

1 MR. LITTLE: Objection, calls for a
2 legal conclusion.

3 A. Yes.

4 Q. Okay. When Mr. Radovan told you
5 that -- that -- about the deal with Mr. Yount,
6 had you seen a signed resolution which would have
7 authorized that transfer of the share?

8 MR. LITTLE: Well, hold on.
9 Objection, mischaracterizes his testimony.

10 He never said that Mr. Radovan told
11 him that. And that would be attorney-client
12 privilege regardless.

13 MR. CAMPBELL: Let me rephrase.

14 Q. Mr. Criswell -- I mean, excuse me --
15 Mr. Coleman, when you -- when you found out about
16 the nature of the transaction between Mr. Yount
17 and CR, would it have required a resolution that
18 you draft -- the same as you drafted here -- had
19 to have been approved in order for CR to transfer
20 its share to Mr. Yount in October --

21 MR. LITTLE: Objection --

22 Q. -- of 2015?

23 MR. LITTLE: Objection, calls for a
24 legal conclusion, foundation.

25 Q. You may answer.

1 A. Yes, it would require approval. I
2 mean, not necessarily in this form, but it would
3 require approval of 67 percent.

4 Q. Did it give you any pause that they --
5 that Mr. Radovan or anybody at CR had not told
6 you that there had been a resolution already
7 passed by the members?

8 MR. LITTLE: Objection, assumes facts,
9 attorney-client privilege.

10 MR. CAMPBELL: Counsel, are you going
11 to instruct him not to answer this one?

12 MR. LITTLE: No, I'm just instructing
13 him not to talk about client communications,
14 but he can talk about his understanding.

15 MR. CAMPBELL: Okay.

16 MR. LITTLE: I just think you're
17 assuming a fact in that.

18 If you understand the question, you
19 can answer it.

20 A. Well, I understand the question. I --
21 I gave advice -- I gave legal advice to CR at the
22 same time that I sent them the draft of the
23 proposed assignment.

24 Q. As of October 13th or 14th, to your
25 knowledge, had there been a signed resolution by

1 the members of the company authorizing the
2 transaction between Mr. Yount and CR?

3 A. I don't have any knowledge of that.

4 Q. You don't know one way or the other?

5 A. Well, if you're asking -- maybe -- let
6 me rephrase that.

7 As of that date, I had no knowledge of
8 that.

9 Q. And then in -- under Exhibit
10 Number 41, you were, in fact, drafting a
11 resolution that would be backed -- that would be
12 effective back to that -- the date of the
13 transaction, right?

14 A. Correct.

15 Q. So --

16 A. By that date, I was -- by that date, I
17 was told that there was no resolution signed.

18 Q. Okay. So you didn't know one way or
19 the other in October, but by -- but by February
20 of 2016, you knew there had been no resolution?

21 A. Yes.

22 Q. But in October, you knew that, under
23 the Operating Agreement, a resolution would have
24 been required to transfer the share from CR to
25 Mr. Yount?

1 A. Yes.

2 MR. LITTLE: Asked and answered.

3 Q. Did you say yes?

4 A. Yeah. I said yes, uh-huh.

5 Q. I didn't -- I'm not hearing you.

6 A. Yes.

7 MR. CAMPBELL: We've lost our audio.

8 THE WITNESS: Can you hear me?

9 MR. LITTLE: And I don't see him
10 anymore.

11 (Off the record.)

12 MR. CAMPBELL: Could you read back the
13 question and the answer.

14 (Record read.)

15 (Exhibit Number 42 marked.)

16 Q. So Exhibit Number 42, which would have
17 been the e-mail from Mr. Yount to -- but a -- and
18 is your copy a -- it goes from 250 to -- I'm
19 sorry -- 251. It's a two-page document.

20 A. I have it.

21 Q. Okay.

22 MR. LITTLE: Where are you at, Rick?

23 MR. CAMPBELL: It's a Yount e-mail to
24 Mr. Coleman, dated February 2nd, 2016, and
25 it's a follow-on e-mail to Exhibit

1 STATE OF TEXAS)

2 COUNTY OF DENTON)

3
4 I, Therese J. Casterline, Certified Shorthand
5 Reporter, in and for the State of Texas, certify
6 that the foregoing deposition of BRUCE COLEMAN
7 was reported stenographically by me at the time
8 and place indicated, said witness having been
9 placed under oath by me, and that the deposition
10 is a true record of the testimony given by the
11 witness.

12 I further certify that I am neither counsel
13 for nor related to any party in this cause and am
14 not financially interested in its outcome.
15 Given under my hand on this the 2nd day of
16 May, 2017.


17
18 
Therese J. Casterline, RMR, CRR, CSR
TSG Reporting - Worldwide
19 747 Third Avenue
20 New York, New York 10017
21 (877) 702-9580
22
23
24
25

EXHIBIT 11

000354

Bruce Coleman

From: Bruce Coleman
Sent: Monday, March 21, 2016 12:46 PM
To: 'Stuart Yount'
Cc: Geri Yount
Subject: RE: Yount IRA Investment

Mr. Yount- I do not represent you and do not feel it is appropriate to get into a back and forth conversation regarding your previous transaction with CR. If you have issues about that transaction, I suggest you deal directly with CR.

Bruce R. Coleman
 Powell Coleman & Arnold LLP
 8080 N. Central Expressway
 Suite 1380
 Dallas TX 75206
 214/373-8782 (phone)
 214/373-8768 (fax)
bcoleman@pcallp.com

From: Stuart Yount [<mailto:syount@fortifiber.com>]
Sent: Friday, March 18, 2016 10:36 PM
To: Bruce Coleman
Cc: Geri Yount
Subject: RE: Yount IRA Investment

Please provide us the documentation where you were "...told by CR that it had sold 50% of its \$2M interest in Cal Neva Lodge, LLC to you for \$1M and that the payment would be transferred through my trust account."

Stuart Yount

300 State Route 28
 Box 308
 Crystal Bay, NV 89402
 (775) 843-0486

From: Bruce Coleman [<mailto:BColeman@pcallp.com>]
Sent: Friday, March 18, 2016 4:22 PM
To: Stuart Yount <syount@fortifiber.com>
Cc: Geri Yount <geriattahoe@fortifiber.com>
Subject: RE: Yount IRA Investment

I was told by CR that it had sold 50% of its \$2M interest in Cal Neva Lodge, LLC to you for \$1M and that the payment would be transferred through my trust account. At the time of this transaction Cal Neva Lodge, LLC had already sold all of the shares it was authorized to sell under the terms of its Operating Agreement, so I had no reason to question the sale of a portion of CR's interest to you.

Bruce R. Coleman
 Powell Coleman & Arnold LLP

8080 N. Central Expressway
Suite 1380
Dallas TX 75206
214/373-8782 (phone)
214/373-8768 (fax)
bcoleman@pcallp.com

From: Stuart Yount [<mailto:syount@fortifiber.com>]
Sent: Friday, March 18, 2016 4:23 PM
To: Bruce Coleman
Cc: Geri Yount
Subject: RE: Yount IRA Investment

Thank you, Mr. Coleman. Why did you send our money to CR instead of Cal Neva LLC, please?

Stuart Yount

300 State Route 28
Box 308
Crystal Bay, NV 89402
(775) 843-0486

From: Bruce Coleman [<mailto:BColeman@pcallp.com>]
Sent: Friday, March 18, 2016 2:13 PM
To: Stuart Yount <syount@fortifiber.com>
Cc: Geri Yount <geriattahoe@fortifiber.com>
Subject: RE: Yount IRA Investment

Mr. Yount:

I have attached the receipt for the wire transfer that was made from my account on October 15, 2015 when the money was transferred to CR. Let me know if you need anything else.

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@pcallp.com

From: Stuart Yount [<mailto:syount@fortifiber.com>]
Sent: Friday, March 18, 2016 12:12 PM
To: Bruce Coleman <BColeman@pcallp.com>
Cc: Geri Yount <geriattahoe@fortifiber.com>
Subject: RE: Yount IRA Investment

Any progress on this requested documentation, Mr. Coleman?

Stuart Yount

300 State Route 28
Box 308
Crystal Bay, NV 89402
(775) 843-0486

From: Bruce Coleman [<mailto:BColeman@pcallp.com>]
Sent: Wednesday, March 16, 2016 2:03 PM
To: Stuart Yount <syount@fortifiber.com>
Subject: RE: Yount IRA Investment

Mr. Yount- I will check my records and get back to you.

Bruce R. Coleman
Powell Coleman & Arnold LLP
8080 N. Central Expressway
Suite 1380
Dallas TX 75206
214/373-8782 (phone)
214/373-8768 (fax)
bcoleman@pcallp.com

From: Stuart Yount [<mailto:syount@fortifiber.com>]
Sent: Wednesday, March 16, 2016 11:04 AM
To: Bruce Coleman
Subject: Yount IRA Investment

I attach the wire of my IRA funds to your law firm: Powell, Coleman & Arnold LLP on 10/14/15. In reviewing the Cal Neva LLC records, we are having difficulty finding this deposit. Please provide documentation showing where your firm sent our \$1,000,000.00. Thank you.

Stuart Yount

300 State Route 28
Box 308
Crystal Bay, NV 89402
(775) 843-0486

OUTGOING WIRE TRANSFER Bank Name: COMPASS BANK

Wire Created by UserID: sc57182 Date: 10/15/2015 Time: 12:12:54
 Branch: 99999 Name: Default Branch Phone #: _____
 Amount: 1,000,000.00 USD WIRE FEE AMOUNT: Refer to Schedule of Fees.
 Ins Amount: _____ Ins Currency: _____ Exchange Rate: _____
 Account #: _____
 Customer Name: POWELL & COLEMAN, L. P. Phone #: _____
 Address 1: 8080 N CENTRAL EXPY STE 1380 Address 2: DALLAS, TX 752061846
 City, State, Zip: _____

BANK INFORMATION

Destination Bank Name: WELLS FARGO NA Bank ABA: 121000248
 Destination Bank Address 1: 155 5TH STREET
 Destination Bank Address 2: _____
 Destination Bank Address 3: _____
 Beneficiary Bank Name: _____ Bank ABA: _____
 Beneficiary Bank Address 1: _____
 Beneficiary Bank Address 2: _____

CUSTOMER (BENEFICIARY) INFORMATION

Beneficiary Name to Credit: CRISWELL RADOVAN, LLC
 Account Number to Credit: _____
 Beneficiary Address 1: _____
 Beneficiary Address 2: _____
 City, State, Zip: _____
 Other Information: 151015120809WLJP
 Bank to Bank Info: _____

BSA INFORMATION

Tax ID #: _____ Drivers License #: 06272260 State: TX
 Name: Bruce Coleman SSN #: 465-80-4308
 Address 1: 8080 N Central Expy. Address 2: Ste. 1380
 City: Dallas State, Zip: TX - 75206
 Comments :
 If this wire is being made on behalf of someone else, need true originator's
 Tax ID #: _____ Drivers License #: _____ Alien ID #: _____
 Passport #: _____ Country of Issuance: _____

Customer Signature: _____ Date: _____

When used in the Agreement, "Compass" shall mean Compass Bank, or any other affiliate of Compass Bancshares, Inc. This Agreement is made between Compass, and the customer named as the originating party on the front of this form ("Customer").

1. **Authorization for Funds Transfer Services.** Compass is authorized and directed to execute and charge to Customer's accounts at Compass the funds transfer payment order appearing on the front of this form. Customer warrants and represents that it has reviewed the information appearing on the front of this form and that such information is accurate. In addition to the amount of the payment order, Customer agrees to pay Compass's customary fees for funds transfers of this type, and any direct or indirect transfer charges incurred by Compass.
2. **Honoring Payment Orders.** Compass is not obligated to execute or honor this payment order, either in whole or part, if (i) the amount of the payment order exceeds Customer's collected funds on deposit with Compass, unless Customer pays Compass in cash; (ii) Compass believes for any reason, whether or not justified, that this payment order is not authorized; or (iii) the information on the other side of this form does not provide all information required by Compass, or does not otherwise comply with this Agreement. If a payment order identifies an intermediary of beneficiary's bank only by an identifying number, Compass is instructed to rely on the number as proper identification of the bank without further inquiry. If a payment order identifies an intermediary or beneficiary's bank both by name and account number, and the name and account number identify different persons, or contain any other error, Customer is liable for all losses relating to the payment order.
3. **Amendment to Payment Order.** After Compass executes this payment order, Compass shall have no obligation or duty to reverse, revoke or alter this payment order. Compass will make a reasonable effort to comply with Customer's request prior to execution if Compass's Funds Transfer Department has been given sufficient notice and a reasonable opportunity to act. Any request must provide the amount and recipient of the proposed funds transfer.
4. **Executing Payment Orders.** Compass will execute payment orders on the day of receipt, if received within Compass's Funds Transfer Department's cut-off time, and the day of receipt is a banking day for Compass and the applicable Federal Reserve Bank. All payment orders must be made in accordance with Compass's standard transfer procedures which Compass shall be entitled to modify from time to time. Compass may execute payment orders in any order and select the means and routes which Compass considers appropriate under the circumstances.
5. **Standard of Care; Limitation of Liability; Indemnity.** Compass agrees to use substantially the same type of procedures and equipment in performing this payment order for Customer as Compass uses in performing similar services on its own behalf. The above standards of care, and Compass's compliance with any instructions given, or believed by Compass to be given by Customer, shall constitute proper, reasonable and ordinary standards of care. Notwithstanding any other provision in this Agreement, or in any other document or relationship between Compass and Customer, except as required by law, Compass is not liable for, and Customer releases and waives all claims against Compass relating to any loss, damages or costs incurred by Customer, or any other person or entity, by reason of anything done or not done by Compass relating to this payment order or under this Agreement, unless resulting solely from Compass's bad faith or gross negligence. Compass shall not be liable under any circumstances for any consequential, special, punitive, incidental or similar damages in connection with this Agreement. Compass shall incur no liability for delays, errors, failures or damages occurring by reason of circumstances beyond Compass's reasonable control, including, without limitation, conflicts with federal or state law or regulation, government actions, national emergencies, labor difficulties, fire, catastrophe, acts of God, weather, equipment malfunction, war, riots, failure of power, communication or transportation. To the full extent allowed by law, Customer will indemnify and hold Compass, its officers, employees, agents and contractors, harmless from any claim, loss, penalty, assessment, cost or damage, whether in contract or in tort, including attorney's fees, which Customer or any other person may suffer or be liable for, arising out of any errors, negligence, action, non-action or involvement by Customer or Compass under this Agreement, including stop payments and amendments to payment orders requested by Customer, except as results solely from Compass's bad faith or gross negligence. Customer acknowledges Compass's inability to foresee any special circumstances which may result in special or consequential losses to Customer. The provisions of the Section 5 are assignment of risk provisions forming the basis of the bargain and consideration for this Agreement. Customer must bring any allowable claim against Compass arising under this Agreement not later than one (1) year from the date of the event giving rise to the claim. EXCEPT AS PROVIDED HEREIN OR REQUIRED BY LAW, COMPASS MAKES NO REPRESENTATION, WARRANTIES, AGREEMENTS OR GUARANTIES, EXPRESS OR IMPLIED.
6. **Arbitration: Actions.** Any controversy or claim arising out of or relating to the payment order or this Agreement shall be settled by arbitration in the City of Birmingham, Alabama, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and the judgement upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. This agreement to arbitrate shall be specifically enforceable under applicable law in any court of competent jurisdiction. Unless specifically waived in writing, Compass shall not be deemed to have waived its right to compel arbitration hereunder by instituting legal action or taking any other action. Customer submits to jurisdiction in the State of Alabama for any action or cause of action arising out of this Agreement.
7. **Miscellaneous.** This Agreement is the entire agreement between the parties, supersedes all prior agreements relating to the matters provided in the Agreement, and shall not be modified nor any provision waived except in writing by Compass and Customer. Any such waiver shall be effective only for the specific purposed, circumstances and duration provided. There are no third party beneficiaries of the Agreement. This Agreement is made in Alabama, shall be effective only upon Compass's acceptance in Alabama and shall be governed by the laws of the State of Alabama and applicable federal laws and regulations.

CR000246

FILED
Electronically
CV16-00767
2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 12

000360

OUTGOING WIRE TRANSFER Bank Name: COMPASS BANK

Wire Created by UserID: sc57182 Date: 10/15/2015 Time: 12:12:54
 Branch: 99999 Name: Default Branch Phone #: _____
 Amount: 1,000,000.00 USD WIRE FEE AMOUNT: Refer to Schedule of Fees.
 Ins Amount: _____ Ins Currency: _____ Exchange Rate: _____
 Account #: _____
 Customer Name: POWELL & COLEMAN, L. P. Phone #: _____
 Address 1: 8080 N CENTRAL EXPY STE 1380 Address 2: DALLAS, TX 752061846
 City, State, Zip: _____

BANK INFORMATION

Destination Bank Name: WELLS FARGO NA Bank ABA: 121000248
 Destination Bank Address 1: 155 5TH STREET
 Destination Bank Address 2: _____
 Destination Bank Address 3: _____
 Beneficiary Bank Name: _____ Bank ABA: _____
 Beneficiary Bank Address 1: _____
 Beneficiary Bank Address 2: _____

CUSTOMER (BENEFICIARY) INFORMATION

Beneficiary Name to Credit: CRISWELL RADOVAN, LLC
 Account Number to Credit: _____
 Beneficiary Address 1: _____
 Beneficiary Address 2: _____
 City, State, Zip: _____
 Other Information: 151015120809WLJP
 Bank to Bank Info: _____

BSA INFORMATION

Tax ID #: _____ Drivers License #: 06272260 State: TX
 Name: Bruce Coleman SSN #: 465-80-4308
 Address 1: 8080 N Central Expy. Address 2: Ste. 1380
 City: Dallas State, Zip: TX - 75206
 Comments :
 If this wire is being made on behalf of someone else, need true originator's
 Tax ID #: _____ Drivers License #: _____ Alien ID #: _____
 Passport #: _____ Country of Issuance: _____

Customer Signature: _____ Date: _____

CR000245

When used in the Agreement, "Compass" shall mean Compass Bank, or any other affiliate of Compass Bancshares, Inc. This Agreement is made between Compass, and the customer named as the originating party on the front of this form ("Customer").

1. **Authorization for Funds Transfer Services.** Compass is authorized and directed to execute and charge to Customer's accounts at Compass the funds transfer payment order appearing on the front of this form. Customer warrants and represents that it has reviewed the information appearing on the front of this form and that such information is accurate. In addition to the amount of the payment order, Customer agrees to pay Compass's customary fees for funds transfers of this type, and any direct or indirect transfer charges incurred by Compass.
2. **Honoring Payment Orders.** Compass is not obligated to execute or honor this payment order, either in whole or part, if (i) the amount of the payment order exceeds Customer's collected funds on deposit with Compass, unless Customer pays Compass in cash; (ii) Compass believes for any reason, whether or not justified, that this payment order is not authorized; or (iii) the information on the other side of this form does not provide all information required by Compass, or does not otherwise comply with this Agreement. If a payment order identifies an intermediary of beneficiary's bank only by an identifying number, Compass is instructed to rely on the number as proper identification of the bank without further inquiry. If a payment order identifies an intermediary or beneficiary's bank both by name and account number, and the name and account number identify different persons, or contain any other error, Customer is liable for all losses relating to the payment order.
3. **Amendment to Payment Order.** After Compass executes this payment order, Compass shall have no obligation or duty to reverse, revoke or alter this payment order. Compass will make a reasonable effort to comply with Customer's request prior to execution if Compass's Funds Transfer Department has been given sufficient notice and a reasonable opportunity to act. Any request must provide the amount and recipient of the proposed funds transfer.
4. **Executing Payment Orders.** Compass will execute payment orders on the day of receipt, if received within Compass's Funds Transfer Department's cut-off time, and the day of receipt is a banking day for Compass and the applicable Federal Reserve Bank. All payment orders must be made in accordance with Compass's standard transfer procedures which Compass shall be entitled to modify from time to time. Compass may execute payment orders in any order and select the means and routes which Compass considers appropriate under the circumstances.
5. **Standard of Care; Limitation of Liability; Indemnity.** Compass agrees to use substantially the same type of procedures and equipment in performing this payment order for Customer as Compass uses in performing similar services on its own behalf. The above standards of care, and Compass's compliance with any instructions given, or believed by Compass to be given by Customer, shall constitute proper, reasonable and ordinary standards of care. Notwithstanding any other provision in this Agreement, or in any other document or relationship between Compass and Customer, except as required by law, Compass is not liable for, and Customer releases and waives all claims against Compass relating to any loss, damages or costs incurred by Customer, or any other person or entity, by reason of anything done or not done by Compass relating to this payment order or under this Agreement, unless resulting solely from Compass's bad faith or gross negligence. Compass shall not be liable under any circumstances for any consequential, special, punitive, incidental or similar damages in connection with this Agreement. Compass shall incur no liability for delays, errors, failures or damages occurring by reason of circumstances beyond Compass's reasonable control, including, without limitation, conflicts with federal or state law or regulation, government actions, national emergencies, labor difficulties, fire, catastrophe, acts of God, weather, equipment malfunction, war, riots, failure of power, communication or transportation. To the full extent allowed by law, Customer will indemnify and hold Compass, its officers, employees, agents and contractors, harmless from any claim, loss, penalty, assessment, cost or damage, whether in contract or in tort, including attorney's fees, which Customer or any other person may suffer or be liable for, arising out of any errors, negligence, action, non-action or involvement by Customer or Compass under this Agreement, including stop payments and amendments to payment orders requested by Customer, except as results solely from Compass's bad faith or gross negligence. Customer acknowledges Compass's inability to foresee any special circumstances which may result in special or consequential losses to Customer. The provisions of the Section 5 are assignment of risk provisions forming the basis of the bargain and consideration for this Agreement. Customer must bring any allowable claim against Compass arising under this Agreement not later than one (1) year from the date of the event giving rise to the claim. EXCEPT AS PROVIDED HEREIN OR REQUIRED BY LAW, COMPASS MAKES NO REPRESENTATION, WARRANTIES, AGREEMENTS OR GUARANTIES, EXPRESS OR IMPLIED.
6. **Arbitration: Actions.** Any controversy or claim arising out of or relating to the payment order or this Agreement shall be settled by arbitration in the City of Birmingham, Alabama, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and the judgement upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. This agreement to arbitrate shall be specifically enforceable under applicable law in any court of competent jurisdiction. Unless specifically waived in writing, Compass shall not be deemed to have waived its right to compel arbitration hereunder by instituting legal action or taking any other action. Customer submits to jurisdiction in the State of Alabama for any action or cause of action arising out of this Agreement.
7. **Miscellaneous.** This Agreement is the entire agreement between the parties, supersedes all prior agreements relating to the matters provided in the Agreement, and shall not be modified nor any provision waived except in writing by Compass and Customer. Any such waiver shall be effective only for the specific purposed, circumstances and duration provided. There are no third party beneficiaries of the Agreement. This Agreement is made in Alabama, shall be effective only upon Compass's acceptance in Alabama and shall be governed by the laws of the State of Alabama and applicable federal laws and regulations.

CR000246

Exhibit 13

000363

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

4 ---o0o---

5
6 GEORGE STUART YOUNT,
7 Individually and in his
8 Capacity as Owner of
9 GEORGE STUART YOUNT IRA,

10 Plaintiff,

11 -vs-

Case No. CV16-00767

Dept. No. B7

12 CRISWELL RADOVAN, LLC, a
13 Nevada limited liability company;
14 CR Cal Neva, LLC, a Nevada
15 limited liability company;
16 et al.,

17 Defendants.
18 _____/

19 DEPOSITION OF WILLIAM CRISWELL
20 _____
21
22
23

04/12/2017

Reno, Nevada

24 REPORTED BY: KRISTINE BOKELMANN, CCR #165, RDR, CRR
25 JOB NUMBER: 374815

1 A I did not.

2 Q Okay. And then it goes down in the -- let's
3 see -- paragraph starting, "What I did not say." Do
4 you see that?

5 A Where is that again?

6 Q The same page, on that 145.

7 A On page 16.

8 Q And it says --

9 A Yes, I see it. Okay. "What I did not say,"
10 that's correct.

11 Q Yeah, yeah. Okay. Let's look down to the
12 next line down, end of the second line:

13 "The funds which you paid were spent, almost
14 immediately, on past due bills which could not be paid
15 from debt or equity sources at the time."

16 Okay. Let's break that down. The \$1 million
17 was immediately spent on what past due bills?

18 A The only one I'm aware of or that I cared
19 about was getting my daughter repaid for the loan that
20 we had. What other bills were due at that time, I
21 don't know.

22 Q Okay.

23 A But that's what Robert said it was spent on.

24 Q And did you ever see an accounting of where
25 that money -- Mr. Yount's money went?

1 A Not at that time.

2 Q Mr. Radovan would know that in detail?

3 A He would.

4 Q Okay. And when you make the statement "on
5 past due bills which could not be paid from the debt or
6 equity sources at the time," what do you mean by that?

7 A Well, we had advanced close to a million
8 dollars to Cal Neva because there was no other money
9 available to do it, but we were very close to closing
10 the loan with Mosaic, at which case we would be
11 reimbursed from the proceeds of that loan.

12 Q So when you say couldn't be paid out of debt
13 or equity, you're saying that debt or equity could not
14 pay back Criswell Radovan's loans or CR loans to the
15 project?

16 A Not at that time.

17 Q Okay. So did you ever tell Mr. Yount prior
18 to making his loan that his money was going to be to
19 pay back money that Criswell Radovan had loaned to the
20 project?

21 A No.

22 Q Okay.

23 A I don't think I told him that.

24 Q You don't think that would have been
25 important for an investor to know where his funds were

1 going to be spent, to pay back a loan that couldn't be
2 used out of debt or equity?

3 A I'd say I don't think it was any of his
4 business.

5 MR. LITTLE: Hold on. Objection to form.
6 Argumentative.

7 BY MR. CAMPBELL:

8 Q Let me ask you this. I'll rephrase it. Do
9 you think a potential investor should know where his
10 funds are going to be placed?

11 MR. LITTLE: Object to the form; foundation.

12 THE WITNESS: I don't think it's any of his
13 business.

14 BY MR. CAMPBELL:

15 Q Okay. All the documents provided to Mr.
16 Yount I'll represent were the PPM, the offering
17 statement, and some updated reports. As we discussed
18 earlier, all those said that the PPM funds were going
19 to be used for certain specified reasons, right?

20 A Well, depends on what time frame you're
21 talking about. If he had made his money -- his
22 investment when there was still money available under
23 the \$20 million, that would be a correct statement.

24 Q Okay. So the money, if it was supposed to go
25 into the -- in the Private Placement Memorandum, could

1 only be spent on those items designated in the PPM

2 where it could be spent?

3 MR. LITTLE: Objection; foundation.

4 THE WITNESS: Yeah, is that a question?

5 BY MR. CAMPBELL:

6 Q Yeah. Isn't that what you just said, that he
7 had got in under the PPM, then the funds would have to
8 be spent --

9 A That is what I said, yes.

10 Q The funds would have to be spent as
11 designated --

12 A Correct.

13 Q -- where they could be spent under the PPM?

14 A Correct.

15 Q So prior to this email -- well, this email,
16 would this have been the first time that Mr. Yount knew
17 where his funds were going to be spent?

18 MR. LITTLE: Objection; speculation.

19 THE WITNESS: Yeah, I have no idea.

20 BY MR. CAMPBELL:

21 Q You didn't tell him they were going to be
22 spent on paying back you and Mr. -- or CR, right?

23 A Not at the time he made his investment or
24 anything like that.

25 Q And do you know if Mr. Radovan told him that?

Page 111

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

3 I, KRISTINE BOKELMANN, a Certified Court
4 Reporter in and for the County of Washoe, State of
5 Nevada, do hereby certify:

6 That on Wednesday, April 12th, 2017, at the
7 hour of 9:56 a.m. of said day, at The Law Office of
8 Richard G. Campbell, Jr., Inc., 200 South Virginia
9 Street, Reno, Nevada, personally appeared WILLIAM
10 CRISWELL, who was duly sworn by me to testify the
11 truth, the whole truth, and nothing but the truth, and
12 thereupon was deposed in the matter entitled herein;

13 That the deposition was taken in verbatim
14 steno type notes by me, a Certified Court Reporter, and
15 thereafter transcribed into typewriting as herein
16 appears;

17 That the foregoing transcript, consisting of
18 pages 1 through 111, is a full, true, and correct
19 transcription of my stenotype notes of said deposition,
20 to the best of my knowledge, skill and ability.

21 Dated at Reno, Nevada, this 13th day of
22 April, 2017.

23 Kristine A. Bokelmann

24 KRISTINE A. BOKELMANN, CCR #165

EXHIBIT 14

000370

Bruce Coleman

From: Bruce Coleman
Sent: Tuesday, February 02, 2016 4:59 PM
To: syount@fortifiber.com
Cc: William Criswell; robert@criswellradovan.com; Heather Hill
Subject: Assignment of Interest in Cal Neva Lodge, LLC
Attachments: Asgmt of Interest in LLC-01.doc; Resolutions-Cal Neva Lodge.doc; Purchase Agreement-Yount.doc

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@pcallp.com

ASSIGNMENT OF INTEREST IN LIMITED LIABILITY COMPANY

THIS ASSIGNMENT OF INTEREST IN LIMITED LIABILITY COMPANY

("Assignment") is executed as of October 13, 2015, by **CR CAL NEVA, LLC**, a Nevada limited liability company ("Assignor") in favor of **STUART YOUNT** ("Assignee").

WITNESSETH:

WHEREAS, Assignor holds a 6.37% ownership interest as a Preferred Member of Cal Neva Lodge, LLC, a Nevada limited liability company (the "Company");

WHEREAS, Assignor desires to assign a 3.18% ownership interest as a Preferred Member in the Company (the "Transferred Interest") to Assignee, which represents one-half of the ownership interest currently held by Assignor as a Preferred Member;

WHEREAS, Assignor and Assignee have erroneously executed a Subscription Agreement (the "Subscription Agreement") dated October 13, 2015 indicating that Assignee was purchasing an interest as a Preferred Member of the Company from the Company, when it is actually the intention of the parties that Assignee purchase such interest from Assignor rather than the Company; and

WHEREAS, the parties intend that this Assignment shall supersede and replace the Subscription Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee do hereby agree as follows:

1. Assignment of Transferred Interest. Assignor hereby transfers, assigns and conveys to Assignee the Transferred Interest and the economic rights and interests pertaining thereto.

2. Subscription Agreement Superseded. Assignor and Assignee hereby acknowledge and agree that the Subscription Agreement is superseded and replaced by this

Assignment, and such Subscription Agreement is hereby terminated and is declared null and void.

3. Further Assurances. Assignor and Assignee further agree that each will do or cause to be done such further acts and shall execute, acknowledge and deliver such further instruments as may be reasonably required by either of them to fully effectuate the assignment made herein.

4. No Third Party Beneficiary. This Assignment is intended for the benefit only of the parties hereto, and is not intended to benefit, nor shall it be construed so as to benefit, any other person or entity.

5. Applicable Law. This Assignment is governed by and shall be construed in accordance with the laws of the State of Nevada.

6. Counterpart Execution. This Assignment may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all counterparts shall be construed together and constitute one and the same Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

ASSIGNOR:

CR CAL NEVA, LLC,
a Nevada limited liability company

By: _____
Name: _____
Title: _____

**RESOLUTIONS OF MEMBERS OF
CAL NEVA LODGE, LLC**

At a special meeting of the Members held on January 27, 2016, the undersigned Members, holding at least 67% of the Percentage Interests in Cal Neva Lodge, LLC (the "Company"), approved the following Resolution:

RESOLVED, that the Company hereby approves that certain Assignment of Interest in Limited Liability Company in the form attached hereto, pursuant to which CR Cal Neva, LLC ("Assignor") shall assign to Stuart Yount ("Assignee") one-half of the ownership interest in the Company currently held by Assignor as a Preferred Member, as described therein, and that Assignee is approved as a new Preferred Member in the Company, with all rights of a Preferred Member as set forth in the Operating Agreement of the Company.

This Resolution is to be effective as of October 13, 2015.

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is by and between STUART YOUNT ("Seller") and CR CAL NEVA, LLC, a Nevada limited liability company ("Buyer").

RECITALS:

A. Seller currently owns a 3.18% interest (the "Interest") as a Preferred Member in Cal Neva Lodge, LLC, a Nevada limited liability company (the "Company").

B. Seller desires to sell, and Buyer desires to purchase, the Interest on the terms set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto as agree as follows:

1. Agreement to Sell. Seller hereby agrees to sell the Interest to Buyer, and Buyer hereby agrees to purchase the Interest from Seller, in accordance with the terms set forth herein.

2. Purchase Price. The Purchase Price for the Interest shall be \$1,000,000.00, payable in cash.

3. Closing Date. The closing of the sale of the Interest shall occur no later than ten (10) days following the date on which the Company repays Buyer the \$1,016,388, as of November 30, 2015, previously loaned by Buyer to the Company (the "Loan"). In the event that (a) Cal Neva Resort has been completed and reopened to the public, and (b) the Loan has not been repaid to Buyer on or before December 31, 2016 for reasons that are beyond the control of Buyer, then Seller shall have the option, by delivering written notice to Buyer by January 15, 2017, to either (i) terminate this Agreement and retain its Interest, or (ii) continue this Agreement until December 31, 2017. If Seller elects option (ii), then Seller shall continue to be required to sell, and Buyer shall be required to purchase, the Interest if at any time prior to December 31, 2017 the Loan is repaid to Buyer or Buyer receives distributions from the Company in a cumulative amount of at least \$1,000,000 (not including any management fees paid to the management company). If the conditions set forth above have not occurred by December 31, 2017, then this Agreement shall automatically terminate and Seller shall retain the Interest.

4. Approval of Members. The closing of the transaction described herein is contingent upon this Agreement receiving the approval of Members in the Company who collectively own at least 67% of the Percentage Interests in the Company. Such approval must be in writing and pursuant to the terms of the Operating Agreement of the Company.

5. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

6. Choice of Law. This Agreement shall be governed under the laws of the State of Nevada.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the _____ day of _____, 2016.

SELLER:

Stuart Yount

BUYER:

CR CAL NEVA, LLC,
a Nevada limited liability company

By: _____
Name: _____
Title: _____

brc\10252\029\Purchase Agreement-Yount.doc

24

24

CODE: \$2200

ANDREW N. WOLF (#4424)
JEREMY L. KRENEK (#13361)
Incline Law Group, LLP
264 Village Blvd., Suite 104
Incline Village, Nevada 89451
(775) 831-3666

Attorneys for Defendants DAVID MARRINER and
MARRINER REAL ESTATE, LLC

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

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

CASE NO. CV16-00767

DEPT NO. B7

Plaintiff,

v.

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

Defendants.

**DEFENDANTS DAVID MARRINER AND MARRINER REAL ESTATE, LLC'S
MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

TO THE HON. PATRICK FLANAGAN, DISTRICT JUDGE, AND TO PLAINTIFF
AND HIS ATTORNEYS OF RECORD:

1 PLEASE TAKE NOTICE THAT defendants DAVID MARRINER and MARRINER
2 REAL ESTATE, LLC (collectively "Marriner"), hereby move the court for summary judgment
3 or, in the alternative, for partial summary judgment, under NRCP 56, on all claims against
4 Marriner contained in the Second Amended Complaint.

5 PLEASE TAKE FURTHER NOTICE THAT Marriner hereby joins in the motions for
6 summary judgment and/or partial summary judgment which may be asserted by the other
7 defendants, to the extent they relate to any claims for relief jointly asserted against Marriner.

8 This Motion is based on NRCP 56, the following memorandum of points and
9 authorities, and the concurrently filed Volume of Evidence and the declaration and exhibits
10 contained therein.

11 **Affirmation:** The undersigned hereby affirms that the foregoing document does not
12 contain the social security number of any person.

13 Dated: June 28, 2017.

14 INCLINE LAW GROUP, LLP

15 By: s/Andrew N. Wolf
16 ANDREW N. WOLF
17 Nevada State Bar No. 4424
18 Attorneys for Defendants DAVID MARRINER
19 and MARRINER REAL ESTATE, LLC
20
21
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28

MEMORANDUM OF POINTS AND AUTHORITIES

1. Introduction

This action seeks damages for alleged fraud in the sale of an LLC membership. The proposed investment was a membership interest in a limited liability company refurbishing the old Cal Neva Lodge in Crystal Bay, on the North Shore of Lake Tahoe. Plaintiff alleges that there were material misrepresentations or omissions in conjunction with the sale of the membership interest. Furthermore, plaintiff alleges that the interest transferred to him is not the interest he intended to purchase. Marriner was a real estate development, sales and marketing consultant for the project developer and is named as a defendant in the action. The presently operative Second Amended Complaint filed September 27, 2016 (“SAC”), asserts the following three claims against Marriner based on alleged fraud:

Third Cause of Action: Fraud (i.e., common law fraud);

Sixth Cause of Action: Punitive damages;

Seventh Cause of Action: Fraud under NRS 90.570 in the Offer, Sale and Purchase of a Security.

Previously, Marriner filed a motion under NRCP 12 and NRCP 9(b) seeking more specificity in Yount’s allegations of fraud vis-à-vis Marriner. Marriner asserted that his allegedly fraudulent conduct had been lumped together collectively with the alleged actions of all other defendants under a general format of “*everybody did everything.*” The court granted the motion with leave to amend. In response, the SAC more fully alleges Yount’s particular allegations against Marriner.

2. The Second Amended Complaint

In the SAC, Yount alleges the following particular facts vis-à-vis Marriner (paragraph numbers are from the SAC are indicated):

A. “Marriner told Yount that Criswell and Radovan had a successful track record in developing high end hotel/resort properties.” (SAC ¶13, 3:27-28)

B. “Marriner also provided marketing and promotional materials related to the Project, and tours of the Cal Neva Lodge.” (SAC ¶13, 3:28-4:1)

- 1
- 2 C. "On or about July 22, 2015, Marriner represented to Yount that the project was on
- 3 schedule, and would open in December 2015..." (SAC ¶14, 4:3-4)
- 4
- 5 D. "On or about July 22, 2015, Marriner ... sent to Yount via e-mail an attached
- 6 construction progress report that did not disclose that the project was substantially
- 7 over budget, was in need of a cash infusion and that the General Contractor, Penta,
- 8 had not been paid, facts which Marriner was aware of." (SAC ¶14, 4:4-7)
- 9
- 10 E. "During July, August, September and October 2015 ... Marriner knew that the general
- 11 contractor and subcontractors on the job were not being paid, but did not disclose this
- 12 to Yount." (SAC ¶15, 4:8-11)
- 13
- 14 F. "Prior to Yount's investment, Marriner knew that the developers had requested
- 15 \$1,000,000 from another investor, Les Busick, to meet the immediate needs of the
- 16 project to keep Penta from leaving the job. This was not disclosed to Yount." (SAC
- 17 ¶16, 4:12-14)
- 18
- 19 G. "Marriner knew that prior to Yount's investment in October 2015 that the \$20,000,000
- 20 cap on funds that could be raised under the Private Placement Memo had been fully
- 21 met yet failed to inform Yount of this fact, and that Yount could no longer be included
- 22 in the investor group under the Private Placement Memo." (SAC ¶17, 4:16-19)
- 23
- 24 H. "Plaintiff was also informed that by both Marriner and Radovan there was still
- 25 \$1,500,000 of Founders Units available for purchase of the \$20,000,000 of Founders
- 26 Units authorized under the Subscription. Agreement and related offering materials." (SAC ¶19, 4:28-5:2; and similar statement at ¶17, 4:15-16.)
- 27
- 28 I. "On or about December 12, 2015, for the first time, Plaintiff was informed of several
- issues that Marriner and/or the developers had not disclosed or were incorrectly
- represented to him prior to his investment, primarily that the Project was substantially
- over budget, Penta had not been paid, and the Cal Neva Lodge was not going to open
- as scheduled." (SAC ¶13, 3:27-28)
- J. "51. Defendants ... knowingly made fraudulent misrepresentations and/or material
- omissions of fact to Plaintiff intended to induce Plaintiff into contributing \$1,000,000
- to obtain a Founders Unit in CNL. Such fraudulent misrepresentations include, but are
- not limited to, that the Cal Neva Lodge would open on or near the end of 2015; that
- the Project was only slightly over budget; that a refinancing of the \$6,000,000
- mezzanine financing with a \$15,000,000 loan was in place or imminent; that the
- developers had a successful track record of developing similar projects; that the
- developers would not receive distributions or other payments related to the Project
- until after the preferred returns and equity investments were paid or returned to the
- investors; and, that there was \$1,500,000 left under the Subscription Agreement and
- related offering documents for purchase of a Founders Unit by Plaintiff. (SAC ¶51,
- 12:1-11)

These allegations are repeated in various places in the SAC. On October 24, 2016,

1 Marriner answered the Third, Sixth and Seventh claims for relief asserted against him in the SAC.
2 In addition to various denials, Marriner asserted affirmative defenses, including the following
3 which are germane to this motion (emphasis added):

4
5 A. **Second Affirmative Defense.** Plaintiff's action is barred by Plaintiff's reliance upon
6 his own independent investigation. (Answer at 9:20)

7 B. **Third Affirmative Defense.** Plaintiff's action is barred by Plaintiff's reliance upon
8 the actions, advice and communications of others. (Answer at 9:22)

9 C. **Fifth Affirmative Defense.** Plaintiff's action is barred by the terms and conditions of
10 the documents evidencing Plaintiff's investment, including the Private Placement
11 Memorandum and related documents and information received therewith which were
12 accepted and approved by Plaintiff, and which together comprise Plaintiff's consent,
13 waiver, release and/or assumption of risk. (Answer at 9:26)

14 3. Moving and Responding Parties' Respective Summary Judgment Burdens.

15 a. **NRCP 56.** In *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005), the
16 court adopted the federal standards of summary judgment review and abrogated the "slightest
17 doubt" standard previously used in Nevada. Yount bears the burden of persuasion at trial to
18 prove each element of each claim asserted against Marriner. *Cuzze v. University and Community*
19 *College System of Nevada*, 123 Nev. 598, 602-603, 172 P.3d 131, 134 (2007) (citations omitted):

20 With respect to burdens of proof and persuasion in the summary judgment context, we
21 follow the federal approach outlined in *Celotex Corp. v. Catrett*. [477 U.S. 317, 324
22 (1986).] The party moving for summary judgment bears the initial burden of
23 production to show the absence of a genuine issue of material fact. If such a showing
24 is made, then the party opposing summary judgment assumes a burden of production
25 to show the existence of a genuine issue of material fact. The manner in which each
26 party may satisfy its burden of production depends on which party will bear the
27 burden of persuasion on the challenged claim at trial. If the moving party will bear
28 the burden of persuasion, that party must present evidence that would entitle it to a
judgment as a matter of law in the absence of contrary evidence. But if the
nonmoving party will bear the burden of persuasion at trial, the party moving for
summary judgment may satisfy the burden of production by either (1) submitting
evidence that negates an essential element of the nonmoving party's claim, or (2)
"pointing out . that there is an absence of evidence to support the nonmoving party's
case." In such instances, in order to defeat summary judgment, the nonmoving party
must transcend the pleadings and, by affidavit or other admissible evidence, introduce
specific facts that show a genuine issue of material fact.

29 "Where an essential element of a claim for relief is absent, the facts, disputed or otherwise, as
30 to other elements are rendered immaterial and summary judgment is proper." *Bulbman, Inc. v.*
31 *Nevada Bell*, 825 P.2d 588, 592 (1992). When the responding party's burden of proof is

1 heightened under applicable law, such as the burden of proof by clear and convincing evidence
2 required for fraud and punitive damages claims, the heightened burden of proof applies at the
3 summary judgment stage. *Ferguson v. LVMPD*, 131 Nev. Adv. Op. 94, 364 P. 3d 592 (2015),
4 citing *Bulbman* and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d
5 202 (1986). (“The district court ruling on a motion for summary judgment “must view the
6 evidence presented through the prism of the substantive evidentiary burden.”) *Ferguson* also
7 cites *Bulbman* for “affirming summary judgment for defendant where plaintiff failed to show
8 genuine issue of material fact as to fraud by clear and convincing evidence.” *Ferguson*, 364 P. 3d
9 at 595. In reviewing this motion, the court must apply the heightened burden of proof to each
element of Yount’s claims.

10 **4. Elements of a Fraud Claim.**

11 In order to state a claim for fraud in Nevada, a plaintiff has the burden of proving each
12 element of the fraud claim by clear and convincing evidence. *Lubbe v. Barba*, 91 Nev. 596, 540
13 P.2d 115, 117 (1975). “Clear and convincing evidence is a higher standard than proof by the
14 preponderance of the evidence and requires evidence establishing every factual element to be
15 highly probable.” *Ferguson*, 364 P. 3d at 596. The elements of a fraud claim are:

- 16 1. A false representation made by the defendant;
- 17 2. Defendant's knowledge or belief that the representation is false (or insufficient basis
18 for making the representation);
- 19 3. Defendant's intention to induce the plaintiff to act or to refrain from acting in reliance
20 upon the misrepresentation;
- 21 4. Plaintiff's justifiable reliance upon the misrepresentation; and
- 22 5. Damage to the plaintiff resulting from such reliance.

23 *Bulbman, Inc. v. Nevada Bell*, 825 P.2d 588, 592 (1992). See, also, *Barmettler v. Reno Air, Inc.*,
24 114 Nev. 441, 956 P.2d 1382 (1998), and *Collins v. Burns*, 103 Nev. 394, 741 P.2d 819 (1987)
25 (noting that one liable for intentional (or fraudulent) misrepresentation generally must have
26 communicated information knowing its falsity). The element of resulting damage requires proof
27 of causation between the misrepresentation and the alleged harm.
28

5. Elements of a Private Claim for Securities Fraud under NRS 90.570.

As a result of the interplay between NRS 90.660 and NRS 90.570, the only private right of action under NRS 90.570 is under Subsection 2.

NRS 90.660 Civil liability.

1. A person who offers or sells a security in violation of any of the following provisions:

(d) Subsection 2 of NRS 90.570;

=> is liable to the person purchasing the security. Upon tender of the security, the purchaser may recover the consideration paid for the security and interest at the legal rate of this State from the date of payment, costs and reasonable attorney's fees, less the amount of income received on the security. A purchaser who no longer owns the security may recover damages. ... ¹

NRS 90.570 Offer, sale and purchase. In connection with the offer to sell, sale, offer to purchase or purchase of a security, a person shall not, directly or indirectly:

2. Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in the light of the circumstances under which they are made;...

Although reliance and scienter are not required elements of securities fraud *in state enforcement actions* initiated under NRS 90.570(2) and (3), *Secretary of State v. Tretiak*, 117 Nev. 299, 22 P. 3d 1134 (2001), by implication they remain as elements of a private claim for relief under NRS 90.570. The clear and repeated differentiation of state enforcement actions in *Tretiak* can only mean that that scienter and reliance are still necessary elements of a private claim under the statute. Moreover, the requirement of a purchase in NRS 90.660 and resulting damages necessarily implies that reliance must be an element. Synthesizing the two statutes and the case law, the elements of a private claim under NRS 90.570 appear to be the following:

1. Either: (a) an untrue statement of a material fact or (b) the failure to state a material fact necessary to make other statements made not misleading in the

¹ Yount testified rather forcefully that he did not purchase the security because the offering was sold out and he refused to accept assignment of a previously issued membership interest. He accordingly adamantly asserts that he does not own an interest in the company. Yount Deposition at 25:11-26:21. Therefore, Yount has no standing to make a claim under NRS 90.570 and summary judgment is, therefore, warranted. See below.

light of the circumstances under which they are made;

2. Scierter;
3. Reliance;
4. The plaintiff's purchase of the security;
5. Tender of the security back to the issuer, unless it was sold by the purchaser.
6. Damages.

6. Elements of a "Claim" for Punitive Damages.

Typically, a claim for punitive damages is not a separate claim for relief. See, e.g., *Shoen v. Amerco, Inc.*, 111 Nev. 735, 896 P.2d 469 (1995) (punitive damages are recoverable under other substantive claims for relief). Punitive damages are a possible remedy for an alleged claim for fraud or other breach of "an obligation not arising from contract where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud or malice...." (NRS 42.005) The factual elements of oppression, fraud and malice are set forth in NRS 42.001 and elsewhere in Chapter 42. Liability for punitive damages is never imputed from one defendant to another. In other words, Marriner has no vicarious liability for punitive damages which might be incurred by another defendant because NRS 42.005 requires that there be clear and convincing evidence that *the defendant* has been guilty of oppression, fraud or malice. See, e.g., *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243, 257-258 (2008). However, there is no free-standing, separate claim for punitive damages, just like there is no separate claim for "compensatory damages." If any such claim is allowed here, it is a remedy for intentional fraud.

7. Elements of Affirmative Defense based on Plaintiff's Independent Investigation.

Blanchard v. Blanchard, 108 Nev. 908, 839 P.2d 1320, 1323 (1992) (generally, "a plaintiff making an independent investigation will be charged with knowledge of facts which reasonable diligence would have disclosed [because] such a plaintiff is deemed to have relied on his own judgment and not on the defendant's representations") See, also, *Bartlett v. Schmidt*, 33 SW 3d 35, 38 (Tex. App. 2000) [alleged fraud and concealment by sellers regarding use restrictions on real property] ("[R]egardless of the result of his investigation, the buyer's decision to undertake such an investigation indicates that he or she is not relying on the seller's

representations about the property.”). ² From the case law, the buyer’s independent investigation negates the fraud element of reliance, by showing an absence of reliance. Assuming it is an affirmative defense, the elements of the defense are as follows:

1. Plaintiff made an independent investigation of the subject matter of the transaction;
2. Defendant did not interfere with plaintiff’s investigation.

8. Undisputed Material Facts.

NRCP 56(c) provides that “Motions for summary judgment and responses thereto shall include a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies.” The following facts are undisputed, based on the Yount’s deposition testimony. The following evidence is set forth in the concurrently filed *DECLARATION OF COUNSEL AND VOLUME OF EVIDENCE* (hereinafter called “MVE” meaning “Marriner’s Volume of Evidence.”) ³

² “Many courts have held that where false and fraudulent representations are made concerning the subject-matter of a contract, but the person to whom they are made, before closing the contract inspects and examines the subject of the contract, or conducts an independent investigation into the matters covered by the representations, which is sufficient to inform him of the truth, and which is not interfered with or rendered nugatory by any act of any other party, it is presumed that he places his reliance on the information acquired by such investigation and on his own judgment based on such facts, and not on the representations made to him, and therefore he cannot have relief because his bargain proves unsatisfactory to him.” *Bartlett v. Schmidt*, 33 SW 3d 35, 38 (Tex. App. 2000), *supra*.

³ MVE Exhibit “1” (also called MVE 1) contains excerpts from Yount’s deposition testimony in an easily readable format. MVE Exh. “2” are the actual pages of the deposition transcript from which these excerpts were copied. MVE Exh. “3” through “14” (MVE 3 – 14) are various exhibits to Yount’s deposition that are mentioned in the included excerpts of his deposition. Finally, MVE Exh. “15” through “18” are exhibits to other parties’ depositions taken in this lawsuit that are mentioned in the included excerpts from Yount’s deposition. Hereinafter, each reference to evidence will refer to either the pages/line numbers of the deposition transcript (MVE Exh. “2”), or in the case of voluminous references (and for easier reading), to the excerpts of the deposition testimony copied and underlined in MVE Exh. “1” *with references to the page numbers displayed at the bottom* of MVE Exh. “1”. This approach eliminates some of the mechanical burden of correlating page/line references to the text in a transcript. However, the page and line number are retained in the excerpts.

1 **A. Prior to investment, Yount conducted an independent investigation of the project**
2 **with his CPA, Ken Tratner.** (Yount Deposition Excerpts, MVE Exh. “1” at pages 4-
3 17; Yount Deposition Exhibits 51, 53, 54, 56, 57, 58, 59, 60, 61, 62 (MVE Exhibits
4 “3” through “14”) [Depo Exhibit 56 (MVE 6) is an email from Yount to his CPA on
5 7/26/2015 seeking the CPA’s involvement and attaching Yount’s notes and project
6 documents; Depo Exhibit 57 (MVE 7) “Cal Neva Lodge Investment Notes” are notes
7 Yount sent to his CPA with project information; Depo Exhibit 59 (MVE 9) is Yount
8 advising Radovan that he sent everything to his CPA a few days earlier and will be in
9 touch soon; Depo Exhibit 60 (MVE 10) is Yount telling Marriner on 8/3/2015 that he
10 is dealing directly (getting his information directly from) Radovan and that Yount’s
11 CPA will be asking Radovan questions directly; Depo Exhibit 61 (MVE 11) includes
12 an email from Yount’s CPA Ken Tratner to Radovan on 8/4/2015 following up their
13 conversation and asking for more documents to review, including updated
14 Assumptions and Summary, 10 year Pro-Forma P&L, Investor Returns and Total
15 Project Budget schedules *based on the current status of the project*, the email string
16 also states that the CPA is reviewing the investment proposal; Depo Exhibit 62 (MVE
17 12) is Yount reminding Radovan on 8/8/2015 to answer the CPA’s questions and send
18 his CPA the requested documents; Depo Exhibit 63 (MVE 13) is an email on
19 8/10/2015 by Radovan’s colleague Pete Dordick to Yount and his CPA, sending
20 requested financial documents; Depo Exhibit 72 (MVE 14) is an email by Radovan to
21 Yount on 10/10/2015 answering Yount’s question that day regarding the scheduled
22 opening, in which Radovan stated “Looking Good. Soft opening in Spring with Grand
23 Opening on Father’s Day weekend.”)

24 **B. As part of his independent investigation, Yount synthesized material he received**
25 **regarding the project and shared it with his CPA, Ken Tratner.** (Yount
26 Deposition Excerpts, MVE Exh. “1” at pages 11, 12, 18; Yount Deposition Exhibits
27 56 and 57 (MVE Exhibits “6” and “7”) [Depo Exhibit 56 (MVE 6) is the email from
28 Yount to his CPA on 7/26/2015 seeking the CPA’s involvement and attaching Yount’s
29 notes and project documents; Depo Exhibit 57 (MVE 7) “Cal Neva Lodge Investment

Notes” are notes Yount sent to his CPA with project information.)

- C. Prior to investment, Yount asked numerous questions of Robert Radovan by email and telephone, including incisive question about budgets, vacancy rates, capital requirements, construction cost overruns, project vision, and other financial matters.** (Yount Deposition Excerpts, MVE Exh. “1” at pages 8-20; Yount Deposition Exhibits 51 (MVE 3) [occupancy rates], 58 (MVE 8) [debt structure]; Emails between Yount and Radovan, MVE Exh. 19.)
- D. Prior to investment, Yount contacted the project architect, Peter Grove (who happened to be Yount’s own architect), to obtain his advice and impressions about the project.** (Yount Deposition Excerpts, MVE Exh. “1” at pages 8-20; Yount Deposition Exhibit 56 (MVE 6) [describes contact with architect].)
- E. In his deposition, Yount could not identify any question, request for information or other follow-up information that was not provided to Yount or to his CPA.** (Yount Deposition Excerpts, MVE Exh. “1” at pages 13 and 14.)
- F. No one interfered in Yount’s or his CPA’s investigation.** (See evidence cited above.)
- G. Yount’s CPA reviewed the project information with Yount and advised him that it was a reasonable investment.** (Yount Deposition Excerpts, MVE Exh. “1” at page 19 [Yount Depo Transcript MVE 2, Page 219, Lines 2-15].)
- H. Prior to investment, Yount learned that the project opening would be delayed to a soft opening in Spring, 2016, with a grand opening on Father’s Day weekend 2016.** (Yount Deposition Excerpts, MVE Exh. “1” at pages 14-15 [Yount Depo Transcript MVE 2, Page 169, Lines 16, to Page 170, Line 3], and Depo Exhibit 72 (MVE14).)
- I. Prior to investment, Yount learned that the project was over budget.** (Yount Deposition Excerpts, MVE Exh. “1” at pages 7, 8, 9, 12 [Yount Depo Transcript MVE 2, Page 136, Lines 11-14; Page 138, Line 22 to Page 139, Line 17; Page 149, Lines 11-25 [10 million dollars over budget], and Depo Exhibit 56 and 57 (MVE 6 and 7).)

- 1 **J. Yount is unaware of any financial improprieties in the project.** Yount Deposition
2 Excerpts, MVE Exh. “1” at page 3 [Yount Depo Transcript MVE 2, Page 113, Line 15
3 to Page 114, Line 2].)
- 4 **K. On July 22, 2015, Marriner provided Yount the July 2015 Monthly Status Report**
5 **created by Criswell Radovan.** (Yount Deposition Excerpts, MVE Exh. “1” at page
6 10; Depo Exhibit 26 (MVE 16); Depo Exhibit 54 (MVE 5).)
- 7 **L. Thereafter, from August 3, 2015, until the date of his investment on October 13,**
8 **2015, Yount did not request any further information from Marriner.** (Yount
9 Deposition Excerpts, MVE Exh. “1” at page 16, 18 [Yount Depo Transcript MVE 2,
10 Page 205, Line 24 to Page 206, Line 15; and Page 215, Line 24 to Page 216, Line 4];
11 Depo Exhibit 60 (MVE 10).)
- 12 **M. On August 3, 2015, in response to Marriner asking Yount if he had any further**
13 **questions, Yount advised Marriner that he was getting his information directly**
14 **from Robert Radovan and that his CPA, Ken Tratner, would be getting more**
15 **information directly from Radovan.** (Yount Deposition Excerpts, MVE Exh. “1” at
16 page 13, 16 [Yount Depo Transcript MVE 2, Page 155, Line 6 to Page 156, Line 2;
17 Page 205, Line 24 to Page 206, Line 15]; Depo Exhibit 60 (MVE 10).)
- 18 **N. Mariner did not handle the receipt or delivery of Yount’s investment documents**
19 **or Yount’s money.** (Yount Deposition Excerpts, MVE Exh. “1” at page 18 [Yount
20 Depo Transcript MVE 2, Page 215, Lines 5-23].)
- 21 **O. Yount confirmed that he read, understood, and agreed to the provisions in the**
22 **Private Placement Memorandum (“PPM”), quoted at length below.** (Yount
23 Deposition Excerpts, MVE Exh. “1” at page 20 [Yount Depo Transcript MVE 2, Page
24 221, Line 14 to Page 222, Line 21]; and Depo Exhibit 1 (MVE 18).)
- 25 **P. Yount contends that he did not purchase a membership interest and is not an**
26 **investor in the project.** (Yount Deposition Excerpts, MVE Exh. “1” at page 1 [Yount
27 Depo Transcript MVE 2, Page 25, Line 11 to Page 26, Line 21].)
- 28

DISCUSSION

9. Plaintiff lacks standing to maintain his Seventh Claim for Relief under NRS 90.570.

Yount testified that he did not purchase the security because the offering was sold out and he refused to accept assignment of the membership interest previously issued to Criswell Radovan. Yount also testified that he does not own an interest in the company. Yount Deposition at 25:11-26:21. Therefore, Yount did not purchase the security and, accordingly, has no standing to make a claim under NRS 90.570. He is not a purchaser. Summary judgment is, therefore, warranted.

10. Plaintiff's Third Claim for Relief for Common-Law Fraud is Barred by his Independent Investigation Conducted with the Advice and Counsel of his CPA and Architect.

The foregoing undisputed facts are sufficient for a trier of fact to determine that based on his independent investigation, Yount did not rely on Marriner, and no alleged acts or omissions by Marriner caused harm to Yount. The evidence cited above regarding Yount's independent investigation and the absence of reliance on Marriner shift the burden of production to Yount to establish each element of his claim for fraud against Marriner by clear and convincing evidence.

11. The Terms and Conditions of PPM and the Subscription Agreement, which Yount read, understood, signed and agreed to, disclaim reliance.

SUBSCRIPTION AGREEMENT

Acknowledgment by Buyer:

“(f) The Purchaser believes, by reason of the Purchaser's business or financial experience, that the Purchaser is capable of evaluating the merits and risks of this investment and of protecting the Purchaser's interest in connection with this investment;...” *SUBSCRIPTION AGREEMENT*, Page 2 (Criswell Depo Exhibit 2 (MVE 17).)

“(g) The Purchaser acknowledges that prior to acquiring the Founders Units, the Purchaser has been provided with financial and other written information about the Company and the terms and conditions of the offering. The Purchaser has been given the opportunity by the Company to obtain such information and ask such questions concerning the Company, the Founders Units and the Purchaser's investment as the Purchaser felt necessary, and to the extent the Purchaser took such opportunity, the

1 Purchaser received satisfactory information and answers. If the Purchaser requested any
2 additional information which the Company possessed or could acquire without
3 unreasonable effort or expense which was necessary to verify the accuracy of the
4 financial and other written information furnished to the Purchaser by the Company, such
5 additional information was provided to the Purchaser and was satisfactory. In reaching
6 the conclusion to acquire the Founders Units, the Purchaser has carefully evaluated the
7 Purchaser's financial resources and investment position and the risks associated with this
8 investment, and the Purchaser acknowledges that the Purchaser is able to bear the
economic risks of this investment. The Purchaser further acknowledges that the
Purchaser's financial condition is such that the Purchaser is not under any present
necessity or constraint to dispose of the Founders Units to satisfy any existing or
contemplated debt or undertaking;..." *SUBSCRIPTION AGREEMENT*, Page 2 (Criswell
Depo Exhibit 2 (MVE 17).)

9
10 "(k) The Purchaser has thoroughly read the Memorandum and all documents attached
11 thereto, and understands the contents of such documents. The Purchaser is familiar with
12 the Company's business objectives and financial arrangements in connection therewith
13 and believes the Founders Units that the Purchaser is purchasing are the kind of securities
14 that the Purchaser wishes to hold for investment and that the nature and purchase price of
15 the Founders Units are consistent with the Purchaser's investment program. No
16 representations or warranties have been made to the Purchaser regarding this investment
17 contrary to those contained in the Memorandum and attached documents, and the
18 Purchaser agrees to inform the Company if the Purchaser learns that any statements made
19 to the Purchaser in connection with the Purchaser's investment in the Company are
20 untrue. The information set forth herein is true and correct;..." *SUBSCRIPTION*
21 *AGREEMENT*, Page 3 (Criswell Depo Exhibit 2 (MVE 17).)

22
23 "(m) The Purchaser has such knowledge and experience in financial and business matters
24 and in investments to be capable of evaluating the merits and risks of the investment in
25 the Founders Units." *SUBSCRIPTION AGREEMENT*, Page 3 (Criswell Depo Exhibit 2
(MVE 17).)

26 "In addition, the Purchaser:

- 27 (2) Understands that the Company shall have the right to accept or reject this subscription
28 in whole or in part in its sole and absolute discretion;

- (5) Acknowledges that to extent desired the Purchaser has consulted with the Purchaser's
financial, business and tax advisers before executing this Subscription Agreement;

SUBSCRIPTION AGREEMENT, Page 3 (Criswell Depo Exhibit 2 (MVE 17).)

PRIVATE PLACEMENT MEORANDUM

RISK FACTORS

THE PURCHASE OF UNITS INVOLVES CERTAIN RISKS, INCLUDING, BUT NOT LIMITED TO, THE RISKS SUMMARIZED BELOW. POTENTIAL INVESTORS SHOULD CAREFULLY READ AND UNDERSTAND THIS OFFERING AND THE RISKS INVOLVED BEFORE SUBSCRIBING.

Business Risks

Insufficient Funding; Dilution. If the Company is unable to raise sufficient financing and/or equity funding to complete the purchase and redevelopment of the Property, implementation of its Business Plan will be delayed and will greatly reduce the Company's possibility of success. Such implementation also may be delayed or impeded by budgetary and cost overruns which may require additional capital. Such additional funds may come from available financing but the source' of such funds may also be the sale of additional Units to additional investors. The purchase price of such additional Units and the rights, preferences and privileges of such Units, could be more favorable and superior to the Units purchased by investors in this Offering and will dilute the Percentage interests of the investors in this Offering. The Company also will require additional financing to build the condos contemplated in the Business Plan, and a construction lender may require pre-sales or a contribution of additional equity as a condition of such financing. Funding for the condos has not been arranged or priced and may not be sought until the redevelopment of the Property has been completed. It is unknown whether such construction financing when needed will be available at commercially reasonable rates. If the Company is unable to fully implement its Business Plan due to insufficient funding, the Preferred Return may not be paid, the condos subject to option may not be built, and the initial investment amount may be lost.

PRIVATE PLACEMENT MEMORANDUM, Page 9 ("Risk Factors") (Criswell Depo Exhibit 1 (MVE 18).)

- 12. There is no proximate cause (legal cause) connecting any alleged acts or omissions of Marriner with Yount's alleged damages which he claims arise from the allegedly improper delivery of his money by the escrow agent (Bruce Coleman) and the resulting alleged conversion of his money by Criswell-Radovan.**

As the saying goes, Yount throws a lot of assorted allegations against the wall to see what will stick. In light of his motion for summary judgment filed June 27, 2017, it is now clear that Yount seeks damages which arise from the allegedly improper delivery of his \$1,000,000 by the escrow

1 agent (Bruce Coleman) to Criswell-Radovan and the resulting alleged conversion of his money by
2 Criswell-Radovan. These serious charges, if true, did not legally result from Marriner's alleged
3 acts or omissions. It is not foreseeable that an attorney acting as escrow agent would (if the
4 allegation is true) improperly distribute an investor's funds without proper written authorizations,
5 amended as may be necessary to reflect any changes in the terms of the investment. No one in
6 Marriner's position could have reasonably foreseen that the funds wired by Yount would be
7 distributed in the manner alleged without written authorization by Yount. Yount testified that
8 Marriner did not handle his money or his investment documents. There is no proximate cause
9 (legal cause) between Marriner and the alleged mechanism of Yount's damage. The mechanism
10 of his alleged damage was not with Marriner's control, and is an intervening or superseding cause
11 of Yount's alleged damages.

12 **13. The Foregoing Facts and Supporting Evidence in the Separate Volume of Evidence**
13 **Shift the Burden of Production on this Motion to Yount.**

14 See, *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005), *supra*, and *Cuzze v.*
15 *University and Community College System of Nevada*, 123 Nev. 598, 602-603, 172 P.3d 131, 134
16 (2007), *supra*.

17 **14. The Separate Claim for Relief for Punitive Damages is Improper.**

18 A claim for punitive damages is not a separate claim for relief. See, e.g., *Shoen v.*
19 *Amerco, Inc.*, 111 Nev. 735, 896 P.2d 469 (1995), *supra*.

20 **15. Punitive Damages are not Supported by Clear and Convincing Evidence of Fraud.**

21 Yount cannot establish reliance or causation vis-à-vis Marriner. Yount based his
22 investment decision on information he gathered from Robert Radovan, and the advice and counsel
23 he received from his own CPA, Ken Tratner, and the impressions of the project architect, Peter
24 Grove, who by coincidence is Yount's own architect. Yount cannot establish his reliance on
25 anything Marriner said by clear and convincing evidence. Using the definition quoted above,
26 given his independent investigation and his direct communications with Robert Radovan, Yount
27 cannot "establish[] every factual element to be highly probable." *Ferguson*, 364 P. 3d at 596.
28

1 **16. Conclusion.**

2 The deposition testimony and exhibits contained in the separate Volume of Evidence establish
3 Yount's independent investigation and, consequently, the lack of any reliance by Yount on
4 Marriner's statements. The independent investigation is a total defense to Yount's common law
5 fraud claim against Marriner (Third Claim for Relief). Moreover, based on his own testimony,
6 Yount is not a purchaser of a security and, therefore, has no standing to pursue a private claim
7 under NRS 90.570 (Seventh Claim for Relief). Moreover, there is no proximate cause connecting
8 the alleged acts or omission of Marriner to the actual mechanism by which Yount claims his
9 money was taken and converted by others. The foregoing facts and evidence shift the burden of
10 production on this motion to Yount to present evidence that establishes each element of his claims
11 against Marriner by clear and convincing evidence and which rebuts the defense of independent
12 investigation. If clear and convincing evidence is lacking on just one element of any claim, all
13 other facts with respect to the claim are rendered immaterial, and summary judgment must be
14 granted with respect to the claim. Marriner respectfully requests that the court enter a summary
15 judgment in Marriner's favor on all claims against Marriner.

16 Finally, Marriner joins in the motions for summary judgment and/or partial summary
17 judgment which may be asserted by the other defendants, to the extent they relate to the three
18 claims for relief jointly asserted against Marriner and others.

19 **Affirmation:** The undersigned hereby affirms that the foregoing document does not
20 contain the social security number of any person.

21 Dated: June 28, 2017.

22 INCLINE LAW GROUP, LLP

23 By: s/Andrew N. Wolf
24 ANDREW N. WOLF
25 Nevada State Bar No. 4424
26 Attorneys for Defendants DAVID MARRINER
27 and MARRINER REAL ESTATE, LLC
28

CERTIFICATE OF SERVICE

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

DEFENDANTS DAVID MARRINER and MARRINER REAL ESTATE, LLC'S MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

UPON:

| | |
|---|--|
| Richard G. Campbell, Jr. DOWNEY BRAND LLC 100 West Liberty, Suite 900 Reno, NV 89501 Telephone: 775-329-5900 Facsimile: 775-997-7417 | Attorney for Plaintiff George Stuart Yount, Individually and in his capacity as Owner of George Stuart Yount IRA |
| Martin A. Little HOWARD & HOWARD ATTORNEYS PLLC 3800 Howard Hughes Parkway, Suite 1000 Las Vegas, NV 86169 Telephone: 702-257-1483 Facsimile: 702-567-1568 | Attorney for Defendants Criswell Radovan, LLC, CR CAL NEVA LLC, Robert Radovan, William Criswell, Cal Neva Lodge, LLC, Powell, Coleman and ARNOLD, LLP |

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

Date: June 28, 2017.

/s/ Crystal Lyle
Crystal Lyle

EXHIBIT 1

000395

000395

EXHIBIT 1

EXHIBIT "1"
Excerpts from Mr. Yount's Deposition

Yount testified he did not purchase the security and is not an investor in the security.

Page 25

11. . . . Q . . Have you taken a position in the bankruptcy
 12. . that you're an investor in the project?
 13. . . . A . . No, I'm not an investor in the project.
 14. . . . Q . . Then why are you on the unsecured creditors'
 15. . committee?
 16. . . . A . . Because certain documents such as the one Mr.
 17. . Radovan signed that said I was an investor in the
 18. . project led me to believe that I should be on that
 19. . committee.
 20. . . . Q . . After late January, 2016 when Mr. Radovan and
 21. . Mr. Criswell told you what they believe they sold you,
 22. . have you held yourself out to be an investor --
 23. . . . A . . No.
 24. . . . Q . . -- in this project to anyone?
 25. . . . A . . No.

Page 26

1. . . . Q . . So presently do you believe that you own a one
 2. . million dollar founders share in the Cal-Neva Lodge
 3. . project?
 4. . . . A . . No.
 5. . . . Q . . Can we have a common understanding today when I
 6. . talk about the project, I'm talking about the Cal-Neva
 7. . project?
 8. . . . A . . Okay, certainly.
 9. . . . Q . . And when I talk about the investment, I'm
 10. . talking about the million dollars that you invested.
 11. . . . A . . That's fine.
 12. . . . Q . . Why don't you believe that you own a one
 13. . million dollar founders share in the Cal-Neva project?
 14. MR. CAMPBELL: . I'm going to object insofar as
 15. . it could call for a legal conclusion.
 16. THE WITNESS: . Because I was told by Mr. Coleman
 17. . in an e-mail that my money never went in the project.
 18. . BY MR. LITTLE:
 19. . . . Q . . Do you believe you hold any interest in the
 20. . project?
 21. . . . A . . Other than a lawsuit, no.

Marriner made no representations to Yount regarding the project budget.

Page 109

9. . . . Q . . And you indicate another misrepresentation was
 10. . that the project was only slightly over budget. . First
 11. . of all, how do you define slightly over budget?
 12. . . . A . . Five to six million dollars.
 13. . . . Q . . And who told you that?

14. . . . A . . I believe that was Mr. Radovan, but I believe
 15. the documents will show.
 16. . . . Q . . He told you that in an e-mail?
 17. . . . A . . I believe so.
 18. . . . Q . . Did he ever tell you that verbally?
 19. . . . A . . Could have been. I don't know.
 20. . . . Q . . Did Mr. Radovan ever -- excuse me, Mr. Marriner
 21. ever make representations about the budget of the
 22. project?
 23. . . . A . . Before my investment?
 24. . . . Q . . Yes.
 25. . . . A . . No, I don't believe so.

Yount has no evidence that refinancing of the \$6 million mezzanine was not imminent.

Yount Depo Page 110

1. . . . Q . . Another misrepresentation you indicate is that
 2. a refinancing of the six million dollar mezzanine
 3. financing with the 15 million dollar loan was in place
 4. or imminent. Do you believe that to have been false at
 5. the time?
 6. . . . A . . I believe it was not a cost saving measure, it
 7. was a desperation measure to save the project, so it was
 8. misrepresented to me in that form, and I believe the
 9. project was more over budget than this five or six
 10. million and I think they knew it at the time.
 11. . . . Q . . But you don't have any evidence of that?
 12. . . . A . . No, just Mr. Marriner's e-mail that said that
 13. Penta if they were not paid was going to pull off the
 14. job.
 15. . . . Q . . Do you have any information that as of the date
 16. that you made your investment, that a refinancing of the
 17. six million mezz with a 15 million dollar loan wasn't in
 18. place or imminent?
 19. . . . A . . At the time of my investment, no, I did not
 20. know that.
 21. . . . Q . . No, do you have any information that it was not
 22. in place or imminent?
 23. . . . A . . No.

Yount has no knowledge or evidence that the developers had a bad "track record".

Yount Depo Page 110

24. . . . Q . . Another misrepresentation is that the
 25. developers had a **successful track record** of developing
 Page 111
 1. similar projects. What misrepresentations were made to
 2. you in that regard?
 3. . . . A . . I've heard later that those projects were not
 4. as successful as were indicated.

- 5· . . . Q · Which projects?
 ·6· . . . A · The Calistoga one supposedly ended in a
 ·7· settlement and a fight among people involved.
 ·8· . . . Q · Where did you learn that from?
 ·9· . . . A · I don't remember for sure.

Yount has no knowledge or evidence of any financial improprieties.

Page 113

- 9· . . . A · I don't believe I ever saw the audit results.
 10· . . . Q · You don't know anything about the audit
 11· performed by --
 12· . . . A · I know it was said to have been underway.
 13· Whether it was ever completed or the results of that, I
 14· do not know.
 15· . . . Q · Do you know if any financial improprieties came
 16· out of that audit?
 17· . . . A · I do not know.
 18· . . . Q · So what distributions or other payments are you
 19· referring to in paragraph 30 of your complaint that you
 20· believe was a misrepresentation or omission?
 21· . . . A · I don't know the specifics of it, I just
 22· believe that there was money taken out of the project
 23· into their pockets. The books and records should show
 24· that, so that should speak for itself.
 25· . . . Q · Well, have you undertaken an investigation of

Page 114

- 1· the books and records to back up this statement?
 ·2· . . . A · No.
 ·3· . . . Q · Do you know anyone who has?
 ·4· . . . A · There was, as you said, discussion of IMC doing
 ·5· that, but I don't know the results, just the
 ·6· allegations, and I believe Mr. Busick said they told him
 ·7· the same thing and that he believes they took a lot of
 ·8· money out of the project.

Yount learned details of the Mosaic refi loan from Criswell Radovan.

Page 128

- 18· . . . Q · Were you aware that Criswell Radovan was
 19· seeking funding through Mosaic, you knew that much,
 20· right?
 21· . . . A · At a later date, yeah.
 22· . . . Q · And you knew --
 23· . . . A · They mentioned it in various meetings.
 24· . . . Q · And in fact, the executive committee had
 25· approved moving forward with Mosaic in January or

Page 129

- 1· February, 2016, correct?
 ·2· . . . A · I don't know what they did or didn't.
 ·3· . . . Q · You didn't know that?
 ·4· . . . A · I think I probably did, but whatever their
 ·5· records show.
 ·6· . . . Q · Were you familiar with any of the terms, high
 ·7· level or otherwise, of the Mosaic loan?

8. . . . A . . Only in broad terms, it was considered to be
 9. quite expensive and there was concern over the project
 10. surviving that extra expense.
 11. . . . Q . . Was it a complete refinancing of the Hall and
 12. Ladera loans?
 13. . . . A . . I believe so.
 14. . . . Q . . And new money?
 15. . . . A . . Yes. That was my understanding.
 16. . . . Q . . Were you asked to go to the meeting

Yount's independent Investigation

Page 119

12. . . . Q . . I want to talk about the due diligence you did
 13. before investing. We talked about one site tour that
 14. you had, correct?
 15. . . . A . . Correct.
 16. . . . Q . . You said you didn't have any in person meetings
 17. with Mr. Radovan prior to investing?
 18. . . . A . . Other than that Bonanza meeting where I met him
 19. first, yes.
 20. . . . Q . . And there was some e-mails between you and he
 21. and --
 22. . . . A . . And some phone conversations.
 23. . . . Q . . -- and maybe a half dozen phone conversations.
 24. Do you recall the specifics of any of those phone
 25. conversations?

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20. . . . Q . . What individuals did you seek any form of
 21. guidance from prior to making your investment decision
 22. on this project?
 23. . . . A . . My CPA firm.
 24. . . . Q . . Anyone else?
 25. . . . A . . I don't believe so.

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1. . . . Q . . Did you seek any information or guidance from
 2. the project architect?
 3. . . . A . . I did ask him what he thought of the project
 4. and he felt it was a good project.
 5. . . . Q . . Did you talk any specifics?
 6. . . . A . . No detail.
 7. . . . Q . . Was this in person or by phone?
 8. . . . A . . By phone, I believe, and there may be an e-mail
 9. or two in the record as well.
 10. . . . Q . . Do you recall how long the conversation was?
 11. . . . A . . Very brief. Probably discussing other things
 12. regarding my project.
 13. . . . Q . . Did you talk to the project architect about the

14· schedule for completion?
 15· . . . A· No, I don't believe so.
 16· . . . Q· Did you talk to him about any of the cost
 17· overruns?
 18· . . . A· I don't believe so.
 19· . . . Q· You understand, at least from seeing documents
 20· produced in this case, that the architect was signing
 21· off on change orders?
 22· . . . A· I trust that you're right.
 23· . . . Q· And in your construction experience, you
 24· understand that architects are typically involved in
 25· cost related issues on a project?

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1· . . . A· Are or are not?
 2· . . . Q· Are.
 3· . . . A· Yeah, correct.
 4· . . . Q· But you didn't ask the architect about any of
 5· the cost overruns you saw in those progress reports that
 6· you were being provided?
 7· . . . A· No.
 8· . . . Q· Outside of perhaps the July meeting where
 9· somebody from Penta was present for part of the time
 10· during that tour, did you ever have any conversations
 11· with anyone from Penta prior to making your investment?
 12· . . . A· No.
 13· . . . Q· Are you familiar with a gentleman named Hal
 14· Thannisch?
 15· . . . A· Wasn't he their project engineer?
 16· . . . Q· Yes.
 17· . . . A· Yes.
 18· . . . Q· Did you ever speak with Mr. Thannisch prior to
 19· investing?
 20· . . . A· Not directly. He may have been on that tour, I
 21· don't remember.
 22· . . . Q· And I apologize if I asked you this, did you
 23· seek out any information from any of the other investors
 24· on the project before you made your investment?
 25· . . . A· No.

Page 123

15· . . . Q· What sort of guidance were you seeking from
 16· your accountant?
 17· . . . A· Financial analysis of the records or reports
 18· that we received.
 19· . . . Q· And what did your accountant tell you about the
 20· investment?
 21· . . . A· He thought that the fees and shares of the
 22· remuneration to the CR was perhaps a bit high, but he
 23· felt like it seemed like a good project.
 24· . . . Q· Do you know if your accountant spoke to anyone
 25· at the project? For example, Mr. Marriner or Mr.

Page 124

1· Criswell or Mr. Radovan?

2. . . . A . . I believe he spoke to Mr. Radovan.
 3. . . . Q . . Did he talk to you about that conversation?
 4. . . . A . . He said he was communicating with him and got
 5. the information he was asking for.
 6. . . . Q . . Do you know what kind of information he was
 7. asking for?
 8. . . . A . . I assume it was financial, but I do not know.
 9. . . . Q . . Do you know if the Criswell Radovan side failed
 10. to provide your accountant with anything that he had
 11. asked for?
 12. . . . A . . Do not know.
 13. . . . Q . . Before you invested, did you ask for any
 14. information that you weren't given?
 15. . . . A . . Don't believe so.
 16. . . . Q . . Outside of what you've told me already, before
 17. you invested were you told any information that you've
 18. learned was untrue other than what we've talked about
 19. today?
 20. . . . A . . Not that I recall.
 21. . . . Q . . So the source of your due diligence would be
 22. your own personal efforts and then relying on your
 23. accountant, is that fair?
 24. . . . A . . My own personal what?
 25. . . . Q . . Your own efforts.

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1. . . . A . . Yes.
 2. . . . Q . . You walked the site, you reviewed financial
 3. records and construction records, correct?
 4. . . . A . . And reports.
 5. . . . Q . . And reports, and then you spoke to your
 6. accountant?
 7. . . . A . . Correct.
 8. . . . Q . . Did you speak to anyone else about this
 9. investment before you decided to give your money?
 10. . . . A . . Other than what we've already testified to, I
 11. don't believe so.

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3. . . . Q . . And if we look over on Bates 2037, it looks
 4. like you guys are talking about having a tour sometime
 5. around July 12th of 2015?
 6. . . . A . . Uh-huh.
 7. . . . Q . . And in fact, if we look on GSY2036, it looks
 8. like you had the tour on July 14th, correct?
 9. . . . A . . I believe so.
 10. . . . Q . . In fact, you e-mail Mr. Marriner thanking him
 11. for the tour and saying it was very impressive, correct?
 12. . . . A . . Correct.
 13. . . . Q . . And you attach a photo of your deck fire pit
 14. with the water feature. What was the purpose of that?
 15. . . . A . . We had discussed how they were looking for
 16. something like that for their project and I had found

17. · this very unique fire/water feature.
 18. · · · · Q · And then on GSY2035, on the same day, Mr.
 19. · Marriner sends an e-mail to you copying your wife and
 20. · Robert saying that as he mentioned on the tour, Robert
 21. · released an additional 1.5 million dollars in equity?
 22. · · · · A · Correct.
 23. · · · · Q · And we talked about that earlier, so this is
 24. · where that would have come from?
 25. · · · · A · Yes.

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- 1· · · · Q · And then he indicates that Robert asked him to
 ·2· · forward the Cal-Neva investment PPM and their founders
 ·3· · progress report with colored renderings, and I think
 ·4· · we've established in the depositions that's Exhibits 1,
 ·5· · 2 and 3.
 ·6· · · · A · Okay.
 ·7· · · · Q · Any reason to dispute that?
 ·8· · · · A · No.
 ·9· · · · Q · And then above that e-mail, it looks like on
 10 · the same day you e-mail Peter Grove who is the project
 11 · architect and also your personal architect, correct?
 12 · · · · A · Correct.
 13 · · · · Q · And you tell him that you saw the project today
 14 · and were pretty impressed and you asked him what holds
 15 · him back from being an investor, correct?
 16 · · · · A · Yes.
 17 · · · · Q · And he told you that it was basically
 18 · financial, a couple of zeros, right?
 19 · · · · A · Yeah, a couple of zeros.
 20 · · · · Q · The following day, July 15th, you e-mail Mr.
 21 · Grove and ask him what do you rate the project's chances
 22 · of success, correct?
 23 · · · · A · Correct.
 24 · · · · Q · And then his response to you is on July 17th,
 25 · 2015?

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- 1· · · · A · Yes.
 ·2· · · · Q · Was there a phone call that precipitated this
 ·3· · e-mail?
 ·4· · · · A · I don't remember.
 ·5· · · · Q · But he told you that the chances were pretty
 ·6· · good, correct?
 ·7· · · · A · Yes.
 ·8· · · · Q · He also told you that they were in a
 ·9· · fundraising mode right now?
 10 · · · · A · Correct.
 11 · · · · Q · And that construction costs were exceeding the
 12 · budget and that they and he were trying to get their
 13 · arms around it and keep it in check, correct?
 14 · · · · A · Correct.
 15 · · · · Q · Do you recall having any conversations with
 16 · Peter Grove about the budget or construction costs?
 17 · · · · A · Not until much later.

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17. . . . Q . Do you recall any meetings or conversations
 18. with Mr. Grove about the project prior to giving your
 19. money?

20. . . . A . No, I do not.

21. . . . Q . Just the e-mails?

22. . . . A . Yes.

23. (Exhibit 51 was marked.)

24. BY MR. LITTLE:

25. . . . Q . I'm going to show you deposition Exhibit 51,

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1. GSY2929. The bottom is an e-mail to David Marriner from
 2. yourself on July 19th, 2015, correct?

3. . . . A . Correct.

4. . . . Q . And you're referencing Page 112 of some
 5. document.

6. . . . A . I believe that was their analysis of the
 7. project. I don't know what you'd call that document.

8. . . . Q . One of the prospectus they gave you?

9. . . . A . Yeah, basically.

10. . . . Q . And you were asking some questions about
 11. occupancy?

12. . . . A . Uh-huh, yes.

13. . . . Q . And then it looks like a potential competitor,
 14. this Biltmore/Boulder Bay project?

15. . . . A . Correct.

16. . . . Q . And how that might affect Cal-Neva?

17. . . . A . Correct.

18. . . . Q . Do you recall Mr. Marriner answering any of
 19. these questions?

20. . . . A . We probably had some conversation about it, but
 21. I don't remember thinking it was any big deal.

22. . . . Q . And then you indicate at the bottom, "As I
 23. understand it, you're over budget by more than five
 24. million dollars so far"?

25. . . . A . Yes.

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1. . . . Q . "Where will that, and likely more, funding
 2. needs come from." Did I read that correctly?

3. . . . A . Yes, you did.

4. . . . Q . Prior to this point in time, had you had any
 5. conversations with Robert Radovan?

6. . . . A . As of July 19th? I don't believe so other than
 7. that Bonanza meeting.

8. . . . Q . Where did the source of this five million
 9. dollars so far being over budget come from?

10. . . . A . It could have come from Robert -- maybe it was
 11. from the conversation with Robert Radovan. I don't
 12. remember. It might have been from an e-mail.

13. . . . Q . Could it have been from Peter Grove?

14. . . . A . No, I don't believe so.

15. . . . Q . But he told you in the prior exhibit that

16 construction costs were exceeding the budget, right?
 17 . . . A . . Yes.
 18 . . . Q . . Is it possible you had a conversation with him
 19 and you talked more details about numbers associated
 20 with that?
 21 . . . A . . It's possible.
 22 . . . Q . . Then on July 21st, Mr. Marriner responds,
 23 copies Mr. Radovan, and says they'll have a draft
 24 response to your questions soon, and he attached some
 25 Pano shot from a drone?

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1 . . . A . . Uh-huh.
 2 . . . Q . . Those questions eventually got answered one way
 3 or the other, correct?
 4 . . . A . . As far as I know.

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(Exhibit 53 was marked.)

12 BY MR. LITTLE:
 13 . . . Q . . I'm going to show you deposition Exhibit 53, a
 14 two page e-mail Bates 4352 and 4363. If we start on the
 15 second page, it looks like it's an e-mail to you and
 16 your wife from Mr. Marriner copying Robert, correct?
 17 . . . A . . I believe so.
 18 . . . Q . . July 22nd, 2015, and it references that you and
 19 Robert had a chance to talk yesterday and he was hopeful
 20 that Robert had answered all of your questions. Do you
 21 believe that that was the first conversation you had
 22 with Robert?
 23 . . . A . . I don't recall.
 24 . . . Q . . Any reason to believe that Robert didn't answer
 25 your questions during that phone call?

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1 . . . A . . No.
 2 . . . Q . . And then he indicates that he's attaching a
 3 recent Cal-Neva construction progress report that's
 4 confidential.
 5 . . . A . . Okay.
 6 . . . Q . . You understood that that was something that the
 7 investors were provided regarding the status of
 8 construction of the project?
 9 . . . A . . I believe so. I believe it's like the other
 10 examples.
 11 . . . Q . . And you reviewed that progress report?
 12 . . . A . . Yes.
 13 . . . Q . . Did you share it with your accountant?
 14 . . . A . . I don't believe so. I might have, I don't
 15 know. I probably did. I don't know.
 16 . . . Q . . Do you know whether that progress report was
 17 the one we saw in Exhibit 26?
 18 . . . A . . The July -- as far as I know, it would be the
 19 July one. They didn't provide a lot of progress
 20 reports, so I assume that must be it.

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22...Q... I'm not going to mark this because it's
 23... previously been marked as Exhibit 26, but I want to talk
 24... about it. This is the July, 2015 --
 25...A... There's another document behind it.

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1...Q... This is the July, 2015 monthly status report,
 2... correct?
 3...A... Yes.

21...Q... This indicates that substantial completion was
 22... currently tracking for December, 2015. Any reason to
 23... believe that statement was untrue at this time?
 24...A... Other than some of the pictures which I think I
 25... later asked Robert about as far as being advanced enough

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1...to finish by December.
 2...Q... And what did he tell you?
 3...A... He basically indicated to me that, and Dave did
 4... I think in one of the e-mails, that it was on track.
 5...Q... But you understood this exhibit was prepared by
 6... third parties, correct?
 7...A... Yes, put out by CR Management.
 8...Q... Correct, but the substance of this document was
 9... prepared by third parties?
 10...A... I would assume so. I don't really know. It
 11... says on the front that there are two other parties that
 12... did this, so I assume that's correct.
 13...Q... Turn over to Page 16.
 14...A... Okay.
 15...Q... This indicates that the renovation was on
 16... schedule for the December 12th major event with the
 17... exception of the specialty restaurant which would not be
 18... 100 percent completed at that time. So you knew this,
 19... right?
 20...A... Yes.
 21...Q... And what is that specialty restaurant?
 22...A... That's the one I referred to as the high-end
 23... restaurant. They pointed at the area, but it hadn't had
 24... anything done to it.
 25...Q... And then it goes on to talk about the schedule

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1...being compressed due to delays caused by scope changes,
 2... some of which were value engineering and other of which
 3... were unforeseen issues that came up, correct?
 4...A... Correct.
 5...Q... And it also says that the budget has been
 6... adversely impacted due to a number of items and it lists
 7... them?
 8...A... Correct.
 9...Q... Did you ever ask any specifics about any of
 10... these items prior to making your investment?
 11...A... I don't believe specifics, no.
 12...Q... Did you ask what the anticipated costs were

13 · associated with these items?
 14 · · · · A · I think that had been indicated to be five to
 15 · six million dollars.

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4 · · · · · (Exhibit 54 was marked.)
 5 · BY MR. LITTLE:
 6 · · · · Q · I'll show you what's been marked deposition
 7 · Exhibit 54, a July 22nd, 2015 e-mail from you to Mr.
 8 · Marriner.
 9 · · · · A · Yes.
 10 · · · · Q · And you indicate that you were going to talk
 11 · some more with Robert the following morning and then in
 12 · the meantime you're asking Dave to send written
 13 · responses that he prepared, correct?
 14 · · · · A · Yes.

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9 · · · · · (Exhibit 56 was marked.)
 10 · BY MR. LITTLE:
 11 · · · · Q · I'm going to show you deposition Exhibit 56, an
 12 · e-mail now from your accountant, Ken Tratner, correct?
 13 · · · · A · Correct.
 14 · · · · Q · And Mitzi must be his colleague?
 15 · · · · A · His colleague, yes. You're not going to try
 16 · and pronounce that last name?
 17 · · · · Q · No. You indicate in this e-mail that you're
 18 · attaching some notes that you've taken from
 19 · conversations, correct?
 20 · · · · A · Yes.
 21 · · · · Q · These would be either handwritten or typed
 22 · notes that you took of conversations with either Mr.
 23 · Marriner or Mr. Radovan, is that fair?
 24 · · · · A · Yes.
 25 · · · · Q · It looks like you're also apparently sending

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1 · him an e-mail from the architect, correct?
 2 · · · · A · I guess so, yes.
 3 · · · · Q · And then you're seeking his advice and counsel
 4 · regarding the project?
 5 · · · · A · Yes.
 6 · · · · Q · And that's something you routinely did when you
 7 · made investment decisions?
 8 · · · · A · Correct, any financial decision of any
 9 · consequence.
 10 · · · · Q · And the attachments to this e-mail are some of
 11 · the documents that you've sent to Mr. Tratner at least
 12 · at this time, correct?
 13 · · · · A · I'm sure it was.
 14 · · · · Q · It's basically sending him the information that
 15 · Mr. Marriner had given to you?
 16 · · · · A · Yes, and perhaps Mr. Radovan as well.
 17 · · · · · (Exhibit 57 was marked.)

18 · BY MR. LITTLE:

19 · · · · Q · I'm going to show you deposition Exhibit 57.

20 · Can you tell me whether these are the notes that you're
21 · referring to in that prior exhibit?

22 · · · · A · I would believe so.

23 · · · · Q · And these are notes that you prepared, correct?

24 · · · · A · Correct.

25 · · · · Q · Came from your document production?

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1 · · · · A · Yes.

2 · · · · Q · What is the source of the information in these
3 · notes?

4 · · · · A · Could have been the documents they sent me,
5 · could have been from telephone conversations. It's my
6 · collection of notes on the project as I made them.

7 · · · · Q · So it's based on either information you had
8 · been provided or conversations you had with Mr. Marriner
9 · or Mr. Radovan?

10 · · · · A · I believe so.

11 · · · · Q · The first thing you indicate is that the total
12 · project cost is something slightly over 60 million
13 · dollars?

14 · · · · A · Six. I'm sorry, where are you now?

15 · · · · Q · Line one. Over 60 million dollars?

16 · · · · A · Yes, I'm sorry, correct.

17 · · · · Q · And so if we go back to Exhibit 2, remember we
18 · were looking at that preliminary budget of about
19 · 50 million dollars and change?

20 · · · · A · Correct.

21 · · · · Q · So it looks like as of this date, which was
22 · late July, it was your understanding the project was at
23 · least 10 million dollars over budget from what was
24 · represented back in 2014?

25 · · · · A · I guess that's what that would indicate.

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5 · · · · Q · Deposition Exhibit 58 are some e-mails between
6 · you and Robert on July 27, 2015, correct?

7 · · · · A · Yes.

8 · · · · Q · And you asked him that you believe there was
9 · some 30 million dollars in debt and wanted to know who
10 · was providing that and under what terms, correct?

11 · · · · A · Correct.

12 · · · · Q · And he explained that the debt was a
13 · combination of a 29.5 million dollar first and a six
14 · million dollar mezzanine, correct?

15 · · · · A · Yes.

16 · · · · Q · And then he gave you the terms of both those
17 · loans?

18 · · · · A · Yes.

19 · · · · Q · And he also told you that they were actively
20 · refinancing the mezz?

21 · · · · A · Correct.

22 · · · · Q · That's the information he had given you about

23. the 15 million dollar refinance?

24. . . . A . . Yes.

25. . . . Q . . What did he tell you about the status of that

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1. refinance at any point in time prior to your investing?

2. . . . A . . As far as I knew, it was on track to be

3. refinanced. He had it ready to go at a lower cost. It

4. was a cost savings measure as well as extending the cash

5. for the project.

13. (Exhibit 59 was marked.)

14. BY MR. LITTLE:

15. . . . Q . . I'll show you deposition Exhibit 59. It looks

16. like July 29, 2015 e-mails between you and Robert,

17. cc'ing Mr. Marriner, correct?

18. . . . A . . Yes.

19. . . . Q . . On July 29th, Robert e-mails asking if there's

20. anything you need from him and to call with questions,

21. correct?

22. . . . A . . Yes.

23. . . . Q . . And your response is that you sent everything

24. to your CPA Sunday afternoon?

25. . . . A . . Yes.

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1. . . . Q . . Did you ask for anything else that Mr. Radovan

2. or Mr. Marriner didn't provide?

3. . . . A . . Not that I'm aware of.

(Exhibit 60 was marked.)

5. BY MR. LITTLE:

6. . . . Q . . Showing you deposition Exhibit 60, a two-page

7. document. The first page, at the bottom there's an

8. e-mail August 3rd, 2015 from Mr. Marriner to you,

9. correct?

10. . . . A . . Correct.

11. . . . Q . . He's following up to ask if you have any more

12. questions, correct?

13. . . . A . . Yes.

18. . . . Q . . And he's asking if you're still interested in

19. investing, correct?

20. . . . A . . Yes.

21. . . . Q . . And your response is you've been dealing

22. directly with Robert and that Robert will be taking

23. questions from your CPA early this week?

24. . . . A . . Yes.

25. . . . Q . . Any reason to believe that Robert didn't

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1. provide your CPA with timely responses to his questions?

2. . . . A . . No.

(Exhibit 61 was marked.)

7. BY MR. LITTLE:

8. . . . Q . . I'll show you deposition Exhibit 61, two page
 9. e-mail string on August 1st. On the second page, you
 10. write to Robert that your CPA has reviewed the proposal
 11. and has some questions, and then you're asking Robert to
 12. tell Ken about his previous projects and how they turned
 13. out for the investors, correct?

14. . . . A . . Correct.

15. . . . Q . . And then on the first page, on August 4th, it
 16. looks like Ken writes to Robert and copies you,
 17. referencing a call that they had. Do you have any
 18. recollection of what was discussed between Robert and
 19. Ken during that call?

20. . . . A . . I wasn't on that call.

21. . . . Q . . Understand, but did Ken talk to you about what
 22. was discussed?

23. . . . A . . I don't believe so. He just answered his
 24. questions in his efforts to advise me.

25. . . . Q . . It looks like Ken is asking for more

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1. information here, correct?

2. . . . A . . Correct.

3. . . . Q . . Some assumptions, pro forma, investor returns
 4. and a total project budget?

5. . . . A . . I believe so.

6. . . . Q . . Any reason to believe that information wasn't
 7. provided?

8. . . . A . . No reason I know of.

20. (Exhibit 62 was marked.)

21. BY MR. LITTLE:

22. . . . Q . . Exhibit 62 is e-mails between you and Robert
 23. copying Ken with Robert indicating that he was going to
 24. get Ken that information, correct?

25. . . . A . . Correct.

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1. . . . Q . . And you don't have any reason to believe that
 2. he didn't do that?

3. . . . A . . No.

4. (Exhibit 63 was marked.)

5. BY MR. LITTLE:

6. . . . Q . . Exhibit 63 is an August 10, 2015 e-mail from
 7. Pete Dordick at Criswell Radovan to you and your CPA,
 8. correct?

9. . . . A . . Correct.

10. . . . Q . . And he's forwarding it looks like some of the
 11. information, the budgetary information that Ken had
 12. requested, correct?

13. . . . A . . Correct.

14. . . . Q . . Have you seen any of this information?

15. . . . A . . I don't know.

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16. . . . Q . . Sir, Exhibit 72 is e-mail between you and

17. Robert on October 10th, 2015, a couple days before you
 18. sent your money, correct?
 19. . . . A . . I believe so.
 20. . . . Q . . And you asked how the Cal-Neva was
 21. scheduling -- how the Cal-Neva schedule was holding up,
 22. correct?
 23. . . . A . . Yes.
 24. . . . Q . . And Robert told you looking good, soft opening
 25. in spring with grand opening on Father's Day weekend.

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1. He told you they just brought in their general manager
 2. and chef, correct?
 3. . . . A . . Yes.

Page 202

14. . . . Q . . . Do you have any evidence that
 15. Robert or anyone from Criswell Radovan misrepresented
 16. the status of financing at any point in time prior to
 17. your giving your money?
 18. . . . A . . I don't know when they knew what. I don't know
 19. if the 15 million dollar refinancing was still viable at
 20. the time of my financing.
 21. . . . Q . . Do you have any evidence that the contractor
 22. was given any notice or intention that it was going to
 23. stop work or walk off the job before you made your
 24. investment?
 25. . . . A . . Just Dave Marriner's e-mail that said that that

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1. was going to happen.
 2. . . . Q . . And that was an e-mail months later, right?
 3. . . . A . . Yes, that if accurate, then CR knew beforehand.

BY WOLF

Page 204

16. . . . Q . . So I'm going to start with some general
 17. questions. Was there any financial information that
 18. Marriner provided to you after mid July, 2015 with
 19. regard to the project?
 20. . . . A . . Before I invested or just any time after?
 21. . . . Q . . From July, mid July, 2015 until you invested,
 22. did Mr. Marriner provide you any financial information
 23. relative to the project?
 24. . . . A . . I'm not sure. The record would show it,
 25. though, I think.

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1. . . . Q . . The records we saw today indicated that in
 2. July, 2015, roughly July 14 or 15, 2015, he e-mailed you
 3. some documents relative to the project. Do you remember
 4. looking at those?
 5. . . . A . . Yes.
 6. . . . Q . . After that date, did he send you any other
 7. financial records regarding the project?
 8. . . . A . . I'm not clear as to whether the documents were
 9. coming from Radovan or Marriner.

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24. . . . Q . Let's turn to one of the exhibits that's in
 25. front of you there, Exhibit 60. So Exhibit 60 is an

Page 206

1. e-mail string between Marriner and yourself on August 3,
 2. 2015, correct?

3. . . . A . Yes.

4. . . . Q . And Marriner asked you a few questions,
 5. including did you have more questions, are you still
 6. interested? Your response was on August 30, 2015, "I've
 7. been dealing directly with Robert. Thanks. He will be
 8. taking questions from my CPA early this week. More
 9. soon." That's your e-mail back to Dave Marriner,
 10. correct?

11. . . . A . Yes.

12. . . . Q . After this e-mail, did you ever seek financial
 13. information from David Marriner between this date and
 14. the date of your investment?

15. . . . A . I don't know. I don't remember.

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16. . . . Q . Do you recall receiving any other investor
 17. updates or investor status reports from any source after
 18. mid July, 2015 up until the day you invested?

19. . . . A . It would have been in the record of the
 20. e-mails. I'm not sure.

21. . . . Q . But as you sit here today, you can't recall if
 22. there was a further update after July of 2015 prior to
 23. the investment?

24. . . . A . You didn't say Dave Marriner, though. You mean
 25. from anybody?

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1. . . . Q . From anybody.

2. . . . A . I'm sure there was other communications from my
 3. CPA and probably myself between the parties. What they
 4. were and when, I don't know.

Pages 207-209:

5. . . . Q . Let's turn to Exhibit 72, and since Mr. Little
 6. did such a good job of covering documents, I'll be
 7. skipping around, hopefully not confusing things.

8. . . . So 72 is an e-mail string on October 10, 2015
 9. between yourself and Robert Radovan, correct?

10. . . . A . Yes.

11. . . . Q . And October 10 is still two days before you
 12. signed the subscription documents, correct?

13. . . . A . Yes.

14. . . . Q . And it's three days prior to your funding,
 15. correct?

16. . . . A . I assume that that's right on the date of the
 17. signing documents.

18. . . . Q . . And the date of the funding?
 19. . . . A . . The date of the funding I remember.
 20. . . . Q . . So you asked, "Terrific, Robert, thanks for
 21. . sending this. . How is the Cal-Neva schedule holding up"?
 22. . And his answer was on October 10, 2015, "Looking good.
 23. . Soft opening in spring with grand opening on Father's
 24. . Day weekend. . Just brought in our general manager and
 25. . chef."

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1. . . . A . . Correct.
 2. . . . Q . . Do you have any reason to doubt the accuracy of
 3. . that date, October 10, 2015, that you received that
 4. . information that there would be a soft opening in the
 5. . spring with a grand opening on Father's Day?
 6. . . . A . . No. . I already told you I heard from him about
 7. . why and that it was happening then.
 8. . . . Q . . And you understood that was the schedule before
 9. . you funded, correct?
 10. . . . A . . Yes.
 11. . . . Q . . You were conducting due diligence with the
 12. . assistance of Ken Tratner, the CPA, correct?
 13. . . . A . . Yes.
 14. . . . Q . . And then there was your own questions and
 15. . answers to Mr. Grove, the architect, correct?
 16. . . . A . . Right.
 17. . . . Q . . Was there anybody else who you engaged for due
 18. . diligence, like a professional such as an attorney?
 19. . . . A . . No.
 20. . . . Q . . Or construction manager, anything like that?
 21. . . . A . . No.
 22. . . . Q . . Was there anyone else besides Ken Tratner,
 23. . Robert Radovan, and Mr. Grove who you sought information
 24. . from regarding the progress of the project during your
 25. . due diligence before funding your investment?

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1. . . . A . . Name those again, please.
 2. . . . Q . . Tratner, Radovan, Grove, and anyone else?
 3. . . . A . . Marriner.
 4. . . . Q . . What information did you seek from Marriner?
 5. . . . A . . Was the project on track. . I think that was in
 6. . e-mails that I asked about that for the December 12th
 7. . being ready.
 8. . . . Q . . And prior to the funding, though, you
 9. . understood the project schedule was what?
 10. . . . A . . Delayed because of the fear of light winter.
 11. . . . Q . . But you knew it was to be delayed to the day we
 12. . just discussed shown in Exhibit 72?
 13. . . . A . . Yes.

No affirmative misrepresentations by Marriner to Yount.

15. . . . Q . . Are you aware of any facts that Mr. Marriner or
 16. . his company misrepresented to you, so as opposed to
 17. . concealing or not disclosing information, affirmatively
 18. . stating something that he knew to be false or had no

19. information to make the statement?
 20. . . . A . . I don't believe -- I believe he knew that the
 21. project was off schedule and told me it was.
 22. . . . Q . . And what time period?
 23. . . . A . . Before my investment.

Pages 215-216

5. . . . Q . . When you executed the subscription and
 6. delivered the subscription agreement, was Marriner
 7. involved in that transmission of the documents?
 8. . . . A . . No, it was strictly me, or Premiere actually.
 9. . . . Q . . So it was between you, Premiere and the Coleman
 10. law firm?
 11. . . . A . . And I'm not sure whether the documents
 12. themselves went to Coleman as well as a check. I know a
 13. check went to Coleman, and whether the documents went to
 14. CR and they signed it as Cal-Neva, LLC.
 15. . . . Q . . But it's accurate, however, to say that you did
 16. not deliver money or documents to Marriner?
 17. . . . A . . Correct.
 18. . . . Q . . And when I say documents, I'm referring to the
 19. signed subscription agreement?
 20. . . . A . . Correct.
 21. . . . Q . . And I'm referring to the signed Private
 22. Placement Memorandum.
 23. . . . A . . Correct.
 24. . . . Q . . After your e-mail on August 3, 2015, I think
 25. it's Exhibit 60, so after your e-mail to Marriner

Page 216

1. August 3, 2015 which is marked as Exhibit 60 to the
 2. deposition, did you ever tell Mr. Marriner that you were
 3. looking to him for project information?
 4. . . . A . . I don't recall.
 5. . . . Q . . So I want to go back to Exhibit 57.
 6. . . . A . . Okay.
 7. . . . Q . . I just want to make sure I understand what this
 8. document is. Exhibit 57 are notes that you prepared by
 9. assembling information you received from others and then
 10. sent to Ken Tratner, the CPA?
 11. . . . A . . Correct.
 12. . . . Q . . And you sent it to him with that e-mail that
 13. was marked earlier which I believe was July 26th, 2015,
 14. correct?
 15. . . . A . . Sounds right.

Page 218

1. BY MR. WOLFE:
 2. . . . Q . . Does Exhibit 57 reflect what your
 3. understandings were from the information you had
 4. accumulated up to the point of sending this to your CPA
 5. of the capital structure as it existed and the proposed
 6. 15 million dollar refinancing?
 7. . . . A . . Yes.

Pages 218-219.

18. Prior to your funding on October 12 or 13,
 19. 2015, what knowledge did you have about potential refi's
 20. of financing on the project?

21. . . . A. . . Other than the 15 million?

22. . . . Q. . . Yes. . So you knew about the 15 million?

23. . . . A. . . Yes.

24. . . . Q. . . Was there any other potential refinance of debt
 25. on the project that you were made aware of?

Page 219

1. . . . A. . . I don't believe so.

2. . . . Q. . . At some point in the process of your due
 3. diligence, your CPA, Kevin Tratner, gave you the
 4. go-ahead or the green light that from the things he read
 5. and saw, the investment looked reasonable or sound?

6. . . . A. . . Reasonable.

7. . . . Q. . . Did he provide you a written opinion in that
 8. regard?

9. . . . A. . . I don't believe so.

10. . . . Q. . . Did he send you e-mails in that regard?

11. . . . A. . . Any e-mails would have been in here, I believe,
 12. in my production.

13. . . . Q. . . So it would have been a phone conversation and
 14. maybe an e-mail?

15. . . . A. . . Yes.

16. . . . Q. . . Is he the general CPA for yourself individually
 17. or for your business?

18. . . . A. . . Everything.

19. . . . Q. . . Did you receive a separate invoice for his due
 20. diligence for the deal?

21. . . . A. . . He did it complimentary.

22. . . . Q. . . Did he send you a bill that showed the hours
 23. that were being written off, or it was just no bill?

24. . . . A. . . No, he said he'd take care of it, not to worry.

Page 219-221:

25. . . . Q. . . If you were to describe what you know of his
 Page 220

1. due diligence consisting of -- strike that.

2. What did his due diligence consist of to your
 3. knowledge, if you know?

4. . . . A. . . Looking through the documents I provided him
 5. and speaking with Robert Radovan is what I know,
 6. speaking and communicating with Robert Radovan. I
 7. wasn't privy to all e-mails that -- I may or may not
 8. have been privy to all e-mails between he and Robert
 9. Radovan.

10. . . . Q. . . In hindsight, was there anything you would have
 11. done differently with regard to your due diligence prior
 12. to funding your investment? Is there any extra
 13. precaution or extra due diligence that you now regret
 14. you didn't pursue or didn't perform?

15. . . . A. . . I probably should have investigated his past
 16. projects more and probably should have quizzed him a

17. little closer on what he knew and didn't know about the
 18. current status of the project.
 19. . . . Q . . When you say "him", do you mean --
 20. . . . A . . We're talking about Robert Radovan is what you
 21. asked, yeah.
 22. . . . Q . . I asked you about --
 23. . . . A . . In general?
 24. . . . Q . . Generally what other due diligence on all
 25. fronts looking back, hindsight being 20-20, would you
 Page 221
 .1. have -- do you wish you had done?
 .2. . . . A . . I wish I had asked Robert and Dave more about
 .3. the current status of the project and hopefully been
 .4. able to uncover more information than what I was given,
 .5. and I also wish I had done more investigation in his
 .6. past projects.
 .7. . . . Q . . Anything else you can think of?
 .8. . . . A . . No, I don't believe so.

Page 221:

14. . . . Q . . I'm showing you Exhibit 1 to the depositions.
 15. Included in Exhibit 1 is the confidential Private
 16. Placement Memorandum dated March 11, 2014. There's
 17. several sections to the document, one of which is called
 18. risk factors which begins on Page 9, and before we talk
 19. about a particular provision in the document, did you
 20. have any legal counsel review the Private Placement
 21. Memorandum and advise you with respect to the PPM before
 22. signing it?
 23. . . . A . . No.
 24. . . . Q . . Did you read the clause on Page 9 of Exhibit 1
 25. that's indemnification -- excuse me, insufficient

Page 222

.1. funding dilution. Were you aware of that provision --
 .2. . . . A . . Yes.
 .3. . . . Q . . -- when you signed the document?
 .4. . . . A . . Yes.
 .5. . . . Q . . And what did it mean to you when you signed the
 .6. document?
 .7. . . . A . . That if the funding was insufficient, they may
 .8. have to go out and get more funding which would dilute
 .9. my interest in the project.
 10. . . . Q . . And it also says that, "If the company is
 11. unable to raise sufficient financing and/or equity
 12. funding to complete the purchase and redevelopment of
 13. the property, implementation of its business plan will
 14. be delayed and will greatly reduce the company's
 15. possibility of success."
 16. You were aware of that when you entered into
 17. this deal, right?
 18. . . . A . . Yes.
 19. . . . Q . . And you're aware of the other risk factors that
 20. are identified in the PPM, correct?
 21. . . . A . . Yes.

22. . . . Q . . You have experience developing property for
 23. yourself personally and for your business operations,
 24. correct?

25. . . . A . . Yes.

Page 223

1. . . . Q . . In your experience, are there cost overruns?

2. . . . A . . Oh, yes.

3. . . . Q . . And what sort of magnitude of cost overruns
 4. have you experienced in your own real estate
 5. construction projects in terms of percentage of the
 6. initial budget?

7. . . . A . . Probably the biggest one would have been my
 8. main house, but that was probably more due to change
 9. orders and site conditions than anything, and as to what
 10. percentage, I'm guessing now, but it's maybe ten
 11. percent.

12. . . . Q . . How about time delays in construction projects
 13. that you've personally been involved in, what sort of
 14. time overruns or schedule delays have you experienced?

15. . . . A . . Again, my personal residence here in Lake
 16. Tahoe. Probably my most recent project which was a
 17. lakeside cottage was a year late, two-and-a-half years
 18. instead of one-and-a-half years over what was projected
 19. by the builder.

20. . . . Q . . And what was the square

Page 227-228:

1. . . . Q . . What capital table do you recall having in hand
 2. having most recently received before you funded your
 3. investment? Do you know what date it was and who it
 4. came from?

5. . . . A . . No. It would have come from Criswell Radovan
 6. or their agent, David Marriner.

7. . . . Q . . And you've testified earlier about
 8. discrepancies in the capital tables, correct?

9. . . . A . . Yes. I'm sorry, I was thinking of the budgets,
 10. but the cap table was one that was sent by Dave Marriner
 11. earlier, but the more recent one was -- and was it
 12. before I invested? I think there might have been one
 13. from CR, from Robert Radovan before I invested, but I'm
 14. not positive of that, but the records will show.

15. . . . Q . . Are you aware of any capital tables besides the
 16. two you just mentioned prior to your investment that you
 17. received?

18. . . . A . . No.

19. . . . Q . . That was stated really horribly.

20. Were you aware -- did you receive any capital
 21. tables other than the two you just described before you
 22. invested?

23. . . . A . . Not that I remember.

24. . . . Q . . Other than the capital table that you received
 25. by e-mail from Dave Marriner early on, were there any

Page 228

1. other documents that you received from Marriner that

·2· ·Marriner created relative to the project?
·3· ····A· ·I'm not always sure what he created versus what
·4· ·was created by CR, so I don't know for sure of any.
·5· ····Q· ·Do you believe that Marriner was attempting to
·6· ·swindle you?
·7· ····A· ·That's a very strong word.· I would not use
·8· ·that word.· I believe Dave Marriner was trying to
·9· ·support his employer and to sell a project to earn a
10· ·commission.
11· ····Q· ·Do you believe that he attempted to defraud
12· ·you?
13· ····A· ·That's a legal description that I'm not
14· ·comfortable in answering.

Page 229:

10· ····Q· ·What communications did Marriner have with you
11· ·regarding the immediacy or imminence of the 15 million
12· ·dollar refinancing? Was that all in e-mails?
13· ····A· ·As far as I remember.
14· ····Q· ·Do you recall any conversations with Marriner
15· ·in that regard?
16· ····A· ·I'm not sure.· No, I do not recall.

Page 234

·1· ····Q· ·And then Exhibit 29, when Mr. Radovan told you
·2· ·about the refinancing and basically that he was pulling
·3· ·an additional nine million dollars out, he told you what
·4· ·that was to cover, correct?
·5· ····A· ·Yes.
·6· ····Q· ·And it doesn't say anything in there about any
·7· ·money being there for a cushion, does it?
·8· ····A· ·No, but that's what I was told.
·9· ····Q· ·By who?
10· ····A· ·Mr. Radovan, I believe.

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EXHIBIT 2

000418

000418

EXHIBIT 2

1
2
3 IN THE SECOND JUDICIAL DISTRICT COURT
4 OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE

6 -o0o-

7 GEORGE STUART YOUNT, :
8 individually and in his capacity : Case No.
9 as owner of GEORGE STUART YOUNT : CV16 00767
10 IRA, :
11 :
12 :
13 :
14 :
15 :
16 :
17 :
18 :
19 :
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Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada
limited liability company; CR
CAL NEVA, LLC, a Nevada limited
liability company; et al.,

Defendants.

=====

16 DEPOSITION OF
17 GEORGE STUART YOUNT
18 Tuesday, June 6, 2017
19 Reno, Nevada
20
21
22
23
24
25

Reported by: DIANNE M. BRUMLEY, NV CCR #205
California CSR #6796

000420

Yount, George

June 06, 2017

Pages 22..25

| | |
|---|---|
| <p style="text-align: right;">Page 22</p> <p>1 in the company's books and records?</p> <p>2 A Correct.</p> <p>3 Q Did you do that before or after Mr. Radovan and</p> <p>4 Criswell told you that you had bought one of their</p> <p>5 shares?</p> <p>6 A I'm not sure whether it was before or after. I</p> <p>7 think it was possibly before, but right about that time.</p> <p>8 Q Have any members of the IMC group or Molly</p> <p>9 Kingston shared any other documents with you?</p> <p>10 A I don't believe so.</p> <p>11 Q Have they provided you with any facts or</p> <p>12 information to assist you with the prosecution of this</p> <p>13 lawsuit?</p> <p>14 A I don't believe so.</p> <p>15 Q To your knowledge, have any of these other</p> <p>16 investors contemplated taking legal action against any</p> <p>17 of the defendants in this case?</p> <p>18 A I believe they have, and they asked me to join</p> <p>19 that and I refused because I think our cases are quite</p> <p>20 different.</p> <p>21 Q Do they have an attorney or attorneys?</p> <p>22 A I don't really know.</p> <p>23 Q Have you met with any attorney --</p> <p>24 A No.</p> <p>25 Q -- on their part?</p> | <p style="text-align: right;">Page 24</p> <p>1 MR. CAMPBELL: Armstrong.</p> <p>2 THE WITNESS: Armstrong. Sorry.</p> <p>3 BY MR. LITTLE:</p> <p>4 Q Does Miss Armstrong represent any of the other</p> <p>5 investors?</p> <p>6 A Not that I'm aware of.</p> <p>7 Q Are any of the other investors paying any</p> <p>8 portion of Miss Armstrong's fees?</p> <p>9 A No.</p> <p>10 Q Have you filed a proof of claim in the</p> <p>11 bankruptcy?</p> <p>12 A I'm sorry, I don't know what a proof of claim</p> <p>13 is.</p> <p>14 Q Have you taken a legal position in the</p> <p>15 bankruptcy vis-a-vis your interest in the company?</p> <p>16 A I'm on the creditors' committee, is that</p> <p>17 something you're trying to find out? I'm not clear I'm</p> <p>18 responding correctly to you.</p> <p>19 Q I'll ask, you are on the creditors' committee?</p> <p>20 A I am.</p> <p>21 Q What do you do on the --</p> <p>22 A The unsecured creditors' committee.</p> <p>23 Q Any investor in the company would be an</p> <p>24 unsecured creditor, correct?</p> <p>25 A A shareholder? I don't know if that's true or</p> |
| <p style="text-align: right;">Page 23</p> <p>1 A No.</p> <p>2 Q Is it all of the investors, the IMC group and</p> <p>3 Molly Kingston that have contemplated taking legal</p> <p>4 action?</p> <p>5 A As far as I know, those have contemplated and</p> <p>6 others I don't know.</p> <p>7 Q Do you know if they have any current plans to</p> <p>8 pursue litigation against any of the defendants?</p> <p>9 A I do not know.</p> <p>10 Q Do you know why they haven't sued yet?</p> <p>11 A I don't even know that they haven't sued yet.</p> <p>12 Q Do you have a general understanding of what</p> <p>13 their complaints are vis-a-vis the defendants in this</p> <p>14 matter?</p> <p>15 A I believe they, like I, believe that we were</p> <p>16 not well informed or openly dealt with.</p> <p>17 Q After they made their investment or before?</p> <p>18 A Don't know.</p> <p>19 Q So you don't know if they have current plans to</p> <p>20 sue?</p> <p>21 A Do not know for sure.</p> <p>22 Q Do you have bankruptcy counsel?</p> <p>23 A Yes.</p> <p>24 Q Who is your bankruptcy counsel?</p> <p>25 A Sally --</p> | <p style="text-align: right;">Page 25</p> <p>1 not. That's a legal term.</p> <p>2 Q Do you know if any of the other investors are</p> <p>3 on the unsecured creditors' committee?</p> <p>4 A I don't believe so, no.</p> <p>5 Q Are they on a secured creditors' committee?</p> <p>6 A I don't know.</p> <p>7 Q Do you know if the other investors say Molly</p> <p>8 Kingston, for example, is a secured or unsecured</p> <p>9 creditor?</p> <p>10 A I do not know.</p> <p>11 Q Have you taken a position in the bankruptcy</p> <p>12 that you're an investor in the project?</p> <p>13 A No, I'm not an investor in the project.</p> <p>14 Q Then why are you on the unsecured creditors'</p> <p>15 committee?</p> <p>16 A Because certain documents such as the one Mr.</p> <p>17 Radovan signed that said I was an investor in the</p> <p>18 project led me to believe that I should be on that</p> <p>19 committee.</p> <p>20 Q After late January, 2016 when Mr. Radovan and</p> <p>21 Mr. Criswell told you what they believe they sold you,</p> <p>22 have you held yourself out to be an investor --</p> <p>23 A No.</p> <p>24 Q -- in this project to anyone?</p> <p>25 A No.</p> |

Yount, George

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Pages 26..29

| | |
|--|---|
| <p style="text-align: right;">Page 26</p> <p>1 Q So presently do you believe that you own a one</p> <p>2 million dollar founders share in the Cal-Neva Lodge</p> <p>3 project?</p> <p>4 A No.</p> <p>5 Q Can we have a common understanding today when I</p> <p>6 talk about the project, I'm talking about the Cal-Neva</p> <p>7 project?</p> <p>8 A Okay, certainly.</p> <p>9 Q And when I talk about the investment, I'm</p> <p>10 talking about the million dollars that you invested.</p> <p>11 A That's fine.</p> <p>12 Q Why don't you believe that you own a one</p> <p>13 million dollar founders share in the Cal-Neva project?</p> <p>14 MR. CAMPBELL: I'm going to object insofar as</p> <p>15 it could call for a legal conclusion.</p> <p>16 THE WITNESS: Because I was told by Mr. Coleman</p> <p>17 in an e-mail that my money never went in the project.</p> <p>18 BY MR. LITTLE:</p> <p>19 Q Do you believe you hold any interest in the</p> <p>20 project?</p> <p>21 A Other than a lawsuit, no.</p> <p>22 Q I want to step back and get a little bit of</p> <p>23 background on you. Can you tell us your educational</p> <p>24 background?</p> <p>25 A I, of course, graduated from high school, I've</p> | <p style="text-align: right;">Page 28</p> <p>1 much about a degree. It wasn't important to me.</p> <p>2 Q Have you ever held any licenses other than a</p> <p>3 driver's license, real estate, anything like that?</p> <p>4 A No, sir. A scuba diving license.</p> <p>5 Q Tell me about your work experience.</p> <p>6 A I started with my family business in 1969 and</p> <p>7 worked my way up through that. In 1976, my father, the</p> <p>8 founder of the company, retired from active day-to-day</p> <p>9 business and I with one other gentleman pretty well ran</p> <p>10 the company from then on, and once my father passed away</p> <p>11 in 2001, I took over as Chairman and CEO.</p> <p>12 Q And what is the family business?</p> <p>13 A We manufacture black paper that goes behind</p> <p>14 stucco walls, flashing around windows, under slab vapor</p> <p>15 barriers, house wraps, mostly residential construction</p> <p>16 materials, and the company is named Fortifiber</p> <p>17 Corporation, F-o-r-t-i-f-i-b-e-r, Corporation.</p> <p>18 Q Is that a Nevada corporation?</p> <p>19 A No, California.</p> <p>20 Q How many shareholders are there?</p> <p>21 A Currently, there are three I would guess you'd</p> <p>22 say. There's two trusts and myself.</p> <p>23 Q Are you the majority shareholder?</p> <p>24 A No.</p> <p>25 Q Who is the majority shareholder?</p> |
| <p style="text-align: right;">Page 27</p> <p>1 attended seven colleges and universities, the last of</p> <p>2 which was Harvard Graduate School of Business.</p> <p>3 Q Do you have any college degrees?</p> <p>4 A No, not officially, although I'm considered an</p> <p>5 alumni of Harvard.</p> <p>6 Q How long did you attend Harvard?</p> <p>7 A It was three weeks a year for three years was</p> <p>8 the initial segment, and then I went back for a unit</p> <p>9 four of the owner president management program later</p> <p>10 which again I believe was three weeks, two or</p> <p>11 three weeks.</p> <p>12 Q What general period of time were you doing this</p> <p>13 course work at Harvard?</p> <p>14 A I completed that course and graduated from that</p> <p>15 course in 1986.</p> <p>16 Q Was that -- I guess there wouldn't have been</p> <p>17 computers then, so it couldn't have been on-line, right?</p> <p>18 A No.</p> <p>19 Q Did you attend the physical campus?</p> <p>20 A Yes, I did, in Cambridge.</p> <p>21 Q So no bachelor or master's degree, you just</p> <p>22 earned units towards that?</p> <p>23 A I do have units, but my involvement was trying</p> <p>24 to be with the best professors and the best universities</p> <p>25 in the country to learn business. I didn't really care</p> | <p style="text-align: right;">Page 29</p> <p>1 A My son and my daughter.</p> <p>2 Q Are they active in the business?</p> <p>3 A My son is. He runs it day-to-day now. These</p> <p>4 are dynasty trusts.</p> <p>5 Q When did you step back from day-to-day</p> <p>6 operations of Fortifiber?</p> <p>7 A I started to step back before 2006 and then the</p> <p>8 great recess came on and I got much more involved again,</p> <p>9 and now the last three years, I've stepped back pretty</p> <p>10 dramatically.</p> <p>11 Q Does the company supply construction materials</p> <p>12 outside of Nevada?</p> <p>13 A Oh, yes.</p> <p>14 Q Throughout the United States?</p> <p>15 A Yes, and beyond.</p> <p>16 Q Sales-wise does it do seven figures, eight</p> <p>17 figures, nine figures?</p> <p>18 A Eight figures, well into the eight figures.</p> <p>19 Q So you were at the helm of that corporation for</p> <p>20 several decades?</p> <p>21 A Yes.</p> <p>22 Q How many employees did the company have at its</p> <p>23 peak?</p> <p>24 A 350.</p> <p>25 Q How about now?</p> |

Yount, George

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Pages 106..109

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| <p style="text-align: right;">Page 106</p> <p>1 BY MR. LITTLE:</p> <p>2 Q I'm trying to understand from you and help me</p> <p>3 understand how owning one of CR Cal-Neva's founding</p> <p>4 shares is any different from what you understood you</p> <p>5 were buying other than the fact that the million dollars</p> <p>6 would have gone to the company instead of to CR</p> <p>7 Cal-Neva?</p> <p>8 A It's like buying a new house versus a resale.</p> <p>9 Can you contemplate that relationship?</p> <p>10 Q Well, was there any wear and tear on their</p> <p>11 shares?</p> <p>12 A Oh, yeah, I think there's a huge wear and tear</p> <p>13 on their shares because they were trying to take their</p> <p>14 money and run as best they could and seeing the project</p> <p>15 in failure. I think the whole atmosphere of the</p> <p>16 transaction changes dramatically.</p> <p>17 Q Those were the same founding shares, though?</p> <p>18 You understood that they purchased two million dollars</p> <p>19 of the 20 million dollar subscription?</p> <p>20 A Depends which cap table you see, but yes,</p> <p>21 potentially.</p> <p>22 Q Wouldn't you be in the same position today had</p> <p>23 you beat Les Busick to the punch and been able to</p> <p>24 purchase part of that remaining 1.5 million dollars?</p> <p>25 A No.</p> | <p style="text-align: right;">Page 108</p> <p>1 purchased from CR Cal-Neva?</p> <p>2 A I think both are worth zero.</p> <p>3 Q In other words, you'd be in the same position?</p> <p>4 MR. CAMPBELL: Objection, that mischaracterizes</p> <p>5 his testimony.</p> <p>6 THE WITNESS: That's not what I said.</p> <p>7 BY MR. LITTLE:</p> <p>8 Q Do you have any evidence that the rights and</p> <p>9 obligations that attach to both of those shares, the one</p> <p>10 closing out the final 1.5 million dollars and CR</p> <p>11 Cal-Neva's founding share are any different?</p> <p>12 MR. CAMPBELL: Asked and answered, and it also</p> <p>13 calls for a legal conclusion.</p> <p>14 THE WITNESS: I don't know. I haven't seen the</p> <p>15 terms under which they bought their share, for example,</p> <p>16 or two shares.</p> <p>17 BY MR. LITTLE:</p> <p>18 Q Let's go through the misrepresentations and</p> <p>19 omissions in paragraph 30 of your complaint?</p> <p>20 A Paragraph 30?</p> <p>21 Q Yes. One, you say, and I don't want to belabor</p> <p>22 this to the extent we've already talked about it, but</p> <p>23 one of them was that the Cal-Neva Lodge would open on or</p> <p>24 near the end of 2015. Who made that misrepresentation</p> <p>25 to you?</p> |
| <p style="text-align: right;">Page 107</p> <p>1 MR. CAMPBELL: Objection insofar as it calls</p> <p>2 for a legal conclusion.</p> <p>3 BY MR. LITTLE:</p> <p>4 Q How would things be different?</p> <p>5 A Do I answer?</p> <p>6 MR. CAMPBELL: If you can.</p> <p>7 THE WITNESS: It seems to me that it -- would</p> <p>8 you ask the question again so I make sure I answer it</p> <p>9 correctly?</p> <p>10 BY MR. LITTLE:</p> <p>11 Q Wouldn't you be in the same position today had</p> <p>12 you beat Les Busick to the punch and purchased one</p> <p>13 million dollars of that remaining 1.5 million dollars</p> <p>14 rather than one of CR Cal-Neva's shares?</p> <p>15 A No, because I wouldn't have been defrauded by</p> <p>16 Mr. Coleman and CR.</p> <p>17 Q I guess I don't understand your answer. My</p> <p>18 question was a hypothetical. If Mr. Busick never came</p> <p>19 into the picture and you closed on that remaining 1.5</p> <p>20 million dollar piece and you bought a million dollars of</p> <p>21 that, how would you be in any different position today?</p> <p>22 A I believe that's a misrepresentation and a lack</p> <p>23 of trust now in the developer that I never contemplated.</p> <p>24 Q Do you have any evidence that the value of that</p> <p>25 founding share is any different than a founding share</p> | <p style="text-align: right;">Page 109</p> <p>1 A I believe Mr. Radovan as well as Mr. Marriner.</p> <p>2 Q And they told you that -- when was the most</p> <p>3 recent time they told you that in relation to when you</p> <p>4 gave your money?</p> <p>5 A Shortly before I gave my money, within a couple</p> <p>6 weeks, except, as I stated, I was told by Mr. Radovan</p> <p>7 that it would open late, but not because of financial</p> <p>8 concerns, at least not budgetary financial concerns.</p> <p>9 Q And you indicate another misrepresentation was</p> <p>10 that the project was only slightly over budget. First</p> <p>11 of all, how do you define slightly over budget?</p> <p>12 A Five to six million dollars.</p> <p>13 Q And who told you that?</p> <p>14 A I believe that was Mr. Radovan, but I believe</p> <p>15 the documents will show.</p> <p>16 Q He told you that in an e-mail?</p> <p>17 A I believe so.</p> <p>18 Q Did he ever tell you that verbally?</p> <p>19 A Could have been. I don't know.</p> <p>20 Q Did Mr. Radovan ever -- excuse me, Mr. Marriner</p> <p>21 ever make representations about the budget of the</p> <p>22 project?</p> <p>23 A Before my investment?</p> <p>24 Q Yes.</p> <p>25 A No, I don't believe so.</p> |

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| <p style="text-align: right;">Page 110</p> <p>1 Q Another misrepresentation you indicate is that</p> <p>2 a refinancing of the six million dollar mezzanine</p> <p>3 financing with the 15 million dollar loan was in place</p> <p>4 or imminent. Do you believe that to have been false at</p> <p>5 the time?</p> <p>6 A I believe it was not a cost saving measure, it</p> <p>7 was a desperation measure to save the project, so it was</p> <p>8 misrepresented to me in that form, and I believe the</p> <p>9 project was more over budget than this five or six</p> <p>10 million and I think they knew it at the time.</p> <p>11 Q But you don't have any evidence of that?</p> <p>12 A No, just Mr. Marriner's e-mail that said that</p> <p>13 Penta if they were not paid was going to pull off the</p> <p>14 job.</p> <p>15 Q Do you have any information that as of the date</p> <p>16 that you made your investment, that a refinancing of the</p> <p>17 six million mezz with a 15 million dollar loan wasn't in</p> <p>18 place or imminent?</p> <p>19 A At the time of my investment, no, I did not</p> <p>20 know that.</p> <p>21 Q No, do you have any information that it was not</p> <p>22 in place or imminent?</p> <p>23 A No.</p> <p>24 Q Another misrepresentation is that the</p> <p>25 developers had a successful track record of developing</p> | <p style="text-align: right;">Page 112</p> <p>1 project until after the preferred returns and equity</p> <p>2 investments were paid or returned to investors. How is</p> <p>3 that a misrepresentation?</p> <p>4 A Because I believe they did take money prior.</p> <p>5 Q What money did they take?</p> <p>6 A How much you mean, or --</p> <p>7 Q Yeah, what money did they take?</p> <p>8 A I believe they took money out of the project</p> <p>9 for their own pockets before the project was solvent.</p> <p>10 Q In terms of distributions?</p> <p>11 A I don't know in terms of what. It was money</p> <p>12 out of the project.</p> <p>13 Q What evidence do you have that the developers</p> <p>14 took money out of the project?</p> <p>15 A I believe there's all kind of budgetary things</p> <p>16 like the travel expenses that I believe were overstated,</p> <p>17 for example.</p> <p>18 Q Wasn't it true that the IMC group or Molly</p> <p>19 Kingston had an audit performed of the books and</p> <p>20 records?</p> <p>21 A I think they started to. I don't know if it</p> <p>22 was ever completed.</p> <p>23 Q And wasn't somebody claiming that Criswell</p> <p>24 Radovan had taken \$500,000 in travel expenses over the</p> <p>25 three year life of the project?</p> |
| <p style="text-align: right;">Page 111</p> <p>1 similar projects. What misrepresentations were made to</p> <p>2 you in that regard?</p> <p>3 A I've heard later that those projects were not</p> <p>4 as successful as were indicated.</p> <p>5 Q Which projects?</p> <p>6 A The Calistoga one supposedly ended in a</p> <p>7 settlement and a fight among people involved.</p> <p>8 Q Where did you learn that from?</p> <p>9 A I don't remember for sure.</p> <p>10 Q Did Mr. Radovan ever make any representations</p> <p>11 to you prior to investing about the success of any of</p> <p>12 his prior developments?</p> <p>13 A I don't believe I spoke to him about that, no.</p> <p>14 Q This would have been conversations with Mr.</p> <p>15 Marriner?</p> <p>16 A Yes, and he may have had e-mails talking about</p> <p>17 his prior -- some of his prior investments. I don't</p> <p>18 remember for sure.</p> <p>19 Q Do you recall any specific details that Mr.</p> <p>20 Marriner told you about these prior projects?</p> <p>21 A Just in broad terms, that the Calistoga project</p> <p>22 was highly successful, and I believe there was one in</p> <p>23 Europe as well.</p> <p>24 Q You also indicate that the developers would not</p> <p>25 receive distributions or other payments related to the</p> | <p style="text-align: right;">Page 113</p> <p>1 A I believe that was indicated in some of the</p> <p>2 meetings, yes.</p> <p>3 Q And wasn't -- didn't the audit prove that to be</p> <p>4 false?</p> <p>5 A I have no idea.</p> <p>6 Q Isn't it true the audit showed that the travel</p> <p>7 expenses were \$40,000 or less between the two of them</p> <p>8 over a three year period of time?</p> <p>9 A I don't believe I ever saw the audit results.</p> <p>10 Q You don't know anything about the audit</p> <p>11 performed by --</p> <p>12 A I know it was said to have been underway.</p> <p>13 Whether it was ever completed or the results of that, I</p> <p>14 do not know.</p> <p>15 Q Do you know if any financial improprieties came</p> <p>16 out of that audit?</p> <p>17 A I do not know.</p> <p>18 Q So what distributions or other payments are you</p> <p>19 referring to in paragraph 30 of your complaint that you</p> <p>20 believe was a misrepresentation or omission?</p> <p>21 A I don't know the specifics of it, I just</p> <p>22 believe that there was money taken out of the project</p> <p>23 into their pockets. The books and records should show</p> <p>24 that, so that should speak for itself.</p> <p>25 Q Well, have you undertaken an investigation of</p> |

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| <p>1 the books and records to back up this statement?</p> <p>2 A No.</p> <p>3 Q Do you know anyone who has?</p> <p>4 A There was, as you said, discussion of IMC doing</p> <p>5 that, but I don't know the results, just the</p> <p>6 allegations, and I believe Mr. Busick said they told him</p> <p>7 the same thing and that he believes they took a lot of</p> <p>8 money out of the project.</p> <p>9 Q Do you know why Mosaic backed out of the</p> <p>10 project?</p> <p>11 A No.</p> <p>12 Q Did that have anything to do with you or the</p> <p>13 efforts, if any, of the members in the IMC group?</p> <p>14 A Not me for sure.</p> <p>15 Q Did that have anything to do with the efforts</p> <p>16 of the IMC group or Molly Kingston?</p> <p>17 A I think it's been alleged that they did, but I</p> <p>18 think it was the IMC group. I don't think anybody</p> <p>19 alleged Molly Kingston was involved in that, but I don't</p> <p>20 know that.</p> <p>21 Q Were you aware that members of the IMC group</p> <p>22 secretly met with Mosaic?</p> <p>23 A I don't know if it was secretly, but I do</p> <p>24 understand that they met with them.</p> <p>25 Q Without Robert Radovan and Bill Criswell?</p> | <p>1 that loan?</p> <p>2 A No, I don't believe so, but I don't know that.</p> <p>3 Q Were you trying to tank that loan?</p> <p>4 A I had no involvement whatsoever with Mosaic</p> <p>5 or --</p> <p>6 Q You didn't have any interest in bringing any</p> <p>7 sort of lender or financing to the project?</p> <p>8 A No. Interest or involvement?</p> <p>9 Q Involvement.</p> <p>10 A No.</p> <p>11 Q Any knowledge? Were you involved in meetings</p> <p>12 or discussions about potential investors of financing</p> <p>13 being brought to the project?</p> <p>14 A There was a lot of discussions in the various</p> <p>15 Cal-Neva meetings about that.</p> <p>16 Q How about meetings outside of the presence of</p> <p>17 Robert and Bill?</p> <p>18 A I think the IMC was looking for investor</p> <p>19 sources that would be less expensive than Mosaic.</p> <p>20 Q Do you know who they were talking to?</p> <p>21 A No.</p> <p>22 Q Did you have any involvement in that?</p> <p>23 A No.</p> <p>24 Q Did anyone represent to you that the developers</p> <p>25 would not receive distributions or payments until after</p> |
| Page 115 | Page 117 |
| <p>1 A Whether they were invited and didn't attend or</p> <p>2 whether they chose not to or objected to it at the time,</p> <p>3 I don't know.</p> <p>4 Q Were you aware that Mosaic backed out of the</p> <p>5 loan after that meeting?</p> <p>6 A I believe so.</p> <p>7 Q Do you know what the IMC group told Mosaic</p> <p>8 during that meeting?</p> <p>9 A No.</p> <p>10 Q Do you know if they planned on telling Mosaic</p> <p>11 that Criswell Radovan had engaged in fraud or other</p> <p>12 mismanagement?</p> <p>13 A I do not know.</p> <p>14 Q You don't know anything that was discussed?</p> <p>15 A No details.</p> <p>16 Q You don't know what they intended to discuss</p> <p>17 with Mosaic?</p> <p>18 A As far as I understood, they were trying to</p> <p>19 make the deal go through.</p> <p>20 Q So you believe that the IMC group wanted the</p> <p>21 Mosaic loan to go through?</p> <p>22 A I don't know if they wanted to. I think they</p> <p>23 were concerned over how expensive it was and whether the</p> <p>24 project could survive the added cost of their financing.</p> <p>25 Q So you don't believe they were trying to tank</p> | <p>1 preferred returns and equity investments were paid?</p> <p>2 A Yes. Mr. Busick said that to me, and I believe</p> <p>3 Mr. Radovan in one of his e-mails said that. I think</p> <p>4 I've said that before, and Mr. Busick said it in front</p> <p>5 of the meeting, by the way, that general meeting.</p> <p>6 Q And the last misrepresentation in paragraph 30</p> <p>7 is that there was 1.5 million dollars left under the</p> <p>8 offering authorized and contemplated by the subscription</p> <p>9 agreement, and we talked about that, correct?</p> <p>10 A Yes.</p> <p>11 Q And that's something they told you when they</p> <p>12 first came to you in June or July of 2015?</p> <p>13 A Yes.</p> <p>14 Q And nothing else was said about that before you</p> <p>15 made your investment?</p> <p>16 A No.</p> <p>17 Q Paragraph 31, you reference some material</p> <p>18 omissions by defendants, one of which is that the</p> <p>19 company's liabilities exceeded its assets. What do you</p> <p>20 base that on?</p> <p>21 A Subsequent books and records just implied that,</p> <p>22 that they were more in debt than they indicated.</p> <p>23 Q And you don't know by how much, correct?</p> <p>24 A No.</p> <p>25 Q You said that there were omissions because the</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 don't have specific facts or evidence of that?</p> <p>2 A Been through that a dozen times, yes, that's</p> <p>3 correct.</p> <p>4 Q Did you help pay for the audit that the IMC</p> <p>5 group solicited?</p> <p>6 A Not a dime, no.</p> <p>7 Q And you haven't seen any results of that audit?</p> <p>8 A I don't believe so.</p> <p>9 Q But you're not aware of any impropriety that</p> <p>10 was found on behalf of anyone at Criswell Radovan</p> <p>11 stemming from that audit?</p> <p>12 A I don't know stemming from the audit, but there</p> <p>13 would be allegations about the misappropriation of funds</p> <p>14 for travel expenses.</p> <p>15 Q There were some allegations made before the</p> <p>16 audit. Do you know if the audit substantiated any of</p> <p>17 that?</p> <p>18 A No, as I've said before. I don't know that the</p> <p>19 audit was ever completed. I was not involved in the</p> <p>20 audit.</p> <p>21 Q Were you involved in meetings with Molly</p> <p>22 Kingston or the IMC group where they talked about the</p> <p>23 audit?</p> <p>24 A I believe they mentioned it was going on and</p> <p>25 they were trying to get information out of Criswell</p> | <p style="text-align: right;">Page 128</p> <p>1 Q Were you using your potential claim against</p> <p>2 Criswell Radovan as leverage to try to get those two</p> <p>3 gentlemen removed from their role on the project?</p> <p>4 A No. As I said, I did not try to get them</p> <p>5 removed from the project.</p> <p>6 Q So you stayed out of it?</p> <p>7 A Stayed out of it.</p> <p>8 Q Why was that?</p> <p>9 A I just didn't think I belonged in it.</p> <p>10 Q And why is that?</p> <p>11 A I did not think I belonged in it. I don't</p> <p>12 understand, I just --</p> <p>13 Q Is that because you didn't believe you were an</p> <p>14 investor in the project?</p> <p>15 A I was not an investor in the project. Depends</p> <p>16 on your timing, but as of the latter part of January, I</p> <p>17 was shown to be not an investor in the project.</p> <p>18 Q Were you aware that Criswell Radovan was</p> <p>19 seeking funding through Mosaic, you knew that much,</p> <p>20 right?</p> <p>21 A At a later date, yeah.</p> <p>22 Q And you knew --</p> <p>23 A They mentioned it in various meetings.</p> <p>24 Q And in fact, the executive committee had</p> <p>25 approved moving forward with Mosaic in January or</p> |
| <p style="text-align: right;">Page 127</p> <p>1 Radovan so they could be audited and they were having</p> <p>2 trouble getting that information.</p> <p>3 Q Do you recall being copied on an e-mail amongst</p> <p>4 members of the IMC group where it came out that the</p> <p>5 travel expenses were really about \$40,000 and not four</p> <p>6 or \$500,000 as had been alleged?</p> <p>7 A I don't remember that.</p> <p>8 Q Did you participate with members of the IMC</p> <p>9 group in trying to have Robert and Bill removed from</p> <p>10 their role on the project?</p> <p>11 A What do you mean by participate?</p> <p>12 Q Were you aware that Molly Kingston and members</p> <p>13 of the IMC group were trying to have Robert and Bill</p> <p>14 removed?</p> <p>15 A Correct, yes, I was.</p> <p>16 Q Did you participate in meetings or discussions</p> <p>17 with them about doing that?</p> <p>18 A I heard that at their meetings. I did not -- I</p> <p>19 still don't know what you mean by participate.</p> <p>20 Q Well --</p> <p>21 A Did I do anything about it?</p> <p>22 Q Yeah, were you trying to get them removed as</p> <p>23 well?</p> <p>24 A I think it would have been appropriate, but I</p> <p>25 did not have any involvement in doing so.</p> | <p style="text-align: right;">Page 129</p> <p>1 February, 2016, correct?</p> <p>2 A I don't know what they did or didn't.</p> <p>3 Q You didn't know that?</p> <p>4 A I think I probably did, but whatever their</p> <p>5 records show.</p> <p>6 Q Were you familiar with any of the terms, high</p> <p>7 level or otherwise, of the Mosaic loan?</p> <p>8 A Only in broad terms, it was considered to be</p> <p>9 quite expensive and there was concern over the project</p> <p>10 surviving that extra expense.</p> <p>11 Q Was it a complete refinancing of the Hall and</p> <p>12 Ladera loans?</p> <p>13 A I believe so.</p> <p>14 Q And new money?</p> <p>15 A Yes. That was my understanding.</p> <p>16 Q Were you asked to go to the meeting of certain</p> <p>17 members of the IMC group and Mosaic?</p> <p>18 A No, not at the Mosaic meeting. I don't believe</p> <p>19 I was asked to go. I certainly wouldn't have gone.</p> <p>20 Q Did anyone tell you what happened at that</p> <p>21 meeting?</p> <p>22 A I don't remember being told what happened at</p> <p>23 the meeting.</p> <p>24 Q The IMC people and Molly Kingston haven't been</p> <p>25 able to secure any commitments on alternate financing</p> |

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| <p style="text-align: right;">Page 118</p> <p>1 project was in need of capital, because the general</p> <p>2 contractor and numerous subcontractors had not been</p> <p>3 paid. You don't have any information that there were</p> <p>4 any contractors unpaid as of the date you made your</p> <p>5 investment, do you?</p> <p>6 A No.</p> <p>7 Q You heard Mr. Coleman testify that it was his</p> <p>8 understanding from Criswell Radovan that you were buying</p> <p>9 one of their shares, you recall that being his</p> <p>10 testimony?</p> <p>11 A Yes.</p> <p>12 Q Do you have any information that he had</p> <p>13 knowledge to the contrary?</p> <p>14 A No. I wasn't involved in those conversations.</p> <p>15 How would I know?</p> <p>16 Q On Page 9 of your complaint, you've sued Mr.</p> <p>17 Criswell and Mr. Radovan for conversion claiming that</p> <p>18 they got your one million dollars. Do you have any</p> <p>19 information or evidence that either of those gentlemen</p> <p>20 took any part of the one million dollars?</p> <p>21 A Absolutely, yes.</p> <p>22 Q What evidence do you have?</p> <p>23 A Mr. Criswell told me that he took a major</p> <p>24 portion of that million dollars to pay back a loan that</p> <p>25 he had from his daughter.</p> | <p style="text-align: right;">Page 120</p> <p>1 A No.</p> <p>2 Q Do you recall what sorts of things Mr. Radovan</p> <p>3 told you by phone about the project?</p> <p>4 A Isn't that the same question?</p> <p>5 Q The answer is no? I just want to be certain.</p> <p>6 A Okay. It was obviously regarding the project.</p> <p>7 Q So we can obviously go through the e-mails and</p> <p>8 see the nature of the communications between you two,</p> <p>9 but I don't want to go to trial and have you say that we</p> <p>10 had this conversation. That's why I'm trying to make</p> <p>11 sure I understand your testimony.</p> <p>12 As you sit here today, you can't recall</p> <p>13 anything specific that Mr. Radovan told you on the phone</p> <p>14 about the project?</p> <p>15 A Other than what's in the e-mails and his</p> <p>16 testimony.</p> <p>17 Q What about his testimony do you recall him</p> <p>18 telling you?</p> <p>19 A I don't remember.</p> <p>20 Q What individuals did you seek any form of</p> <p>21 guidance from prior to making your investment decision</p> <p>22 on this project?</p> <p>23 A My CPA firm.</p> <p>24 Q Anyone else?</p> <p>25 A I don't believe so.</p> |
| <p style="text-align: right;">Page 119</p> <p>1 Q Any other evidence?</p> <p>2 A Only from what they testified in their</p> <p>3 depositions.</p> <p>4 Q Have we talked about all the misrepresentations</p> <p>5 and omissions that you believe were made by each of the</p> <p>6 defendants in this case?</p> <p>7 A I believe so.</p> <p>8 Q Have we talked about all the evidence that you</p> <p>9 have that supports those allegations?</p> <p>10 A I believe so, part of which was testimony in</p> <p>11 some of the depositions.</p> <p>12 Q I want to talk about the due diligence you did</p> <p>13 before investing. We talked about one site tour that</p> <p>14 you had, correct?</p> <p>15 A Correct.</p> <p>16 Q You said you didn't have any in person meetings</p> <p>17 with Mr. Radovan prior to investing?</p> <p>18 A Other than that Bonanza meeting where I met him</p> <p>19 first, yes.</p> <p>20 Q And there was some e-mails between you and he</p> <p>21 and --</p> <p>22 A And some phone conversations.</p> <p>23 Q -- and maybe a half dozen phone conversations.</p> <p>24 Do you recall the specifics of any of those phone</p> <p>25 conversations?</p> | <p style="text-align: right;">Page 121</p> <p>1 Q Did you seek any information or guidance from</p> <p>2 the project architect?</p> <p>3 A I did ask him what he thought of the project</p> <p>4 and he felt it was a good project.</p> <p>5 Q Did you talk any specifics?</p> <p>6 A No detail.</p> <p>7 Q Was this in person or by phone?</p> <p>8 A By phone, I believe, and there may be an e-mail</p> <p>9 or two in the record as well.</p> <p>10 Q Do you recall how long the conversation was?</p> <p>11 A Very brief. Probably discussing other things</p> <p>12 regarding my project.</p> <p>13 Q Did you talk to the project architect about the</p> <p>14 schedule for completion?</p> <p>15 A No, I don't believe so.</p> <p>16 Q Did you talk to him about any of the cost</p> <p>17 overruns?</p> <p>18 A I don't believe so.</p> <p>19 Q You understand, at least from seeing documents</p> <p>20 produced in this case, that the architect was signing</p> <p>21 off on change orders?</p> <p>22 A I trust that you're right.</p> <p>23 Q And in your construction experience, you</p> <p>24 understand that architects are typically involved in</p> <p>25 cost related issues on a project?</p> |

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| <p>1 A Are or are not?</p> <p>2 Q Are.</p> <p>3 A Yeah, correct.</p> <p>4 Q But you didn't ask the architect about any of</p> <p>5 the cost overruns you saw in those progress reports that</p> <p>6 you were being provided?</p> <p>7 A No.</p> <p>8 Q Outside of perhaps the July meeting where</p> <p>9 somebody from Penta was present for part of the time</p> <p>10 during that tour, did you ever have any conversations</p> <p>11 with anyone from Penta prior to making your investment?</p> <p>12 A No.</p> <p>13 Q Are you familiar with a gentleman named Hal</p> <p>14 Thannisch?</p> <p>15 A Wasn't he their project engineer?</p> <p>16 Q Yes.</p> <p>17 A Yes.</p> <p>18 Q Did you ever speak with Mr. Thannisch prior to</p> <p>19 investing?</p> <p>20 A Not directly. He may have been on that tour, I</p> <p>21 don't remember.</p> <p>22 Q And I apologize if I asked you this, did you</p> <p>23 seek out any information from any of the other investors</p> <p>24 on the project before you made your investment?</p> <p>25 A No.</p> | <p>1 Criswell or Mr. Radovan?</p> <p>2 A I believe he spoke to Mr. Radovan.</p> <p>3 Q Did he talk to you about that conversation?</p> <p>4 A He said he was communicating with him and got</p> <p>5 the information he was asking for.</p> <p>6 Q Do you know what kind of information he was</p> <p>7 asking for?</p> <p>8 A I assume it was financial, but I do not know.</p> <p>9 Q Do you know if the Criswell Radovan side failed</p> <p>10 to provide your accountant with anything that he had</p> <p>11 asked for?</p> <p>12 A Do not know.</p> <p>13 Q Before you invested, did you ask for any</p> <p>14 information that you weren't given?</p> <p>15 A Don't believe so.</p> <p>16 Q Outside of what you've told me already, before</p> <p>17 you invested were you told any information that you've</p> <p>18 learned was untrue other than what we've talked about</p> <p>19 today?</p> <p>20 A Not that I recall.</p> <p>21 Q So the source of your due diligence would be</p> <p>22 your own personal efforts and then relying on your</p> <p>23 accountant, is that fair?</p> <p>24 A My own personal what?</p> <p>25 Q Your own efforts.</p> |
| Page 123 | Page 125 |
| <p>1 Q Did you know who they were at the time?</p> <p>2 A Just from the cap table I was provided, yes.</p> <p>3 Q Do you know any of those individuals?</p> <p>4 A Mr. Busick, as I've said.</p> <p>5 Q Anyone else?</p> <p>6 A I did not know.</p> <p>7 Q Is there a reason you didn't pick up the phone</p> <p>8 and talk to Mr. Busick about the project?</p> <p>9 A I was just impressed that he was a major</p> <p>10 investor because I respect him.</p> <p>11 Q Were you aware that he walked the project with</p> <p>12 Penta shortly before investing an additional 1.5 million</p> <p>13 dollars in September?</p> <p>14 A No.</p> <p>15 Q What sort of guidance were you seeking from</p> <p>16 your accountant?</p> <p>17 A Financial analysis of the records or reports</p> <p>18 that we received.</p> <p>19 Q And what did your accountant tell you about the</p> <p>20 investment?</p> <p>21 A He thought that the fees and shares of the</p> <p>22 remuneration to the CR was perhaps a bit high, but he</p> <p>23 felt like it seemed like a good project.</p> <p>24 Q Do you know if your accountant spoke to anyone</p> <p>25 at the project? For example, Mr. Marriner or Mr.</p> | <p>1 A Yes.</p> <p>2 Q You walked the site, you reviewed financial</p> <p>3 records and construction records, correct?</p> <p>4 A And reports.</p> <p>5 Q And reports, and then you spoke to your</p> <p>6 accountant?</p> <p>7 A Correct.</p> <p>8 Q Did you speak to anyone else about this</p> <p>9 investment before you decided to give your money?</p> <p>10 A Other than what we've already testified to, I</p> <p>11 don't believe so.</p> <p>12 Q Can you explain how you believe you've been</p> <p>13 damaged in this lawsuit?</p> <p>14 A First of all, because my money was not put</p> <p>15 where the escrow instructions I agreed to said it would</p> <p>16 go. Do you want other --</p> <p>17 Q Yeah, any other reasons you believe you've been</p> <p>18 damaged?</p> <p>19 A As I told you, I think it totally disvalues the</p> <p>20 project that they took the money personally and took it</p> <p>21 out of the project, and I still think it implies that</p> <p>22 they took the money to get as much out of the project as</p> <p>23 they could before it went broke. I think they could see</p> <p>24 the handwriting on the wall.</p> <p>25 Q And that's just your own personal opinion, you</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 A I think it was just a general update report 2 telling me everything was as planned. 3 Q And if we look over on Bates 2037, it looks 4 like you guys are talking about having a tour sometime 5 around July 12th of 2015? 6 A Uh-huh. 7 Q And in fact, if we look on GSY2036, it looks 8 like you had the tour on July 14th, correct? 9 A I believe so. 10 Q In fact, you e-mail Mr. Marriner thanking him 11 for the tour and saying it was very impressive, correct? 12 A Correct. 13 Q And you attach a photo of your deck fire pit 14 with the water feature. What was the purpose of that? 15 A We had discussed how they were looking for 16 something like that for their project and I had found 17 this very unique fire/water feature. 18 Q And then on GSY2035, on the same day, Mr. 19 Marriner sends an e-mail to you copying your wife and 20 Robert saying that as he mentioned on the tour, Robert 21 released an additional 1.5 million dollars in equity? 22 A Correct. 23 Q And we talked about that earlier, so this is 24 where that would have come from? 25 A Yes.</p> | <p style="text-align: right;">Page 136</p> <p>1 A Yes. 2 Q Was there a phone call that precipitated this 3 e-mail? 4 A I don't remember. 5 Q But he told you that the chances were pretty 6 good, correct? 7 A Yes. 8 Q He also told you that they were in a 9 fundraising mode right now? 10 A Correct. 11 Q And that construction costs were exceeding the 12 budget and that they and he were trying to get their 13 arms around it and keep it in check, correct? 14 A Correct. 15 Q Do you recall having any conversations with 16 Peter Grove about the budget or construction costs? 17 A Not until much later. 18 Q Much later being when? 19 A After it was in big trouble, probably after 20 December the 12th. 21 Q So you don't recall a conversation with him 22 before you gave your money? 23 A I don't recall other than these e-mails. Could 24 have happened. I'm not saying it didn't. 25 Q He told you he really liked the ownership team</p> |
| <p style="text-align: right;">Page 135</p> <p>1 Q And then he indicates that Robert asked him to 2 forward the Cal-Neva investment PPM and their founders 3 progress report with colored renderings, and I think 4 we've established in the depositions that's Exhibits 1, 5 2 and 3. 6 A Okay. 7 Q Any reason to dispute that? 8 A No. 9 Q And then above that e-mail, it looks like on 10 the same day you e-mail Peter Grove who is the project 11 architect and also your personal architect, correct? 12 A Correct. 13 Q And you tell him that you saw the project today 14 and were pretty impressed and you asked him what holds 15 him back from being an investor, correct? 16 A Yes. 17 Q And he told you that it was basically 18 financial, a couple of zeros, right? 19 A Yeah, a couple of zeros. 20 Q The following day, July 15th, you e-mail Mr. 21 Grove and ask him what do you rate the project's chances 22 of success, correct? 23 A Correct. 24 Q And then his response to you is on July 17th, 25 2015?</p> | <p style="text-align: right;">Page 137</p> <p>1 and they were quality guys, correct? 2 A Yes. 3 Q So you may have had a conversation with Mr. 4 Grove about the budget and construction costs, you just 5 don't recall? 6 A I don't recall any conversation other than what 7 he told me here. 8 Q If you knew of it, is there any particular 9 reason you didn't ask him more information about those 10 costs? 11 A It was expressed -- I don't know that he knew 12 how much -- I don't know. I don't remember why I should 13 say, or if I did. 14 Q He ended by saying he'll continue to keep you 15 posted with pics as things progress. Did that happen? 16 A I don't think so. 17 Q Do you recall any meetings or conversations 18 with Mr. Grove about the project prior to giving your 19 money? 20 A No, I do not. 21 Q Just the e-mails? 22 A Yes. 23 (Exhibit 51 was marked.) 24 BY MR. LITTLE: 25 Q I'm going to show you deposition Exhibit 51,</p> |

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| <p>1 GSY2929. The bottom is an e-mail to David Marriner from 2 yourself on July 19th, 2015, correct? 3 A Correct. 4 Q And you're referencing Page 112 of some 5 document. 6 A I believe that was their analysis of the 7 project. I don't know what you'd call that document. 8 Q One of the prospectus they gave you? 9 A Yeah, basically. 10 Q And you were asking some questions about 11 occupancy? 12 A Uh-huh, yes. 13 Q And then it looks like a potential competitor, 14 this Biltmore/Boulder Bay project? 15 A Correct. 16 Q And how that might affect Cal-Neva? 17 A Correct. 18 Q Do you recall Mr. Marriner answering any of 19 these questions? 20 A We probably had some conversation about it, but 21 I don't remember thinking it was any big deal. 22 Q And then you indicate at the bottom, "As I 23 understand it, you're over budget by more than five 24 million dollars so far"? 25 A Yes.</p> | <p>1 A Uh-huh. 2 Q Those questions eventually got answered one way 3 or the other, correct? 4 A As far as I know. 5 (Exhibit 52 was marked.) 6 BY MR. LITTLE: 7 Q Let me show you deposition Exhibit 52. Do you 8 know if this is the drone shot that Mr. Marriner sent 9 you? 10 A I believe it is. 11 (Exhibit 53 was marked.) 12 BY MR. LITTLE: 13 Q I'm going to show you deposition Exhibit 53, a 14 two page e-mail Bates 4352 and 4363. If we start on the 15 second page, it looks like it's an e-mail to you and 16 your wife from Mr. Marriner copying Robert, correct? 17 A I believe so. 18 Q July 22nd, 2015, and it references that you and 19 Robert had a chance to talk yesterday and he was hopeful 20 that Robert had answered all of your questions. Do you 21 believe that that was the first conversation you had 22 with Robert? 23 A I don't recall. 24 Q Any reason to believe that Robert didn't answer 25 your questions during that phone call?</p> |
| Page 139 | Page 141 |
| <p>1 Q "Where will that, and likely more, funding 2 needs come from." Did I read that correctly? 3 A Yes, you did. 4 Q Prior to this point in time, had you had any 5 conversations with Robert Radovan? 6 A As of July 19th? I don't believe so other than 7 that Bonanza meeting. 8 Q Where did the source of this five million 9 dollars so far being over budget come from? 10 A It could have come from Robert -- maybe it was 11 from the conversation with Robert Radovan. I don't 12 remember. It might have been from an e-mail. 13 Q Could it have been from Peter Grove? 14 A No, I don't believe so. 15 Q But he told you in the prior exhibit that 16 construction costs were exceeding the budget, right? 17 A Yes. 18 Q Is it possible you had a conversation with him 19 and you talked more details about numbers associated 20 with that? 21 A It's possible. 22 Q Then on July 21st, Mr. Marriner responds, 23 copies Mr. Radovan, and says they'll have a draft 24 response to your questions soon, and he attached some 25 Pano shot from a drone?</p> | <p>1 A No. 2 Q And then he indicates that he's attaching a 3 recent Cal-Neva construction progress report that's 4 confidential. 5 A Okay. 6 Q You understood that that was something that the 7 investors were provided regarding the status of 8 construction of the project? 9 A I believe so. I believe it's like the other 10 examples. 11 Q And you reviewed that progress report? 12 A Yes. 13 Q Did you share it with your accountant? 14 A I don't believe so. I might have, I don't 15 know. I probably did. I don't know. 16 Q Do you know whether that progress report was 17 the one we saw in Exhibit 26? 18 A The July -- as far as I know, it would be the 19 July one. They didn't provide a lot of progress 20 reports, so I assume that must be it. 21 Q And then he indicates that he reached out to 22 Roger and Bea, B-e-a, Wittenberg -- 23 A Correct. 24 Q -- to invite them to the project. Who are 25 they?</p> |

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| <p style="text-align: right;">Page 142</p> <p>1 A They're the owners of the Biltmore across the</p> <p>2 street.</p> <p>3 Q Were they looking at them as potential</p> <p>4 investors?</p> <p>5 A Or just being a neighbor and involved. I</p> <p>6 suppose they'd be happy either way.</p> <p>7 Q Did you have any conversations with the</p> <p>8 Wittenbergs about this project?</p> <p>9 A Roger.</p> <p>10 Q What were your and he's discussions?</p> <p>11 A I had discussions about the project and the</p> <p>12 viability of it and how -- and I expressed interest in</p> <p>13 wanting to talk to him more, and he didn't evidently</p> <p>14 follow-up on that as far as I know.</p> <p>15 Q Did he tell you anything about the viability of</p> <p>16 the project?</p> <p>17 A He wasn't sure. At the time -- let's see,</p> <p>18 what's the date on this, July 22nd, yeah, at the time it</p> <p>19 sounded like a reasonably good project. We didn't know</p> <p>20 enough detail. He thought there was room for both of</p> <p>21 them to be there.</p> <p>22 Q I'm not going to mark this because it's</p> <p>23 previously been marked as Exhibit 26, but I want to talk</p> <p>24 about it. This is the July, 2015 --</p> <p>25 A There's another document behind it.</p> | <p style="text-align: right;">Page 144</p> <p>1 to finish by December.</p> <p>2 Q And what did he tell you?</p> <p>3 A He basically indicated to me that, and Dave did</p> <p>4 I think in one of the e-mails, that it was on track.</p> <p>5 Q But you understood this exhibit was prepared by</p> <p>6 third parties, correct?</p> <p>7 A Yes, put out by CR Management.</p> <p>8 Q Correct, but the substance of this document was</p> <p>9 prepared by third parties?</p> <p>10 A I would assume so. I don't really know. It</p> <p>11 says on the front that there are two other parties that</p> <p>12 did this, so I assume that's correct.</p> <p>13 Q Turn over to Page 16.</p> <p>14 A Okay.</p> <p>15 Q This indicates that the renovation was on</p> <p>16 schedule for the December 12th major event with the</p> <p>17 exception of the specialty restaurant which would not be</p> <p>18 100 percent completed at that time. So you knew this,</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q And what is that specialty restaurant?</p> <p>22 A That's the one I referred to as the high-end</p> <p>23 restaurant. They pointed at the area, but it hadn't had</p> <p>24 anything done to it.</p> <p>25 Q And then it goes on to talk about the schedule</p> |
| <p style="text-align: right;">Page 143</p> <p>1 Q This is the July, 2015 monthly status report,</p> <p>2 correct?</p> <p>3 A Yes.</p> <p>4 MR. WOLFE: Is this 54?</p> <p>5 MR. LITTLE: No, it's Exhibit 26. For the</p> <p>6 record, it's Bates numbers GSY1831 to 1854.</p> <p>7 BY MR. LITTLE:</p> <p>8 Q The first page references a Kevin Case with</p> <p>9 Case Development Services. Did you ever have any</p> <p>10 communications with him?</p> <p>11 A Not that I recall.</p> <p>12 Q And then we talked about Hal Thannisch, you</p> <p>13 can't recall if you had conversations with him?</p> <p>14 A I was aware of him, but I don't know that we</p> <p>15 ever talked.</p> <p>16 Q Second page, it says, "The Penta team is led by</p> <p>17 Lee Mason and Ted Griffin." Does that refresh your</p> <p>18 recollection of either of those guys were the one you</p> <p>19 met with at the project?</p> <p>20 A No. Sorry.</p> <p>21 Q This indicates that substantial completion was</p> <p>22 currently tracking for December, 2015. Any reason to</p> <p>23 believe that statement was untrue at this time?</p> <p>24 A Other than some of the pictures which I think I</p> <p>25 later asked Robert about as far as being advanced enough</p> | <p style="text-align: right;">Page 145</p> <p>1 being compressed due to delays caused by scope changes,</p> <p>2 some of which were value engineering and other of which</p> <p>3 were unforeseen issues that came up, correct?</p> <p>4 A Correct.</p> <p>5 Q And it also says that the budget has been</p> <p>6 adversely impacted due to a number of items and it lists</p> <p>7 them?</p> <p>8 A Correct.</p> <p>9 Q Did you ever ask any specifics about any of</p> <p>10 these items prior to making your investment?</p> <p>11 A I don't believe specifics, no.</p> <p>12 Q Did you ask what the anticipated costs were</p> <p>13 associated with these items?</p> <p>14 A I think that had been indicated to be five to</p> <p>15 six million dollars.</p> <p>16 Q Do you know -- do you even know whether the</p> <p>17 contractor had priced all these items yet?</p> <p>18 A I don't know, but if he was quoting a number, I</p> <p>19 assume it would have been there.</p> <p>20 Q You're making an assumption?</p> <p>21 A Yes. Otherwise he would have said that it's</p> <p>22 five to six million dollars except for these items that</p> <p>23 are not priced yet, wouldn't he?</p> <p>24 Q You don't recall any specific conversations</p> <p>25 about any of these scope changes?</p> |

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| <p style="text-align: right;">Page 146</p> <p>1 A No, I don't.</p> <p>2 Q Or costs associated with them?</p> <p>3 A Not specifically, no, just in total.</p> <p>4 (Exhibit 54 was marked.)</p> <p>5 BY MR. LITTLE:</p> <p>6 Q I'll show you what's been marked deposition</p> <p>7 Exhibit 54, a July 22nd, 2015 e-mail from you to Mr.</p> <p>8 Marriner.</p> <p>9 A Yes.</p> <p>10 Q And you indicate that you were going to talk</p> <p>11 some more with Robert the following morning and then in</p> <p>12 the meantime you're asking Dave to send written</p> <p>13 responses that he prepared, correct?</p> <p>14 A Yes.</p> <p>15 Q Do you recall any specifics of the second call</p> <p>16 you had with Robert?</p> <p>17 A No.</p> <p>18 Q Do you know if it was in person or by phone?</p> <p>19 A By phone.</p> <p>20 (Exhibit 55 was marked.)</p> <p>21 BY MR. LITTLE:</p> <p>22 Q I'm going to show you deposition Exhibit 55.</p> <p>23 It's a chain of e-mails. Starting on Page 2, it looks</p> <p>24 like you are communicating with Robert via e-mail on</p> <p>25 July 23rd trying to set up a time to talk, correct?</p> | <p style="text-align: right;">Page 148</p> <p>1 him an e-mail from the architect, correct?</p> <p>2 A I guess so, yes.</p> <p>3 Q And then you're seeking his advice and counsel</p> <p>4 regarding the project?</p> <p>5 A Yes.</p> <p>6 Q And that's something you routinely did when you</p> <p>7 made investment decisions?</p> <p>8 A Correct, any financial decision of any</p> <p>9 consequence.</p> <p>10 Q And the attachments to this e-mail are some of</p> <p>11 the documents that you've sent to Mr. Tratner at least</p> <p>12 at this time, correct?</p> <p>13 A I'm sure it was.</p> <p>14 Q It's basically sending him the information that</p> <p>15 Mr. Marriner had given to you?</p> <p>16 A Yes, and perhaps Mr. Radovan as well.</p> <p>17 (Exhibit 57 was marked.)</p> <p>18 BY MR. LITTLE:</p> <p>19 Q I'm going to show you deposition Exhibit 57.</p> <p>20 Can you tell me whether these are the notes that you're</p> <p>21 referring to in that prior exhibit?</p> <p>22 A I would believe so.</p> <p>23 Q And these are notes that you prepared, correct?</p> <p>24 A Correct.</p> <p>25 Q Came from your document production?</p> |
| <p style="text-align: right;">Page 147</p> <p>1 A Yes.</p> <p>2 Q And then it looks like on the first page, you</p> <p>3 were trying to have that call on July 24th around 4:00</p> <p>4 p.m.?</p> <p>5 A Yes.</p> <p>6 Q Do you recall any of the specifics of that</p> <p>7 phone call?</p> <p>8 A I don't even know that it happened.</p> <p>9 (Exhibit 56 was marked.)</p> <p>10 BY MR. LITTLE:</p> <p>11 Q I'm going to show you deposition Exhibit 56, an</p> <p>12 e-mail now from your accountant, Ken Tratner, correct?</p> <p>13 A Correct.</p> <p>14 Q And Mitzi must be his colleague?</p> <p>15 A His colleague, yes. You're not going to try</p> <p>16 and pronounce that last name?</p> <p>17 Q No. You indicate in this e-mail that you're</p> <p>18 attaching some notes that you've taken from</p> <p>19 conversations, correct?</p> <p>20 A Yes.</p> <p>21 Q These would be either handwritten or typed</p> <p>22 notes that you took of conversations with either Mr.</p> <p>23 Marriner or Mr. Radovan, is that fair?</p> <p>24 A Yes.</p> <p>25 Q It looks like you're also apparently sending</p> | <p style="text-align: right;">Page 149</p> <p>1 A Yes.</p> <p>2 Q What is the source of the information in these</p> <p>3 notes?</p> <p>4 A Could have been the documents they sent me,</p> <p>5 could have been from telephone conversations. It's my</p> <p>6 collection of notes on the project as I made them.</p> <p>7 Q So it's based on either information you had</p> <p>8 been provided or conversations you had with Mr. Marriner</p> <p>9 or Mr. Radovan?</p> <p>10 A I believe so.</p> <p>11 Q The first thing you indicate is that the total</p> <p>12 project cost is something slightly over 60 million</p> <p>13 dollars?</p> <p>14 A Six. I'm sorry, where are you now?</p> <p>15 Q Line one. Over 60 million dollars?</p> <p>16 A Yes, I'm sorry, correct.</p> <p>17 Q And so if we go back to Exhibit 2, remember we</p> <p>18 were looking at that preliminary budget of about</p> <p>19 50 million dollars and change?</p> <p>20 A Correct.</p> <p>21 Q So it looks like as of this date, which was</p> <p>22 late July, it was your understanding the project was at</p> <p>23 least 10 million dollars over budget from what was</p> <p>24 represented back in 2014?</p> <p>25 A I guess that's what that would indicate.</p> |

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| <p>1 Q And you also understood that the developer had</p> <p>2 a 20 percent piece of the equity?</p> <p>3 A That's what I was told.</p> <p>4 Q In fact, you said that they bought two million</p> <p>5 dollars of the 20 million dollar offering?</p> <p>6 A That's what he told me.</p> <p>7 Q So even though Mr. Marriner in Exhibit 4 had</p> <p>8 apparently inadvertently left Criswell Radovan off that</p> <p>9 founders equity page, you always understood that</p> <p>10 Criswell Radovan had a two million dollar piece?</p> <p>11 A But where did the two million come from? It</p> <p>12 would be oversubscribed, not a million-and-a-half short</p> <p>13 if you added that and this, wouldn't it?</p> <p>14 Q Well, you've heard testimony about pay Marriner</p> <p>15 and Fairwinds, right?</p> <p>16 A Yes.</p> <p>17 Q You know that that two million dollars</p> <p>18 referenced on Exhibit 4 was not part of the equity?</p> <p>19 A I believe you're right, yes.</p> <p>20 Q And then there's some reference --</p> <p>21 MR. WOLFE: I just want to -- I guess the</p> <p>22 objection is it's nonresponsive, move to strike. I'd</p> <p>23 like an answer to the question you posed, your last full</p> <p>24 question.</p> <p>25 THE WITNESS: I'm sorry?</p> | <p>1 to you, but you just basically copy and pasted about him</p> <p>2 refinancing the mezz?</p> <p>3 A At the lower rate.</p> <p>4 Q And bringing in an additional nine million</p> <p>5 bucks basically?</p> <p>6 A Yeah.</p> <p>7 Q And on the last page, you indicate that they're</p> <p>8 expected to have a soft opening by December 12th for</p> <p>9 Frank Sinatra's 100th birthday party with a full opening</p> <p>10 by April, correct?</p> <p>11 A Correct.</p> <p>12 Q What's your understanding of a soft opening?</p> <p>13 A That means if I understand, I'm not in the</p> <p>14 industry, but it's my understanding it's open to the</p> <p>15 public on a limited basis, not advertised as such.</p> <p>16 Q So as of the end of July, they were looking at</p> <p>17 a full opening in April?</p> <p>18 A Yes, for the reasons that I've previously had</p> <p>19 in the e-mails.</p> <p>20 Q So it's your testimony that in July, Criswell</p> <p>21 Radovan was concerned about the snow pack affecting --</p> <p>22 A The lack of snow affecting the occupancy of the</p> <p>23 hotel.</p> <p>24 Q Is there snow typically in July in Lake Tahoe?</p> <p>25 A No, but I think they're worried about it in the</p> |
| Page 151 | Page 153 |
| <p>1 MR. CAMPBELL: He's making an objection saying</p> <p>2 you didn't answer the previous question.</p> <p>3 BY MR. LITTLE:</p> <p>4 Q I think the question was, you always understood</p> <p>5 that Criswell Radovan had two million dollars of that</p> <p>6 20 million dollar subscription notwithstanding what was</p> <p>7 represented in Exhibit 4?</p> <p>8 A I believe as of this date, I knew that.</p> <p>9 MR. WOLFE: As of what date?</p> <p>10 THE WITNESS: You said this was the last part</p> <p>11 of July, I believe.</p> <p>12 BY MR. LITTLE:</p> <p>13 Q Exhibit 56 shows that he sent these notes to</p> <p>14 his accountant on July 26th, 2015, correct?</p> <p>15 A Correct. That's when I think I prepared this,</p> <p>16 just in anticipation of that.</p> <p>17 Q And you also understood, according to your</p> <p>18 notes, that preferred and founder members were treated</p> <p>19 the same?</p> <p>20 A Correct.</p> <p>21 Q And that the offering was being extended and</p> <p>22 there was an additional 1.5 million dollars to be</p> <p>23 raised?</p> <p>24 A Correct.</p> <p>25 Q And we saw this in an e-mail from Mr. Radovan</p> | <p>1 latter months towards the finish of the project. I</p> <p>2 don't think they were worried about it in July.</p> <p>3 (Exhibit 58 was marked.)</p> <p>4 BY MR. LITTLE:</p> <p>5 Q Deposition Exhibit 58 are some e-mails between</p> <p>6 you and Robert on July 27, 2015, correct?</p> <p>7 A Yes.</p> <p>8 Q And you asked him that you believe there was</p> <p>9 some 30 million dollars in debt and wanted to know who</p> <p>10 was providing that and under what terms, correct?</p> <p>11 A Correct.</p> <p>12 Q And he explained that the debt was a</p> <p>13 combination of a 29.5 million dollar first and a six</p> <p>14 million dollar mezzanine, correct?</p> <p>15 A Yes.</p> <p>16 Q And then he gave you the terms of both those</p> <p>17 loans?</p> <p>18 A Yes.</p> <p>19 Q And he also told you that they were actively</p> <p>20 refinancing the mezz?</p> <p>21 A Correct.</p> <p>22 Q That's the information he had given you about</p> <p>23 the 15 million dollar refinance?</p> <p>24 A Yes.</p> <p>25 Q What did he tell you about the status of that</p> |

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| <p style="text-align: right;">Page 154</p> <p>1 refinance at any point in time prior to your investing?</p> <p>2 A As far as I knew, it was on track to be</p> <p>3 refinanced. He had it ready to go at a lower cost. It</p> <p>4 was a cost savings measure as well as extending the cash</p> <p>5 for the project.</p> <p>6 Q Did Robert ever tell you when that refinance</p> <p>7 was supposed to close?</p> <p>8 A Not that I recall.</p> <p>9 Q At any point in time, did he tell you that they</p> <p>10 were going to also look at refinancing both loans prior</p> <p>11 to you investing?</p> <p>12 A Not that I recall.</p> <p>13 (Exhibit 59 was marked.)</p> <p>14 BY MR. LITTLE:</p> <p>15 Q I'll show you deposition Exhibit 59. It looks</p> <p>16 like July 29, 2015 e-mails between you and Robert,</p> <p>17 cc'ing Mr. Marriner, correct?</p> <p>18 A Yes.</p> <p>19 Q On July 29th, Robert e-mails asking if there's</p> <p>20 anything you need from him and to call with questions,</p> <p>21 correct?</p> <p>22 A Yes.</p> <p>23 Q And your response is that you sent everything</p> <p>24 to your CPA Sunday afternoon?</p> <p>25 A Yes.</p> | <p style="text-align: right;">Page 156</p> <p>1 provide your CPA with timely responses to his questions?</p> <p>2 A No.</p> <p>3 Q Any information that Robert provided false or</p> <p>4 misleading information to your accountant?</p> <p>5 A Other than what we've discussed before, no.</p> <p>6 (Exhibit 61 was marked.)</p> <p>7 BY MR. LITTLE:</p> <p>8 Q I'll show you deposition Exhibit 61, two page</p> <p>9 e-mail string on August 1st. On the second page, you</p> <p>10 write to Robert that your CPA has reviewed the proposal</p> <p>11 and has some questions, and then you're asking Robert to</p> <p>12 tell Ken about his previous projects and how they turned</p> <p>13 out for the investors, correct?</p> <p>14 A Correct.</p> <p>15 Q And then on the first page, on August 4th, it</p> <p>16 looks like Ken writes to Robert and copies you,</p> <p>17 referencing a call that they had. Do you have any</p> <p>18 recollection of what was discussed between Robert and</p> <p>19 Ken during that call?</p> <p>20 A I wasn't on that call.</p> <p>21 Q Understand, but did Ken talk to you about what</p> <p>22 was discussed?</p> <p>23 A I don't believe so. He just answered his</p> <p>24 questions in his efforts to advise me.</p> <p>25 Q It looks like Ken is asking for more</p> |
| <p style="text-align: right;">Page 155</p> <p>1 Q Did you ask for anything else that Mr. Radovan</p> <p>2 or Mr. Marriner didn't provide?</p> <p>3 A Not that I'm aware of.</p> <p>4 (Exhibit 60 was marked.)</p> <p>5 BY MR. LITTLE:</p> <p>6 Q Showing you deposition Exhibit 60, a two-page</p> <p>7 document. The first page, at the bottom there's an</p> <p>8 e-mail August 3rd, 2015 from Mr. Marriner to you,</p> <p>9 correct?</p> <p>10 A Correct.</p> <p>11 Q He's following up to ask if you have any more</p> <p>12 questions, correct?</p> <p>13 A Yes.</p> <p>14 Q And wanting to arrange a meeting with Roger and</p> <p>15 Robert to compare notes on each other's projects and</p> <p>16 meet Heather. Roger is the one we talked about earlier?</p> <p>17 A Roger from the Biltmore.</p> <p>18 Q And he's asking if you're still interested in</p> <p>19 investing, correct?</p> <p>20 A Yes.</p> <p>21 Q And your response is you've been dealing</p> <p>22 directly with Robert and that Robert will be taking</p> <p>23 questions from your CPA early this week?</p> <p>24 A Yes.</p> <p>25 Q Any reason to believe that Robert didn't</p> | <p style="text-align: right;">Page 157</p> <p>1 information here, correct?</p> <p>2 A Correct.</p> <p>3 Q Some assumptions, pro forma, investor returns</p> <p>4 and a total project budget?</p> <p>5 A I believe so.</p> <p>6 Q Any reason to believe that information wasn't</p> <p>7 provided?</p> <p>8 A No reason I know of.</p> <p>9 Q Do you know what total project budget schedules</p> <p>10 were provided to your CPA?</p> <p>11 A No.</p> <p>12 Q Do you know what assumptions were provided to</p> <p>13 your CPA?</p> <p>14 A No, other than the document that shows how much</p> <p>15 the rental of the rooms was, all that documented</p> <p>16 information.</p> <p>17 Q Does your CPA have construction experience?</p> <p>18 A Not that I'm aware of in particular. He's a</p> <p>19 general CPA.</p> <p>20 (Exhibit 62 was marked.)</p> <p>21 BY MR. LITTLE:</p> <p>22 Q Exhibit 62 is e-mails between you and Robert</p> <p>23 copying Ken with Robert indicating that he was going to</p> <p>24 get Ken that information, correct?</p> <p>25 A Correct.</p> |

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| <p style="text-align: right;">Page 158</p> <p>1 Q And you don't have any reason to believe that</p> <p>2 he didn't do that?</p> <p>3 A No.</p> <p>4 (Exhibit 63 was marked.)</p> <p>5 BY MR. LITTLE:</p> <p>6 Q Exhibit 63 is an August 10, 2015 e-mail from</p> <p>7 Pete Dordick at Criswell Radovan to you and your CPA,</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 Q And he's forwarding it looks like some of the</p> <p>11 information, the budgetary information that Ken had</p> <p>12 requested, correct?</p> <p>13 A Correct.</p> <p>14 Q Have you seen any of this information?</p> <p>15 A I don't know.</p> <p>16 Q Have you ever spoken with Pete Dordick?</p> <p>17 A Yes.</p> <p>18 Q Prior to investing?</p> <p>19 A No.</p> <p>20 (Exhibit 64 was marked.)</p> <p>21 BY MR. LITTLE:</p> <p>22 Q Sir, Exhibit 64 is an e-mail to your accountant</p> <p>23 from you, correct?</p> <p>24 A Correct.</p> <p>25 Q And it's referencing a call between you and</p> | <p style="text-align: right;">Page 160</p> <p>1 Q And then you're telling Ken that you look</p> <p>2 forward to his comments?</p> <p>3 A Yes.</p> <p>4 Q Do you have any more knowledge or recollection</p> <p>5 about Ken's comments other than what you told me</p> <p>6 earlier?</p> <p>7 A Just what I told you earlier.</p> <p>8 (Exhibit 65 was marked.)</p> <p>9 BY MR. LITTLE:</p> <p>10 Q I'll show you deposition Exhibit 65. It's an</p> <p>11 e-mail to Peter Grove, the project architect, from</p> <p>12 yourself on August 18th, correct?</p> <p>13 A Yes.</p> <p>14 Q And you're asking that if they decide to, will</p> <p>15 they really be ready for a full opening in December on</p> <p>16 Sinatra's birthday?</p> <p>17 A Correct.</p> <p>18 Q Why would you be asking that if they told you a</p> <p>19 week earlier that they weren't going to do a soft</p> <p>20 opening until March and then a full opening until June?</p> <p>21 A There's a difference between the plan to open</p> <p>22 for reasons of the snow pack and their ability to open.</p> <p>23 Q And what did Mr. Grove tell you?</p> <p>24 A I don't remember his answer, but there's a</p> <p>25 difference there I'm trying to distinguish.</p> |
| <p style="text-align: right;">Page 159</p> <p>1 Robert?</p> <p>2 A Yes.</p> <p>3 Q You can read this e-mail, but do you have any</p> <p>4 specific recollection of what you and Robert discussed</p> <p>5 on this call?</p> <p>6 A No. Obviously I discussed getting ready for</p> <p>7 the 100th birthday party opening.</p> <p>8 Q And is this -- you told me earlier that the</p> <p>9 reason they told you it would get extended out into 2016</p> <p>10 was because of snow pack and the economy. Is this where</p> <p>11 that came from?</p> <p>12 A Not snow pack, the lack of snow and what that</p> <p>13 would mean to the traffic for the hotel.</p> <p>14 Q So according to this document, you knew that</p> <p>15 they were only going to open for the party and as of</p> <p>16 August 12th, they weren't going to do a soft opening now</p> <p>17 until March 1st, correct?</p> <p>18 A Yes.</p> <p>19 Q So now it's getting extending out past what we</p> <p>20 talked about in the July e-mails?</p> <p>21 A Correct, so I don't know that that -- yeah, I</p> <p>22 guess that's correct.</p> <p>23 Q And then they were looking to do the big</p> <p>24 official opening on Father's Day?</p> <p>25 A Yes.</p> | <p style="text-align: right;">Page 161</p> <p>1 Q Okay. And the difference is what?</p> <p>2 A Being ready to open and deciding not to open at</p> <p>3 that time, which is what I've been told, and not being</p> <p>4 able to open then are two distinct differences.</p> <p>5 Q You don't know what Mr. Grove told you?</p> <p>6 A I don't remember the details of it.</p> <p>7 Q Had he told you that, he being Peter Grove,</p> <p>8 told you that they would not be ready to open in</p> <p>9 December for construction reasons, would that have</p> <p>10 caused you some concern?</p> <p>11 A Anything that's negative on the project would</p> <p>12 cause me some concern. As to how big the delay was or</p> <p>13 his level of concern would have meant how big a concern</p> <p>14 I had.</p> <p>15 Q But fair to say he didn't give you any sort of</p> <p>16 bleak outlooks on the ability to open by December,</p> <p>17 right?</p> <p>18 A Correct.</p> <p>19 Q Otherwise, you'd remember that?</p> <p>20 A Yes. I don't believe he did.</p> <p>21 Q But you'd agree he, Peter Grove, would have</p> <p>22 been as knowledgeable as the developer about the current</p> <p>23 status of construction as a project architect?</p> <p>24 A Maybe not quite as, but he would definitely be</p> <p>25 knowledgeable.</p> |

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| <p>Page 166</p> <p>1 A Correct.</p> <p>2 Q Do you know why Mr. Marriner is instructing you</p> <p>3 to send the check to Criswell Radovan if you were buying</p> <p>4 from the company?</p> <p>5 A I don't know that he's saying that the check is</p> <p>6 to go there. He's saying it could have been the</p> <p>7 documents involved, the signed documents. I believe the</p> <p>8 offering memorandum tells me where to send the check and</p> <p>9 that was to Mr. Coleman, Bruce Coleman, and that's where</p> <p>10 the check was sent.</p> <p>11 Q So they didn't give you any instructions to</p> <p>12 send the check to Criswell Radovan?</p> <p>13 A No, not that I know of, nor did we.</p> <p>14 Q And then it looks like you e-mail back and you</p> <p>15 thank him for some pictures and ask, looking a bit</p> <p>16 behind, you posed that question, right?</p> <p>17 A Yes e.</p> <p>18 Q Do you remember getting any response? Well,</p> <p>19 did you have any conversation with him about that?</p> <p>20 A With Dave Marriner?</p> <p>21 Q Yes.</p> <p>22 A As far as I know -- I don't recall exactly, but</p> <p>23 I believe he would have responded.</p> <p>24 Q Do you have any phone conversations with Robert</p> <p>25 or Dave, say, in the two weeks before you closed?</p> | <p>Page 168</p> <p>1 concerned with this roundabout e-mail string about wire</p> <p>2 instructions, a great opportunity to send one million</p> <p>3 dollars to the wrong person and that he'll leave it in</p> <p>4 your hands." Do you know what he's referencing?</p> <p>5 A He's saying that Criswell Radovan, or Robert</p> <p>6 Radovan and Dave were suggesting send it to CR and not</p> <p>7 the attorney that was said in the documents, I believe,</p> <p>8 so we did send it to the attorney in the documents who</p> <p>9 was the escrow holder and fiduciary.</p> <p>10 (Exhibit 71 was marked.)</p> <p>11 BY MR. LITTLE:</p> <p>12 Q I'll show you Exhibit 71. This document came</p> <p>13 from your production. It's wiring instructions to</p> <p>14 Criswell Radovan, LLC's bank account, correct?</p> <p>15 A I believe so, yes. I don't know if it's my</p> <p>16 document.</p> <p>17 Q The Bates number below GSY2513 I'll represent</p> <p>18 came from your production.</p> <p>19 A Yes. That doesn't mean it's my document.</p> <p>20 Q Well, it was in your file, correct?</p> <p>21 A Correct.</p> <p>22 Q At some point in time, someone sends you wiring</p> <p>23 instructions to Criswell Radovan, LLC, correct?</p> <p>24 A I believe the previous document showed that</p> <p>25 coming from Dave originally.</p> |
| <p>Page 167</p> <p>1 A I don't know. I would assume so, but I don't</p> <p>2 know.</p> <p>3 (Exhibit 70 was marked.)</p> <p>4 BY MR. LITTLE:</p> <p>5 Q Exhibit 70 looks like an e-mail communication</p> <p>6 between you and Doug from your office on October 5th?</p> <p>7 A You're on Page 3?</p> <p>8 Q Well, actually bottom of Page 2 going over to</p> <p>9 Page 3 is that October 1st e-mail where Marriner says</p> <p>10 that I believe Robert will want you to use the Criswell</p> <p>11 Radovan address, correct?</p> <p>12 A Yes.</p> <p>13 Q And then above that on October 3rd, you send an</p> <p>14 e-mail to Robert asking him to confirm you want our IRA</p> <p>15 check to be mailed to the address Dave suggests?</p> <p>16 A Yeah, yes.</p> <p>17 Q And it looks like on October 3rd above that,</p> <p>18 Robert tells you the funds should be wired into your</p> <p>19 attorney's account -- his attorney's account in</p> <p>20 accordance with the documents, correct?</p> <p>21 A Yes. That's what we did.</p> <p>22 Q And then on the first page of this document, on</p> <p>23 October 5th, Doug e-mails you saying he sent wire</p> <p>24 instructions to you and Premiere. He says they were</p> <p>25 clear and are attached again, and then he says, "I'm</p> | <p>Page 169</p> <p>1 Q And it says on here, "For credit to the account</p> <p>2 of Criswell Radovan, LLC." Do you see that?</p> <p>3 A Yes.</p> <p>4 Q If you were buying one of the founding shares</p> <p>5 and not Criswell Radovan, why would they be sending you</p> <p>6 a document suggesting that they be getting credit for</p> <p>7 your one million dollars?</p> <p>8 A Maybe because they wanted to take the money</p> <p>9 more directly than going through their attorney.</p> <p>10 Q But it's your testimony that no one told you</p> <p>11 that Les Busick or anyone else had closed out that 1.5</p> <p>12 million dollar piece?</p> <p>13 A Correct, or was even discussing it.</p> <p>14 (Exhibit 72 was marked.)</p> <p>15 BY MR. LITTLE:</p> <p>16 Q Sir, Exhibit 72 is e-mail between you and</p> <p>17 Robert on October 10th, 2015, a couple days before you</p> <p>18 sent your money, correct?</p> <p>19 A I believe so.</p> <p>20 Q And you asked how the Cal-Neva was</p> <p>21 scheduling -- how the Cal-Neva schedule was holding up,</p> <p>22 correct?</p> <p>23 A Yes.</p> <p>24 Q And Robert told you looking good, soft opening</p> <p>25 in spring with grand opening on Father's Day weekend.</p> |

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| <p>1 He told you they just brought in their general manager 2 and chef, correct? 3 A Yes. 4 Q And that was similar to what we saw in a prior 5 e-mail? 6 A Same thing. 7 Q Any reason to believe that they hadn't brought 8 in a general manager and chef as of that time? 9 A No. He said they just brought them in. I 10 don't understand the question I guess. Would you like 11 to restate that question? 12 Q No, I'll withdraw it. No, I guess my question 13 was, you don't have any reason to believe that -- 14 A This wasn't true? 15 Q Yeah, that wasn't true? 16 A No. 17 (Exhibit 73 was marked.) 18 BY MR. LITTLE: 19 Q Exhibit 73, more e-mail strings from your 20 document production. Page 2, October 13, 2015, Dave 21 Marriner is asking you about doing another site tour. 22 A Yes. 23 Q This would be referencing the second one that 24 we talked about, right? 25 A Yes. What's the date of this, October 13th?</p> | <p>1 that you had sent earlier where you said, as I 2 understand it, you're over budget by more than five 3 million so far. Where will that, and likely more, 4 funding needs come from? 5 A Where are you reading, sir? 6 Q At the top. 7 A Yes. 8 Q So you're referring him down to one of your 9 e-mails and you say, unfortunately, they didn't answer 10 and you missed that error, likely intentional on their 11 part. What are you referring to? 12 A They evidently did not answer my concern over 13 the five million dollars and where the funding would 14 come from. That's what it says. 15 Q Well, I thought Robert told you that they were 16 seeking a refinancing of that 15 million dollars to -- 17 A Yes, but at this point it may well have gone 18 away. I don't know. I don't know the reason for that. 19 Q Okay. 20 A At some point it certainly went away. 21 Q Do you know why? 22 A No. 23 (Exhibit 75 was marked.) 24 BY MR. LITTLE: 25 Q Exhibit 75, more e-mails between you and Mr.</p> |
| Page 171 | Page 173 |
| <p>1 Yeah. 2 Q And if we look at the first page, it looks like 3 that site tour was probably conducted on Friday, 4 October 23rd? 5 A Yes, that's the one with Robert Radovan as 6 well. 7 (Exhibit 74 was marked.) 8 BY MR. LITTLE: 9 Q Exhibit 74, it looks like e-mails between -- 10 well, the top is an e-mail between you and Paul Jameson. 11 Who is Paul Jameson? 12 A He's a member of the IMC. 13 Q And it's December 15, 2015, correct? 14 A Yes. 15 Q Was this after the investor meeting? 16 A Yes. 17 Q Three days after? 18 A Correct. 19 Q I guess my question is, the conversation 20 between you and Mr. Jameson, it looks like there's an 21 attachment, a Cal-Neva progress report. Was there a new 22 progress report in December? 23 A I believe there might well have been, yes. I 24 don't know that for sure. 25 Q And you're referring him basically to an e-mail</p> | <p>1 Jameson with IMC, correct? 2 A Yes. 3 Q On December 17th? 4 A Which page are you looking on, first of all? 5 Q The first two pages. 6 A Okay. 7 Q Let's start on the second page. On 8 December 17th, you sent an e-mail to Paul asking him if 9 it's okay to send this to Bill, correct? 10 A I asked for his input on it, yes. 11 Q Do you see where I'm at? 12 A The bottom here? 13 Q No, at the top. It says, "Paul, is this okay 14 to send Bill"? 15 A Yes. 16 Q And what you're talking about is a proposed 17 response that you had sent Paul below for his review and 18 pre-approval? 19 A Okay. 20 Q Why was it that you were drafting a proposed 21 response to Bill Criswell and seeking Paul's approval? 22 A He was involved and we had been communicating 23 on the project and I wanted his input. It's not that he 24 had a right to pre-approve, I could have done whatever I 25 wanted.</p> |

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| <p style="text-align: right;">Page 202</p> <p>1 project and keeping what Criswell Radovan says it sold</p> <p>2 to you?</p> <p>3 A Absolutely not.</p> <p>4 Q You don't dispute that the companies treated</p> <p>5 you like an investor; in other words, they shared the</p> <p>6 same information with you that they shared with other</p> <p>7 investors since October?</p> <p>8 A At least through February, I guess. I haven't</p> <p>9 seen anything --</p> <p>10 Q Since the bankruptcy?</p> <p>11 A I haven't seen anything in a long time.</p> <p>12 Q Since the bankruptcy was filed?</p> <p>13 A When was that?</p> <p>14 Q I'm not sure. Do you have any evidence that</p> <p>15 Robert or anyone from Criswell Radovan misrepresented</p> <p>16 the status of financing at any point in time prior to</p> <p>17 your giving your money?</p> <p>18 A I don't know when they knew what. I don't know</p> <p>19 if the 15 million dollar refinancing was still viable at</p> <p>20 the time of my financing.</p> <p>21 Q Do you have any evidence that the contractor</p> <p>22 was given any notice or intention that it was going to</p> <p>23 stop work or walk off the job before you made your</p> <p>24 investment?</p> <p>25 A Just Dave Marriner's e-mail that said that that</p> | <p style="text-align: right;">Page 204</p> <p style="text-align: center;">EXAMINATION</p> <p>1 BY MR. WOLFE:</p> <p>2 Q Thank you. Mr. Yount, we've met before. My</p> <p>3 name is Andrew Wolfe. I represent Dave Marriner and</p> <p>4 Marriner Real Estate, LLC. They're named as defendants</p> <p>5 in your lawsuit.</p> <p>6 A You may call me Stuart if I may call you Andy.</p> <p>7 Q Well, for the record today, I'll probably stick</p> <p>8 with Mr. Yount.</p> <p>9 A Okay, whatever you like.</p> <p>10 Q And in the course of my questioning, when I use</p> <p>11 the term Marriner, I'll be referring to Dave Marriner</p> <p>12 and his company which are kind of collectively</p> <p>13 referenced in your complaint.</p> <p>14 A Fine.</p> <p>15 Q So I'm going to start with some general</p> <p>16 questions. Was there any financial information that</p> <p>17 Marriner provided to you after mid July, 2015 with</p> <p>18 regard to the project?</p> <p>19 A Before I invested or just any time after?</p> <p>20 Q From July, mid July, 2015 until you invested,</p> <p>21 did Mr. Marriner provide you any financial information</p> <p>22 relative to the project?</p> <p>23 A I'm not sure. The record would show it,</p> <p>24 though, I think.</p> <p>25</p> |
| <p style="text-align: right;">Page 203</p> <p>1 was going to happen.</p> <p>2 Q And that was an e-mail months later, right?</p> <p>3 A Yes, that if accurate, then CR knew beforehand.</p> <p>4 Q Is North Light the same thing as Roger?</p> <p>5 A No, different company.</p> <p>6 Q Did you bring in North Light?</p> <p>7 A No.</p> <p>8 Q Did you bring Roger to the table in terms of a</p> <p>9 potential source of investment?</p> <p>10 A No. I think he knew it was available and used</p> <p>11 North Light to potentially offer.</p> <p>12 Q You don't dispute that at least members of the</p> <p>13 IMC group preferred North Light over Mosaic?</p> <p>14 A Don't know for sure. I just don't know. It</p> <p>15 was indicated in the e-mail, so that's what I know.</p> <p>16 Q And that was indicated in e-mails before they</p> <p>17 met with Mosaic?</p> <p>18 A I don't remember the dates.</p> <p>19 Q There was never any discussion with you about</p> <p>20 trying to tank the Mosaic deal?</p> <p>21 A No. I never had any feeling like that. They</p> <p>22 would have no benefit.</p> <p>23 Q I'm going to pass the witness.</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 205</p> <p>1 Q The records we saw today indicated that in</p> <p>2 July, 2015, roughly July 14 or 15, 2015, he e-mailed you</p> <p>3 some documents relative to the project. Do you remember</p> <p>4 looking at those?</p> <p>5 A Yes.</p> <p>6 Q After that date, did he send you any other</p> <p>7 financial records regarding the project?</p> <p>8 A I'm not clear as to whether the documents were</p> <p>9 coming from Radovan or Marriner.</p> <p>10 Q Are you aware --</p> <p>11 A So he could have been, but it would have shown</p> <p>12 in the record.</p> <p>13 Q Are you aware of any e-mail or other</p> <p>14 correspondence in which Marriner delivered financial</p> <p>15 records pertinent to the project to you between mid</p> <p>16 July, 2015 up until the day you funded which was</p> <p>17 October 13 of 2015?</p> <p>18 A Isn't that what I just answered? Is that</p> <p>19 different than the question --</p> <p>20 Q I asked you about e-mails. Now I'm asking you</p> <p>21 about any other form of transmittal.</p> <p>22 A As in telephone calls, et cetera. I'm not</p> <p>23 sure.</p> <p>24 Q Let's turn to one of the exhibits that's in</p> <p>25 front of you there, Exhibit 60. So Exhibit 60 is an</p> |

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| <p style="text-align: right;">Page 206</p> <p>1 e-mail string between Marriner and yourself on August 3, 2 2015, correct?</p> <p>3 A Yes.</p> <p>4 Q And Marriner asked you a few questions, 5 including did you have more questions, are you still 6 interested? Your response was on August 30, 2015, "I've 7 been dealing directly with Robert. Thanks. He will be 8 taking questions from my CPA early this week. More 9 soon." That's your e-mail back to Dave Marriner, 10 correct?</p> <p>11 A Yes.</p> <p>12 Q After this e-mail, did you ever seek financial 13 information from David Marriner between this date and 14 the date of your investment?</p> <p>15 A I don't know. I don't remember.</p> <p>16 Q Do you recall receiving any other investor 17 updates or investor status reports from any source after 18 mid July, 2015 up until the day you invested?</p> <p>19 A It would have been in the record of the 20 e-mails. I'm not sure.</p> <p>21 Q But as you sit here today, you can't recall if 22 there was a further update after July of 2015 prior to 23 the investment?</p> <p>24 A You didn't say Dave Marriner, though. You mean 25 from anybody?</p> | <p style="text-align: right;">Page 208</p> <p>1 A Correct.</p> <p>2 Q Do you have any reason to doubt the accuracy of 3 that date, October 10, 2015, that you received that 4 information that there would be a soft opening in the 5 spring with a grand opening on Father's Day?</p> <p>6 A No. I already told you I heard from him about 7 why and that it was happening then.</p> <p>8 Q And you understood that was the schedule before 9 you funded, correct?</p> <p>10 A Yes.</p> <p>11 Q You were conducting due diligence with the 12 assistance of Ken Tratner, the CPA, correct?</p> <p>13 A Yes.</p> <p>14 Q And then there was your own questions and 15 answers to Mr. Grove, the architect, correct?</p> <p>16 A Right.</p> <p>17 Q Was there anybody else who you engaged for due 18 diligence, like a professional such as an attorney?</p> <p>19 A No.</p> <p>20 Q Or construction manager, anything like that?</p> <p>21 A No.</p> <p>22 Q Was there anyone else besides Ken Tratner, 23 Robert Radovan, and Mr. Grove who you sought information 24 from regarding the progress of the project during your 25 due diligence before funding your investment?</p> |
| <p style="text-align: right;">Page 207</p> <p>1 Q From anybody.</p> <p>2 A I'm sure there was other communications from my 3 CPA and probably myself between the parties. What they 4 were and when, I don't know.</p> <p>5 Q Let's turn to Exhibit 72, and since Mr. Little 6 did such a good job of covering documents, I'll be 7 skipping around, hopefully not confusing things.</p> <p>8 So 72 is an e-mail string on October 10, 2015 9 between yourself and Robert Radovan, correct?</p> <p>10 A Yes.</p> <p>11 Q And October 10 is still two days before you 12 signed the subscription documents, correct?</p> <p>13 A Yes.</p> <p>14 Q And it's three days prior to your funding, 15 correct?</p> <p>16 A I assume that that's right on the date of the 17 signing documents.</p> <p>18 Q And the date of the funding?</p> <p>19 A The date of the funding I remember.</p> <p>20 Q So you asked, "Terrific, Robert, thanks for 21 sending this. How is the Cal-Neva schedule holding up"? 22 And his answer was on October 10, 2015, "Looking good. 23 Soft opening in spring with grand opening on Father's 24 Day weekend. Just brought in our general manager and 25 chef."</p> | <p style="text-align: right;">Page 209</p> <p>1 A Name those again, please.</p> <p>2 Q Tratner, Radovan, Grove, and anyone else?</p> <p>3 A Marriner.</p> <p>4 Q What information did you seek from Marriner?</p> <p>5 A Was the project on track. I think that was in 6 e-mails that I asked about that for the December 12th 7 being ready.</p> <p>8 Q And prior to the funding, though, you 9 understood the project schedule was what?</p> <p>10 A Delayed because of the fear of light winter.</p> <p>11 Q But you knew it was to be delayed to the day we 12 just discussed shown in Exhibit 72?</p> <p>13 A Yes.</p> <p>14 Q What important information about the project 15 can you say Marriner did not disclose to you that he 16 knew was important?</p> <p>17 A According to depositions, Marriner knew that CR 18 was trying to -- was going to try and sell the fair 19 shares, but whether he was to tell me that or Radovan 20 was to tell me that was a conflict between their two 21 testimonies.</p> <p>22 Q And what other material or important 23 information do you believe Marriner failed to disclose to 24 you?</p> <p>25 A I think he probably knew a lot more about why</p> |

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| <p style="text-align: right;">Page 214</p> <p>1 Q However, by the time you invested, you knew it</p> <p>2 wasn't going to be ready on December 12th?</p> <p>3 MR. CAMPBELL: Objection, that mischaracterizes</p> <p>4 his testimony.</p> <p>5 THE WITNESS: No, I did not say I knew that. I</p> <p>6 knew that it was not going to be open on December 12th,</p> <p>7 not that it was not going to be ready on December 12th.</p> <p>8 BY MR. WOLFE:</p> <p>9 Q So what's the difference between ready and</p> <p>10 open?</p> <p>11 A Huge. One is --</p> <p>12 Q In your verbiage.</p> <p>13 A In my verbiage, being ready means you have a</p> <p>14 document and the place is built, but you've decided not</p> <p>15 to open is the other alternative and that's what I was</p> <p>16 told. They decided because of the potential poor winter</p> <p>17 and poor attendance, it was too risky financially to</p> <p>18 staff up and make it go, open to the public, not that</p> <p>19 there was delays because of construction.</p> <p>20 Q And that was based on statements from whom?</p> <p>21 A Radovan.</p> <p>22 Q Your understanding.</p> <p>23 A Mr. Radovan.</p> <p>24 Q So I'm going to repeat the question from a</p> <p>25 moment ago. Besides what you've already discussed, is</p> | <p style="text-align: right;">Page 216</p> <p>1 August 3, 2015 which is marked as Exhibit 60 to the</p> <p>2 deposition, did you ever tell Mr. Marriner that you were</p> <p>3 looking to him for project information?</p> <p>4 A I don't recall.</p> <p>5 Q So I want to go back to Exhibit 57.</p> <p>6 A Okay.</p> <p>7 Q I just want to make sure I understand what this</p> <p>8 document is. Exhibit 57 are notes that you prepared by</p> <p>9 assembling information you received from others and then</p> <p>10 sent to Ken Tratner, the CPA?</p> <p>11 A Correct.</p> <p>12 Q And you sent it to him with that e-mail that</p> <p>13 was marked earlier which I believe was July 26th, 2015,</p> <p>14 correct?</p> <p>15 A Sounds right.</p> <p>16 Q And as you look at these notes, is it apparent</p> <p>17 to you that the project was looking for 15 million to</p> <p>18 take out an existing six million mezzanine and cover an</p> <p>19 additional nine million in change orders, is that what</p> <p>20 you were conveying?</p> <p>21 A No. I was trying to say that -- you're right</p> <p>22 up to the end here, it was 15 million to cover six</p> <p>23 million of indebtedness and five or six million in</p> <p>24 change orders, and I think there was roughly three</p> <p>25 million that was in a reserve or potential future costs.</p> |
| <p style="text-align: right;">Page 215</p> <p>1 there anything else that Marriner misrepresented to you</p> <p>2 that you believe he knew to be false or had inadequate</p> <p>3 information to make the representation?</p> <p>4 A I don't believe so.</p> <p>5 Q When you executed the subscription and</p> <p>6 delivered the subscription agreement, was Marriner</p> <p>7 involved in that transmission of the documents?</p> <p>8 A No, it was strictly me, or Premiere actually.</p> <p>9 Q So it was between you, Premiere and the Coleman</p> <p>10 law firm?</p> <p>11 A And I'm not sure whether the documents</p> <p>12 themselves went to Coleman as well as a check. I know a</p> <p>13 check went to Coleman, and whether the documents went to</p> <p>14 CR and they signed it as Cal-Neva, LLC.</p> <p>15 Q But it's accurate, however, to say that you did</p> <p>16 not deliver money or documents to Marriner?</p> <p>17 A Correct.</p> <p>18 Q And when I say documents, I'm referring to the</p> <p>19 signed subscription agreement?</p> <p>20 A Correct.</p> <p>21 Q And I'm referring to the signed Private</p> <p>22 Placement Memorandum.</p> <p>23 A Correct.</p> <p>24 Q After your e-mail on August 3, 2015, I think</p> <p>25 it's Exhibit 60, so after your e-mail to Marriner</p> | <p style="text-align: right;">Page 217</p> <p>1 Q So did you include that statement anywhere in</p> <p>2 Exhibit 57 that a portion of the 15 million dollar new</p> <p>3 loan was to create a cash reserve or a line of credit</p> <p>4 for anticipated, but as of yet unknown expenses?</p> <p>5 A No. That was in other e-mails.</p> <p>6 Q In the middle of Exhibit 57, there's tha</p> <p>7 paragraph that reads, "They are refinancing," you see</p> <p>8 that paragraph?</p> <p>9 A Yes.</p> <p>10 Q Are those words you composed or words -- those</p> <p>11 five lines, are those words you composed or words that</p> <p>12 you took from another person's e-mail or other</p> <p>13 communication?</p> <p>14 A I believe it was a copy and paste. I might</p> <p>15 have changed a word or two. I'm not sure. I can't be</p> <p>16 sure.</p> <p>17 Q But this accurately reflected your</p> <p>18 understanding of what the intent for the 15 million was</p> <p>19 to be used for at or about the time you wrote --</p> <p>20 MR. CAMPBELL: Objection, lack of foundation.</p> <p>21 BY MR. WOLFE:</p> <p>22 Q -- the memorandum?</p> <p>23 MR. CAMPBELL: Answer if you can.</p> <p>24 THE WITNESS: So would you ask the question</p> <p>25 again?</p> |

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| <p style="text-align: right;">Page 218</p> <p>1 BY MR. WOLFE:</p> <p>2 Q Does Exhibit 57 reflect what your</p> <p>3 understandings were from the information you had</p> <p>4 accumulated up to the point of sending this to your CPA</p> <p>5 of the capital structure as it existed and the proposed</p> <p>6 15 million dollar refinancing?</p> <p>7 A Yes.</p> <p>8 Q I'm sure you covered this in one shape or</p> <p>9 another, but I want to ask it my own way.</p> <p>10 A Okay.</p> <p>11 Q Prior to your investment --</p> <p>12 TELEPHONE: Excuse me, Dave is on the phone</p> <p>13 again.</p> <p>14 BY MR. WOLFE:</p> <p>15 Q I think I just prefaced it with I'm about to</p> <p>16 cover maybe some old ground, but I think this is a</p> <p>17 little different.</p> <p>18 Prior to your funding on October 12 or 13,</p> <p>19 2015, what knowledge did you have about potential refi's</p> <p>20 of financing on the project?</p> <p>21 A Other than the 15 million?</p> <p>22 Q Yes. So you knew about the 15 million?</p> <p>23 A Yes.</p> <p>24 Q Was there any other potential refinance of debt</p> <p>25 on the project that you were made aware of?</p> | <p style="text-align: right;">Page 220</p> <p>1 due diligence consisting of -- strike that.</p> <p>2 What did his due diligence consist of to your</p> <p>3 knowledge, if you know?</p> <p>4 A Looking through the documents I provided him</p> <p>5 and speaking with Robert Radovan is what I know,</p> <p>6 speaking and communicating with Robert Radovan. I</p> <p>7 wasn't privy to all e-mails that -- I may or may not</p> <p>8 have been privy to all e-mails between he and Robert</p> <p>9 Radovan.</p> <p>10 Q In hindsight, was there anything you would have</p> <p>11 done differently with regard to your due diligence prior</p> <p>12 to funding your investment? Is there any extra</p> <p>13 precaution or extra due diligence that you now regret</p> <p>14 you didn't pursue or didn't perform?</p> <p>15 A I probably should have investigated his past</p> <p>16 projects more and probably should have quizzed him a</p> <p>17 little closer on what he knew and didn't know about the</p> <p>18 current status of the project.</p> <p>19 Q When you say "him", do you mean --</p> <p>20 A We're talking about Robert Radovan is what you</p> <p>21 asked, yeah.</p> <p>22 Q I asked you about --</p> <p>23 A In general?</p> <p>24 Q Generally what other due diligence on all</p> <p>25 fronts looking back, hindsight being 20-20, would you</p> |
| <p style="text-align: right;">Page 219</p> <p>1 A I don't believe so.</p> <p>2 Q At some point in the process of your due</p> <p>3 diligence, your CPA, Kevin Tratner, gave you the</p> <p>4 go-ahead or the green light that from the things he read</p> <p>5 and saw, the investment looked reasonable or sound?</p> <p>6 A Reasonable.</p> <p>7 Q Did he provide you a written opinion in that</p> <p>8 regard?</p> <p>9 A I don't believe so.</p> <p>10 Q Did he send you e-mails in that regard?</p> <p>11 A Any e-mails would have been in here, I believe,</p> <p>12 in my production.</p> <p>13 Q So it would have been a phone conversation and</p> <p>14 maybe an e-mail?</p> <p>15 A Yes.</p> <p>16 Q Is he the general CPA for yourself individually</p> <p>17 or for your business?</p> <p>18 A Everything.</p> <p>19 Q Did you receive a separate invoice for his due</p> <p>20 diligence for the deal?</p> <p>21 A He did it complimentary.</p> <p>22 Q Did he send you a bill that showed the hours</p> <p>23 that were being written off, or it was just no bill?</p> <p>24 A No, he said he'd take care of it, not to worry.</p> <p>25 Q If you were to describe what you know of his</p> | <p style="text-align: right;">Page 221</p> <p>1 have -- do you wish you had done?</p> <p>2 A I wish I had asked Robert and Dave more about</p> <p>3 the current status of the project and hopefully been</p> <p>4 able to uncover more information than what I was given,</p> <p>5 and I also wish I had done more investigation in his</p> <p>6 past projects.</p> <p>7 Q Anything else you can think of?</p> <p>8 A No, I don't believe so.</p> <p>9 Q Can you turn to the PPM?</p> <p>10 MR. CAMPBELL: Exhibit 1? There's three</p> <p>11 different documents that have been bounced around as</p> <p>12 part of the offering.</p> <p>13 BY MR. WOLFE:</p> <p>14 Q I'm showing you Exhibit 1 to the depositions.</p> <p>15 Included in Exhibit 1 is the confidential Private</p> <p>16 Placement Memorandum dated March 11, 2014. There's</p> <p>17 several sections to the document, one of which is called</p> <p>18 risk factors which begins on Page 9, and before we talk</p> <p>19 about a particular provision in the document, did you</p> <p>20 have any legal counsel review the Private Placement</p> <p>21 Memorandum and advise you with respect to the PPM before</p> <p>22 signing it?</p> <p>23 A No.</p> <p>24 Q Did you read the clause on Page 9 of Exhibit 1</p> <p>25 that's indemnification -- excuse me, insufficient</p> |

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| <p style="text-align: right;">Page 222</p> <p>1 funding dilution. Were you aware of that provision --</p> <p>2 A Yes.</p> <p>3 Q -- when you signed the document?</p> <p>4 A Yes.</p> <p>5 Q And what did it mean to you when you signed the</p> <p>6 document?</p> <p>7 A That if the funding was insufficient, they may</p> <p>8 have to go out and get more funding which would dilute</p> <p>9 my interest in the project.</p> <p>10 Q And it also says that, "If the company is</p> <p>11 unable to raise sufficient financing and/or equity</p> <p>12 funding to complete the purchase and redevelopment of</p> <p>13 the property, implementation of its business plan will</p> <p>14 be delayed and will greatly reduce the company's</p> <p>15 possibility of success."</p> <p>16 You were aware of that when you entered into</p> <p>17 this deal, right?</p> <p>18 A Yes.</p> <p>19 Q And you're aware of the other risk factors that</p> <p>20 are identified in the PPM, correct?</p> <p>21 A Yes.</p> <p>22 Q You have experience developing property for</p> <p>23 yourself personally and for your business operations,</p> <p>24 correct?</p> <p>25 A Yes.</p> | <p style="text-align: right;">Page 224</p> <p>1 Q Construction.</p> <p>2 A Construction, so it was probably</p> <p>3 seven-and-a-half as opposed to six-and-a-half million.</p> <p>4 Q So about 15, 18 percent?</p> <p>5 A We can calculate it. If you want to get out a</p> <p>6 calculator, we can figure that out.</p> <p>7 Q So I'm not sure if this is clearly asked and</p> <p>8 answered earlier in this deposition. There's been</p> <p>9 plenty of discussion of a December 12, 2015 meeting --</p> <p>10 A Correct.</p> <p>11 Q -- where things got heated. What were</p> <p>12 the revelations, I don't mean generally, but more</p> <p>13 specifically what were the revelations in terms of</p> <p>14 magnitude of cost overruns in dollars, time, expectation</p> <p>15 for completion that were revealed for the first time at</p> <p>16 that December 12th, 2015 meeting?</p> <p>17 A On the time basis, it was going to take a lot</p> <p>18 longer to build, not just to open, but to build than was</p> <p>19 expected, and I don't remember for sure, but I don't</p> <p>20 think they felt they could open at Father's Day, either.</p> <p>21 It would go well beyond that.</p> <p>22 Q Was a time estimate, a month or a year given?</p> <p>23 A I don't remember.</p> <p>24 Q Or was it simply a statement that we're not</p> <p>25 going to be able to open by Father's Day?</p> |
| <p style="text-align: right;">Page 223</p> <p>1 Q In your experience, are there cost overruns?</p> <p>2 A Oh, yes.</p> <p>3 Q And what sort of magnitude of cost overruns</p> <p>4 have you experienced in your own real estate</p> <p>5 construction projects in terms of percentage of the</p> <p>6 initial budget?</p> <p>7 A Probably the biggest one would have been my</p> <p>8 main house, but that was probably more due to change</p> <p>9 orders and site conditions than anything, and as to what</p> <p>10 percentage, I'm guessing now, but it's maybe ten</p> <p>11 percent.</p> <p>12 Q How about time delays in construction projects</p> <p>13 that you've personally been involved in, what sort of</p> <p>14 time overruns or schedule delays have you experienced?</p> <p>15 A Again, my personal residence here in Lake</p> <p>16 Tahoe. Probably my most recent project which was a</p> <p>17 lakeside cottage was a year late, two-and-a-half years</p> <p>18 instead of one-and-a-half years over what was projected</p> <p>19 by the builder.</p> <p>20 Q And what was the square footage?</p> <p>21 A 3600 square feet.</p> <p>22 Q And what was the value of the project as</p> <p>23 initially budgeted and what did it turn out to be?</p> <p>24 A At what stage? Are you including the land and</p> <p>25 everything? What number am I looking for?</p> | <p style="text-align: right;">Page 225</p> <p>1 A I don't remember for sure.</p> <p>2 Q What about dollars of cost overruns and that</p> <p>3 sort of thing, what was revealed on December 12 that you</p> <p>4 weren't aware of previously?</p> <p>5 A I believe the cost overruns were going to be</p> <p>6 significantly higher than the five or six million</p> <p>7 originally contemplated, or the nine million potential</p> <p>8 that was reserved for, and I'm thinking it was more in</p> <p>9 the 20 to 30 million dollar range.</p> <p>10 Q And who shared -- strike that.</p> <p>11 Did somebody make the statement that the cost</p> <p>12 overruns are not going to be nine million, they're going</p> <p>13 to be 20 to 30 million?</p> <p>14 A I don't know that they presented it that way,</p> <p>15 but that was the net effect of what I think Mr. Criswell</p> <p>16 and Mr. Radovan presented at that meeting.</p> <p>17 Q Did they have budgets and spread sheets and so</p> <p>18 forth that were showing these new numbers of 20 to 30</p> <p>19 million in overruns versus nine million?</p> <p>20 A I don't believe they presented them that day.</p> <p>21 I think in the not too distant future after that, they</p> <p>22 presented some other documents.</p> <p>23 Q So if you can identify a particular statement</p> <p>24 or speech, what was it that set things off toward</p> <p>25 hostility at that December 12, 2015 meeting?</p> |

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| <p style="text-align: right;">Page 226</p> <p>1 A It was the combination of the time delays and</p> <p>2 the cost overruns, and I believe that might have been</p> <p>3 Mr. Criswell mostly saying it, but it was both Criswell</p> <p>4 and Radovan.</p> <p>5 Q Was there an executive committee meeting that</p> <p>6 preceded what was to be the 100th birthday party?</p> <p>7 A To my understanding, there was.</p> <p>8 Q And were you in attendance in that meeting?</p> <p>9 A No.</p> <p>10 Q Did you talk to people that came out of that</p> <p>11 executive committee meeting immediately after it was</p> <p>12 over?</p> <p>13 A No. Pretty much immediately after it was over,</p> <p>14 we went into the celebration and that's when all the</p> <p>15 information came out.</p> <p>16 Q And the information that came out was what</p> <p>17 you've described so far?</p> <p>18 A Yes.</p> <p>19 Q So nothing more specific than what you've</p> <p>20 described so far that you can recall?</p> <p>21 A Well, they talked about the cost overruns and</p> <p>22 the change orders and some of them were due to the fire</p> <p>23 department, some of them were due to TRPA, all of those</p> <p>24 things that are already in these documents that we've</p> <p>25 discussed.</p> | <p style="text-align: right;">Page 228</p> <p>1 other documents that you received from Marriner that</p> <p>2 Marriner created relative to the project?</p> <p>3 A I'm not always sure what he created versus what</p> <p>4 was created by CR, so I don't know for sure of any.</p> <p>5 Q Do you believe that Marriner was attempting to</p> <p>6 swindle you?</p> <p>7 A That's a very strong word. I would not use</p> <p>8 that word. I believe Dave Marriner was trying to</p> <p>9 support his employer and to sell a project to earn a</p> <p>10 commission.</p> <p>11 Q Do you believe that he attempted to defraud</p> <p>12 you?</p> <p>13 A That's a legal description that I'm not</p> <p>14 comfortable in answering.</p> <p>15 Q You have a claim for punitive damages against</p> <p>16 all defendants and in this, you allege that the</p> <p>17 defendants, including Marriner and Marriner Real</p> <p>18 Estate's actions were fraudulent and in conscious</p> <p>19 disregard of plaintiff's rights with the express</p> <p>20 malicious intent of causing harm to plaintiff.</p> <p>21 Do you believe Dave Marriner expressly or</p> <p>22 otherwise intended to harm you?</p> <p>23 A I believe that he misled me to do the things I</p> <p>24 said and that might be considered fraudulent, I believe.</p> <p>25 I don't know the line between salesmanship and</p> |
| <p style="text-align: right;">Page 227</p> <p>1 Q What capital table do you recall having in hand</p> <p>2 having most recently received before you funded your</p> <p>3 investment? Do you know what date it was and who it</p> <p>4 came from?</p> <p>5 A No. It would have come from Criswell Radovan</p> <p>6 or their agent, David Marriner.</p> <p>7 Q And you've testified earlier about</p> <p>8 discrepancies in the capital tables, correct?</p> <p>9 A Yes. I'm sorry, I was thinking of the budgets,</p> <p>10 but the cap table was one that was sent by Dave Marriner</p> <p>11 earlier, but the more recent one was -- and was it</p> <p>12 before I invested? I think there might have been one</p> <p>13 from CR, from Robert Radovan before I invested, but I'm</p> <p>14 not positive of that, but the records will show.</p> <p>15 Q Are you aware of any capital tables besides the</p> <p>16 two you just mentioned prior to your investment that you</p> <p>17 received?</p> <p>18 A No.</p> <p>19 Q That was stated really horribly.</p> <p>20 Were you aware -- did you receive any capital</p> <p>21 tables other than the two you just described before you</p> <p>22 invested?</p> <p>23 A Not that I remember.</p> <p>24 Q Other than the capital table that you received</p> <p>25 by e-mail from Dave Marriner early on, were there any</p> | <p style="text-align: right;">Page 229</p> <p>1 misleading and fraudulence, but I do believe I was</p> <p>2 intentionally misled by all of the plaintiffs to</p> <p>3 accomplish my investment.</p> <p>4 MR. CAMPBELL: Defendants.</p> <p>5 THE WITNESS: Defendants, sorry.</p> <p>6 BY MR. WOLFE:</p> <p>7 Q And you've already testified as to what you</p> <p>8 believe Marriner's role was in that today, correct?</p> <p>9 A I believe so.</p> <p>10 Q What communications did Marriner have with you</p> <p>11 regarding the immediacy or imminence of the 15 million</p> <p>12 dollar refinance? Was that all in e-mails?</p> <p>13 A As far as I remember.</p> <p>14 Q Do you recall any conversations with Marriner</p> <p>15 in that regard?</p> <p>16 A I'm not sure. No, I do not recall.</p> <p>17 Q Have you testified with regard to all of the</p> <p>18 complaints or concerns you have with regard to Marriner</p> <p>19 in today's deposition?</p> <p>20 A As far as I know.</p> <p>21 Q I'll pass back to Mr. Little.</p> <p>22 MR. MARRINER: Andrew, can we talk for a minute</p> <p>23 before you close?</p> <p>24 MR. WOLFE: Sure, I'll call you on the cell</p> <p>25 phone.</p> |

Yount, George

June 06, 2017

Pages 230..233

| Page 230 | Page 232 |
|--|---|
| <p>1 FURTHER EXAMINATION</p> <p>2 BY MR. LITTLE:</p> <p>3 Q Just a few follow-up questions. We went</p> <p>4 through a bunch of e-mails today. You'd agree with me</p> <p>5 that the bulk of your communications with my client and</p> <p>6 Mr. Marriner regarding this project occurred in July and</p> <p>7 maybe the first week in August?</p> <p>8 A I'm not sure. If that's what those documents</p> <p>9 show.</p> <p>10 Q Well, the bulk of the information that you</p> <p>11 received about the project occurred in July and the</p> <p>12 first week --</p> <p>13 A Regarding whether I invest or not, so before my</p> <p>14 investment is what you're asking?</p> <p>15 Q The due diligence you were doing was mostly in</p> <p>16 July and the first week in August, correct?</p> <p>17 A I don't know for sure. If that's what those</p> <p>18 documents show, then that would be correct.</p> <p>19 Q Well, the e-mails that show information being</p> <p>20 passed back and forth, that would have been the time</p> <p>21 period that you were getting active information about</p> <p>22 the project, is that fair?</p> <p>23 A Yes.</p> <p>24 Q And then it took you several months to get</p> <p>25 funding out of your 401-K?</p> | <p>1 Mr. Marriner prior to late September or early October?</p> <p>2 A I think I indicated that, yes.</p> <p>3 Q In e-mails or verbally?</p> <p>4 A Probably both, that I was working hard to</p> <p>5 finalize the documents and get it funded.</p> <p>6 Q Well, when did you commit to invest in this</p> <p>7 project?</p> <p>8 MR. CAMPBELL: He asked and answered that. He</p> <p>9 didn't recall.</p> <p>10 THE WITNESS: I don't recall.</p> <p>11 BY MR. LITTLE:</p> <p>12 Q Was it before late September or early October?</p> <p>13 A I believe so.</p> <p>14 Q Do you recall a specific conversation with</p> <p>15 somebody about that?</p> <p>16 A No, but there was e-mails in that regard.</p> <p>17 Q Exhibit 72, when Robert tells you about a soft</p> <p>18 opening in spring with the grand opening on Father's Day</p> <p>19 weekend, it doesn't say anything there about weather or</p> <p>20 tourism being the cause of that, correct?</p> <p>21 A Correct.</p> <p>22 Q Do you have any information that the project</p> <p>23 was more behind what Robert represented in this</p> <p>24 October 10th e-mail as of October 10th?</p> <p>25 A I didn't even think that that necessarily meant</p> |
| Page 231 | Page 233 |
| <p>1 A To get the funding and conversion into a --</p> <p>2 what do you call those, that form? It's where a 401-K</p> <p>3 gets converted to -- there's another acronym for that.</p> <p>4 Q But that process took considerable time?</p> <p>5 A It did.</p> <p>6 Q More than you just pulling money out of a bank</p> <p>7 account?</p> <p>8 A Correct.</p> <p>9 Q And during that period of time that you were</p> <p>10 trying to get the funding out of your 401-K, there</p> <p>11 wasn't very much communication between you and the</p> <p>12 defendants about the project, do you agree with that?</p> <p>13 A Yeah. That would have been in late September,</p> <p>14 early October.</p> <p>15 Q Until that period of time, late September,</p> <p>16 early October, you didn't even know if you'd be able to</p> <p>17 fund an investment on this project?</p> <p>18 A I kind of felt I would be able to. I had the</p> <p>19 money. It was the legalities of how to set it up</p> <p>20 properly.</p> <p>21 Q Correct, and you didn't know if those</p> <p>22 legalities would work out until late September or early</p> <p>23 October?</p> <p>24 A I felt they would.</p> <p>25 Q But did you communicate that to Mr. Radovan or</p> | <p>1 the project was behind. His decision to open it was</p> <p>2 behind.</p> <p>3 Q Well, that's fine. Do you have any information</p> <p>4 as you sit here today that the project was more behind</p> <p>5 than what was represented on October 10th hack when he</p> <p>6 said this?</p> <p>7 MR. CAMPBELL: I'm going to object, it's a lack</p> <p>8 of foundation and it's been asked and answered,</p> <p>9 foundation on behind.</p> <p>10 THE WITNESS: Yeah, I don't like the word</p> <p>11 behind. I don't think it's -- it's not saying the</p> <p>12 project is behind, it was saying the decision -- to me,</p> <p>13 it was his decision not to open, not that the project</p> <p>14 was behind being opened.</p> <p>15 BY MR. LITTLE:</p> <p>16 Q It doesn't say that in this e-mail, does it?</p> <p>17 A No. It doesn't say one way or the other. It</p> <p>18 doesn't say the reason for it being delayed, but I</p> <p>19 believe it did in other documents.</p> <p>20 Q Based on the work that was remaining to be</p> <p>21 completed, do you have any information that it couldn't</p> <p>22 have been completed within the time frames referenced by</p> <p>23 Mr. Radovan in Exhibit 72 as of the date --</p> <p>24 A I had no information I don't believe that it</p> <p>25 couldn't have been completed by December 12th.</p> |

Yount, George

June 06, 2017

Pages 234..237


| | |
|--|--|
| <p style="text-align: right;">Page 234</p> <p>1 Q And then Exhibit 29, when Mr. Radovan told you</p> <p>2 about the refinancing and basically that he was pulling</p> <p>3 an additional nine million dollars out, he told you what</p> <p>4 that was to cover, correct?</p> <p>5 A Yes.</p> <p>6 Q And it doesn't say anything in there about any</p> <p>7 money being there for a cushion, does it?</p> <p>8 A No, but that's what I was told.</p> <p>9 Q By who?</p> <p>10 A Mr. Radovan, I believe.</p> <p>11 Q When was this?</p> <p>12 A I don't know exactly, but it was before I</p> <p>13 invested when we talked about that refinancing, or maybe</p> <p>14 it's in some of the documents. I don't know which.</p> <p>15 Q Can you explain to me how Criswell Radovan's</p> <p>16 founders share is any different than the founders share</p> <p>17 you thought you were buying?</p> <p>18 MR. CAMPBELL: Objection, that's been asked and</p> <p>19 answered several times.</p> <p>20 THE WITNESS: Several times. You keep asking</p> <p>21 the same questions over and over.</p> <p>22 BY MR. LITTLE:</p> <p>23 Q Other than where the money was going, is there</p> <p>24 any other difference that you're aware of?</p> <p>25 A I don't know if the details of the shares are</p> | <p style="text-align: right;">Page 236</p> <p>1 works for Criswell Radovan knew that -- she had received</p> <p>2 information, or communication I should say, with Bruce</p> <p>3 Coleman regarding that they were required to get a vote</p> <p>4 from the shareholders if they were going to sell to me</p> <p>5 one of their shares. Is that what you're trying to get</p> <p>6 at?</p> <p>7 Q You've asserted fraud against my clients which</p> <p>8 is material misrepresentations or material omissions.</p> <p>9 I'm trying to ask you, are there any other</p> <p>10 misrepresentations or omissions that you believe were</p> <p>11 made by my clients that we haven't talked about here</p> <p>12 today?</p> <p>13 A If you include the part about Heather in there,</p> <p>14 yes.</p> <p>15 Q Then that's it?</p> <p>16 A I believe so.</p> <p>17 Q That's all I have.</p> <p>18 MR. CAMPBELL: Can we take a two-minute break?</p> <p>19 (A recess was taken.)</p> <p>20 MR. WOLFE: I have no further questions.</p> <p>21 (The proceedings concluded at 5:00 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 235</p> <p>1 any different or not.</p> <p>2 Q And you read and understood the terms of the</p> <p>3 subscription agreement before you signed off on it?</p> <p>4 A Yes.</p> <p>5 Q And you had an opportunity to have your counsel</p> <p>6 or your accountant review it?</p> <p>7 A Correct.</p> <p>8 Q Likewise, the escrow instructions, you read</p> <p>9 those before you signed off on the subscription</p> <p>10 agreement?</p> <p>11 A Yes.</p> <p>12 Q And you understood that the conditions of the</p> <p>13 escrow, the money being held in escrow had already been</p> <p>14 satisfied by the time you sent in the money? In other</p> <p>15 words, 14 million dollars had already been raised and we</p> <p>16 were past April 30th, 2014?</p> <p>17 A That's true.</p> <p>18 Q Have you testified here today about all the</p> <p>19 misrepresentations or omissions that you claim were made</p> <p>20 by Robert Radovan, Bill Criswell, or anyone at Criswell</p> <p>21 Radovan?</p> <p>22 A That I knew then or know now?</p> <p>23 Q Yeah, at any point in time.</p> <p>24 A Well, in Mr. Criswell's deposition, it came to</p> <p>25 light that Heather, I forgot her last name, but who</p> | <p style="text-align: right;">Page 237</p> <p>1 I, GEORGE STUART YOUNT, hereby declare under</p> <p>2 penalty of perjury that I have read the foregoing pages</p> <p>3 1 through 236; that any changes made herein were made</p> <p>4 and initialed by me; that I have hereunto affixed my</p> <p>5 signature.</p> <p>6 Dated: _____</p> <p>7</p> <p>8 _____</p> <p>9 GEORGE STUART YOUNT</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |

Yount, George

June 06, 2017

Pages 238..239

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| 1 | CORRECTIONS | Page 238 |
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| 1 | STATE OF NEVADA) | Page 239 |
| 2 |) ss. | |
| 3 | COUNTY OF WASHOE) | |
| 4 | I, DIANNE M. BRUMLEY, a Certified Court | |
| 5 | Reporter for the State of Nevada, do hereby certify: | |
| 6 | That on Tuesday, the 6th day of June, 2017, at | |
| 7 | the hour of 10:00 a.m. of said day, at the offices of | |
| 8 | Robison, Belaustegui, 71 Washington Street, Reno, | |
| 9 | Nevada, personally appeared GEORGE STUART YOUNT, who was | |
| 10 | duly sworn by me, thereupon was deposed in the matter | |
| 11 | entitled herein, and that before the proceedings' | |
| 12 | completion, the reading and signing of the deposition | |
| 13 | has been requested by the deponent or party; | |
| 14 | That the foregoing transcript, consisting of | |
| 15 | Pages 1 through 236, is a full, true and correct | |
| 16 | transcript of the stenographic notes of testimony taken | |
| 17 | by me to the best of my knowledge, skill and ability. | |
| 18 | I further certify that I am not an attorney or | |
| 19 | counsel for any of the parties, nor a relative or | |
| 20 | employee of any attorney or counsel connected with the | |
| 21 | action, nor financially interested in the action. | |
| 22 | | |
| 23 |  | |
| 24 | DIANNE M. BRUMLEY, NEVADA CCR #205 | |
| 25 | CALIFORNIA CSR #6796 | |

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2017-06-28 10:48:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6172106 : pmsewell

EXHIBIT 3

000447

000447

EXHIBIT 3

From: Dave Marriner <marrinertahoe@aol.com>
Sent: Tuesday, July 21, 2015 4:19 PM
To: Stuart Yount
Cc: robert@criswellradovan.com
Subject: Re: Cal-Neva
Attachments: Cal Neva Pano by Drone 72115.jpg

Hi Stuart,
 Robert has returned from his MBA Conference at Pepperdine University and back in the saddle.
 We have a draft response to your questions being reviewed.
 Hope to get it to you shortly.
 I have attached a Pano Shot of our amazing Cal Neva Rebirth project from a drone taken last week.
 Enjoy!
 Dave



Dave Marriner
 Marriner Real Estate, LLC
 Cal Neva Lodge Rebirth 2015
 marrinertahoe@gmail.com
 marrinertahoe@aol.com
 www.marrinerrealestate.com
 www.lasdunascabo.com
 www.dolphincoveusvi.com

775-745-8482 Cell
 775-298-4828 Skype Cell

-----Original Message-----

From: Stuart Yount <syount@fortifiber.com>
To: Dave Marriner <marrinertahoe@aol.com>
Cc: robert <robert@criswellradovan.com>
Sent: Sun, Jul 19, 2015 11:17 am
Subject: RE: Cal-Neva

Page 112 shows a chart of competitive properties' performance. Am I understanding that:

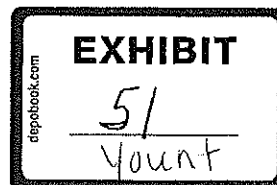
A is Squaw
 B is the Ritz
 C is Embassy Suites
 D is the Hyatt Regency?

Why do you think Cal Neva will have a 60% average occupancy when the established competitors average 53%?

I see no comment on the likely entrant of the Biltmore/Boulder Bay project. How do you see that affecting Cal Neva?

As I understand it, you're over budget by more than \$5m so far. Where will that, & likely more, funding needs come from?

Stuart Yount
 Chairman & CEO



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EXHIBIT 4

000449

EXHIBIT 4

I will be working hard this week with our team to secure reasonable financing and get the project back on track.

We have all been "shocked" regarding the recent announcement of cost overruns but we also remain confident that if we come together as a cohesive local team we can get the project under control and deliver the iconic Rebirth of the New Cal Neva Lodge and Casino.

North Lake Tahoe needs this project to be a huge success and it could spark the redevelopment of all Crystal Bay.

All hands are on deck now to bring back the Cal Neva and the Rat Pack.

Regards,

Dave



Dave Marriner

Marriner Real Estate, LLC

Cal Neva Lodge Rebirth 2015

marrinertahoe@gmail.com

marrinertahoe@aol.com

dave@lasrosadas.com

www.marrinerrealestate.com

www.lasrosadas.com

www.lasdunascabo.com

www.dolphincoveusvi.com

775-745-8482 Cell

-----Original Message-----

From: Dave Marriner <marrinertahoe@aol.com>

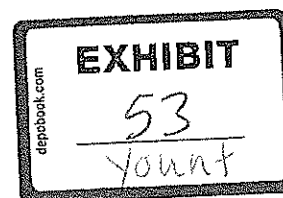
To: syount <syount@fortifiber.com>; geriattahoe <geriattahoe@fortifiber.com>

Cc: robert <robert@criswellradovan.com>

Sent: Wed, Jul 22, 2015 10:40 am

Subject: Re: Cal-Neva/ Progress Report (Confidential)

Hi Stuart and Geri,



I understand that you and Robert had a chance to talk yesterday.

I hope he was able to answer most or all of your questions.

I have attached our recent Cal Neva Construction Progress Report (Confidential).

This Progress Report will bring you up to speed on our progress and you will see our renderings of our vision.

We are very excited to have you consider joining our Founding Member Team.

I know Robert will follow up your conversation with a response to your questions.

I have reached out to Roger and Bea Wittenberg to invite them to tour our project. Bea said they will be available the first week of August and would like to see our progress. She mentioned they are excited to see the Crystal Bay area have a rebirth.

If you have any information you can share with us about Boulder Bay I will add their project to our report.

Please contact me with any more questions.

Best regards,

Dave



Dave Marriner

Marriner Real Estate, LLC

Cal Neva Lodge Rebirth 2015

marrinertahoe@gmail.com

marrinertahoe@aol.com

www.marrinerrealestate.com

www.lasdunascabo.com

www.dolphincoveusvi.com

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EXHIBIT 5

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EXHIBIT 5

From: Stuart Yount
Sent: Wednesday, July 22, 2015 1:22 PM
To: Dave Marriner
Cc: Geri Yount; robert@criswellradovan.com
Subject: Re: Cal-Neva/ Progress Report (Confidential)

Thanks, Dave. I'm to talk some more with Robert tomorrow morning. In the meantime, please send the written responses you prepared.

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

On Jul 22, 2015, at 10:39 AM, Dave Marriner <marrinertahoe@aol.com> wrote:

Hi Stuart and Geri,

I understand that you and Robert had a chance to talk yesterday.
 I hope he was able to answer most or all of your questions.

I have attached our recent Cal Neva Construction Progress Report (Confidential).
 This Progress Report will bring you up to speed on our progress and you will see our renderings of our vision.

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I have reached out to Roger and Bea Wittenberg to invite them to tour our project. Bea said they will be available the first week of August and would like to see our progress. She mentioned they are excited to see the Crystal Bay area have a rebirth.

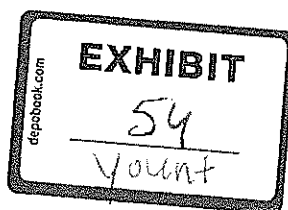
If you have any information you can share with us about Boulder Bay I will add their project to our report.

Please contact me with any more questions.

Best regards,
 Dave



Dave Marriner
 Marriner Real Estate, LLC
 Cal Neva Lodge Rebirth 2015
marrinertahoe@gmail.com
marrinertahoe@aol.com
www.marrinerrealestate.com
www.lasdunascabo.com
www.dolphincoveusvi.com



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Transaction # 6172106 : pmsewell

EXHIBIT 6

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EXHIBIT 6

From: Stuart Yount
Sent: Sunday, July 26, 2015 2:52 PM
To: Ken Tratner (Ktratner@mhtcpa.com); Mitzi Villeneuve (mvilleneuve@mhtcpa.com)
Cc: Geri Yount
Subject: Potential 401k Investment for Stu
Attachments: Cal Neva Progress Report 7615.pdf; Cal Neva Pano by Drone 72115.jpg; Cal_Neva_71514Full_PPM_exhibits_supplements.pdf; Cal Neva Progress Report 7615.pdf; CN Cabin Elevations 7615.pdf; CN Cabin Floorplan 7615.pdf; RE: Cal-Neva; CAL NEVA LODGE INVESTMENT NOTES 072615.docx

I've been looking into investing in the historic Cal Neva Lodge near us which is being rehabbed. My investment in the LLC would be \$1,000,000 of a \$60,000,000+ project for which I would have 3.5% ownership. I want the money to come from my 401k so it has no effect on Fortifiber's cash. I attach the offering for your review as well as notes I've taken from conversations. Also, an email to my inquiry by the project architect, whom I've known for years & is also our architect on the Cottage we're building at our home.

I think this is timely because the recession has waned here & there are no decent hotel rooms on the North Shore of Lake Tahoe other than the Hyatt Regency. It has high occupancy & high room & food rates. For example, this weekend (summer but no holiday) it is sold out with the least expensive room going for \$600/night with a 3 day minimum. The investors get paid back in full plus 10% interest before any distributions to the developer.

I look forward to your advice & council this week, as always. Many thanks.

Stuart Yount

300 State Route 28
 Box 308
 Crystal Bay, NV 89402
 (775) 843-0486



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EXHIBIT 7

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EXHIBIT 7

CAL NEVA LODGE INVESTMENT NOTES

Total Project cost is something slightly over \$60,000,000

Ownership:

| | |
|---------------|----------------------|
| Developer- | 20% |
| Pickets/mezz- | 10% |
| Investors- | 70% for \$20,000,000 |

The Developer also bought \$2,000,000 of the \$20,000,000 offering.

It is regarded as a Nevada LLC business. You should not be subject to CA income tax. That is, as long as you are a Nevada resident.

Below is a link to the Fairwinds Lodge that will give the Cal Neva lakefront access. It was added to the project after the offering memorandum at a cost of \$6,000,000.

http://www.youtube.com/watch?v=iC_dLPT3YTo

The Preferred and Founder members are the same.

The offering is extended. The actual first closing date for the debt and Mezz piece was Sept, 30, 2014. A potential \$1,500,000 was held to be raised after the closing.

They are refinancing the mezzanine piece with a less costly \$15,000,000 mezzanine. This is to cover the added costs of regulatory and code requirements which changed or were added by the two counties and TRPA which we deal with. We have also added some costs for design upgrades within the project. Pre-development of the condo units is also included within this. We have just received confirmation from TRPA regarding the condo conversion of 28 TAUs (Tourist Accommodation Units, hotel rooms).

We have previously not carried the cost or revenue of this item because we were not sure we could do this given TRPA zoning. We now have the positive confirmation of the conversion and wish to proceed as fast as possible.

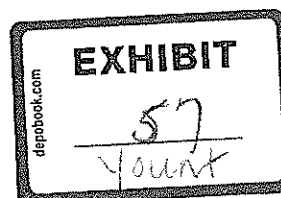
These units are limited to 1,250 square feet due to the condo conversion policy within the TRPA general plan. They will differ in pricing due to the different placement and view, not from size or design. We are expecting to average roughly \$1,250 per foot throughout the sell-out of the units. These units can be put through the rental pool of the hotel with a profit split paid back to the owner.

On distributions, equity and its preferred return is repaid first. We are assuming a refinance in year 2-3 of operations to take out the Construction/mini-perm and the mezzanine, along with any remaining equity outstanding after the condominium distributions.

A member cannot be forced to sell.

We are happy to report to anyone you would like us to. I assume the note on page 19 about the 35 year old issue must have been a regulatory issue.

If there are losses beyond what is budgeted and held in reserve, the executive committee could issue a capital call, but you are not required to fund.



GSY002040

The executive committee is:

Robert Radovan (Criswell Radovan LLC)
William Criswell (Criswell Radovan LLC)
Les Busick Investor- Incline Village
Brandon Chaney Investor- Incline Village
Troy Gillespie Investor- Incline Village

The manager will not start receiving capital from its 20% position until the equity and preferred return has been received by the investors.

Expected to have a soft opening by December 12, 2015 for, former owner, Frank Sinatra's 100th Birthday Party!!! Full opening by April.

GSY002041

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Transaction # 6172106 : pmsewell

EXHIBIT 8

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EXHIBIT 8

From: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
Sent: Monday, July 27, 2015 3:20 PM
To: Stuart Yount
Subject: Re: Debt

Hi Stuart,

The debt is a combination of a \$29,500,000 first and a \$6,000,000 mezzanine piece.

The first is with Hall Structured Finance at 8.75% with a term of 3 years with 2 one year extensions.

The Mezz is with the Pickett Family (They own Montreux). It's at 12 % for 2 years.

Neither have pre-payment penalties, as we are actively re-financing the Mezz.

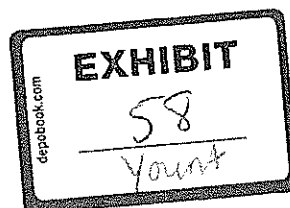
Thanks,

Robert

On Jul 27, 2015, at 8:35 AM, Stuart Yount wrote:

I believe there is some \$30(?)m in debt. Who is providing that & under what terms, please?

Stuart Yount
Chairman & CEO
<image001.png>
300 State Route 28
Box 308
Crystal Bay, NV 89402
(775) 843-0486



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EXHIBIT 9

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EXHIBIT 9

From: Stuart Yount
Sent: Wednesday, July 29, 2015 12:37 PM
To: Robert Radovan
Cc: Dave Marriner
Subject: RE:

Thanks. I sent everything to my CPA's Sunday afternoon. We'll be in touch soon.

Stuart Yount
Chairman & CEO

300 State Route 28
Box 308
Crystal Bay, NV 89402
(775) 843-0486

-----Original Message-----

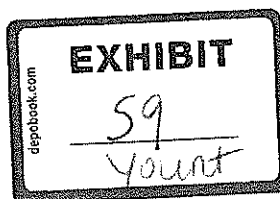
From: Robert Radovan [<mailto:Robert@CRISWELLRADOVAN.COM>]
Sent: Wednesday, July 29, 2015 12:00 PM
To: Stuart Yount <syount@fortifiber.com>
Cc: Dave Marriner <marrinertahoe@aol.com>
Subject:

Hi Stuart,

I just wanted to check in to see if there is anything you need from me. Just call me with any questions.

Thanks,

Robert



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EXHIBIT 10

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EXHIBIT 10

From: Dave Marriner <marrinertahoe@aol.com>
Sent: Monday, August 3, 2015 12:34 PM
To: Stuart Yount
Subject: Re: Cal Neva

Great!
Just checking.
Dave

Sent from my iPhone

On Aug 3, 2015, at 12:27 PM, Stuart Yount <syount@fortifiber.com> wrote:

I've been dealing directly with Robert, thanks. He will be taking questions from my CPA early this week. More soon.

Stuart Yount
Chairman & CEO
Fortifiber Corporation
300 State Route 28
Box 308
Crystal Bay, NV 80402
(775) 843-0486

On Aug 3, 2015, at 11:45 AM, Dave Marriner <marrinertahoe@aol.com> wrote:

Hi Stuart,
Hope you are doing well.
I wanted to follow-up on several things.

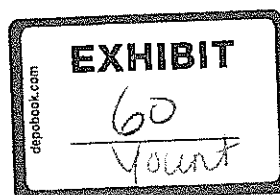
1. Do you have any more questions?
2. Can we arrange a meeting with Roger and Robert to compare notes on each others projects and meet Heather?
3. Roger and Bea wanted to take a tour in early August. I can arrange a tour this week between Wed. and Friday after 3:30pm.
4. Based on your review of our Founding Membership Offering, are you still interested?

Best regards,
Dave



Dave Marriner
Marriner Real Estate, LLC
Cal Neva Lodge Rebirth 2015
marrinertahoe@gmail.com
marrinertahoe@aol.com
www.marrinerrealestate.com
www.lasdunascabo.com
www.dolphincoveusvi.com

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GSY002358

775-745-8482 Cell
775-298-4828 Skype Cell

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EXHIBIT 11

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EXHIBIT 11

From: Stuart Yount
Sent: Tuesday, August 4, 2015 6:34 PM
To: Ken Tratner
Subject: Re: Cal Neva

Thanks, Ken.

Stuart Yount
Chairman & CEO
Fortifiber Corporation
300 State Route 28
Box 308
Crystal Bay, NV 80402
(775) 843-0486

On Aug 4, 2015, at 5:39 PM, Ken Tratner <ktratner@mhtcpa.com> wrote:

Robert

It was very nice speaking with you earlier today.

As we discussed, we would like the opportunity to review the updated 'Assumptions and Summary', '10 year Pro-forma P & L', 'Investor Returns', and 'Total Project Budget' schedules based on the current status of the project.

Thank you for your time and patience in introducing the project and assumptions.

Ken

Meloni Hribal Tratner LLP | 21600 Oxnard Street, Suite 500 | Woodland Hills, California 91367
Office: 818.587.3730 | Fax: 818.587.3731 | Web: www.mhtcpa.com | Email: ktratner@mhtcpa.com

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From: Robert Radovan [<mailto:Robert@CRISWELLRADOVAN.COM>]
Sent: 08/02/2015 11:14 AM
To: Stuart Yount
Cc: Ken Tratner; Geri Yount
Subject: Re: Cal Neva

Thanks Stuart,

I look forward to speaking with Mr. Tratner. Call me whenever is convenient.

Thanks,

Robert
707-332-3424 cell
707-963-0313 off

On Aug 1, 2015, at 6:45 PM, Stuart Yount wrote:

My CPA, Ken Tratner, has reviewed your proposal & has a few questions. I'm asking him to call you at (707) 332-3424 on Monday. Robert, please also tell Ken about your previous resort projects & how they turned out for your investors. I look forward to the results of that call. Many thanks to you both.

Stuart Yount
Chairman & CEO
<image003.png>
300 State Route 28
Box 308
Crystal Bay, NV 89402
(775) 843-0486

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EXHIBIT 12

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EXHIBIT 12

From: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
Sent: Sunday, August 9, 2015 10:01 AM
To: Stuart Yount
Cc: Ken Tratner (Ktratner@mhtcpa.com); Dave Marriner (marrinertahoe@aol.com)
Subject: Re: Questions
Attachments: image003.png

Yes Stuart,

I owe Ken the updated pro-forma and condo numbers. I've been traveling non-stop for the past few days, so have not been able to get it to him. I'll get Ken the info first thing on Monday.

Thanks,

Robert

Sent from my iPhone

On Aug 8, 2015, at 7:22 PM, Stuart Yount <syount@fortifiber.com> wrote:

I believe the ball is in your court to respond to Ken's questions & requests for further information, Robert????

Stuart Yount
Chairman & CEO
<image003.png>
300 State Route 28
Box 308
Crystal Bay, NV 89402
(775) 843-0486

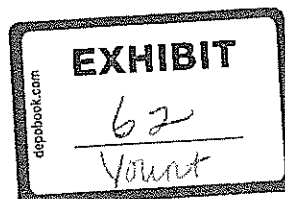


EXHIBIT 13

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EXHIBIT 13

From: Pete Dordick <pete@CRISWELLRADOVAN.COM>
Sent: Monday, August 10, 2015 9:56 AM
To: Stuart Yount; Ktratner@mhtcpa.com; marrinertahoe@aol.com; Robert Radovan
Cc: Heather Hill
Subject: Calneva
Attachments: CalNeva - Phase 2 - Conceptual Program & Budget.pdf; CalNeva - Ten Year Forecast NOI.pdf

Gentlemen,

Robert asked me to forward the enclosed documents regarding the Calneva project to you. These include our projections for the condo project and our 10 year pro forma. Please note that the pro forma does not currently include revenues from condo rentals during times the owners are not using them.

Robert is currently traveling and could not send them himself.

Please let me know if you have any questions.

Pete

Pete Dordick
Criswell Radovan, LLC
1336 Oak Avenue, Suite D
St. Helena, California 94574
Office: 707.963.0313
Cell: 303.885.3310
pete@criswellradovan.com



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EXHIBIT 14

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EXHIBIT 14

From: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
Sent: Saturday, October 10, 2015 4:03 PM
To: Stuart Yount
Cc: Geri Yount
Subject: Re:

Definitely!!!

Sent from my iPhone

> On Oct 10, 2015, at 3:26 PM, Stuart Yount <syount@fortifiber.com> wrote:

>
 > Still doing Sinatra party on December 12th?
 >
 > Can you now ID the GM & Chef?

>
 > Stuart Yount
 > Chairman & CEO
 > Fortifiber Corporation
 > 300 State Route 28
 > Box 308
 > Crystal Bay, NV 80402
 > (775) 843-0486

> On Oct 10, 2015, at 3:05 PM, Robert Radovan <Robert@CRISWELLRADOVAN.COM> wrote:

>
 > Looking good. Soft opening in spring with Grand Opening on Father's Day weekend. Just brought in our General Manager and Chef.

>
 > Starwood is heavily involved in opening schedule working with their marketing groups. Very positive with their clientele.

>
 > Thanks,

>
 > Robert

>
 > Sent from my iPhone

>
 >> On Oct 10, 2015, at 12:20 PM, Stuart Yount <syount@fortifiber.com> wrote:

>>
 >> Terrific, Robert. Thanks for sending this. How's the Cal Neva schedule holding up?

>>
 >> Take care.

>>
 >> Stuart Yount



>> Chairman & CEO
>> FORTIFIBER CORPORATION
>> 300 State Route 28
>> Box 308
>> Crystal Bay, NV 89402
>> (775) 843-0486
>>
>>> On Oct 10, 2015, at 11:39 AM, Robert Radovan <Robert@CRISWELLRADOVAN.COM> wrote:
>>>
>>> Hey Stuart,
>>>
>>> Driving to lunch in Yountville and drove by this. I'm sure you've seen this before, but it's very cool.
>>>
>>> Cheers,
>>>
>>> Robert
>>>
>>> <IMG_1747.JPG>
>>> <ATT00001.c>

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EXHIBIT 15

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EXHIBIT 15

775-745-8482 Cell

-----Original Message-----

From: Robert Radoyan <Robert@CRISWELLRADOVAN.COM>

To: Stuart Yount <syount@fortifiber.com>

Cc: Dave Marriner <marrinertahoe@aol.com>; Heather Hill <Heather@CRISWELLRADOVAN.COM>

Sent: Sat, Jul 25, 2015 10:11 am

Subject: Cal Neva

Hi Stuart,

Thanks for taking the time yesterday to talk through the Cal Neva project. Below is the Q & A and please let me know if there is anything else you need from me. It would be great to have a neighbor and descendant of the founder of Napa Valley involved in the project!

Cheers,

Robert

1. The Preferred and Founder members are the same.
2. The offering is extended. The actual first closing date for the debt and Mezz piece was Sept, 30, 2014. A potential \$1,500,000 was held to be raised after the closing.
3. The current capital stack is as follows, the \$1,500,000 offering is included in the \$20,000,000 of equity.

Equity- \$20,000,000

Mezzanine- \$6,000,000

Debt- \$29,500,000

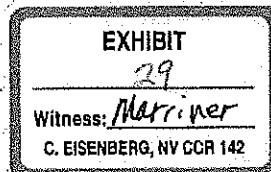
Total- \$55,500,000

We are refinancing the mezzanine piece with a less costly \$15,000,000 mezzanine. This is to cover the added costs of regulatory and code requirements which changed or were added by the two counties and TRPA which we deal with. We have also added some costs for design upgrades within the project. Pre-development of the condo units is also included within this. We have just received confirmation from TRPA regarding the condo conversion of 28 TAUs (Tourist Accommodation Units, hotel rooms).

We have previously not carried the cost or revenue of this item because we were not sure we could do this given TRPA zoning. We now have the positive confirmation of the conversion and wish to proceed as fast as possible.

These units are limited to 1,250 square feet due to the condo conversion policy within the TRPA general plan. They will differ in pricing due to the different placement and view, not from size or design. We are expecting to average roughly \$1,250 per foot throughout the sell-out of the units. These units can be put through the rental pool of the hotel with a profit split paid back to the owner.

4. On distributions, equity and its preferred return is repaid first. We are assuming a refinance in year 2-3 of operations to take out the Construction/mini-perm and the mezzanine, along with any remaining equity outstanding after the condominium distributions.
5. A member cannot be forced to sell.
6. We are happy to report to anyone you would like us to. I assume the note on page 19 about the 35 year old issue must have been a regulatory issue.



7. If there are losses beyond what is budgeted and held in reserve, the executive committee could issue a capital call, but you are not required to fund.

8. The executive committee is:

Robert Radovan (Criswell Radovan LLC)
William Criswell (Criswell Radovan LLC)
Les Busick Investor- Incline Village
Brandon Chaney Investor- Incline Village
Troy Gillespie Investor- Incline Village

9. The manager will not start receiving capital from its 20% position until the equity and preferred return has been received by the investors.

I've taken these a little out of order given how some of the issues were part of each other. Please let me know if there is anything else I can help with or clarify. I realize its a bit like drinking from the fire-hose.

Thanks again,

RR

On Sat, Jan 23, 2016 at 6:24 PM, Stuart Yount <syount@fortifiber.com> wrote:

Your Capital Equity Table shows:

CR Cal Neva (Criswell Radovan) \$2,000,000 9.1%

With the following footnote:

Stuart Yount holds \$1MM within the CR \$2MM

This is in error. If you look back on the communications up to the sale to me, as well as who my IRA's check went to, I was buying \$1,000,000 of the original Founding Investment which, I was told, was out of the \$1,500,000 of the still available originally authorized \$20,000,000. Please correct the Capital Equity Table to show my Preferred Member interest as the other original investors are. Thank you.

Stuart Yount

Chairman & CEO



300 State Route 28

Box 308

Crystal Bay, NV 89402

(775) 843-0486

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EXHIBIT 16

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EXHIBIT 16

Partial Document

THIS EXHIBIT IS PART OF A DOCUMENT.

ONLY SELECTED PAGES ARE INCLUDED IN THIS EXHIBIT.

CalNeva Renovation

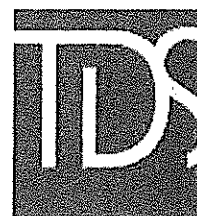


July 2015

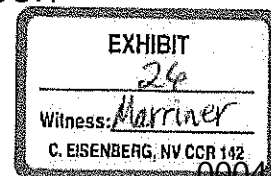
MONTHLY STATUS REPORT



Case Development Services
Kevin Case



Thannisch Development Services
Hal Thannisch



CalNeva Renovation

Monthly Status Update

Abatement and demolition of the tower started in December 2015 and was completed in early February 2015.

The historic CalNeva Resort where Frank Sinatra and the "Rat Pack", Marilyn Monroe and other famous stars played and stayed is on track for construction. The 94,000 SF resort currently under renovation will include an overhaul of the 10-story tower, including all 219 interior guest rooms and suites, the casino floor, Frank Sinatra's Celebrity Showroom, the restoration of the original circle bar and the addition of a fine dining specialty restaurant. The exterior improvements and façade enhancements are also well underway.

The General Contractor, the PENTA Building Group (hereinafter referred to as PENTA) mobilized to the site on November 2014 and substantial completion is currently tracking for December 2015.

The project is broken down into 4 phases on construction:

Tower Guest Rooms (Interior & Exterior)

Three Meal Restaurant/ Site & Landscape

Public Spaces (Porta Cochere, Exterior Façade, Hotel Lobby, Casino Area, Circle Bar, Indian Room)

Specialty Restaurant, Terrace Units, Spa, Salon

The PENTA Project Management Team, led by Lee Mason, as well as the supervisory team led by Ted Griffin, are managing and overseeing the daily construction efforts with great knowledge while also being sensitive to the challenging budget.

CalNeva Renovation

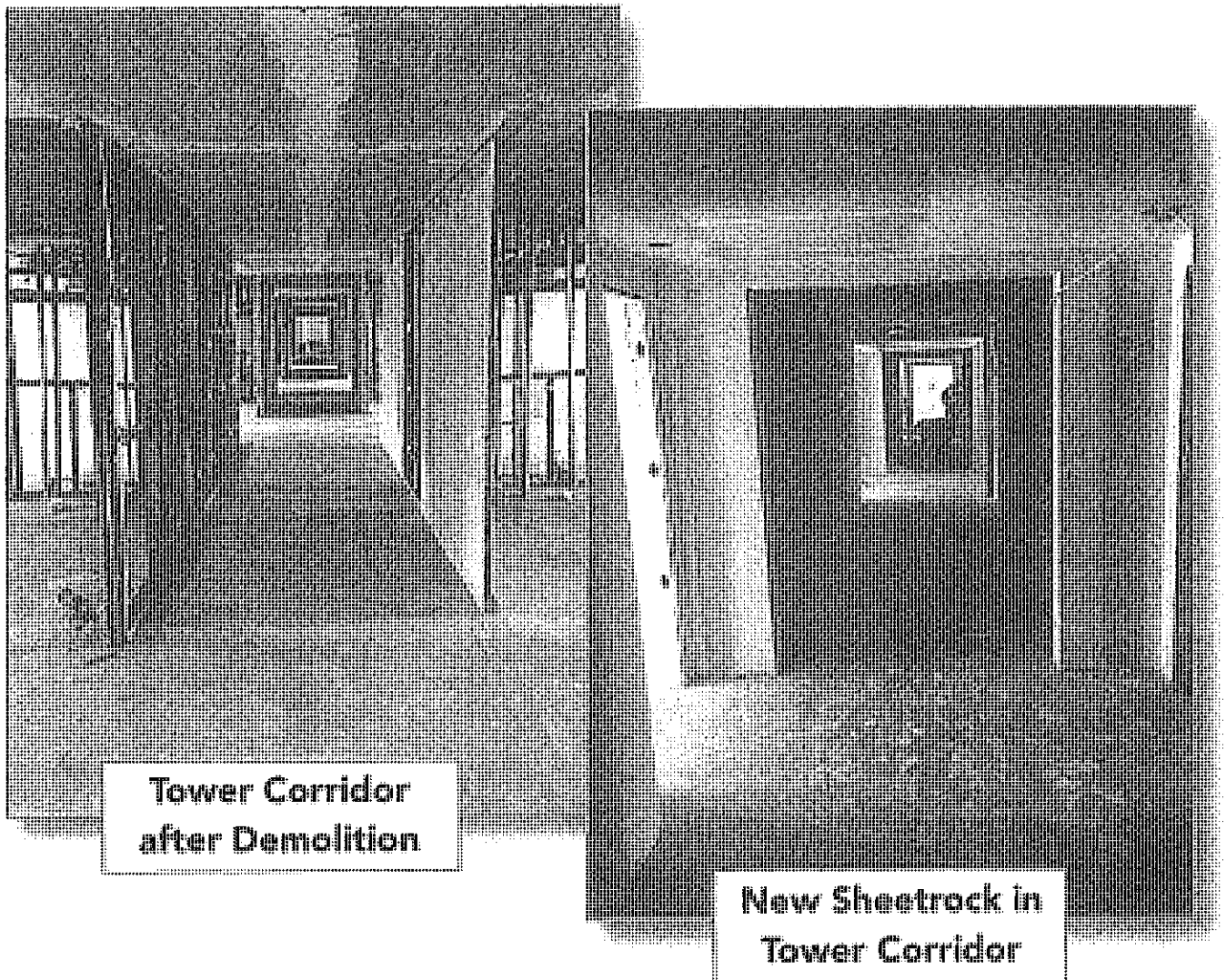
TOWER GUEST ROOMS

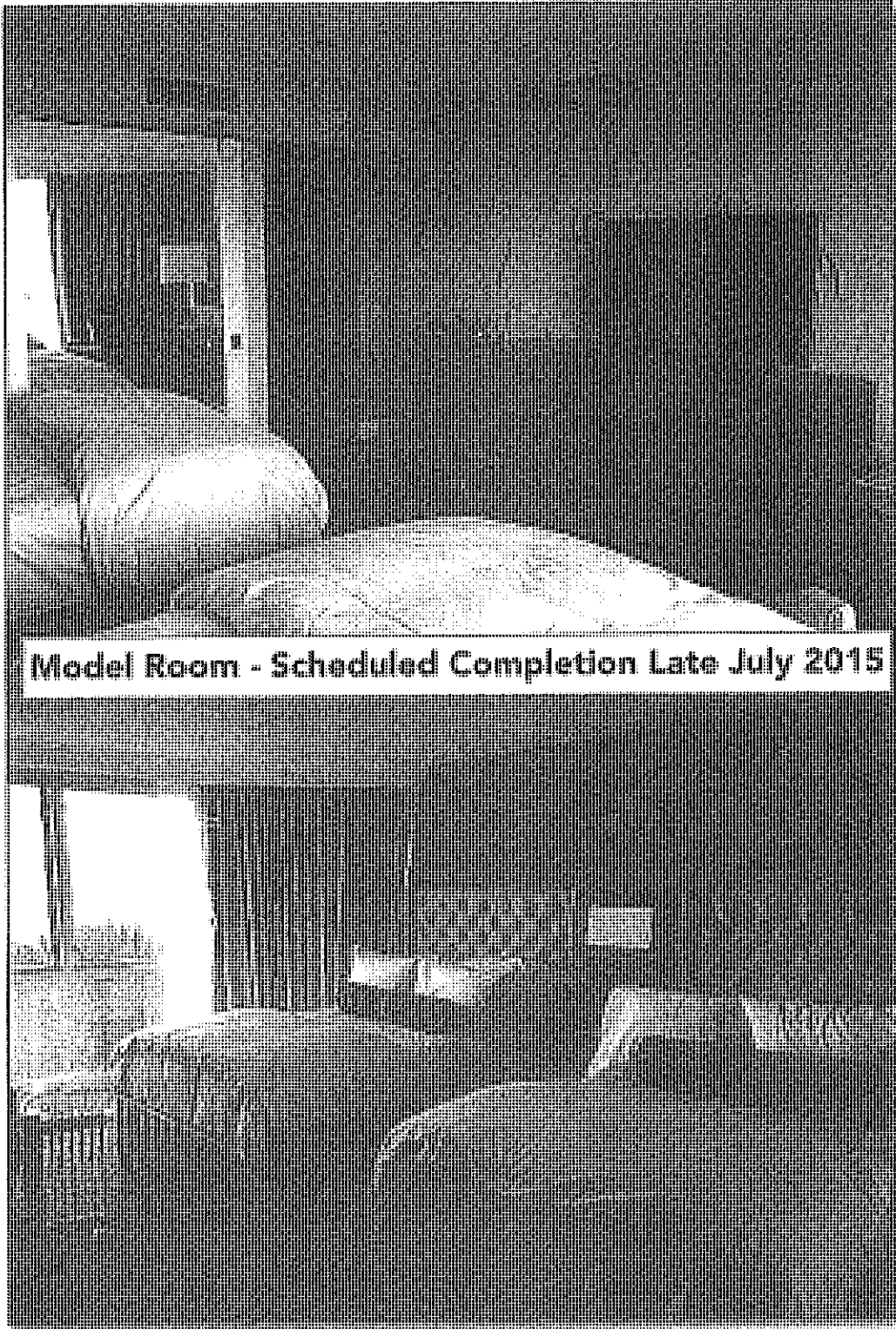
Tower Guest Room construction began December 2014 and is scheduled to be completed November 2015.

Abatement & demolition of the tower started December 2015 and completed early Februarys 2015.

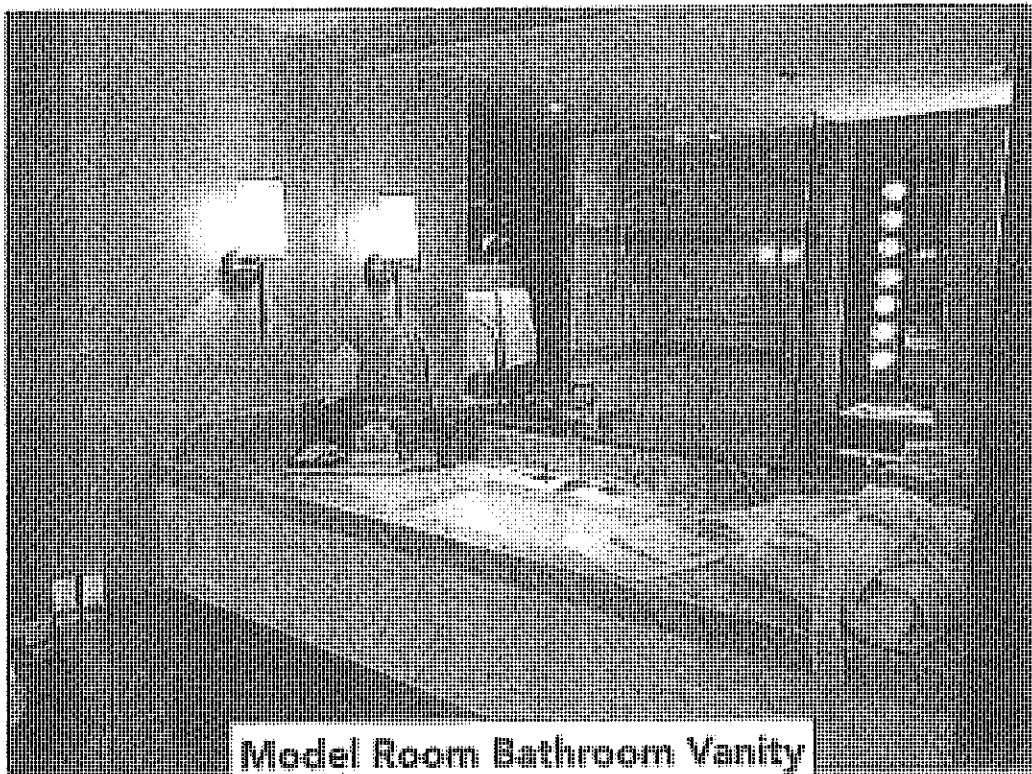
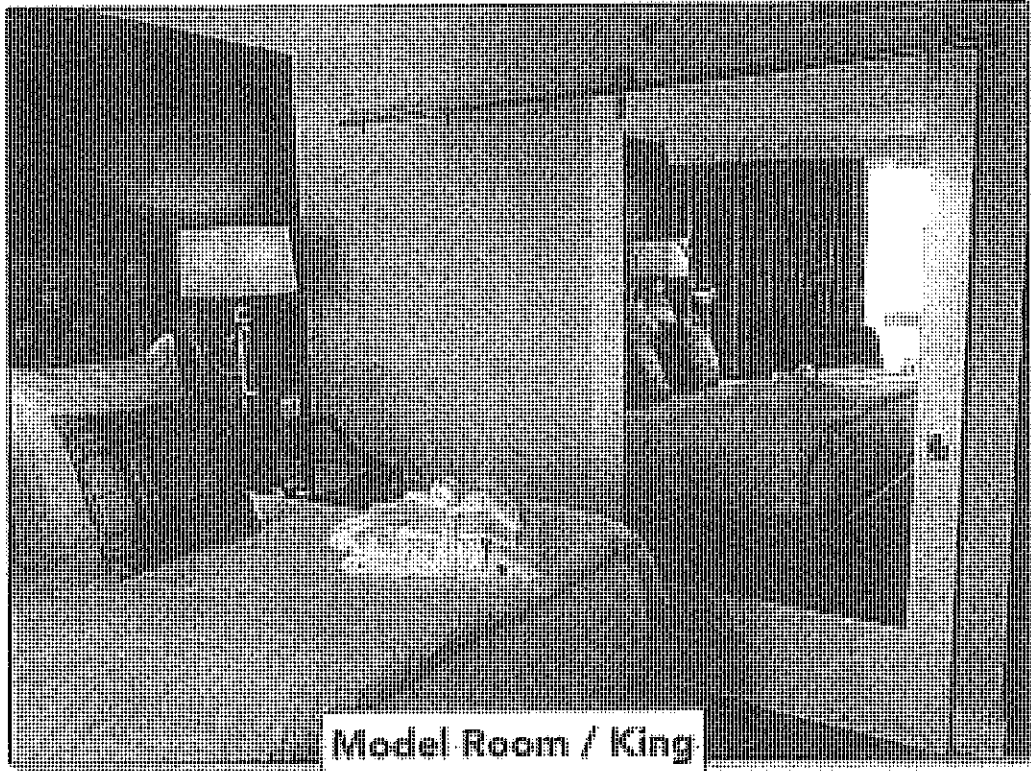
Abatement is complete and included removal of "popcorn" ceilings, long-standing plumbing elbow tape, and old taping mud.

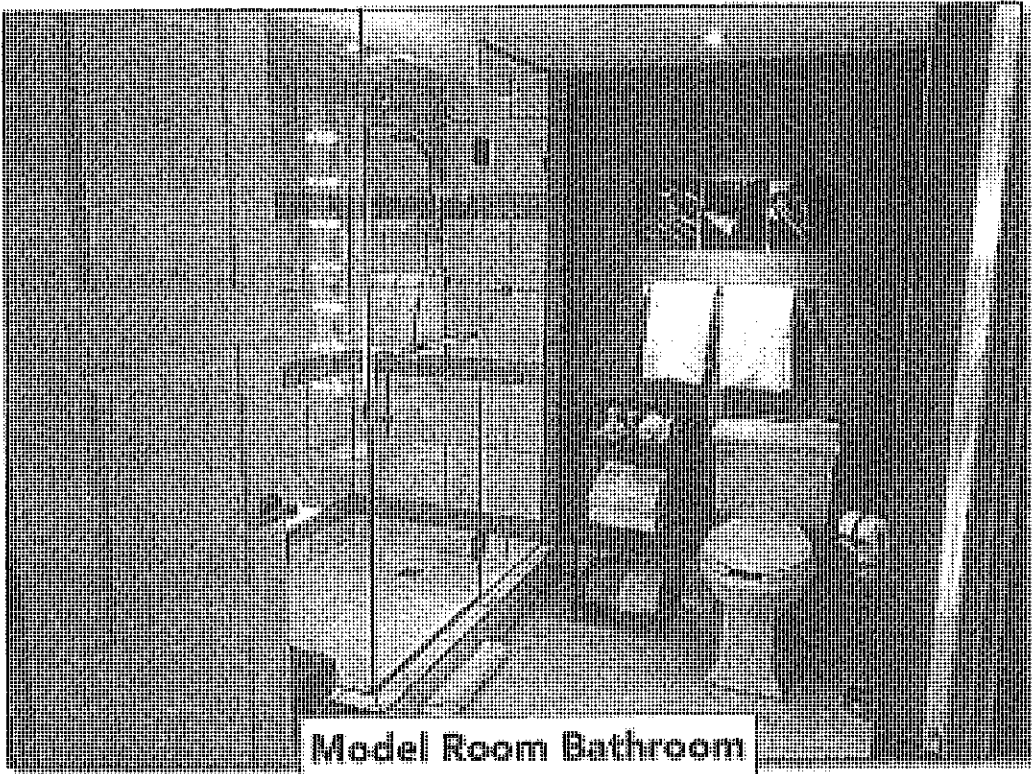
Rough construction (Electrical, Plumbing, Mechanical, and Framing & Drywall) started March 2015 and is scheduled to be completed July 2015.



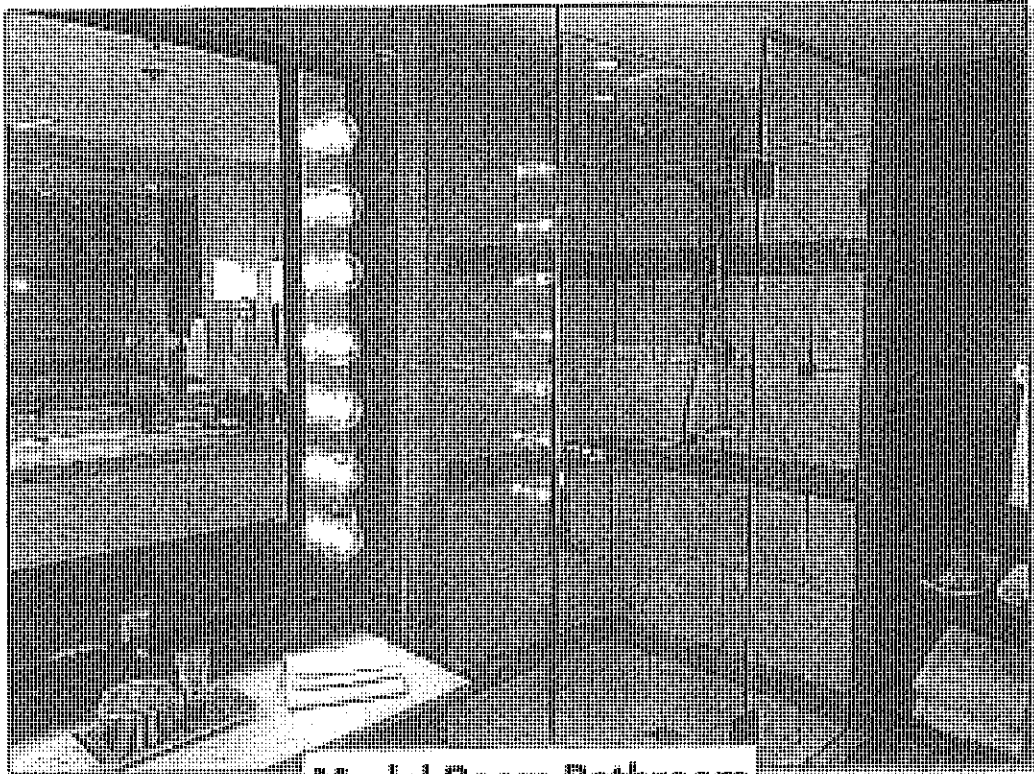


The Model room has been spectacularly designed by the team of Paul Deusing Partner's and has received very favorably by the ownership and Starwood. The room is currently undergoing modifications to maintain the design intent while reducing costs.

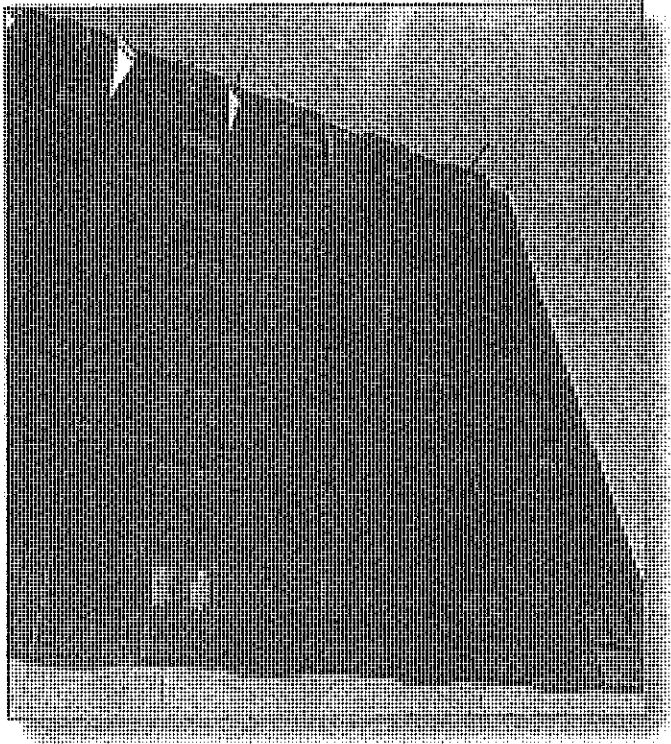




Model Room Bathroom



Model Room Bathroom



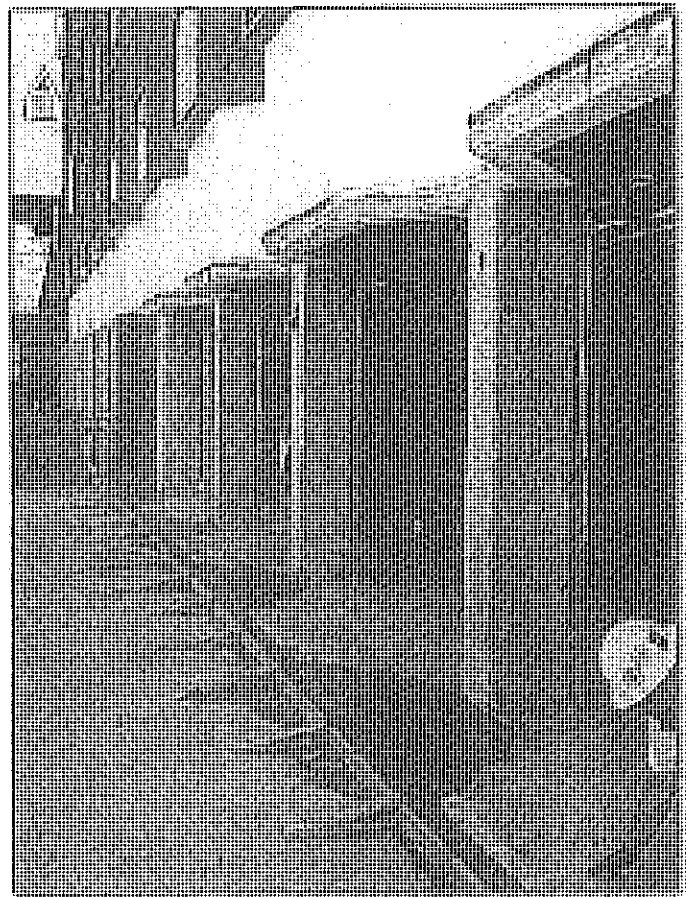
EXTERIOR CONSTRUCTION

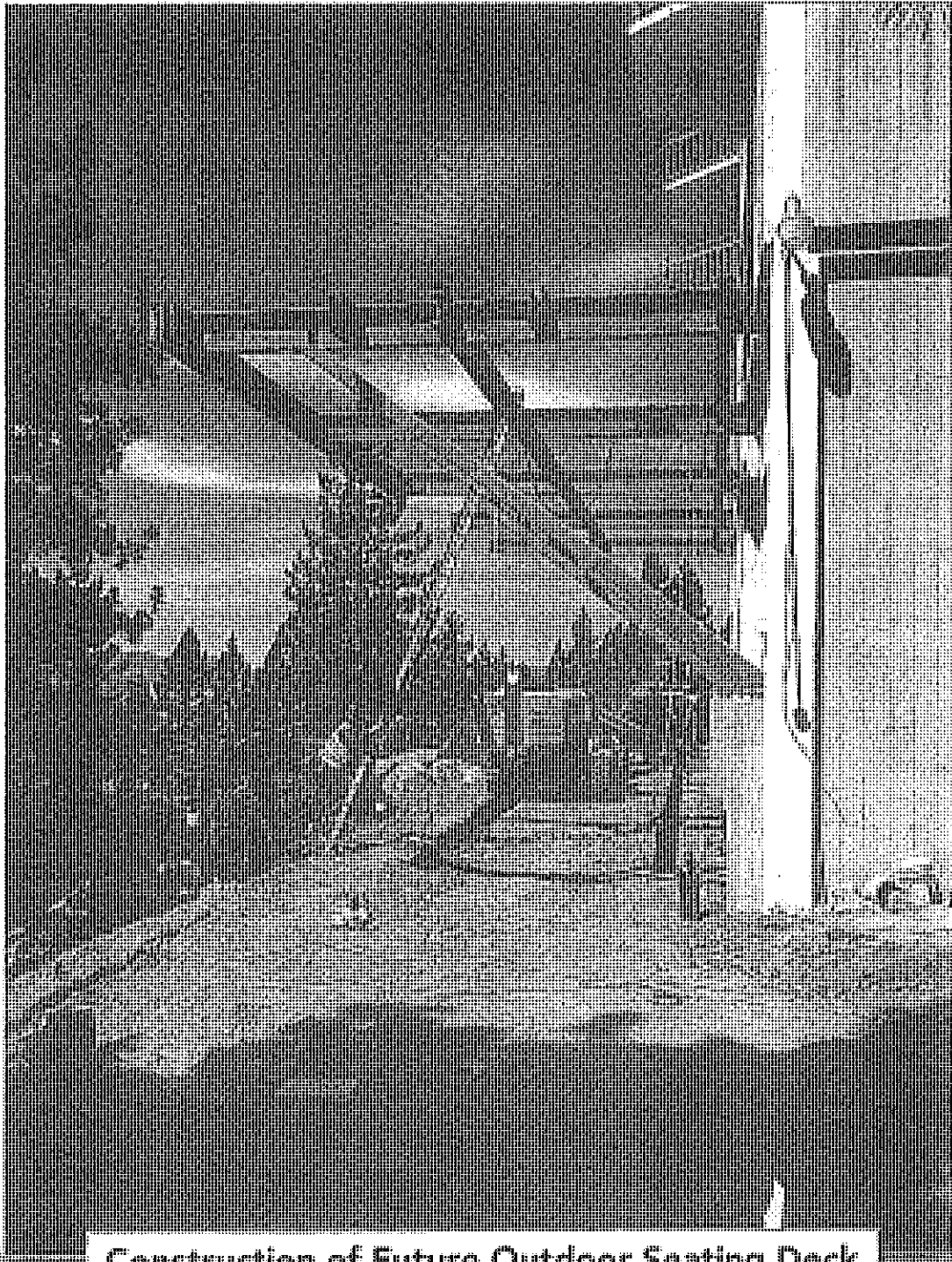
Exterior Construction is ongoing, removal of old window system is complete. The new curtain wall glass system and exterior paint is scheduled to be completed in late August 2015.

EXTERIOR OPENINGS AND FINISHES

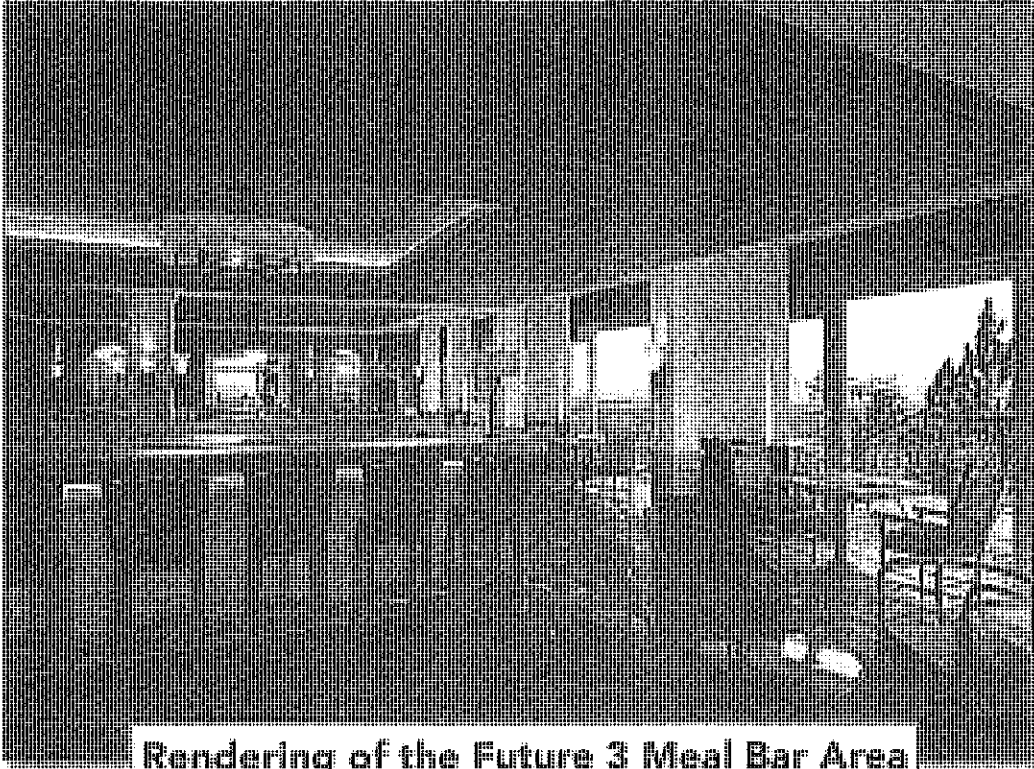
3 MEAL RESTAURANT

3 Meal Restaurant construction is ongoing, scope of work includes fitness center, new kitchen layout, buffet areas, private dining area, and large dining room area with new bar and new South terrace with 20' overhang deck area. 3 Meal is scheduled to be completed late October 2015.

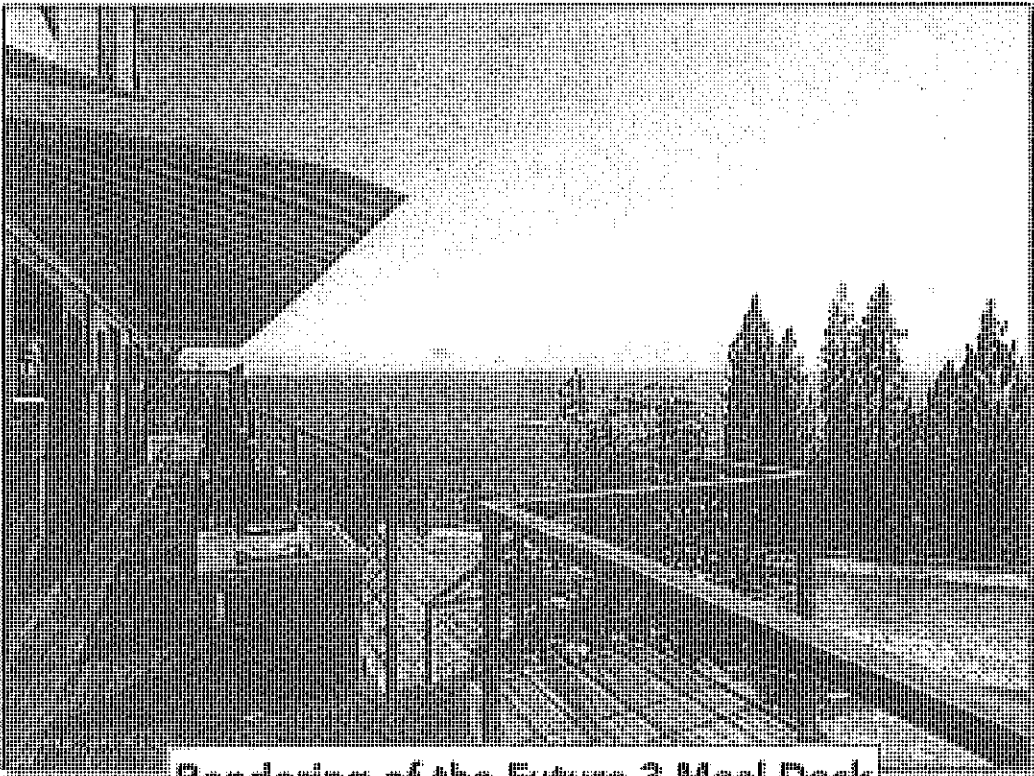




**Construction of Future Outdoor Seating Deck
for 3 Meal Restaurant**



Rendering of the Future 3 Meal Bar Area



Rendering of the Future 3 Meal Deck

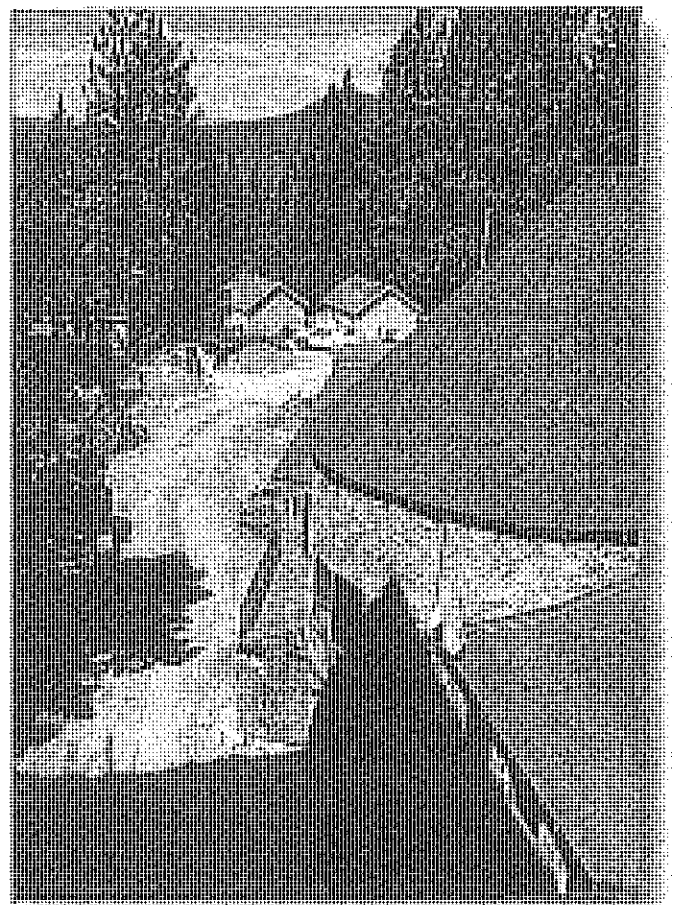
CalNeva Renovation



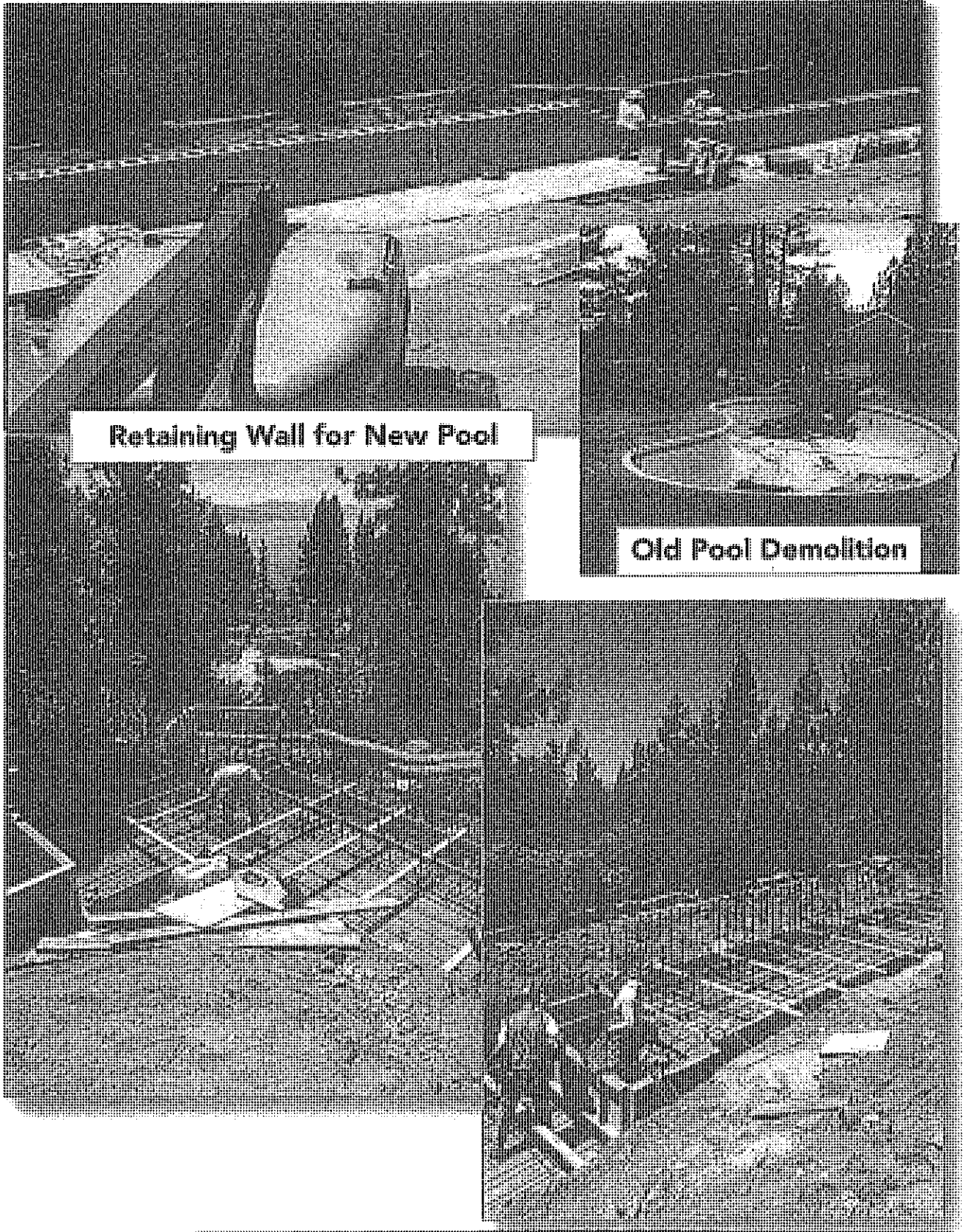
Rendering of the Future Pool Area from 3 Meal Deck

Site Work/ Landscaping

Site work started May 1, 2015 and is scheduled to be completed October 15, 2015. Construction work is banned in Lake Tahoe from October – May, this helps mitigate the construction debris running into the lake and lowering the clarity of the lake. The removal of several trees was needed due to construction activities, but it was kept to a minimal amount. Very large retaining walls will be constructed to help support new civil construction. The well-known CalNeva Pool was demolished and will be replaced with a large outdoor patio area. The new pool will be built on the southern end of the property, just south of the tower and east of the lower terrace units. The upper and lower terrace units will be gutted and will have all new finishes. The cabins will need further inspection, but they will be completely remodeled and will have their own themes (Marilyn, Franks, and Sammy Davis Jr. cabins). The front entrance sign will be removed and a new front sign will be erected.



RENOVATION OF OLD POOL AREA

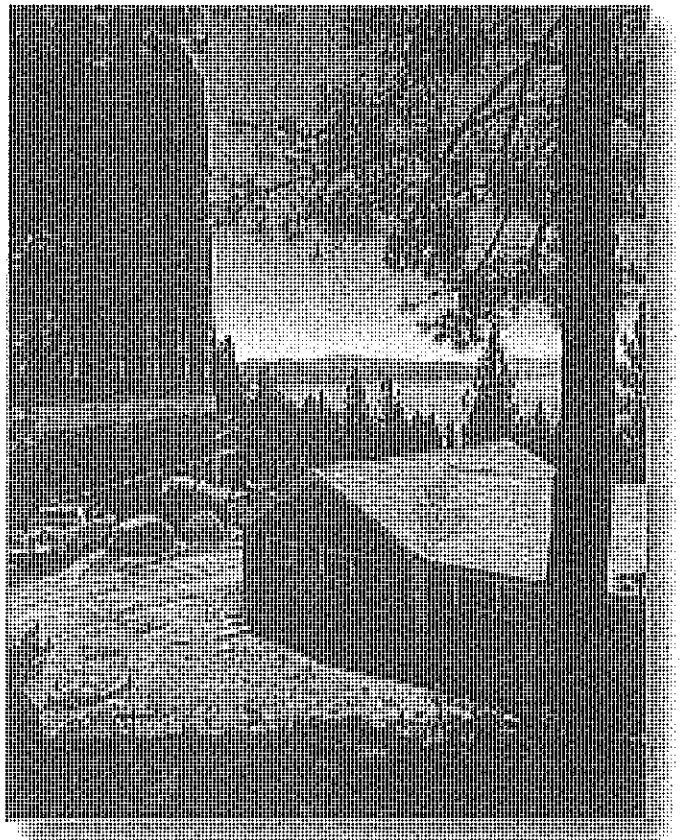
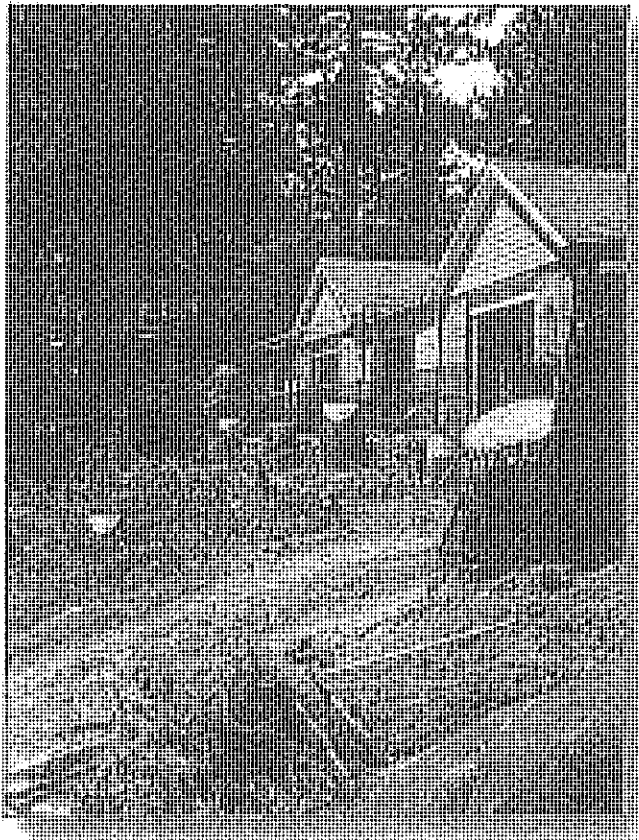
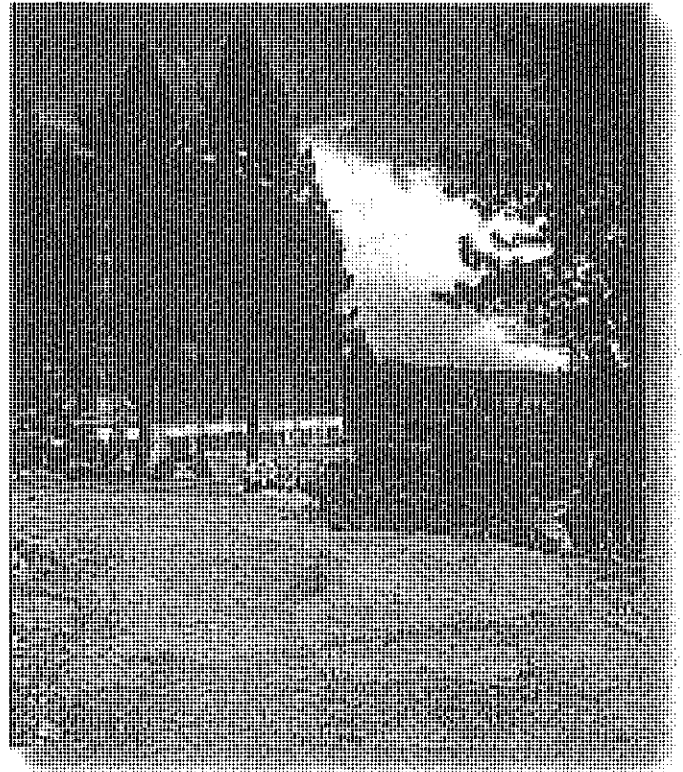


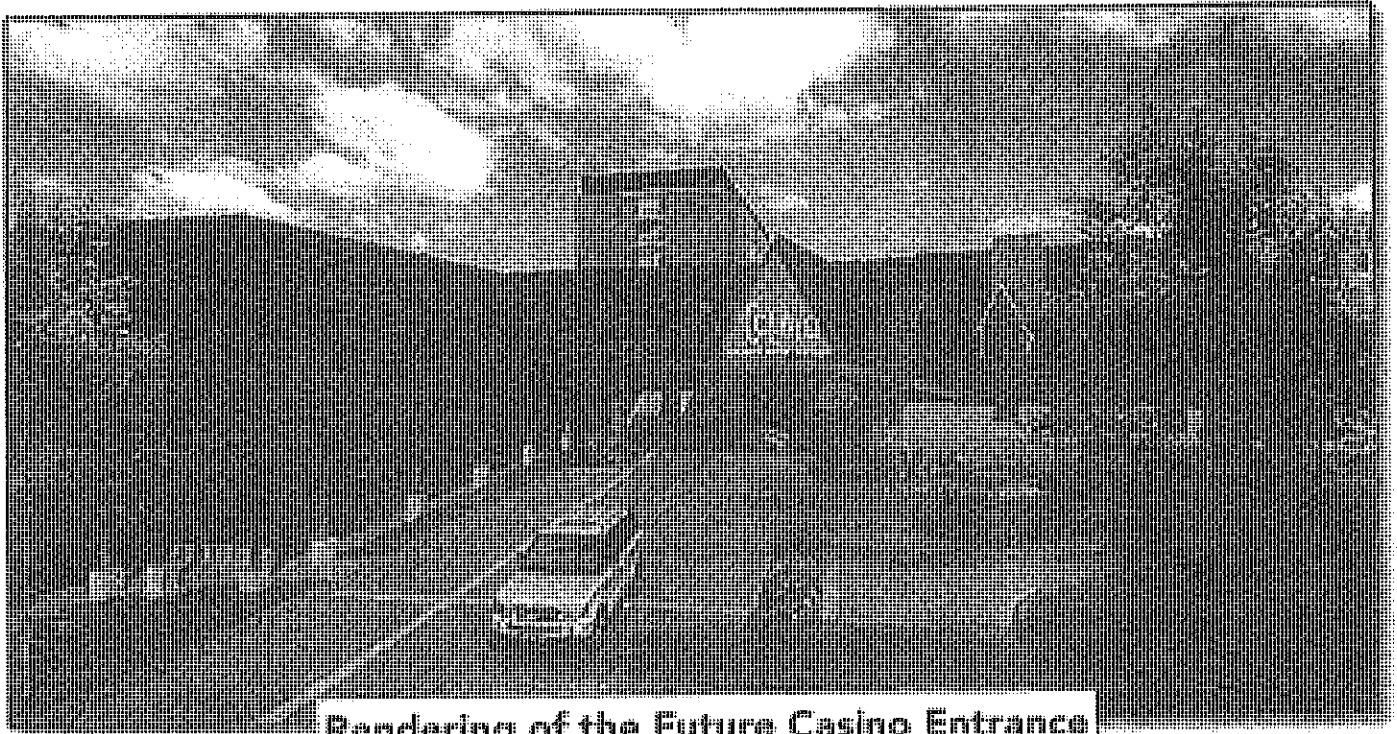
Retaining Wall for New Pool

Old Pool Demolition

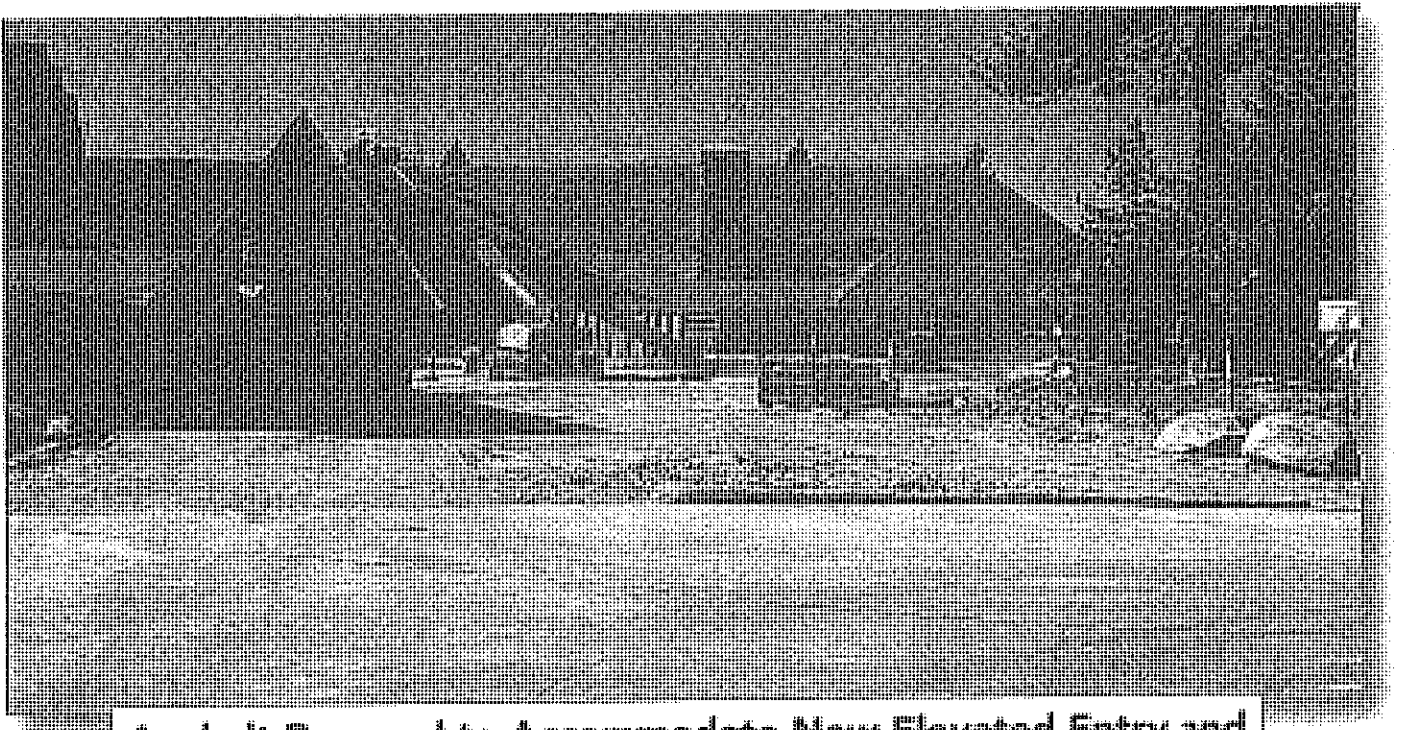
TREE REMOVAL

Tree removal is complete opening spectacular views to the lake. Additional limbing of lower branches will be started in the winter prior to opening of the renovated hotel to improve the health of the remaining trees on property.



CalNeva Renovation

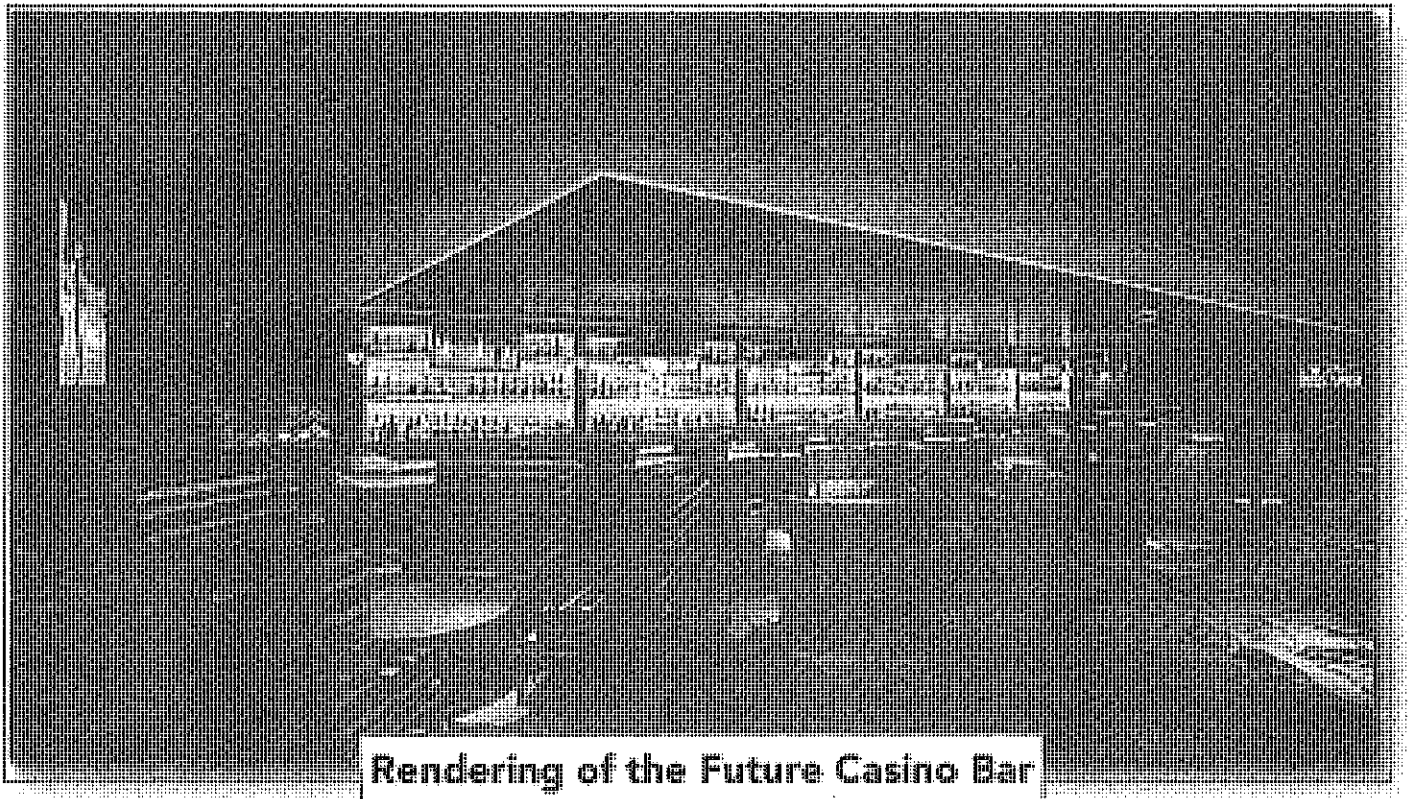
Rendering of the Future Casino Entrance



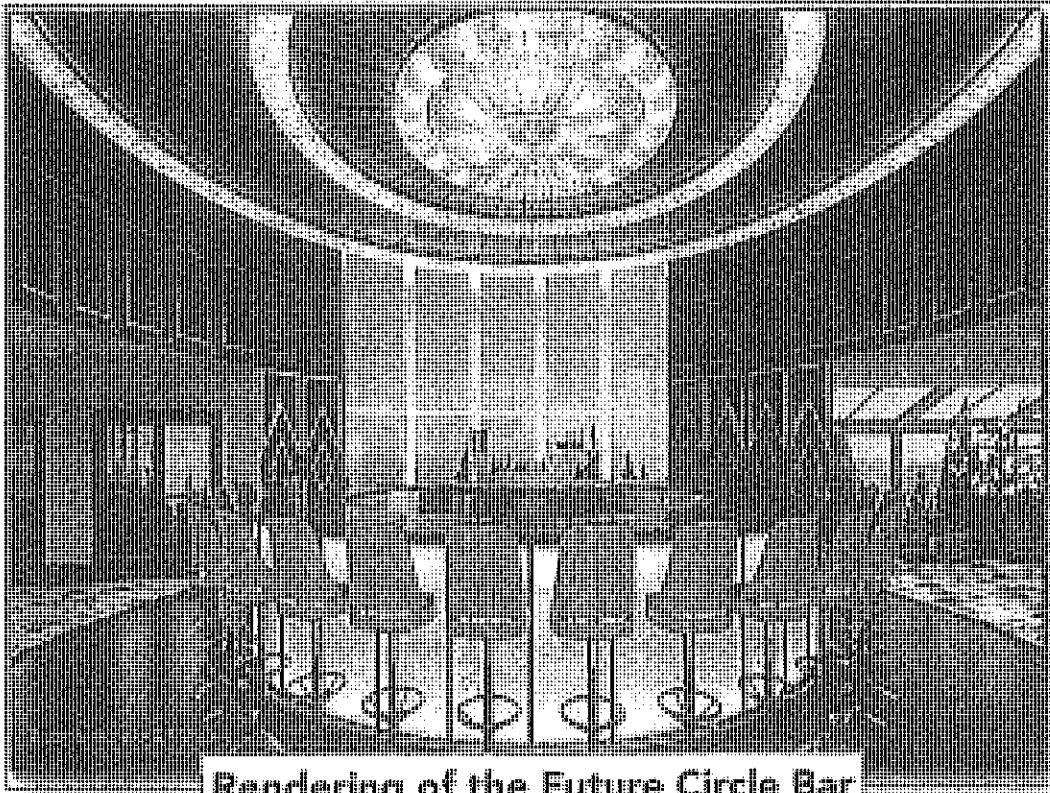
**Asphalt Removal to Accommodate New Elevated Entry and
Porte-cochere**

LOWRISE / LODGE

The Casino area is scheduled to begin work early July 2015 – November 2015. The casino area has been abated and demolition is near completion. The new casino area will include a newly renewed Circle Bar and new Casino Bar/ Sports Bar area. The iconic Indian Room will get a minor facelift, leaving all the famed features like Cal- Nev fireplace and wood flooring & paneling in tact. The Specialty Restaurant is scheduled to receive a new curtain wall system which will one up the view of all Tahoe. The Frank Sinatra Showroom will also receive a minor facelift, mainly carpet and paint and upholstery.



Rendering of the Future Casino Bar



Rendering of the Future Circle Bar



Rendering of the Future Specialty Restaurant

Construction Summary:

The CalNeva renovation is on schedule for the December 12th Major Event with the exception of the Specialty Restaurant which will not be 100% completed at that time.

The construction schedule is being compressed due to some delays caused by scope changes, many of which were the result of value engineering exercises as well as unforeseen issues.

The tower works have proceeded very smoothly and the site work is also progressing on schedule.

The original budget has been adversely impacted due to items such as:

- o Fire Marshall requirements to bring the building to current codes as well as significant electrical system upgrades for life safety such as new generator, new switchgear, etc. required by NV Energy
- o Smoke removal system required by Fire Marshall
- o Floor to floor fire dampers added by Fire Marshall
- o Stairwell pressurization system installation required by Fire Marshall
- o Terrace Units fire sprinkler system added by Fire Marshall
- o Structural repairs due to unforeseen deterioration and lack of substantial footings.
- o Structural repairs due to rot and failure of significant beams and flooring beneath Circle Bar
- o Specialty Restaurant scope changes and upgrades
- o Casino Floor scope changes and upgrades
- o Three Meal Restaurant Kitchen Equipment and Grease Duct/Air Make Up Air upgrades added as required by code.
- o Replace Sprinkler System in the low rise due to massive rust in the lines.
- o Sewer Line Replacement due to cracking and failing lines.
- o Mandatory (code required) elevator hoistway upgrade requirements
- o Starwood brand quality standards requirements – upgrades in materials and scope
- o Fan coil unit replacement in all tower rooms
- o Civil / Underground BMP additions required by code

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2017-06-28 10:48:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6172106 : pmsewell

EXHIBIT 17

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EXHIBIT 17

Ca|NeVa

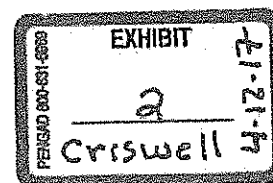
RESORT & CASINO

LOCATED ON THE NORTH SHORE OF LAKE TAHOE

CONFIDENTIAL OFFERING MEMORANDUM



CRISWELL RADOVAN, LLC
March 2014



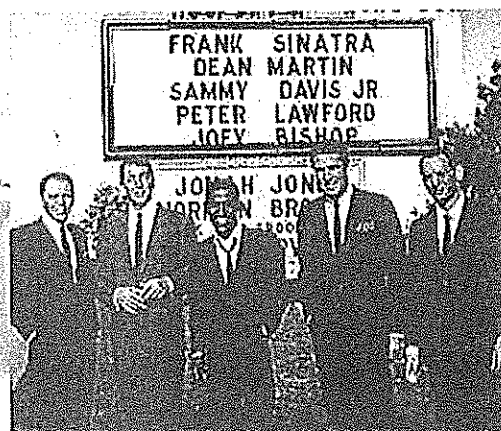
CONFIDENTIAL

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EXHIBITS

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



Partial Document

THIS EXHIBIT IS PART OF A DOCUMENT.
ONLY SELECTED PAGES ARE INCLUDED IN THIS EXHIBIT.

000500

Case No. 74275

In the Supreme Court of Nevada

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

Appellant,

vs.

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

Respondent.

Electronically Filed
Mar 05 2019 08:45 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Second Judicial District Court, Washoe County, Nevada

The Honorable N. PATRICK FLANAGAN, District Judge

The Honorable JEROME POLAHA

The Honorable EGAN WALKER

District Court Case No. CV16-00767

APPELLANT'S APPENDIX

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

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

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

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

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

12.5.3 the transfer as a gift and for no consideration;

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

12.5.5 the occasional accommodation transfer by a Member; or

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

12.6 Transfers with Members' Approval.

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

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

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

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

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

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

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

12.7 Death of Member; Other Termination of Membership.

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

000277

000277

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

By: 
Brandon Chaney, Manager

000278

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

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


By: 
John Paye, Manager

000280

000280

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**

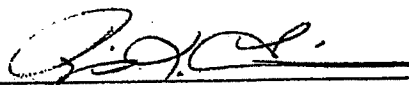
By: 
John F. Miller, Manager

000282

000282

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

THE ERICKSON FAMILY TRUST dated
August 3, 2006

By: 
Philip L. Erickson, Trustee

000284

000284

Sep 04 14 06:50a Dixon Financial Services

5305500695

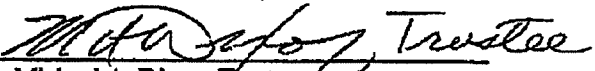
p.1

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925 283 3524

p.1

DIXON FAMILY TRUST
DATED NOVEMBER 1, 1994

By:  Trustee
Michael A. Dixon, Trustee


By: 
Sharon L. Dixon, Trustee

MARTIN FAMILY TRUST
DATED APRIL 20, 2000

By: Carel 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

000287

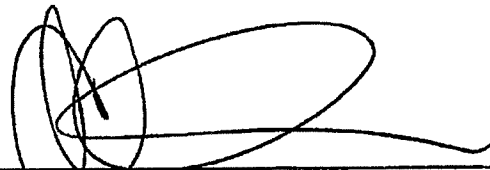
000287

THORPE INVESTMENTS, LP

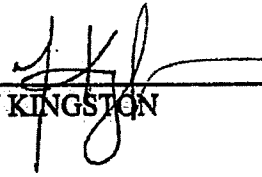
By: 
Allen R. Thorpe, General Partner

000288

000288



ARTHUR PRIESTON


MOLLY KINGSTON

000290

000290

Sep 05 14 12:21p

Mariucci

4083951887

p.1

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

By:


Stephen Ray Mariucci, Trustee

By:


Gayle Elaine Mariucci, Trustee

Trustee

000291

MARRINER REAL ESTATE, LLC,
a Nevada limited liability company

By: 

Dave Marriner, Manager

LADERA DEVELOPMENT, LLC

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

| | | |
|---|---|-------|
| (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 st Floor New York, New York 10022 | 1.71% |
| (m) Arthur Prieston | 4503 Great Bear Truckee, CA 96161 | 1.71% |
| (n) Molly Kingston | 529 Fallen Leaf Way Incline Village, NV 89451 | 1.71% |
| (o) Mariucci Living Trust Under Agreement dated July 5, 1989, as amended | 15940 Romita Court Monte Sereno, CA 95030 | 1.71% |
| (p) Marriner Real Estate, LLC | 1545 Debra Lane Incline Village, NV 89450 | 0.65% |

2. SPONSOR MEMBER

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

3. MEZZANINE LENDER

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

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> |
| TOTAL | \$20,500,000 |

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.

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 |

FILED
Electronically
CV16-00767
2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 2

000299

1

2

3

4

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

7

---o0o---

8

9 GEORGE STUART YOUNT,
10 individually and in his
11 Capacity as Owner of
12 GEORGE STUART YOUNT IRA,

Plaintiff,

-vs-

Case No. CV16-00767
Department No. B7

13 CRISWELL RADOVAN, LLC, a
14 Nevada limited liability
15 company; CR CAL NEVA, LLC,
16 a Nevada limited liability
17 company, ET AL.,

Defendants.

17

18

19

DEPOSITION OF ROBERT RADOVAN

20

Friday, May 26th, 2017

21

Reno, Nevada

22

23

24

25 Reported by:
Job No.: 396077

KATE MURRAY, CCR #599

1 A. Yes. We were getting to some change
2 orders that were taking the loan out of balance with
3 Hall, and we knew that we were coming up in another
4 month or two where we would need to put \$1.4 million
5 of equity in with Hall so that they saw that we
6 raised this other 1.4 to rebalance the loan, given
7 the change orders.

8 **Q. And those would have been change orders**
9 **that were approved in that June, July timeframe?**

10 A. Correct. By July at that point.

11 **Q. Explain to me the balancing requirements**
12 **under the Hall note, how that worked. What was the**
13 **percentages?**

14 A. I don't recall what the percentages were
15 exactly. If you have a loan and they have an equity
16 requirement that X percentage of equity is there for
17 X percentage of loan, if the construction side,
18 which is kind of what they're primarily funding, if
19 change orders take that number above in the overall
20 budget, they require an extra cash infusion to cover
21 that element of the loan.

22 They're not advancing further funds, but
23 they want to know funds are there to complete.

24 **Q. Okay. So when you decided to, A, to**
25 **raise the additional 1.5, had that been from a**

1 BY MR. CAMPBELL:

2 Q. Do you have Exhibit 36 in your book, in
3 the book in front of you?

4 A. No, no.

5 Q. If you would just briefly look through
6 these documents behind this e-mail, did the
7 documents that Mr. Yount signed, were those all the
8 documents that were provided to him and would have
9 needed to be signed to be part of the private
10 placement memorandum?

11 A. I believe so. I think this is the
12 subscription agreement, yes.

13 Q. So these were required under the private
14 placement memorandum?

15 A. Correct.

16 Q. Mr. Yount executed all of them?

17 A. Correct.

18 Q. Or his trust officer?

19 A. Uh-huh.

20 Q. Can you look at Exhibit 37? This is
21 dated October 13th, 2015. It says, Acceptance of
22 subscription agreement, and it says, CR Cal Neva.
23 Is that your signature?

24 A. Yes, it is.

25 Q. Do you remember accepting Mr. Yount's

1 **subscription agreement?**

2 A. Yes.

3 Q. Now, if Mr. Busick filled out the \$1.5
4 million available under the private placement
5 memorandum, why were the subscription agreements
6 sent to Mr. Yount for him to be part of the private
7 placement memorandum?

8 A. Honestly, that is what I thought was
9 required, in that he was getting a founder unit.
10 Ours were the first ones too. We had always held
11 out that we're selling one of our units. It's in
12 many documents.

13 Everything was filled out, and that is
14 what I thought was required to complete the
15 transaction.

16 Q. Did you tell Mr. Yount that instead of
17 being part of the \$1.5 million left under the
18 subscription agreement, that he was going to be, in
19 fact, buying half of the CR two million?

20 A. I did not.

21 Q. Did somebody?

22 A. I assume Dave did. He knew 100 percent
23 that that was the case.

24 Q. Did you later take the position that it
25 was a mistake that Mr. Yount was sent these

1 A. That we need to get approval of that at
2 the annual meeting.

3 Q. Okay. The annual meeting being when?

4 A. Typically, we did it in April.

5 Q. Let's look at Exhibit 41. Counsel, if
6 you could in your book, please?

7 This is, again, an e-mail from
8 Mr. Coleman to Mr. Criswell, and you were copied on
9 that as was Ms. Hill. Do you see that?

10 A. Uh-huh, I do.

11 Q. It has some attached documents. First
12 one is an assignment of interest, and the second one
13 is a resolution of the members of Cal Neva Lodge,
14 LLC, and then finally, the third was a purchase
15 agreement.

16 As of February 2nd, 2016, were you aware
17 that in order to transfer the CR share to Mr. Yount,
18 that it needed member approval as reflected in this
19 resolution?

20 A. At that point in time, yes.

21 Q. Did the members of the Cal Neva Lodge,
22 LLC, approve this transaction on January 27th, 2016?

23 A. I don't believe so.

24 Q. Have they ever approved this transaction?

25 A. No.

1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.
3

4 I, KATE MURRAY, a duly commissioned and
5 licensed court reporter, Washoe County, State of
6 Nevada, do hereby certify:

7 That I reported the taking of the
8 deposition of ROBERT RADOVAN, commencing on Friday,
9 May 26th, 2017, at 10:01 a.m.

10 That prior to being examined, the witness
11 was duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of
14 said deposition is a complete, true and accurate
15 transcription of said shorthand notes.

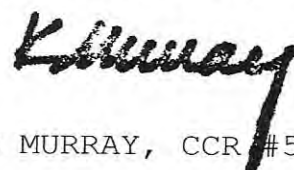
16 I further certify that I am not a
17 relative or employee of an attorney or counsel of
18 any of the parties, nor a relative or employee of an
19 attorney or counsel involved in said action, nor a
20 person financially interested in the action.

21

22 DATED: At Reno, Nevada this 15th day of
23 June, 2017.

24

25


KATE MURRAY, CCR #599

FILED
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CV16-00767
2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 3

000306



4465 South Jones Boulevard
 Las Vegas, Nevada 89103
 Direct Line (702) 553-1503
 Main Phone (702)-507-0750
 Fax Number (702)-507-0755
cmontgomery@premiertrust.com

FOLLOW US ON.....



From: Heather Hill [<mailto:Heather@CRISWELLRADOVAN.COM>]

Sent: Monday, October 12, 2015 4:26 PM

To: Cheri Montgomery <CMontgomery@premiertrust.com>

Subject: Cal Neva investment - Mr. Yount

Ms. Montgomery -

Attached please find:

- The full Subscription Booklet with the Operating Agreement as an exhibit.
- The smaller PDF is the pieced out Subscription packet that needs to be filled out with all the vesting information.
- LLC Charter
- IRS EIN statement
- Wire instructions to our Corp Account for Criswell- Radovan, LLC

Once we receive the funds I will re-circulate the Operating Agreement updating the capital stack with Mr. Younts investment.

Cheers,

Heather Hill
 Criswell Radovan, LLC
 707-963-0313

FILED
Electronically
CV16-00767
2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 4

000308

Ellis, Donna

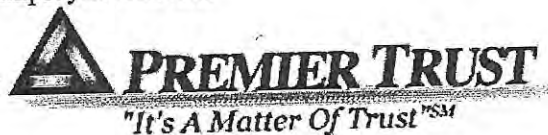
From: Cheri Montgomery <CMontgomery@premiertrust.com>
Sent: Wednesday, October 14, 2015 9:57 AM
To: Doug Driver
Cc: Stuart Yount
Subject: FW: signed documents for - Cal Neva investment - Mr. Yount
Attachments: doc01737220151012165430.pdf

Hi Doug,

Attached is the agreement signed and sent on Tuesday.

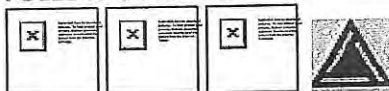
Thanks!

Best,
Cheri Montgomery, MSC
 Senior Trust Administrator
 Employee Benefits



4465 South Jones Boulevard
 Las Vegas, Nevada 89103
 Direct Line (702) 553-1503
 Main Phone (702)-507-0750
 Fax Number (702)-507-0755
cmontgomery@premiertrust.com

FOLLOW US ON.....



From: Cheri Montgomery
Sent: Tuesday, October 13, 2015 8:23 AM
To: 'Heather Hill' <Heather@CRISWELLRADOVAN.COM>
Subject: signed documents for - Cal Neva investment - Mr. Yount

Hi Heather,

Attached are the signed documents for Yount IRA.
 Once the documents are fully executed – please forward.

Thanks!

Best,
Cheri Montgomery, MSC
 Senior Trust Administrator
 Employee Benefits

SUBSCRIPTION BOOKLET

(for Founding Members)

CAL NEVA LODGE, LLC

SUBSCRIPTION INSTRUCTIONS

EACH POTENTIAL INVESTOR WHO WISHES TO SUBSCRIBE FOR FOUNDERS UNITS MUST COMPLETE, EXECUTE AND RETURN TO THE COMPANY THE FOLLOWING DOCUMENTS CONTAINED IN THIS SUBSCRIPTION BOOKLET (AS APPLICABLE):

- (1) A Subscription Agreement;
- (2) A Member Signature Page and Power of Attorney;
- (3) A Certificate of Nonforeign Status (for Members who are individuals);
- (4) A Certificate of Nonforeign Status (for Members who are entities);
- (5) Investor's Instructions to Escrow and Wire Transfer Information; and
- (6) IRS Form W-9.

ALSO, IF APPLICABLE, PLEASE DELIVER THE FOLLOWING:

IF THE POTENTIAL INVESTOR IS A TRUST, INCLUDE A COPY OF THE TRUST AGREEMENT.

IF THE POTENTIAL INVESTOR IS A PARTNERSHIP, INCLUDE A COPY OF THE SIGNED PARTNERSHIP AGREEMENT, AND A COMPLETED SUBSCRIPTION AGREEMENT FOR EACH PARTNER.

IF THE POTENTIAL INVESTOR IS A CORPORATION, INCLUDE A COPY OF THE BOARD RESOLUTION DESIGNATING THE CORPORATE OFFICER AUTHORIZED TO SIGN ON BEHALF OF THE CORPORATION AND AUTHORIZING THE INVESTMENT AND THE CORPORATION'S MOST RECENT FINANCIAL STATEMENTS.

IF POTENTIAL INVESTOR IS A LIMITED LIABILITY COMPANY, INCLUDE A COPY OF THE SIGNED OPERATING AGREEMENT AND THE ARTICLES OF ORGANIZATION OR CERTIFICATE OF FORMATION, AS FILED, AND A COMPLETED SUBSCRIPTION AGREEMENT FOR EACH MEMBER AND EACH MANAGER.

SUBSCRIPTION AGREEMENT

TO: **CAL NEVA LODGE, LLC,**
a Nevada limited liability company
c/o CR Cal Neva, LLC
1336-D Oak Street
St. Helena, California 94574

Potential Investor:

The undersigned (the "Purchaser"), by completing and executing this Subscription Agreement and the Member Signature Page and Power of Attorney, hereby tenders this subscription and applies for the purchase of the number of Founders Units (the "Founders Units") of **CAL NEVA LODGE, LLC**, a Nevada limited liability company (the "Company"), set forth below the Purchaser's signature hereto, at a price of \$1,000,000 per Founders Unit (the "Purchase Price"). The Purchaser hereby acknowledges receipt of a copy of the Company's Confidential Private Placement Memorandum, dated _____ (the "Memorandum").


The Purchaser (or, if the Purchaser is signing in a fiduciary capacity, the person or persons for whom the fiduciary is signing) hereby represents and warrants to the Company that:

(a) The Purchaser is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"). The specific category or categories of "accredited investor" applicable to the Purchaser are as follows:

A. AND B. ARE APPLICABLE TO INDIVIDUALS (Please INITIAL applicable blanks):

- A. _____ The Purchaser is a natural person and has a net worth, either alone or with the Purchaser's spouse, of more than \$1,000,000 (*excluding* the value of Purchaser's primary residence).
- B. _____ The Purchaser is a natural person and had income in excess of \$200,000 (\$300,000 including income of spouse) during each of the previous two years and expects to have income in excess of such amounts during the current year.

C. THROUGH F. ARE APPLICABLE TO NON-INDIVIDUALS (Please INITIAL applicable blanks):

- C. _____ The Purchaser is a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Founders Units, and the purchase is directed by a person meeting the criteria described in Subsection (g) below.
- D.  The Purchaser is an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 that either (i) has its investment decisions made by a plan fiduciary, as defined by Section 3(21) of such Act, which is a bank, savings and loan association, insurance company or a registered investment adviser, or (ii) has total assets in excess of \$5,000,000 or, if a self-directed plan, the investment decisions are made solely by persons who are accredited investors as described herein.
- E. _____ The Purchaser is an entity (*excluding* a trust **UNLESS** it is a revocable grantor trust) in which all of the equity owners are accredited investors within categories A and B above.

F. _____ The Purchaser is a corporation, or a partnership, not formed for the specific purpose of acquiring the Founders Units, with total assets in excess of \$5,000,000.

(b) The Purchaser understands that the Company has not registered the Founders Units under the Securities Act, or qualified the Founders Units under the applicable securities laws of any state, in reliance on exemptions from registration and qualification, and the Purchaser understands that such exemptions depend in large part on the Purchaser's investment intent at the time the Purchaser acquires the Founders Units;

(c) The Founders Units subscribed for herein will be acquired for the Purchaser's own account, for investment and not for resale or distribution to any person, corporation, or other entity, and the Purchaser has no intention of distributing or reselling the Founders Units;

(d) The Purchaser acknowledges that any disposition of the Founders Units is subject to restrictions imposed by federal and state law and that the certificates representing the Founders Units will bear a restrictive legend. The Purchaser also recognizes that the Founders Units cannot be disposed of by the Purchaser, absent registration and qualification, or an available exemption from registration and qualification, and that no undertaking has been made with regard to registering or qualifying the Founders Units in the future. The Purchaser understands that the availability of an exemption in the future will depend in part on circumstances outside the Purchaser's control and that the Purchaser may be required to hold the Founders Units for a substantial period. The Purchaser recognizes that no public market exists with respect to the Founders Units and no representation has been made to the Purchaser that such a public market will exist at a future date. The Purchaser understands that no state securities administrator or commissioner has made any finding or determination relating to the fairness for investment of the Founders Units and that no such administrator or commissioner has or will recommend or endorse the Founders Units;

(e) The Purchaser has not seen or received any advertisement or general solicitation with respect to the sale of the Founders Units;

(f) The Purchaser believes, by reason of the Purchaser's business or financial experience, that the Purchaser is capable of evaluating the merits and risks of this investment and of protecting the Purchaser's interest in connection with this investment;

(g) The Purchaser acknowledges that prior to acquiring the Founders Units, the Purchaser has been provided with financial and other written information about the Company and the terms and conditions of the offering. The Purchaser has been given the opportunity by the Company to obtain such information and ask such questions concerning the Company, the Founders Units and the Purchaser's investment as the Purchaser felt necessary, and to the extent the Purchaser took such opportunity, the Purchaser received satisfactory information and answers. If the Purchaser requested any additional information which the Company possessed or could acquire without unreasonable effort or expense which was necessary to verify the accuracy of the financial and other written information furnished to the Purchaser by the Company, such additional information was provided to the Purchaser and was satisfactory. In reaching the conclusion to acquire the Founders Units, the Purchaser has carefully evaluated the Purchaser's financial resources and investment position and the risks associated with this investment, and the Purchaser acknowledges that the Purchaser is able to bear the economic risks of this investment. The Purchaser further acknowledges that the Purchaser's financial condition is such that the Purchaser is not under any present necessity or constraint to dispose of the Founders Units to satisfy any existing or contemplated debt or undertaking;

(h) The Purchaser hereby accepts full and sole responsibility for all state and federal tax consequences which may result from the Purchaser's acquisition of the Founders Units;

(i) The Purchaser, if subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), has taken into consideration the diversification requirements of ERISA prior to making an investment in the Founders Units;

(j) The Purchaser, if executing this Subscription Agreement and the Member Signature Page and Power of Attorney in a representative or fiduciary capacity, has full power and authority to execute and deliver this Subscription Agreement, the Operating Agreement and the Member Signature Page and Power of Attorney on behalf of the subscribing individual, partnership, trust, estate, corporation, or other entity for whom the Purchaser is executing such

documents, and such individual, partnership, trust, estate, corporation, or other entity has full right and power to perform pursuant to such documents and to become a member in the Company pursuant to the Operating Agreement;

(k) The Purchaser has thoroughly read the Memorandum and all documents attached thereto, and understands the contents of such documents. The Purchaser is familiar with the Company's business objectives and financial arrangements in connection therewith and believes the Founders Units that the Purchaser is purchasing are the kind of securities that the Purchaser wishes to hold for investment and that the nature and purchase price of the Founders Units are consistent with the Purchaser's investment program. No representations or warranties have been made to the Purchaser regarding this investment contrary to those contained in the Memorandum and attached documents, and the Purchaser agrees to inform the Company if the Purchaser learns that any statements made to the Purchaser in connection with the Purchaser's investment in the Company are untrue. The information set forth herein is true and correct;

(l) The Purchaser acknowledges and agrees that the Purchaser is not entitled to cancel, terminate or revoke this Subscription Agreement or any of the Purchaser's agreements hereunder and that this Subscription Agreement and any other agreements made hereby shall survive Purchaser's death or disability; and

(m) The Purchaser has such knowledge and experience in financial and business matters and in investments to be capable of evaluating the merits and risks of the investment in the Founders Units.

In addition, the Purchaser:

- (1) Understands that the Founders Units being acquired will be governed by the Operating Agreement;
- (2) Understands that the Company shall have the right to accept or reject this subscription in whole or in part in its sole and absolute discretion;
- (3) Understands that no public market for the Founders Units exists, or is likely to develop, and that it may not be possible to liquidate this investment readily, if at all, in the case of an emergency or for any other reason;
- (4) Understands that the Founders Units are subject to transfer restrictions as set forth in the Operating Agreement;
- (5) Acknowledges that to extent desired the Purchaser has consulted with the Purchaser's financial, business and tax advisers before executing this Subscription Agreement;
- (6) Acknowledges and agrees that a breach by the Purchaser of any of the Purchaser's representations made herein which results in a loss by the Company of the exemptions from registration and qualification requirements under applicable federal and state securities laws will cause the Purchaser to be liable to the Company for all damages and losses caused thereby;
- (7) If the consideration to be delivered is cash, Purchaser agrees to deliver the Purchase Price via bank wire transfer to the Company (or directly to the designated third-party escrow for the benefit of the Company, as applicable), see wire transfer instructions attached hereto, no later than three days after delivery of email notice by the Company to the Purchaser (the "Funding Notice") and acknowledges that the Purchaser's failure to timely deliver the Purchase Price will materially and adversely affect the Offering, the other investors and the Company and that the Purchaser will be responsible for all damages and losses that result from the Purchaser's failure to timely deliver the Purchase Price; and
- (8) Acknowledges and agrees that any funds delivered by the Purchaser to a designated third-party escrow for the benefit of the Company will be delivered to the Company (not Purchaser) upon either the termination or successful closing of the Offering, and that such funds will be returned to Purchaser by the Company only if the Company at the time of termination has not accepted subscriptions of at least \$14,000,000 (the "Offering Minimum").

This Subscription Agreement and all rights hereunder, shall be governed by, and interpreted in accordance with, the laws of the State of Nevada.

[Signature Page Follows]

000315

000315

IN WITNESS WHEREOF, the Purchaser has duly executed and delivered this Subscription Agreement effective as of the date set forth below.

Date: 10-12, 2015

[CORPORATION/TRUST]

"PURCHASER"
Premier Trust, Inc. Custodian FBO

George Stuart Yount, IRA

By: Deb Erdmann

Title: DEBORAH ERDMANN
VP / TRUST OFFICER

By: _____

Title: _____

Address: Premier Trust, Inc.
4465 S. Jones Boulevard
Las Vegas, NV 89103

EMAIL ADDRESS: KKlein @ Premier Trust. com

Taxpayer ID No.: _____

Subscription Amount: \$ 1,000,000.00

Number of Founders Units (\$1,000,000 Each): _____

I hereby confirm that the trust named above is a revocable grantor trust in which each of the grantors is an individually accredited investor as described in Sections (a) A. or B. of this Subscription Agreement.

By: _____

Title: _____

ACCEPTANCE OF SUBSCRIPTION

THE FOREGOING SUBSCRIPTION IS HEREBY ACCEPTED FOR _____ FOUNDERS UNITS.

DATED: _____, 2015

CAL NEVA LODGE, LLC

**By: CR CAL NEVA, LLC, a Nevada limited liability
company, Manager**

By: _____

Title: _____

MEMBER SIGNATURE PAGE AND POWER OF ATTORNEY

CAL NEVA LODGE, LLC,
a Nevada limited liability company

The undersigned, desiring to become a Member of **CAL NEVA LODGE, LLC**, a Nevada limited liability company (the "Company") hereby agrees to all of the terms and conditions of the Amended and Restated Operating Agreement of the Company (the "Operating Agreement") referred to, described in, and attached as an Exhibit to, the Company's Confidential Private Placement Memorandum dated 10-12-15 (the "Memorandum"), and agrees to be bound thereby. Any capitalized term contained herein that is not defined herein shall have the meaning set forth in the Operating Agreement.

The undersigned further grants to the Manager of the Company (the "Manager"), a special Power of Attorney irrevocably making, constituting and appointing the Manager as the undersigned's attorney-in-fact with full power of substitution with power and authority to act in the undersigned's name and on the undersigned's behalf, to execute, acknowledge and swear to in the execution, acknowledgment, and filing of documents which shall include, by way of illustration but not of limitation, the following:

- (a) The Operating Agreement of the Company, any amendments to the foregoing which, under the laws of the State of California or the laws of any other state, are required to be executed or filed or which the Company deems to be advisable to execute or file;
- (b) Any other instrument or document which may be required to be filed by the Company under the laws of any state or by any governmental agency;
- (c) Any instrument or document which may be required to effect the continuation of the Company, the admission of an additional or substituted Members, or the dissolution and termination of the Company (provided the continuation, admission or dissolution and termination are in accordance with the terms of the Operating Agreement) or to reflect any reduction in the amount of capital contributions of the Members; and
- (d) Any other documents deemed by the Manager to be necessary for the business of the Company.

The Power of Attorney granted hereby is a special Power of Attorney coupled with an interest, is irrevocable, shall survive the death or incapacity of the undersigned and is limited to the matters set forth herein. This special Power of Attorney may be exercised by the Manager, acting for the undersigned by a facsimile signature of the Manager; this Power of Attorney shall survive an assignment by the undersigned of all or any portion of the undersigned's Founders Units, but only until the assignee of the Founders Units is recognized as the owner of the Founders Units as set forth in the Operating Agreement.

[Signature Page Follows]

THIS SUBSCRIPTION IS FOR _____ FOUNDERS UNITS (\$1,000,000.00 EACH).

TOTAL INVESTMENT AMOUNT: \$ 1,000,000.00

Executed on 10-12, 2015, at Las Vegas, Nevada

Signature of Subscriber

Deb Edmonson

Signature of Subscriber

Social Security Nos.: _____

Driver's License Nos. _____

Email Address: KKlein@PremierTrust.com

Home Address: Premier Trust, Inc.

City: 4465 S. Jones Boulevard

State: _____

Zip: Las Vegas, NV 89103

Home Phone: () _____

Business Address: Premier Trust, Inc.

City: 4465 S. Jones Boulevard

State: _____

Zip: Las Vegas, NV 89103

Business Phone: (702) 507-0750

REGISTRATION:

PLEASE PRINT YOUR NAME(S) EXACTLY AS YOUR FOUNDERS UNITS ARE TO BE REGISTERED:

TITLE REGISTRATION PREFERENCE

CHECK ONE

- A. ☐ Individual Ownership
- B. ☐ Joint Tenants with Right of Survivorship (ALL MUST SIGN)
- C. ☐ Trust (Date Trust Established _____)
- D. ☐ Partnership
- E. ☐ Community Property
- F. ☐ Tenants in Common (ALL MUST SIGN)
- G. ☐ Corporation
- H. ☐ Limited Liability Company
- I. ☒ Other Retirement Plan IRA

CERTIFICATE OF NONFOREIGN STATUS

Members That Are Entities

Section 1446 of the Internal Revenue Code provides that a limited liability company taxed as a partnership must pay a withholding tax to the Internal Revenue Service with respect to a member's allocable share of such limited liability company's effectively connected taxable income, if the member is a foreign person. To inform CAL NEVA LODGE, LLC, a Nevada limited liability company (the "Company") that the provisions of Section 1446 do not apply, the undersigned hereby certifies on behalf of Premier Trust, Inc. Custodian FBO
(name of entity) (the "Member") the following: George Stuart Young, IRA

1. The Member is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. The Member's U.S. employer identification number is: ; and

3. The Member's principal office address is: Premier Trust, Inc.
4465 S. Jones Boulevard
Las Vegas, NV 89103

The Member hereby agrees to notify the Company within 30 days of the time the Member becomes a foreign person and agrees to execute a new Certificate of Nonforeign Status from time to time as required by the Company. The Member understands that this certification may be disclosed to the Internal Revenue Service by the Company and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of the Member.

Dated: 10-12, 2015

(Please print name of Member)

By: Deb Erdmann

Title: DEBORAH ERDMANN
VP / TRUST OFFICER

(Please print name and title of person signing this Certificate)

INVESTOR'S INSTRUCTION TO ESCROW AND WIRE TRANSFER INFORMATION

I hereby instruct Powell Coleman & Arnold LLP ("Escrow Holder") to accept the sum of \$ 1,200,000.00. This sum is my investment in Cal Neva Lodge, LLC (the "Company"). I direct that this sum be placed in an escrow (the "Escrow") and retained by Escrow Holder until such time as either subscriptions for 14 Units are accepted and deposited into the Escrow representing a total sum of \$14,000,000 or the subscription period sooner expires by its terms under the Subscription Agreement, now scheduled for expiration on April 30, 2014 (unless extended for up to 90 days by the Company) (the "Termination Date"). Escrow Holder's wire transfer information is set forth below.

In the event that the total amount held in the Escrow reaches \$14,000,000, I further instruct Escrow Holder to disburse my funds deposited into the Escrow to the Company or its designated representative or agent. I acknowledge having read the Subscription Agreement and Confidential Private Placement Memorandum copies of which I received from the Company.

If, before the Termination Date, the amount deposited into the Escrow has not reached \$14,000,000, I direct Escrow Holder to return my investment of \$ 1,200,000.00 by check directly to me at the following address:

Premier Trust, Inc.

4465 S. Jones Boulevard

Las Vegas, NV 89103

By my signature below I agree that Escrow Holder has no duty to me other than to disburse the funds contained in the Escrow as instructed when one or the other of the above described events occurs. I further advise Escrow Holder that I have given the Manager of the Company a power of attorney to act for me in all matters related to the Escrow with the exception of modifying or canceling all Escrow Instructions, which modification or cancellation must be in a writing signed by all of the Investors unless all of the monies deposited into the Escrow are returned to the respective investor in connection with such modification or cancellation.

Premier Trust, Inc. Custodian FBO

Date: 10-12, 2015

Deborah Erdmann
Investor Signature DEBORAH ERDMANN
SSN: TRUST OFFICER
Telephone No.: 702 507 0710

Investor Signature _____

SSN: _____

Telephone No.: _____

Escrow Holder's Wire Transfer Information:

BBVA Compass Bank
8080 N. Central Expressway
Dallas, Texas 75206

Powell Coleman & Arnold LLP
IOLTA Account No.: 75103816
ABA No.: 111907445

A Board of Directors Resolution executed on July 24, 2001 appointed and resolved the following named individual be empowered to sign documents on behalf of the Corporation:

President, Secretary, Treasurer

AND, a Board of Directors Resolution executed on April 15, 2010, appointed and resolved the following named individual be empowered to sign documents of behalf of the Corporation:

Nancy Dirk

Assistant Treasurer

AND, a Board of Directors Resolution executed on April 15, 2010, appointed and resolved the following named individual be empowered to sign documents on behalf of the Corporation:

Stacy Libbey

Assistant Secretary


AND, a Board of Directors Resolution executed on April 1, 2015, appointed and resolved the following named individuals be empowered by this Corporate Resolution to sign documents as the Fiduciary, pursuant to the governing document, on behalf of the Corporation:

Kathleen M. Allinger
Marsha G. Walters
Deborah Erdmann
Brian Simmons
Susan Callaghan
Asif Siddiq
Nicole Shrive
Janette Garcia

[illegible]

I, Stacy Libbey, was duly appointed Assistant Secretary of Premier Trust Inc. on April 15, 2010. I do hereby certify that said Resolution dated April 1, 2015 is in force and effect at this time.

April 1, 2015
Date


Stacy Libbey, Assistant Secretary

The following specimen signatures are provided for your reference:

Mark Dreschler, President

Stacy Libbey, Assistant Secretary

Nancy Dirk, Assistant Treasurer

Marsha G. Walters, Trust Officer

Kathleen M. Allinger, Trust Officer

Deborah Erdmann, Trust Officer

Brian Simmons, Trust Officer

Susan Callaghan, Trust Officer

Asif Siddiq, Trust Officer

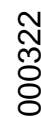
Nicole Shrive, Trust Officer

Janette Garcia, Operations Officer

STATE OF NEVADA } ss:
COUNTY OF CLARK }

On April 1, 2015, personally appeared before me, a Notary Public in and for said County and State, Stacy Libbey who acknowledged to me that she executed the foregoing instrument.

Notary Public



FILED
Electronically
CV16-00767
2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 5

000323

ACCEPTANCE OF SUBSCRIPTION

THE FOREGOING SUBSCRIPTION IS HEREBY ACCEPTED FOR 1 FOUNDERS UNITS.

DATED: OCT 13, 2015

CAL NEVA LODGE, LLC

By: CR CAL NEVA, LLC, a Nevada limited liability
company, Manager

By: 

Title: President

FILED
Electronically
CV16-00767
2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 6

000325

Mary Morris

From: Robert Radovan <robert@criswellradovan.com>
 Sent: Monday, January 25, 2016 11:35 AM
 To: Bruce Coleman
 Subject: FW: January 27th Cal Neva Monthly Meeting
 Attachments: "Confidential" Cal Neva Founders Equity; Cal Neva Lodge, LLC Acceptance of Yount IRA Subscription.docx

REDACTED

From: Stuart Yount <syount@fortifiber.com>
 Date: Mon, 25 Jan 2016 17:18:20 +0000
 To: Dave Marriner <IMCEAMAILTO-marrinertahoe+40gmail+2Ecom@fortifiber.com>
 Cc: "Heather@criswellradovan.com" <Heather@criswellradovan.com>, Anthony Zabit <azabit@dimension4.com>, Arthur Prieston <aprieston@priestongroup.com>, Brandon Chaney <brandon1536@gmail.com>, "CEA Ventures, LP" <dmgibson5@gmail.com>, Chris Gibson <chris.gibson@twainfinancial.com>, Dave Martin <daveandcarol1@cox.net>, Jeremy Page <jpage@elevateig.com>, Jim Davis <jcddx1@gmail.com>, Joan Davis <Joandavisartstudios@gmail.com>, John Paye <jasperreddog@gmail.com>, Les Busick <lbusick@gmail.com>, Michael Dixon <miked@dfsinc.com>, Molly Kingston <mkingston@arrowinvest.com>, Munnerlyn Revocable Trust <charlesrm@comcast.net>, "Oakdale Ave. Partners, LP" <TectaJohn@comcast.net>, Paul Jameson <paul.g.jameson@gmail.com>, Phil Busick <philbusick@gmail.com>, Robert Radovan <robert@criswellradovan.com>, Sharon Dixon <sdixon875@gmail.com>, Robert Finkelstein <rfinkelstein@raf-ltd.com>, Steve & Vicki Kegel <skegel@tahoemountainresorts.com>, Steve Mariucci <smariucci@comcast.net>, The Erickson Family Trust <phil@inclineholding.com>, "Thorpe Investments, LP" <athorpe@hf.com>, Tim Racich <Tim@calpacproperties.com>, Bill Criswell <bill@criswellradovan.com>, William Gibson <wgibson@cfmlogistics.com>, James Pickett <jpickett@laderaventures.com>, Jeff Pickett <jeff@connorgp.com>, Lisa Pacey-Willis <LisaP@criswellradovan.com>, Pete Dordick <pete@criswellradovan.com>, Geri Yount <geriattahoe@fortifiber.com>
 Subject: January 27th Cal Neva Monthly Meeting

1. I never was asked, told of or agreed to an "...investment or purchase of a CR \$1M share." See attached signed acceptance by the Cal Neva Lodge, LLC of our Founders Unit Purchase on 10/13/15.
2. I was never told before your email yesterday morning, Dave, that the project was in trouble before we invested, especially to the extent that because our IRA legalities took a long time, the developers had asked the Busick's for \$1,000,000 "...to meet the immediate needs of the project to keep Penta on the job." This also is a revelation that that Penta was unpaid & about to leave the job before we invested! The first we heard of that even being a possibility was at the Fair Winds on December 12th.
3. Until December, the only investor list I received was from you on 7/14/15 (attached) which showed \$1,500,000 of the authorized \$20,000,000 still available. Also, I was never told "...Robert decided to sell the Younts \$1M of their \$2M CR equity...". Note that CR was not even listed as an investor!

Stuart Yount

300 State Route 28
 Box 308
 Crystal Bay, NV 89402

(775) 843-0486

From: Dave Marriner [mailto:marrinertahoe@gmail.com]

Sent: Sunday, January 24, 2016 8:39 AM

To: Stuart Yount <syount@fortifiber.com>

Cc: Heather Hill <Heather@criswellradovan.com>; Anthony Zabit <azabit@dimension4.com>; Arthur Prieston <aprieston@priestongroup.com>; Brandon Chaney <brandon1536@gmail.com>; CEA Ventures, LP <dmgibson5@gmail.com>; Chris Gibson <chris.gibson@twainfinancial.com>; Dave & Carol <daveandcarol1@cox.net>; Jeremy Page <jpage@elevateig.com>; Jim Davis <jcddx1@gmail.com>; Joan Davis <joandavisartstudios@gmail.com>; John Paye <jasperreddog@gmail.com>; Les Busick <lbusick@gmail.com>; Michael Dixon <miked@dfsinc.com>; Molly Kingston <mkingston@arrowinvest.com>; Munnerlyn Revocable Trust <charlesrm@comcast.net>; Oakdale Ave. Partners, LP <TectaJohn@comcast.net>; Paul Jameson <paul.g.jameson@gmail.com>; Phil Busick <philbusick@gmail.com>; Robert Radovan <Robert@criswellradovan.com>; Sharon Dixon <sdixon875@gmail.com>; Sinatra Family <rfinkelstein@raf-ltd.com>; Steve Kegel <skegel@tahoemountainresorts.com>; Steve Mariucci <smariucci@comcast.net>; The Erickson Family Trust <phil@inclineholding.com>; Thorpe Investments, LP <athorpe@hf.com>; Tim Racich <Tim@calpacproperties.com>; William Criswell <Bill@criswellradovan.com>; William Gibson <wgibson@cfmlogistics.com>; James Pickett <jpickett@laderaventures.com>; Jeff Pickett <jeff@connorpp.com>; Lisa Pacey-Willis <LisaP@criswellradovan.com>; Pete Dordick <pete@criswellradovan.com>

Subject: Re: January 27th Cal Neva Monthly Meeting

Cal Neva Investors,

I agree with Stuart Yount regarding his investment.

Stuart and Geri Yount are "Pillars of our Local Community" and deserve our full attention to resolve the confusion surrounding their investment or purchase of a CR \$1M share. The funds obtained by Stuart and Geri are from a Trust that benefits young children and we must get this resolved immediately and peacefully.

I recall suggesting on the last EC call to Robert and Bill to sign a Promissory Note from CR to the Yount Trust that will insure their investment is protected and would receive the Preferred Investor Benefits if we consummate a sale while the details surrounding their investment are being resolved.

Below is an e-mail I sent to the EC last week to help bring transparency to the Yount transaction.

Dear Executive Committee,

It has come to my attention that a false rumor has been propagated throughout the investment group that Robert asked me to not mention the cost overruns and change orders to Stuart Yount.

This rumor is false and unfounded and may be detrimental to the success of our project and affect the reputation of our management team. This false rumor is of particular concern to me since Stuart and Geri Yount have been good friends of mine since 1993 and I would not knowingly participate in any activity that would hurt them or put their investment at risk.

An extended delay in the Yount's ability to setup a self directed IRA and transfer funds in August or September caused Robert to seek funding from Les Busick in late September to meet the immediate needs of the project to keep Penta on the job.

When the Yount's funding became available in early October, Robert decided to sell the Younts \$1M of their \$2M CR equity since Les Busick had funded the \$1.5M of open equity.

Robert and Bill are working out the details regarding the sale of CR shares but that will remain in their control.

The July 25, 2015 e-mail below is one of many e-mail exchanges that took place between Robert and Stuart while Stuart was doing his due diligence.

After my initial introduction of Stuart to Robert in early July, Robert and Stuart's legal advisors took over a lengthy Q&A process where Robert shared the July 25th e-mail (copied below) that clearly disclosed to Stuart that "the \$6M mezzanine piece will be refinanced with a less costly \$15,000,000 mezzanine that is to cover the added costs of regulatory

and code requirements which changed or were added by the two counties and TRPA which we deal with. We have also added some costs for design upgrades within the project."

The July 25th e-mail clearly demonstrates that Robert was not making any attempt to hide the change orders or construction budget increases from Stuart Yount.

In addition I forwarded a copy of our July Progress Report to Stuart that outlined the changes being dealt with at the time he was deciding to invest.

Please make every effort to stop this kind of destructive behavior and try to keep our collective focus on stopping the torpedo that is about to hit our ship.

The success of our project is hinging on our ability to come together as a TEAM to fund the completion of this amazing project and ensuring a successful opening this summer.

Kind regards,
Dave

Copy and Paste from July 25, 2015 e-mail below:

We are refinancing the mezzanine piece (\$6M) with a less costly \$15,000,000 mezzanine. This is to cover the added costs of regulatory and code requirements which changed or were added by the two counties and TRPA which we deal with. We have also added some costs for design upgrades within the project. Pre-development of the condo units is also included within this. We have just received confirmation from TRPA regarding the condo conversion of 28 TAUs (Tourist Accommodation Units, hotel rooms).

Dave Marriner

Marriner Real Estate, LLC
Cal Neva Lodge Rebirth 2015
marrinertahoe@gmail.com
marrinertahoe@aol.com
dave@lasrosadas.com
www.marrinerrealestate.com
www.lasrosadas.com
www.lasdunascabo.com
www.dolphincoveusvi.com

775-745-8482 Cell

-----Original Message-----

From: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
To: Stuart Yount <syount@fortifiber.com>
Cc: Dave Marriner <marrinertahoe@aol.com>; Heather Hill <Heather@CRISWELLRADOVAN.COM>
Sent: Sat, Jul 25, 2015 10:11 am
Subject: Cal Neva

Hi Stuart,

Thanks for taking the time yesterday to talk through the Cal Neva project. Below is the Q & A and please let me know if there is anything else you need from me. It would be great to have a neighbor and descendant of the founder of Napa Valley involved in the project!

Cheers,

Robert

1. The Preferred and Founder members are the same.

2. The offering is extended. The actual first closing date for the debt and Mezz piece was Sept, 30, 2014. A potential \$1,500,000 was held to be raised after the closing.

3. The current capital stack is as follows, the \$1,500,000 offering is included in the \$20,000,000 of equity.

Equity- \$20,000,000

Mezzanine- \$6,000,000

Debt- \$29,500,000

Total- \$55,500,000

We are refinancing the mezzanine piece with a less costly \$15,000,000 mezzanine. This is to cover the added costs of regulatory and code requirements which changed or were added by the two counties and TRPA which we deal with. We have also added some costs for design upgrades within the project. Pre-development of the condo units is also included within this. We have just received confirmation from TRPA regarding the condo conversion of 28 TAUs (Tourist Accommodation Units, hotel rooms).

We have previously not carried the cost or revenue of this item because we were not sure we could do this given TRPA zoning. We now have the positive confirmation of the conversion and wish to proceed as fast as possible.

These units are limited to 1,250 square feet due to the condo conversion policy within the TRPA general plan. They will differ in pricing due to the different placement and view, not from size or design. We are expecting to average roughly \$1,250 per foot throughout the sell-out of the units. These units can be put through the rental pool of the hotel with a profit split paid back to the owner.

4. On distributions, equity and its preferred return is repaid first. We are assuming a refinance in year 2-3 of operations to take out the Construction/mini-perm and the mezzanine, along with any remaining equity outstanding after the condominium distributions.

5. A member cannot be forced to sell.

6. We are happy to report to anyone you would like us to. I assume the note on page 19 about the 35 year old issue must have been a regulatory issue.

7. If there are losses beyond what is budgeted and held in reserve, the executive committee could issue a capital call, but you are not required to fund.

8. The executive committee is:

Robert Radovan (Criswell Radovan LLC)
William Criswell (Criswell Radovan LLC)
Les Busick Investor- Incline Village
Brandon Chaney Investor- Incline Village
Troy Gillespie Investor- Incline Village

9. The manager will not start receiving capital from its 20% position until the equity and preferred return has been received by the investors.

I've taken these a little out of order given how some of the issues were part of each other. Please let me know if there is anything else I can help with or clarify. I realize its a bit like drinking from the fire-hose.

Thanks again,

RR

On Sat, Jan 23, 2016 at 6:24 PM, Stuart Yount <syount@fortifiber.com> wrote:

Your Capital Equity Table shows:

1CR Cal Neva (Criswell Radovan) \$2,000,000 9.1%

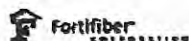
With the following footnote:

1Stuart Yount holds \$1MM within the CR \$2MM

This is in error. If you look back on the communications up to the sale to me, as well as who my IRA's check went to, I was buying \$1,000,000 of the original Founding Investment which, I was told, was out of the \$1,500,000 of the still available originally authorized \$20,000,000. Please correct the Capital Equity Table to show my Preferred Member interest as the other original investors are. Thank you.

Stuart Yount

Chairman & CEO



300 State Route 28

Box 308

Crystal Bay, NV 89402

(775) 843-0486

From: Heather Hill [mailto:Heather@CRISWELLRADOVAN.COM]

Sent: Friday, January 22, 2016 7:18 PM

To: Anthony Zabit <azabit@dimension4.com>; Arthur Prieston <aprieston@priestongroup.com>; Brandon Chaney <brandon1536@gmail.com>; CEA Ventures, LP <dmgibson5@gmail.com>; Chris Gibson <chris.gibson@twainfinancial.com>; Dave & Carol <daveandcarol1@cox.net>; Dave Marriner <marrinertahoe@gmail.com>; Jeremy Page <jpage@elevateig.com>; Jim Davis <jcdx1@gmail.com>; Joan Davis <Joandavisartstudios@gmail.com>; John Paye <jasperreddog@gmail.com>; Les Busick <lbusick@gmail.com>; Michael Dixon <miked@dfsinc.com>; Molly Kingston <mkingston@arrowinvest.com>; Munnerlyn Revocable Trust <charlesrm@comcast.net>; Oakdale Ave. Partners, LP <Tectajohn@comcast.net>; Paul Jameson <paul.g.jameson@gmail.com>; Phil Busick <philbusick@gmail.com>; Robert Radovan <Robert@CRISWELLRADOVAN.COM>; Sharon Dixon <sdixon875@gmail.com>; Sinatra Family <rfinkelstein@raf-ltd.com>; Steve Kegel <skegel@tahoemountainresorts.com>; Steve Mariucci <smariucci@comcast.net>; The Erickson Family Trust <phil@inclineholding.com>; Thorpe Investments, LP <athorpe@hf.com>; Tim Racich <Tim@calpacproperties.com>; Troy Gillespie <troygillespie10@yahoo.com>; William Criswell <Bill@CRISWELLRADOVAN.COM>; William Gibson <wgibson@cfmlogistics.com>; Stuart Yount <syount@fortifiber.com>; James Pickett <jpickett@laderaventures.com>; Jeff Pickett <jeff@connorgp.com>

Cc: Lisa Pacey-Willis <LisaP@CRISWELLRADOVAN.COM>; Pete Dordick

<pete@CRISWELLRADOVAN.COM>

Subject: January 27th Cal Neva Monthly Meeting

Attached please find the agenda for the January 27th Executive Committee & Member Meeting. For your convenience I have also attached the January reporting packet previously circulated. Please note the meeting will be held at the Fairwinds Estate and begin at 2pm Wednesday January 27th.

Cheers,

Heather Hill

Criswell Radovan, LLC

707-963-0313

000331

000331

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2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 7

000332

Bruce Coleman

From: Heather Hill <Heather@CRISWELLRADOVAN.COM>
Sent: Friday, October 02, 2015 6:19 PM
To: Bruce Coleman
Cc: Robert Radovan
Subject: Cal Neva Equity

Hi Bruce-

We have identified an investor for Cal Neva who will take the place of one of CR Cal Neva's \$2M investment bringing them down to \$1M.

He is prepared to fund next week and we would like to use your trust account to process this transaction. We assume there is some sort of swap agreement CR will need to sign to paper this transaction above and beyond the typical documentation.

Please verify the trust account wire instructions and let us know what procedurally we need to do.

Cheers,

Heather Hill
Criswell Radovan, LLC
707-963-0313

000333

000333

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2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 8

000334

Bruce Coleman

From: Bruce Coleman
Sent: Tuesday, October 06, 2015 4:23 PM
To: 'Heather Hill'
Subject: Cal Neva

Heather:

As of 4:00 p.m. today, our account has not received the \$1,000,000. In the meantime, I want to make you aware of the requirements in the Operating Agreement. Section 12.2 provides that no Member may sell all or any part of its Interest unless approved in writing by Members holding at least 67% of the Percentage Interests in the Company. You do not necessarily need to hold a formal meeting of the Members, but a ballot should be sent to each Member requesting approval. I would recommend that you prepare a simple paragraph explaining who the new investor will be and emphasizing that CR will continue to be the Manager of the entity. I do not see why this would be controversial to anyone, but you need to follow the proper procedures so that we will have written evidence that the required percentage of Members have approved the deal. Keep in mind that CR itself owns 26.83% of the interests, and IMC Investment Group owns 20.49%, so the two of you would be able to vote almost 50% of the interests. Let me know if you need any further information, and I will keep looking for the wire.

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@pcallp.com

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2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 9

000336

Bruce Coleman

From: Bruce Coleman
Sent: Friday, October 16, 2015 2:59 PM
To: 'Heather Hill'
Subject: Cal Neva - Stewart Yount Investment
Attachments: Asgmt of Interest in LLC.doc

Heather:

I am attaching a proposed form of Assignment of Interest in Limited Liability Company to be used for the investment of Stewart Yount. You have previously told me that you have approval from the necessary Members to transfer \$1,000,000 of the CR interest to Stewart Yount. If there are any other documents that Mr. Yount has already signed (such as a subscription agreement), please forward them to me so that my files will be complete. I need to prepare a revised Schedule 4.1 and Schedule 4.2 for the Operating Agreement to reflect the new investment. However, I need you to send me the address of Mr. Yount for those Schedules. Also, I believe that you said that Les Busick has also made an additional investment. Please give me the details on that so that I can include that change in the Schedules at the same time. Call me with any questions or changes to the attached document.

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@pcallp.com

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Electronically
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2017-06-27 03:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6169488 : tbritton

EXHIBIT 10

000338

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

GEORGE STUART YOUNT,) CASE NO. CV16-00767
INDIVIDUALLY AND IN HIS)
CAPACITY AS OWNER OF) DEPT. NO. B7
GEORGE STUART YOUNT IRA,)

Plaintiff,

VS.

CRISWELL RADOVAN, LLC, A)
NEVADA LIMITED LIABILITY)
COMPANY; CR CAL NEVA, LLC,)
A NEVADA LIMITED LIABILITY)
COMPANY; ROBERT RADOVAN;)
WILLIAM CRISWELL; CAL NEVA)
LODGE, LLC, A NEVADA)
LIMITED LIABILITY COMPANY;)
POWELL, COLEMAN AND ARNOLD)
LLP; DAVID MARRINER;)
MARRINER REAL ESTATE, LLC,)
A NEVADA LIMITED LIABILITY)
COMPANY; NEW CAL-NEVA)
LODGE, LLC, A NEVADA)
LIMITED LIABILITY COMPANY;)
AND DOES 1-10,)

Defendants.

Dallas, TX

ORAL VIDEOCONFERENCE DEPOSITION OF

BRUCE COLEMAN

APRIL 20, 2017

Reported by: Therese J. Casterline
Job No. 121218

1 Q. The investors that -- that came in
2 under the Private Placement Memorandum.

3 A. Oh, yes.

4 MR. LITTLE: Let me just object, vague
5 and overbroad.

6 Q. Powell Coleman was set up as the
7 escrow agent in this -- for the investors under
8 the Private Placement Memorandum, correct?

9 A. Correct.

10 Q. Okay. When was that decision first
11 made?

12 A. They -- CR asked if I could use my
13 trust account to receive the initial investments,
14 so it would have been before the first investment
15 came in.

16 Q. And as part of that, were you -- prior
17 to that first investment coming in, were you
18 given a copy of this Investor's Instruction to
19 Escrow and Wire Transfer Information for your --
20 for your duties as acting as the escrow agent?

21 A. I assume that I was.

22 Q. And you understand, as an escrow
23 agent, you -- you know, you generally have some
24 kind of escrow instructions that delineate how
25 money comes in and out of an escrow account,

1 correct?

2 A. Yes.

3 Q. So this looks like the -- those type
4 of escrow instructions instructing Powell Coleman
5 how to handle money that came in and how to --
6 how to put that money -- where the money was
7 supposed to go from the escrow, right?

8 A. Correct.

9 Q. Were there any other escrow
10 instructions that were ever provided to you,
11 other than this particular page right here?

12 A. I recall that some of the early
13 investors had letter agreements with me about the
14 handling of their money. I'm not sure exactly --
15 I don't recall how it would have differed from
16 this, but there were some.

17 Q. When you say "early investors," were
18 those investors that invested prior to the
19 Private Placement Memorandum?

20 A. I don't remember the timing. When I
21 say the early investors, I mean as -- as these
22 instructions that we were looking at a minute ago
23 state, no money was to be distributed to the LLC
24 until \$14 million had been raised. So it was --
25 I'm talking about the people who were putting in

1 A. Yes.

2 Q. And then once that was reached, it
3 would be distributed to Cal Neva Lodge, LLC?

4 A. Yes.

5 Q. And then as other investors came in,
6 the -- under the Private Placement Memorandum,
7 did all the money go to Powell Coleman's trust
8 account and then distributed out to the Cal Neva?

9 A. Yes.

10 Q. Did your firm register under the
11 Nevada revised statute as an escrow holder in
12 Nevada?

13 A. No.

14 Q. In the -- in the time frame about the
15 end of September of 2015, do you remember an
16 approximate -- or \$1.5 million coming in through
17 the Private Placement Memorandum from a gentleman
18 named Les Busick?

19 A. I was told by my client that that
20 happened.

21 Q. Did it go into your trust account?

22 A. That, I don't remember. I -- I doubt
23 that it did. I think it went directly to the
24 company, but I would have to check that.

25 Q. Would -- would your records -- your

1 Busick had invested money as -- as an attorney
2 representing them or to tell you as the escrow
3 holder for the Private Placement Memorandum?

4 A. I did not recall receiving it as an
5 escrow holder. I -- as I said earlier, I don't
6 believe I did. I think it went directly from him
7 to the company, so they just told me so that I
8 could update my records.

9 Q. So it would have been so you could
10 update your records to know how much was left in
11 the Private Placement Memorandum to raise?

12 A. And -- and to update the schedules on
13 the LLC agreement.

14 Q. After that conversation, was it your
15 understanding, then, that the 20 million Private
16 Placement Memorandum was fully funded?

17 A. Yes.

18 Q. And you don't remember about when that
19 happened?

20 A. I don't -- I don't have a date, no.
21 It would have been in probably early October of
22 2015.

23 Q. But if that did not go through your
24 escrow account, we wouldn't see that entry in
25 your bank statements from your trust account?

1 MR. LITTLE: Objection,
2 attorney-client privilege.

3 MR. CAMPBELL: I'm not asking for the
4 communication itself, just who told him if money
5 was coming in.

6 MR. LITTLE: Okay. That's fair.

7 A. Heather Hill of CR.

8 Q. Now, by -- when Heather Hill told you
9 that and when you confirmed that the million
10 dollars was going to be deposited into your --
11 into your trust account, you knew by that time
12 that Mr. Yount's -- I mean Mr. Busick's money had
13 already been received by this -- by Cal Neva
14 Lodge and that the 20 million PPM was -- was
15 fully allocated, correct?

16 A. Yes.

17 Q. Did Ms. Hill or anyone at -- at Cal
18 Neva or CR send you any supplemental escrow
19 instructions as to how to handle Mr. Yount's
20 \$1 million?

21 A. No.

22 Q. And the only escrow instructions that
23 you had in your firm were those reflected on that
24 Exhibit Number 36, that investor's instructions
25 under the Private Placement Memorandum?

1 A. That's what they had always arranged
2 when they first told me about Mr. Yount, that
3 they were selling him 50 percent of their
4 interest in return for \$1 million, and that he
5 would send the money to me, and then I would send
6 it to them.

7 Q. Okay. Do you have any written
8 confirmation of that telephone call that -- where
9 either Mr. Criswell or Radovan or Heather or
10 anybody at any of the CR entities sent -- sent
11 you written instructions on how to handle
12 Mr. Yount's money once it came into your trust
13 account?

14 A. No.

15 Q. It was all based on that telephone
16 call?

17 A. Yes.

18 Q. Did Mr. -- did Ms. Hill or either --
19 anybody at CR, any of the CR entities, ever
20 provide you with the document contained within
21 Exhibit Number 36, where -- which are Mr. Yount's
22 filling out and signatures on the Subscription
23 Agreement of the PPM at or about the same time --

24 A. No.

25 Q. -- Mr. Yount's money came in?

1 know whether they had one or not. I assume they
2 did.

3 Q. When you represent an LLC, do you feel
4 like you also represent its members?

5 MR. LITTLE: Objection, legal
6 conclusion.

7 Q. You can answer it.

8 A. Well, the -- of necessity, the
9 instructions I receive are going to be from the
10 management of the LLC.

11 Q. But isn't -- isn't Cal Neva Lodge, LLC
12 made up of its members?

13 A. Yes.

14 Q. In essence, you're representing the
15 members also, right?

16 A. Yes.

17 MR. LITTLE: Same objection, legal
18 conclusion.

19 Q. Can you answer that, Mr. Coleman?

20 A. Do I represent -- if I represent the
21 company, then -- then I would -- the company is
22 owned by the members, so therefore I would
23 represent them as well.

24 Q. Okay. When Mr. Yount invested back in
25 October, even though he was buying -- your

1 understanding, he was buying a CR share, he was
2 still going to be a member of Cal Neva Lodge,
3 LLC, right?

4 A. Yes.

5 Q. In fact, he was just going to step
6 into the shoes, based on your understanding of --
7 of one-half of the Cal Neva membership --
8 one-half of the CR membership? Excuse me.

9 A. Yes.

10 MR. CAMPBELL: All right. Do you want
11 to take a quick break, and then I'll kind of
12 go into the second half? I should be able
13 to finish in 45 minutes or an hour after
14 this one, if you want to take a 15-minute
15 break right now.

16 MR. LITTLE: Sure.

17 (Recess 12:01-12:14 p.m.)

18 MR. CAMPBELL: Ms. Court Reporter, if
19 you can mark -- the next exhibit, 39, will
20 be -- it starts with an e-mail from
21 Mr. Radovan to Mr. Coleman, dated
22 January 25th, 2016, and then has an e-mail
23 string below it, if you have that -- see
24 that document.

25 (Exhibit Number 39 marked.)

1 A. No.

2 Q. Okay. If you go down to the third or
3 fourth page down, it's the Resolution of the
4 Members of Cal Neva Lodge, LLC. It's got a Bates
5 of 269 in there.

6 A. Yes.

7 Q. Okay. And you drafted this
8 resolution?

9 A. Yes.

10 Q. And why did you draft this resolution?

11 A. Because to transfer 50 percent of the
12 CR interest to Mr. Yount would require the
13 approval of at least 67 percent of the percentage
14 interests of the members in Cal Neva, LLC.

15 Q. That's in the Operating Agreement,
16 correct?

17 A. Yes.

18 Q. And that -- that Operating Agreement
19 would have been in effect in October -- on
20 October 13th of 2015 when Mr. Yount sent his
21 money to your trust account?

22 A. Yes.

23 Q. And before CR could transfer that
24 interest, they would have had to have a signed --
25 a resolution in this form, right?