4 deal together, because I don't think they were getting  
5 communication, the documents now show, that they felt they  
6 needed and were required. So they were potentially, I  
7 assume, reaching out to the executive committee to assure  
8 them that the communication was better than they were finding  
9 out.

10 Q. Do you think it's a fair characterization in some  
11 of the e-mails we've looked at today and previously that the  
12 meeting with Mosaic on February 1, 2016 was a good meeting?

13 A. That's been represented in some of the documents.

14 Q. Do you believe that's a fair or accurate  
15 characterization?

16 A. Well, if a good meeting results in the deal being  
17 cancelled, it wasn't good enough to save it, evidently, so,  
18 no.

19 Q. Now, you indicated that you had lost trust or  
20 didn't trust Mr. Criswell and Mr. Radovan and that's why you  
21 didn't share with them that there was going to be this  
22 meeting behind their backs?

23 A. It wasn't my meeting. It wasn't my place to say.  
24 And, no, I was not communicating.

1 Q. At some point, did the refinance talk more about a  
2 refinance of the entire project, not just the mezzanine  
3 finance?

4 A. Yeah, it was after that. I think the attempts to  
5 refinance the mezzanine wasn't coming to fruition. So they  
6 were looking at other options to refinance the project. And  
7 at some point, I think in October, they started talking about  
8 an outfit called Mosaic.

9 Q. Was this conveyed to you sometime in one of these  
10 October meetings?

11 A. I was -- the meeting that I had talked about  
12 before where we called Robert in, that was around the time  
13 this Mosaic thing was coming to the table. The reason I  
14 remember it is I was out of the country and Robert called me  
15 and I was in Europe.

16 Q. What was your understanding of the nature of the  
17 Mosaic loan in that October time frame?

18 A. My understanding was that it was someone that  
19 potentially could refinance the entire project, maybe provide  
20 additional monies based upon whatever the appraisal was of  
21 the project. And Robert was basically trying to negotiate  
22 some terms to see if we could get something that would be  
23 attractive for the project.

24 Q. And did he give you a term sheet or give you an

1 outline of what the terms were going to be?

2 A. He said that they had provided a term sheet and  
3 that it was nonbinding. And at some point, I think he sent  
4 it to us in -- he sent it to us in a packet with a bunch of  
5 stuff. I never actually saw it when I came over in October.  
6 But, yeah, it was very difficult to get information about the  
7 conversations or what's happening with Mosaic. So we kind of  
8 took it as we didn't know really what the terms were.

9 Q. And were there follow-up conversations in November  
10 about the Mosaic loan?

11 A. You know, the Mosaic was there, but there was so  
12 much else going on at that point with all this change order  
13 business and the Mosaic thing was kind of pushed off to the  
14 side. And they were scrambling to get information to the  
15 membership, specifically the EC, because we were demanding  
16 financials and change order reports and then we were in the  
17 holidays as well.

18 Q. Did Mr. Radovan ever tell you or the EC that  
19 without the Mosaic loan, the project was not going to move  
20 forward?

21 A. Well, we learned that, you know, I'd say in Q1 of  
22 2016 that if we didn't get a refinance or more money, the  
23 project was doomed.

24 Q. Let's talk a little more about the Mosaic loan.

1 Were there conversations in the EC in that November meeting  
2 about either go, no go with the Mosaic loan?

3 A. We told Robert we thought it was in the best  
4 interests of the project to try to see what kind of terms we  
5 could get out of Mosaic. And at that point, Troy Gillespie  
6 had stepped off of the EC, he was so disgusted with Robert  
7 and Bill managing it. So Paul Jamieson was added on to the  
8 board.

9 Paul was kind of a whiz when it comes to analyzing  
10 financial matters. We were very interested to see what terms  
11 we could get and how it would affect the overall, you know,  
12 performance of the project. We didn't want to go from the  
13 frying pan into the fire, but we needed to figure out this  
14 problem, because Robert and Bill couldn't do it on their own.

15 Q. So did you get some kind of follow-up on that from  
16 Mr. Radovan and Mr. Criswell that outlined those?

17 A. In November, December and January, we really could  
18 not get any information about it. It was like they kind of  
19 pushed Mosaic to the side. We kept asking about it.

20 Q. Okay. And did there come a time when you met with  
21 Mosaic?

22 A. Yes. The entire EC, other than Robert and Bill,  
23 met with Mosaic I think in the beginning of February in  
24 Sacramento.

1 Q. How did that meeting come about?

2 A. That meeting came about, I was contacted by  
3 Mosaic, and Mosaic called me up and said, hey, we haven't  
4 heard from Robert or Bill.

5 MR. LITTLE: Your Honor, I'm going to object.  
6 It's hearsay.

7 THE COURT: Sustained. Rephrase the question.

8 BY MR. CAMPBELL:

9 Q. Did Mosaic ask you for the meeting?

10 A. Mosaic asked for the meeting with the EC, yes.

11 Q. You didn't reach out to try to set up the meeting?

12 A. No.

13 Q. And then you were in the meeting with Mosaic?

14 A. I was in the meeting with Mosaic, along with Phil  
15 and Les Busick and Paul Jamieson.

16 Q. So both the Busicks were there?

17 A. The entire executive committee was there.

18 Q. With the exception of Robert and Bill?

19 A. Yes.

20 Q. Let's took to an exhibit here. It's Exhibit  
21 Number 124, Mr. Chaney.

22 A. Okay.

23 Q. If you look at the first string in the e-mail,  
24 which is from Sterling Johnson. It's the next to last page



1 in the e-mail string.

2 A. Yes.

3 Q. Okay. This was a letter from Mosaic to  
4 Mr. Criswell and Radovan?

5 A. Yes.

6 Q. Did you get a copy of that letter at some point?

7 A. I did. I've seen this or something to that effect  
8 before. I think it was forwarded to me.

9 Q. If you look to the next page?

10 A. Yeah. I see I was on the string later.

11 Q. And then in the middle of the page, it appears  
12 that Les Busick sent an e-mail to the other members?

13 A. I see one from Paul. What is the subject line?

14 Q. Okay. Well, it says all.

15 A. Okay.

16 Q. So you're referring to the previous page, it looks  
17 like Paul Jamieson sent an e-mail and then it was to Heather  
18 Hill and a bunch of people on the list?

19 A. Yes.

20 Q. And then the body of that e-mail is starting with  
21 all?

22 A. Yes.

23 Q. So it was Mr. Jamieson who sent the e-mail?

24 A. Yes.

1 Q. Mr. Jamieson was at the Mosaic meeting?

2 A. Yes, he was.

3 Q. And do you see the representations in the bullet  
4 points as to what transpired in the meeting?

5 A. I do.

6 Q. And would you agree with what Mr. Jamieson says as  
7 to what transpired and what he put in that document?

8 A. Can I read this?

9 Q. Sure.

10 A. I would agree with that.

11 Q. You were at the meeting?

12 A. I was at the meeting.

13 Q. So when Mr. Johnson wrote the letter to  
14 Mr. Radovan, he also refers to a bit of a mess right now,  
15 right?

16 A. Yeah. Yes.

17 Q. And the second bullet point that Mosaic expressed  
18 some concerns about the cost overruns, delay and lack of CR  
19 transparency?

20 A. Yes.

21 Q. Did you or either Mr. Busick or Mr. Jamieson go  
22 into the meeting to somehow torpedo the Mosaic loan?

23 A. Absolutely not. We wanted this project to  
24 succeed. So we were looking for any way -- I mean, our big

1 concern with Mosaic was nothing was moving forward and that  
2 we had -- we were committed to a million dollar break-up fee  
3 with them, which, you know, it was concerning. So when  
4 Mosaic contacted me and they said, do you know you're on the  
5 hook for a million dollars?

6 MR. LITTLE: Objection, your Honor, hearsay.

7 THE COURT: Sustained.

8 BY MR. CAMPBELL:

9 Q. What was your understanding of the break-up fee?

10 A. That if we didn't move forward with the project,  
11 it would be a certain percentage of the maximum loan amount.

12 Q. And how much was that break-up fee?

13 A. I remember doing the math and it was a million  
14 dollars.

15 Q. And at the bottom of those bullet points, it says,  
16 the ripped up term sheet waives the 1 million fee from Mosaic  
17 it says it is currently owed?

18 A. Yes.

19 Q. Is that accurate that transpired in that meeting?

20 A. Yes.

21 THE COURT: Mr. Campbell, we're going to have to  
22 break now. Sir, you can step down. Watch your step going  
23 down. We'll pick up tomorrow morning at 9:00 with the Skype.

24 MR. CAMPBELL: Yes.

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

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 VI

20 September 7, 2017

21 9:00 a.m.

22 Reno, Nevada  
23

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

1 THE COURT: Thank you, Mr. Tratner.

2 MR. LITTLE: Thank you, sir.

3 THE WITNESS: Okay. Thank you.

4 THE COURT: Can we bring in Mr. Chaney?

5 Mr. Chaney, you remain under oath. Mr. Campbell, your  
6 witness.

7 BY MR. CAMPBELL:

8 Q. Mr. Chaney, when we left off last night, we were  
9 talking about the Mosaic loan. I wanted to follow up with a  
10 couple more questions on that. Can you look at Exhibit  
11 Number 122?

12 A. Certainly. Okay. I have the exhibit in front of  
13 me.

14 Q. It's an e-mail from Mr. Jamieson to Mr. Yount. In  
15 the e-mail, Mr. Jamieson says, yes, it's approved. They may  
16 not be pleased about it, but they authorized such  
17 discussions. What makes it imperative is what we have heard  
18 from Mosaic about their opinion of CR. This meeting is  
19 critical for our benefit, and, frankly, for CR's benefit as  
20 well as they want us to consider such an expensive loan.

21 A couple statements I want to ask you about as to  
22 your knowledge. It says, what we have heard from Mosaic  
23 about their opinion of CR. Had you heard something from  
24 Mosaic about their opinions of CR?

1           A.     Well, when we met with Mosaic in Sacramento we,  
2 EC, Mosaic was, first of all, upset that they hadn't heard  
3 from Robert Radovan in three months. And then they heard the  
4 project was over budget and delayed. So they were concerned  
5 that the developer really knew what they were doing and they  
6 had big concerns.

7           Q.     And when it says the opinion of CR, do you know  
8 what Mr. Jamieson is referring to?

9           A.     Opinion?

10           MR. LITTLE: Objection, your Honor, foundation.

11           THE COURT: Sustained.

12 BY MR. CAMPBELL:

13           Q.     Did Mosaic express to you some opinion of CR?

14           A.     Some opinion --

15           MR. LITTLE: I'm going to object. It's improper  
16 opinion evidence. It's hearsay.

17           THE COURT: Overruled.

18           THE WITNESS: So opinion, you mean an opinion that  
19 CR --

20 BY MR. CAMPBELL:

21           Q.     That Mr. Jamieson's e-mail says, what makes it  
22 imperative is what we have heard from Mosaic about their  
23 opinion of CR. Had you heard anything from Mosaic?

24           A.     Yes. I did hear something from Mosaic about their

1 opinion of CR.

2 Q. Was it good or bad?

3 A. It was not good.

4 Q. And then later on, it says -- Mr. Jamieson says,  
5 this meeting is critical for our benefit, and, frankly, for  
6 CR's benefit as well if they want us to consider such an  
7 expensive loan. Do you know what Mr. Jamieson is talking  
8 about an expensive loan as related to Mosaic?

9 MR. LITTLE: Same objection, foundation.

10 THE COURT: Why don't you ask him if he knows  
11 about the Mosaic loan.

12 BY MR. CAMPBELL:

13 Q. What did you know about the Mosaic loan, as far as  
14 it's expensiveness.

15 A. Well, it was an extremely high interest rate with  
16 extremely high fees, and, frankly, it didn't appear to be  
17 enough money to even finish the project.

18 Q. Your understanding of the -- what was your  
19 understanding of the amount that they were going to loan?

20 A. I thought it was 19 million, if my memory serves  
21 me correct.

22 Q. Was it somehow conditioned?

23 A. It was conditioned upon an appraisal of the  
24 property.



1 Q. So after this time frame, the Mosaic meeting and  
2 then the e-mails we looked at yesterday about Mosaic sending  
3 the e-mail to Mr. Radovan, did CR, Mr. Radovan or any of the  
4 investors circle back around and talk to Mosaic?

5 A. No. The only time I talked to Mosaic was in that  
6 meeting. I didn't talk to them after that.

7 Q. Did Mr. Criswell or Mr. Radovan update the  
8 investor group about any follow-up conversations with Mosaic?

9 A. No. I think they kind of let it die and looked at  
10 other options, mainly because they wanted to stay in control  
11 of the project. And I think the only way Mosaic would do the  
12 loan is if they had someone that was managing it that knew  
13 what they were doing.

14 Q. Did Mosaic ultimately cease, you know, terminate  
15 all further discussions?

16 A. As far as I know, because I didn't hear really  
17 about it after that.

18 Q. Did you receive a letter through the course of  
19 your dealings with Mr. Radovan that was sent from Mosaic to  
20 Mr. Radovan about terminating the loan going forward?

21 A. Yes.

22 MR. CAMPBELL: Your Honor, I have a new exhibit.  
23 I believe it's an impeachment exhibit. It goes directly to  
24 the heart of the evidence that we've heard today from

1 Mr. Radovan as to the -- as to what happened with the Mosaic  
2 loan. Mr. Chaney provided it to me. I did not get it in  
3 discovery. It was not provided in the CR discovery. But I  
4 think it goes to the heart of the matter and it should be  
5 admitted as an impeachment witness.

6 THE COURT: Show it to counsel. You can provide  
7 it to the clerk.

8 THE CLERK: Exhibit 77 marked for identification.

9 THE COURT: Mr. Little.

10 MR. LITTLE: My response is the door is going to  
11 swing both ways on that. The rules of evidence are clear  
12 that you can bring in impeachment evidence if it's truly to  
13 impeach a witness. I guess I'd ask your Honor, you can  
14 separate the wheat from the chaff, we know that. I'm not  
15 going to object to this, but by the same token when I have  
16 impeachment evidence, I'll going to be relying on the same  
17 argument.

18 THE COURT: Mr. Wolf, anything to add?

19 MR. WOLF: I have no further comment on it.

20 THE COURT: All right. Thank you. 77 is  
21 admitted.

22 MR. CAMPBELL: May I approach, your Honor?

23 THE COURT: You may.

24 BY MR. CAMPBELL:

1 Q. Mr. Chaney, I've handed you what has now been  
2 marked as Exhibit Number 77. Is this the letter that you  
3 said you just answered to my previous questions about the  
4 Mosaic letter to Mr. Radovan?

5 A. That's correct.

6 Q. Okay. As a member of the executive committee,  
7 were you involved with the refinancing or new financing for  
8 the project in this let's call it December through March of  
9 2016 time frame?

10 A. Well, I think everyone on the executive committee  
11 wished they were more involved, because everything was kept  
12 very close to the vest of Radovan and Criswell.

13 MR. LITTLE: Your Honor, I would object and just  
14 ask that he talk about himself and not what other executive  
15 committee members may or may not be thinking.

16 THE COURT: Fair enough. Just narrow the  
17 question, Mr. Campbell.

18 BY MR. CAMPBELL:

19 Q. You did have some knowledge of what was going on  
20 as far as new money coming into the project?

21 A. Yes.

22 Q. And you personally?

23 A. Yes.

24 Q. Personally, did you ever see Mr. Yount try to

1 sabotage the Mosaic loan?

2 A. Absolutely not.

3 Q. Did you ever see Mr. Yount ever try to sabotage  
4 any other lenders coming into the project?

5 A. Why would he do that?

6 Q. So the answer is no?

7 A. No.

8 Q. Let's backup to the December 2015 time frame after  
9 the December 12th party. I think yesterday you said there  
10 was some concern?

11 A. Uh-huh.

12 Q. Among the other investors that you were privy to  
13 and heard certain conversations, is that correct?

14 A. Yes.

15 Q. There are a lot of e-mails in the record back and  
16 forth, I'm not going to go through them with you, but do you  
17 remember e-mails going back and forth among the various  
18 investors talking about different options?

19 A. Yes.

20 Q. And what were those options to your understanding?

21 A. Options for the project going forward?

22 Q. Yes.

23 A. Yeah. The options were for us to sell the project  
24 is one option, try to recoup our monies the investors have

1 put in. Two is to find another developer to come in and take  
2 the place of Criswell Radovan so that the project could be  
3 brought to fruition and we could raise money.

4 Q. And some of the e-mails that you may see on cross  
5 examination talk about strategies of divide and conquer, or  
6 good cop, bad cop. Do you remember any of those discussions?

7 A. I do.

8 Q. What was that about?

9 A. Well, Robert and Bill were very defensive about  
10 their performance and they obviously wouldn't do what's best  
11 for the project. So we were trying to figure out a way to  
12 get them to do what's best for the project versus what's best  
13 for their own pocketbook.

14 Q. Did they view you as adversaries to them?

15 MR. LITTLE: Objection, calls for speculation.

16 THE COURT: Sustained.

17 BY MR. CAMPBELL:

18 Q. Did they ever tell you that they were your  
19 adversaries?

20 A. They never specifically told me that they were an  
21 adversary, but I would say they could definitely feel the  
22 heat from me holding them accountable for what they needed to  
23 do for the project.

24 Q. In the course of those conversations, did the IMC

1 group or yourself ever ask Mr. Radovan and Mr. Criswell to  
2 disgorge their equity in the project?

3 A. Their equity? Well, they had two pieces of  
4 equity. They supposedly had invested \$2 million, which I  
5 questioned, and I never got detail of, into the preferred  
6 \$20 million preferred equity piece. Then there was a  
7 20 percent common piece that was to participate in any equity  
8 in the project when it was sold down the line after everyone  
9 else was paid out.

10 And one of the options was if they would step  
11 aside and allow a credible manager and developer to come in,  
12 we wanted them to give that up and give it to someone else,  
13 because they were unable to perform.

14 Q. The 20 percent is a back end?

15 A. That's correct.

16 Q. And just to make clear, was that in the operating  
17 agreement?

18 A. That was in the operating agreement, yes.

19 Q. So that 20 percent was only paid after the  
20 other -- after the other equity investors were paid?

21 A. That's correct.

22 Q. Let's go to Exhibit 137.

23 A. Okay.

24 Q. And can you explain to the Court the purpose of

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 7, 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 977, 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 12th day of October 2017.

21

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

24

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 )  
12 Plaintiffs, )  
13 )  
13 vs. ) Case No. CV16-00767  
14 )  
14 CRISWELL RADOVAN, et al., ) Department 7  
15 )  
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 have the floor.

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

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

13 THE COURT: Just a minute here. Go ahead.

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

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

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

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

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

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

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

18 MR. CAMPBELL: Functionally, there is no  
19 difference.

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

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

1 members of the LLC, including Mr. Yount if he was going to  
2 buy in.

3 THE COURT: All right.

4 MR. CAMPBELL: Again, your Honor --

5 THE COURT: I understand.

6 MR. CAMPBELL: -- I think it's their breach.

7 Thank you.

8 THE COURT: Thank you, Mr. Campbell. All right.

9 I'd like to take a few minutes to gather my thoughts and look  
10 at Blanchard again and go through a couple of the e-mails.  
11 So I'll do my best to get back here at quarter after. All  
12 right. Court's in recess.

13 (A break was taken.)

14 THE COURT: I apologize. Good lawyers give judges  
15 a lot to think about. This is an important case to all  
16 sides. So I wanted to make sure I viewed everything and  
17 pulled the Blanchard case, reviewed the cases cited by  
18 counsel, had an opportunity to listen to very good arguments  
19 by very good lawyers and the Court has listened to the  
20 testimony in this case.

21 Mr. Marriner testified first. He's a realtor and  
22 he met Mr. Radovan at the Fairwinds Estates sometime in  
23 February of 2014. He was hired on as a consultant to raise  
24 approximately \$5 million to fund the development of the Cal

1 Neva and that's Exhibit 1. He was not involved in the sale  
2 of securities. He invested in Cal Neva Lodge LLC. He never  
3 told any investor that he had investigated any representation  
4 in the operating agreement.

5 He met Mr. Yount in 1996 at a barbecue. He  
6 considered him a friend and that's not unusual up in a close  
7 community like Incline Village. They met at lunch sometime  
8 in June and Mr. Yount inquired, how is the project going?  
9 Mr. Marriner offered to take him on a tour of the Cal Neva  
10 site.

11 He had told Mr. Yount that they were looking to  
12 open on December 12th, which was the 100th anniversary of  
13 Frank Sinatra's birthday. And he sent Mr. Yount the latest  
14 executive committee reports. Told Mr. Yount at that time  
15 that the opening date was still 12/12/2015. And he also told  
16 that there was 1.5 million, the last tranche available for  
17 investment under the PPM.

18 He forwarded Exhibit 3, which was the PPM, to  
19 Mr. Yount. He also sent the latest construction report,  
20 which was July, and Exhibit 8 to Mr. Yount. Again, he stated  
21 they were looking at a target date for opening of  
22 December 12th. This is sometime in June that these  
23 discussions and e-mails took place.

24 He sent Mr. Yount the term sheets through an

1 e-mail, which is Exhibit 11. In those term sheets are  
2 disclaimers. Mr. Yount testified he read those. And on  
3 Exhibit 12, Mr. Marriner sent another e-mail to Mr. Yount  
4 asking if he had any questions. And Mr. Yount responded with  
5 some questions and they were directed to Mr. Radovan.

6 Exhibit 12 is the July status report, which  
7 contains the change orders and the impact those change orders  
8 had on the development of the project. Exhibit 14 is another  
9 e-mail from Mr. Marriner to Mr. Yount saying that Mr. Radovan  
10 will get back to Mr. Yount to answer all of those questions  
11 that he had raised. And Exhibit 18 is an e-mail from  
12 Mr. Radovan to Mr. Yount, which was cced to Mr. Marriner,  
13 which responded to the 11 questions asked by Mr. Yount. They  
14 discussed a \$15 million mezzanine loan to cover the change  
15 orders, as well as potential upgrades and expanding the scope  
16 of construction.

17 Mr. Marriner was never involved in the financing  
18 of this project. He was not involved with the executive  
19 committee, the construction committee, and he was not privy  
20 to the figures being bantered about amongst those entities.

21 Mr. Marriner never gave Mr. Yount any specific  
22 numbers on the change orders. Mr. Marriner was never  
23 involved with Hall or the business discussions regarding  
24 potential financing by Hall. Mr. Marriner has a background

1 in construction and clearly knows that unless you have  
2 capital, the project dies. Mr. Marriner never spoke to  
3 Mr. Yount regarding the destination of his \$1 million  
4 investment.

5 Exhibit 29, which is the e-mail string from  
6 August to September 28th, Mr. Marriner was trying to be  
7 helpful in assisting Mr. Yount in moving money around. He  
8 sent an e-mail, which is Exhibit 30, which states that Robert  
9 hopes to close out the funding very soon.

10 Mr. Marriner never spoke to Mr. Yount regarding  
11 the Mosaic loan. Mr. Marriner testified that Hall still had  
12 \$5 million to loan, that they were looking at a \$15 million  
13 mezzanine loan, and that Mosaic loan was still in the works,  
14 and he believed the project was still on schedule.

15 He talked about a perfect storm, that is,  
16 simultaneous investments of Mr. Yount and Mr. Busick.  
17 However, he was informed by Mr. Radovan that CR still had  
18 another funding membership available under the PPM.

19 Two weeks afterwards, Mr. Yount invested in Cal  
20 Neva Lodge LLC. Mr. Marriner testified that there is no  
21 difference between the two shares, that is, the shares of  
22 Mr. Busick and the shares of CR Cal Neva. But he was told by  
23 Mr. Radovan that he would take -- that Mr. Radovan would take  
24 care of the plaintiff's investment.

1           Mr. Marriner was clear in his testimony that this  
2 is not a security. This was a real estate investment. Mr.  
3 Marriner knew that through -- that Mr. Radovan had an  
4 additional founding membership available for Mr. Yount.

5           Mr. Marriner knew that the Mosaic \$50 million loan  
6 was the best solution for financing and taking this project  
7 to closure of construction.

8           After the December 12th meeting, Mr. Marriner  
9 testified that there was a general feeling among the  
10 investors for a need for more transparency and greater  
11 financial reports, more frequent financial reports. He knew  
12 that \$8.6 million in cost overruns were there for work that  
13 had already been done and was proposed in the future.

14           On cross examination by Mr. Wolf, Mr. Marriner  
15 reiterated in an e-mail dated August 3rd, 2015, that  
16 Mr. Yount was dealing directly with Mr. Radovan and it was a  
17 hand-off from -- by Mr. Marriner of Mr. Yount to Mr. Radovan.

18           Mr. Marriner testified that Mr. Yount conducted  
19 due diligence between July 25th and August 3rd, spoke to  
20 Peter Grove, the architect, who coincidentally is or was the  
21 architect for Mr. Yount's personal residence. Mr. Marriner  
22 testified that the information provided to Mr. Yount was fair  
23 and was accurate.

24           Mr. Marriner testified that Mr. Yount knew that

1 Mr. Radovan needed more money and he attempted to help by  
2 engaging the Wittenbergs and Boulder Bay as potential  
3 investors. Mr. Marriner testified that there was no false  
4 information provided to Mr. Yount and he had sent all the  
5 executive committee reports to Mr. Yount and that he had no  
6 reason to doubt the veracity of the information contained  
7 therein. Exhibit 10, the construction summary was given to  
8 Mr. Yount before he invested and Mr. Yount was fully advised  
9 as to the status of the project.

10 Mr. Marriner testified as to Mr. Busick's site  
11 visit, and at that time, the tower was finished or  
12 approximately 95 percent done. Mr. Busick was on the  
13 executive committee. He was one of the original, if not the  
14 original investor in this project. He had a background in  
15 construction.

16 Mr. Marriner testified that there was a lot of  
17 activity on that site. That Mr. Busick appeared pleased with  
18 the progress with construction. That Mr. Busick felt they  
19 could make the opening. Lee Mason, a representative of Penta  
20 Construction, also appeared to be excited, as was Mr.  
21 Marriner. It looked as if the project was close to being  
22 finished. It appeared to be a very good job.

23 On September 30th, Mr. Marriner testified that  
24 there was no adverse information to be shared with Mr. Yount.



1 That there was no indication of a problem at that time.

2 As to the CR share, Mr. Marriner testified that he  
3 was pleased to have a share available for Mr. Yount. That  
4 there was no indication that CR was, quote, bailing out,  
5 close quote, of the project. That the CR shares were part of  
6 the original 20 founding shares and there were no differences  
7 between the CR shares and the other shares.

8 Mr. Marriner testified he was very excited about  
9 this project. He labeled it as, quote, sensational, close  
10 quote, project. And he was devastated professionally and  
11 personally over the loss of this project, this lawsuit, his  
12 reputation, and his friends.

13 On cross examination by Mr. Little, he pointed out  
14 in Exhibit 3 that Exhibit 3 contained a disclosure that this  
15 was not a security and explained the risk of such a  
16 speculative investment.

17 Mr. Marriner pointed out his background in  
18 construction and testified that renovating old properties  
19 raise common problems, that this was a fluid project, and the  
20 monthly status reports, which is Exhibit 10, were prepared by  
21 third parties. And on page 16 of Exhibit 10 identifies the  
22 adverse impact some of these changes had, particularly the  
23 sewer, on the project's progress and that the information  
24 contained therein was accurate.

1           Exhibit 14 was identified as an e-mail, which  
2 demonstrated that Mr. Yount knew of the debt. Exhibit 13 was  
3 an e-mail from Mr. Yount's architect, Peter Grove, who termed  
4 the project to be very good. Mr. Yount's CPA reviewed the  
5 investment. The testimony is Mr. Yount never asked for any  
6 additional information.

7           Exhibit 27 is an e-mail from the -- from Mr. Yount  
8 to his CPA, which demonstrates that Mr. Yount knew that the  
9 opening was being pushed back to March. Exhibit 36 is an  
10 e-mail three days before Mr. Yount's investment, which  
11 demonstrates he knew the opening was for Father's Day.

12           Mr. Yount took a site visit with Mr. Lee Mason and  
13 questioned whether or not the change orders were necessary.  
14 There did not appear to be any red flags and Mr. Marriner  
15 felt optimistic about the project. Exhibit 37 is an e-mail  
16 dated October 10th, which introduced the new general manager  
17 and the chef to the investors.

18           Mr. Marriner testified to the deal with Starwood  
19 in which the Cal Neva Lodge would be added to the Starwood's  
20 luxury collection. And he testified that it certainly did  
21 not look like the project was about to fail.

22           Mr. Marriner found no improprieties by Criswell  
23 Radovan and that in fact Criswell Radovan was still in charge  
24 of this project. Mr. Marriner testified that there was no

1 involvement by Mr. Criswell in Mr. Yount's investment.

2 Mr. Marriner testified that selling of the CR  
3 founders share was not taking money out of the company and  
4 the transfer was specifically authorized by Exhibit 5,  
5 section 12.1, 12.3, 12.4, and 12.6.2.

6 On redirect, Mr. Marriner again walked through the  
7 financials, Exhibit 4 and Exhibit 60, which was an e-mail by  
8 Mr. Marriner to all the investors.

9 Mr. Criswell testified, testified that he was a  
10 partner in CR LLC, which was a limited liability company used  
11 as conduit to move money into and out of a particular  
12 project. That he had a separate LLC for each project when  
13 the project was funded. And that CR Cal Neva LLC was the  
14 manager of an SPE.

15 He testified that they purchased the Cal Neva for  
16 \$13 million in a joint venture with Canyon and walked through  
17 that transaction. He testified that CR had \$2 million into  
18 the project.

19 He testified that the construction budget was  
20 prepared by third parties, Hal Thannisch, Penta Construction,  
21 and perhaps the architect. Nevertheless, it was outside  
22 sources.

23 Mr. Criswell testified that his daughter invested  
24 \$220,000 to cover short-term debts. That CR was to receive a

1 development fee of \$60,000 a month with a cap of 2.2 million.

2 Mr. Criswell testified to a July 2015 executive  
3 committee meeting wherein the parties discussed the budget  
4 shortfall of 2.5 to 5 million. They discussed financing  
5 options. They discussed the Ladera loan. And in order to  
6 meet future and present needs, they discussed the mezzanine  
7 loan. And in August and September, the parties discussed a  
8 total refinance of the project.

9 Mr. Criswell testified on October 10th he became  
10 aware of the Busick investment and that Mr. Yount funded  
11 several days later. Mr. Criswell testified that Mr. Radovan  
12 asked for his consent to sell a CR founders share to Yount.  
13 Everyone, apparently, everybody wanted to have Mr. Yount  
14 participate in the Cal Neva project.

15 Exhibit 33 is from Heather Hill, an employee of  
16 CR, to Bruce Coleman, who is the general counsel for Criswell  
17 Development Corporation in the past. Mr. Criswell testified  
18 that he believed he never needed prior approval for the Yount  
19 transaction and that he had in fact prior approval for that  
20 transfer and that there was no discussion of securities  
21 fraud.

22 Mr. Criswell testified to the 12/12 executive  
23 committee meeting before the party, which meeting was  
24 expanded to include all the investors, who were told that the

1 project was over budget due to cost overruns. Mr. Criswell  
2 wanted the executive committee's approval for the Mosaic loan  
3 with changes to at least get a conditional commitment.

4 The executive committee did not approve the Mosaic  
5 loan at that time. They asked Mr. Radovan to hold off to see  
6 if they couldn't explore other options.

7 Mr. Criswell testified that the cost overruns were  
8 discussed in July and the discussions in the December meeting  
9 centered on Mosaic's loan. Mr. Criswell testified that the  
10 IMC, Incline Men's Club, the largest investor at \$6 million  
11 in this project disagreed with his approach. However,  
12 Mr. Criswell testified that those were the only dissidents  
13 and the rest of the investors -- the rest of the investors  
14 approved of their approach to Mosaic.

15 At that party, Mr. Criswell reached out to  
16 Mr. Yount and Mr. Criswell testified that Mr. Yount told him  
17 that he didn't know about all of these cost overruns and  
18 extra expenses and the financial condition of the project.  
19 Mr. Criswell testified that they probably could have done a  
20 better job reporting to investors about the financing and the  
21 status of the construction.

22 Mr. Criswell testified that the EC was provided  
23 monthly budget reports and they were prepared by Thannisch  
24 and Penta. Mr. Criswell testified he saw the cost overruns

1 in the September report, which was before Mr. Yount invested  
2 in the project.

3 Mr. Criswell testified that they were looking at a  
4 December 12th substantial completion date. That they still  
5 had \$9 million from Hall to complete or that they had the  
6 option to raise additional capital from the investors.

7 Exhibit 46 is an e-mail from Mr. Yount requesting  
8 the return of his \$1 million investment. Ms. Clerk, can I  
9 have Exhibit 43?

10 Mr. Criswell testified that he told Mr. Yount that  
11 he would try and find someone to buy his share and that he  
12 felt this was going to be very easy to find other investors.  
13 However, Mr. Criswell testified that Mr. Yount had already  
14 been provided all of this information beforehand.

15 Mr. Criswell testified that CR had advanced  
16 \$900,000 over time reflected in journal entries. And that  
17 Mr. Yount's money was spent paying past due bills on the Cal  
18 Neva, as well as other Criswell Radovan projects.

19 Exhibit 49 is an e-mail packet with material dated  
20 12/17/15. It shows in big black bold title page, 35 million  
21 in debt, 20 million in equity, \$55 million project. This is  
22 important, because throughout these proceedings there's been  
23 an allegation that these numbers were not shared and were  
24 misleading. The Court finds that these numbers provided by

1 the defendants were remarkably accurate and it's spot on.

2 Mr. Criswell testified that afterwards he found  
3 out that Mr. Yount wanted a preferred share. However, he  
4 testified that is what he got, because the Criswell -- the CR  
5 share was a founders share.

6 On cross examination by Mr. Little, Mr. Criswell  
7 testified that Mr. Radovan told the executive committee of  
8 the cost overruns and a number of 9.3 million and that they  
9 needed financing. There was a number of 10.5 million  
10 discussed as well.

11 Mr. Criswell testified that there's no difference  
12 between a CR share, founders share, and the share Mr. Busick  
13 purchased.

14 Mr. Criswell testified to his professional  
15 background in construction and hotel development, which is  
16 impressive. He had developed the Four Seasons Hotel in  
17 Dublin, wineries in Napa, other resorts that are award  
18 winning.

19 He testified to meeting Mr. Radovan while  
20 Mr. Criswell was serving in the Navy as a supervisor for the  
21 Navy Special Operations and Mr. Radovan was a United States  
22 Navy Seal. Impressive credentials for any individual.

23 Mr. Criswell testified he never met Mr. Yount  
24 before his investment and that the information provided to

1 Mr. Yount was truthful and accurate. That CR was authorized  
2 to sell the two founders shares. And on redirect, when shown  
3 Exhibit 4 on page nine, demonstrated that there was an  
4 interest reserve for the loan and that the CR share was the  
5 same founders share as that bought by Mr. Busick.

6 That the information was given to the plaintiff  
7 was accurate and consistent with the information that  
8 Mr. Radovan gave to the executive committee and Mr. Yount,  
9 which included monthly reports, financial documents, and that  
10 the numbers were consistent.

11 Mr. Criswell testified that the Ladera agreement  
12 required CR to keep \$1 million in the project. Exhibit 150,  
13 page three, section five, showed that there was no prepayment  
14 penalty on the Ladera loan.

15 Mr. Criswell testified that Mr. Yount was not  
16 prevented from asking for any documents or information. And  
17 that Mr. Busick's \$1.5 million investment went into the  
18 project and indeed was more advantageous than the investment  
19 by Mr. Yount, because it infused an additional half million  
20 dollars into the project.

21 Mr. Wolf cross-examined Mr. Criswell and  
22 demonstrated that the pro forma had projected a \$51 million  
23 project, that the change orders were anticipated, and that  
24 the added scope included a new kitchen and the condo



1 development.

2 Mr. Radovan testified as to Exhibit 5, Exhibit 4,  
3 the guaranteed maximum price contract, Exhibit 1, and stated  
4 that he was aware of Mr. Yount's interest in this project in  
5 July and he was aware that Mr. Yount had been given Exhibits  
6 3, 4 and 5.

7 Mr. Radovan testified he knew the Hall loan was  
8 out of balance in July of 2015 and that he knew the opening  
9 would have to be pushed back because of the sewer pipe and  
10 other change orders and the requirements imposed by Starwood.

11 He testified that he told Mr. Yount's CPA that the  
12 opening was pushed back because of the construction issues  
13 and he told Mr. Yount about the scheduled pushback.  
14 Exhibit 36, which is the e-mail of October 10th to  
15 Mr. Yount's architect, Peter Grove, and to his CPA regarding  
16 pushing back the dates of the opening. This was two days  
17 before Mr. Yount's investment.

18 Mr. Radovan testified he told Mr. Yount that they  
19 were raising \$9 million because they knew more change orders  
20 were coming. Mr. Radovan testified to a conversation he had  
21 with Mr. Yount's CPA in August. That he doesn't know if Mr.  
22 Marriner knew of the pushback dates. In deposition, he did  
23 correct that testimony and stated that Mr. Marriner did know  
24 of the pushback dates.

1           Mr. Radovan testified to the Mosaic loan that was  
2 in the works as of -- in September of 2015. That they were  
3 looking at a high 40 million of dollars. The project was  
4 looking for different options for financing, including a  
5 capital call, which was discussed in April.

6           Mr. Radovan testified that the issues relating to  
7 the tower were 95 percent complete and the restaurant was  
8 85 percent complete.

9           Mr. Radovan testified that the executive committee  
10 agreed to take the loan up in early November seeking an  
11 additional \$16 million in debt.

12           Throughout this time, Mr. Radovan testified he was  
13 vaguely aware of Mr. Yount's interest in the project.  
14 Exhibit 29 is an e-mail between Mr. Yount and Mr. Marriner  
15 and there was no indication that the plaintiff would invest  
16 in the project. It had been three to four months of  
17 inactivity by Mr. Yount.

18           Mr. Yount was in the process of trying to  
19 extricate the money out of his 401K, but as everybody  
20 testified, there was radio silence between the parties during  
21 this time.

22           Mr. Radovan testified that he spoke to Mr. Busick  
23 after Labor Day, who expressed some interest in investing in  
24 the \$1.5 million tranche, as well as, and this is important,

1 three to four other potential investors. They had a meeting  
2 in Napa at the defendant's office in Napa with Mr. Busick's  
3 son. And, subsequently, on the 29th, the Busicks invested.

4 Mr. Radovan testified that the CR Cal Neva had as  
5 available a founders share under the PPM. That it was the  
6 same as the founders share Busick purchased.

7 In Exhibit 33, the assistant, which I believe is  
8 Ms. Hill, discussed a swap agreement, and Mr. Radovan wanted  
9 to know if there was anything required to properly effectuate  
10 the transfer of the CR founders share to Mr. Yount who was  
11 seeking to purchase a founders share.

12 It required under Exhibit 5, the operating  
13 agreement, which is article 12.2 and 12.3, one, that  
14 Mr. Yount sign the PPM; two, that the transfer be approved at  
15 the next meeting or annual meeting, or in writing; and,  
16 three, even if it was not approved, the buyer would keep the  
17 beneficial interest.

18 Mr. Coleman testified that he was counsel for  
19 Mr. Criswell back in 1982 and he had met Mr. Radovan in 2000.  
20 They had formed CR and worked on 20 projects. There were  
21 only two projects in litigation and two in bankruptcy back in  
22 the '80s. But most importantly, those were not CR projects.

23 Mr. Coleman testified that he was contacted  
24 regarding the Cal Neva project and with Brandon Iverson

1     formed several LLCs and the operating agreement.

2             Exhibit 3, Exhibit 5 were discussed. Section 7.4  
3     of Exhibit 5, demonstrates that CR put in \$2 million into the  
4     project for two shares and there was a journal error of  
5     \$480,000, which was subsequently reconciled.

6             Mr. Coleman testified that the subscription  
7     agreement advises the investors that this is not a security.  
8     It is a private placement memorandum. And that they must be  
9     a qualified investor. Mr. Coleman testified that there were  
10    no written escrow instructions.

11            Exhibit 33 is an e-mail from Ms. Hill to  
12    Mr. Coleman discussing the transfer. Exhibit 33 is an e-mail  
13    dated October 2nd and he had said that -- excuse me --  
14    Mr. Coleman had heard that Mr. Busick was interested in  
15    increasing his investment and that CR was selling one of  
16    their two shares.

17            Exhibit 42 is the e-mail regarding Mr. Yount's  
18    investment. Money came into Mr. Coleman's escrow account and  
19    went out the next day.

20            Mr. Coleman was questioned as to whether this was  
21    a swap, was this an assignment of the CR per the operating  
22    agreement? Mr. Coleman was emphatic, it was neither. It was  
23    simply CR selling their share. It was simply Mr. Yount  
24    buying a member's share and stepping into the shoes of CR and

1 becoming a member.

2           The effective date was backdated so as to give  
3 Mr. Yount every day of interest he was due under the  
4 agreement.

5           On cross examination by Mr. Little, Mr. Coleman  
6 testified he was instructed to wire Mr. Yount's money to CR.  
7 He says this was simply a common transaction of one owner  
8 selling a share to a buyer. He testified under -- as to  
9 Exhibit 5, section 12.3, that the approval was at, quote, the  
10 next member meeting, close quote. 12.4 required approval,  
11 quote, after the transferee executes the documents, close  
12 quote. That there was no preapproval needed and that CR  
13 share is a founders share. And under 12.6.2, even if the  
14 transfer is not approved, that Mr. Yount would still have the  
15 economic benefit of the \$1 million investment. That this was  
16 simply a personal, private transaction.

17           On redirect, Mr. Radovan was called back to the  
18 stand. He testified that he told Mr. Yount about the  
19 \$9 million in change orders in July. He had a conversation  
20 with Mr. Yount regarding the change orders and Exhibit 18.  
21 He had a conversation regarding the transfer and sent  
22 documents to Mr. Yount. In October and November, the company  
23 was not out of money. The company was paying the  
24 contractors.

1           There was some testimony on cross examination --  
2 excuse me -- direct examination that the general manager  
3 hadn't been paid, Thannisch hadn't been paid \$90,000, Paul  
4 Dosick hadn't been paid \$90,000, North Star Demo had a claim  
5 for asbestos removal of \$96,000. However, Mr. Radovan  
6 explained that those changes came in after November. And up  
7 until that time, the company was paying its contractors.  
8 That this was not a failing operation.

9           Mr. Radovan testified the debt was disclosed to  
10 the members in the November meeting. The members were aware  
11 of the 9 to \$10 million in cost overruns, the July report  
12 numbers were updated and the members were told of the  
13 \$51 million Mosaic loan.

14           The members discussed financing for months.  
15 Mr. Radovan asked the EC for approval of the Mosaic loan.  
16 Mr. Radovan met with Mosaic in December. And, finally, the  
17 executive committee approved the Mosaic loan in December.  
18 They set up a meeting between Mosaic and CR.

19           Mr. Radovan testified that this was not a troubled  
20 project, that they had money, that it was staffed, that they  
21 had Starwood on aboard. That this should have been opened  
22 but for the interference of certain members of the executive  
23 committee with the loan with Mosaic.

24           Mr. Little cross-examined Mr. Radovan regarding

1 Exhibit 3, stating that it was not updated because upon  
2 advice of securities counsel must have been the same document  
3 provided to all investors, and, again, the disclaimers were  
4 discussed.

5 Mr. Radovan testified that the answers and  
6 information given to Mr. Yount were truthful. That the  
7 opening was moved before Mr. Yount invested. That the  
8 project was not failing. They had 100 people on site. They  
9 had a chef, they had a general manager. And, in fact,  
10 Mr. Busick walked the project and invested more money.

11 Mr. Radovan testified that everyone wanted  
12 Mr. Yount as a member. He was a neighbor, he was a community  
13 leader, a pillar of the community in one person. And there's  
14 nothing in the record that would contradict that description  
15 of Mr. Yount. Mr. Radovan was excited about the project and  
16 that the CR shares were no different than the founders  
17 shares.

18 Mr. Yount took the stand and he testified to his  
19 background, the fact that he had lived in Lake Tahoe for 20  
20 years, attended UNR. He had worked with Peter Grove, the  
21 architect, for some 40 years.

22 He testified that in the spring of 2014, he spoke  
23 with Mr. Marriner regarding the Cal Neva project, but he was  
24 not interested at that time in investing. However, he

1 testified in June of 2015, he became interested and reached  
2 out to Mr. Marriner because his 401K fund was available for  
3 investment.

4 Mr. Yount testified that he was in, quote,  
5 constant communication, close quote, with Mr. Marriner up  
6 until the time of the investment. That he walked the site  
7 with Mr. Marriner, who according to Mr. Yount appeared to be  
8 very knowledgeable about the project.

9 He received the e-mail, which is Exhibit 8 after  
10 the tour and was told that 1.5 million equity was still  
11 available under the PPM, which entitled him to certain  
12 priorities and to purchase a cabin. Mr. Yount testified he  
13 reviewed the PPM, which is Exhibit 3, reviewed the  
14 confidential offer memorandum, Exhibit 4, and signed the  
15 amended and restated operating agreement, which he read,  
16 which is Exhibit 5.

17 Exhibit 11 was the financial material e-mail from  
18 Mr. Marriner. Exhibit 12 was the e-mail from Mr. Marriner  
19 regarding questions. Mr. Yount testified that he thought  
20 that Mr. Marriner was trying to sell a founders share under  
21 the PPM and that he had questions about the project.

22 Exhibit 13 is an e-mail from Mr. Peter Groves  
23 rating the project's chances of success as very good. That  
24 he, being Peter Grove, was very impressed with the management



1 team. In that e-mail, he was advised of cost overruns, which  
2 the parties were trying to -- which the developers were  
3 trying to get their arms around. Exhibit 15 is an e-mail  
4 stating that the cost overruns were \$9 million in cost  
5 overruns. There was no information on the change of schedule  
6 and Exhibit 34 is an e-mail string regarding the 401K.

7 On October 3rd, Mr. Yount decided to make the  
8 investment. He testified in July, he did not know of the  
9 refinance and would not have invested had he did.

10 Mr. Marriner wanted Mr. Yount to reach out to  
11 Roger Wittenberg for refinance or investment. Mr. Wittenberg  
12 is not an investor, operated an investment vehicle called  
13 North Light. Mr. Yount testified that he was never told that  
14 the loan was out of balance.

15 Most importantly, Mr. Yount testified that had he  
16 been told the loan was out of balance he, quote, would have  
17 been concerned and would have inquired more, close quote.  
18 Not that he would pull the investment, not that he would  
19 refuse to invest, but that he would have inquired more and he  
20 would have been concerned.

21 A series of e-mails, Exhibits 35, 36, 38 recount  
22 the investment documents. Importantly was an e-mail sent by  
23 Mr. Yount's CFO. Ms. Clerk. I sent the wire instructions to  
24 both of you and Premier. They were very close -- excuse

1 me -- they were very clear and they are attached again. I'm  
2 concerned with this round-about e-mail string about wire  
3 instructions, a great opportunity to send \$1 million to the  
4 wrong person. Okay. Kreskin couldn't have called it better.

5 Exhibit 40 is Mr. Radovan's acceptance of  
6 Mr. Yount's \$1 million for the founders shares. Mr. Yount  
7 testified that he would not have invested because the sale of  
8 this one share by CR was a clear indication, quote, that the  
9 project was going to die and the developer was trying to get  
10 out, close quote.

11 Again, Mr. Yount testified about the 12/12 party.  
12 But I circle back to that comment Mr. Yount testified to  
13 about not willing to invest because of the sale of CR's  
14 share. It contradicts his e-mail to Mr. Radovan on  
15 December 13th when he demanded his \$1 million investment to  
16 be returned. However, he said that once there was financial  
17 stability and faith in the management, that they, he and his  
18 wife, would reconsider investing again. There was some  
19 argument made that Mr. Yount was straddling the fence, wanted  
20 in, wanted out. I think this e-mail by Mr. Yount could  
21 support that characterization.

22 Mr. Yount testified that it would have been insane  
23 to undermine the Mosaic loan and that the Exhibits 47 --  
24 excuse me -- the e-mail exhibits were simply to try to calm

1 down the IMC. Mr. Yount testified he never spoke to Mosaic.  
2 That he wanted to get paid and he testified he still does.  
3 He still wants to get paid as do everybody.

4 Exhibit 50 is an e-mail from Mr. Criswell dated  
5 12/16. Mr. Yount testified that he thought the Mosaic loan  
6 was imminent and he wanted the project to succeed. He  
7 described the executive committee meeting on December 12th as  
8 rousing. But there was a discussion about trying to get his  
9 money paid back or at least reflect his investment through a  
10 note, which never occurred, or at least this Court has no  
11 evidence of that.

12 Exhibit 58 is an e-mail from Mr. Yount to Molly  
13 Kingston regarding the bus going off the road or in the ditch  
14 and how they couldn't continue with the project with CR as  
15 developers.

16 59 is an e-mail dated January 25th to Paul  
17 Jamieson and he was aware of the CR share and the PPM share  
18 and called it a bait and switch. Exhibit 122 is an e-mail  
19 regarding the IMC meeting with the Mosaic in which Mr. Yount  
20 expressed some concern.

21 Exhibit 62 an e-mail from Mr. Yount to Mr.  
22 Marriner stating that he was not, quote, fully informed,  
23 close quote, about the financials. Mr. Yount testified to a  
24 meeting with Mr. Criswell in the Hyatt lobby on December

1 27th, where they discussed memorializing his investment with  
2 the note. Mr. Criswell testified that he assured Mr. Yount  
3 that they would buy his note back, buy his share back, once  
4 they had been made whole from the Cal Neva.

5 Mr. Yount testified that he never wanted to  
6 participate in the Cal Neva Lodge going forward. He just  
7 wanted to get his money back, and that's memorialized in  
8 Exhibit 69.

9 On cross examination by Mr. Little, Mr. Yount  
10 testified that he is the CEO of two corporations that are  
11 involved in acquisition and development, that he has built  
12 two homes and he has considerable experience with cost  
13 overruns and delays. That Mr. Yount considers himself to be  
14 a sophisticated investor. That he sits on several boards.  
15 He sits on the board of the TRPA. That he appreciates the  
16 risks in all investments and that he utilized a CFO and a CPA  
17 in evaluating this investment.

18 He was shown Exhibit 3 wherein the disclaimers  
19 clearly stated this was not a security, that there was a risk  
20 of insufficient funding, and there was a risk of losing the  
21 entire investment.

22 Exhibit 13 was the e-mail from his architect,  
23 Peter Grove, wherein they discuss the cost overruns,  
24 fundraising and the management and likelihood of success,

1 which the e-mail -- which the architect indicated was pretty  
2 good. He was aware of the information given to the CPA who  
3 gave Mr. Yount a green light to invest.

4 He was aware of the compensation of the manager.  
5 On page 11 of the Exhibit 4, forward looking statements.  
6 Page three, subsection iii, he read and understood those  
7 provisions. Page 14 of the subscription agreement contained  
8 the documents, he was aware of those. He was and is an  
9 accredited investor. Under Exhibit 42, section B, he was  
10 aware that the founders share was not registered. He read  
11 and understood that. Section G, he read and understood that.  
12 Page three, he read and understood that section.

13 We move to the escrow instructions, and in  
14 Exhibit 4 and 5, he read and understood that, particularly  
15 the schedule 4.3. Exhibit 4, which is page eight, he  
16 realized that the time line for opening was off at the time  
17 of his investment.

18 He was in possession of Exhibit 10, the July  
19 construction status report. He saw other construction status  
20 reports. And he realized that Exhibit 10 was prepared by a  
21 third party.

22 He testified it was reasonable to rely upon the  
23 construction manager's reports. He testified he knew the  
24 budget was being adversely impacted at the time of his

1 investment. He testified he never had any contact with  
2 William Criswell, just Mr. Radovan.

3 He testified that Mr. Radovan spoke to him  
4 regarding the delays. And there was an e-mail after  
5 Mr. Yount had toured the site. Mr. Yount testified that Mr.  
6 Marriner offered on a number of occasions to take him on  
7 another site tour and spoke to him about the delays, but  
8 Mr. Yount did not take up that offer.

9 Mr. Yount testified that he didn't have any  
10 questions of the defendants and that he never asked for  
11 anything that the defendants didn't give him.

12 He testified to Exhibit 13, which is the e-mail  
13 from Peter Grove, the architect, regarding the cost overruns  
14 and their attempts to get their arms around them. That  
15 Mr. Yount testified that he was open to get more information.  
16 And Exhibit 28 demonstrates Mr. Yount was aware of the change  
17 in opening, also demonstrated by his deposition on page 160.

18 Mr. Yount testified that the CPA gave him no pause  
19 or cause for not investing in the project. Mr. Yount  
20 testified that Les Busick is a friend, knew he was an  
21 investor, and he knew he sat on the executive committee.  
22 Mr. Yount received a list of the other investors and that the  
23 delay in funding his investment was because of the 401K.

24 Mr. Yount admitted that from September 1st to the

1 date of his investment, there was only one e-mail between him  
2 and the developers. Exhibit 14, which is a July 19th, 2015  
3 e-mail demonstrates that the parties were aware of at least  
4 \$5 million in cost overruns. Exhibit 15, which is a  
5 July 22nd e-mail, again, restated the fact that there would  
6 be \$5 million or more in overruns.

7           Exhibits 18 and 21 are Mr. Radovan's responses to  
8 Mr. Yount's questions and Mr. Yount's notes, which is  
9 Exhibit 21, which demonstrated that the developers had  
10 \$2 million in founders shares and that the developers wanted  
11 to raise 10.5 million between the debt and equity. He  
12 admitted that it was told there was 5 to \$6 million in cost  
13 overruns and maybe others, up to \$3 million in contingency  
14 funds needed.

15           Exhibit 153, which is an e-mail dated July 27th,  
16 2015, is a summary of the cost overruns. Exhibit 27 is an  
17 e-mail between the CPA and the Mr. Yount advising him that  
18 the opening had been pushed back. And Exhibit 21 was  
19 Mr. Yount's notes confirming that.

20           Mr. Yount testified after the break that the sale  
21 by Criswell Radovan of that founders share signals the  
22 project in trouble. But he admitted he was not a commercial  
23 developer. He never had any money in commercial  
24 developments. He was unaware that hotels often run two years

1 in the red.

2 Exhibit 33 is an e-mail dated October 7th, 2015.  
3 When contrasted with Mr. Yount's deposition at page 93 and  
4 105, he was asked, what about the difference in the shares?  
5 He couldn't point to any.

6 On page 222 of his deposition, Mr. Yount testified  
7 that the defendants never obstructed the plaintiffs due  
8 diligence. They provided the documents and information  
9 whenever asked. And that Mr. Yount admitted that he was not  
10 the only potential investigator for the \$1.5 million share  
11 that was opened.

12 Exhibit Number 54, which is the second amended  
13 complaint served by Brandon Chaney during the course of some  
14 mediation. Mr. Yount testified that nobody told him to  
15 serve -- he did not tell Mr. Chaney to serve the complaint.

16 However, if you look at the complaint, page four,  
17 paragraph 15, contradiction, the evidence shows that the  
18 contractors were paid. Paragraph 18, the evidence shows that  
19 the project was over budget. Paragraph 20, there was a  
20 mistake in the -- it was a typographical mistake. In  
21 paragraph 21, Penta had been paid. And as to the scheduled  
22 opening, defendant knew it had been pushed back.

23 Mr. Yount testified he never wanted to participate  
24 in the Cal Neva project after the December meeting. And he



1 had discussed replacing Criswell Radovan, but he was not part  
2 of the IMC or IMC's efforts to replace Criswell Radovan.

3           However, Exhibit 50, the e-mail with Paul Jamieson  
4 discussing our team. Exhibit 55 is an e-mail with  
5 Mr. Radovan regarding the IMC. Exhibit 58 is an e-mail from  
6 Molly Kingston from the IMC declaring a divorce. Exhibit 59  
7 is an e-mail to Paul Jamieson for approval, asking  
8 Mr. Jamison's approval to send an e-mail to get Criswell  
9 Radovan out.

10           Exhibit 109 is an e-mail regarding a drop box for  
11 your eyes only. Exhibit 110 is an e-mail to Paul Jamieson  
12 specifically instructing it not to be shared with CR,  
13 discussing our team to which Mr. Radovan had never disavowed.  
14 Exhibit 114 is an e-mail demanding a meeting. Exhibit 115 is  
15 an e-mail discussing this with Robert -- regarding a  
16 discussion with Robert.

17           118 is an e-mail with Paul Jamieson regarding the  
18 infamous meeting with Mosaic. 119 is an e-mail to Busick  
19 with Paul Jamieson's meeting with -- with Paul Jamieson  
20 regarding a meeting with IMC. 120, 121, 122, all of these  
21 e-mails involve Mr. Yount and members of the IMC.

22           Mr. Yount testified that he didn't hold himself  
23 out as a member, that he distanced himself from the IMC, but,  
24 however, he attended executive committee meetings. He was

1 considered by all to be a member, and certainly by the e-mail  
2 string was cahoots with this cabal involving certain members  
3 of the IMC, and that he testified he was not opposed to the  
4 removal of CR as manager of this project.

5 Exhibit 119 talks about talking points and using  
6 Mr. Yount's letter as leverage encouraging everybody to be a  
7 cohesive group and using Mr. Yount as the IMC's spokesperson,  
8 quote, unquote.

9 This is demonstrated as well on Exhibits 121, 125,  
10 126, 127, 130, 131, 132, 133 in which members of the IMC --  
11 strike that -- in which I believe Ms. Molly Kingston is  
12 referred to as our hero by Mr. Yount and to keep it up.

13 Mr. Wolf cross-examined and talked about trust and  
14 verify, President Reagan's admonition with the Russians, I  
15 think it was the Salt Treaty. But in cross examination by  
16 Mr. Wolf, Mr. Yount testified that he has no evidence that CR  
17 doesn't have hotel experience. I'm going to resist -- strike  
18 that.

19 And despite the e-mail of 12/13 about the wheels  
20 were coming off the bus, there were a number of investors,  
21 that they were looking at a refinance of the mezzanine and a  
22 refinance of the entire project. And that the Mosaic loan  
23 was the only exit strategy, and this is Mr. Yount's  
24 testimony, was the only exit strategy to get their money back

1 and that he was in favor of it.

2           However, Mr. Yount testified that he didn't mean  
3 to undermine the Mosaic loan, but that he was not  
4 interested -- strike that -- but simply monitoring it. He  
5 under cross examination of Mr. Wolf, he acknowledged the risk  
6 factors, the answers given by Mr. Radovan to the questions,  
7 and under Exhibit 153, the payment application and the  
8 numbers were close to what Mr. Radovan had told Mr. Yount.  
9 And he knew that other investors were looking at the  
10 investment in the Cal Neva.

11           On cross examination by Mr. Little, Mr. Yount  
12 testified that CR Cal Neva had executed a term sheet of  
13 \$47 million in late October, which was to close in 30 days,  
14 and that was true. And that Mr. Radovan's testimony  
15 regarding the executive committee and Mosaic was true. And  
16 Mr. Yount testified that those loans would cover all the debt  
17 and that the project would have been completed.

18           Mr. Yount testified he didn't torpedo the loan.  
19 He didn't want Mosaic, however, he never tried to resurrect  
20 the Mosaic loan.

21           Brandon Chaney testified. He was a member of the  
22 Incline Men's Club and met Mr. Marriner in 2014 regarding the  
23 Cal Neva. The Incline Men's Club is the largest investor in  
24 the project with \$6 million collectively invested. His role

1 was to represent the investors -- excuse me -- he testified  
2 that Mr. Marriner's role was to represent the investment, he  
3 vouched for the developers and told everyone the construction  
4 budget was on schedule. He assured the Incline Men's Club  
5 that this wouldn't go over budget.

6 He testified that Mr. Yount was on the executive  
7 committee -- excuse me -- the witness, Mr. Chaney, was on the  
8 executive committee, because it was the largest investor and  
9 the duties of the executive committee was to represent the  
10 members to guide the project.

11 However, he also testified he did not regularly  
12 attend meetings of the executive committee. He testified to  
13 the July Fairwinds meeting where Mr. Radovan gave an overview  
14 to the EC.

15 There were several problematic aspects of Mr.  
16 Chaney's testimony. Mr. Chaney testified that the PPM was  
17 disorganized and it was clear that the managers were not  
18 knowledgeable about the money. He testified that Mr. Radovan  
19 had oversubscribed the PPM. Well, that was wrong. And he  
20 testified that Mr. Radovan had taken money from Busick and  
21 Mr. Yount. Well, the evidence shows that was wrong, too.

22 Mr. Chaney testified that he was concerned with  
23 the sale of the Radovan -- the CR share, because he wanted to  
24 have the defendants to have some skin in the game. Well, the

1 evidence shows that they did. And they were concerned about  
2 the defendant's using the money to pay other debts. Well,  
3 the evidence shows that the money was sent to CR, who used it  
4 to pay not just other CR debts, but close to \$300,000 in  
5 debts owed to the project.

6 He testified that he had heard of Mosaic from  
7 Mr. Radovan in October of 2015 and they were going to  
8 refinance the entire project. That Mr. Radovan had provided  
9 a term sheet, but that Mr. Chaney didn't know Mosaic.

10 In November of 2015, Mr. Chaney testified that  
11 Mosaic pushed back. Well, that's belied by the voicemail of  
12 Mr. Penner, CEO of Mosaic, which indicated in the end of  
13 November they were very anxious and enthusiastic about the  
14 loan.

15 Mr. Chaney testified that the entire executive  
16 committee met with Mosaic, who had asked for the meeting with  
17 Mr. Chaney and Mr. Busick and Mr. Jamieson and without CR.  
18 This was curious, because why would Mosaic reach out to  
19 Mr. Chaney, who claimed he didn't know anybody at Mosaic?

20 When asked who called him for this important  
21 meeting, Mr. Chaney could only remember the first name,  
22 didn't know the last name. Again, why would Mosaic, who had  
23 been involved with both Mr. Criswell and Mr. Radovan since  
24 September of 2014 in trying to get this loan in the works

1 reach out to somebody who admittedly didn't know him to have  
2 a meeting without Mr. Criswell or Mr. Radovan present? I  
3 believe there was some testimony that there may have been a  
4 family connection or familiarity between Mr. Criswell and the  
5 Halls. It just did not make sense.

6 Mr. Tratner testified out of order, but he  
7 testified he looked at the investment on behalf of Mr. Yount.  
8 He was sent the updated financial projections, the profit and  
9 loss. He spoke to Mr. Radovan regarding forecasting  
10 prospective, the profit and loss.

11 On cross examination from Mr. Little, he was shown  
12 Exhibit 19, and he testified that this was 1 million of a  
13 \$60 million project, testified to the PPM, Mr. Yount's notes  
14 with the updated information. And that Mr. Radovan said,  
15 quote, please let me know if you need any more info, close  
16 quote. Mr. Little cross-examined him and said that the  
17 defendants answered all of his questions.

18 Mr. Chaney resumed the stand and testified about  
19 Exhibit 122. And despite the fact, this is another curious  
20 fact about Mr. Chaney's testimony, despite the fact that he  
21 realized that the Mosaic loan was the best chance for this  
22 project to go to completion and get everybody paid, they  
23 never pursued it. He claimed on his testimony that CR never  
24 pursued Mosaic. Well, that's wrong. And that's demonstrated

1 by Mr. Penner's voicemail indicating that in November that  
2 Mosaic was still interested. As a matter of fact, Ms. Clerk,  
3 number two.

4 THE CLERK: Yes, your Honor.

5 THE COURT: Last paragraph, we also told them that  
6 for the better part of three months, we have not heard much  
7 from the team. They went on to explain a little of the  
8 history of the deal from their perspective, and to tell you  
9 the truth, there seems to be a little bit of a mess right  
10 now. Let's underline, underline these last two words. We  
11 are going to take a step back, tear up the executed term  
12 sheet, tear up the executed term sheet, the deal, the loan  
13 that would have saved this project. It had been executed.  
14 Give you and the ownership time to figure things out on your  
15 own, and at the right moment, if you desire, reintroduce the  
16 deal to Mosaic. That's all. Thank you, Ms. Clerk.

17 When confronted with the audit, Mr. Chaney  
18 testified, although the records appeared to be a mess, the  
19 auditor did not find any improprieties, although he did  
20 testify that this was phase one of the audit. However, most  
21 tellingly, he didn't want to do phase two, because it cost  
22 money. He could have, perhaps should have, but it cost money  
23 to do an audit on a deal worth almost \$60 million.

24 He also testified that there were other options,

1 Colombia Pacific, Langham. That they hired a broker to pitch  
2 the project, but there was a lack of confidence in CR.

3 They talked about the winery litigation between  
4 Mr. Radovan and himself, and it's clear he was bitter and  
5 it's clear he was prejudiced and it's clear he's biased  
6 against Mr. Radovan, and as Mr. Campbell rightly pointed out,  
7 perhaps he had every right to be. But that bias is there.  
8 That bitterness is there.

9 He has been found personally liable for tortious  
10 interference with a contract, with a verdict in the form of  
11 \$6.4 million. He wasn't subpoenaed. He volunteered to  
12 testify here, because as he said, quote, I have a story to  
13 tell, close quote.

14 He testified that he did call David Marriner up,  
15 doesn't recall the exact words, but he told him to give back  
16 the commission or bad things would happen. And this was  
17 before his testimony at trial. Mr. Chaney testified he told  
18 Mr. Marriner to do the right thing, get on the right side.  
19 And as far as other members of the IMC calling Mr. Marriner,  
20 he testified that, quote, it could have happened, close  
21 quote. But all he wanted Mr. Marriner to do was open your  
22 eyes.

23 Mr. Chaney admitted that two years later, CR is  
24 still the manager of the Cal Neva. That although there were



1 procedures and a process in place that could have removed  
2 them, no such move has been made to date. And that CR is  
3 still trying to finance the Cal Neva.

4 As far as Mr. Chaney and Mr. Radovan go back,  
5 Mr. Chaney testified that he had to buy out Mr. Radovan and  
6 he settled the lawsuit by paying Mr. Radovan for his share.

7 Also troubling in Mr. Chaney's testimony is the  
8 fact that he claims he was kept in the dark. He wasn't aware  
9 of these cost overruns and financials were kept from him.  
10 That the third parties Penta and Thannisch, their conclusions  
11 or reports were tarnished because they were paid by the  
12 defendant, which is not true.

13 However, he admitted that he used the CR offices  
14 in the summer of the 2015 and he was there about once every  
15 other week for two or three days and he had talked to  
16 Mr. Radovan all the time. But despite that, he was clueless  
17 as to the cost overruns and that Mr. Radovan never provided  
18 him with any answers to his questions.

19 Once again, he testified to the Mosaic telephone  
20 call by a Howard and he called Mr. Chaney for the first time  
21 and told him, are you aware that -- this is Howard, are you  
22 aware of the \$1 million break-up fee? Why would somebody  
23 from Mosaic call, why would this Howard call Mr. Chaney to  
24 discuss a term of an agreement which was shared by

1 Mr. Radovan sometime before in the term sheet? Mr. Chaney  
2 testified he didn't know Mosaic, he didn't know Howard. This  
3 is troubling.

4 Also, Exhibit 129, which is an e-mail, which  
5 outlines the reasons why Mosaic is backing away, curiously,  
6 they are identical to Mr. Chaney's issues with Criswell  
7 Radovan and this Court cannot find that is coincidental.

8 On cross examination by Mr. Wolf, Mr. Chaney  
9 admitted to calling Mr. Marriner up in late July to do the  
10 right thing. Mr. Marriner hung up on him. The telephone  
11 call with Mr. Radovan -- in his telephone call with Mr.  
12 Marriner, Mr. Chaney called the bankruptcy a disaster,  
13 demanded that Mr. Marriner give back all of his commissions.

14 Mr. Little took Mr. Chaney on cross examination,  
15 talked about the Straight Shot suit, spoliation of evidence,  
16 and to some extent this Court understands that Mr. Summer was  
17 perhaps a rogue employee left over from the prior company  
18 acquired by Teleconnex and he worked out of his home.

19 But he also testified that Mosaic called the  
20 executive committee, because Mr. Radovan had not called back.  
21 However, that's contradicted by the voicemail in November.  
22 Mr. Chaney testified that the break-up fee was news to him,  
23 although he had been provided the term sheet prior to this.

24 Also, Mr. Chaney made what can only be described

1 as disturbing comment regarding the Washoe County Sheriff's  
2 Office. He testified that the Ladera loan was in default and  
3 that the IMC members were only aware of a sheriffs sale of  
4 their membership interest the day before the sheriff was to  
5 execute on the membership interest. However, the sheriff  
6 held off executing on that judgment, because the Incline  
7 Village people were very important people in this community.  
8 This Court finds that testimony incredible.

9 Finally, Mr. Radovan took the stand in rebuttal  
10 and talked about the \$480,000 in development fees. He never  
11 told Bruce Chaney that he took \$480,000 in fees and that he  
12 never took \$480,000 until development fees, that that was a  
13 double entry, which was subsequently corrected.

14 That any disbursement had to be approved by Hall  
15 and that Hall paid 90 percent of the disbursements and that  
16 they needed Hall's approval for any disbursement, significant  
17 disbursement. Mr. Radovan testified that he pursued funding  
18 until the bankruptcy and that Criswell -- that under any of  
19 these circumstances, any of these scenarios, Criswell Radovan  
20 would not be involved in the project, but that no one has  
21 come up with an option. The entire reason for the  
22 refinancing was the cost overruns.

23 He played and this is Exhibit 217, the e-mail --  
24 excuse me -- the voicemail of Ethan Penner dated

1 November 19th at 2:55 p.m., in which he stated there's a lot  
2 of enthusiasm regarding the deal and please get back to me,  
3 close quote. That Mr. Radovan was not an impediment to the  
4 Mosaic deal. That Mr. Chaney had offices in or had an office  
5 in Mr. Radovan's and Mr. Criswell's office in Napa. That  
6 they are the debtor in possession and they have audited  
7 financials and all the members received audited financials  
8 and Paul Jamison and Busick has changed sides. This Court  
9 finds that really has no bearing on this case, this Court's  
10 decision.

11 That Mosaic would have closed by year end and that  
12 all the parties would have been paid. The project would be  
13 up, operational, and a spectacular success.

14 All right. The Court adopts the findings of facts  
15 as set forth in the defendants' statements of Mr. Little and  
16 Mr. Wolf.

17 As to the first cause of action, breach of  
18 contract, Cal Neva LLC is in bankruptcy and under the  
19 protection of the bankruptcy court, therefore, the claim  
20 against Cal Neva Lodge LLC is dismissed.

21 Basic contracts principles on the breach of  
22 contract require for an enforceable contract, an offer and  
23 acceptance and a consideration. However, CR Cal Neva LLC and  
24 Criswell Radovan LLC are not parties to the contract of the

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

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

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

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

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

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

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

1 statements.

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

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

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

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

24 And that it played a material and substantial part

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

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

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

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

24 The Nevada Supreme Court stated that the



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

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

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

1 operating from the same facts and circumstances everybody  
2 else was.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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

25

# EXHIBIT 2

004623

004623

# EXHIBIT 2



**AFFIDAVIT OF MARK G. SIMONS IN SUPPORT OF  
MOTION TO AMEND THE PLEADINGS TO CONFORM TO  
THE EVIDENCE AND JUDGMENT**

STATE OF NEVADA       )  
  )ss.  
COUNTY OF WASHOE    )

I, Mark Simons, being duly sworn, depose and state under penalty of perjury the following:

1. I am an attorney licensed in Nevada and am counsel representing Defendants David Marriner and Marriner Real Estate, LLC (hereinafter collectively referred to as "Marriner") in this matter. I am a shareholder with the law firm of SIMONS LAW, PC.

2. I have personal knowledge of the facts set forth in this affidavit, and if I am called as a witness, I would and could testify competently as to each fact set forth herein.

3. I submit this affidavit in support of Plaintiff's MOTION TO AMEND THE PLEADINGS TO CONFORM TO THE EVIDENCE AND JUDGMENT ("Motion"), to which this affidavit is attached as Exhibit 2.

4. Exhibit 1 to the Motion are true and correct excerpts of the trial transcript in this matter.

5. Exhibit 3 to the Motion is a true and correct copy of Judge Flanagan's September 15, 2017 Amended Order entered in this matter.

6. Exhibit 4 to the Motion is a true and correct copy of Trial Exhibit 121 in this matter.

7. Exhibit 5 to the Motion is a true and correct copy of Trial Exhibit 125 in this matter.

8. Exhibit 6 to the Motion is a true and correct copy of Trial Exhibit 126.

9. Exhibit 7 to the Motion is a true and correct copy of Trial Exhibit 127.

10. Exhibit 8 to the Motion is a true and correct copy of Trial Exhibit 130.

11. Exhibit 9 to the Motion is a true and correct copy of Trial Exhibit 131.

12. Exhibit 10 to the Motion is a true and correct copy of Trial Exhibit 132.

13. Exhibit 11 to the Motion is a true and correct copy of Trial Exhibit 133.

14. Exhibit 12 to the Motion is a true and correct copy of Trial Exhibit 134.

15. Exhibit 13 to the Motion are true and correct excerpts of Plaintiff's Motion for Limited Post Judgment Discovery.

16. Exhibit 14 to the Motion are true and correct excerpts of Defendants' June 29, 2017, Motion for Summary Judgment.

17. Exhibit 15 to the Motion are true and correct excerpts excerpt of Defendants' August 25, 2017, Proposed Findings of Facts and Conclusions of Law.

18. Exhibit 16 to the Motion is a true and correct copy of Trial Exhibit 1.


19. Exhibit 17 to the Motion is a true and correct copy of Trial Exhibit 5.

20. Exhibit 18 to the Motion is a true and correct copy of Trial Exhibit 122.

21. Exhibit 19 to the Motion is a true and correct copy of the March 12, 2018 Judgment.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 21<sup>st</sup> day of August, 2018.

  
MARK G. SIMONS

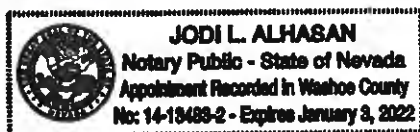
STATE OF NEVADA )

)ss.

COUNTY OF WASHOE )

Subscribed and sworn to before me  
on this 21 day of August, 2018 by  
Mark G. Simons at Reno, Nevada.

  
NOTARY PUBLIC



004625

# EXHIBIT 3

004626

004626

# EXHIBIT 3

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

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

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

Case No.: CV16-00767

Dept. No.: 7

Plaintiff,

vs.

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

Defendants.

**AMENDED ORDER**

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

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Richard G. Campbell, Jr., Esq., attorney for Plaintiff George Stuart Yount;  
Andrew N. Wolf, Esq., Attorney for Defendants David Marriner and Marriner  
Real Estate, LLC; and  
Martin A. Little, Esq., attorney for Defendants Criswell Radovan, LLC; CR  
Cal Neva, LLC; Robert Radovan; William Criswell; Cal Neva Lodge, LLC;  
Powell, Coleman, and Arnold, LLP.

*Kristen Lewis*  
Judicial Assistant

# EXHIBIT 4

004630

004630

# EXHIBIT 4

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**From:** Stuart Yount  
**Sent:** Saturday, January 30, 2016 4:56 PM  
**To:** Paul Jameson  
**Cc:** Geri Yount  
**Subject:** Talk w/Jeremy

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 & 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



# EXHIBIT 5

004632

# EXHIBIT 5

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**From:** Stuart Yount  
**Sent:** Tuesday, February 2, 2016 10:08 AM  
**To:** 'Molly Kingston'; Geri Yount  
**Subject:** RE: utterly confused....

The disaster seems to not only continue, but also to escalate in severity!

Stuart Yount  
 Chairman & CEO  
 FortiFiber.....  
 300 State Route 28  
 Box 308  
 Crystal Bay, NV 89402  
 (775) 843-0486

**From:** Molly Kingston [<mailto:mkingston@arrowinvest.com>]  
**Sent:** Tuesday, February 2, 2016 10:06 AM  
**To:** Stuart Yount <[syount@fortifiber.com](mailto:syount@fortifiber.com)>; Geri Yount <[geriattahoe@fortifiber.com](mailto:geriattahoe@fortifiber.com)>  
**Subject:** utterly confused....

Morning Younts,

I was unaware of the meeting with Mosaic in Sac yesterday. I do not currently understand the strategy being pursued to 'rescue the project.' I remain unsupportive of burdening the project with additional debt. Any buyer will prefer a clean slate to bring in their own financing partners. The concept of borrowing money and developing the project by committee is completely unappealing and a poor strategy for success, in my opinion.

I have reached out to Arthur by voicemail and text and mentioned our collective interest in meeting with him. I also offered to talk by phone if we can manage that more quickly.

Still losing sleep and immensely stressed over this ...

Thanks,

Molly

# EXHIBIT 6

004634

004634

# EXHIBIT 6

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**From:** Molly Kingston <mkingston@arrowinvest.com>  
**Sent:** Tuesday, February 2, 2016 1:26 PM  
**To:** Stuart Yount; Geri Yount  
**Subject:** novel approach? [Confidential]

Hi S & G,

I spoke with Paul this morning. I learned that the EC (minus CR) met with Mosaic and had a "good meeting." We remain aligned in terms of our ultimate objective (saving our invested capital).

I agree with you that this is an escalating disaster and have been thinking about a communication that goes to all investors (but to each individually not as a group) before tomorrow's call. I wanted to run it by the two of you to see what you think.

My suggested approach is one designed to come across as fair to CR and to all of us, and not speaking of their bad deeds and not trying to play politics. In summary, the letter would state:

It is not my objective to convince anyone of anything. The facts speak for themselves and people may do their own research and seek their own legal counsel, as I have. I cannot continue to devote hours of uncompensated time to this faltering deal and nor do I see the benefits of continued meetings and conference calls with CR. They have failed the project and us, to put it kindly.

Our invested capital is seriously at risk. The best option to avoid losing money is to sell the project as efficiently as possible. Based on my seasoned analysis and several conversations with industry colleagues, I cannot support loading the project with additional debt. I believe new debt hinders the ability to sell the project. I am equally non-supportive of development by committee or a tightly-controlled continued developer role for CR.

To that end, CR must immediately resign and cede their 20%. This will allow a realistic marketing effort of the project. CR can find investors and make an offer to buy the project, just as anyone else can. Those of you who support them can assist them to recapitalize and make an offer with CR.

The alternative to an immediate voluntary face-saving resignation is that CR faces swift civil and criminal action.

Thanks for your time....

-m

# EXHIBIT 7

004636

004636

# EXHIBIT 7

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**From:** Paul Jameson <pjameson@elevateig.com>  
**Sent:** Tuesday, February 2, 2016 4:48 PM  
**To:** Stuart Yount  
**Subject:** Re: Assignment of Interest in Cal Neva Lodge, LLC

I am going to call you in a few

Paul Jameson

**ELEVATE INVESTMENT GROUP**

6770 S. McCarran Blvd #202, Reno NV 89509

880 Northwood Blvd, Incline Village, NV 89451

P: (775)200-7547, F: (775)344-0560, C: (775)298-5988

E: [pjameson@elevateig.com](mailto:pjameson@elevateig.com)



On Tue, Feb 2, 2016 at 4:42 PM, Stuart Yount <[syount@fortifiber.com](mailto:syount@fortifiber.com)> wrote:

I am trying to. Do you see anything you feel I'm doing wrong here so far, Paul?

Stuart Yount

Chairman & CEO



300 State Route 28

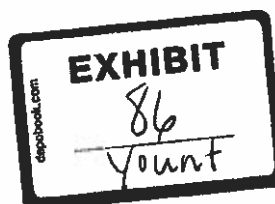
Box 308

Crystal Bay, NV 89402

(775) 843-0486

**From:** Paul Jameson [<mailto:pjameson@elevateig.com>]  
**Sent:** Tuesday, February 2, 2016 4:38 PM  
**To:** Stuart Yount <[syount@fortifiber.com](mailto:syount@fortifiber.com)>  
**Subject:** Re: Assignment of Interest in Cal Neva Lodge, LLC

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GSY002172

Wow - exercise extreme caution as you are doing... those documents are dangerous.

Paul Jameson

**ELEVATE INVESTMENT GROUP**

6770 S. McCarran Blvd #202, Reno NV 89509

880 Northwood Blvd, Incline Village, NV 89451

P: (775)200-7547, F: (775)344-0560, C: (775)298-5988

E: [pjameson@elevateg.com](mailto:pjameson@elevateg.com)

On Tue, Feb 2, 2016 at 4:28 PM, Stuart Yount <[syount@fortifiber.com](mailto:syount@fortifiber.com)> wrote:

Bruce, I attach the original signed acceptance of my purchase of a \$1,000,000 Founders Share by Cal Neva Lodge, LLC of my IRA's Subscription. I also attach the originally executed Subscription Agreement. Note the owner is George Stuart Yount IRA. I believe your documents & check should match that ownership title.

On the Assignment document, I have NOT "...erroneously executed a Subscription Agreement..." It was never my intention, nor was I ever asked, to was it ever my intention for "...the Assignee purchase such interest from Assignor rather than the Company;"

I will NOT sign anything that says "...this Assignment shall supersede and replace the Subscription Agreement;" Per my understanding of Mr. Criswell's intent, this is to be an offer to me that I may execute at such time in the future that CR puts my \$1,000,000 in an escrow account for my sole benefit.

As to the Purchase Agreement, I see no purpose to this document. I am not purchasing anything but am merely getting back what was falsely and secretly taken from me without my knowledge or consent.

Stuart Yount

300 State Route 28

Box 308

Crystal Bay, NV 89402

(775) 843-0486

**From:** Bruce Coleman [mailto:[BColeman@pcallp.com](mailto:BColeman@pcallp.com)]

**Sent:** Tuesday, February 2, 2016 2:59 PM

**To:** Stuart Yount <[syount@fortifiber.com](mailto:syount@fortifiber.com)>

**Cc:** William Criswell <[Bill@criswellradovan.com](mailto:Bill@criswellradovan.com)>; [robert@criswellradovan.com](mailto:robert@criswellradovan.com); Heather Hill  
<[Heather@criswellradovan.com](mailto:Heather@criswellradovan.com)>

**Subject:** Assignment of Interest in Cal Neva Lodge, LLC

Stuart:

Bill Criswell is currently in a meeting, but he wanted me to send you the documents that you have been discussing. I am attaching the Assignment of Interest in Limited Liability pursuant to which CR assigns 50% of its interest to you; Resolutions of Members of Cal Neva Lodge, LLC approving such assignment; and a Purchase Agreement pursuant to which CR will repurchase your interest on the terms set forth therein. If you have any questions, please feel free to call Bill or me.

Bruce

Bruce R. Coleman

POWELL COLEMAN & ARNOLD LLP

8080 N. Central Expressway

Suite 1380

Dallas, Texas 75206

214/373-8782 (phone)

214/373-8768 (fax)



[bcoleman@pcallip.com](mailto:bcoleman@pcallip.com)

004640

004640

# EXHIBIT 8

004641

004641

# EXHIBIT 8

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**From:** Paul Jameson <pjameson@elevateig.com>  
**Sent:** Friday, February 5, 2016 11:15 AM  
**To:** Stuart Yount  
**Cc:** Geri Yount; Paul Jameson  
**Subject:** Sharing Roger info... perhaps boulder bay summary

Stuart,

Ahead of Roger calling me, do you (or do you think he) has some info on his background? I'd like to get some over to the potential investor today as they are actively reviewing. Heck, they may want to invest in Boulder Bay when it launches.

A quick way to get there would be for me to share the business plan for Boulder Bay (which I have, but under strict NDA) would be a big acceleration of their vetting him as a good candidate, and showing the strength of the CalNeva and surrounding area. I can reach out to him but wanted to get your pulse.

Thanks,

Paul Jameson

**ELEVATE INVESTMENT GROUP**

6770 S. McCarran Blvd #202, Reno NV 89509

880 Northwood Blvd, Incline Village, NV 89451

P: (775)200-7547, F: (775)344-0560, C: (775)298-5988

E: [pjameson@elevateig.com](mailto:pjameson@elevateig.com)



# EXHIBIT 9

004643

004643

# EXHIBIT 9

**From:** Stuart Yount  
**Sent:** Friday, February 5, 2016 2:24 PM  
**To:** 'Paul Jameson'  
**Cc:** Geri Yount  
**Subject:** RE: RESPONSE REQUESTED: potential new developers

Thanks. Just trying to be extra careful, Paul.

Stuart Yount  
 Chairman & CEO  
 Fortifiber.....  
 300 State Route 28  
 Box 308  
 Crystal Bay, NV 89402  
 (775) 843-0486

**From:** Paul Jameson [mailto:pjameson@elevateg.com]  
**Sent:** Friday, February 5, 2016 2:14 PM  
**To:** Stuart Yount <syount@fortifiber.com>  
**Subject:** Re: RESPONSE REQUESTED: potential new developers

Roger is comfortable with me sharing him as someone on my target list. He said North Light is just a source of capital and he would work with others. Thanks again for flagging this as something I should double check!

Paul Jameson  
**ELEVATE INVESTMENT GROUP**  
 6770 S. McCarran Blvd #202, Reno NV 89509  
 880 Northwood Blvd, Incline Village, NV 89451  
 P: (775)200-7547, F: (775)344-0560, C: (775)298-5988  
 E: pjameson@elevateg.com



On Fri, Feb 5, 2016 at 12:41 PM, Stuart Yount <syount@fortifiber.com> wrote:

Wow! Paul, do you have Roger's permission to put his name out here like this?

Stuart Yount  
 Chairman & CEO  
 FORTIFIBER CORPORATION  
 300 State Route 28  
 Box 308

1



GSY004690

Crystal Bay, NV 89402  
(775) 843-0486

On Feb 5, 2016, at 11:12 AM, Paul Jameson <[pjameson@elevateig.com](mailto:pjameson@elevateig.com)> wrote:

All,

**The potential new mezz partner is now spending time and money reviewing the project with credit committee - they could not be more serious about this potential investment.**

I am looking for a list of potential developers that would come in and finish the project to completion. So far I have (1) Roger Wittenberg, owner of the Tahoe Biltmore, thanks to the Younts and (2) Howard Karawan, introduced to us by Mosaic and a respected consultant in the industry. Howard would likely be a supplemental team member, making the list really one person.

**Today if possible, please send me any other potential developers that would complete the project, with 1-2 sentences on their fit and experience.** Molly, I believe you have a couple, even though they also may be capital partners. Please send a list over and recognize this is 100% confidential and the team receiving this data is under strict NDA.

Obviously this request is confidential for all of us as well. Please do not discuss with others outside of this email list. There are other highly sensitive aspects of the path forward that I would like to discuss with everyone at a later date. For now, I would not discuss any bad acts that have occurred to date or potential remedies that could be considered.

Thank you,

Paul Jameson  
**ELEVATE INVESTMENT GROUP**  
6770 S. McCarran Blvd #202, Reno NV 89509  
880 Northwood Blvd, Incline Village, NV 89451  
P: (775)200-7547, F: (775)344-0560, C: (775)298-5988  
E: [pjameson@elevateig.com](mailto:pjameson@elevateig.com)

# EXHIBIT 10

004646

004646

# EXHIBIT 10

**From:** Paul Jameson <pjameson@elevateig.com>  
**Sent:** Sunday, February 14, 2016 9:55 AM  
**To:** Stuart Yount  
**Cc:** Geri Yount  
**Subject:** Re: paramount-inv

They typically do deals with other investors in tranches of at least 10MM per investor. What they would want is to organize the project so there is a representative of the other members as one voice, maybe two since we are 20MM.

Have I spoken to partners of theirs? No, not yet. Once they give the green light to going full speed ahead on the due diligence, I will start the same diligence on them. Their principal is transparent and not hiding his story or approach thus far... the opposite of this 104MM buyout we are exploring.

Paul Jameson

**ELEVATE INVESTMENT GROUP**

6770 S. McCarran Blvd #202, Reno NV 89509

880 Northwood Blvd, Indine Village, NV 89451

P: (775)200-7547, F: (775)344-0560, C: (775)298-5988

E: [pjameson@elevateig.com](mailto:pjameson@elevateig.com)



On Sun, Feb 14, 2016 at 9:47 AM, Stuart Yount <[syount@fortifiber.com](mailto:syount@fortifiber.com)> wrote:  
 On the surface based on their website, they look excellent. What is the REAL story on their experience in dealing with investors on projects they've taken on?

No, I do not know of them.

Stuart Yount  
 Chairman & CEO  
 FORTIFIBER CORPORATION  
 300 State Route 28  
 Box 308  
 Crystal Bay, NV 89402  
 (775) 843-0486

On Feb 14, 2016, at 9:37 AM, Paul Jameson <[pjameson@elevateig.com](mailto:pjameson@elevateig.com)> wrote:

The one I am working on for a larger mezz, yes. Are you familiar with them?



---

Paul Jameson  
Elevate Investment Group  
[pjameson@elevateig.com](mailto:pjameson@elevateig.com)  
[775-200-7547](tel:775-200-7547)

On Sun, Feb 14, 2016 at 10:00 AM, Stuart Yount <[syount@fortifiber.com](mailto:syount@fortifiber.com)> wrote:

Is this the potential investment group?

<http://www.paramountinv.com/>

Stuart Yount  
Chairman & CEO  
FORTIFIBER CORPORATION  
300 State Route 28  
Box 308  
Crystal Bay, NV 89402  
[\(775\) 843-0486](tel:775-843-0486)

# EXHIBIT 11

004649

004649

# EXHIBIT 11

**From:** Paul Jameson <pjameson@elevateig.com>  
**Sent:** Friday, February 26, 2016 8:01 PM  
**To:** Stuart Yount  
**Cc:** Geri Yount  
**Subject:** Re: Another day!?!?!?

We finalized the agreement and moved mountains doing so. The attorney (ours) is doing a final review in the morning to confirm there are no 'gotchas' that we haven't covered off... then Robert is signing.

I have the whole thing teed up. If they do not fund 5M by Thursday, it cancels. In parallel, we can pursue debt options. We have accepted every term they came back with... keep in mind the money is very, very good. The rest is legal things to protect us.

--

paul jameson  
 elevate investment group  
 pjameson@elevateig.com



On Fri, Feb 26, 2016 at 7:12 AM, Paul Jameson <pjameson@elevateig.com> wrote:  
 Thank you!

On Feb 25, 2016, 22:53 -0800, Stuart Yount <syount@fortifiber.com>, wrote:

You're our hero!

Stuart Yount

Chairman & CEO



300 State Route 28

Box 308

Crystal Bay, NV 89402

(775) 843-0486

1



GSY002072

From: Paul Jameson (mailto:[pjameson@elevateig.com](mailto:pjameson@elevateig.com))  
Sent: Thursday, February 25, 2016 10:34 PM  
To: Stuart Yount <[syount@fortifiber.com](mailto:syount@fortifiber.com)>  
Subject: Re: Another day!?!?!?

Indeed. I received their documents midday. They made big changes... not to the price, but to the legal structure and it would put us at major risk if they didn't keep funding.

Tonight we let it cool down, and tomorrow there will be a final document. It will either be signed or void by end of the day.

--  
paul jameson  
elevate investment group  
[pjameson@elevateig.com](mailto:pjameson@elevateig.com)

On Thu, Feb 25, 2016 at 10:20 PM, Stuart Yount <[syount@fortifiber.com](mailto:syount@fortifiber.com)> wrote:

Stuart Yount  
Chairman & CEO  
 .....  
300 State Route 28  
Box 308  
Crystal Bay, NV 89402  
(775) 843-0486

# EXHIBIT 12

004652

004652

# EXHIBIT 12

---

**From:** Paul Jameson <pjameson@elevateig.com>  
**Sent:** Sunday, February 28, 2016 11:00 AM  
**To:** Paul G. Jameson  
**Cc:** Brandon Chaney; Les Busick; Phil Busick; Robert Radovan; William Criswell; Heather Hill; Lisa Pacey-Willis  
**Subject:** Cal Neva EC Report on Financing - February 28, 2016  
**Attachments:** Cal Neva EC Membership Update 160228.pdf

Members of the Cal Neva,

An EC report to the Membership relating to the financing efforts underway is attached. It is with great pleasure that I get to announce that Robert has signed the PSA with GBCI. Today, it was sent to their group awaiting their review and signature.

In addition to the work performed by the EC this week and weekend, we all owe a very large thank you to Molly Kingston is in order for her (1) building the summary of the gaming and Starwood agreements for the Purchaser and (2) crafting a fantastic cover letter to go along with the executed document to express our excitement over this transaction. Thank you Molly for your commitment to our collective success.

The next all-hands EC meeting is scheduled for 2pm on Wednesday, March 16th in Incline Village. The location for those local, and dial-in for those remote, shall be circulated along with the agenda and supporting documentation ahead of the meeting.

Thank you

--

paul jameson

**elevate investment group**

pjameson@elevateig.com



CONFIDENTIAL – NOT FOR DISTRIBUTION

Date: Sunday, February 28, 2016  
 From: Cal Neva Executive Committee ("EC")  
 To: Members of the Cal Neva Lodge, LLC redevelopment project

Subject: Financing Update

**GBCI buyout.** Today, Criswell-Radovan signed a PSA for 100% of the project that requires a 5M payment no later than next Thursday, March 3, 2016. GBCI has the document and plans to review for signature Monday.

The GBCI team changed the legal aspects of the PSA at the 11<sup>th</sup> hour, but we made minor edits to protect our investment from being tied up in some legal battle if they do not fund. Financial terms were all accepted and it is now time to sit and wait.

We will keep you apprised of the status.

**Condo financing.** Robert will be finalizing the security agreement Monday. Several of you have indicated you will put in \$50,000 or more to keep the project afloat.

These funds will be paid back upon the closing of any financing deal being pursued at this time. Purchase by GBCI requires a free and clear property. Mezz and construction debt will pay this back as well. The multiple is increased from 1.25x to 1.50x, independent of time outstanding, to further induce our collective support of the project.

**Other financing.** We are allowed to pursue debt options while under contract with GBCI. In order to have necessary backups in place, we have several underway still. Mosaic is passing at this time for reasons unrelated to the project, but rather for their own internal challenges. The remaining options are:

- **Replacement mezzanine lender.** Invested heavily in developing model, talking to Penta, drafting LOI
- **Newly engaged parties.** Robert and others have engaged several debt parties who are fast and real
- **Gamma (Trump).** Holding off on signing LOI until next week. Expensive, but a good last resort option

**Non-financing items.**

- **Next all-hands meeting.** Tentatively scheduled for 2pm on Wednesday, March 16<sup>th</sup> in-person in Tahoe. Details to be confirmed prior to the meeting and will include a dial-in for remote members
- **Accounting review.** Still underway, details to be provided on the next Executive Committee call
- **Questions and comments.** Outside of the all-hands meetings, Paul Jameson can be available as lead member representative to discuss the financing efforts or other aspects of the project

Respectfully submitted,

Paul Jameson and Robert Radovan on behalf of the EC

GSY000162

# EXHIBIT 13

# EXHIBIT 13



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2018-06-15 02:51:20 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6731590 : csulezic

1 **2045**

2 Daniel F. Polsenberg  
3 Nevada Bar No. 2376  
4 Joel D. Henriod  
5 Nevada Bar No. 8492  
6 Adrienne R. Brantley-Lomeli  
7 Nevada Bar No. 14,486  
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21 Fax (775) 997-7417  
22 RCampbell@RGCLawOffice.com

23 *Attorneys for Plaintiff*  
24 *George Stuart Yount*

25 DISTRICT COURT

26 WASHOE COUNTY, NEVADA

27 GEORGE STUART YOUNT, individually  
28 and in his capacity as owner of  
GEORGE YOUNT IRA,

Case No. CV16-00767

Dept. No. 7

Plaintiff,

us.

**PLAINTIFF'S MOTION FOR LIMITED  
POST JUDGMENT DISCOVERY**

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.

1  
2 Plaintiff Stuart Yount ("Mr. Yount") moves for post-trial discovery,  
3 limited in scope to circumstances surrounding the withdrawal of Mosaic's  
4 preliminary loan offer.

5 INTRODUCTION

6 Judge Flanagan awarded substantial damages when defendants never  
7 pleaded or proved a counterclaim. He based his oral ruling and award of  
8 damages on an email exchange between a member of Mosaic and Robert  
9 Radovan. Judge Flanagan's entire theory of liability rested on the motivation  
10 behind the withdrawal of the Mosaic loan. Supporting evidence from the Mosaic  
11 members would bear significantly on the validity of Judge Flanagan's ruling.  
12 Accordingly, it is essential that Mr. Yount be permitted to conduct limited post  
13 judgment discovery and depose three Mosaic members. This Court should  
14 authorize limited post-trial discovery into the facts surrounding the withdrawal  
15 of the Mosaic loan.

16 I.

17 STATEMENT OF FACTS

18 **A. Defendants Contend in all Pre-trial Court Filings and Discovery**  
19 **that Mr. Yount had Unclean Hands**

20 Following a failed investment project in the Cal Neva, Mr. Yount filed a  
21 complaint alleging numerous causes of actions against the defendants including  
22 breach of contract, breach of duty, fraud, negligence, conversion, punitive  
23 damages, and securities fraud claims.<sup>1</sup> Defendants answered and asserted  
24  
25  
26  
27

28 <sup>1</sup> Second Amended Complaint ¶¶ 28-50.

1 unclean hands.<sup>2</sup> Defendants alleged that Mr. Yount conspired with other  
2 investors to interfere with the Project's refinancing loan.

3 Discovery focused on the subscription agreement and other pre-  
4 investment documents, communications between Mr. Yount and defendants,  
5 and communications between Mr. Yount and the investors that allegedly  
6 conspired to interfere with the Mosaic loan.

7 **B. The Suit Proceeds to Trial without Discovery**  
8 **on Any Members of Mosaic**

9 The focus of the trial centered on the alleged fraudulent  
10 misrepresentations that defendants made to induce Mr. Yount to invest in the  
11 Cal Neva. To prove defendants' affirmative defense of unclean hands,  
12 defendants introduced a series of email communications between Mr. Yount and  
13 members of the Incline Men's club ("IMC") and an email from Sterling Johnson,  
14 the VP of investments at Mosaic, that withdrew the preliminary loan offer. To  
15 prove their affirmative defense of unclean hands, defendants only needed to  
16 prove that misconduct occurred they did not need to prove that actual  
17 interference occurred.

18 To demonstrate that investors conspired to interfere with the loan,  
19 defendants introduced an email that evidenced a meeting with members of the  
20 Executive Committee and members of Mosaic. The email explained that Mosaic  
21 had not heard from Criswell Radovan in months.

22 As you know, Ethan and I were in Sacramento this morning to visit with  
23 a group who represented themselves as investors with you in CalNeva...  
24 We also told them that for the better part of three months we have not  
25 heard much from you or your team.

26  
27 <sup>2</sup> Marriner's Answer to Second Amended Complaint and Cross-Claim pgs. 9-10;  
28 Criswell Answer to Plaintiff's Complaint pg.8; Defendants' Proposed Findings of  
Fact and Conclusions of Law, 8/25/2017, 11:4-7.

1 offer because they had not received due diligence paperwork from Radovan. But  
2 because of the litigious nature of Criswell and Radovan, Mr. Johnson, Mr.  
3 Penner, and Mr. Karawan declined to sign an affidavit. They informed Mr.  
4 Campbell that if subpoenaed for a deposition they would testify that Mosaic  
5 withdrew the loan because of the lack of due diligence. Thus, Mr. Campbell's  
6 affidavit is the best evidence available under the circumstances because Mr.  
7 Johnson, Mr. Penner, and Mr. Karawan would not sign their own affidavits.  
8 There is sufficient reason to regard it as reliable because Mr. Campbell is an  
9 attorney licensed in the State of Nevada and Mr. Johnson, Mr. Penner, and Mr.  
10 Karawan will testify to the above if subpoenaed. *See Crummer*, 68 Nev. at 532,  
11 238 P.2d at 1127 (noting that court could not determine reliability because  
12 intervening source of information was not disclosed and no reason given why  
13 the affidavit of such person was not available). Therefore, this Court may rely  
14 on Mr. Campbell's declaration in support of this motion.

15 CONCLUSION

16 For the forgoing reasons, this Court should authorize limited port  
17 judgment discovery relating to the withdrawal of the Mosaic loan.

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

20 Dated this 15th day of June, 2018.

21 LEWIS ROCA ROTHGERBER CHRISTIE LLP

22  
23 By: /s/ Daniel F. Polsenberg

24 DANIEL F. POLSENBERG (SBN 2376)  
25 JOEL D. HENRIOD (SBN 8492)  
26 ADRIENNE R. BRANTLEY-LOMELI (SBN 14,486)  
3993 Howard Hughes Parkway, Suite 600  
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*Attorneys for Plaintiff*

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**8**

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
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# EXHIBIT 14

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# EXHIBIT 14

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CV16-00767  
2017-06-29 02:44:59 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6173719 : pmsewell

1 **2200**

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3 Alexander Villamar, Esq., NV Bar No. 9927

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10 *Attorneys for Criswell Radovan, LLC, CR Cal Neva, LLC,*

11 *Robert Radovan, William Criswell, Cal Neva Lodge, LLC,*

12 *and Powell, Coleman and Arnold LLP*

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

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

15 Plaintiff,

16 vs.

CASE NO.: CV16-00767

DEPT NO.: B7

**MOTION FOR SUMMARY JUDGMENT**

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

24 Defendants.

25 ///

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28 ///

Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Ste. 1000  
Las Vegas, NV 89169  
(702) 257-1483



004664

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## IV.

## CONCLUSION

For the foregoing reasons, Defendants are entitled to summary judgment.

DATED this 28 day of June 2017.

HOWARD & HOWARD ATTORNEYS PLLC

By: 

Martin A. Little, Esq.  
Alexander Villamar, Esq.  
3800 Howard Hughes Pkwy, Suite 1000  
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Telephone No. (702) 257-1483  
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CR Cal Neva, LLC, Robert Radovan,  
William Criswell, Cal Neva Lodge, LLC*

Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Ste. 1000  
Las Vegas, NV 89169  
(702) 257-1483

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STAT OF NEVADA**

**AFFIRMATION**

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

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by:

\_\_\_\_\_ A specific state or federal law, to wit:

\_\_\_\_\_ (State specific state or federal law)

**- OR -**

For the administration of a public program

**- OR -**

\_\_\_\_\_ For an application for a federal or state grant

**- OR -**

\_\_\_\_\_ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230, and NRS 125B.055)

Date: June 28, 2017

HOWARD & HOWARD ATTORNEYS, PLLC

By: 

Martin A. Little, Esq.

Alexander Villamar, Esq.

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*Attorneys for Criswell Radovan, LLC,*

*CR Cal Neva, LLC, Robert Radovan,*

*William Criswell, Cal Neva Lodge, LLC,*

*and Powell, Coleman and Arnold LLP*

Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Ste. 1000  
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(702) 257-1483

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am employed in the County of Clark, State of Nevada, am over  
3 the age of 18 years and not a party to this action. My business address is that of Howard &  
4 Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada,  
5 89169.

6 On this day I served the foregoing **CRISWELL RADOVAN, LLC, CR CAL NEVA,**  
7 **LLC, ROBERT RADOVAN, WILLIAM CRISWELL, AND POWELL, COLEMAN**  
8 **AND ARNOLD LLP'S MOTION FOR SUMMARY JUDGMENT** in this action or  
9 proceeding electronically with the Clerk of the Court via the E-File and Serve system, which  
10 will cause this document to be served upon the following counsel of record:

11 Richard G. Campbell, Esq.  
12 The Law Office of  
13 Richard G. Campbell, Jr., Inc.  
200 South Virginia Street, 8th Floor  
14 Reno, NV 89502  
Telephone: (775)-686-2446  
15 Facsimile: (775) 997-7417  
Attorneys for Plaintiff

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

16  
17 I certify under penalty of perjury that the foregoing is true and correct, and that this  
18 Certificate of Service was executed by me on June 28, 2015 at Las Vegas, Nevada.

19  
20   
21 An Employee of HOWARD & HOWARD ATTORNEYS PLLC  
22  
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Las Vegas, NV 89169  
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# EXHIBIT 15

004668

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# EXHIBIT 15

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CV16-00767  
2017-08-25 12:58:43 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6268725 : nmasch

1 **1750**

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3 Alexander Villamar, Esq., NV Bar No. 9927

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10 Attorneys for Criswell Radovan, LLC, CR Cal Neva, LLC,

11 Robert Radovan, William Criswell, Cal Neva Lodge, LLC,

12 and Powell, Coleman and Arnold LLP

13 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
14 **THE STATE OF NEVADA IN AND FOR THE**  
15 **COUNTY OF WASHOE**

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

19 Plaintiff,

20 vs.

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

Defendants.

CASE NO.: CV16-00767

DEPT NO.: B7

**DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Howard & Howard Attorneys PLLC  
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Las Vegas, NV 89169  
(702) 257-1483

004669

1 Plaintiff was doing his due diligence and communicating with Marriner and Radovan. This is  
2 consistent with the cost overruns Plaintiff's own notes show he understood to be imminent prior  
3 to investing.

4 41. Yount is unaware of any financial improprieties in the Project and hasn't  
5 identified any.

6 42. There is no information provided by Defendants to Yount which Defendants knew  
7 or believed to be false.

8 43. Moreover, CR Cal Neva's Founder's Share has the identical rights, obligations  
9 and value as the Founder's Share Plaintiff says he thought he was purchasing.

10 44. There is no evidence that the membership interest Yount received is materially  
11 different from the one he sold. Any assertion to this effect is speculative.

12 45. Notably, from the moment Plaintiff bought his interest, he clearly considered  
13 himself as, and was treated by the Executive Committee as, a full founding investor. He even  
14 requested a note be made to acknowledge his investment which was done but he refused to sign.  
15 He attended Executive Committee meetings and involved himself actively in those meetings. He  
16 also involved himself with a select group of investors who actively meddled in the financing  
17 efforts to try to supplant their own financing. In the spring of 2016, these investors (with  
18 Plaintiff's involvement) went behind Criswell Radovan's back and sabotaged the loan Criswell  
19 Radovan had lined up with Mosaic to fund the remaining construction.  
20

21 46. Yount was aware of the interference when it occurred.

22 47. Yount's alleged damages result in whole or in part from the interference in the  
23 Mosaic loan.

24 48. Without funding, the Project fell into bankruptcy and Plaintiff has since attempted  
25 to distance himself from his investment, including filing the instant lawsuit.  
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**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STAT OF NEVADA**

**AFFIRMATION**

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

- OR -

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

\_\_\_\_\_ A specific state or federal law, to wit:

\_\_\_\_\_ (State specific state or federal law)

- OR -

For the administration of a public program

- OR -

\_\_\_\_\_ For an application for a federal or state grant

- OR -

\_\_\_\_\_ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230, and NRS 125B.055)

Date: 8/25/17

HOWARD & HOWARD ATTORNEYS, PLLC

By: 

Martin A. Little, Esq.  
Alexander Villamar, Esq.  
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Las Vegas, NV 89169  
Telephone: (702) 257-1483  
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*Attorneys for Criswell Radovan, LLC,  
CR Cal Neva, LLC, Robert Radovan,  
William Criswell, Cal Neva Lodge, LLC,  
and Powell, Coleman and Arnold LLP*

Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Ste. 1000  
Las Vegas, NV 89169  
(702) 257-1483

004672

1 **CERTIFICATE OF SERVICE**

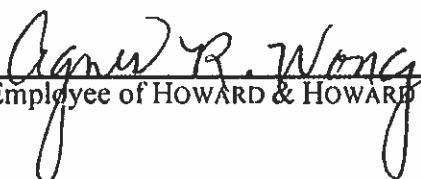
2 I hereby certify that I am employed in the County of Clark, State of Nevada, am over the  
3 age of 18 years and not a party to this action. My business address is that of Howard & Howard  
4 Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

5 On this day I served the foregoing **DEFENDANTS' PROPOSED FINDINGS OF**  
6 **FACT AND CONCLUSIONS OF LAW** in this action or proceeding electronically with the  
7 Clerk of the Court via the E-File and Serve system, which will cause this document to be served  
8 upon the following counsel of record:

9 Richard G. Campbell, Esq.  
10 The Law Office of  
11 Richard G. Campbell, Jr., Inc.  
12 200 South Virginia Street, 8th Floor  
13 Reno, NV 89502  
14 Telephone: (775)-686-2446  
15 Facsimile: (775) 997-7417  
16 *Attorneys for Plaintiff*

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

17 I certify under penalty of perjury that the foregoing is true and correct, and that this  
18 Certificate of Service was executed by me on August 25, 2015 at Las Vegas, Nevada.

19   
20 An Employee of HOWARD & HOWARD ATTORNEYS PLLC  
21  
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Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Ste. 1000  
Las Vegas, NV 89169  
(702) 257-1483

# EXHIBIT 16

004674

004674

# EXHIBIT 16

## Real Estate Consulting Agreement Cal Neva Lodge Development

This agreement is entered into between Marriner Real Estate, LLC a Nevada Limited Liability Company (Consultant) and Cal Neva Lodge, LLC also known as Cal Neva Development (Developer) on the 13th day of February 2014.

Marriner Real Estate, LLC agrees to perform the following services for the Cal Neva Development project located in Crystal Bay, Nevada and Kings Beach, California.

### **Term**

Cal Neva Lodge, LLC (Developer) agrees to retain Marriner Real Estate, LLC for a term commencing on February 13, 2014 and continuing until terminated under this Agreement.

### **Relationship of Parties**

Marriner Real Estate is being retained to perform the tasks set forth below as an independent contractor, not an employee or partner of the Cal Neva Lodge Project or its affiliates.

### **Scope of Agreement**

Marriner will manage all aspects of the sales of 5 Founding Memberships and 28 condominiums approved on the site plan.

### **Product Review**

Work with the Developer and its engineers and consultants to review the site plan and building layout of the 28 condominiums to ensure they will meet the needs of the market.

- Review the site plan and make recommendations for view orientation
- Evaluate circulation and neighborhood location
- Review the floor plans and specifications for the condominiums
- Make recommendations for interior and exterior design
- Locate and manage the design and installation of the sales center

## **Competitive Update and Pricing Study**

Conduct a complete study of current and planned developments in the Lake Tahoe area. This study will include the following:

- Overall market review
- Competitive market analysis of current and planned developments
- Update of the resale market in Lake Tahoe area
- Conduct market research to determine the buyer profile for the community
- Identify the specific needs and desires of the buyer
- Develop a pricing strategy for the condominiums
- Prepare a written report of the findings and recommendations

## **Compensation Agreement**

Marriner Real Estate will receive the following compensation for its services.

Commission for the sale/exchange of the Fairwinds Lodge will be reduced to 2.5% of the sale/exchange value. Buyer to pay cost of Exchange documents. Buyer's broker commission of 2.5% to be paid in two phases, \$75,000 upon execution of Exchange documents and balance paid upon closing of development funding or no later than 60 days from execution of Exchange documents.

Upon termination of this agreement all draws will be forgiven.

Marriner Real Estate will be paid a listing portion of the sales commission at 3% of the total sales price for any fully executed condominium or Founding Membership Investment or funding arranged by Marriner Real Estate, LLC.

Outside broker commissions and referral fees will be paid by the developer through escrow.

Upon termination of this Agreement Marriner Real Estate will be paid its commissions on all sales based upon the following conditions.

- 1/3 commission to be paid for a signed contract
- 1/3 commission to be paid for contracts with loan approval or all cash purchases.
- 1/3 commission to be paid on all escrows that close within 60 days of termination.

Cal Neva Development will include an Honorary Founding Membership with no fees to Marriner Real Estate, LLC

All other expenses incurred on behalf of the Developer will be reimbursed within 30 days of submitting a pre-approved invoice.

### **Termination**

This Consulting Agreement may be terminated, at will, by either party upon 60 day written notice to the other party. Upon termination, all outstanding expenses will be reimbursed within 30 days and outstanding draws will be forgiven.

### **Indemnity**

Cal Neva Development and Cal Neva Lodge, LLC agree to defend, indemnify and hold Marriner Real Estate, LLC and its agents harmless for any and all claims, demands, losses, expenses, damages, attorney fees and cost which Marriner Real Estate, LLC and its agents shall or may at any time sustain or incur by reason or in consequence of any actions taken by Developer or its associates without Marriner Real Estate's actual or constructive knowledge.

### **Additional Work**

Any consulting work outside the scope of this Agreement will be subject to a separate work contract and additional fees at a rate of \$150 per hour.

Cal Neva Development and its subsidiaries agree to the terms outlined in this Real Estate Consulting Agreement.

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Marriner Real Estate, LLC  
A Nevada Limited Liability Company  
David Marriner, Member

\_\_\_\_\_  
Cal Neva Development  
Cal Neva Lodge, LLC  
Robert Radovan, Managing Director

All other expenses incurred on behalf of the Developer will be reimbursed within 30 days of submitting a pre-approved invoice.

### Termination

This Consulting Agreement may be terminated, at will, by either party upon <sup>30</sup> ~~60~~ day written notice to the other party. Upon termination, all outstanding expenses will be reimbursed within 30 days and outstanding draws will be forgiven. *RR 1/24*

### Indemnity

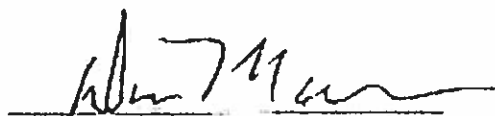
Cal Neva Development and Cal Neva Lodge, LLC agree to defend, indemnify and hold Marriner Real Estate, LLC and its agents harmless for any and all claims, demands, losses, expenses, damages, attorney fees and cost which Marriner Real Estate, LLC and its agents shall or may at any time sustain or incur by reason or in consequence of any actions taken by Developer or its associates without Marriner Real Estate's actual or constructive knowledge.

### Additional Work

Any consulting work outside the scope of this Agreement will be subject to a separate work contract and additional fees at a rate of \$150 per hour.

Cal Neva Development and its subsidiaries agree to the terms outlined in this Real Estate Consulting Agreement.

Date 2/13/14



Marriner Real Estate, LLC  
A Nevada Limited Liability Company  
David Marriner, Member

Date 2-14-14



Cal Neva Development  
Cal Neva Lodge, LLC  
Robert Radovan, Managing Director

# EXHIBIT 17

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# EXHIBIT 17



**CAL NEVA LODGE, LLC**  
**AMENDED AND RESTATED**  
**OPERATING AGREEMENT**

**Dated: May 1, 2014**

004680

## CAL NEVA LODGE, LLC

### AMENDED AND RESTATED OPERATING AGREEMENT

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

#### BACKGROUND FACTS:

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

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

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

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

#### ARTICLE 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.43.2 any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705 (a)(2)(B) expenditures pursuant to Section 1.704-1 (b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits or Losses pursuant to this subsection 1.44 will be subtracted from such taxable income or loss;

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

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

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

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

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

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



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

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

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

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

## ARTICLE 2 ORGANIZATION AND TERM

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

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

2.1.1 a change in the Company name;

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

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

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

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

2.3.1 December 31, 2063;

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

2.3.3. entry of a decree of judicial dissolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE 3 PURPOSES AND POWERS OF THE COMPANY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE 4 MEMBERS, DUTIES, CAPITAL CONTRIBUTIONS AND LOANS

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

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

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

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

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

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

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

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

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

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

4.7.1 withdraw his/its Capital Contribution;

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

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

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

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

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

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

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

## **ARTICLE 5 ALLOCATIONS OF PROFITS AND LOSSES**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**5.6 Tax Matters Partner**

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

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

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

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

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

**ARTICLE 6**  
**DISTRIBUTIONS; BOOKS AND RECORDS; AUDITS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 7 DEVELOPMENT AND MANAGEMENT OF THE PROPERTY**

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

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

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

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

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

## **ARTICLE 8 MANAGEMENT OF THE COMPANY**

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

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

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

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

8.3.2 the dissolution of the Company;

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

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

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

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

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

8.3.8 approval of the Operating Budget and any amendments thereto;

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## **ARTICLE 9 MANAGER**

### **9.1 Manager.**

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

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

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

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

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

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

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

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

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

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

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

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

#### 9.4 **Removal of a Manager.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 10 MEETINGS AND VOTES OF MEMBERS**

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

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

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

### **10.4 Court Ordered Meeting.**

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

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

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

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

### **10.5 Notice.**

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

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

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

#### 10.6 Waiver of Notice.

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

10.6.2 By attending a meeting, a Member:

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

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

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

#### 10.8 Voting Procedures.

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

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

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

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

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

## ARTICLE 11 MEMBERS' LIABILITY AND INDEMNITY

### 11.1 **Members.**

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

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

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

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



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

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

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

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

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

## **ARTICLE 12 TRANSFERS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.5.3 the transfer as a gift and for no consideration;

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

12.5.5 the occasional accommodation transfer by a Member; or

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

**12.6 Transfers with Members' Approval.**

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

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

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

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

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

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

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

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

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

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

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

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

### **ARTICLE 13**

#### **TERMINATION AND DISSOLUTION**

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

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

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

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

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

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

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

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

13.4.1 To the expenses of such liquidation;

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

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

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

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

#### **ARTICLE 14 DISPUTE RESOLUTION**

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

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

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

#### **ARTICLE 15 AMENDMENTS**

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

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

#### **ARTICLE 16 MISCELLANEOUS**

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

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

If to CR: CR Cal Neva, LLC  
c/o Criswell Radovan, L.L.C.  
1336-D Oak Street  
St. Helena, California 94574  
Attn: Robert Radovan  
Facsimile: 707/963-0513

With copy to: Powell Coleman & Arnold LLP  
8080 North Central Expressway, Suite 1380  
Dallas, Texas 75206  
Attn: Bruce Coleman, Esq.  
Facsimile: 214/373-8768

If to other Members: At the addresses set forth on Schedule 4.1

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

#### **16.12 Indemnities.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CR CAL NEVA, LLC

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

004722

004722

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

By: \_\_\_\_\_

  
Brandon Chaney, Manager

MUNNERLYN REVOCABLE TRUST dated  
September 17, 1997

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

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

004724

004724

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

By:   
John Paye, Manager

004725

CEA VENTURES, LP

By: CEA Holdings, LLC,  
General Partner

By:   
Donna M. Gibson, Managing Member

**OAKDALE AVENUE PARTNERS, LP**


By: **Oakdale Avenue Management, LLC,  
General Partner**

By:   
**John F. Miller, Manager**

004727

004727



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

004728

004728

By: \_\_\_\_\_

004729

Sep 04 14 06:50a Dixon Financial Services

5305500695

p.1

Sep 03 14 05:59p D F S

925 293 3524

p.1

DIXON FAMILY TRUST  
DATED NOVEMBER 1, 1994

By: *Michael A. Dixon*, Trustee  
Michael A. Dixon, Trustee


By: *Sharon L. Dixon*  
Sharon L. Dixon, Trustee

MARTIN FAMILY TRUST  
DATED APRIL 20, 2000

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

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

## SINATRA FAMILY CAL NEVA INVESTORS


By:   
Robert A. Finkelstein,  
Trustee/Managing Member

004732

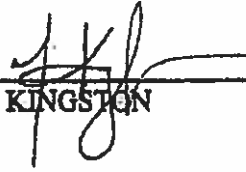
004732

THORPE INVESTMENTS, LP

By:   
Allen R. Thorpe, General Partner



ARTHUR PRIESTON

  
MOLLY KINGSTON

004735

004735



Sep 05 14 12:21p

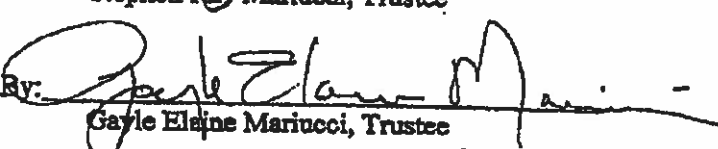
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MARIUCCI LIVING TRUST UNDER  
AGREEMENT DATED JULY 5, 1989,  
AS AMENDED

By:  Trustee  
Stephen Ray Mariucci, Trustee

By:  Trustee  
Gayle Elaine Mariucci, Trustee

004736

004736

MARRINER REAL ESTATE, LLC,  
a Nevada limited liability company

By: 

Dave Marriner, Manager

## LADERA DEVELOPMENT, LLC

By: Name: James PickettTitle: Managing Member

## Schedule 4.1

## MEMBERS AND INTERESTS

As of November 24, 2014

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

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

## 2. SPONSOR MEMBER

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

Ladera Development, LLC	16475 Bordeaux Drive Reno, Nevada 89511	10%
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## Schedule 4.2

**CAPITAL CONTRIBUTIONS OF PREFERRED MEMBERS**  
**As of November 24, 2014**

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

## Schedule 4.3

## USES OF CAPITAL CONTRIBUTIONS

1. Repayment of bridge loan note in the amount of \$6,000,000.00, plus accrued interest, due on or before April 30, 2014.
2. Payment to Seller of approximately \$10,000,000.00 to redeem its equity interest in New Cal Neva.
3. Provide additional development capital for the Project.

1. \$7.3 MM  
2. \$11.0 MM  

---

\$18.3

## Schedule 8.4

EXECUTIVE COMMITTEE  
As of October 7, 2014

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



# EXHIBIT 18

004744

004744

# EXHIBIT 18

**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](mailto: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](mailto: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 &

1



GSY004797

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

# EXHIBIT 19

004747

004747

# EXHIBIT 19

FILED  
Electronically  
CV16-00767  
2018-03-12 01:46:55 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6572400

1 **CODE: 1880**  
2 **ANDREW N. WOLF (#4424)**  
3 **JEREMY L. KRENEK (#13361)**  
4 **Incline Law Group, LLP**  
5 **264 Village Blvd., Suite 104**  
6 **Incline Village, Nevada 89451**  
7 **(775) 831-3666**

8 **Attorneys for Defendants DAVID MARRINER and**  
9 **MARRINER REAL ESTATE, LLC**

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

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

16 **Plaintiff,**

17 **v.**

18 **CRISWELL RADOVAN, LLC, a Nevada**  
19 **limited liability company; CR Cal Neva,**  
20 **LLC, 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.**

**CASE NO. CV16-00767**

**DEPT NO. B7**

**JUDGMENT**

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

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

7 On September 8, 2017, at the conclusion of the trial and following the close of the  
8 evidence, Judge Flanagan, ruling from the bench, orally stated his findings of fact, conclusions  
9 of law and decision on the record in open court pursuant to NRCP 52. Judge Flanagan also  
10 adopted the proposed findings of fact submitted by the defendants prior to trial. Transcript  
11 1131:14-16.

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

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

19 Subsequently, the matter was assigned to the undersigned District Judge. On November  
20 13, 2017, the court held a status conference wherein the court directed the parties to file briefs  
21 regarding the appropriate procedure to be followed after Judge Flanagan's untimely passing.  
22 This briefing was completed on or about February 2, 2018. Based on the briefing, the court  
23 determines that the primary rules which govern further proceedings by the undersigned  
24 successor judge are NRCP 52 (findings by the court; judgment on partial findings), NRCP 58  
25 (entry of judgment) and NRCP 63 (inability of a judge to proceed).

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

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

9 Under NRCP 63, the court has discretion to recall witnesses. The court finds no need or  
10 reason to recall witnesses. See: *Smith's Food King v. Hornwood*, 108 Nev. 666, 836 P. 2d 1241  
11 (1992); and, *Canseco v. United States*, 97 F.3d 1224, 1227 (9<sup>th</sup> Cir. 1996) [successor judges  
12 need only certify their familiarity with those portions of the record that relate to the issues  
13 before them]. Compare: *Mergentime Corporation v. Washington Metropolitan Area Transit*  
14 *Authority*, 166 F.3d 1257 (DC Cir. 1999). Accordingly, the court now enters judgment as  
15 follows:

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

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

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

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