

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.

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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
VOLUME 3
PAGES 501-750**

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SUBSCRIPTION BOOKLET

(for Founding Members)

CAL NEVA LODGE, LLC

SUBSCRIPTION INSTRUCTIONS

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

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

ALSO, IF APPLICABLE, PLEASE DELIVER THE FOLLOWING:

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

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

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

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

SUBSCRIPTION AGREEMENT

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

Potential Investor:

The undersigned (the "**Purchaser**"), by completing and executing this Subscription Agreement and the Member Signature Page and Power of Attorney, hereby tenders this subscription and applies for the purchase of the number of Founders Units (the "**Founders Units**") of **CAL NEVA LODGE, LLC**, a Nevada limited liability company (the "**Company**"), set forth below the Purchaser's signature hereto, at a price of \$1,000,000 per Founders Unit (the "**Purchase Price**"). The Purchaser hereby acknowledges receipt of a copy of the Company's Confidential Private Placement Memorandum, dated March 11, 2014 (the "**Memorandum**").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In addition, the Purchaser:

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

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

[Signature Page Follows]

000506

EXHIBIT 18

000507

000507

EXHIBIT 18

Partial Document

THIS EXHIBIT IS PART OF A DOCUMENT.

ONLY SELECTED PAGES ARE INCLUDED IN THIS EXHIBIT.

000508

CONFIDENTIAL
PRIVATE PLACEMENT MEMORANDUM
DATED: MARCH 11, 2014

ACCREDITED INVESTORS ONLY

NO. _____

CAL NEVA LODGE, LLC,
a Nevada limited liability company

MAXIMUM OFFERING:	\$20,000,000
MINIMUM OFFERING:	\$14,000,000
MINIMUM SUBSCRIPTION:	\$ 1,000,000
MINIMUM PURCHASE:	1 UNIT (\$1,000,000)

CAL NEVA LODGE, LLC, a Nevada limited liability company (the "Company") has been formed to purchase and develop certain real property located in Crystal Bay, Nevada and the related business known as the "Cal Neva Resort, Spa and Casino" (collectively, the "Property"); to exercise all rights, powers, privileges, and other incidents of ownership or possession with respect to the Property; to enter into, make, and perform all contracts and other undertakings; and to engage in other related activities.

The Company will offer and sell up to twenty (20) units of membership interests in the Company (the "Units"), with a minimum purchase of one Unit (\$1,000,000), at a purchase price of \$1,000,000 per Unit, to selected investors ("Investors") who meet the suitability requirements established for this offering (the "Offering"). Investors will have an opportunity to become founding members ("Founding Members") and acquire founders units ("Founders Units") and/or preferred members ("Preferred Members") and acquire preferred units (the "Preferred Units"). Of the total Units offered hereunder, the Company has stipulated that the Preferred Units and the Founders Units will not be created as a separate class unless a minimum of five (5) Units of that class are sold and that no more than fifteen (15) Founders Units will be issued and sold. The Company also reserves the right to sell partial Preferred Units. It is anticipated that the closing of the Offering will occur on or before March 28, 2014 (the "Closing Date"), provided that on or before the Closing Date, Investors shall have subscribed for a minimum of fourteen (14) of the Units (\$14,000,000) (the "Minimum Offering Amount"). The Offering will terminate not later than April 30, 2014, unless extended by the Manager for up to ninety (90) days (the "Termination Date").

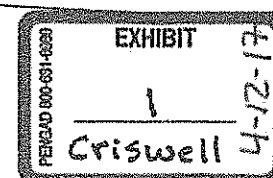
THERE IS NO PUBLIC MARKET FOR THE UNITS, AND THE COMPANY IS UNCERTAIN WHEN OR IF SUCH MARKET MIGHT DEVELOP.

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS FOR NONPUBLIC OFFERINGS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER SAID ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

PURCHASE OF THE PREFERRED UNITS INVOLVES CERTAIN RISKS AND IS SPECULATIVE. SEE "RISK FACTORS."

	Price to Investors (1)	Placement Fees (2)	Proceeds to Company (3)
Per Unit			
Minimum.....	\$ 1,000,000	\$ -0-	\$ 1,000,000
Maximum.....	\$14,000,000	\$ -0-	\$14,000,000
	\$20,000,000	\$ -0-	\$20,000,000

(The footnotes hereto appear on the following page)



- (1) The minimum subscription for Units is one Unit (\$1,000,000); provided, however, that the Company reserves the right to sell partial Preferred Units. The purchase price of \$1,000,000 per Unit is payable in cash at the time of subscription.
- (2) The Units are being offered for sale by the Company on a "best efforts" basis. The Company does not anticipate paying fees for the placement of the Units being offered hereunder. Notwithstanding the foregoing, the Company reserves the right to pay fees to licensed professionals (including finders' fees) that relate solely to the raising of capital for use in the acquisition, development and operation of real estate. See "THE OFFERING - Plan of Distribution."
- (3) Before legal, accounting, financing, and other expenses associated with the Offering currently estimated at \$50,000. See "ESTIMATED USES OF PROCEEDS."

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, OR ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THE CONTENTS OF THIS MEMORANDUM OR ANY COMMUNICATION FROM THE COMPANY, ITS AFFILIATES AND EMPLOYEES, AS LEGAL, TAX OR INVESTMENT ADVICE. EACH INVESTOR SHOULD CONSULT SUCH INVESTOR'S OWN COUNSEL, ACCOUNTANT AND OTHER ADVISORS AS TO THE LEGAL, TAX AND ECONOMIC CONSEQUENCES OF THE INVESTMENT DESCRIBED HEREIN.

THE STATEMENTS CONTAINED HEREIN ARE BASED ON INFORMATION BELIEVED BY THE COMPANY TO BE RELIABLE. NO WARRANTY CAN BE MADE AS TO THE ACCURACY OF SUCH INFORMATION OR THAT CIRCUMSTANCES MAY NOT HAVE CHANGED SINCE THE DATE SUCH INFORMATION WAS SUPPLIED. THIS MEMORANDUM CONTAINS SUMMARIES OF CERTAIN DOCUMENTS THAT THE COMPANY BELIEVES TO BE FAIR SUMMARIES OF SUCH DOCUMENTS, BUT REFERENCE IS HEREBY MADE TO THE ACTUAL DOCUMENTS (COPIES OF WHICH ACCOMPANY THIS MEMORANDUM OR ARE AVAILABLE AT THE OFFICES OF THE COMPANY) FOR COMPLETE INFORMATION CONCERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES THERETO.

THIS MEMORANDUM HAS BEEN PREPARED SOLELY FOR THE BENEFIT OF QUALIFIED INVESTORS (SEE "INVESTOR SUITABILITY STANDARDS") WHO ARE INTERESTED IN THE PROPOSED PRIVATE PLACEMENT OF THE UNITS. ANY DISTRIBUTION OR REPRODUCTION OF THIS MEMORANDUM, IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY, IS PROHIBITED. BY ACCEPTING DELIVERY OF THIS MEMORANDUM, EACH RECIPIENT AGREES TO RETURN THIS MEMORANDUM AND ALL OTHER DOCUMENTS TO THE COMPANY IF THE RECIPIENT DOES NOT PURCHASE ANY OF THE UNITS.

THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO PURCHASE THE UNITS IN ANY JURISDICTION TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER OR SOLICITATION. EXCEPT AS OTHERWISE INDICATED, THIS

MEMORANDUM SPEAKS AS OF THE DATE OF THIS MEMORANDUM. NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY SALE MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY AFTER THE DATE OF THIS MEMORANDUM.

EXCEPT FOR THIS MEMORANDUM AND THE EXHIBIT HERETO, NO OFFERING LITERATURE OR ADVERTISING IN WHATEVER FORM HAS BEEN AUTHORIZED IN THE OFFERING OF THE UNITS. NO PERSON HAS BEEN AUTHORIZED TO MAKE REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE UNITS, THE COMPANY OR ITS PROSPECTIVE BUSINESS, EXCEPT THE REPRESENTATIONS CONTAINED HEREIN. ANY INFORMATION OTHER THAN THAT CONTAINED HEREIN OR THE DOCUMENTS FURNISHED BY THE COMPANY ON REQUEST MUST NOT BE RELIED UPON BY ANY POTENTIAL INVESTOR AS HAVING BEEN AUTHORIZED BY THE COMPANY.

DURING THE COURSE OF THE OFFERING AND PRIOR TO SALE, EACH PROSPECTIVE INVESTOR AND SUCH INVESTOR'S PURCHASER REPRESENTATIVE(S), IF ANY, ARE INVITED TO ASK QUESTIONS OF AND OBTAIN ADDITIONAL INFORMATION FROM THE COMPANY CONCERNING THE TERMS AND CONDITIONS OF THE OFFERING, THE COMPANY, THE BUSINESS AND OTHER RELEVANT MATTERS, INCLUDING, BUT NOT LIMITED TO, ADDITIONAL INFORMATION TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH IN THIS MEMORANDUM. THE COMPANY WILL PROVIDE SUCH ADDITIONAL INFORMATION TO THE EXTENT IT POSSESSES IT OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE.

PROSPECTIVE INVSETORS ARE INVITED TO ASK QUESTIONS AND REQUEST ADDITIONAL INFORMATION BY CONTACTING THE MANAGER AT:

CAL NEVA LODGE, LLC
Attn: Robert Radovan
c/o CR Cal Neva, LLC
1336-D Oak Street
St. Helena, CA 94574
Telephone: 707-963-0313
Email: Robert@CriswellRadovan.com

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Exhibits

"A"	-	Operating Agreement
"B"	-	Business Plan

INVESTOR SUITABILITY STANDARDS

This is a private offering that is being made only by delivery of a copy of this Memorandum. Sales of the Units will be made only to investors who are "accredited investors" as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended.

Accredited Investors

Accredited Investors are those prospective investors who meet at least one of the following standards or others set forth in Rule 501(a) of Regulation D, which are described in more detail in the Purchaser Questionnaire:

- (a) The investor is a natural person and such investor's Net Worth (as defined below) either individually or jointly with such investor's spouse, exceeds \$1,000,000 (*excluding* the value of such investor's primary residence);
- (b) The investor is a natural person who has had Individual Income (as defined below) from all sources, without including any income of such investor's spouse, in excess of \$200,000, or with such investor's spouse of \$300,000, in each of the two most recent years and reasonably expects to have Individual Income in excess of \$200,000 or \$300,000, as applicable, in the current year;
- (c) Any entity (a partnership, limited liability company, corporation, trust or unincorporated association) in which all of the equity owners of that entity qualify as Accredited Investors. A trust will qualify as an Accredited Investor if: (x) it is an irrevocable trust and it qualifies under clause (c) below; or (y) it is a revocable trust and each person with the power to revoke the trust qualifies under clause (a) or (b) above;
- (d) A corporation or a partnership, not formed for the specific purpose of acquiring the Units, that has total assets in excess of \$5,000,000;
- (e) A trust, not formed for the specific purpose of acquiring the Units, that has total assets in excess of \$5,000,000 and is directed by a sophisticated person as defined in Rule 506(b)(2) of Regulation D; or
- (f) Any Director or executive officer of the Company.

As used in the foregoing description, the term "Net Worth" means the excess of total assets at fair market value over total liabilities, and the term "Individual Income" means adjusted gross income, as reported for Federal Income Tax purposes, less any income attributable to a spouse or to a property owned by a spouse unless such spouse is a co-investor, increased by the following amounts (but not including any amounts attributable to a spouse or to property owned by a spouse unless such spouse is a co-purchaser): (i) the amount of any interest income received which is tax-exempt under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"); (ii) the amount of losses claimed as a limited partner in a limited partnership (as reported on Schedule E of Form 1040); (iii) any deduction claimed for depletion under Section 611 et seq. of the Code; and (iv) any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income pursuant to the provisions of Section 1202 of the Code.

Each prospective investor will be required to represent that such prospective investor is acquiring the Units for such prospective investor's own account or for a fiduciary account for which the prospective investor either directly or indirectly supplies the funds, for investment, and not with any intention of making a distribution or resale of such securities either in whole or in part.

The Company reserves the right to declare any prospective investor ineligible to purchase Units based on information provided (or not provided) in the Subscription Agreement and Purchaser Questionnaire or on any other

information which may become known or available to the Company concerning the suitability of such prospective investor or for any other reason.

In the case of fiduciary accounts, the net worth and/or income suitability requirements must be met by the beneficiary of the account, or by the fiduciary, if the fiduciary directly or indirectly provides funds for the purchase of the Units. In order to create an Individual Retirement Account, a person must comply with the provisions of Section 408 of the Code and an investment in the Units does not, in and of itself, create an Individual Retirement Account for any person.

SUMMARY OF THE OFFERING

THE INFORMATION SET FORTH BELOW IS INTENDED TO SUPPLY, IN SUMMARY FORM, CERTAIN INFORMATION AND HIGHLIGHTS FROM THE MATERIAL CONTAINED IN THIS MEMORANDUM AND SHOULD BE READ IN CONJUNCTION WITH, AND IS QUALIFIED BY, THE DETAILED INFORMATION APPEARING ELSEWHERE IN THIS MEMORANDUM. ANY CAPITALIZED TERMS CONTAINED HEREIN WHICH ARE NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN THE COMPANY'S OPERATING AGREEMENT ATTACHED HERETO AS EXHIBIT A (THE "OPERATING AGREEMENT").

The Company

CAL NEVA LODGE, LLC is a Nevada limited liability company. The Company's address and telephone number are c/o CR Cal Neva, LLC, 1336-D Oak Street, St. Helena, CA 94574; (707) 963-0313. The address of the Company's Development Office is 2 State Line Road, Crystal Bay, NV 89402..

Overview

The Company has been formed to complete the purchase certain real property located in Crystal Bay, Nevada and the related business known as the "Cal Neva Resort, Spa and Casino" (referred to herein as the "Property"); to exercise all rights, powers, privileges, and other incidents of ownership or possession with respect to the Property; to enter into, make, and perform all contracts and other undertakings; and to engage in other related activities.

Management

The Company is manager managed and, except with respect to certain "Major Decisions," management and control of the Company is vested exclusively in the Manager of the Company. The Manager of the Company is CR Cal Neva, LLC, a Nevada limited liability company. The Manager may not be removed without the unanimous consent of all Members. The Manager and the Members also will appoint a five (5) member Executive Committee to make Major Decisions. The Executive Committee's power is limited to making Major Decisions. Major Decisions require approval of four (4) out of five (5) members of the Executive Committee.

The Offering

The Company is offering for sale up to twenty (20) Units (\$20,000,000) of membership interests in the Company for a purchase price of \$1,000,000 per Unit. The Minimum Offering Amount is fourteen (14) Units (\$14,000,000). The minimum investment is one (1) Unit, or \$1,000,000. Subscriptions for the Units will be accepted only from prospective investors who are "accredited investors." Investors

- (iii) **PRO RATA RETURN:** To all Members *pro rata* based upon the Percentage Interest owned by each such Member.
- (iv) 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 the Preferred Members is less than forty percent (40%) of the Capital Contributions made by the Preferred Members, each Preferred Member shall be entitled to receive additional distributions of Preferred Returns, prior to any distributions to the other Members, in an amount equal to the difference between 40% of the Capital Contributions made by each Preferred Member minus the total Preferred Returns received by each Preferred Member. After such additional distributions have been paid to the Preferred Members, distributions shall then be made. Preferred Returns to each Preferred Member shall thereafter continue 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.
- (v) Schedule 4.1 of the Operating Agreement also provides that the Common 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 ten percent (10%) Percentage Interest also has been reserved for a mezzanine lender.

Allocations of Income and Gain

Allocations of the Company's income, gain and for tax and financial purposes will be made in a manner which will be consistent with, and will give effect to, the distribution provisions outlined above.

Reports to Members

The Company information necessary for the preparation of the Federal income tax returns of the investors will be furnished to each Member within ninety (90) days after the end of each year. If there are more than thirty-five (35) Members, the Company will also send to each Member, within one hundred twenty (120) days after the end of each year, an annual report containing financial statements of the Company and a report of the activities of the Company during such year.

Tax Considerations

An investment in the Company is not expected to yield significant tax benefits for a typical investor, and an investor solely seeking such benefits should not invest in the Company. Nevertheless, investment in the Company requires careful consideration of tax consequences and the risks attendant thereto. See "RISK FACTORS - Federal Income Tax Risks." EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT WITH SUCH PROSPECTIVE INVESTOR'S OWN TAX ADVISOR IN ORDER TO FULLY UNDERSTAND HOW SUCH CONSEQUENCES AND RISKS AFFECT SUCH PROSPECTIVE INVESTOR'S PARTICULAR SITUATION.

**Limitation on Transfer
of Units**

There is currently no public market for the Units, and it is highly unlikely that such a market will develop. The Units have not been registered under the Securities Act of 1933, as amended (the "Act"), or the securities laws of any state, and may not be transferred or resold except as permitted under the Act and such state law pursuant to registration or exemption therefrom. Further, the transferability of the Units will be subject to certain significant restrictions imposed by the Operating Agreement. See "SUMMARY OF THE OPERATING AGREEMENT - Limited Transferability of the Units," and "RISK FACTORS."

Compensation to the Manager

The Manager will not receive any compensation for the Manager's services to the Company. Any decision to provide the Manager with compensation at a later date shall be deemed a Major Decision and will be subject to approval of the Executive Committee. In addition, an affiliate of the Manager may receive fees in the amount of \$60,000 per month for services provided under a Development Services Agreement to be entered into post-closing. Such development fees will not to exceed \$1,200,000. Once the Property is developed, an affiliate of the Manager also may enter into a Hotel Management Agreement. The Development Services Agreement and the Hotel Management Agreements will be negotiated at arm's length utilizing outside independent counsel. See "COMPENSATION AND FEES."

Conflict of Interest

The Company may be subject to various conflicts of interest given that its Manager have other business interests and investments which include real estate. See "CONFLICTS OF INTEREST."

THE BUSINESS

The Company has been formed to purchase certain real property located in Crystal Bay, Nevada and the related business known as the "Cal Neva Resort, Spa and Casino" (referred to herein as the "Property"). Criswell Radovan, LLC through affiliate Cal Neva Lodge, LLC, bought the Property in April 2013 from Canyon Capital, who had taken it back in foreclosure in 2009. In connection with the purchase, Canyon Capital agreed to take passive preferred equity in the venture. Criswell Radovan, LLC also obtained bridge financing of \$6 million which it used as the equity to close on the Property and complete the entire pre-development phase on the Property. While that acquisition and pre-development financing was relatively expensive, it allows the new equity investors to invest at an unusually low risk level for a development opportunity. The Property (effectively purchased for an acquisition price of \$13,000,000) includes all real property, the hotel and restaurant business (with liquor and gaming licenses), all inventory, furnishings and equipment used in the operations of the business and all intellectual property (names, logos and website).

The Property—Cal Neva Resort, Spa and Casino

The Cal Neva Resort, Spa and Casino was founded in the early 1926. It is the oldest casino in the U.S. and the hotel saw its heyday in the 1960s when it was owned by Frank Sinatra and became a popular destination among the Hollywood and political elite. The Property will feature 191 guest rooms among its tower, chalets, and cabins. It also enjoys a non-restricted gaming license for a 17,000 square foot casino; 16,000 feet of meeting space, a full service spa, a 350 seat showroom, the famous Circle Bar, Press Restaurant, and a Dean & DeLuca market.

Set on almost 14 acres overlooking Lake Tahoe, the Property has just over 9 acres in Nevada and 4.5 acres in the State of California in the North Shore area of Lake Tahoe. It is a 45 minute drive from the Reno-Tahoe airport, about 3.5 hours by car from San Francisco, and about 90 minutes by car from Sacramento. In addition to being less than 400 feet from the water, the Cal Neva is within 30 minutes of the Northstar, Squaw, Incline, and Alpine Meadows ski areas, as well as several smaller ski resorts such as Diamond Peak at Incline Village.

While the building needs cosmetic improvements and a complete re-launch of the management and marketing of the property, there are no known structural issues of concern, and the previous owner spent over \$10,000,000 upgrading all of the kitchen and service areas to support group business. The cost of the recent upgrades alone roughly matches the price to buy the entire property.

For additional information regarding the Property (Cal Neva Resort, Spa and Casino), see "Business Plan" attached hereto as Exhibit B.

Business Summary

The Cal Neva Resort, Spa and Casino enjoys a strong sense of place and identity created by its high-profile history of close to ninety (90) years. The Company believes that one of the most striking things about this opportunity is the nostalgia and popularity it enjoys throughout the San Francisco bay area and the northern California region. This is not just a rooms upgrade to take market share from competitors – the notion of "bringing back the Cal Neva" has an immediate resonance with people, and done right, the Company believes it could be a game-changer in the North Lake Tahoe Market. There is nothing in the market with the kind a character that this hotel offers, and the ability to bring music and other major live entertainment as well as upscale gambling entertainment to an otherwise sleepy night-life scene in North Lake Tahoe, gives it a market niche all to itself. The Property also has been offered the opportunity to become a member of the Starwood Luxury Collection. The Company believes that this would give the Property the power to utilize the Starwood network for reservations, marketing, and group sales, while permitting it to keep its historic identity.

The Company believes that based on the very good structural and "back of house" condition of the Property, the hotel can be renovated and re-opened for about \$32 million renovation cost, with twelve approximately

(12) months for the upgrade. The Company anticipates that the project will initially be capitalized with \$20,000,000 of equity and \$35,000,000 of debt.

A financial forecast for the Property anticipates return of Investor principal in four (4) years, total Project revenue in excess of \$90,000,000 (or a 4.5 times equity multiple) if the Property is sold in year seven of operations, before any contribution from Phase II condo units and a long-term annuity stream of between \$2,000,000-2,500,000 if the Property is held beyond year seven. The Company anticipates, but cannot guarantee, that such *pro forma* financial results will be met or that the Property will be offered for sale at the end of year seven. For additional information regarding the Company, historical and *pro forma* financial information and the Business Operating Plan for the Property, see the Company's Business Plan attached hereto as Exhibit B.

Management

The Company is managed by the Manager in accordance with the Operating Agreement. Manager is an affiliate of Criswell Radovan, LLC. The Criswell Radovan team was chosen to pursue this opportunity based on its track record in the luxury hotel space, including several significant historic rehabilitations. The Ritz Carlton in San Francisco and the Aetna Springs project in Napa Valley (currently in development) show Criswell Radovan's understanding of both the creative sensitivity in planning as well as the marketing power of restoring these historic hotels. Criswell Radovan's work on the Calistoga Ranch project in Napa Valley (ranked #1 hotel in California and #5 in the U.S. by U.S. News and World Report) in addition to those other properties demonstrates its success in developing one-of-a-kind properties in markets with very high barriers to entry.

For additional information regarding Management of the Company, see the Company's Operating Agreement attached hereto as Exhibit A and the Company's Business Plan attached hereto as Exhibit B.

Legal Proceedings

The Company is not a party to any material pending legal proceeding.

COMPENSATION AND FEES

Subject to Section 8.3 of the Operating Agreement regarding approval of Major Decisions including the approval of an Operating Budget and a Project Budget and approval of other payments, the Company may not pay to any Manager, Member of other person a salary as compensation for their services rendered to the Company.

Upon approval of the Executive Committee, pursuant to Section 7.4 of the Operating Agreement, the Company plans to enter into a Development Services Agreement with an affiliate of the Manager to oversee the development of the project (the "Developer"). It is anticipated that the Developer will receive a fee (the "Development Fee") in an amount of \$60,000 per month; provided that Development Fees will not to exceed \$1,200,000 in the aggregate. Following the completion of the redevelopment, the Company, upon approval of the Executive Committee, and pursuant to Section 7.3 of the Operating Agreement, plans to enter into a Hotel Management Agreement with day-to-day management of the Property to be performed by an affiliate of the Manager. In addition to being approved by the Executive Committee, the Development Services Agreement and the Hotel Management Agreement will be negotiated at arm's length utilizing outside independent counsel and will be terminable for cause.

For additional information regarding Compensation and Fees, see the Company's Operating Agreement attached hereto as Exhibit A and the Company's Business Plan attached hereto as Exhibit B.

ESTIMATED USE OF PROCEEDS

The following table illustrates the intended use by the Company of the proceeds of the Offering assuming sale of the Maximum Offering Amount. The figures contained in the table represent the estimates of the Manager. While the Manager believe that the Manager have adequately anticipated each category of the use of proceeds, certain reallocations may be necessary.

Payoff of Equity Bridge Financing	\$ 6,400,000
Payment to Canyon to Redeem Preferred Equity Interest	10,500,000
Reimbursement of Manager for Predevelopment Services/Expenses	300,000 ¹
Working Capital	<u>\$ 2,800,000</u>
TOTAL PROCEEDS	\$20,000,000

¹ Represents the net amount to be received by the Manager after taking into account reimbursement and reinvestment of \$1,000,000 by Criswell Radovan, LLC.

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

Lack of Company History. The executive officers and Manager have experience in the purchase, development and management of real property, the purchase and sale of businesses and the finance and sale of commercial real estate. However, the Company is newly formed and has not engaged in any substantial business prior to this Offering. There is no Company history or prior earnings upon which investors could evaluate the likely performance of the Company. Accordingly, the Company will be subject to all of the risks inherent in the creation of a new business.

Speculative Investment. There can be no assurance the Company will satisfy its business objectives. Furthermore, no assurance can be given to the Founding Members or the Preferred Members that they will realize a return on their investment, or that they will not lose their entire investment in the Company. For this reason, each prospective purchaser should carefully read this Memorandum and all exhibits hereto and should consult with such purchaser's attorney, business advisor, or investment advisor, if any. The Founding Members also will receive an option to purchase condos at a discount. Such condos have not been built and no assurance can be given that such condos will ever be built.

Reliance on the Company. The Founding Members and Preferred Members have the right to vote on Major Decisions. Except with respect to the foregoing, Members do not have voting rights and will be completely reliant on the Manager for management of the Company's affairs.

Conflicts of Interest. The Manager may be subject to certain conflicts of interest with respect to the Company relating to businesses in which the Manager may engage in the future which are similar to and competitive with the business conducted by the Company. See "CONFLICTS OF INTEREST."

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.

Risks Associated with the Property. The success of the Company will be directly dependent upon the success of the Property. The Property will be subject to the risks generally incident to niche, high end destination resort properties and to the hospitality business in general, including changes in economic or local condition, changes of supply of or demand for similar or competing properties, changes in average room rates and availability of rooms offered at discount or Internet rates at competing properties, changes in gas prices, the cost of airline travel or the value of the U.S. Dollar, changes in federal, state and local laws, rules and regulations impacting the Property

or access to the Property, changes in weather patterns or other environmental conditions, changes in tax, environmental or zoning laws and other factors beyond the control of the Company.

Competition and Pricing. The lodge/resort industry in which the Property competes is highly competitive, with competition coming primarily from other lodges, resorts, hotels and ranches that provide alternative accommodations, facilities and activities. While we believe that Cal Neva Resort, Spa and Casino is well positioned to compete, and that our newly rebuilt main lodge, luxury accommodations and Crystal Bay location present a significant advantage over competing properties, Cal Neva Resort, Spa and Casino has not been actively or efficiently marketed and has been closed for renovation since September 2013. As a result, it is uncertain whether achieved an acceptable level of occupancy can be sustained or whether the Property can successfully compete and prove viable within the marketplace. The Company, in addition, has identified several situations the occurrence of which may hinder its ability to successfully compete:

- Other competitive lodges/resorts may capture greater market attention or media buzz;
- Other competitive lodges/resorts/hotels may be reduce room rates in an effort to boost occupancy;
- Our accommodations may not meet evolving market tastes or needs; and
- The Company may not have the financial resources to pay for needed maintenance or additional capital improvements as market or other conditions may require.

Many of our competitors also have substantially greater financial, marketing, personnel and other resources than does the Company. There can be no assurance that the newly reopened Cal Neva Resort, Spa and Casino following its acquisition by the Company can be successfully re-launched and marketed. Competitive pressures could prevent us from growing, reduce our market share or require us to reduce room rates and restaurant prices, any of which could harm our business. The Company also may be required to adjust its rates and pricing due to seasonal demand or unexpected weather or environmental conditions. A lowering of rates and prices may have a material adverse impact on the financial condition and results of operations of the Company. See "Business Plan."

Delays in Implementing Business Operating Plan. Any delay in the implementation of the Business Operating Plan may cause the Company to incur additional costs and could impair the possible success of the Company. In particular, the Company will be purchasing, operating and holding the Property. While the Company intends to refinance the Property within three (3) years and sell the Property within ten (10) years, the inability to timely sell the Property as planned could greatly reduce the internal rate of return and the ability of the Company to repay all of the investors their Capital Contributions. In addition, any such delay will at least defer the receipt by the Preferred Members of any return on their Units, may jeopardize the viability of the Company and could result in a total loss of any investment in the Units.

Projections. The projected financial information contained herein or in the Company's Business Plan attached to this Memorandum as Exhibit B represents a projection of future events which may or may not occur. The projections are based on the estimates and assumptions set forth therein which may or may not prove to be accurate and should not be relied upon to indicate the actual results which might be obtained by the Company. No representation or warranty of any kind is given with respect to the accuracy of the projections. The actual results of future operations of the Company likely will vary from those set forth in the projections, and such variations may be material and adverse. The projections have been prepared by the Company's management and have not been reviewed or compiled by independent certified public accountants.

Investment Risks

Compensation to the Manager. The Manager and/or its affiliates may be entitled to receive compensation to be paid by the Company under certain circumstances. See "COMPENSATION AND FEES."

Restrictions on Transferability; No Market for Units. There currently exists no public market for the Units and it is highly unlikely that such a market will ever develop. A Preferred Member will only be able to sell the Units pursuant to exemptions from registration and qualification under applicable Federal and state securities laws, with an opinion of counsel acceptable to the Company to that effect. Further, the transferability of the Units is specifically restricted under the Operating Agreement. As a result of the foregoing, investors must bear the economic risk of an investment in the Units offered hereby for an indefinite period of time and may not be able to liquidate their investments in the event of an emergency or for any other reason.

Dissolution of Company. There is always a risk that the Company may be dissolved notwithstanding the desires of some, or all, of the Founding or Preferred Members.

Liability of the Preferred Members for Return of Distributions. Under applicable law, a Preferred Member who has received distributions from the Company, representing, in whole or in part, a return of such Preferred Member's Capital Contribution (distributions of cash in excess of profits) may be required to repay to the Company any sum not in excess of the amount of such return of capital plus interest, if the Company is unable to satisfy its liabilities to creditors who extended credit or whose claim arose before such return of capital.

Lack of Management Control by Investors. Investors will have very limited voting rights. The Founding Members and the Preferred Members do not have the right to take part in the management or control of the Company's business, which will be the sole responsibility of the Manager. Following the closing of the Offering, most day-to-day activities will be delegated to affiliates of the Manager who will perform development and hotel management services pursuant to a Development Services Agreement and a Hotel Management Agreement, respectively. Such agreements must be approved by the Executive Committee and will be terminable for cause.

Reports to the Founding and Preferred Members. The only information regarding the business of the Company that will be required to be prepared and made available to the Founding Members and the Preferred Members will be the reports described in the Operating Agreement.

Forward-Looking Statements. Certain statements contained in this Memorandum, including without limitation, statements containing the words "believes," "anticipates," "intends," "expects" and words of similar import, constitute "forward-looking statements." Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Company or industry results to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such factors include, among others, the following: general economic and business conditions, both domestic and foreign; industry and market capacity; liability and other claims asserted against the Company; competition; change in operating strategy or development plans; the ability to attract and retain qualified personnel; and other factors referenced in this Memorandum. Given these uncertainties, prospective investors are cautioned not to place undue reliance on such forward-looking statements. The Company disclaims any obligation to update any such factors or to publicly announce the result of any revisions to any of the forward-looking statements contained herein to reflect future events or developments.

Federal Income Tax Risks

General. The economic benefits of an investment in the Company are in part predicated on certain assumptions concerning the Federal income tax aspects of such an investment. However, there are various risks associated with the Federal income tax consequences of an investment in the Company, which are summarized below. This summary is not intended to be a substitute for careful tax planning, particularly since the income tax consequences of an investment in the Company are complex and will not be the same for all investors. **PROSPECTIVE INVESTORS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS WITH SPECIFIC REFERENCE TO THEIR OWN TAX SITUATIONS BEFORE INVESTING IN THE COMPANY.**

Tax Status of the Company and Tax Matters: No Tax Ruling or Opinion of Counsel. Although the Company believes that the Company will be treated as a Company for Federal income tax purposes, no ruling from the Internal Revenue Service (the "Service") or opinion of counsel has been or will be sought with respect to the status of the Company as a "partnership" for Federal income tax purposes, or with respect to the Federal income tax consequences of any assignment of the Units or with respect to the Federal income tax consequences of the Company's operations, including the tax treatment of income, gains or losses of the Company or any deductions or credits which the Company intends to take. In the event that the Company is classified as an association taxable as a corporation, the Members would be treated as shareholders of a corporation, with the result, among other things, that: (i) items of income, gain, loss, deduction and credit would not flow through to the Members to be accounted for on their individual Federal income tax returns; (ii) distributions would be treated as corporate distributions to the Members taxable to them as dividends, to the extent of the Company's current or accumulated earnings and profits; and (iii) the taxable income of the Company would be subject to the Federal income tax imposed on corporations in a manner that would reduce the amounts, if any, available for distribution to the Members.

Changes in Federal Tax Law. It should be emphasized that the Internal Revenue Code could be substantially amended (including amendments having retroactive effect) in a manner that could adversely affect an investment in the Units. Also, judicial decisions and administrative actions of the Treasury Department and the Service may have adverse effects on the interpretation of existing tax law. It is impossible to predict any changes in the tax law or the effect such changes could have on an investment in the Company.

Audit of the Company's Tax Returns. There is a possibility that the tax returns of the Company will be examined by the Service. Adjustments, if any, resulting from any such audit would require adjustments to the Members' personal income tax returns and might result in separate audits of the Member's own tax returns. Any such audit of a Member's return could result in proposed adjustments relating to non-Company items as well as of Company income or loss.

CONFLICTS OF INTEREST

The Company is subject to various conflicts of interest arising from its relationships with the Manager and its Affiliates. These conflicts include, but are not limited to, the following:

Compensation. While the Manager will not receive any compensation for the Manager's services to the Company, affiliates of the Manager will receive fees for development and hotel management services pursuant to a Development Services Agreement and a Hotel Management Agreement, respectively. Such agreements, as described above, must be approved by the Executive Committee and will be terminable for cause.

Other Activities of the Manager. The Manager may engage for the their own accounts, or for the account of others, including other entities which the Manager may form, in other business ventures, related to similar businesses, competitive or otherwise, and neither the Company nor any of the Preferred Members shall be entitled to any interest therein. The Operating Agreement expressly provides that the Manager will not be obligated to present to the Company any particular investment opportunity that comes to their attention, even if such opportunity is of a character which might be suitable for investment by the Company. Furthermore, the Manager will not have any duty to account to the Company for profits derived from any of the foregoing activities.

Lack of Separate Representation. The Company and the Common Member and the Manager are represented by the same counsel. The attorneys who perform services for the Company and the Common Member and Manager also perform services for certain affiliates of the Common Member and Manager. Legal counsel for the Company does not purport to act independently on behalf of the Investors, and does not represent the interests of either the Founding Members or the Preferred Members in connection with this Offering. It is anticipated that the representation of the Company and the Common Member and Manager by the same counsel will continue in the

future. If a dispute arises between the Company, the Common Member and the Manager, or if a majority of the Investor members of the Executive Committee request, the Manager will cause the Company to retain separate counsel for such matters as and when appropriate. Each Investor must rely upon such Investor's legal counsel for advice in connection with an investment in the Units.

Resolution of Conflicts of Interest. The Manager has not developed, and do not expect to develop, any formal process for resolving conflicts of interest. However, the Manager is subject to a fiduciary duty to exercise good faith and integrity in handling the affairs of the Company, which duty will govern its actions in all such matters. See "FIDUCIARY RESPONSIBILITY OF THE MANAGER." While the foregoing conflicts of interest could materially and adversely affect the Founding Members and the Preferred Members and the Company, the Manager, in the Manager's sole judgment and discretion, will attempt to mitigate such potential adversity by the exercise of its business judgment in an attempt to fulfill the Manager's fiduciary obligations. There can be no assurance that any such attempt will prevent the adverse consequences that may result from the numerous conflicts of interest. See "OTHER ACTIVITIES OF MANAGER."

FIDUCIARY RESPONSIBILITY OF THE MANAGER

The Manager is accountable to the Company as a fiduciary and consequently must exercise good faith and integrity in handling the Company's affairs.

The Manager has broad discretionary powers to manage the affairs of the Company under the terms of the Operating Agreement. Generally, actions taken by the Manager are not subject to vote or review by the Founding Members or the Preferred Members, except as required by statute. The Company must, on demand, give to any Founding Members or Preferred Member or such Founding Members' or Preferred Member's legal representative, true and full information concerning all Company affairs and each Founding Members or Preferred Member or such Founding Members' or Preferred Member's legal representative may inspect and copy certain of the Company's books and records at any time during normal business hours following reasonable notice to the Company as described in the Operating Agreement.

THE OFFERING

The Offering described herein consists of a total of up to a maximum of twenty (20) Units, with a minimum purchase of one Unit (\$1,000,000), at a purchase price of \$1,000,000 per Unit, to selected Investors who meet the suitability requirements established for this Offering. Investors will have an opportunity to become Founding Members and acquire Founders Units and/or Preferred Members and acquire Preferred Units. Of the total Units offered hereunder, the Company has stipulated that the Preferred Units and the Founders Units will not be created as a separate class unless a minimum of five (5) Units of that class are sold and that no more than fifteen (15) Founders Units will be issued and sold. It is anticipated that the closing of the Offering will occur on or before March 28, 2014, provided that on or before the Closing Date, Investors shall have subscribed for a minimum of fourteen (14) of the Units (\$14,000,000), which is the Minimum Offering Amount. The Founders Units and the Preferred Units will be offered on a best efforts basis. The Offering will terminate not later than April 30, 2014, unless extended by the Manager for up to 90 days.

All subscriptions, once accepted, will be deposited in an escrow account to be established at Powell Coleman & Arnold LLP. Unless subscriptions for fourteen (14) Units (\$14,000,000) have been received and accepted by the Manager by the Termination Date, all funds received from subscribers will be returned to them by the Company without interest.

Objectives

The principal investment objectives in order of priority are to: (1) protect the Members' Capital Contribution Amounts; and (2) provide for payment of the Preferred Return. HOWEVER, THERE CAN BE NO ASSURANCE THAT ANY OR ALL SUCH OBJECTIVES WILL BE ATTAINED.

Subscription Procedures

Each person wishing to subscribe for the purchase of Units will be required to execute a Subscription Agreement, a Founding Member/Preferred Member Signature Page and Power of Attorney and a Purchaser Questionnaire in the forms contained in the Subscription Booklet that accompanies this Memorandum. Each investor will be required to represent in the Subscription Agreement, among other things, that such investor is an "accredited investor," acquiring the Units for such investor's own account or for a fiduciary account for which the investor either directly or indirectly supplies the funds, for investment, and not with any intention of making a distribution or resale of such securities either in whole or in part. The Company reserves the right, in its sole discretion, to reject the subscription of any prospective investor.

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

- (1) A Subscription Agreement;
- (2) A Founding Member/Preferred Member Signature Page and Power of Attorney;
- (3) A Purchaser Questionnaire;
- (4) A Certificate of Nonforeign Status;
- (5) IRS Form W-9; and
- (6) Investor's Instructions to Escrow and Wire Transfer Information.

The failure to fully complete and execute each of the foregoing documents may result in the rejection, or a delay in the acceptance, of an investor's subscription.

By executing the Founding Member/Preferred Member Signature Page and Power of Attorney, the subscriber: (i) agrees, among other things, to all of the terms of the Operating Agreement; (ii) grants the Power of Attorney contained therein; and (iii) certifies to all the representations contained therein.

Acceptance of Subscriptions

Before the Company will accept a subscription for the Units offered hereby, it must determine that the investor meets the suitability standards set forth above under the caption "INVESTOR SUITABILITY STANDARDS."

Therefore, each prospective investor will be asked to complete a Purchaser Questionnaire contained in the Subscription Booklet that accompanies this Memorandum. Not more than ten (10) business days after the Company receives a completed and executed Subscription Agreement from a prospective investor, the Company will notify such investor whether such investor's subscription will be rejected. Amounts paid by a prospective investor whose subscription is rejected will be promptly returned without interest.

ERISA CONSIDERATIONS

Special considerations must be taken into account by the person ("Fiduciary") having responsibility regarding the investments of a tax-qualified retirement plan ("Qualified Plan"), an IRA or Keogh Plan subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") in determining whether to invest a portion of the IRA's, the Keogh Plan's or the Qualified Plan's assets in the Company. Qualified Plans subject to ERISA include, but are not limited to pension, profit sharing, stock bonus, or other tax-qualified retirement plans. IRAs and Keogh Plans are also subject to ERISA.

General Fiduciary Duties

ERISA requires that the Fiduciary handle the investments of a Qualified Plan with the care, skill, prudence, and diligence that a prudent man would use under the same circumstances. Specifically, ERISA requires that the Fiduciary make the following determinations (among others): (i) whether the investment is made solely in the interests of the plan participants; (ii) whether the investments of the plan are adequately diversified; (iii) whether the investment is made in accordance with the documents and instruments governing the plan; (iv) whether the investment complies with the plan's need for liquidity and return, which must necessarily take into account whether the income the plan receives will be subject to the tax on unrelated business taxable income (See "Unrelated Business Taxable Income" below); and (v) whether the investment would constitute a "prohibited transaction" under the provisions of ERISA or of the Code.

THIS DISCUSSION IS NOT INTENDED TO BE A LIST OF ALL OF THE DETERMINATIONS THAT A FIDUCIARY MUST MAKE PRIOR TO AUTHORIZING A PLAN TO INVEST IN THE COMPANY, AND IS A GENERAL DISCUSSION OF CERTAIN ISSUES THAT MAY AFFECT A FIDUCIARY'S DECISION WHETHER TO INVEST IN THE COMPANY.

Plan Asset Regulations

Under ERISA, certain requirements apply with respect to the assets of an IRA, Keogh Plan or Qualified Plan. For example, ERISA and the Code prohibit an IRA, Keogh Plan or Qualified Plan from engaging in certain "prohibited transactions" involving plan assets with people or entities which are labeled "parties in interest" under ERISA or "disqualified persons" under the Code with respect to that plan. Also, any person having authority or discretion regarding the management or disposition of plan assets may be a Fiduciary, and therefore be held to the special standards of fiduciary responsibility contained in ERISA, including liability for certain breaches of fiduciary responsibility by other Fiduciaries. Thus, if the assets of the Company constitute plan assets, the person who has responsibility for the management of the Company's assets has been a Fiduciary of each Qualified Plan that invests in the Company, and the Fiduciaries of the investing Qualified Plans could be subject to co-fiduciary liability under ERISA for breaches committed by that person or for an improper delegation of investment authority to that person.

Neither ERISA nor the Code defines the term "plan assets." The Department of Labor, however, has issued ERISA Interpretive Bulletin 75-2 ("IB 75-2"), which provides that an investment by a Qualified Plan in securities of a corporation or a Company generally will not result in the underlying assets of the corporation or Company being treated as plan assets for purposes of the prohibited transaction rules solely by reason of such investment. Under the guidelines of IB 75-2, then, the assets of the Company normally would not constitute assets of a Qualified Plan that invests in the Company for purposes of the prohibited transaction rules.

Fiduciaries of Qualified Plans should be aware that, subsequent to the promulgation of IB 75-2, the Department of Labor has issued final regulations (Regulation 29 C.F.R. Section 2510.3-101, published on November 13, 1986 at 51 Fed. Reg. 41262) defining what constitutes plan assets ("Plan Asset Regulations"). The Plan Asset Regulations provide, among other things, that a Company's assets will not be plan assets if: (i) benefit plan investors, in the aggregate, own less than 25% of the value of membership interests; or (ii) if the Company is an operating company. The Company does not intend to limit plan investors to the percentage set forth in (i), above. An operating company is an entity that is primarily engaged in the production or sale of a product or service other than the investment of capital. More likely than not the Company will be deemed to be an operating company, and therefore its assets should not be deemed to be plan assets under the Plan Asset Regulations. If, pursuant to the Plan Asset Regulations, any investment in the Company were considered to be an investment in the underlying Company assets, prohibited transactions could arise under ERISA and the Code, investment by a Fiduciary of an IRA, Keogh Plan, or Qualified Plan could be deemed an improper delegation of investment authority, and the Fiduciary could be liable either directly, or under the co-fiduciary rules of ERISA, for the acts of the Company. Accordingly, an IRA, Keogh Plan or Qualified Plan Fiduciary is urged to consult its legal counsel with respect to investment in the Units.

Unrelated Business Taxable Income

IRAs, Keogh Plans and Qualified Plans are generally exempt from Federal income taxation on their income. This exemption from tax does not apply, however, to the extent that the "unrelated business taxable income" ("UBTI") of the Qualified Plan exceeds \$1,000 during any fiscal year of the entity. It is believed that, subject to certain exceptions, income from the Company would constitute UBTI.

THE ABOVE DISCUSSION RELATING TO UBTI IS GIVEN AS GENERAL INFORMATION ONLY, NOT AS ADVICE AS TO HOW ANY PARTICULAR IRA, KEOGH PLAN OR QUALIFIED PLAN WOULD BE TAXED UNDER THE UBTI RULES. IRAS, KEOGH PLANS AND QUALIFIED PLANS SHOULD CONSULT THEIR TAX ADVISER REGARDING THE APPLICATION OF THE UBTI RULES TO THEIR PARTICULAR CIRCUMSTANCES, INCLUDING THE EFFECT AND APPLICABILITY OF STATE, LOCAL, AND OTHER TAX LAWS.

Valuation of Units

ERISA requires that the assets of a plan be valued at their fair market value as of the close of the plan year. It may not be possible to adequately value the Units from year to year, since there may not be a market for them.

SUMMARY OF THE OPERATING AGREEMENT

THE FOLLOWING IS A SUMMARY OF THE OPERATING AGREEMENT. SUCH SUMMARY IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE OPERATING AGREEMENT, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A. IT IS RECOMMENDED THAT EACH PROSPECTIVE INVESTOR READ THE OPERATING AGREEMENT IN FULL. CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS MEMORANDUM SHALL HAVE THE MEANING GIVEN TO THEM IN THE OPERATING AGREEMENT.

Nature of the Company

The Company is a limited liability company formed under the laws of the State of Nevada on March 13, 2013. The Operating Agreement authorizes the issuance and sale of up to twenty (20) Founders Units and Preferred Units for \$1,000,000 per Unit. The Minimum Offering Amount is fourteen (14) Units (\$14,000,000). The minimum investment is one Unit, or \$1,000,000; provided, however, that the Company reserves the right to sell partial Preferred Units.

Capital contributed to the Company by a purchaser of the Units is subject to the risks of the Company's business. Except as specifically provided in the Operating Agreement, no Member is permitted to take any part in the management or control of the business and may not be assessed for additional capital contributions. Assuming that the Company is operated in accordance with the terms of the Operating Agreement, a Member will not be liable for the liabilities of the Company in excess of such Member's Capital Contribution and share of undistributed profits. Notwithstanding the foregoing, a Preferred Member will be liable for any Distributions made to such Preferred Member if, after such Distributions, the remaining assets of the Company are not sufficient to pay its then outstanding liabilities, exclusive of liabilities of the Preferred Members on account of their Capital Contribution Amounts, and liabilities for which recourse is limited to specific Company assets.

Responsibilities of the Company

Subject to approval of Major Decisions by the Executive Committee, the Manager has the exclusive management and control of all aspects of the business of the Company. Subject to the foregoing, in the course of its management, the Manager may, in its absolute discretion, acquire, encumber, hold title to, pledge, sell, release, or otherwise dispose of real and personal property and interests therein when and upon such terms as it determines to be in the best interests of the Company and employ such persons, including, under certain circumstances, affiliates of the Manager, as the Manager deem necessary for the efficient operation of the Company.

Liabilities of Preferred Members / Assessability of Interests

The Operating Agreement provides that the Members shall not be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Company.

Term and Dissolution

The term of the Company will continue until December 31, 2063, unless dissolved in accordance with the Operating Agreement.

Voting Rights of Members

As set forth in the Operating Agreement, the Members have a limited right to vote on Major Decisions.

Limited Transferability of Units

Founding Members and Preferred Members have the right to assign, transfer or sell the Founding Units and the Preferred Units only in accordance with the provisions of the Operating Agreement. No assignment shall be effective if the assignment would violate the provisions of any applicable state or federal securities law, and the Company may require the transferor to provide to the Company an opinion of counsel satisfactory to the Company to that effect.

Preferred Return

The Preferred Members shall receive a "Preferred Return" in an amount equal to 10% per annum, calculated on an annual basis, non-compounded, on the amount of all Capital Contribution Amounts actually received by the Company in cash for which Preferred Units were issued. 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 the Preferred Members is less than forty percent (40%) of the Capital Contributions made by the Preferred Members, each Preferred Member shall be entitled to receive additional distributions of Preferred Returns, prior to any distributions to the other Members, in an amount equal to the difference between 40% of the Capital Contributions made by each Preferred Member minus the total Preferred Returns received by each Preferred Member. After such additional distributions have been paid to the Preferred Members, distributions shall then be made. Preferred Returns to each Preferred Member shall thereafter continue 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.

Distributions

Distributions of cash received from operations or the sale or refinance of the Property shall be distributed as follows:

- (vi) **10% PREFERRED RETURN:** 100% to the Preferred Members *pro rata* based upon the Percentage Interest owned by each such Preferred Member until the Preferred Members have received cumulative Distributions equal to the 10% annualized Preferred Return, non-compounded; and thereafter
- (vii) **RETURN OF INVESTMENT:** 100% to all Members *pro rata* based upon the Percentage Interest owned by each such Member until the Members have received cumulative Distributions equal to the Members' Capital Contributions; and thereafter
- (viii) **PRO RATA RETURN:** To all Members *pro rata* based upon the Percentage Interest owned by each such Member.

- (ix) 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 the Preferred Members is less than forty percent (40%) of the Capital Contributions made by the Preferred Members, each Preferred Member shall be entitled to receive additional distributions of Preferred Returns, prior to any distributions to the other Members, in an amount equal to the difference between 40% of the Capital Contributions made by each Preferred Member minus the total Preferred Returns received by each Preferred Member. After such additional distributions have been paid to the Preferred Members, distributions shall then be made. Preferred Returns to each Preferred Member shall thereafter continue 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.
- (x) Schedule 4.1 of the Operating Agreement also provides that the Common 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 ten percent (10%) Percentage Interest also has been reserved for a mezzanine lender.

Allocations of Income and Loss

Allocations of Company income, gain and for tax and financial purposes will be made in a manner which will be consistent with, and will give effect to, the distribution provisions outlined above.

The Manager' Independent Activities

The Operating Agreement provides that the Manager (as well as any Founding Member or Preferred Member) and any of their Affiliates may engage in or possess any interest in other business ventures of every nature and description, whether such ventures are competitive with the Company or otherwise. Thus, the Manager or any of their Affiliates may engage independently in any other business. (See "RISK FACTORS - Conflicts of Interest.")

Books and Records

At all times during the term of the Company, the Company will keep true and accurate books of account of all the financial activities of the Company. These books of account will be kept open for inspection by the Members or their representatives at any time during normal business hours following reasonable notice given to the Company. The Manager may make such elections for Federal and state income tax purposes as the Manager deem appropriate and the fiscal year of the Company will be the calendar year unless changed by the Manager with the consent of the Commissioner of the Internal Revenue Service.

Reports

If there are more than 35 Members, the Company will send to each Member, within 120 days after the end of each of the Company's fiscal years, an annual report, prepared at the Company's expense, containing a balance sheet, statement of income or loss and statement of changes in financial position. The financial statements included in the annual report may, at the discretion of the Company, be unaudited.

The Company shall send to each Member within 90 days after the end of each taxable year the information necessary for the Member to complete its Federal and state income tax or information returns.

Appointment of the Manager as Attorney-in-Fact

Under the Operating Agreement, each Founding Member and Preferred Member irrevocably constitutes and appoints the Manager as such Founding Member's or Preferred Member's true and lawful attorney-in-fact, with full power and authority in such Founding Member's or Preferred Member's name, place and stead to make, execute acknowledge and file the certificates and other instruments described therein. This power of attorney does not grant the authority to amend or modify the Operating Agreement except as otherwise permitted therein (*See* Founding Member/Preferred Member Signature Page and Power of Attorney contained in the Subscription Booklet).

ADDITIONAL INFORMATION

In the opinion of the Manager, this Memorandum contains a fair summary of the documents referred to herein and does not omit a material fact or contain a misstatement of a material fact or fail to state a material fact necessary to make any statements made herein not misleading. Persons to whom offers are made will be furnished with such additional information concerning the Company and the other matters discussed herein as they, or their representatives or advisors, may reasonably request. The Company will, to the extent the Company possesses such information or can acquire it without unreasonable effort or expense, endeavor to provide such information to such persons. All prospective investors are urged to make such personal investigations, inspections or inquiries as they deem appropriate.

OPERATING AGREEMENT

[attached hereto]

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Exhibit A

Partial Document

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

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, President

By: _____

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Schedule 4.1

MEMBERS AND INTERESTS

As of _____, 2014

<u>Members</u>	<u>Business, Residence or Mailing Address</u>	<u>Percentage Owned</u>
1. PREFERRED MEMBERS		
(a) _____		
(b) _____		
(c) _____		
2. FOUNDER MEMBERS		
(a) _____		
(b) _____		
(c) _____		
3. SPONSOR MEMBER		
CR Cal Neva, LLC	1336-D Oak Street St. Helena, California 94574	20%
4. MEZZANINE LENDER		
_____	_____ _____	10%

Schedule 4.2

INITIAL CASH CAPITAL CONTRIBUTIONS

CR

\$ _____

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 March 31, 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.

BUSINESS PLAN

[attached hereto]

000538

Exhibit B

000538

EXHIBIT 19

000539

000539

EXHIBIT 19

Re: Cal Neva

5/26/16 9:37 AM

From: Stuart Yount <syount@fortifiber.com>

To: Dave Marriner <marrinertahoe@aol.com>

Subject: Re: Cal Neva

Date: Mon, Aug 3, 2015 12:32 pm

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

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

RE:

5/26/16 9:36 AM

From: Stuart Yount <syount@fortifiber.com>
To: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
Cc: Dave Marriner <marrinertahoe@aol.com>

Subject: RE:

Date: Wed, Jul 29, 2015 12:39 pm

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

Re: Cal Neva

5/26/16 9:34 AM

From: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
 To: Stuart Yount <syount@fortifiber.com>
 Cc: Dave Marriner <marrinertahoe@aol.com>; Heather Hill <Heather@CRISWELLRADOVAN.COM>
 Subject: Re: Cal Neva
 Date: Sun, Jul 26, 2015 9:54 am

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

RR

Sent from my iPhone

> On Jul 26, 2015, at 7:40 AM, Stuart Yount <syount@fortifiber.com> wrote:

> How do the state taxes to the investors on their 10% interest, distributions & eventual sale of their interest in Cal Neva split between California & Nevada?

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

>> On Jul 25, 2015, at 11:39 AM, Robert Radovan <Robert@CRISWELLRADOVAN.COM> wrote:

>>
 >> Yes and the Fairwinds is included.
 >>
 >> Thanks,
 >>
 >> Robert

>>
 >>
 >>
 >> Sent from my iPhone

>>> On Jul 25, 2015, at 11:04 AM, Stuart Yount <syount@fortifiber.com> wrote:

>>>
 >>> All very interesting. Many thanks.

>>>
 >>> Does a \$1m investment currently equal 3.3% ownership in the entire Cal Neva project, including the Fairwinds?

>>>
 >>> Stuart Yount
 >>> Chairman & CEO

Re: Cal Neva

5/26/16 9:33 AM

From: Stuart Yount <syount@fortifiber.com>
To: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
Cc: Dave Marriner <marrinerlahoe@aol.com>; Heather Hill <Heather@CRISWELLRADOVAN.COM>
Subject: Re: Cal Neva
Date: Sun, Jul 26, 2015 7:51 am

I believe the Developer has 20% ownership & the \$20,000 Founding investors own 66%. So, who owns the remaining 14%? Thanks.

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

> On Jul 26, 2015, at 7:38 AM, Stuart Yount <syount@fortifiber.com> wrote:

>

> How do the state taxes to the investors on their 10% interest, distributions & eventual sale of their interest in Cal Neva split between California & Nevada?

>

> Stuart Yount
 > Chairman & CEO
 > FORTIFIBER CORPORATION
 > 300 State Route 28
 > Box 308
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 > (775) 843-0486

>

>> On Jul 25, 2015, at 11:39 AM, Robert Radovan <Robert@CRISWELLRADOVAN.COM> wrote:

>>

>> Yes and the Fairwinds is included.

>>

>> Thanks,

>>

>> Robert

>>

>>

>>

>> Sent from my iPhone

>>

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>>>

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Re: Cal Neva

5/26/16 9:33 AM

Fairwinds?

>>>

>>> 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: Saturday, July 25, 2015 10:11 AM

>>> To: Stuart Yount <syount@fortifiber.com>

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

>>> <Heather@CRISWELLRADOVAN.COM>

>>> 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

Re: Cal Neva

5/26/16 9:33 AM

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

>>>

>>>

>>>

Re: Cal Neva

5/26/16 9:32 AM

From: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
 To: Stuart Yount <syount@fortifiber.com>
 Cc: Dave Marriner <marrinertahoe@aol.com>; Heather Hill <Heather@CRISWELLRADOVAN.COM>
 Subject: Re: Cal Neva
 Date: Sat, Jul 25, 2015 11:40 am

Yes and the Fairwinds is included.

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Sent from my iPhone

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> Stuart Yount

> Chairman & CEO

>

> 300 State Route 28

> Box 308

> Crystal Bay, NV 89402

> (775) 843-0486

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> Sent: Saturday, July 25, 2015 10:11 AM

> To: Stuart Yount <syount@fortifiber.com>

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> Subject: Cal Neva

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> Cheers,

>

> Robert

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

25

25

1 **1520**

2 Martin A. Little, Esq., NV Bar No. 7067

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

4 **Howard & Howard Attorneys PLLC**

5 3800 Howard Hughes Pkwy., Ste. 1000

6 Las Vegas, NV 89169

7 Telephone: (702) 257-1483

8 Facsimile: (702) 567-1568

9 E-Mail: mal@h2law.com; av@h2law.com10 *Attorneys for Criswell Radovan, LLC, CR Cal Neva, LLC,*11 *Robert Radovan, William Criswell, Cal Neva Lodge, LLC,*12 *and Powell, Coleman and Arnold LLP*13 **IN THE SECOND JUDICIAL DISTRICT COURT OF**14 **THE STATE OF NEVADA IN AND FOR THE**15 **COUNTY OF WASHOE**16 GEORGE STUART YOUNT, Individually and
17 in his Capacity as Owner of GEORGE
18 STUART YOUNT IRA,

19 Plaintiff,

20 vs.

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

Defendants.

CASE NO.: CV16-00767

DEPT NO.: B7

**DECLARATION OF ROBERT
RADOVAN IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

///

///

///

///

///

Howard & Howard Attorneys PLLC
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
(702) 257-1483

000549

1 I Robert Radovan, declare:

2 1. I am one of the Defendants in the above-captioned matter. I have personal
3 knowledge of the matters set forth herein, except as stated on information and belief, which
4 matters I believe to be true.

5 2. I am a member of CR Cal Neva, LLC which owns \$2 million of the \$20 million
6 founder equity shares in the project.

7 3. CR Cal Neva believed it was selling one of its two equity founders shares to
8 plaintiff.

9 4. The share CR Cal Neva sold to plaintiff has the exact rights, obligations and
10 value as the last \$1.5 million founder share sold to Les Busick.

11 I declare under penalties of perjury under the laws of the state of Nevada that the
12 foregoing is true and correct.

13 DATED this 28 day of June, 2017.

14 
15 ROBERT RADOVAN
16
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Howard & Howard Attorneys PLLC
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
(702) 257-1483

000550

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**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STAT OF NEVADA**

AFFIRMATION

The undersigned attorney does hereby affirm that the preceding document:

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

- OR -

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

_____ A specific state or federal law, to wit:

(State specific state or federal law)

- OR -

For the administration of a public program

- OR -

_____ For an application for a federal or state grant

- OR -

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

Date: June 28, 2017

HOWARD & HOWARD ATTORNEYS, PLLC

By: _____

Alexander Villamar
Martin A. Little, Esq.
Alexander Villamar, Esq.
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
*Attorneys for Criswell Radovan, LLC,
CR Cal Neva, LLC, Robert Radovan,
William Criswell, Cal Neva Lodge, LLC,
and Powell, Coleman and Arnold LLP*

Howard & Howard Attorneys PLLC
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
(702) 257-1483

000551

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am employed in the County of Clark, State of Nevada, am over
3 the age of 18 years and not a party to this action. My business address is that of Howard &
4 Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada,
5 89169.

6 On this day I served the foregoing **DECLARATION OF ROBERT RADOVAN IN**
7 **SUPPORT OF MOTION FOR SUMMARY JUDGMENT** in this action or proceeding
8 electronically with the Clerk of the Court via the E-File and Serve system, which will cause this
9 document to be served upon the following counsel of record:

10 Richard G. Campbell, Esq.
11 The Law Office of
12 Richard G. Campbell, Jr., Inc.
13 200 South Virginia Street, 8th Floor
14 Reno, NV 89502
15 Telephone: (775)-686-2446
16 Facsimile: (775) 997-7417
17 *Attorneys for Plaintiff*

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

18 I certify under penalty of perjury that the foregoing is true and correct, and that this
19 Certificate of Service was executed by me on June 28, 2015 at Las Vegas, Nevada.

20 
21 An Employee of HOWARD & HOWARD ATTORNEYS PLLC
22
23
24
25
26
27
28

Howard & Howard Attorneys PLLC
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
(702) 257-1483

000552

26

26

CODE: 1520

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.

**MARRINER'S DECLARATION OF COUNSEL AND VOLUME OF EVIDENCE IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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

DAVID MARRINER and MARRINER REAL ESTATE, LLC (collectively

1 "Marriner"), respectfully submit the following Declaration of Andrew N. Wolf, Esq., and
2 exhibits contained in the attached Volume of Evidence, in support of the concurrently filed
3 motion for summary judgment.

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

6 Dated: June 28, 2017.

7 INCLINE LAW GROUP, LLP

8 By: s/Andrew N. Wolf
9 ANDREW N. WOLF
10 Nevada State Bar No. 4424
11 Attorneys for Defendants DAVID MARRINER
12 and MARRINER REAL ESTATE, LLC
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**DECLARATION OF ANDREW N. WOLF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

ANDREW N. WOLF hereby declares per NRS 53.045 as follows:

1. I am the attorney of record in this lawsuit for defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC (collectively "Marriner"). I submit this declaration in support of Marriner's concurrently filed motion for summary judgment. I have personal knowledge of the facts and information stated herein and would so testify if called as a witness.

2. Attached collectively as **Exhibit "2"** hereto are true and correct copies of selected pages of the transcript of plaintiff GEORGE STUART YOUNT's deposition taken in this matter on June 6, 2017.

3. For the court's convenience, attached collectively as **Exhibit "1"** hereto are excerpts copied from the foregoing pages of Mr. Yount's Deposition (Exhibit "2") which are cited in, and otherwise relied upon, in Marriner's concurrently filed motion for summary judgment.

4. Attached hereto as **Exhibits "3"** through **"14"** are true and correct copies of certain selected exhibits attached to Mr. Yount's deposition, and **Exhibits "15"** through **"18"** are selected exhibits from other depositions taken in this matter which were referred to in Mr. Yount's deposition. In any places where pages of a large document are removed from an exhibit for sake of brevity, the removal of pages is clearly noted in the attached exhibits.

5. Attached hereto collectively as **Exhibit "19"** are true and correct copies of certain email correspondence produced by Marriner in this lawsuit.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing assertions of this declaration are true and correct. Executed this 28th day of June, 2017, at Incline Village, Washoe County, Nevada.

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



ANDREW N. WOLF

EXHIBIT LIST

Exhibit 1:	Excerpts from Yount Deposition	23 Pages
Exhibit 2:	Partial Transcript of Yount Deposition	29 Pages
Exhibit 3:	Yount Deposition Exhibit 51	2 Pages
Exhibit 4:	Yount Deposition Exhibit 53	3 Pages
Exhibit 5:	Yount Deposition Exhibit 54	2 Pages
Exhibit 6:	Yount Deposition Exhibit 56	2 Pages
Exhibit 7:	Yount Deposition Exhibit 57	3 Pages
Exhibit 8:	Yount Deposition Exhibit 58	2 Pages
Exhibit 9:	Yount Deposition Exhibit 59	2 Pages
Exhibit 10:	Yount Deposition Exhibit 60	3 Pages
Exhibit 11:	Yount Deposition Exhibit 61	3 Pages
Exhibit 12:	Yount Deposition Exhibit 62	2 Pages
Exhibit 13:	Yount Deposition Exhibit 63	2 Pages
Exhibit 14:	Yount Deposition Exhibit 72	2 Pages
Exhibit 15:	Marriner Deposition Exhibit 29	3 Pages
Exhibit 16:	Marriner Deposition Exhibit 26 (Partial Copy)	18 Pages
Exhibit 17:	Criswell Deposition Exhibit 2 (Partial Copy)	10 Pages
Exhibit 18:	Criswell Deposition Exhibit 1 (Partial Copy)	32 Pages
Exhibit 19:	Email correspondence produced by Marriner	10 Pages

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:

MARRINER'S DECLARATION OF COUNSEL AND VOLUME OF EVIDENCE IN SUPPORT OF MOTION FOR 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

000558

000558

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.

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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.

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- 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

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- 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.

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- 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

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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.

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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.

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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.

Page 155

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

Page 156

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

Page 157

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.

Page 158

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.

Page 169

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.

Page 170

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

Page 203

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.

Page 205

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.

Page 205

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.

Page 206

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?

Page 207

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."

Page 208

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?

Page 209

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

000581

000581

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, :
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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
19 Tuesday, June 6, 2017
20 Reno, Nevada
21
22
23
24
25

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

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1	APPEARANCES	1	INDEX (CONT'D)
2		2	
3		3	EXHIBIT
4	FOR THE PLAINTIFF:		PAGE
5	RICHARD G. CAMPBELL, JR.	3	Exhibit 83 - E-mail January 28, 2016
6	Attorney at Law	4	Exhibit 84 - E-mail January 31, 2016
7	200 S. Virginia Street, 8th Floor		Exhibit 85 - E-mail February 2, 2016
8	Reno, Nevada 89501	5	Exhibit 86 - E-mail February 2, 2016
9			Exhibit 87 - E-mails February 2-3, 2016
10	FOR THE DEFENDANTS CRISWELL RADOVAN:	6	Exhibit 88 - E-mail February 5, 2016
11	Howard & Howard		Exhibit 89 - E-mail February 26, 2016
12	Attorneys at Law	7	Exhibit 90 - E-mails March 14, 2016
13	BY: MARTIN LITTLE		Exhibit 91 - E-mails March 15, 2016
14	3800 Howard Hughes Parkway, Suite 1000	8	Exhibit 92 - E-mail March 17, 2016
15	Las Vegas, Nevada 89169	9	
16		10	
17	FOR THE DEFENDANTS DAVID MARRINER and MARRINER	11	
18	REAL ESTATE:	12	
19	Incline Law Group	13	
20	Attorneys at Law	14	
21	BY: ANDREW N. WOLF	15	
22	264 Village Blvd., Suite 104	16	
23	Incline Village, Nevada 89451	17	
24		18	
25	Also present via telephone:	19	
	David Marriner	20	
		21	
		22	
		23	
		24	
		25	

Yount, George

June 06, 2017

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<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>

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<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>

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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>
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<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>
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<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>
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<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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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.
16 Q Have you ever spoken with Pete Dordick?
17 A Yes.
18 Q Prior to investing?
19 A No.
20 (Exhibit 64 was marked.)
21 BY MR. LITTLE:
22 Q Sir, Exhibit 64 is an e-mail to your accountant
23 from you, correct?
24 A Correct.
25 Q And it's referencing a call between you and

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1 Robert?
2 A Yes.
3 Q You can read this e-mail, but do you have any
4 specific recollection of what you and Robert discussed
5 on this call?
6 A No. Obviously I discussed getting ready for
7 the 100th birthday party opening.
8 Q And is this -- you told me earlier that the
9 reason they told you it would get extended out into 2016
10 was because of snow pack and the economy. Is this where
11 that came from?
12 A Not snow pack, the lack of snow and what that
13 would mean to the traffic for the hotel.
14 Q So according to this document, you knew that
15 they were only going to open for the party and as of
16 August 12th, they weren't going to do a soft opening now
17 until March 1st, correct?
18 A Yes.
19 Q So now it's getting extending out past what we
20 talked about in the July e-mails?
21 A Correct, so I don't know that that -- yeah, I
22 guess that's correct.
23 Q And then they were looking to do the big
24 official opening on Father's Day?
25 A Yes.

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1 Q And then you're telling Ken that you look
2 forward to his comments?
3 A Yes.
4 Q Do you have any more knowledge or recollection
5 about Ken's comments other than what you told me
6 earlier?
7 A Just what I told you earlier.
8 (Exhibit 65 was marked.)
9 BY MR. LITTLE:
10 Q I'll show you deposition Exhibit 65. It's an
11 e-mail to Peter Grove, the project architect, from
12 yourself on August 18th, correct?
13 A Yes.
14 Q And you're asking that if they decide to, will
15 they really be ready for a full opening in December on
16 Sinatra's birthday?
17 A Correct.
18 Q Why would you be asking that if they told you a
19 week earlier that they weren't going to do a soft
20 opening until March and then a full opening until June?
21 A There's a difference between the plan to open
22 for reasons of the snow pack and their ability to open.
23 Q And what did Mr. Grove tell you?
24 A I don't remember his answer, but there's a
25 difference there I'm trying to distinguish.

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1 Q Okay. And the difference is what?
2 A Being ready to open and deciding not to open at
3 that time, which is what I've been told, and not being
4 able to open then are two distinct differences.
5 Q You don't know what Mr. Grove told you?
6 A I don't remember the details of it.
7 Q Had he told you that, he being Peter Grove,
8 told you that they would not be ready to open in
9 December for construction reasons, would that have
10 caused you some concern?
11 A Anything that's negative on the project would
12 cause me some concern. As to how big the delay was or
13 his level of concern would have meant how big a concern
14 I had.
15 Q But fair to say he didn't give you any sort of
16 bleak outlooks on the ability to open by December,
17 right?
18 A Correct.
19 Q Otherwise, you'd remember that?
20 A Yes. I don't believe he did.
21 Q But you'd agree he, Peter Grove, would have
22 been as knowledgeable as the developer about the current
23 status of construction as a project architect?
24 A Maybe not quite as, but he would definitely be
25 knowledgeable.

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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>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>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>
Page 223	Page 225
<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>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>

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<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>

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<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>

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1	STATE OF NEVADA)	Page 239
) ss.	
2	COUNTY OF WASHOE)	
3		
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
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EXHIBIT 3

000610

000610

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:

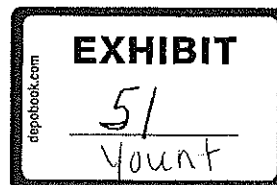
A is Squaw
 B is the Ritz
 C is Embassy Suites
 D is the Hyatt Regency?

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

000612

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>

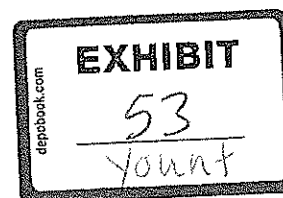
To: syount <syount@fortifiber.com>; geriattahoe <geriattahoe@fortifiber.com>

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

000615

000615

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.

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

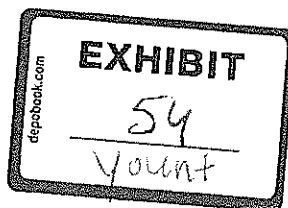


EXHIBIT 6

000617

000617

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.

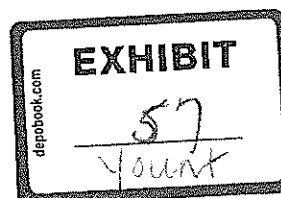
These units are limited to 1,250 square feet due to the condo conversion policy within the TRPA general plan. They will differ in pricing due to the different placement and view, not from size or design. We are expecting to average roughly \$1,250 per foot throughout the sell-out of the units. These 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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EXHIBIT 8

000622

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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.

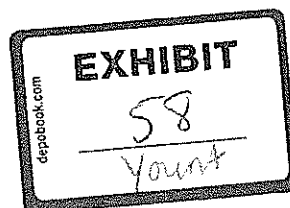
Thanks,

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



GSY003031

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EXHIBIT 9

000624

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-----

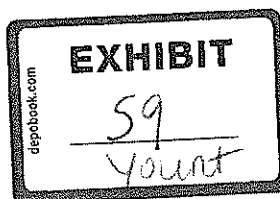
From: Robert Radovan [<mailto:Robert@CRISWELLRADOVAN.COM>]
Sent: Wednesday, July 29, 2015 12:00 PM
To: Stuart Yount <syount@fortifiber.com>
Cc: Dave Marriner <marrinertahoe@aol.com>
Subject:

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

000626

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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.

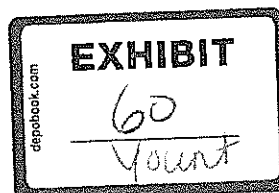
1. Do you have any more questions?
2. Can we arrange a meeting with Roger and Robert to compare notes on each others projects and meet Heather?
3. Roger and Bea wanted to take a tour in early August. I can arrange a tour this week between Wed. and Friday after 3:30pm.
4. Based on your review of our Founding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

000628

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EXHIBIT 11

000629

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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

000632

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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,

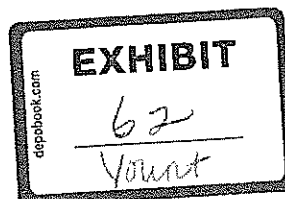
Robert

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



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EXHIBIT 13

000634

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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

000636

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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

000639

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EXHIBIT 15

775-745-8482 Cell

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

From: Robert Radoyan <Robert@CRISWELLRAOVAN.COM>

To: Stuart Yount <syount@fortifiber.com>

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

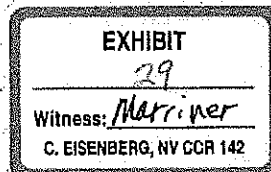
Total- \$55,500,000

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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Jacqueline Bryant
Clerk of the Court
Transaction # 6172106 : pmsewell

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.

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CalNeva Renovation

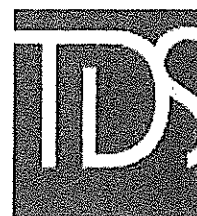


July 2015

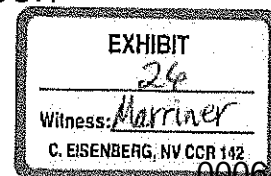
MONTHLY STATUS REPORT



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

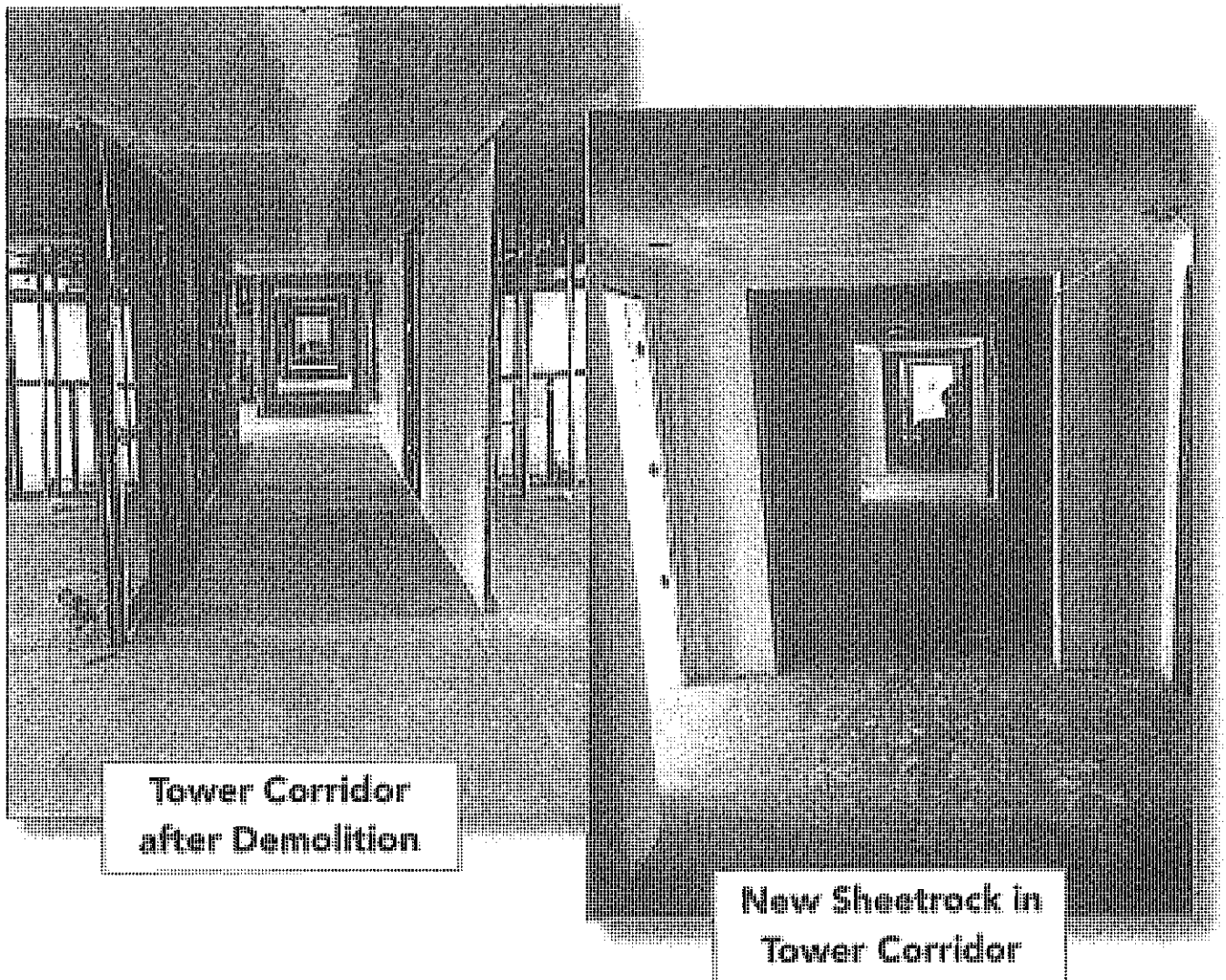
TOWER GUEST ROOMS

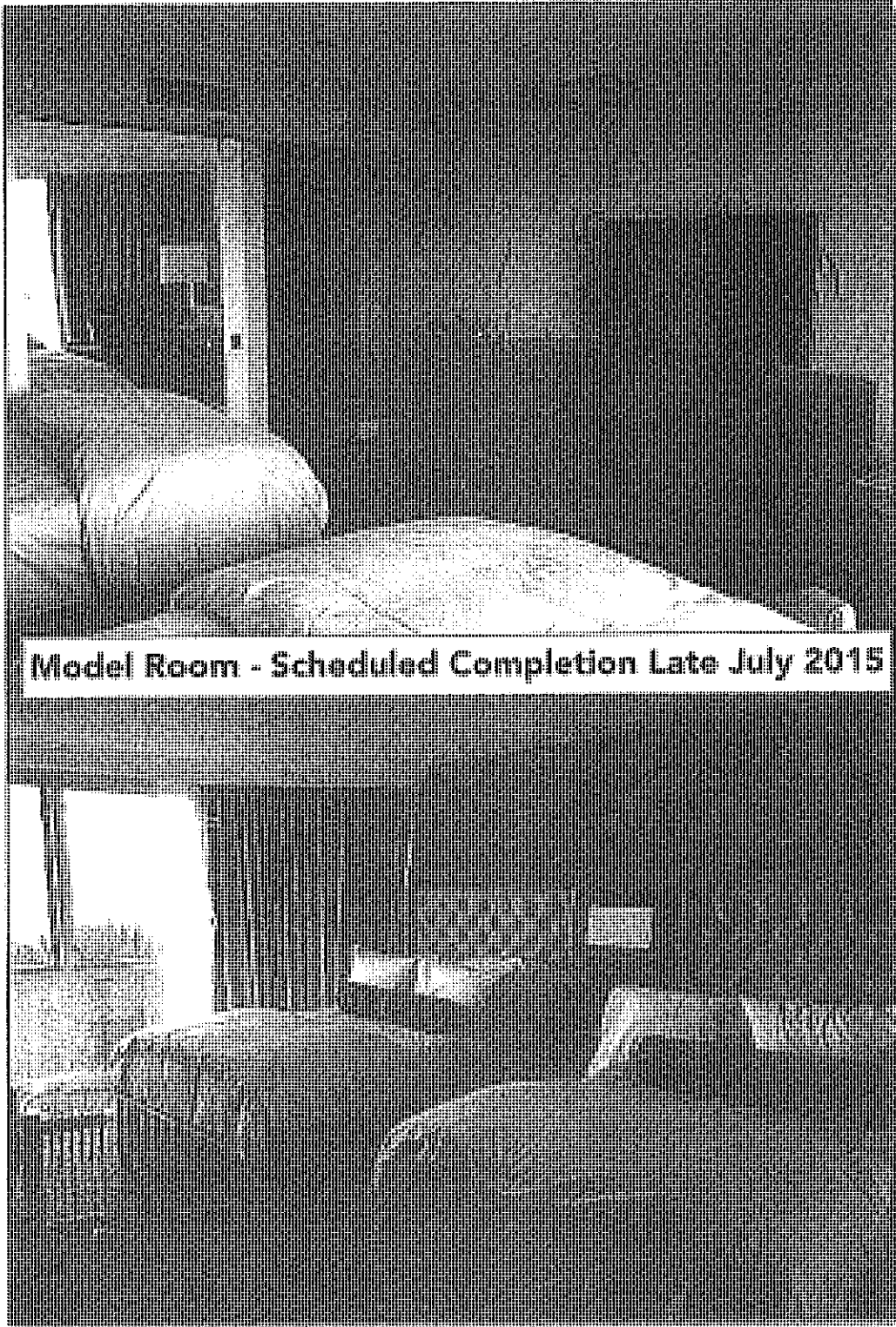
Tower Guest Room construction began December 2014 and is scheduled to be completed November 2015.

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

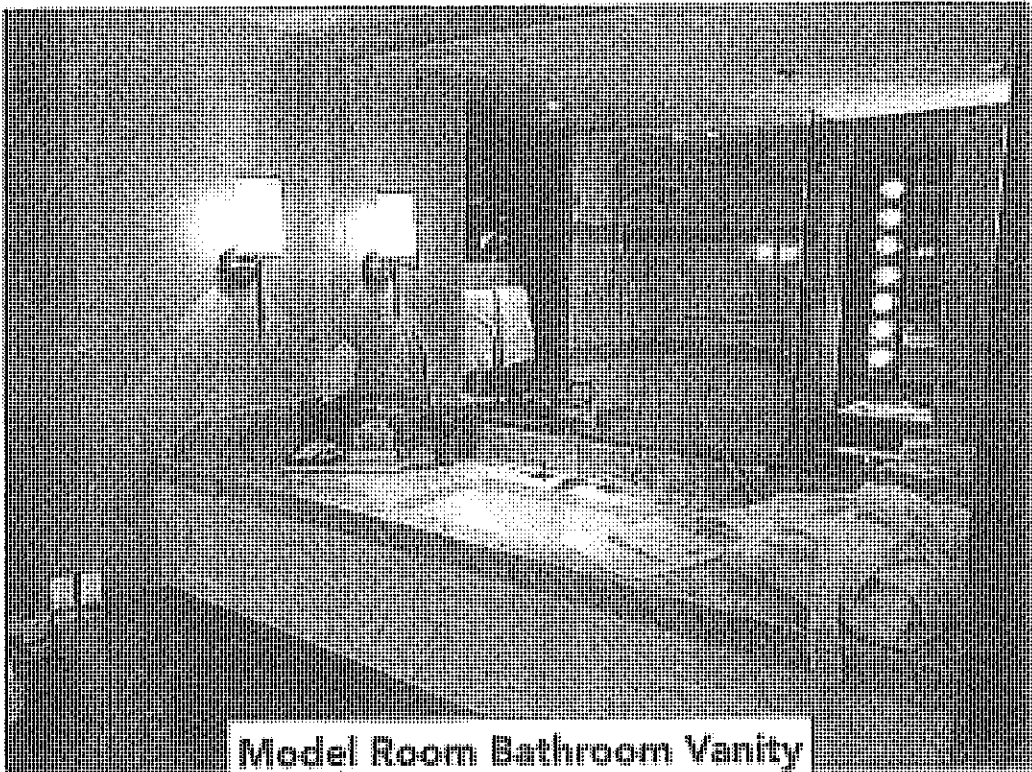
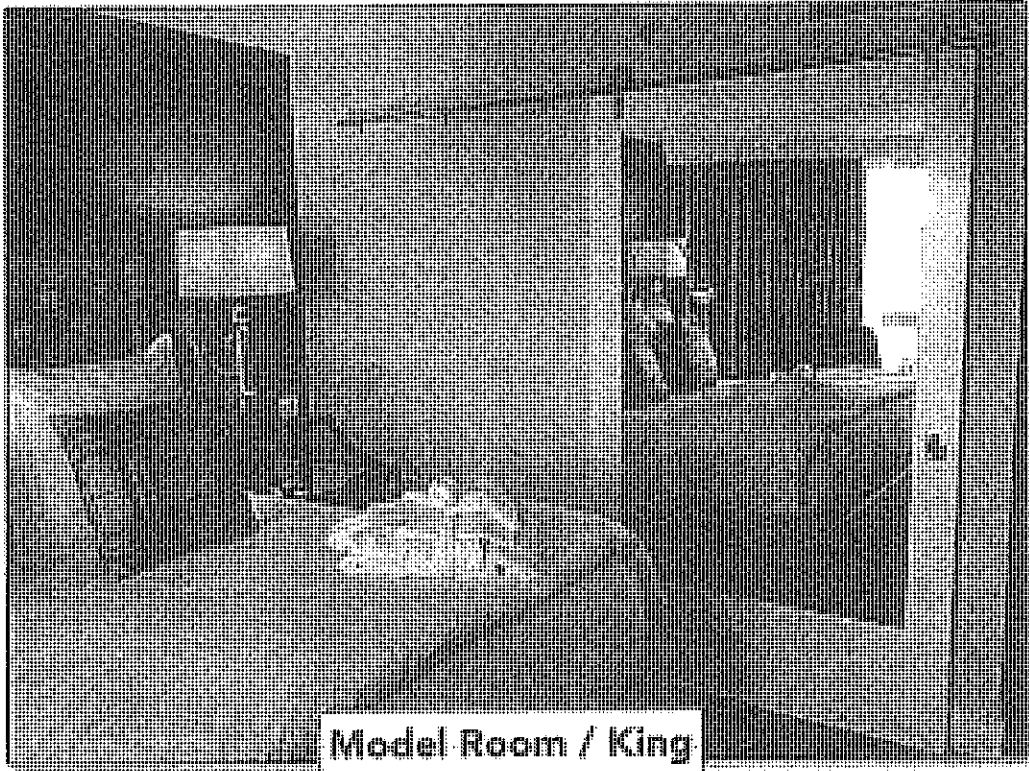
Abatement is complete and included removal of "popcorn" ceilings, long-standing plumbing elbow tape, and old taping mud.

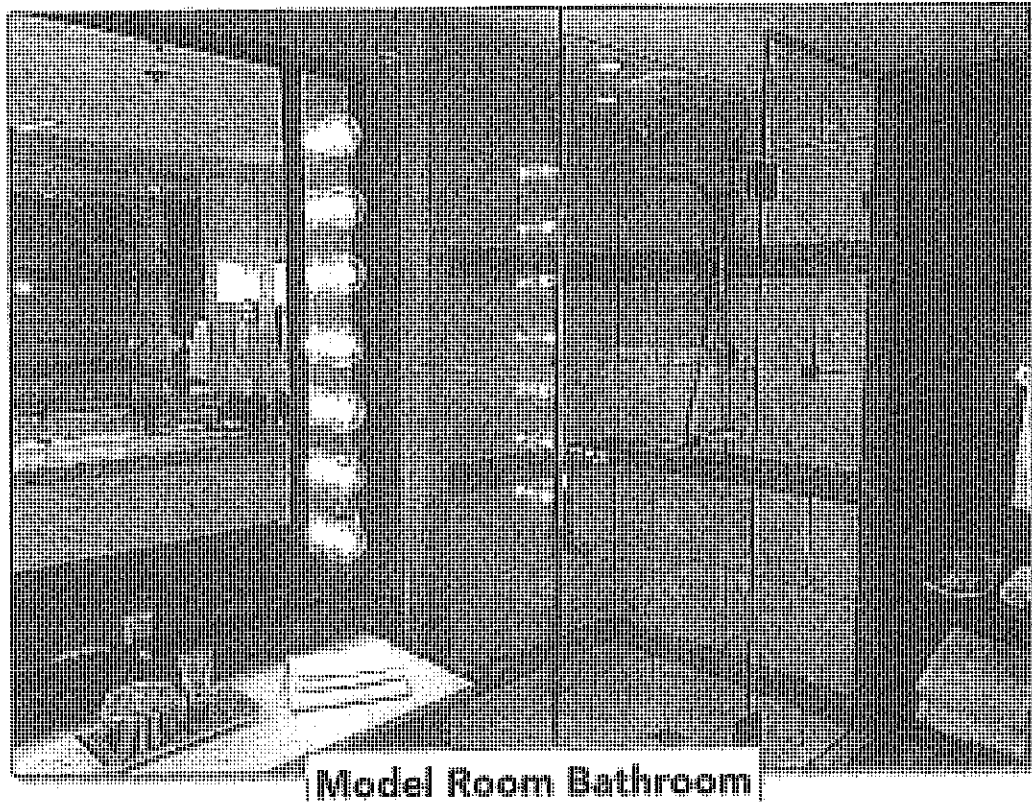
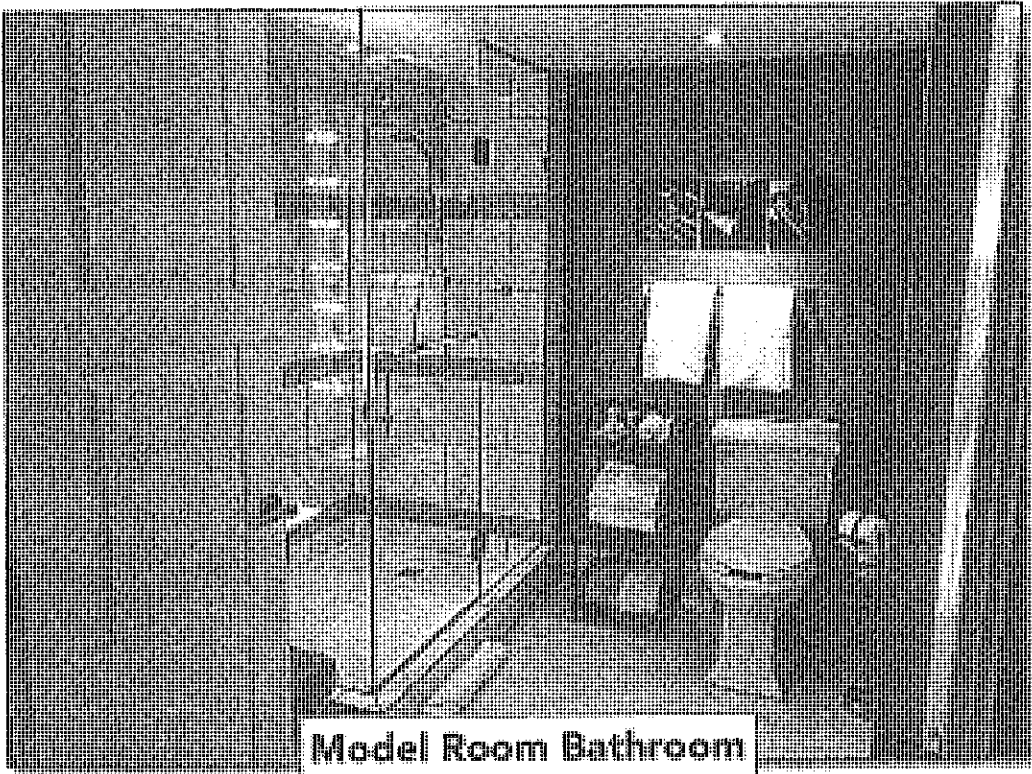
Rough construction (Electrical, Plumbing, Mechanical, and Framing & Drywall) started March 2015 and is scheduled to be completed July 2015.

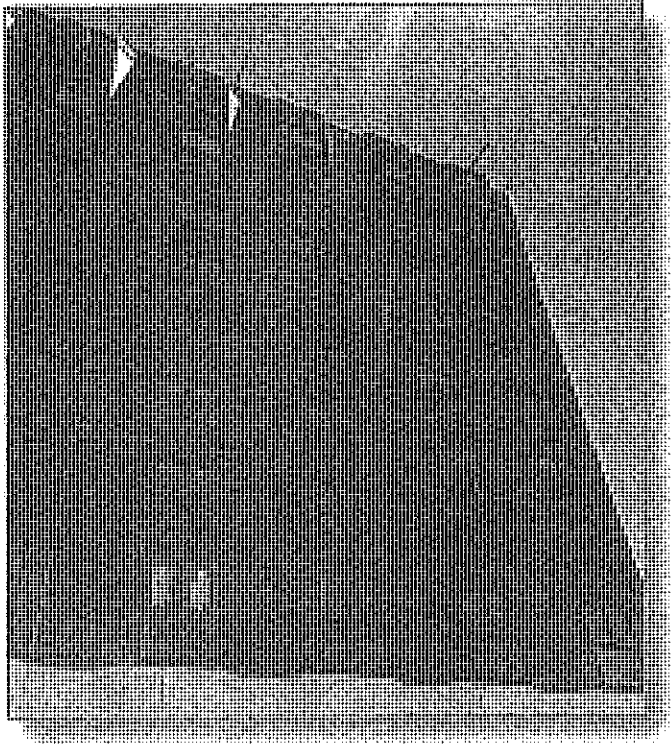




The Model room has been spectacularly designed by the team of Paul Deusing Partner's and has received very favorably by the ownership and Starwood. The room is currently undergoing modifications to maintain the design intent while reducing costs.







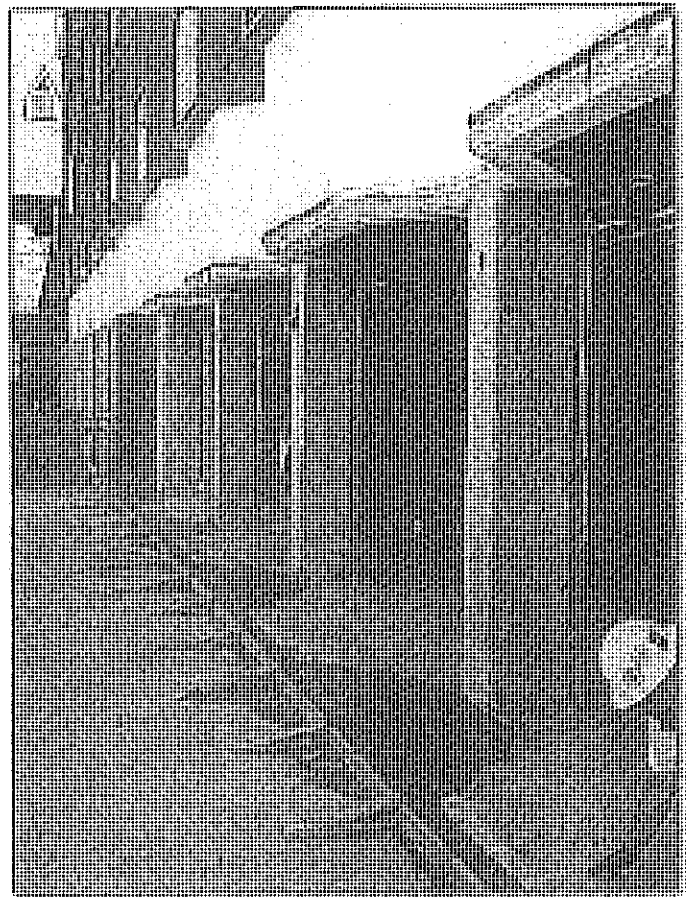
EXTERIOR CONSTRUCTION

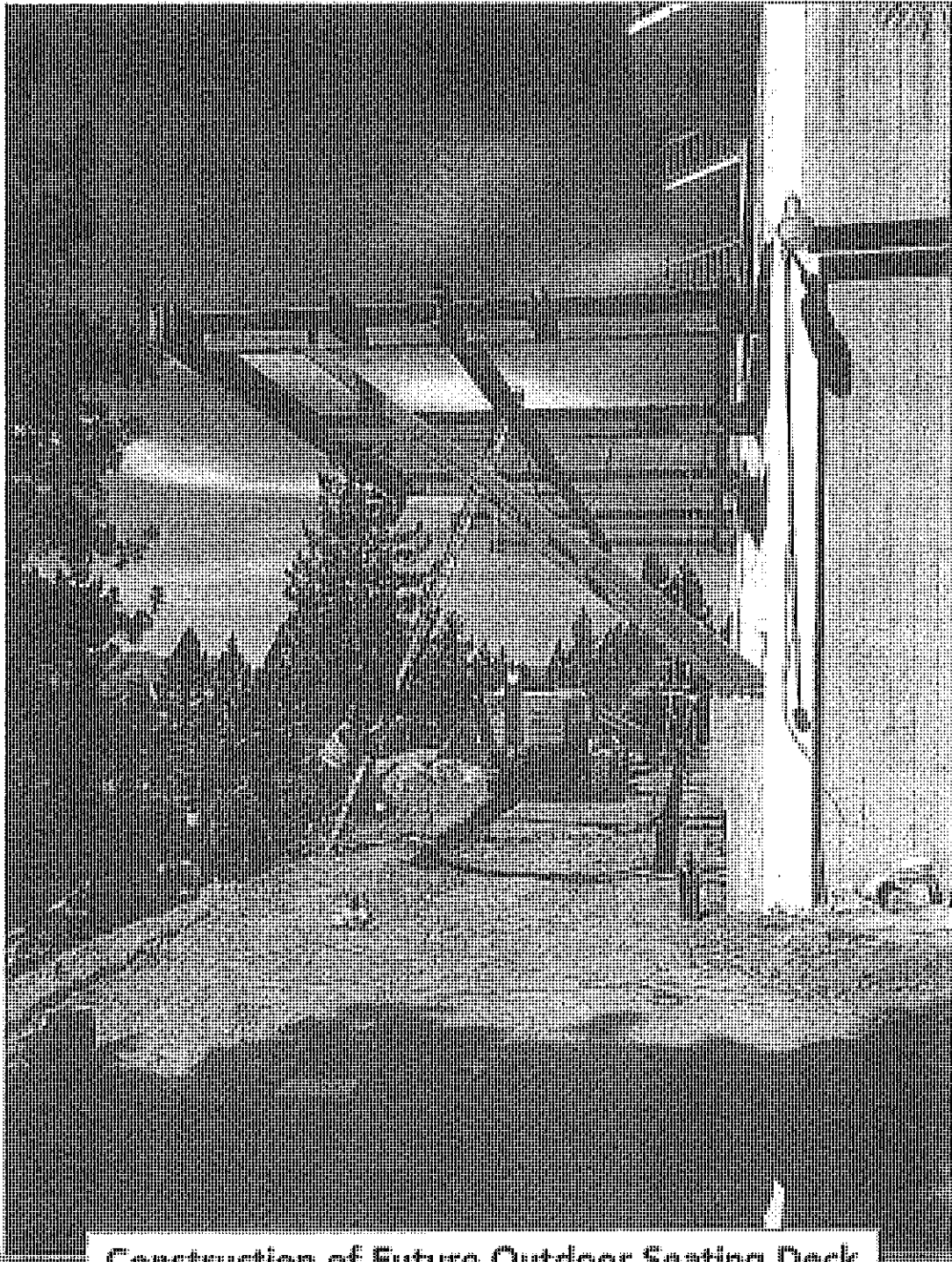
Exterior Construction is ongoing, removal of old window system is complete. The new curtain wall glass system and exterior paint is scheduled to be completed in late August 2015.

EXTERIOR OPENINGS AND FINISHES

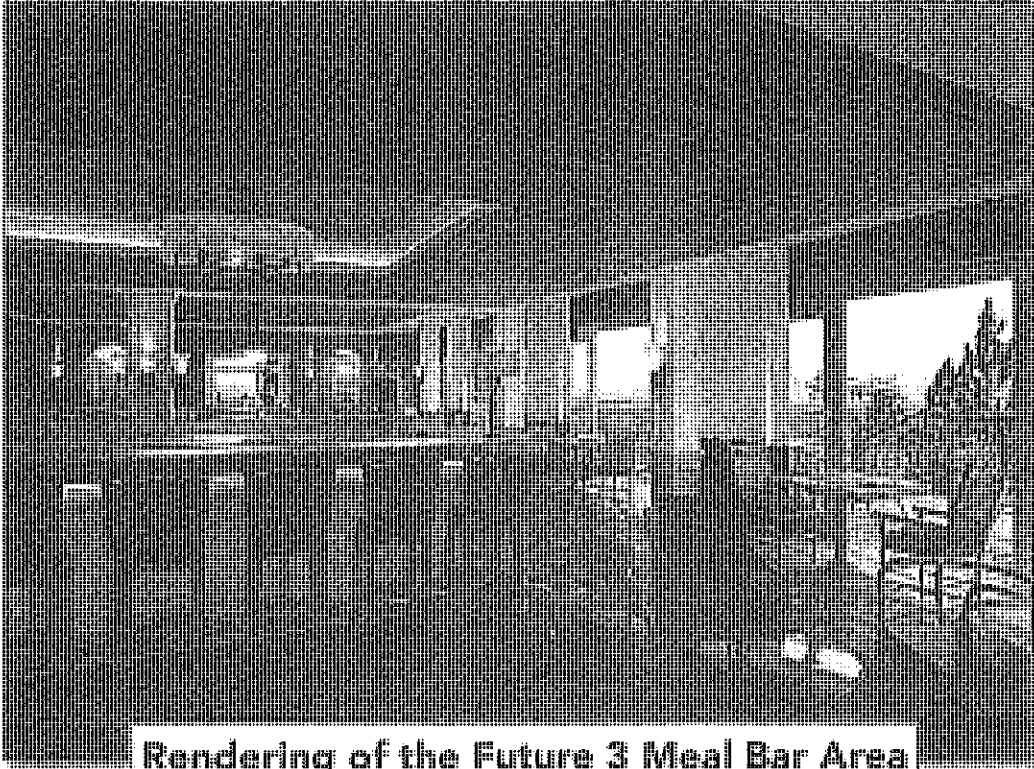
3 MEAL RESTAURANT

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.

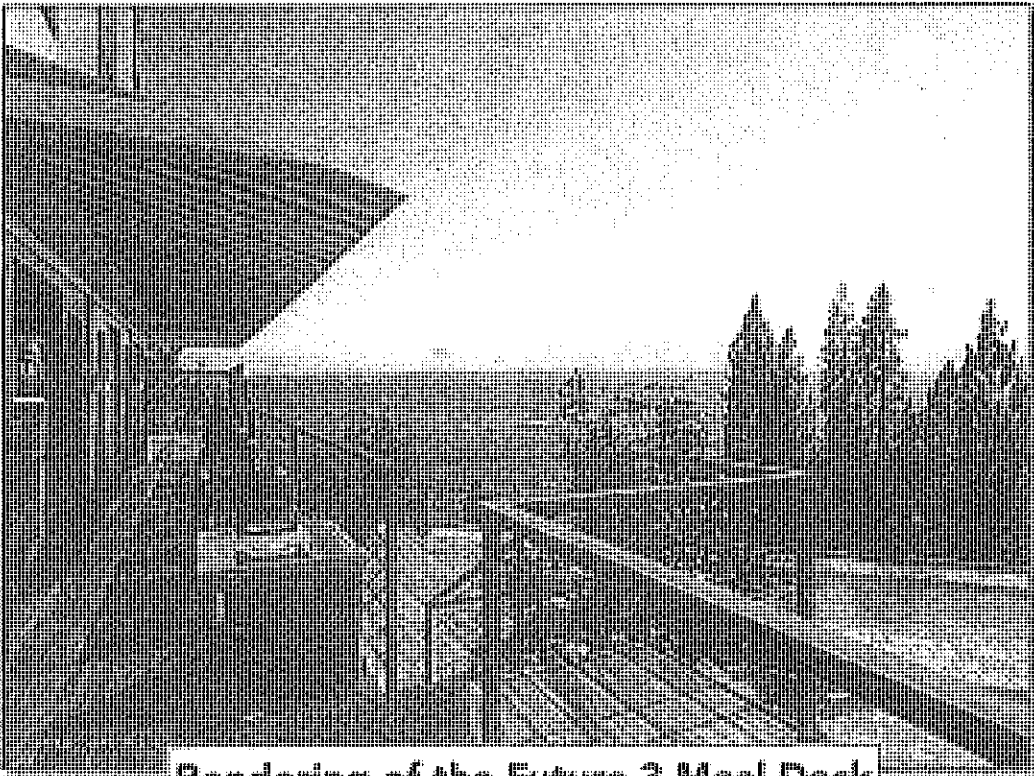




**Construction of Future Outdoor Seating Deck
for 3 Meal Restaurant**

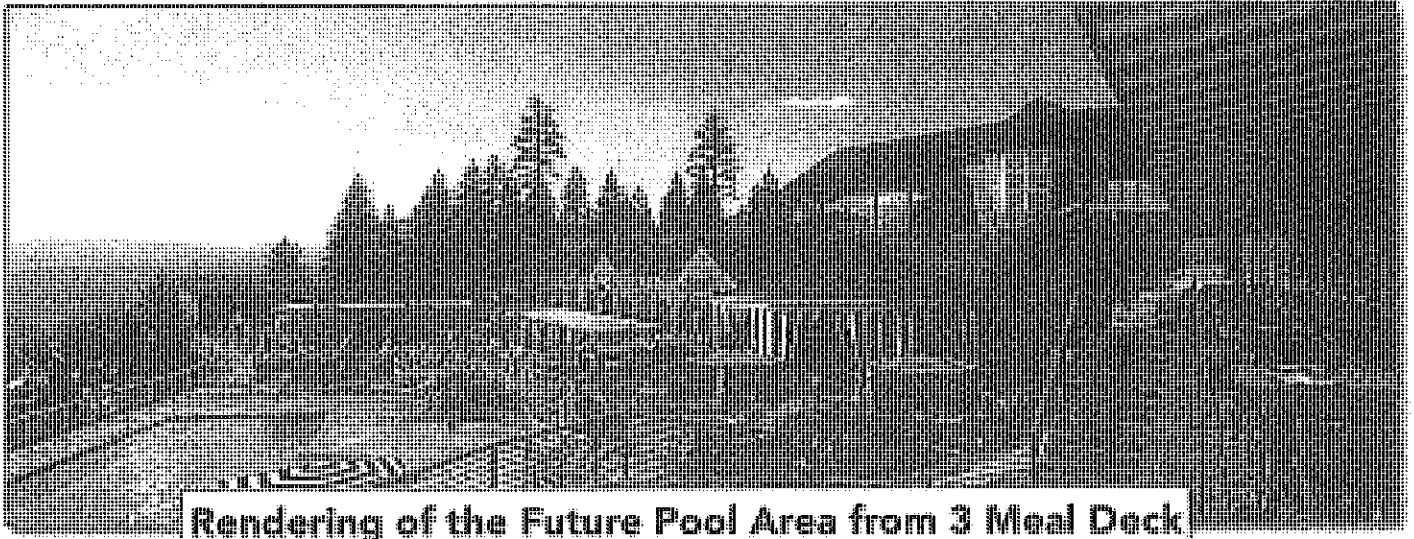


Rendering of the Future 3 Meal Bar Area



Rendering of the Future 3 Meal Deck

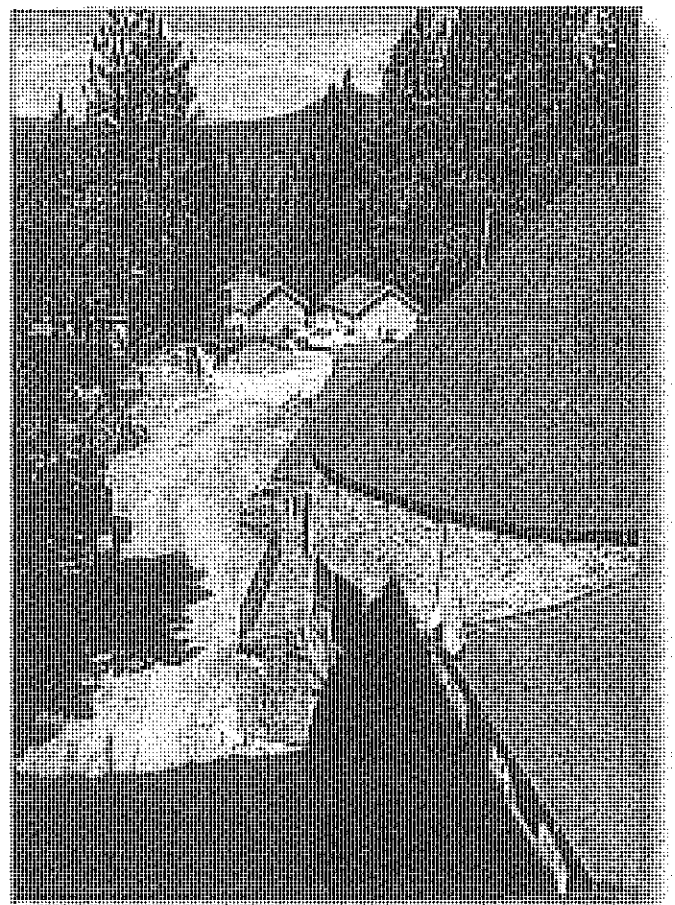
CalNeva Renovation



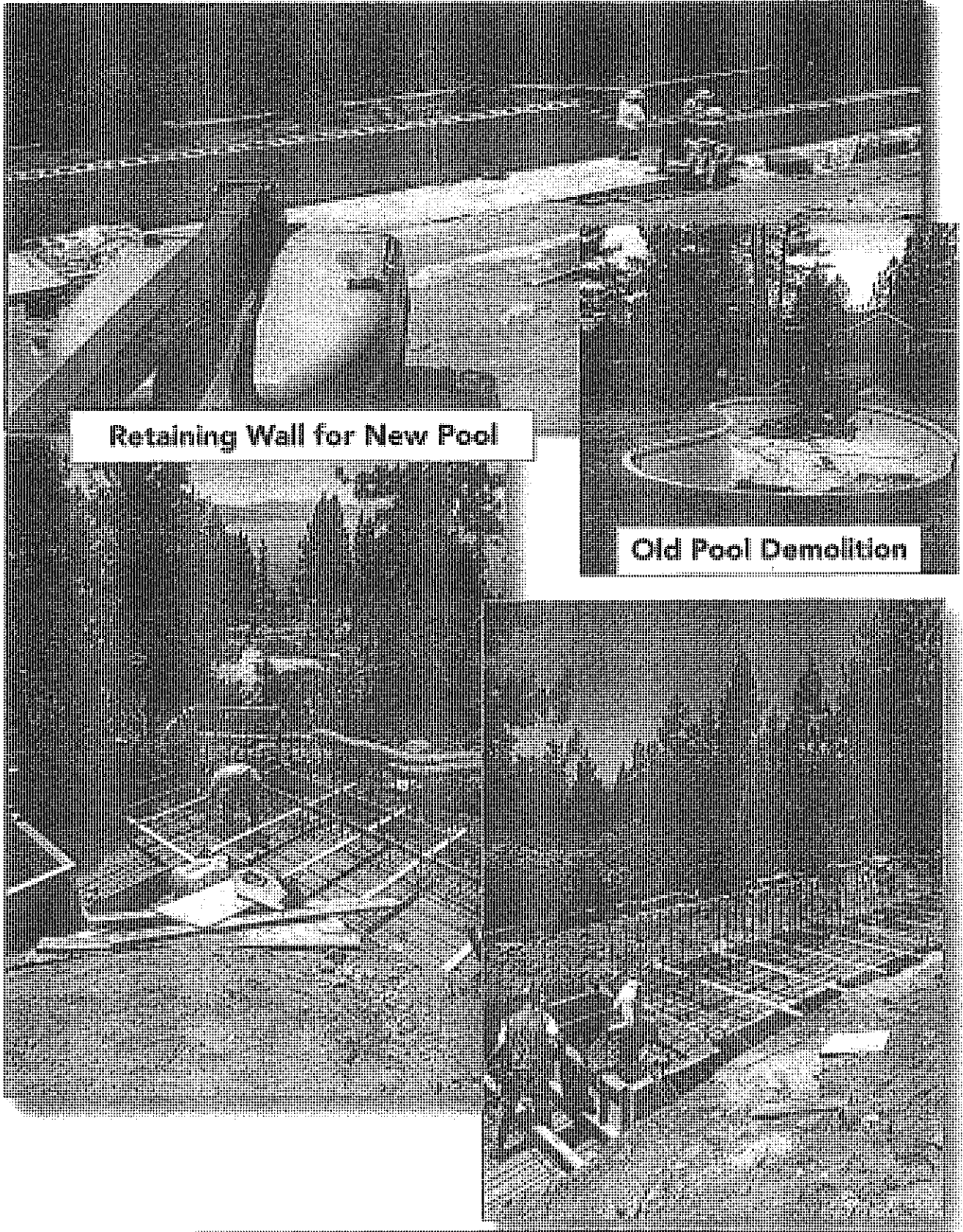
Rendering of the Future Pool Area from 3 Moal Deck

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

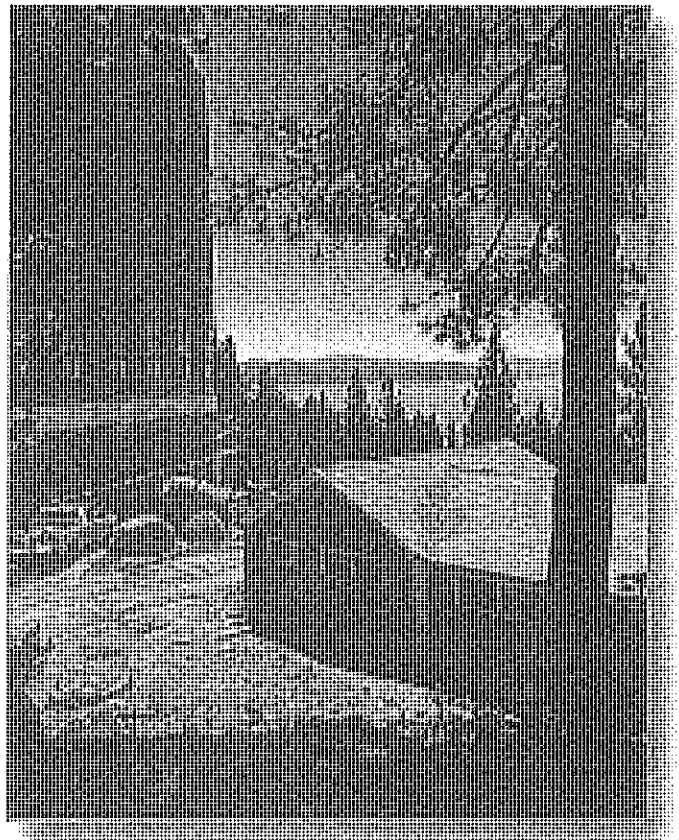
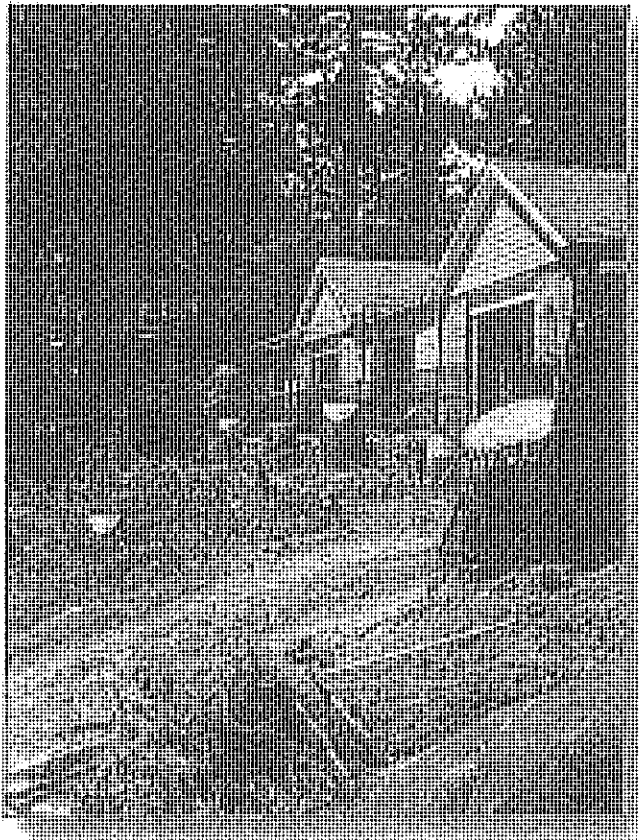
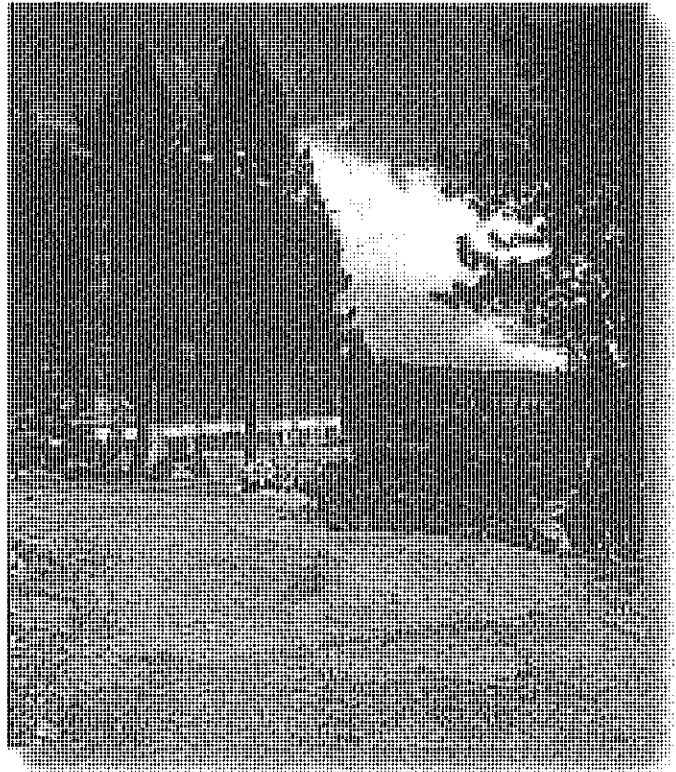


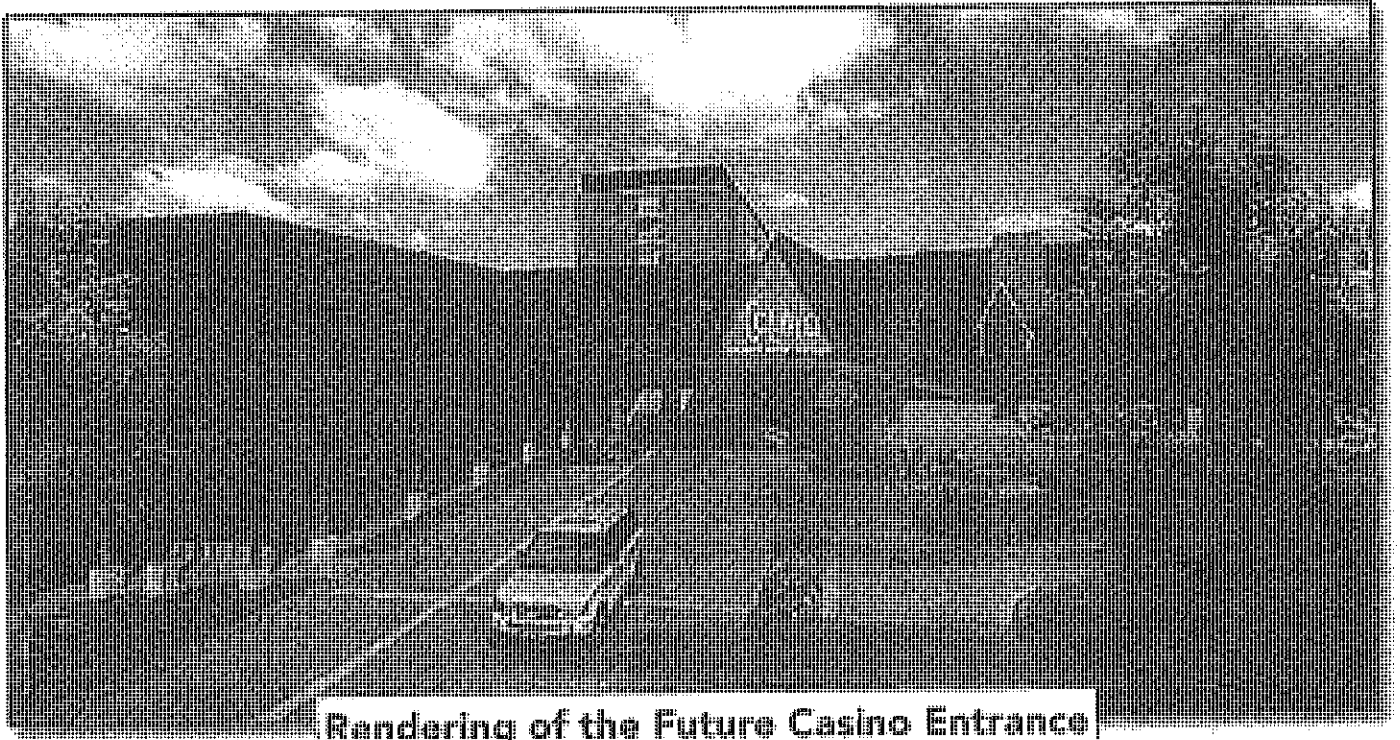
Retaining Wall for New Pool

Old Pool Demolition

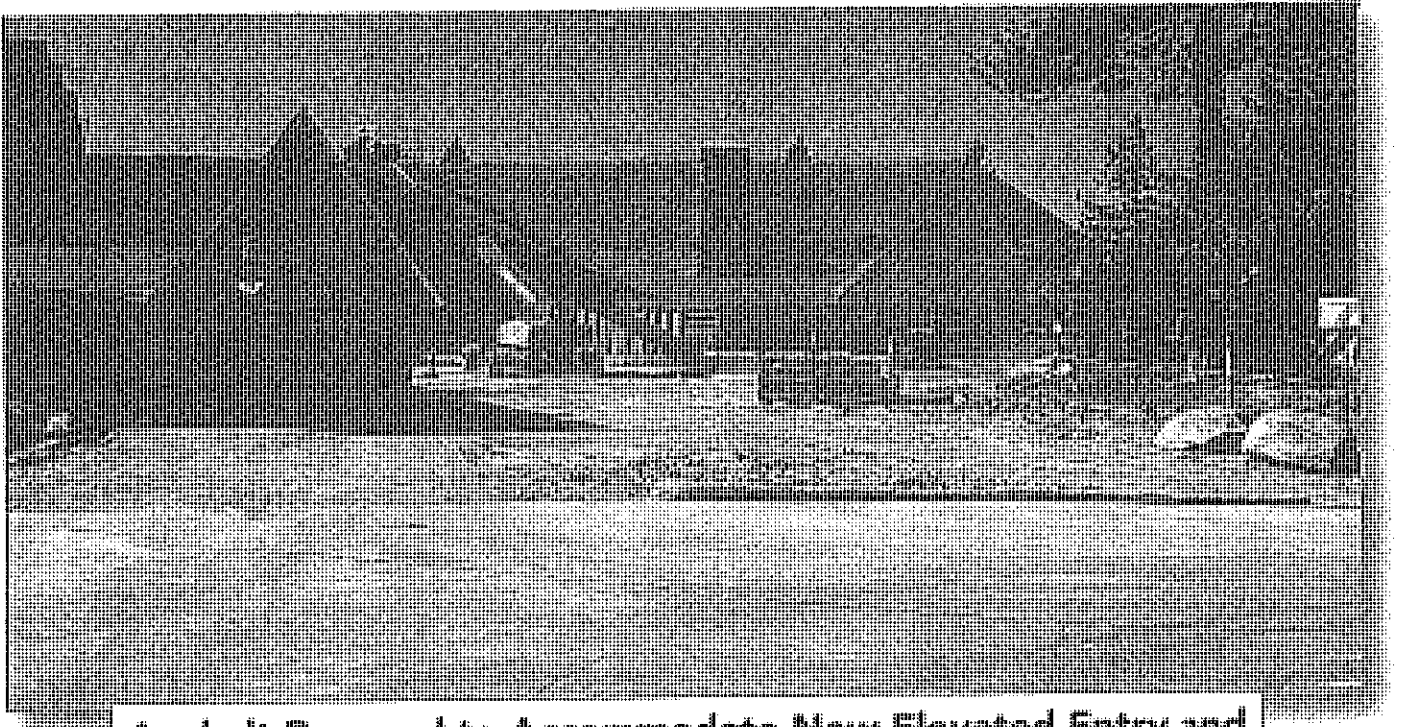
TREE REMOVAL

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

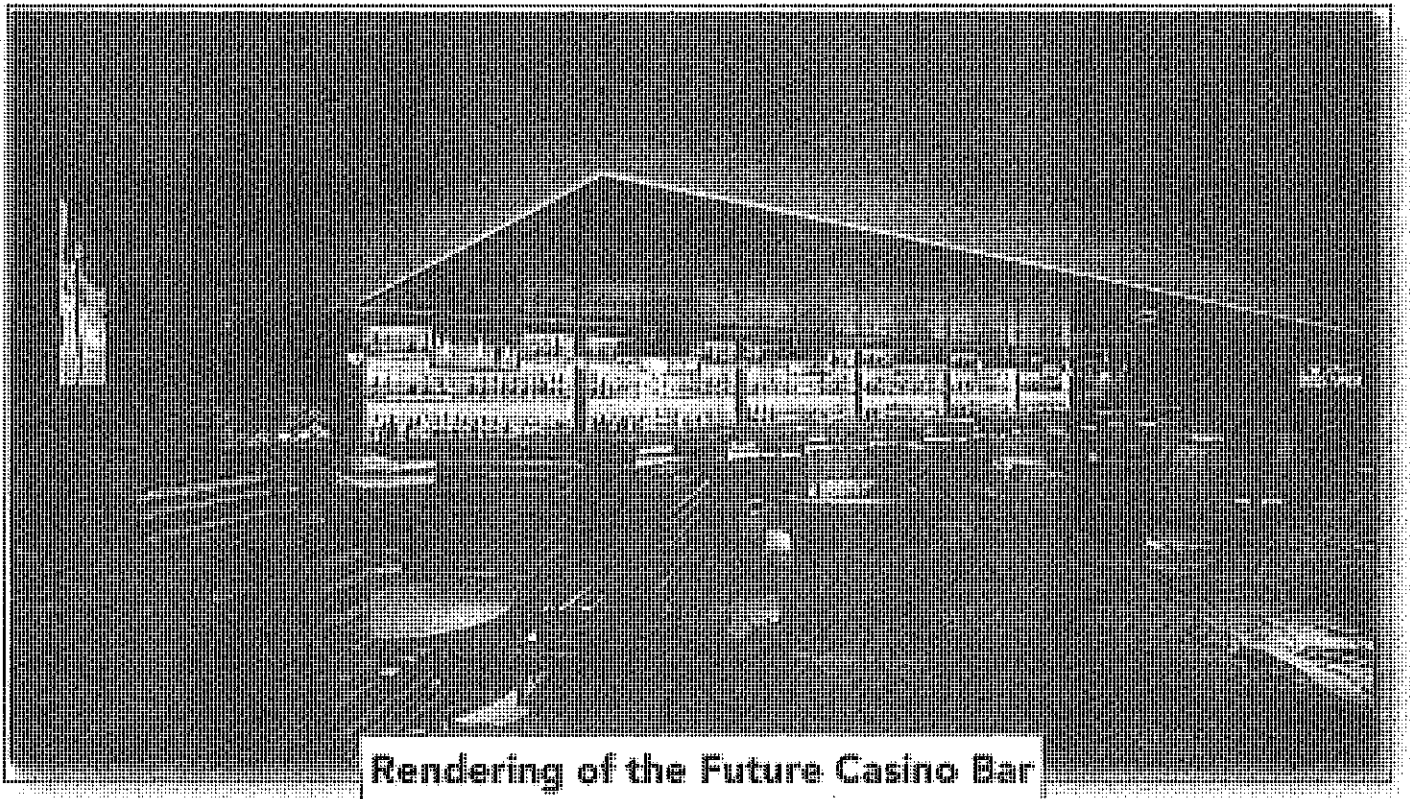
Rendering of the Future Casino Entrance



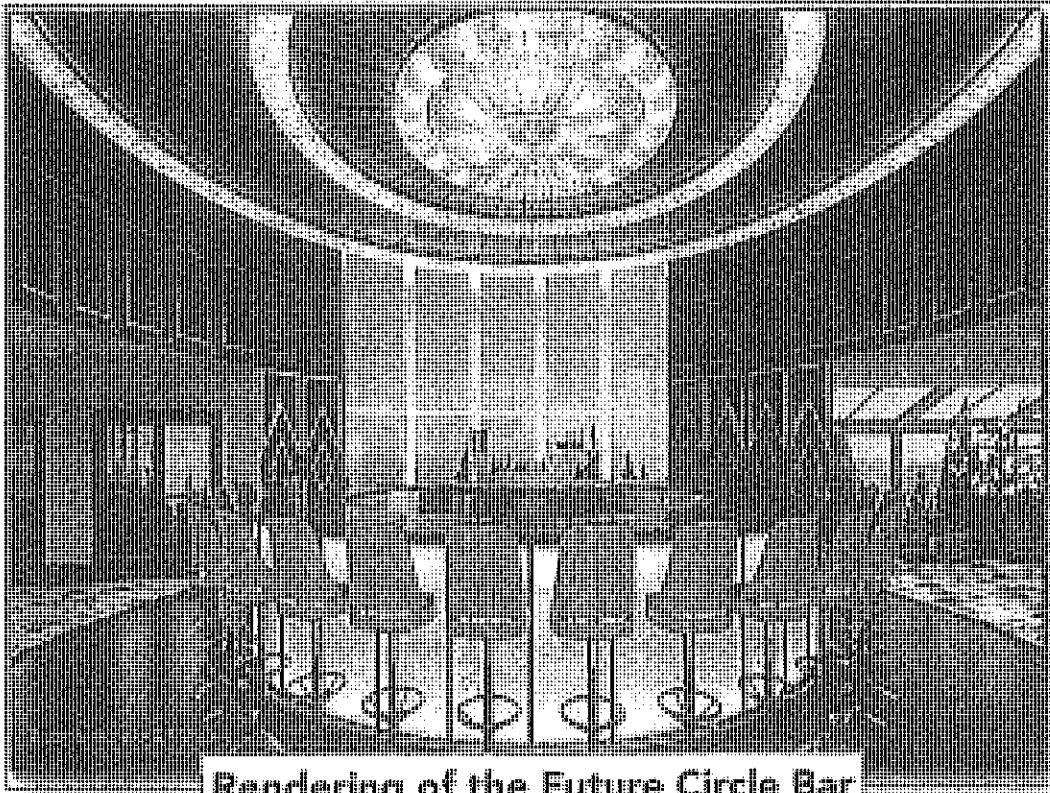
**Asphalt Removal to Accommodate New Elevated Entry and
Porte-cochere**

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 included 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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Clerk of the Court
Transaction # 6172106 : pmsewell

EXHIBIT 17

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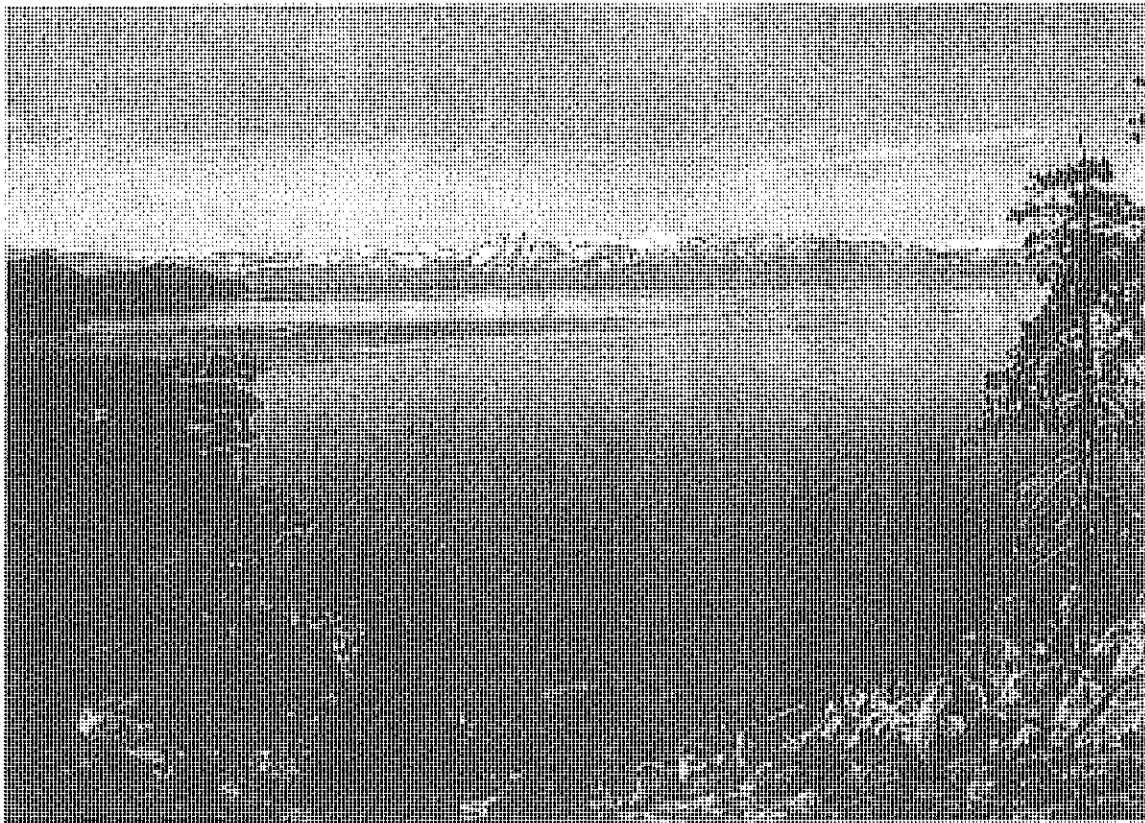
EXHIBIT 17

Ca|NeVa

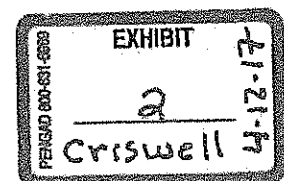
RESORT & CASINO

LOCATED ON THE NORTH SHORE OF LAKE TAHOE

CONFIDENTIAL OFFERING MEMORANDUM



CRISWELL RADOVAN, LLC
March 2014



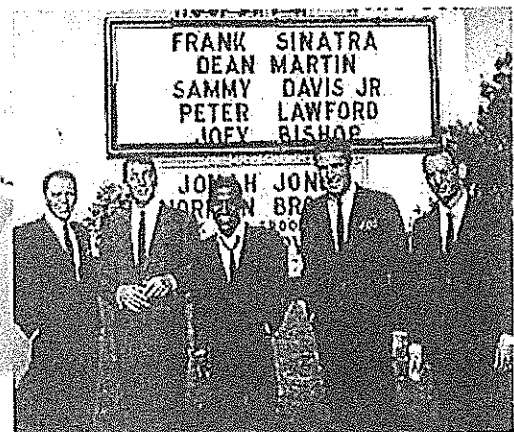
CONFIDENTIAL

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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.

SUBSCRIPTION BOOKLET

(for Founding Members)

CAL NEVA LODGE, LLC

SUBSCRIPTION INSTRUCTIONS

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

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

ALSO, IF APPLICABLE, PLEASE DELIVER THE FOLLOWING:

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

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

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

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

SUBSCRIPTION AGREEMENT

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

Potential Investor:

The undersigned (the "**Purchaser**"), by completing and executing this Subscription Agreement and the Member Signature Page and Power of Attorney, hereby tenders this subscription and applies for the purchase of the number of Founders Units (the "**Founders Units**") of **CAL NEVA LODGE, LLC**, a Nevada limited liability company (the "**Company**"), set forth below the Purchaser's signature hereto, at a price of \$1,000,000 per Founders Unit (the "**Purchase Price**"). The Purchaser hereby acknowledges receipt of a copy of the Company's Confidential Private Placement Memorandum, dated March 11, 2014 (the "**Memorandum**").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In addition, the Purchaser:

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

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

[Signature Page Follows]

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Jacqueline Bryant
Clerk of the Court
Transaction # 6172106 : pmsewell

EXHIBIT 18

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EXHIBIT 18

Partial Document

THIS EXHIBIT IS PART OF A DOCUMENT.

ONLY SELECTED PAGES ARE INCLUDED IN THIS EXHIBIT.

000671

CONFIDENTIAL
PRIVATE PLACEMENT MEMORANDUM
DATED: MARCH 11, 2014

ACCREDITED INVESTORS ONLY

NO. _____

CAL NEVA LODGE, LLC,
a Nevada limited liability company

MAXIMUM OFFERING:	\$20,000,000
MINIMUM OFFERING:	\$14,000,000
MINIMUM SUBSCRIPTION:	\$ 1,000,000
MINIMUM PURCHASE:	1 UNIT (\$1,000,000)

CAL NEVA LODGE, LLC, a Nevada limited liability company (the "Company") has been formed to purchase and develop certain real property located in Crystal Bay, Nevada and the related business known as the "Cal Neva Resort, Spa and Casino" (collectively, the "Property"); to exercise all rights, powers, privileges, and other incidents of ownership or possession with respect to the Property; to enter into, make, and perform all contracts and other undertakings; and to engage in other related activities.

The Company will offer and sell up to twenty (20) units of membership interests in the Company (the "Units"), with a minimum purchase of one Unit (\$1,000,000), at a purchase price of \$1,000,000 per Unit, to selected investors ("Investors") who meet the suitability requirements established for this offering (the "Offering"). Investors will have an opportunity to become founding members ("Founding Members") and acquire founders units ("Founders Units") and/or preferred members ("Preferred Members") and acquire preferred units (the "Preferred Units"). Of the total Units offered hereunder, the Company has stipulated that the Preferred Units and the Founders Units will not be created as a separate class unless a minimum of five (5) Units of that class are sold and that no more than fifteen (15) Founders Units will be issued and sold. The Company also reserves the right to sell partial Preferred Units. It is anticipated that the closing of the Offering will occur on or before March 28, 2014 (the "Closing Date"), provided that on or before the Closing Date, Investors shall have subscribed for a minimum of fourteen (14) of the Units (\$14,000,000) (the "Minimum Offering Amount"). The Offering will terminate not later than April 30, 2014, unless extended by the Manager for up to ninety (90) days (the "Termination Date").

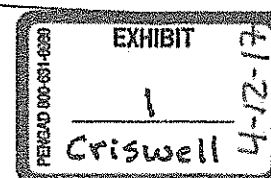
THERE IS NO PUBLIC MARKET FOR THE UNITS, AND THE COMPANY IS UNCERTAIN WHEN OR IF SUCH MARKET MIGHT DEVELOP.

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS FOR NONPUBLIC OFFERINGS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER SAID ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

PURCHASE OF THE PREFERRED UNITS INVOLVES CERTAIN RISKS AND IS SPECULATIVE. SEE "RISK FACTORS."

	Price to Investors (1)	Placement Fees (2)	Proceeds to Company (3)
Per Unit			
Minimum.....	\$ 1,000,000	\$ -0-	\$ 1,000,000
Maximum.....	\$14,000,000	\$ -0-	\$14,000,000
	\$20,000,000	\$ -0-	\$20,000,000

(The footnotes hereto appear on the following page)



- (1) The minimum subscription for Units is one Unit (\$1,000,000); provided, however, that the Company reserves the right to sell partial Preferred Units. The purchase price of \$1,000,000 per Unit is payable in cash at the time of subscription.
- (2) The Units are being offered for sale by the Company on a "best efforts" basis. The Company does not anticipate paying fees for the placement of the Units being offered hereunder. Notwithstanding the foregoing, the Company reserves the right to pay fees to licensed professionals (including finders' fees) that relate solely to the raising of capital for use in the acquisition, development and operation of real estate. See "THE OFFERING - Plan of Distribution."
- (3) Before legal, accounting, financing, and other expenses associated with the Offering currently estimated at \$50,000. See "ESTIMATED USES OF PROCEEDS."

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, OR ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THE CONTENTS OF THIS MEMORANDUM OR ANY COMMUNICATION FROM THE COMPANY, ITS AFFILIATES AND EMPLOYEES, AS LEGAL, TAX OR INVESTMENT ADVICE. EACH INVESTOR SHOULD CONSULT SUCH INVESTOR'S OWN COUNSEL, ACCOUNTANT AND OTHER ADVISORS AS TO THE LEGAL, TAX AND ECONOMIC CONSEQUENCES OF THE INVESTMENT DESCRIBED HEREIN.

THE STATEMENTS CONTAINED HEREIN ARE BASED ON INFORMATION BELIEVED BY THE COMPANY TO BE RELIABLE. NO WARRANTY CAN BE MADE AS TO THE ACCURACY OF SUCH INFORMATION OR THAT CIRCUMSTANCES MAY NOT HAVE CHANGED SINCE THE DATE SUCH INFORMATION WAS SUPPLIED. THIS MEMORANDUM CONTAINS SUMMARIES OF CERTAIN DOCUMENTS THAT THE COMPANY BELIEVES TO BE FAIR SUMMARIES OF SUCH DOCUMENTS, BUT REFERENCE IS HEREBY MADE TO THE ACTUAL DOCUMENTS (COPIES OF WHICH ACCOMPANY THIS MEMORANDUM OR ARE AVAILABLE AT THE OFFICES OF THE COMPANY) FOR COMPLETE INFORMATION CONCERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES THERETO.

THIS MEMORANDUM HAS BEEN PREPARED SOLELY FOR THE BENEFIT OF QUALIFIED INVESTORS (SEE "INVESTOR SUITABILITY STANDARDS") WHO ARE INTERESTED IN THE PROPOSED PRIVATE PLACEMENT OF THE UNITS. ANY DISTRIBUTION OR REPRODUCTION OF THIS MEMORANDUM, IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY, IS PROHIBITED. BY ACCEPTING DELIVERY OF THIS MEMORANDUM, EACH RECIPIENT AGREES TO RETURN THIS MEMORANDUM AND ALL OTHER DOCUMENTS TO THE COMPANY IF THE RECIPIENT DOES NOT PURCHASE ANY OF THE UNITS.

THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO PURCHASE THE UNITS IN ANY JURISDICTION TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER OR SOLICITATION. EXCEPT AS OTHERWISE INDICATED, THIS

MEMORANDUM SPEAKS AS OF THE DATE OF THIS MEMORANDUM. NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY SALE MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY AFTER THE DATE OF THIS MEMORANDUM.

EXCEPT FOR THIS MEMORANDUM AND THE EXHIBIT HERETO, NO OFFERING LITERATURE OR ADVERTISING IN WHATEVER FORM HAS BEEN AUTHORIZED IN THE OFFERING OF THE UNITS. NO PERSON HAS BEEN AUTHORIZED TO MAKE REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE UNITS, THE COMPANY OR ITS PROSPECTIVE BUSINESS, EXCEPT THE REPRESENTATIONS CONTAINED HEREIN. ANY INFORMATION OTHER THAN THAT CONTAINED HEREIN OR THE DOCUMENTS FURNISHED BY THE COMPANY ON REQUEST MUST NOT BE RELIED UPON BY ANY POTENTIAL INVESTOR AS HAVING BEEN AUTHORIZED BY THE COMPANY.

DURING THE COURSE OF THE OFFERING AND PRIOR TO SALE, EACH PROSPECTIVE INVESTOR AND SUCH INVESTOR'S PURCHASER REPRESENTATIVE(S), IF ANY, ARE INVITED TO ASK QUESTIONS OF AND OBTAIN ADDITIONAL INFORMATION FROM THE COMPANY CONCERNING THE TERMS AND CONDITIONS OF THE OFFERING, THE COMPANY, THE BUSINESS AND OTHER RELEVANT MATTERS, INCLUDING, BUT NOT LIMITED TO, ADDITIONAL INFORMATION TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH IN THIS MEMORANDUM. THE COMPANY WILL PROVIDE SUCH ADDITIONAL INFORMATION TO THE EXTENT IT POSSESSES IT OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE.

PROSPECTIVE INVSETORS ARE INVITED TO ASK QUESTIONS AND REQUEST ADDITIONAL INFORMATION BY CONTACTING THE MANAGER AT:

CAL NEVA LODGE, LLC
Attn: Robert Radovan
c/o CR Cal Neva, LLC
1336-D Oak Street
St. Helena, CA 94574
Telephone: 707-963-0313
Email: Robert@CriswellRadovan.com

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Exhibits

"A"	-	Operating Agreement
"B"	-	Business Plan

INVESTOR SUITABILITY STANDARDS

This is a private offering that is being made only by delivery of a copy of this Memorandum. Sales of the Units will be made only to investors who are "accredited investors" as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended.

Accredited Investors

Accredited Investors are those prospective investors who meet at least one of the following standards or others set forth in Rule 501(a) of Regulation D, which are described in more detail in the Purchaser Questionnaire:

- (a) The investor is a natural person and such investor's Net Worth (as defined below) either individually or jointly with such investor's spouse, exceeds \$1,000,000 (*excluding* the value of such investor's primary residence);
- (b) The investor is a natural person who has had Individual Income (as defined below) from all sources, without including any income of such investor's spouse, in excess of \$200,000, or with such investor's spouse of \$300,000, in each of the two most recent years and reasonably expects to have Individual Income in excess of \$200,000 or \$300,000, as applicable, in the current year;
- (c) Any entity (a partnership, limited liability company, corporation, trust or unincorporated association) in which all of the equity owners of that entity qualify as Accredited Investors. A trust will qualify as an Accredited Investor if: (x) it is an irrevocable trust and it qualifies under clause (c) below; or (y) it is a revocable trust and each person with the power to revoke the trust qualifies under clause (a) or (b) above;
- (d) A corporation or a partnership, not formed for the specific purpose of acquiring the Units, that has total assets in excess of \$5,000,000;
- (e) A trust, not formed for the specific purpose of acquiring the Units, that has total assets in excess of \$5,000,000 and is directed by a sophisticated person as defined in Rule 506(b)(2) of Regulation D; or
- (f) Any Director or executive officer of the Company.

As used in the foregoing description, the term "Net Worth" means the excess of total assets at fair market value over total liabilities, and the term "Individual Income" means adjusted gross income, as reported for Federal Income Tax purposes, less any income attributable to a spouse or to a property owned by a spouse unless such spouse is a co-investor, increased by the following amounts (but not including any amounts attributable to a spouse or to property owned by a spouse unless such spouse is a co-purchaser): (i) the amount of any interest income received which is tax-exempt under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"); (ii) the amount of losses claimed as a limited partner in a limited partnership (as reported on Schedule E of Form 1040); (iii) any deduction claimed for depletion under Section 611 et seq. of the Code; and (iv) any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income pursuant to the provisions of Section 1202 of the Code.

Each prospective investor will be required to represent that such prospective investor is acquiring the Units for such prospective investor's own account or for a fiduciary account for which the prospective investor either directly or indirectly supplies the funds, for investment, and not with any intention of making a distribution or resale of such securities either in whole or in part.

The Company reserves the right to declare any prospective investor ineligible to purchase Units based on information provided (or not provided) in the Subscription Agreement and Purchaser Questionnaire or on any other

information which may become known or available to the Company concerning the suitability of such prospective investor or for any other reason.

In the case of fiduciary accounts, the net worth and/or income suitability requirements must be met by the beneficiary of the account, or by the fiduciary, if the fiduciary directly or indirectly provides funds for the purchase of the Units. In order to create an Individual Retirement Account, a person must comply with the provisions of Section 408 of the Code and an investment in the Units does not, in and of itself, create an Individual Retirement Account for any person.

SUMMARY OF THE OFFERING

THE INFORMATION SET FORTH BELOW IS INTENDED TO SUPPLY, IN SUMMARY FORM, CERTAIN INFORMATION AND HIGHLIGHTS FROM THE MATERIAL CONTAINED IN THIS MEMORANDUM AND SHOULD BE READ IN CONJUNCTION WITH, AND IS QUALIFIED BY, THE DETAILED INFORMATION APPEARING ELSEWHERE IN THIS MEMORANDUM. ANY CAPITALIZED TERMS CONTAINED HEREIN WHICH ARE NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN THE COMPANY'S OPERATING AGREEMENT ATTACHED HERETO AS EXHIBIT A (THE "OPERATING AGREEMENT").

The Company

CAL NEVA LODGE, LLC is a Nevada limited liability company. The Company's address and telephone number are c/o CR Cal Neva, LLC, 1336-D Oak Street, St. Helena, CA 94574; (707) 963-0313. The address of the Company's Development Office is 2 State Line Road, Crystal Bay, NV 89402..

Overview

The Company has been formed to complete the purchase certain real property located in Crystal Bay, Nevada and the related business known as the "Cal Neva Resort, Spa and Casino" (referred to herein as the "Property"); to exercise all rights, powers, privileges, and other incidents of ownership or possession with respect to the Property; to enter into, make, and perform all contracts and other undertakings; and to engage in other related activities.

Management

The Company is manager managed and, except with respect to certain "Major Decisions," management and control of the Company is vested exclusively in the Manager of the Company. The Manager of the Company is CR Cal Neva, LLC, a Nevada limited liability company. The Manager may not be removed without the unanimous consent of all Members. The Manager and the Members also will appoint a five (5) member Executive Committee to make Major Decisions. The Executive Committee's power is limited to making Major Decisions. Major Decisions require approval of four (4) out of five (5) members of the Executive Committee.

The Offering

The Company is offering for sale up to twenty (20) Units (\$20,000,000) of membership interests in the Company for a purchase price of \$1,000,000 per Unit. The Minimum Offering Amount is fourteen (14) Units (\$14,000,000). The minimum investment is one (1) Unit, or \$1,000,000. Subscriptions for the Units will be accepted only from prospective investors who are "accredited investors." Investors

- (iii) **PRO RATA RETURN:** To all Members *pro rata* based upon the Percentage Interest owned by each such Member.
- (iv) 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 the Preferred Members is less than forty percent (40%) of the Capital Contributions made by the Preferred Members, each Preferred Member shall be entitled to receive additional distributions of Preferred Returns, prior to any distributions to the other Members, in an amount equal to the difference between 40% of the Capital Contributions made by each Preferred Member minus the total Preferred Returns received by each Preferred Member. After such additional distributions have been paid to the Preferred Members, distributions shall then be made. Preferred Returns to each Preferred Member shall thereafter continue 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.
- (v) Schedule 4.1 of the Operating Agreement also provides that the Common 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 ten percent (10%) Percentage Interest also has been reserved for a mezzanine lender.

Allocations of Income and Gain

Allocations of the Company's income, gain and for tax and financial purposes will be made in a manner which will be consistent with, and will give effect to, the distribution provisions outlined above.

Reports to Members

The Company information necessary for the preparation of the Federal income tax returns of the investors will be furnished to each Member within ninety (90) days after the end of each year. If there are more than thirty-five (35) Members, the Company will also send to each Member, within one hundred twenty (120) days after the end of each year, an annual report containing financial statements of the Company and a report of the activities of the Company during such year.

Tax Considerations

An investment in the Company is not expected to yield significant tax benefits for a typical investor, and an investor solely seeking such benefits should not invest in the Company. Nevertheless, investment in the Company requires careful consideration of tax consequences and the risks attendant thereto. See "RISK FACTORS - Federal Income Tax Risks." EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT WITH SUCH PROSPECTIVE INVESTOR'S OWN TAX ADVISOR IN ORDER TO FULLY UNDERSTAND HOW SUCH CONSEQUENCES AND RISKS AFFECT SUCH PROSPECTIVE INVESTOR'S PARTICULAR SITUATION.

**Limitation on Transfer
of Units**

There is currently no public market for the Units, and it is highly unlikely that such a market will develop. The Units have not been registered under the Securities Act of 1933, as amended (the "Act"), or the securities laws of any state, and may not be transferred or resold except as permitted under the Act and such state law pursuant to registration or exemption therefrom. Further, the transferability of the Units will be subject to certain significant restrictions imposed by the Operating Agreement. See "SUMMARY OF THE OPERATING AGREEMENT - Limited Transferability of the Units," and "RISK FACTORS."

Compensation to the Manager

The Manager will not receive any compensation for the Manager's services to the Company. Any decision to provide the Manager with compensation at a later date shall be deemed a Major Decision and will be subject to approval of the Executive Committee. In addition, an affiliate of the Manager may receive fees in the amount of \$60,000 per month for services provided under a Development Services Agreement to be entered into post-closing. Such development fees will not to exceed \$1,200,000. Once the Property is developed, an affiliate of the Manager also may enter into a Hotel Management Agreement. The Development Services Agreement and the Hotel Management Agreements will be negotiated at arm's length utilizing outside independent counsel. See "COMPENSATION AND FEES."

Conflict of Interest

The Company may be subject to various conflicts of interest given that its Manager have other business interests and investments which include real estate. See "CONFLICTS OF INTEREST."

THE BUSINESS

The Company has been formed to purchase certain real property located in Crystal Bay, Nevada and the related business known as the "Cal Neva Resort, Spa and Casino" (referred to herein as the "Property"). Criswell Radovan, LLC through affiliate Cal Neva Lodge, LLC, bought the Property in April 2013 from Canyon Capital, who had taken it back in foreclosure in 2009. In connection with the purchase, Canyon Capital agreed to take passive preferred equity in the venture. Criswell Radovan, LLC also obtained bridge financing of \$6 million which it used as the equity to close on the Property and complete the entire pre-development phase on the Property. While that acquisition and pre-development financing was relatively expensive, it allows the new equity investors to invest at an unusually low risk level for a development opportunity. The Property (effectively purchased for an acquisition price of \$13,000,000) includes all real property, the hotel and restaurant business (with liquor and gaming licenses), all inventory, furnishings and equipment used in the operations of the business and all intellectual property (names, logos and website).

The Property—Cal Neva Resort, Spa and Casino

The Cal Neva Resort, Spa and Casino was founded in the early 1926. It is the oldest casino in the U.S. and the hotel saw its heyday in the 1960s when it was owned by Frank Sinatra and became a popular destination among the Hollywood and political elite. The Property will feature 191 guest rooms among its tower, chalets, and cabins. It also enjoys a non-restricted gaming license for a 17,000 square foot casino; 16,000 feet of meeting space, a full service spa, a 350 seat showroom, the famous Circle Bar, Press Restaurant, and a Dean & DeLuca market.

Set on almost 14 acres overlooking Lake Tahoe, the Property has just over 9 acres in Nevada and 4.5 acres in the State of California in the North Shore area of Lake Tahoe. It is a 45 minute drive from the Reno-Tahoe airport, about 3.5 hours by car from San Francisco, and about 90 minutes by car from Sacramento. In addition to being less than 400 feet from the water, the Cal Neva is within 30 minutes of the Northstar, Squaw, Incline, and Alpine Meadows ski areas, as well as several smaller ski resorts such as Diamond Peak at Incline Village.

While the building needs cosmetic improvements and a complete re-launch of the management and marketing of the property, there are no known structural issues of concern, and the previous owner spent over \$10,000,000 upgrading all of the kitchen and service areas to support group business. The cost of the recent upgrades alone roughly matches the price to buy the entire property.

For additional information regarding the Property (Cal Neva Resort, Spa and Casino), see "Business Plan" attached hereto as Exhibit B.

Business Summary

The Cal Neva Resort, Spa and Casino enjoys a strong sense of place and identity created by its high-profile history of close to ninety (90) years. The Company believes that one of the most striking things about this opportunity is the nostalgia and popularity it enjoys throughout the San Francisco bay area and the northern California region. This is not just a rooms upgrade to take market share from competitors – the notion of "bringing back the Cal Neva" has an immediate resonance with people, and done right, the Company believes it could be a game-changer in the North Lake Tahoe Market. There is nothing in the market with the kind a character that this hotel offers, and the ability to bring music and other major live entertainment as well as upscale gambling entertainment to an otherwise sleepy night-life scene in North Lake Tahoe, gives it a market niche all to itself. The Property also has been offered the opportunity to become a member of the Starwood Luxury Collection. The Company believes that this would give the Property the power to utilize the Starwood network for reservations, marketing, and group sales, while permitting it to keep its historic identity.

The Company believes that based on the very good structural and "back of house" condition of the Property, the hotel can be renovated and re-opened for about \$32 million renovation cost, with twelve approximately

(12) months for the upgrade. The Company anticipates that the project will initially be capitalized with \$20,000,000 of equity and \$35,000,000 of debt.

A financial forecast for the Property anticipates return of Investor principal in four (4) years, total Project revenue in excess of \$90,000,000 (or a 4.5 times equity multiple) if the Property is sold in year seven of operations, before any contribution from Phase II condo units and a long-term annuity stream of between \$2,000,000-2,500,000 if the Property is held beyond year seven. The Company anticipates, but cannot guarantee, that such *pro forma* financial results will be met or that the Property will be offered for sale at the end of year seven. For additional information regarding the Company, historical and *pro forma* financial information and the Business Operating Plan for the Property, see the Company's Business Plan attached hereto as Exhibit B.

Management

The Company is managed by the Manager in accordance with the Operating Agreement. Manager is an affiliate of Criswell Radovan, LLC. The Criswell Radovan team was chosen to pursue this opportunity based on its track record in the luxury hotel space, including several significant historic rehabilitations. The Ritz Carlton in San Francisco and the Aetna Springs project in Napa Valley (currently in development) show Criswell Radovan's understanding of both the creative sensitivity in planning as well as the marketing power of restoring these historic hotels. Criswell Radovan's work on the Calistoga Ranch project in Napa Valley (ranked #1 hotel in California and #5 in the U.S. by U.S. News and World Report) in addition to those other properties demonstrates its success in developing one-of-a-kind properties in markets with very high barriers to entry.

For additional information regarding Management of the Company, see the Company's Operating Agreement attached hereto as Exhibit A and the Company's Business Plan attached hereto as Exhibit B.

Legal Proceedings

The Company is not a party to any material pending legal proceeding.

COMPENSATION AND FEES

Subject to Section 8.3 of the Operating Agreement regarding approval of Major Decisions including the approval of an Operating Budget and a Project Budget and approval of other payments, the Company may not pay to any Manager, Member or other person a salary as compensation for their services rendered to the Company.

Upon approval of the Executive Committee, pursuant to Section 7.4 of the Operating Agreement, the Company plans to enter into a Development Services Agreement with an affiliate of the Manager to oversee the development of the project (the "Developer"). It is anticipated that the Developer will receive a fee (the "Development Fee") in an amount of \$60,000 per month; provided that Development Fees will not to exceed \$1,200,000 in the aggregate. Following the completion of the redevelopment, the Company, upon approval of the Executive Committee, and pursuant to Section 7.3 of the Operating Agreement, plans to enter into a Hotel Management Agreement with day-to-day management of the Property to be performed by an affiliate of the Manager. In addition to being approved by the Executive Committee, the Development Services Agreement and the Hotel Management Agreement will be negotiated at arm's length utilizing outside independent counsel and will be terminable for cause.

For additional information regarding Compensation and Fees, see the Company's Operating Agreement attached hereto as Exhibit A and the Company's Business Plan attached hereto as Exhibit B.

ESTIMATED USE OF PROCEEDS

The following table illustrates the intended use by the Company of the proceeds of the Offering assuming sale of the Maximum Offering Amount. The figures contained in the table represent the estimates of the Manager. While the Manager believe that the Manager have adequately anticipated each category of the use of proceeds, certain reallocations may be necessary.

Payoff of Equity Bridge Financing	\$ 6,400,000
Payment to Canyon to Redeem Preferred Equity Interest	10,500,000
Reimbursement of Manager for Predevelopment Services/Expenses	300,000 ¹
Working Capital	<u>\$ 2,800,000</u>
TOTAL PROCEEDS	\$20,000,000

¹ Represents the net amount to be received by the Manager after taking into account reimbursement and reinvestment of \$1,000,000 by Criswell Radovan, LLC.

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

Lack of Company History. The executive officers and Manager have experience in the purchase, development and management of real property, the purchase and sale of businesses and the finance and sale of commercial real estate. However, the Company is newly formed and has not engaged in any substantial business prior to this Offering. There is no Company history or prior earnings upon which investors could evaluate the likely performance of the Company. Accordingly, the Company will be subject to all of the risks inherent in the creation of a new business.

Speculative Investment. There can be no assurance the Company will satisfy its business objectives. Furthermore, no assurance can be given to the Founding Members or the Preferred Members that they will realize a return on their investment, or that they will not lose their entire investment in the Company. For this reason, each prospective purchaser should carefully read this Memorandum and all exhibits hereto and should consult with such purchaser's attorney, business advisor, or investment advisor, if any. The Founding Members also will receive an option to purchase condos at a discount. Such condos have not been built and no assurance can be given that such condos will ever be built.

Reliance on the Company. The Founding Members and Preferred Members have the right to vote on Major Decisions. Except with respect to the foregoing, Members do not have voting rights and will be completely reliant on the Manager for management of the Company's affairs.

Conflicts of Interest. The Manager may be subject to certain conflicts of interest with respect to the Company relating to businesses in which the Manager may engage in the future which are similar to and competitive with the business conducted by the Company. See "CONFLICTS OF INTEREST."

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.

Risks Associated with the Property. The success of the Company will be directly dependent upon the success of the Property. The Property will be subject to the risks generally incident to niche, high end destination resort properties and to the hospitality business in general, including changes in economic or local condition, changes of supply of or demand for similar or competing properties, changes in average room rates and availability of rooms offered at discount or Internet rates at competing properties, changes in gas prices, the cost of airline travel or the value of the U.S. Dollar, changes in federal, state and local laws, rules and regulations impacting the Property

or access to the Property, changes in weather patterns or other environmental conditions, changes in tax, environmental or zoning laws and other factors beyond the control of the Company.

Competition and Pricing. The lodge/resort industry in which the Property competes is highly competitive, with competition coming primarily from other lodges, resorts, hotels and ranches that provide alternative accommodations, facilities and activities. While we believe that Cal Neva Resort, Spa and Casino is well positioned to compete, and that our newly rebuilt main lodge, luxury accommodations and Crystal Bay location present a significant advantage over competing properties, Cal Neva Resort, Spa and Casino has not been actively or efficiently marketed and has been closed for renovation since September 2013. As a result, it is uncertain whether achieved an acceptable level of occupancy can be sustained or whether the Property can successfully compete and prove viable within the marketplace. The Company, in addition, has identified several situations the occurrence of which may hinder its ability to successfully compete:

- Other competitive lodges/resorts may capture greater market attention or media buzz;
- Other competitive lodges/resorts/hotels may be reduce room rates in an effort to boost occupancy;
- Our accommodations may not meet evolving market tastes or needs; and
- The Company may not have the financial resources to pay for needed maintenance or additional capital improvements as market or other conditions may require.

Many of our competitors also have substantially greater financial, marketing, personnel and other resources than does the Company. There can be no assurance that the newly reopened Cal Neva Resort, Spa and Casino following its acquisition by the Company can be successfully re-launched and marketed. Competitive pressures could prevent us from growing, reduce our market share or require us to reduce room rates and restaurant prices, any of which could harm our business. The Company also may be required to adjust its rates and pricing due to seasonal demand or unexpected weather or environmental conditions. A lowering of rates and prices may have a material adverse impact on the financial condition and results of operations of the Company. See "Business Plan."

Delays in Implementing Business Operating Plan. Any delay in the implementation of the Business Operating Plan may cause the Company to incur additional costs and could impair the possible success of the Company. In particular, the Company will be purchasing, operating and holding the Property. While the Company intends to refinance the Property within three (3) years and sell the Property within ten (10) years, the inability to timely sell the Property as planned could greatly reduce the internal rate of return and the ability of the Company to repay all of the investors their Capital Contributions. In addition, any such delay will at least defer the receipt by the Preferred Members of any return on their Units, may jeopardize the viability of the Company and could result in a total loss of any investment in the Units.

Projections. The projected financial information contained herein or in the Company's Business Plan attached to this Memorandum as Exhibit B represents a projection of future events which may or may not occur. The projections are based on the estimates and assumptions set forth therein which may or may not prove to be accurate and should not be relied upon to indicate the actual results which might be obtained by the Company. No representation or warranty of any kind is given with respect to the accuracy of the projections. The actual results of future operations of the Company likely will vary from those set forth in the projections, and such variations may be material and adverse. The projections have been prepared by the Company's management and have not been reviewed or compiled by independent certified public accountants.

Investment Risks

Compensation to the Manager. The Manager and/or its affiliates may be entitled to receive compensation to be paid by the Company under certain circumstances. See "COMPENSATION AND FEES."

Restrictions on Transferability; No Market for Units. There currently exists no public market for the Units and it is highly unlikely that such a market will ever develop. A Preferred Member will only be able to sell the Units pursuant to exemptions from registration and qualification under applicable Federal and state securities laws, with an opinion of counsel acceptable to the Company to that effect. Further, the transferability of the Units is specifically restricted under the Operating Agreement. As a result of the foregoing, investors must bear the economic risk of an investment in the Units offered hereby for an indefinite period of time and may not be able to liquidate their investments in the event of an emergency or for any other reason.

Dissolution of Company. There is always a risk that the Company may be dissolved notwithstanding the desires of some, or all, of the Founding or Preferred Members.

Liability of the Preferred Members for Return of Distributions. Under applicable law, a Preferred Member who has received distributions from the Company, representing, in whole or in part, a return of such Preferred Member's Capital Contribution (distributions of cash in excess of profits) may be required to repay to the Company any sum not in excess of the amount of such return of capital plus interest, if the Company is unable to satisfy its liabilities to creditors who extended credit or whose claim arose before such return of capital.

Lack of Management Control by Investors. Investors will have very limited voting rights. The Founding Members and the Preferred Members do not have the right to take part in the management or control of the Company's business, which will be the sole responsibility of the Manager. Following the closing of the Offering, most day-to-day activities will be delegated to affiliates of the Manager who will perform development and hotel management services pursuant to a Development Services Agreement and a Hotel Management Agreement, respectively. Such agreements must be approved by the Executive Committee and will be terminable for cause.

Reports to the Founding and Preferred Members. The only information regarding the business of the Company that will be required to be prepared and made available to the Founding Members and the Preferred Members will be the reports described in the Operating Agreement.

Forward-Looking Statements. Certain statements contained in this Memorandum, including without limitation, statements containing the words "believes," "anticipates," "intends," "expects" and words of similar import, constitute "forward-looking statements." Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Company or industry results to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such factors include, among others, the following: general economic and business conditions, both domestic and foreign; industry and market capacity; liability and other claims asserted against the Company; competition; change in operating strategy or development plans; the ability to attract and retain qualified personnel; and other factors referenced in this Memorandum. Given these uncertainties, prospective investors are cautioned not to place undue reliance on such forward-looking statements. The Company disclaims any obligation to update any such factors or to publicly announce the result of any revisions to any of the forward-looking statements contained herein to reflect future events or developments.

Federal Income Tax Risks

General. The economic benefits of an investment in the Company are in part predicated on certain assumptions concerning the Federal income tax aspects of such an investment. However, there are various risks associated with the Federal income tax consequences of an investment in the Company, which are summarized below. This summary is not intended to be a substitute for careful tax planning, particularly since the income tax consequences of an investment in the Company are complex and will not be the same for all investors. **PROSPECTIVE INVESTORS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS WITH SPECIFIC REFERENCE TO THEIR OWN TAX SITUATIONS BEFORE INVESTING IN THE COMPANY.**

Tax Status of the Company and Tax Matters: No Tax Ruling or Opinion of Counsel. Although the Company believes that the Company will be treated as a Company for Federal income tax purposes, no ruling from the Internal Revenue Service (the "Service") or opinion of counsel has been or will be sought with respect to the status of the Company as a "partnership" for Federal income tax purposes, or with respect to the Federal income tax consequences of any assignment of the Units or with respect to the Federal income tax consequences of the Company's operations, including the tax treatment of income, gains or losses of the Company or any deductions or credits which the Company intends to take. In the event that the Company is classified as an association taxable as a corporation, the Members would be treated as shareholders of a corporation, with the result, among other things, that: (i) items of income, gain, loss, deduction and credit would not flow through to the Members to be accounted for on their individual Federal income tax returns; (ii) distributions would be treated as corporate distributions to the Members taxable to them as dividends, to the extent of the Company's current or accumulated earnings and profits; and (iii) the taxable income of the Company would be subject to the Federal income tax imposed on corporations in a manner that would reduce the amounts, if any, available for distribution to the Members.

Changes in Federal Tax Law. It should be emphasized that the Internal Revenue Code could be substantially amended (including amendments having retroactive effect) in a manner that could adversely affect an investment in the Units. Also, judicial decisions and administrative actions of the Treasury Department and the Service may have adverse effects on the interpretation of existing tax law. It is impossible to predict any changes in the tax law or the effect such changes could have on an investment in the Company.

Audit of the Company's Tax Returns. There is a possibility that the tax returns of the Company will be examined by the Service. Adjustments, if any, resulting from any such audit would require adjustments to the Members' personal income tax returns and might result in separate audits of the Member's own tax returns. Any such audit of a Member's return could result in proposed adjustments relating to non-Company items as well as of Company income or loss.

CONFLICTS OF INTEREST

The Company is subject to various conflicts of interest arising from its relationships with the Manager and its Affiliates. These conflicts include, but are not limited to, the following:

Compensation. While the Manager will not receive any compensation for the Manager's services to the Company, affiliates of the Manager will receive fees for development and hotel management services pursuant to a Development Services Agreement and a Hotel Management Agreement, respectively. Such agreements, as described above, must be approved by the Executive Committee and will be terminable for cause.

Other Activities of the Manager. The Manager may engage for the their own accounts, or for the account of others, including other entities which the Manager may form, in other business ventures, related to similar businesses, competitive or otherwise, and neither the Company nor any of the Preferred Members shall be entitled to any interest therein. The Operating Agreement expressly provides that the Manager will not be obligated to present to the Company any particular investment opportunity that comes to their attention, even if such opportunity is of a character which might be suitable for investment by the Company. Furthermore, the Manager will not have any duty to account to the Company for profits derived from any of the foregoing activities.

Lack of Separate Representation. The Company and the Common Member and the Manager are represented by the same counsel. The attorneys who perform services for the Company and the Common Member and Manager also perform services for certain affiliates of the Common Member and Manager. Legal counsel for the Company does not purport to act independently on behalf of the Investors, and does not represent the interests of either the Founding Members or the Preferred Members in connection with this Offering. It is anticipated that the representation of the Company and the Common Member and Manager by the same counsel will continue in the

future. If a dispute arises between the Company, the Common Member and the Manager, or if a majority of the Investor members of the Executive Committee request, the Manager will cause the Company to retain separate counsel for such matters as and when appropriate. Each Investor must rely upon such Investor's legal counsel for advice in connection with an investment in the Units.

Resolution of Conflicts of Interest. The Manager has not developed, and do not expect to develop, any formal process for resolving conflicts of interest. However, the Manager is subject to a fiduciary duty to exercise good faith and integrity in handling the affairs of the Company, which duty will govern its actions in all such matters. See "FIDUCIARY RESPONSIBILITY OF THE MANAGER." While the foregoing conflicts of interest could materially and adversely affect the Founding Members and the Preferred Members and the Company, the Manager, in the Manager's sole judgment and discretion, will attempt to mitigate such potential adversity by the exercise of its business judgment in an attempt to fulfill the Manager's fiduciary obligations. There can be no assurance that any such attempt will prevent the adverse consequences that may result from the numerous conflicts of interest. See "OTHER ACTIVITIES OF MANAGER."

FIDUCIARY RESPONSIBILITY OF THE MANAGER

The Manager is accountable to the Company as a fiduciary and consequently must exercise good faith and integrity in handling the Company's affairs.

The Manager has broad discretionary powers to manage the affairs of the Company under the terms of the Operating Agreement. Generally, actions taken by the Manager are not subject to vote or review by the Founding Members or the Preferred Members, except as required by statute. The Company must, on demand, give to any Founding Members or Preferred Member or such Founding Members' or Preferred Member's legal representative, true and full information concerning all Company affairs and each Founding Members or Preferred Member or such Founding Members' or Preferred Member's legal representative may inspect and copy certain of the Company's books and records at any time during normal business hours following reasonable notice to the Company as described in the Operating Agreement.

THE OFFERING

The Offering described herein consists of a total of up to a maximum of twenty (20) Units, with a minimum purchase of one Unit (\$1,000,000), at a purchase price of \$1,000,000 per Unit, to selected Investors who meet the suitability requirements established for this Offering. Investors will have an opportunity to become Founding Members and acquire Founders Units and/or Preferred Members and acquire Preferred Units. Of the total Units offered hereunder, the Company has stipulated that the Preferred Units and the Founders Units will not be created as a separate class unless a minimum of five (5) Units of that class are sold and that no more than fifteen (15) Founders Units will be issued and sold. It is anticipated that the closing of the Offering will occur on or before March 28, 2014, provided that on or before the Closing Date, Investors shall have subscribed for a minimum of fourteen (14) of the Units (\$14,000,000), which is the Minimum Offering Amount. The Founders Units and the Preferred Units will be offered on a best efforts basis. The Offering will terminate not later than April 30, 2014, unless extended by the Manager for up to 90 days.

All subscriptions, once accepted, will be deposited in an escrow account to be established at Powell Coleman & Arnold LLP. Unless subscriptions for fourteen (14) Units (\$14,000,000) have been received and accepted by the Manager by the Termination Date, all funds received from subscribers will be returned to them by the Company without interest.

Objectives

The principal investment objectives in order of priority are to: (1) protect the Members' Capital Contribution Amounts; and (2) provide for payment of the Preferred Return. HOWEVER, THERE CAN BE NO ASSURANCE THAT ANY OR ALL SUCH OBJECTIVES WILL BE ATTAINED.

Subscription Procedures

Each person wishing to subscribe for the purchase of Units will be required to execute a Subscription Agreement, a Founding Member/Preferred Member Signature Page and Power of Attorney and a Purchaser Questionnaire in the forms contained in the Subscription Booklet that accompanies this Memorandum. Each investor will be required to represent in the Subscription Agreement, among other things, that such investor is an "accredited investor," acquiring the Units for such investor's own account or for a fiduciary account for which the investor either directly or indirectly supplies the funds, for investment, and not with any intention of making a distribution or resale of such securities either in whole or in part. The Company reserves the right, in its sole discretion, to reject the subscription of any prospective investor.

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

- (1) A Subscription Agreement;
- (2) A Founding Member/Preferred Member Signature Page and Power of Attorney;
- (3) A Purchaser Questionnaire;
- (4) A Certificate of Nonforeign Status;
- (5) IRS Form W-9; and
- (6) Investor's Instructions to Escrow and Wire Transfer Information.

The failure to fully complete and execute each of the foregoing documents may result in the rejection, or a delay in the acceptance, of an investor's subscription.

By executing the Founding Member/Preferred Member Signature Page and Power of Attorney, the subscriber: (i) agrees, among other things, to all of the terms of the Operating Agreement; (ii) grants the Power of Attorney contained therein; and (iii) certifies to all the representations contained therein.

Acceptance of Subscriptions

Before the Company will accept a subscription for the Units offered hereby, it must determine that the investor meets the suitability standards set forth above under the caption "INVESTOR SUITABILITY STANDARDS."

Therefore, each prospective investor will be asked to complete a Purchaser Questionnaire contained in the Subscription Booklet that accompanies this Memorandum. Not more than ten (10) business days after the Company receives a completed and executed Subscription Agreement from a prospective investor, the Company will notify such investor whether such investor's subscription will be rejected. Amounts paid by a prospective investor whose subscription is rejected will be promptly returned without interest.

ERISA CONSIDERATIONS

Special considerations must be taken into account by the person ("Fiduciary") having responsibility regarding the investments of a tax-qualified retirement plan ("Qualified Plan"), an IRA or Keogh Plan subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") in determining whether to invest a portion of the IRA's, the Keogh Plan's or the Qualified Plan's assets in the Company. Qualified Plans subject to ERISA include, but are not limited to pension, profit sharing, stock bonus, or other tax-qualified retirement plans. IRAs and Keogh Plans are also subject to ERISA.

General Fiduciary Duties

ERISA requires that the Fiduciary handle the investments of a Qualified Plan with the care, skill, prudence, and diligence that a prudent man would use under the same circumstances. Specifically, ERISA requires that the Fiduciary make the following determinations (among others): (i) whether the investment is made solely in the interests of the plan participants; (ii) whether the investments of the plan are adequately diversified; (iii) whether the investment is made in accordance with the documents and instruments governing the plan; (iv) whether the investment complies with the plan's need for liquidity and return, which must necessarily take into account whether the income the plan receives will be subject to the tax on unrelated business taxable income (See "Unrelated Business Taxable Income" below); and (v) whether the investment would constitute a "prohibited transaction" under the provisions of ERISA or of the Code.

THIS DISCUSSION IS NOT INTENDED TO BE A LIST OF ALL OF THE DETERMINATIONS THAT A FIDUCIARY MUST MAKE PRIOR TO AUTHORIZING A PLAN TO INVEST IN THE COMPANY, AND IS A GENERAL DISCUSSION OF CERTAIN ISSUES THAT MAY AFFECT A FIDUCIARY'S DECISION WHETHER TO INVEST IN THE COMPANY.

Plan Asset Regulations

Under ERISA, certain requirements apply with respect to the assets of an IRA, Keogh Plan or Qualified Plan. For example, ERISA and the Code prohibit an IRA, Keogh Plan or Qualified Plan from engaging in certain "prohibited transactions" involving plan assets with people or entities which are labeled "parties in interest" under ERISA or "disqualified persons" under the Code with respect to that plan. Also, any person having authority or discretion regarding the management or disposition of plan assets may be a Fiduciary, and therefore be held to the special standards of fiduciary responsibility contained in ERISA, including liability for certain breaches of fiduciary responsibility by other Fiduciaries. Thus, if the assets of the Company constitute plan assets, the person who has responsibility for the management of the Company's assets has been a Fiduciary of each Qualified Plan that invests in the Company, and the Fiduciaries of the investing Qualified Plans could be subject to co-fiduciary liability under ERISA for breaches committed by that person or for an improper delegation of investment authority to that person.

Neither ERISA nor the Code defines the term "plan assets." The Department of Labor, however, has issued ERISA Interpretive Bulletin 75-2 ("IB 75-2"), which provides that an investment by a Qualified Plan in securities of a corporation or a Company generally will not result in the underlying assets of the corporation or Company being treated as plan assets for purposes of the prohibited transaction rules solely by reason of such investment. Under the guidelines of IB 75-2, then, the assets of the Company normally would not constitute assets of a Qualified Plan that invests in the Company for purposes of the prohibited transaction rules.

Fiduciaries of Qualified Plans should be aware that, subsequent to the promulgation of IB 75-2, the Department of Labor has issued final regulations (Regulation 29 C.F.R. Section 2510.3-101, published on November 13, 1986 at 51 Fed. Reg. 41262) defining what constitutes plan assets ("Plan Asset Regulations"). The Plan Asset Regulations provide, among other things, that a Company's assets will not be plan assets if: (i) benefit plan investors, in the aggregate, own less than 25% of the value of membership interests; or (ii) if the Company is an operating company. The Company does not intend to limit plan investors to the percentage set forth in (i), above. An operating company is an entity that is primarily engaged in the production or sale of a product or service other than the investment of capital. More likely than not the Company will be deemed to be an operating company, and therefore its assets should not be deemed to be plan assets under the Plan Asset Regulations. If, pursuant to the Plan Asset Regulations, any investment in the Company were considered to be an investment in the underlying Company assets, prohibited transactions could arise under ERISA and the Code, investment by a Fiduciary of an IRA, Keogh Plan, or Qualified Plan could be deemed an improper delegation of investment authority, and the Fiduciary could be liable either directly, or under the co-fiduciary rules of ERISA, for the acts of the Company. Accordingly, an IRA, Keogh Plan or Qualified Plan Fiduciary is urged to consult its legal counsel with respect to investment in the Units.

Unrelated Business Taxable Income

IRAs, Keogh Plans and Qualified Plans are generally exempt from Federal income taxation on their income. This exemption from tax does not apply, however, to the extent that the "unrelated business taxable income" ("UBTI") of the Qualified Plan exceeds \$1,000 during any fiscal year of the entity. It is believed that, subject to certain exceptions, income from the Company would constitute UBTI.

THE ABOVE DISCUSSION RELATING TO UBTI IS GIVEN AS GENERAL INFORMATION ONLY, NOT AS ADVICE AS TO HOW ANY PARTICULAR IRA, KEOGH PLAN OR QUALIFIED PLAN WOULD BE TAXED UNDER THE UBTI RULES. IRAS, KEOGH PLANS AND QUALIFIED PLANS SHOULD CONSULT THEIR TAX ADVISER REGARDING THE APPLICATION OF THE UBTI RULES TO THEIR PARTICULAR CIRCUMSTANCES, INCLUDING THE EFFECT AND APPLICABILITY OF STATE, LOCAL, AND OTHER TAX LAWS.

Valuation of Units

ERISA requires that the assets of a plan be valued at their fair market value as of the close of the plan year. It may not be possible to adequately value the Units from year to year, since there may not be a market for them.

SUMMARY OF THE OPERATING AGREEMENT

THE FOLLOWING IS A SUMMARY OF THE OPERATING AGREEMENT. SUCH SUMMARY IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE OPERATING AGREEMENT, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A. IT IS RECOMMENDED THAT EACH PROSPECTIVE INVESTOR READ THE OPERATING AGREEMENT IN FULL. CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS MEMORANDUM SHALL HAVE THE MEANING GIVEN TO THEM IN THE OPERATING AGREEMENT.

Nature of the Company

The Company is a limited liability company formed under the laws of the State of Nevada on March 13, 2013. The Operating Agreement authorizes the issuance and sale of up to twenty (20) Founders Units and Preferred Units for \$1,000,000 per Unit. The Minimum Offering Amount is fourteen (14) Units (\$14,000,000). The minimum investment is one Unit, or \$1,000,000; provided, however, that the Company reserves the right to sell partial Preferred Units.

Capital contributed to the Company by a purchaser of the Units is subject to the risks of the Company's business. Except as specifically provided in the Operating Agreement, no Member is permitted to take any part in the management or control of the business and may not be assessed for additional capital contributions. Assuming that the Company is operated in accordance with the terms of the Operating Agreement, a Member will not be liable for the liabilities of the Company in excess of such Member's Capital Contribution and share of undistributed profits. Notwithstanding the foregoing, a Preferred Member will be liable for any Distributions made to such Preferred Member if, after such Distributions, the remaining assets of the Company are not sufficient to pay its then outstanding liabilities, exclusive of liabilities of the Preferred Members on account of their Capital Contribution Amounts, and liabilities for which recourse is limited to specific Company assets.

Responsibilities of the Company

Subject to approval of Major Decisions by the Executive Committee, the Manager has the exclusive management and control of all aspects of the business of the Company. Subject to the foregoing, in the course of its management, the Manager may, in its absolute discretion, acquire, encumber, hold title to, pledge, sell, release, or otherwise dispose of real and personal property and interests therein when and upon such terms as it determines to be in the best interests of the Company and employ such persons, including, under certain circumstances, affiliates of the Manager, as the Manager deem necessary for the efficient operation of the Company.

Liabilities of Preferred Members / Assessability of Interests

The Operating Agreement provides that the Members shall not be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Company.

Term and Dissolution

The term of the Company will continue until December 31, 2063, unless dissolved in accordance with the Operating Agreement.

Voting Rights of Members

As set forth in the Operating Agreement, the Members have a limited right to vote on Major Decisions.

Limited Transferability of Units

Founding Members and Preferred Members have the right to assign, transfer or sell the Founding Units and the Preferred Units only in accordance with the provisions of the Operating Agreement. No assignment shall be effective if the assignment would violate the provisions of any applicable state or federal securities law, and the Company may require the transferor to provide to the Company an opinion of counsel satisfactory to the Company to that effect.

Preferred Return

The Preferred Members shall receive a "Preferred Return" in an amount equal to 10% per annum, calculated on an annual basis, non-compounded, on the amount of all Capital Contribution Amounts actually received by the Company in cash for which Preferred Units were issued. 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 the Preferred Members is less than forty percent (40%) of the Capital Contributions made by the Preferred Members, each Preferred Member shall be entitled to receive additional distributions of Preferred Returns, prior to any distributions to the other Members, in an amount equal to the difference between 40% of the Capital Contributions made by each Preferred Member minus the total Preferred Returns received by each Preferred Member. After such additional distributions have been paid to the Preferred Members, distributions shall then be made. Preferred Returns to each Preferred Member shall thereafter continue 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.

Distributions

Distributions of cash received from operations or the sale or refinance of the Property shall be distributed as follows:

- (vi) **10% PREFERRED RETURN:** 100% to the Preferred Members *pro rata* based upon the Percentage Interest owned by each such Preferred Member until the Preferred Members have received cumulative Distributions equal to the 10% annualized Preferred Return, non-compounded; and thereafter
- (vii) **RETURN OF INVESTMENT:** 100% to all Members *pro rata* based upon the Percentage Interest owned by each such Member until the Members have received cumulative Distributions equal to the Members' Capital Contributions; and thereafter
- (viii) **PRO RATA RETURN:** To all Members *pro rata* based upon the Percentage Interest owned by each such Member.

- (ix) 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 the Preferred Members is less than forty percent (40%) of the Capital Contributions made by the Preferred Members, each Preferred Member shall be entitled to receive additional distributions of Preferred Returns, prior to any distributions to the other Members, in an amount equal to the difference between 40% of the Capital Contributions made by each Preferred Member minus the total Preferred Returns received by each Preferred Member. After such additional distributions have been paid to the Preferred Members, distributions shall then be made. Preferred Returns to each Preferred Member shall thereafter continue 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.
- (x) Schedule 4.1 of the Operating Agreement also provides that the Common 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 ten percent (10%) Percentage Interest also has been reserved for a mezzanine lender.

Allocations of Income and Loss

Allocations of Company income, gain and for tax and financial purposes will be made in a manner which will be consistent with, and will give effect to, the distribution provisions outlined above.

The Manager' Independent Activities

The Operating Agreement provides that the Manager (as well as any Founding Member or Preferred Member) and any of their Affiliates may engage in or possess any interest in other business ventures of every nature and description, whether such ventures are competitive with the Company or otherwise. Thus, the Manager or any of their Affiliates may engage independently in any other business. (See "RISK FACTORS - Conflicts of Interest.")

Books and Records

At all times during the term of the Company, the Company will keep true and accurate books of account of all the financial activities of the Company. These books of account will be kept open for inspection by the Members or their representatives at any time during normal business hours following reasonable notice given to the Company. The Manager may make such elections for Federal and state income tax purposes as the Manager deem appropriate and the fiscal year of the Company will be the calendar year unless changed by the Manager with the consent of the Commissioner of the Internal Revenue Service.

Reports

If there are more than 35 Members, the Company will send to each Member, within 120 days after the end of each of the Company's fiscal years, an annual report, prepared at the Company's expense, containing a balance sheet, statement of income or loss and statement of changes in financial position. The financial statements included in the annual report may, at the discretion of the Company, be unaudited.

The Company shall send to each Member within 90 days after the end of each taxable year the information necessary for the Member to complete its Federal and state income tax or information returns.

Appointment of the Manager as Attorney-in-Fact

Under the Operating Agreement, each Founding Member and Preferred Member irrevocably constitutes and appoints the Manager as such Founding Member's or Preferred Member's true and lawful attorney-in-fact, with full power and authority in such Founding Member's or Preferred Member's name, place and stead to make, execute acknowledge and file the certificates and other instruments described therein. This power of attorney does not grant the authority to amend or modify the Operating Agreement except as otherwise permitted therein (*See* Founding Member/Preferred Member Signature Page and Power of Attorney contained in the Subscription Booklet).

ADDITIONAL INFORMATION

In the opinion of the Manager, this Memorandum contains a fair summary of the documents referred to herein and does not omit a material fact or contain a misstatement of a material fact or fail to state a material fact necessary to make any statements made herein not misleading. Persons to whom offers are made will be furnished with such additional information concerning the Company and the other matters discussed herein as they, or their representatives or advisors, may reasonably request. The Company will, to the extent the Company possesses such information or can acquire it without unreasonable effort or expense, endeavor to provide such information to such persons. All prospective investors are urged to make such personal investigations, inspections or inquiries as they deem appropriate.

OPERATING AGREEMENT

[attached hereto]

000695

000695

Exhibit A

Partial Document

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

000696

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, President

By: _____

f:\DOCS\BRC\10252\029\Amended Restated Operating Agreement-Cal Neva Lodge-06.doc

000697

000697

Schedule 4.1

MEMBERS AND INTERESTS

As of _____, 2014

<u>Members</u>	<u>Business, Residence or Mailing Address</u>	<u>Percentage Owned</u>
1. PREFERRED MEMBERS		
(a) _____		
(b) _____		
(c) _____		
2. FOUNDER MEMBERS		
(a) _____		
(b) _____		
(c) _____		
3. SPONSOR MEMBER		
CR Cal Neva, LLC	1336-D Oak Street St. Helena, California 94574	20%
4. MEZZANINE LENDER		
_____	_____ _____	10%

Schedule 4.2

INITIAL CASH CAPITAL CONTRIBUTIONS

CR	\$ _____
_____	_____
_____	_____
_____	_____

669000

000699

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 March 31, 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.

BUSINESS PLAN

[attached hereto]

000701

Exhibit B

000701

FILED
Electronically
CV16-00767
2017-06-28 10:48:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6172106 : pmsewell

EXHIBIT 19

000702

EXHIBIT 19

Re: Cal Neva

5/26/16 9:37 AM

From: Stuart Yount <syount@fortifiber.com>

To: Dave Marriner <marrinertahoe@aol.com>

Subject: Re: Cal Neva

Date: Mon, Aug 3, 2015 12:32 pm

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

RE:

5/26/16 9:36 AM

From: Stuart Yount <syount@fortifiber.com>
To: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
Cc: Dave Marriner <marrinertahoe@aol.com>

Subject: RE:

Date: Wed, Jul 29, 2015 12:39 pm

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

Re: Cal Neva

5/26/16 9:34 AM

From: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
 To: Stuart Yount <syount@fortifiber.com>
 Cc: Dave Marriner <marrinertahoe@aol.com>; Heather Hill <Heather@CRISWELLRADOVAN.COM>
 Subject: Re: Cal Neva
 Date: Sun, Jul 26, 2015 9:54 am

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

RR

Sent from my iPhone

> On Jul 26, 2015, at 7:40 AM, Stuart Yount <syount@fortifiber.com> wrote:

> How do the state taxes to the investors on their 10% interest, distributions & eventual sale of their interest in Cal Neva split between California & Nevada?

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

>> On Jul 25, 2015, at 11:39 AM, Robert Radovan <Robert@CRISWELLRADOVAN.COM> wrote:

>>
 >> Yes and the Fairwinds is included.
 >>
 >> Thanks,
 >>
 >> Robert

>>
 >>
 >>
 >> Sent from my iPhone

>>> On Jul 25, 2015, at 11:04 AM, Stuart Yount <syount@fortifiber.com> wrote:

>>>
 >>> All very interesting. Many thanks.

>>>
 >>> Does a \$1m investment currently equal 3.3% ownership in the entire Cal Neva project, including the Fairwinds?

>>>
 >>> Stuart Yount
 >>> Chairman & CEO

Re: Cal Neva

5/26/16 9:33 AM

From: Stuart Yount <syount@fortifiber.com>
To: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
Cc: Dave Marriner <marrinerlahoe@aol.com>; Heather Hill <Heather@CRISWELLRADOVAN.COM>
Subject: Re: Cal Neva
Date: Sun, Jul 26, 2015 7:51 am

I believe the Developer has 20% ownership & the \$20,000 Founding investors own 66%. So, who owns the remaining 14%? Thanks.

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

> On Jul 26, 2015, at 7:38 AM, Stuart Yount <syount@fortifiber.com> wrote:

>

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>

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Re: Cal Neva

5/26/16 9:33 AM

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>>>

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>>> 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: Saturday, July 25, 2015 10:11 AM

>>> To: Stuart Yount <syount@fortifiber.com>

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

>>> <Heather@CRISWELLRADOVAN.COM>

>>> Subject: Cal Neva

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>>> Hi Stuart,

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>>> 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

Re: Cal Neva

5/26/16 9:33 AM

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.

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>>> 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.

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>>> 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.

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>>> RR

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Re: Cal Neva

5/26/16 9:32 AM

From: Robert Radovan <Robert@CRISWELLRADOVAN.COM>
 To: Stuart Yount <syount@fortifiber.com>
 Cc: Dave Marriner <marrinertahoe@aol.com>; Heather Hill <Heather@CRISWELLRADOVAN.COM>
 Subject: Re: Cal Neva
 Date: Sat, Jul 25, 2015 11:40 am

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Cheers,

Robert

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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).

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Thanks again,

RR

27

27

1 **2200**

2 Martin A. Little, Esq., NV Bar No. 7067
3 Alexander Villamar, Esq., NV Bar No. 9927

4 **Howard & Howard Attorneys PLLC**
5 3800 Howard Hughes Pkwy., Ste. 1000
6 Las Vegas, NV 89169

7 Telephone: (702) 257-1483

8 Facsimile: (702) 567-1568

9 E-Mail: mal@h2law.com; av@h2law.com

10 *Attorneys for Criswell Radovan, LLC, CR Cal Neva, LLC,*
11 *Robert Radovan, William Criswell, Cal Neva Lodge, LLC,*
12 *and Powell, Coleman and Arnold LLP*

13 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
14 **THE STATE OF NEVADA IN AND FOR THE**
15 **COUNTY OF WASHOE**

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

19 Plaintiff,

20 vs.

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

Defendants.

CASE NO.: CV16-00767

DEPT NO.: B7

MOTION FOR SUMMARY JUDGMENT

///

///

///

///

Defendants Criswell Radovan, LLC (Criswell Radovan), CR Cal Neva, LLC ("CR Cal Neva"), Robert Radovan ("Radovan"), William Criswell ("Criswell"), and Powell, Coleman and Arnold LLP ("PCA"), (Collectively "Defendants"), by and through their undersigned counsel, file this Motion for Summary Judgment ("Motion"), pursuant to NRCP 56, on the grounds there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law.¹

This Motion is made and based on NRCP 56 and the attached Memorandum of Points and Authorities, the Declaration of Robert Radovan and the depositions and documents attached as exhibits to this Motion, the pleadings and papers on file herein, and the arguments of counsel at any hearing hereof.

DATED this 28 day of June, 2017.

HOWARD & HOWARD ATTORNEYS PLLC

By: 

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case involves the redevelopment of the historic Cal Neva Hotel in Lake Tahoe (the "Property"). Criswell Radovan acquired the Property in 2013 with the intent of re-opening it after a multi-million dollar renovation (the "Project"). The acquisition and renovation of the

¹¹ Cal Neva Lodge, LLC and New Cal-Neva Lodge, LLC are currently navigating through Chapter 11 reorganization in the United States Bankruptcy Court for the District of Nevada; therefore, this Motion is not filed with respect to these defendants.

1 Project was to be funded through conventional financing and \$20 million of equity, which
2 equity shares were offered to investors beginning in 2014 (hereafter the "Founder Shares.").

3 The general contractor, Penta Building Group ("Penta") mobilized to the site in
4 November 2014 and substantial completion was targeted for December 2015 – to be timed with
5 an opening celebration on Frank Sinatra's 100th birthday. By July 2015, the Project was
6 progressing and all but \$1.5 Million of the Founder Shares had been sold. Around this time,
7 the construction budget and schedule was being impacted by scope changes due to unforeseen
8 construction issues, and it became necessary for the development team to sell the remaining
9 \$1.5 million of Founder Shares. This offering was put out to prospective investors through the
10 Project's agent and broker, David Marriner ("Mariner") of Marriner Real Estate.

11 One of these prospective investors was Plaintiff George Yount ("Plaintiff") -- a
12 sophisticated investor from Lake Tahoe who was originally approached in 2014 about investing
13 but was not interested at the time. Plaintiff engaged in significant due diligence in late July and
14 early August, but then went radio silent as he navigated how to pull \$1 million out of his 401(k)
15 to invest. Faced with deadlines, Radovan and Marriner pursued other investors and ultimately
16 sold the last \$1.5 million Founder Share to an existing investor, Les Busick, at the end of
17 September 2015.

18 Around the time Mr. Busick closed out the last of the Founder Shares, Plaintiff got his
19 401(k) approval to fund an anticipated \$1 million investment in the Project. Excited to have
20 Plaintiff part of the Project, Radovan and Marriner discussed selling Plaintiff one of CR Cal
21 Neva's two Founder Shares.² Radovan assumed that Marriner had explained this to Plaintiff,
22 and Marriner assumed that Radovan had told Plaintiff. Plaintiff contends, however, that he
23 closed his purchase on October 12, 2015 believing that he was buying \$1 million of the last
24 \$1.5 million Founder Share. Practically, there is no difference-- value or otherwise-- between
25 the share Plaintiff thought he was purchasing and the share he purchased from CR Cal Neva.
26 They are both Founder Shares and have the identical rights, obligations and value.
27

28 ² CR Cal Neva is a limited liability company owned by Radovan and Criswell. It is a single purpose entity
formed to develop the Project. CR Cal Neva owned \$2 million of the original \$20 million Founder Shares.

1 Although Plaintiff feigns outrage at learning he purchased one of CR Cal Neva's
2 Founder Shares, instead of the last Founder Share purchased by Mr. Busick, this is no doubt a
3 convenient reaction to the fact the Project subsequently fell into bankruptcy. Notably, from the
4 moment Plaintiff bought his interest, he clearly considered himself as, and was treated by the
5 Executive Committee as, a full founding investor. He attended Executive Committee meetings
6 and involved himself actively in those meetings. Unfortunately, he also involved himself with
7 a select group of investors who actively meddled in the financing efforts to try to supplant their
8 own financing. In the spring of 2016, these investors (with Plaintiff's involvement) went behind
9 Criswell Radovan's back and sabotaged the loan Criswell Radovan had lined up with Mosaic
10 to fund the remaining construction. Without funding, the Project fell into bankruptcy and
11 Plaintiff has since attempted to distance himself from his investment, including filing the instant
12 lawsuit.

13 Each of Plaintiff's legal theories fails because he is in the identical position he would
14 have been had he beat Mr. Busick to the finish line and purchased the last Founder Share. That
15 is to say, Plaintiff has not been damaged as he got exactly what he bargained for -- a Founder
16 Share in the Project.

17 Moreover, as explained herein, Plaintiff's own testimony demonstrates that his fraud
18 and tort claims fail to satisfy the clear and convincing pleading standards. Accordingly,
19 Defendants are entitled to judgment as a matter of law.

20 II.

21 STATEMENT OF UNDISPUTED FACTS

22
23 1. On or about February 18, 2014, Marriner met with Plaintiff about investing in
24 the Project. See Second Amended Complaint, ¶ 13. Plaintiff was not interested at that time.
25 See, Deposition of Plaintiff ("Plaintiff depo"), p. 55: 1-12, **Exhibit 1** hereto.

26 2. Nearly a year and a half later, in July 2015, Plaintiff was informed the last \$1.5
27 million Founder's Share had been released. Plaintiff Depo, 77:22 – 78:9.

28 3. Plaintiff considers himself a sophisticated investor. Id. at 33:14 – 18.

4. Plaintiff is the CEO of Fortifiber Corporation, a company that supplies

1 construction materials around the world. *Id.* at 28:5 – 29:15.

2 5. Plaintiff understands how to review financial statements and to assess risks when
3 it comes to making an investment. *Id.* at 33:22 – 34:2.

4 6. In July, 2015, Plaintiff was provided with numerous investment documents,
5 including a Private Placement Memorandum, which discussed the speculative nature and risk
6 of the investment. *Id.* at 221:14 – 222:21; 235:2-6. Plaintiff read and understood the risks of
7 this type of investment and had the opportunity to have his attorney and accountant review the
8 same. *Id.*

9 7. In addition to the “Private Placement” documents, Plaintiff was provided
10 financial statements, construction progress reports and answers to all of the specific questions
11 he had about the Project. *Id.* at 62-64. Importantly, the construction progress reports addressed
12 the significant impacts that were occurring to the budget and schedule at the time due to
13 unforeseen scope changes. *See, e.g.*, July 2015 Monthly Progress Reported, **Exhibit 2** hereto;
14 Plaintiff depo, pp. 62-63.

15 8. As part of his due diligence, in July, 2015, Plaintiff did a 2-hour walk through
16 of the Project with Marriner and a Penta representative, where Plaintiff was told about the
17 ongoing changes to the Project that were impacting the budget and schedule. *Id.* at 36:22-39:20.

18 9. Although Plaintiff knew the schedule was being compressed by scope changes,
19 which were also already affecting the budget, he admittedly never asked any specifics about
20 either prior to investing. *Id.* at 144.

21 10. Plaintiff did, however, speak with the Project’s architect, Peter Grove, who he
22 knew well – in fact, Peter Grove was Plaintiff’s architect on one of his residence remodels. *Id.*
23 at 47; 81.

24 11. Plaintiff asked Peter Grove how he would rate the Project’s chance of success,
25 and was told “pretty good.” *Id.* at 135-136. Peter Grove told Plaintiff the Project was in fund
26 raising mode, with construction costs exceeding budget and they were trying to get their arms
27 around those increasing costs. *Id.* at 135-36.
28

1 12. Plaintiff believes Peter Grove was honest with him and would not misrepresent
2 facts about the Project's costs or schedule. Id. at 201.

3 13. Prior to investing, Plaintiff admittedly did not ask for anything that he was not
4 given. Id. at 155:1-3.

5 14. Importantly, Plaintiff had his CPA review all this documentation and assist him
6 with his due diligence. Id. at 34:7-15; 120:20-23. Radovan also timely responded to questions
7 from Plaintiff's CPA. Id. at 155:22 – 156:2. Plaintiff's CPA told him this seemed like a good
8 project. Id. at 123:19-23.

9 15. In late July, 2015, Plaintiff made notes of his due diligence. See, Note, **Exhibit**
10 **3** hereto; Plaintiff Depo. at 148-149. These notes confirm Plaintiff's understanding that the
11 construction budget was at least \$10 million over budget from what was represented in the
12 Private Placement Memoranda. Id. at 149:21-25. Plaintiff's notes also confirm his
13 understanding that the developer, CR Cal Neva, owned \$2 million of Founder Shares. Id. at
14 150:1-6. Additionally, as of late July, Plaintiff understood the full opening was being pushed
15 back to April 2016. See, Exhibit 3 and Plaintiff Depo., p. 152:16-19.

16 16. Plaintiff was seeking to fund his potential investment through his 401(k), which
17 he admits took a lot of time. Id. at 230:24-231:5.

18 17. During this time, in August 2015, Plaintiff was told the soft opening was being
19 pushed back even further, to March 2016, with a grand opening on Father's Day, 2016. Id. at
20 159:14-25.

21 18. Les Busick, one of the original investors and a member of the Project's
22 Executive Committee, purchased the last \$1.5 million Founder Share at the end of September
23 2015. See, Deposition of Robert Radovan, p. 71:7-9, **Exhibit 4**.

24 19. Radovan spoke to Marriner and told him that if Plaintiff was still interested in
25 investing, CR Cal Neva would sell him one of its \$1 million Founder Shares. See Radovan
26 Dep., p. 75:12-23; 91:9-19; 92:14-18. Radovan believed Marriner informed Plaintiff of this
27 fact. Id. at 74:16-23. Plaintiff has no evidence to the contrary. Plaintiff Dep., at 14:21-15:18.
28

1 20. In fact, on October 1, 2015 -- after Mr. Busick closed out the last \$1.5 million
2 Founder Share, Marriner sent Plaintiff wiring instructions to Criswell Radovan's bank account.
3 See, Plaintiff Depo., p. 168-69.

4 21. On October 10, 2015 -- two days before Plaintiff invested, Radovan responded
5 by email to Plaintiff's request for a schedule update, reaffirming that a soft opening was
6 scheduled in Spring with grand opening on Father's Day 2016. Id. 170, 207-08.

7 22. On October 12, 2015, Plaintiff signed and delivered a Subscription Agreement
8 and wired his \$1 million to the trust account of PCA-- the developer's attorney. See, Amended
9 Complaint, p. 20.

10 23. PCA -- believing Plaintiff was buying one of CR Cal Neva's shares -- sent the
11 funds to CR Cal Neva. See, Deposition of Bruce Coleman, p. 35:24-36:6, **Exhibit 5** hereto. In
12 fact, PCA did not have the escrow instructions or Subscription Agreement that Plaintiff
13 executed which forms the basis for his negligence cause of action. Id. at 34:8-21; 36:18-37:4;
14 37:25-38:3. PCA's only instructions were to send the money to Criswell Radovan, which made
15 sense since everyone (except allegedly Plaintiff) believed Plaintiff was buying one of CR Cal
16 Neva's Founder Shares.

17 24. Plaintiff claims he first learned he had purchased one of CR Cal Neva's
18 Founding Shares in January, 2016. See, Second Amended Complaint, p. 23. Prior to investing,
19 Plaintiff says nobody told him Mr. Busick had purchased the last \$1.5 million Founder's Share.
20 Plaintiff depo., pp. 80, 90.

21 25. Plaintiff also claims that, in December 2015, he learned for the first time that:

- 22 a. the project was substantially over budget (Plaintiff depo., pp. 84-85); and
23 b. it was not going to open in December, 2015 because of construction delays (Id.
24 at 84-85).

25 26. As shown above, and explained in more detail below, this allegation is belied by
26 the undisputed evidence in this case, including Plaintiff's own testimony.
27
28

000719

summary judgment on appeal). To rebut a motion for partial summary judgment, Plaintiff must present admissible evidence that demonstrates that genuine issues of material fact remain in dispute. *Posadas v. City of Reno*, 109 Nev. 448, 851 P.2d 438 (1993); *Bartmettler v. Reno Air*, 114, 956 P.2d 1382 (1998). Plaintiff cannot rebut Defendants' motion on "gossamer wings of whimsy, speculation, and conjecture . . ." or by establishing the "slightest doubt" as to the operative facts. *D.*; *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005)(abrogating the "slightest doubt" standard regarding motions for summary judgment). Because there are no material issues of fact left for trial, as set forth below, the Court should grant summary judgment to Defendants.

B. Summary Judgment Is Appropriate Since Plaintiff Is In The Same Position He Would Have Been Had He Bought From The Last \$1.5 Million Founders' Share

The thrust of Plaintiff's lawsuit is that he thought he was buying part of the last \$1.5 million Founder's Share that Les Busick ultimately took before Plaintiff could get his funding in place. *See*, Plaintiff Depo., at 43:13-18. Fundamental to each of Plaintiff's causes of action is causation and damages -- neither of which Plaintiff can prove since CR Cal Neva's Founder's Share has the identical rights, obligations and value as the Founder's Share Plaintiff thought he was purchasing. *See*, Radovan Declaration, filed concurrently herewith.

In fact, Plaintiff admitted as follows:

Q. Are the rights and obligations of those two Founders Shares any different to your knowledge?

A. I don't know. I never saw any documentation on that.

Plaintiff Depo., at 105:19-25

* * *

Q. Do you have any evidence that the value of that founding share is any different than a founding share purchased from CR Cal-Neva?

A. I think they are both worth zero.

Plaintiff Depo., at 107:24-108:2.

* * *

1 Q. Can you explain how you believe you've been damages in this
2 lawsuit?

3 A. First of all, because my money was not put where the escrow
4 instruction I agreed to said it would go. Do you want other--

5 Q. Yeah, any other reasons you believe you've been damaged?

6 A. As I told you, I think it totally disvalues the Project that they
7 took the money personally and took it out of the Project, and I
8 still don't think it implies that they took the money to get as
9 much out of the Project as they could before it went broke. I
10 think they could see the handwriting on the wall.

11 Q. And that's just your own personal opinion, you don't have
12 specific facts or evidence of that?

13 A. Been through that a dozen times, yes, that's correct.

14 Id. at 125:12 – 126:3.

15 * * *

16 Q. Do you have any evidence that Criswell Radovan sold you one
17 of their shares because they knew the Project was in trouble?

18 A. No. It just seems obvious to me.

19 Id. at 93:18 – 21:3; 105:1-17 (admitting he has no evidence Defendants intended to
20 sell their shares because Project was failing.)

21 The bottom line is Plaintiff got exactly what he bargained for-- a Founder's Share in the
22 Project. Plaintiff would be in the exact position he is now had he beat Les Busick to purchase
23 the remaining \$1.5 million Founder's Share. Accordingly, Plaintiff has not been damaged and
24 his claims should be dismissed.

25 C. Plaintiff Cannot Prove His Fraud-Based Claims, Including Punitive 26 Damages

27 To establish a claim for fraud, a plaintiff must prove that (1) a false representation was
28 made by the defendant; (2) defendant's knowledge or belief that its representation was false or
that defendant had an insufficient basis of information for making the representation; (3)
defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation;
and (4) damage to the plaintiff as a result of relying on the misrepresentation. *Barmettler v.*

1 *Reno Air, Inc.*, 114 Nev. 441, 446–47, 956 P.2d 1382, 1386 (1998); *Bulbman Inc. v. Nevada*
2 *Bell*, 108 Nev. 105, 110–11, 825 P.2d 588, 592 (1992); *Lubbe v. Barba*, 91 Nev. 596, 599, 540
3 P.2d 115, 117 (1975).

4 The plaintiff has the burden of proving each and every element of his claim by clear and
5 convincing evidence. *Id.* Further, “[w]here an essential element of a claim for relief is absent,
6 the facts, disputed or otherwise, as to other elements are rendered immaterial and summary
7 judgment is proper.” *Bulbman*, 108 Nev. at 111, 825 P.2d at 592.

8 “[A] representation which later proved to be technically in error, [does] not establish[]
9 in the record by clear and convincing evidence that” the defendant knew the representation was
10 false. *Lubbe*, 91 Nev. at 599.

11 Damages alleged must be proximately caused by reliance on the misrepresentation or
12 omission. *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420 (2007). Proximate cause limits
13 liability to foreseeable consequences that are reasonably connected to both the defendant's
14 misrepresentation or omission and the harm that the misrepresentation or omission created. *Id.*
15 at 225-226.

16
17 **i. Fraud and Punitive Damage Claims Against Criswell Fail as a Matter of**
18 **Law**

19 As a threshold matter, Plaintiff has asserted fraud and punitive damages against Criswell
20 and Radovan in their individual capacities, in addition to asserting those claims against their
21 entities. *See*, Second Amended Complaint, third, sixth and seventh causes of action. These
22 claims must fail against Criswell as Plaintiff admitted in his deposition that he never met, spoke
23 to or communicated with Criswell prior to making his investment. *See* Plaintiff Depo, at 58:13
24 – 59:1; 80:17-22. It goes without saying that if Plaintiff never spoke with Criswell he could not
25 have been defrauded by Criswell. Thus, Plaintiff cannot prove any of the elements of his fraud
26 or punitive damage claims against Criswell individually, much less by clear and convincing
27 evidence.
28

1 **ii. Plaintiff's Claim That the Project Was More Over-budget Than**
 2 **Represented**

3 Plaintiff's fraud claims also fail against all of the Defendants for substantive reasons.

4 Plaintiff first contends he was defrauded because the Project was more over-budget than
 5 represented by Marriner and Radovan. Plaintiff Depo., pp. 71-72; 84-85. Specifically, Plaintiff
 6 testified he was led to believe the Project was \$5-6 Million over budget. *Id.*, at 72. Plaintiff's
 7 own testimony, however, shows he really knew the Project was at least \$10 million over budget.
 8 *Id.*, at 149:17-25. Importantly, Plaintiff has no evidence the Project was more overbudget than
 9 this when he made his investment:

10 Q. What information or evidence do you have that the Project was
 11 substantially overbudget as of the date you made your
 investment?

12 A. No firm knowledge.

13 *Id.* at 88:11-14.

14 * * *

15 Q. Do you have any information how much more overbudget the
 16 Project was when you made your investment than was
 represented to you?

17 A. No..

18 Q. Have you attempted to ascertain that number?

19 A. No

20 Q. Do you have a ballpark?

21 A. No. It would strictly be a guess.

22 *Id.* at 72:11-19. Thus, Plaintiff cannot prove by clear and convincing evidence that
 23 Defendants misrepresented the budget.

24 Moreover, Plaintiff admittedly cannot prove intent to induce reliance.

25 Q. Do you have any information at the time Mr. Radovan made
 26 these representations to you that he knew the costs on the
 27 project would exceed this Nine Million Dollars?

28 A. No.

Id. at 76:1-5; *See also*, p. 89:4-8 and 100:5-10.

1 **iii. Plaintiff's Claim Regarding Schedule Delays**

2 Plaintiff also claims he was misled about the date the Project would open. Specifically,
3 he says he knew it was not going to open by December, 2015, but says this was because of
4 concerns over lack of tourism in the winter -- not because of construction delays. *Id.* at 84-85.
5 This claim must also fail.

6 In fact, two days before Plaintiff invested, Radovan told him by email the soft opening
7 was in spring and grand opening Father's Day, 2016. *Id.* at 207-08. This email says nothing
8 about tourism or weather. *Id.* at 232:17-21. Plaintiff admittedly has no evidence to believe this
9 statement was false when made. *Id.* at 169:16-170:16; 207:5-208:16.

10 **iv. Plaintiff's Claim the Defendants Knew and Misrepresented the Financial**
11 **Health of the Project When He Invested. *Id.* at 85.**

12 Plaintiff also contends Defendants knew and misrepresented the financial health of the
13 Project when he invested. *Id.* At 85. Although similar to his claim that the Project was more
14 overbudget, Plaintiff adds that Defendants sold their share to him because they knew the Project
15 was failing. When pressed, however, Plaintiff admitted he had no evidence to support this:

16 Q. Do you have any evidence that Criswell Radovan sold you one
17 of their shares because they knew the Project was in trouble?

18 A. No. It just seems obvious to me.

19 *Id.* at 93:18-21; 105:8-18. This falls far short of the clear and convincing evidence
20 standard.

21 **v. Plaintiff's Claim That Defendants Misrepresented Financing**

22 Plaintiff's fraud and punitive damage claims are also predicated on the allegation that
23 Defendants made misrepresentations about the refinancing that was being pursued before he
24 invested. *See*, Second Amended Complaint, ¶ 35 and 51. Plaintiff has no evidence to back this
25 up:

26 Q. Do you have any information that as of the date that you made
27 your investment, that a refinancing that a refinancing of the six
28 million mezz with a 15 Million dollar loan wasn't in place or
imminent?

 A. At the time of my investment, no, I did not know that.

1 Q. No, do you have any information that it was not in place or
2 imminent?

3 A. No.

4 *Id.* at 110:15-23; 202:14-20.

5 **vi. Plaintiff's Claim About Defendants' Development Experience.**

6 Plaintiff's Complaint references misrepresentations about Defendants' track record of
7 developing similar projects. *See*, Second Amended Comp., ¶ 51. When pressed, he admitted
8 Marriner only mentioned one prior project, which he could not remember any details, and he
9 did nothing to investigate this or any other prior projects. Plaintiff Depo., p. 60:25-61:25. This
10 hardly satisfies any fraud elements.

11 In summary, Plaintiff cannot prove fraud and punitive damages against any of the
12 Defendants.

13 **D. Plaintiff's Second and Fourth Causes of Action Against PCY Fail as Well**

14 Plaintiff contends PCY breached its duties to him by releasing his funds to Criswell
15 Radovan. This claim fails because PCY understood and believed Plaintiff was buying one of
16 CR Cal Neva's shares, and Plaintiff admitted he has no evidence to the contrary. Plaintiff
17 Depo., 118:7-15. In fact, PCY did not have the escrow instructions that Plaintiff says were
18 breached. Coleman Depo., pp. 34-37. PCY followed the only instructions it had, which was to
19 send the money to Criswell Radovan for a purchase of its shares.

20 **E. Plaintiff's Breach of Contract Claim Fails**

21 Finally, Plaintiff testified he understood his contract to be with Cal Neva Lodge, LLC –
22 a bankrupt Defendant subject to an automatic stay. *Id.*, at 102. Accordingly, contract claims
23 against the other Defendants must fail.

24 ///

25 ///

26 ///

27 ///

28 ///

IV.
CONCLUSION

For the foregoing reasons, Defendants are entitled to summary judgment.

DATED this 28 day of June 2017.

HOWARD & HOWARD ATTORNEYS PLLC

By:



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1 **SECOND JUDICIAL DISTRICT COURT**
2 **COUNTY OF WASHOE, STAT OF NEVADA**

3 **AFFIRMATION**

4
5 **X** Document does not contain the social security number of any person

6 **- OR -**

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

9 _____ A specific state or federal law, to wit:

10 _____
(State specific state or federal law)

11 **- OR -**

12 For the administration of a public program

13 **- OR -**

14 _____ For an application for a federal or state grant

15 **- OR -**

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

18 Date: June 28, 2017

19 HOWARD & HOWARD ATTORNEYS, PLLC

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28 *CR Cal Neva, LLC, Robert Radovan,*

William Criswell, Cal Neva Lodge, LLC,

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000727
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000727

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am employed in the County of Clark, State of Nevada, am over
3 the age of 18 years and not a party to this action. My business address is that of Howard &
4 Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada,
5 89169.

6 On this day I served the foregoing **CRISWELL RADOVAN, LLC, CR CAL NEVA,**
7 **LLC, ROBERT RADOVAN, WILLIAM CRISWELL, AND POWELL, COLEMAN**
8 **AND ARNOLD LLP'S MOTION FOR SUMMARY JUDGMENT** in this action or
9 proceeding electronically with the Clerk of the Court via the E-File and Serve system, which
10 will cause this document to be served upon the following counsel of record:

11 Richard G. Campbell, Esq.
12 The Law Office of
13 Richard G. Campbell, Jr., Inc.
14 200 South Virginia Street, 8th Floor
15 Reno, NV 89502
16 Telephone: (775)-686-2446
17 Facsimile: (775) 997-7417
18 *Attorneys for Plaintiff*

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Incline Village, NV 89451
Telephone: (775) 831-3666
Attorneys for Defendants
David Marriner and
Marriner Real Estate, LLC

19 I certify under penalty of perjury that the foregoing is true and correct, and that this
20 Certificate of Service was executed by me on June 28, 2015 at Las Vegas, Nevada.

21 
22 An Employee of HOWARD & HOWARD ATTORNEYS PLLC
23
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EXHIBIT LIST

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5.	Deposition of Bruce Coleman	3

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Jacqueline Bryant
Clerk of the Court
Transaction # 6173719 : pmsewell

EXHIBIT 1

000730

In the Matter Of:
GEORGE STUART YOUNT vs
CRISWELL RADOVAN

GEORGE YOUNT

June 06, 2017



702-805-4800
scheduling@envision.legal

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

-o0o-

GEORGE STUART YOUNT,
individually and in his capacity : Case No.
as owner of GEORGE STUART YOUNT : CV16 00767
IRA,

Plaintiff,

vs.

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

Defendants.

=====

DEPOSITION OF
GEORGE STUART YOUNT
Tuesday, June 6, 2017
Reno, Nevada

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

Yount, George

June 06, 2017

Pages 14..17

<p style="text-align: right;">Page 14</p> <p>1 the time reviewing e-mails and time spent with your 2 attorney preparing for the deposition? 3 A Roughly. 4 Q Anything else you did to prepare for the 5 deposition? 6 A I can't think of anything. 7 Q You said you had some of the deposition 8 transcripts, but you can't say that you've ever reviewed 9 them? 10 A Correct. 11 Q But you did sit through all four of those 12 depositions, correct? 13 A Correct. 14 Q As you sit here today -- well, let's talk about 15 David Marriner first. Did anything he testified to 16 stand out in your mind as being false or inaccurate? 17 A I'm not sure because there was conflicts 18 between what he said and what Mr. Radovan and Mr. 19 Criswell said, so I don't know if it was false or 20 inaccurate. 21 Q What conflicts did you perceive between their 22 respective testimony? 23 A There was testimony in some of the depositions 24 about what Mr. Marriner knew and should have told me 25 versus what Mr. Marriner thinks he was allowed to tell</p>	<p style="text-align: right;">Page 16</p> <p>1 should have told you that you were really purchasing 2 Criswell Radovan's share as opposed to one of the 3 founding's shares? 4 A No one told me that, but they disagreed with 5 each other as to who should have told me. 6 Q Correct. That's the conflict between the 7 testimony that you're talking about? 8 A Yeah. 9 Q Is there any other conflict between their 10 testimony that you're aware of? 11 A It was just a general -- it wasn't just a 12 telling of that. It was what Mr. Marriner's 13 responsibilities were as the agent versus what he 14 understood they were and what he was allowed or supposed 15 to say to me versus what he felt Mr. Radovan restricted 16 him on. 17 Q Do you think that Mr. Marriner, from your 18 perception, had a larger role in at least involvement 19 with your investment than he testified to? 20 A I think -- maybe I'm not answering this 21 correctly. Tell me if I'm wrong, but I think he should 22 have told me what was going on with the project and with 23 the -- Busick was never mentioned. There was a whole 24 lot of things that were never mentioned. 25 Q We'll talk about all of that. I recall Mr.</p>
<p style="text-align: right;">Page 15</p> <p>1 me, I believe. 2 Q And would it be fair to say you don't know who 3 is telling the truth in that regard? 4 A Correct. 5 Q Outside of those inconsistencies, is there 6 anything else that you perceived as inaccurate or false 7 that came out of Mr. Marriner's deposition? 8 A I can't say as I remember anything, but I think 9 there were some inaccuracies. 10 Q Anything stand out in your mind today? 11 A No. 12 Q What about with respect to Mr. Criswell's 13 deposition? 14 A The same would hold true. 15 Q No specific inaccuracies that you can think of? 16 A I can't think of any. 17 Q What about Mr. Radovan's deposition? 18 A Same answer. 19 Q What about Bruce Coleman's deposition? 20 A That seemed accurate as well. 21 Q Seemed accurate? 22 A There was less conflicts with what he said than 23 what the others said. 24 Q Would it be fair to say that the prime conflict 25 between Mr. Marriner and Mr. Radovan stems from who</p>	<p style="text-align: right;">Page 17</p> <p>1 Marriner testified that his role was simply to make the 2 introduction between you and Mr. Radovan and then he 3 stepped out. From what you observed between the time 4 you got involved and signed off in October, was that 5 accurate? 6 A No. He was involved the entire way with giving 7 documents and giving reports on the project and the one 8 tour I had before the investment. 9 Q So he had a larger role than simply making an 10 introduction between you and Mr. Radovan? 11 A Yes. 12 Q Did you have any prior relationship with Mr. 13 Campbell before you retained him on this lawsuit? 14 A No. 15 Q Can you explain how it is that you came to hire 16 Mr. Campbell to work on this matter for you? 17 A An associate of mine of many years recommended 18 Brian Pick at Downey Brand and because I was very 19 concerned and thought I needed to consider a lawsuit, I 20 made an appointment with him and he brought in Mr. 21 Campbell who I had never met before that day. 22 Q Did the referral come from any of the other 23 investors on this project? 24 A No, no. It was a business associate. 25 Q Are any portion of your legal fees in this case</p>

Yount, George

June 06, 2017

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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.
22 Q I want to step back and get a little bit of
23 background on you. Can you tell us your educational
24 background?
25 A I, of course, graduated from high school, I've

Page 27

1 attended seven colleges and universities, the last of
2 which was Harvard Graduate School of Business.
3 Q Do you have any college degrees?
4 A No, not officially, although I'm considered an
5 alumni of Harvard.
6 Q How long did you attend Harvard?
7 A It was three weeks a year for three years was
8 the initial segment, and then I went back for a unit
9 four of the owner president management program later
10 which again I believe was three weeks, two or
11 three weeks.
12 Q What general period of time were you doing this
13 course work at Harvard?
14 A I completed that course and graduated from that
15 course in 1986.
16 Q Was that -- I guess there wouldn't have been
17 computers then, so it couldn't have been on-line, right?
18 A No.
19 Q Did you attend the physical campus?
20 A Yes, I did, in Cambridge.
21 Q So no bachelor or master's degree, you just
22 earned units towards that?
23 A I do have units, but my involvement was trying
24 to be with the best professors and the best universities
25 in the country to learn business. I didn't really care

Page 28

1 much about a degree. It wasn't important to me.
2 Q Have you ever held any licenses other than a
3 driver's license, real estate, anything like that?
4 A No, sir. A scuba diving license.
5 Q Tell me about your work experience.
6 A I started with my family business in 1969 and
7 worked my way up through that. In 1976, my father, the
8 founder of the company, retired from active day-to-day
9 business and I with one other gentleman pretty well ran
10 the company from then on, and once my father passed away
11 in 2001, I took over as Chairman and CEO.
12 Q And what is the family business?
13 A We manufacture black paper that goes behind
14 stucco walls, flashing around windows, under slab vapor
15 barriers, house wraps, mostly residential construction
16 materials, and the company is named Fortifiber
17 Corporation, F-o-r-t-i-f-i-b-e-r, Corporation.
18 Q Is that a Nevada corporation?
19 A No, California.
20 Q How many shareholders are there?
21 A Currently, there are three I would guess you'd
22 say. There's two trusts and myself.
23 Q Are you the majority shareholder?
24 A No.
25 Q Who is the majority shareholder?

Page 29

1 A My son and my daughter.
2 Q Are they active in the business?
3 A My son is. He runs it day-to-day now. These
4 are dynasty trusts.
5 Q When did you step back from day-to-day
6 operations of Fortifiber?
7 A I started to step back before 2006 and then the
8 great recess came on and I got much more involved again,
9 and now the last three years, I've stepped back pretty
10 dramatically.
11 Q Does the company supply construction materials
12 outside of Nevada?
13 A Oh, yes.
14 Q Throughout the United States?
15 A Yes, and beyond.
16 Q Sales-wise does it do seven figures, eight
17 figures, nine figures?
18 A Eight figures, well into the eight figures.
19 Q So you were at the helm of that corporation for
20 several decades?
21 A Yes.
22 Q How many employees did the company have at its
23 peak?
24 A 350.
25 Q How about now?

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Yount, George

June 06, 2017

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Page 30

1 A Close to 80.

2 Q Does it hold any construction licenses, or is

3 it strictly a supplier of materials?

4 A Supplier only.

5 Q Let's talk about your financial or business

6 experience. Outside of this project, have you made any

7 other real estate investments in your life?

8 A Other than for the company or for my own

9 residences, I guess one time my father and I went into a

10 venture of growing tomatoes in -- that wasn't even real

11 estate, growing tomatoes in Egypt, but not real estate

12 as such I don't believe.

13 Q You mentioned --

14 A I actually did have a small house that I

15 purchased in Pasadena, California that we've refurbished

16 and tried to sell, but that was just a one-time shot and

17 it didn't work out that well.

18 Q You mentioned the company in terms of real

19 estate investments, I take it the company has purchased

20 land?

21 A It really consists of two corporations. One is

22 called Stanwall Corporation, one is Fortifiber

23 corporation. Stanwall was always conceived as the real

24 estate investment for the business by building factories

25 from that standpoint, so between those two, which are

Page 31

1 same ownership, identical.

2 Q Is it Stanwall?

3 A S-t-a-n-w-a-l-l, which is named after Stanley

4 and Walter. My father was Stanley.

5 Q How many factories has Stanwall been involved

6 in acquiring?

7 A Or building?

8 Q Or building.

9 A Through the years, ten maybe. I don't know

10 exactly. I could research that if it mattered.

11 Q And you were the head of that company as well?

12 A Yes.

13 Q So you were involved in the acquisition and

14 development of those properties?

15 A Yes, I was involved.

16 Q And then on a personal level, you've acquired

17 and developed properties for your own personal use?

18 A Residences, yes, except for that one I

19 mentioned in Pasadena.

20 Q Approximately how many properties have you

21 acquired and/or developed for personal use?

22 A Five maybe.

23 Q Now, in the approximate ten properties that

24 Stanwall acquired and developed, did you stay --

25 A Stanwall or Fortifiber.

Page 32

1 Q -- did you stay involved during the

2 construction project?

3 A Yes.

4 Q Were any of those renovations, or were they all

5 new construction?

6 A Some were acquired as operating factories and

7 not renovations necessarily, and some of them were -- I

8 guess really just one of them was buying the land and

9 building a factory on it.

10 Q So one of the approximate ten, you bought the

11 land and built it from ground up?

12 A Yes.

13 Q And the others you built as existing factories?

14 A Bought as existing factories.

15 Q And then I take it you would have had to make

16 some renovations to those properties?

17 A That goes on throughout the course of business

18 forever.

19 Q Sure. Outside of your work at Fortifiber and

20 Stanwall, have you invested in any other businesses over

21 your lifetime?

22 A Yes, some. Not a great deal.

23 Q What other businesses have you invested in?

24 A I bought some stock in a company called MTI,

25 Medical Technologies, Inc. I think is what that stands

Page 33

1 for, and that was a good friend of mine that needed some

2 help and I invested some stock in that. I did not

3 participate in the day-to-day or any kind of position

4 other than consultation as a friend and investor.

5 Q Are you still an investor in that business?

6 A Yes.

7 Q Any other businesses?

8 A I mentioned the tomatoes in Egypt investment,

9 but that was kind of a flier. I can't think of any

10 offhand.

11 Q I take it you've made other types of

12 investments, stock or otherwise?

13 A Absolutely.

14 Q Do you consider yourself to be a sophisticated

15 investor?

16 A I believe that's what I qualified as

17 theoretically for -- some of the investments required

18 that qualification.

19 Q What sort of investments are those?

20 A Well, the tomatoes in Egypt one required that.

21 I think -- I'm not sure if MTI required that or not.

22 Q You understand how to review financial

23 statements?

24 A Yes.

25 Q You understand how to assess risk when it comes

Page 34

1 to making an investment?

2 A If I'm fully informed, yes.

3 Q You understand the types of information you

4 would want to know when making an investment in a

5 company or real estate?

6 A Mostly.

7 Q And you surround yourself with a team of

8 advisors, you have accountants and attorneys that assist

9 you with due diligence?

10 A I haven't used attorneys too much except when

11 I'm doing an acquisition or something of that sort, but

12 I do have a CPA firm that I work with.

13 Q And what is the name of that firm?

14 A Meloni, Hribal and Tratner, and Ken Tratner

15 specifically is the gentleman I mostly deal with.

16 Q Where is Ken based out of?

17 A Woodland Hills, I believe it is, California.

18 Q Any other types of investments that you've been

19 involved in that we haven't talked about?

20 A I can't think of any. Well, I guess I do --

21 it's kind of stocks, but it's options trading. I have a

22 friend who does some of that for me.

23 Q Outside of Fortifiber, have you sat on any

24 boards of any companies or professional organizations?

25 A Fortifiber Stanwall, and then non owned

Page 35

1 companies, I at one point participated in MTI's board.

2 I had a high school friend and best man in my wedding, I

3 paid on his board for a photography processing lab in

4 Pasadena, a small business, and some non-profit boards

5 if you want me to include that.

6 Q And sitting on boards, one of the roles would

7 be reviewing financial statements and understanding the

8 financial health of the company?

9 A Correct.

10 Q You're currently married, correct?

11 A Oh, yes.

12 Q What's your wife's name?

13 A Geraldine Marie Yount.

14 Q And how long have you two been married?

15 A Almost 47 years.

16 Q Congratulations.

17 A Thank you.

18 Q Can you tell us about her business and

19 financial experience?

20 A She has a degree in business administration

21 from Cal State L.A., but other than that, she has really

22 not participated in business hardly at all. She's been

23 my caretaker all these years.

24 Q She didn't have an active role in Fortifiber?

25 A No.

Page 36

1 Q Or Stanwall?

2 A No.

3 Q To your knowledge, she hasn't sat on any

4 boards?

5 A I don't believe she sat on any boards.

6 Q Has she had an active role in making any sort

7 of investment decisions on behalf of your family?

8 A Not in Stanwall or Fortifiber, but she's -- we

9 discuss things like the MTI investment and stocks and

10 bonds. Not that she knows specific stocks and bonds, I

11 just give her an outline of what my investment plan is,

12 more to keep her informed than anything.

13 Q Was she involved in making any investment

14 decisions for this project?

15 A She was informed of it. She --

16 MR. CAMPBELL: I'm going to caution, any

17 specific discussions will be covered by any marital

18 privilege, so you don't need to get into it other than

19 you --

20 THE WITNESS: I kept her informed.

21 BY MR. LITTLE:

22 Q Did she -- how many walk-throughs or tours did

23 you do of the project?

24 A I had one before and I believe two after the

25 investment.

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1 Q And when were the two after?

2 A One was in October with Mr. Radovan and Mr.

3 Marriner, and the other was just before the big supposed

4 celebration meeting on December 12th of 2016.

5 Q And the first one would have been late July?

6 A Mid to late, yeah.

7 Q While I'm here, who attended the July tour?

8 A I was trying to think of that. I don't

9 remember for sure. Obviously David Marriner and my wife

10 and myself, and I think there might have opinion a Penta

11 person there for part of it. I really don't recall who

12 was on that tour.

13 Q Do you recall how long that tour lasted?

14 A Two hours or less.

15 Q But for sure you and your wife and Mr.

16 Marriner?

17 A Correct.

18 Q And you believe a representative of Penta for

19 awhile?

20 A I'm not positive of that, but I believe we at

21 least met with one when we were going in. I think part

22 of the walk-through was with a Penta person as well.

23 Q Do you recall any substantive discussions with

24 the Penta representative?

25 A Only about him explaining what was being done

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<p>1 there.</p> <p>2 Q Do you know the name of that individual?</p> <p>3 A No, I'm sorry, I don't.</p> <p>4 Q Male or female?</p> <p>5 A Male.</p> <p>6 Q Do you know that person's capacity with Penta?</p> <p>7 A I'm not sure if he was the project manager or</p> <p>8 what. Mr. Marriner would know.</p> <p>9 Q Did you have any discussions during this first</p> <p>10 walk-through with the Penta representative about the</p> <p>11 status of construction?</p> <p>12 A No. Just he would show me what was being</p> <p>13 built, but --</p> <p>14 Q Any discussions about the schedule?</p> <p>15 A Not with him, no.</p> <p>16 Q Any discussions with Penta about any pending or</p> <p>17 approved changes to the project?</p> <p>18 A He would point out some changes like, for</p> <p>19 example, under the Circle Bar, there was substantial</p> <p>20 foundation work that came up that had to be done.</p> <p>21 Q Did you ask him about any costs associated with</p> <p>22 any of these changes?</p> <p>23 A No.</p> <p>24 Q I don't know if we have the exhibit book. Do</p> <p>25 you recall being given, I think it's Exhibit 25, or 26.</p>	<p>1 foundation under that.</p> <p>2 Q But in terms of time impacts or cost impacts,</p> <p>3 you didn't discuss that with Penta?</p> <p>4 A No, sir.</p> <p>5 Q You didn't ask?</p> <p>6 A No.</p> <p>7 Q Did you ask Mr. Marriner during the July</p> <p>8 walk-through, or did he offer to you any information</p> <p>9 about time or cost impacts associated with these</p> <p>10 changes?</p> <p>11 A Around that time, I believe it was at that tour</p> <p>12 as well, but I did ask him was it still on schedule for</p> <p>13 opening December 12th I believe it was.</p> <p>14 Q And what did he tell you?</p> <p>15 A He said yes.</p> <p>16 Q So to sum up, the July meeting was mid to late</p> <p>17 July, correct?</p> <p>18 A Correct.</p> <p>19 Q You believe it was attended by you, your wife,</p> <p>20 Mr. Marriner and somebody from Penta?</p> <p>21 A Part of the tour. I don't think the whole</p> <p>22 tour, but yes.</p> <p>23 Q And it lasted in the neighborhood of two hours?</p> <p>24 A Correct.</p> <p>25 Q Basically just walking the site?</p>
Page 39	Page 41
<p>1 Do you recall Mr. Marriner providing you with the July,</p> <p>2 2015 status report?</p> <p>3 A Yes, I do.</p> <p>4 Q That's Exhibit 26. Did you have that prior to</p> <p>5 the walk-through in July?</p> <p>6 A I don't believe -- it was about that time. I</p> <p>7 don't remember exactly the timing relationship.</p> <p>8 Q Now, this document lists a bunch of changes</p> <p>9 that were going to be necessary or impact items to the</p> <p>10 project and schedule, correct?</p> <p>11 A Correct.</p> <p>12 Q Did you talk about those with the Penta</p> <p>13 representative?</p> <p>14 A No. The costs you mean? No. I didn't feel</p> <p>15 that was my place to be dealing with somebody who was</p> <p>16 working for the project.</p> <p>17 Q So the Penta representative just told you about</p> <p>18 some of the changes that were ongoing?</p> <p>19 A Yeah, he would point at things and say this is</p> <p>20 what we're doing here, this is what we're doing there.</p> <p>21 Q Did he explain the circumstances that led to</p> <p>22 the change, for example, if it was a requirement of some</p> <p>23 governmental entity or anything like that?</p> <p>24 A No, except for the Circle Bar, that they did</p> <p>25 not know that there was little or no or decrepit</p>	<p>1 A Correct.</p> <p>2 Q What was the status of construction from your</p> <p>3 view at that point in time?</p> <p>4 A The tower rooms were virtually complete, not</p> <p>5 quite, but virtually complete. Virtually nothing was</p> <p>6 done in the main lobby entry, although they had put up a</p> <p>7 porte-cochere outside that was new, and what they call</p> <p>8 the main restaurant, which I guess was more of a coffee</p> <p>9 shop, but it was quite a ways along, but by no means</p> <p>10 finished, and they showed me where there was going to be</p> <p>11 a high-end restaurant.</p> <p>12 Q And then you mentioned there was another tour</p> <p>13 in late October after you gave your money or made your</p> <p>14 investment?</p> <p>15 A Gave my money.</p> <p>16 Q We'll call it gave your money, all right. Who</p> <p>17 attended that tour?</p> <p>18 A That was Mr. Radovan, Mr. Marriner, my wife and</p> <p>19 myself, I believe, and there was -- I believe there was</p> <p>20 also some of the IMC group were there as well.</p> <p>21 Q What was the purpose of this tour?</p> <p>22 A Just an update tour. I had breakfast with Mr.</p> <p>23 Marriner and Mr. Radovan that morning.</p> <p>24 Q Any representatives of Penta?</p> <p>25 A I don't recall any.</p>

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1 Q How long did that tour last?

2 A Again, probably two hours or so.

3 Q Did you learn any new information during that

4 tour that you didn't know prior to giving your money?

5 A I don't believe so. I saw more progress,

6 but --

7 Q What was being represented about the status of

8 completion during this second tour?

9 A I believe it was still scheduled to be on time

10 in December, but around that same time Mr. Radovan told

11 me that they were planning to delay the opening because

12 they were worried about another light winter and

13 therefore might not get the skiers and occupancy at that

14 time, and so they were planning to delay the soft

15 opening until around May 1st, I believe, and the hard

16 opening until Father's Day that year which I believe was

17 June 17th, but whatever it is.

18 Q Had you been told that prior to making your

19 investment or giving your money?

20 A No, absolutely not, but I did ask about it

21 before I made my investment.

22 Q And you were told that it was on schedule for

23 December?

24 A Yes. Seeing the pictures in that July report

25 raised concerns about the completion by December. It

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1 seemed like there was a lot more to do.

2 Q So prior to giving your money, you had been led

3 to believe that the project could be substantially

4 completed by the December deadline?

5 A It could open.

6 Q It could open.

7 A In other words, it would have to have had a

8 certificate of occupancy.

9 Q During this second tour with Mr. Radovan, was

10 there any discussion of the nature of your investment?

11 A What do you mean by the nature of my

12 investment?

13 Q Well, the thrust of your lawsuit is that you

14 thought you were buying one of the -- part of that last

15 1.5 million dollar piece, correct?

16 A Correct.

17 Q That Les Busick ultimately took?

18 A That's what I'm told, yes.

19 Q And you didn't know that he had purchased that

20 1.5 million dollars before you gave your money?

21 A Absolutely did not, nor did I know he was even

22 asked or in discussion of it.

23 Q And you came to learn that Mr. Radovan and Mr.

24 Criswell were selling you one of their founders shares?

25 A That's what they were supposedly trying to do.

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1 Q So my question is, did that issue come up

2 during this walk-through in mid October?

3 A Absolutely not, no.

4 Q You didn't learn about that until the end of

5 January --

6 A Yes.

7 Q -- of the following year?

8 A Correct.

9 Q Given your experience with construction

10 projects, when you walked the project in mid to late

11 October, did it appear to you to be something that could

12 be opened by December?

13 A I have no experience in developing hotels and

14 resorts, so I couldn't be sure, but I asked that before

15 I made my investment just a few days before early

16 October and was assured that it was all fine.

17 Q Who gave you that assurance?

18 A I think I asked Mr. Radovan and Mr. Marriner

19 separately.

20 Q By phone or e-mail or correspondence?

21 A Both. Some of it was in e-mails and I believe

22 some of it was by phone with Mr. Radovan.

23 Q Are you certain both of them told you that?

24 A I'm sorry, sir?

25 Q Are you certain that both Mr. Marriner and Mr.

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1 Radovan told you this prior to giving your money?

2 A I believe so.

3 Q Let me ask it this way: During this October

4 tour, did the project seem to significantly progress

5 from what you observed during your July tour?

6 A It seemed to have progressed. Significant in a

7 couple months is not probably the right word.

8 Q What sort of progress did you notice between

9 those time periods?

10 A More finished rooms, model rooms if you will,

11 and carpets and painted walls in the tower and all that.

12 Q What about to any of what we'll call the common

13 areas, the lobby, the restaurant, those things?

14 A Only the one restaurant had some progress to

15 it, but the rest of it, no.

16 Q During that October tour, were contractors on

17 site?

18 A Yes.

19 Q But it was during this October tour that you

20 first heard that they wanted to delay opening?

21 A I don't believe I heard it at the tour, but it

22 was around that same time. Mr. Radovan wrote me. I

23 believe you'll find an e-mail as an exhibit in there.

24 Q But the first time you heard that was after you

25 gave your money?

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<p style="text-align: right;">Page 46</p> <p>1 A Yes. That's my recollection.</p> <p>2 Q And then let's talk about --</p> <p>3 A And it was not a delay because of construction</p> <p>4 or cost. It was strictly a choice that they made</p> <p>5 because of the economy and concern over the winter.</p> <p>6 Q Let's talk about the third tour. You said that</p> <p>7 was sometime in mid December?</p> <p>8 A December 12th, the day of the meeting. All of</p> <p>9 the shareholders that wanted to go and was available to</p> <p>10 go on a tour before that December 12th, I believe it was</p> <p>11 Frank Sinatra's 100th birthday event which was at the</p> <p>12 Fairwinds which is right next to the Cal-Neva, so we</p> <p>13 went to the Cal-Neva first and toured the project.</p> <p>14 Q Did your wife go on that?</p> <p>15 A Yes.</p> <p>16 Q Who hosted that tour?</p> <p>17 A Dave Marriner.</p> <p>18 Q Was Mr. Radovan or Mr. Criswell there?</p> <p>19 A Yes.</p> <p>20 Q Both?</p> <p>21 A I don't think they were necessarily on the</p> <p>22 tour. As I understand it, they were at a meeting at the</p> <p>23 Fairwinds with, I believe it was the executive</p> <p>24 committee, beforehand.</p> <p>25 Q Do you know which investors went on the tour</p>	<p style="text-align: right;">Page 48</p> <p>1 Q How long was that meeting?</p> <p>2 A The tour?</p> <p>3 Q That tour, sorry.</p> <p>4 A Roughly, again, a couple hours or so. Then we</p> <p>5 went over to the Fairwinds.</p> <p>6 Q What progress, if any, did you see between the</p> <p>7 October and December 12th tours?</p> <p>8 A Some, but not nearly what I would have</p> <p>9 expected.</p> <p>10 Q What progress do you recall seeing?</p> <p>11 A Again, more of the model rooms and finishing of</p> <p>12 the tower was the biggest part.</p> <p>13 Q Were there still contractors on site?</p> <p>14 A I believe it was a Saturday and I don't</p> <p>15 believe -- I don't remember seeing contractors as such.</p> <p>16 Q But your understanding Penta was still doing</p> <p>17 work at the time?</p> <p>18 A As far as I know.</p> <p>19 Q Was there any progress that had been made to</p> <p>20 any of the common areas, the lobby, the restaurants?</p> <p>21 A Not particularly.</p> <p>22 Q Did Mr. Marriner make any representations</p> <p>23 during that tour about the status of construction?</p> <p>24 A I don't remember such.</p> <p>25 Q About costs?</p>
<p style="text-align: right;">Page 47</p> <p>1 with you?</p> <p>2 A I don't remember specifically.</p> <p>3 Q Any representatives from the contractor or</p> <p>4 architect on that tour?</p> <p>5 A No. I've never met a representative of the</p> <p>6 architect I don't believe. Well, let me correct that.</p> <p>7 I know the architect because he just designed a home for</p> <p>8 me at Lakeside Cottage.</p> <p>9 Q That's Peter Grove?</p> <p>10 A Peter Grove, I do know him well, but he was</p> <p>11 never on any of these tours.</p> <p>12 Q But he was the project architect for the</p> <p>13 Cal-Neva project?</p> <p>14 A That's my understanding.</p> <p>15 Q And he's also your architect on your home in</p> <p>16 Lake Tahoe?</p> <p>17 A The cottage that I added in the last couple of</p> <p>18 years, yes. The main home was his predecessor company</p> <p>19 which was Lundahl & Associates.</p> <p>20 Q So the December 12th tour was basically David</p> <p>21 Marriner, you, your wife and some of the other</p> <p>22 investors?</p> <p>23 A I believe so.</p> <p>24 Q Do you know which other investors?</p> <p>25 A I don't remember for sure who was on that.</p>	<p style="text-align: right;">Page 49</p> <p>1 A No, I don't believe so.</p> <p>2 Q Those are the only three tours you've had,</p> <p>3 correct?</p> <p>4 A Correct.</p> <p>5 MR. CAMPBELL: Counsel, would this be a good</p> <p>6 time for a quick break?</p> <p>7 MR. LITTLE: Yeah, it would be great.</p> <p>8 (A recess was taken.)</p> <p>9 BY MR. LITTLE:</p> <p>10 Q We've talked about the three tours. During the</p> <p>11 July tour, did any of the financing efforts come up</p> <p>12 while you were on the physical tour?</p> <p>13 A I don't believe so.</p> <p>14 Q Was your wife actively involved in reviewing</p> <p>15 information or making the decision to make an investment</p> <p>16 on this project?</p> <p>17 A No.</p> <p>18 Q Did she have any conversations with Mr.</p> <p>19 Marriner, Mr. Criswell, or Mr. Radovan independent of</p> <p>20 you?</p> <p>21 A No.</p> <p>22 Q Outside the tours, did your wife participate in</p> <p>23 any other meetings or phone calls with either of those</p> <p>24 three individuals?</p> <p>25 A She participated in some of the meetings called</p>

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1 A Correct.

2 Q Do you know what exhibit we're on? Off the

3 record.

4 (A discussion was held off the record.)

5 Exhibit 48 was marked.)

6 BY MR. LITTLE:

7 Q Sir, I want to show you what's been marked as

8 Exhibit 48 to your deposition. This is a copy of the

9 complaint that was filed by your attorney in this

10 lawsuit. Have you seen this document before?

11 A Yes.

12 Q And if you turn over to Page 12 of the exhibit,

13 is that your signature --

14 A Yes, it is.

15 Q -- under the verification?

16 A Yes.

17 Q And you understood that you signed this

18 document under oath acknowledging that the allegations

19 were true and correct?

20 A To the best of my knowledge.

21 Q And to the best of your knowledge, are the

22 allegations in this complaint true?

23 A To the best of my knowledge.

24 Q I want to spend some time going through the

25 allegations. Let's start on Page 3 of the complaint.

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1 Let's talk about paragraph 12. Would February 18, 2014

2 be the first time that you were introduced to this

3 project?

4 A I believe Mr. Marriner -- yeah, that would be

5 when Mr. Marriner first told me.

6 Q What do you recall about your first

7 introduction to the project?

8 A I saw Dave Marriner I think at probably a

9 restaurant accidentally and he discussed -- he mentioned

10 it to me and sent me some information on it, but I

11 didn't pay much attention. I told him I wasn't

12 interested at that time.

13 Q How did you know Mr. Marriner at this point in

14 time?

15 A Mr. Marriner I met on the 4th of July in 1993 I

16 believe it was when he was -- '93, something like that,

17 it might have been a little later than that, but anyway,

18 it was a 4th of July party at his house that a friend of

19 mine from Harvard Business School had introduced me to

20 Mr. Marriner.

21 Q Had you or any of your companies ever done

22 business with Mr. Marriner?

23 A No.

24 Q And this talks about meeting him. Is it your

25 recollection that you had a physical meeting with him

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1 where he told you about the project?

2 A Yeah, I think it was a brief chance meeting and

3 he sent me follow-up information and I decided not to

4 proceed at that time. I was not interested.

5 Q What information do you recall him sending you?

6 A I don't know if it was a progress report or

7 what. I don't remember the details.

8 Q Do you remember looking at Exhibits 1, 2 and 3

9 which are the Private Placement Memoranda and some of

10 the other financial business terms of the investment, do

11 you recall him providing those to you back in 2014?

12 A I don't remember for sure, but I didn't pay

13 much attention to them at the time. I was not

14 interested in the project.

15 Q At that point in time back in 2014, is there a

16 particular reason you weren't interested in investing?

17 A I had other uses of my money that did not allow

18 me to consider that.

19 Q Did you do any due diligence back in 2014 with

20 respect to this project?

21 A No.

22 Q More just a general interest because you live

23 in the area?

24 A Correct.

25 Q Back in 2014, did you meet or speak with either

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1 Mr. Radovan or Mr. Criswell?

2 A No. I -- no. I had met Mr. Radovan, but not

3 there, at a public event.

4 Q In 2014?

5 A It might even have been 2013, somewhere along

6 in there.

7 Q Is that the first time you ever met him?

8 A Yes, and it wasn't just he and I. It was an

9 event.

10 Q Did he discuss the Cal-Neva project when you

11 met him?

12 A Not with me directly, but with the group. It

13 was a -- Bonanza newspaper is our local newspaper up

14 there. At that time they had weekly meetings and people

15 could talk and say what was going on in the community

16 and he came to that.

17 Q To speak about the project?

18 A Yes.

19 Q Do you recall what he said to the group back

20 then?

21 A That he was going -- his group was going to

22 change or update and renovate and reopen the Cal-Neva.

23 Q Was he actively seeking out investors at least

24 according to what he was saying at that meeting?

25 A I'm sure that was the intent of it. I don't

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Page 62

1 Q And then this paragraph says, "Marriner also
2 provided marketing and promotional materials related to
3 the project and tours of the Cal-Neva Lodge all intended
4 to induce you to become an investor." Do you see that?
5 A Yes.
6 Q The tour would have been the one in July?
7 A Correct.
8 Q And the marketing and promotional materials
9 would be the stuff that he gave to you in either June or
10 July of 2015?
11 A Correct.
12 Q Do you recall what specific marketing or
13 promotional materials you were provided regarding this
14 project?
15 A As I recollect, it was more like these monthly
16 reports like the July report, that kind of thing.
17 Q Were you provided more than one of those
18 progress reports?
19 A Yes. Along the way, yes.
20 Q Prior to making your investment or giving your
21 money?
22 A I believe I saw others.
23 Q Do you know how many others you saw?
24 A No.
25 Q And you were given Exhibit 1, correct, trial

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1 Exhibit 1?
2 A What's trial Exhibit 1?
3 Q Excuse me, Deposition Exhibit 1?
4 A That's the --
5 Q Private Placement Memorandum.
6 A Yes.
7 Q And you were given Deposition Exhibit 2, the
8 confidential offering memoranda?
9 A Yes.
10 Q And Exhibit 3 which was the Operating Agreement
11 of Cal-Neva Lodge, LLC?
12 A Correct.
13 Q Would it be fair to say you don't know if you
14 were given these in the June, July, 2015 time frame, or
15 back in 2014, or maybe at both times?
16 A It could have been. I don't know. Like I say,
17 I didn't pay much attention back in '14 because I didn't
18 have money available to consider it.
19 Q And then you were given Exhibit 26 which was
20 the July monthly status report that was given to
21 investors, correct?
22 A Correct.
23 Q And you believe you were given prior to
24 investing or giving your money similar reports to this?
25 A Yes.

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1 Q Any other marketing or promotional materials
2 that you were given by either Mr. Marriner or anyone
3 from Criswell Radovan before you gave your money?
4 A I don't recall.
5 Q Aside from e-mails that answered some
6 questions?
7 A Oh, yeah.
8 Q So there were e-mails between you and Mr.
9 Marriner about the project?
10 A And Mr. Radovan as well.
11 Q Outside of those e-mails, I'm looking for other
12 marketing or promotional or investor documents that you
13 were provided. Any others than what we talked about,
14 status reports and Exhibits 1, 2 and 3?
15 A They would have been in the discovery if I had.
16 Q Were you given any financial statements?
17 A I believe I was given financial progress
18 reports.
19 Q Have you produced all that information to your
20 attorney?
21 A To the best of my knowledge.
22 Q Do you recall what -- did you personally review
23 the financial progress reports, or is that something you
24 would have sent to your accountant?
25 A Both.

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1 Q Do you recall what those financial progress
2 reports said about the financial health of the project?
3 A Are you including the e-mails as well, or just
4 the financial reports?
5 Q Let's start with the reports.
6 A Yeah, it seemed like it was going on schedule,
7 on budget, pretty close.
8 Q What was your understanding of the budget for
9 the project back prior to giving your money?
10 A As far as the numbers?
11 Q Yes.
12 A I believe -- I really don't recall the numbers
13 themselves.
14 Q Do you have an estimate?
15 A The project was 47 million or something of that
16 sort. I can't swear to that.
17 Q If we look at Exhibit 2, this is a preliminary
18 budget of \$50,729,787. Is that your understanding what
19 the budget was?
20 A What's the date of this?
21 Q This document is March, 2014.
22 A Yeah, could have been. Like I say, back in
23 2014 I didn't pay much attention.
24 Q Do you know if the budget was more than that
25 prior to you making your investment or giving your

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<p>1 Q And what do you base that on?</p> <p>2 A A feeling.</p> <p>3 Q A feeling?</p> <p>4 A Yeah, just looking at the results later.</p> <p>5 Q Do you have any facts you can point me to or</p> <p>6 evidence that would show that he knew that information</p> <p>7 to be false or misleading at the time?</p> <p>8 A I don't believe so.</p> <p>9 Q Other than your belief that Mr. Radovan misled</p> <p>10 you about the actual budget for the project, do you</p> <p>11 believe he misrepresented any other facts about the</p> <p>12 project prior to your giving your money in e-mails or</p> <p>13 documents given to you?</p> <p>14 A Can you ask that a different way? I'm sorry,</p> <p>15 I'm not getting that.</p> <p>16 Q Yeah. We were talking about the e-mails and</p> <p>17 documents that Mr. Radovan and Mr. Marriner provided you</p> <p>18 which in paragraph 13 you say induced you to make your</p> <p>19 investment, and I was asking as you sit here today</p> <p>20 reflecting on it, was any of that information false or</p> <p>21 inaccurate, and you told me that you believed they</p> <p>22 understated the budget, correct?</p> <p>23 A Yes.</p> <p>24 Q And my question is, do you believe that they</p> <p>25 made any other false statements or misleading statements</p>	<p>1 Q Do you have any information at the time Mr.</p> <p>2 Radovan made these representations to you that he knew</p> <p>3 the costs on the project would exceed this nine million</p> <p>4 dollars?</p> <p>5 A No.</p> <p>6 Q Prior to giving your money, was there any</p> <p>7 discussion about a complete refinancing of both loans</p> <p>8 instead of just refinancing the mezzanine piece?</p> <p>9 A Not that I remember.</p> <p>10 Q Specifically was there any discussion about a</p> <p>11 loan with Mosaic prior to you giving your money?</p> <p>12 A I don't believe so.</p> <p>13 Q Paragraph 14 of the complaint, you say you were</p> <p>14 later provided a subscription booklet that included some</p> <p>15 instructions and signature page, et cetera. Is that the</p> <p>16 documents that your 401-K agent provided over to Mr.</p> <p>17 Coleman after you signed?</p> <p>18 A I believe so.</p> <p>19 Q That was the documents you signed that provided</p> <p>20 the impetus for your investment in this project?</p> <p>21 A Right, and where to invest and where to send</p> <p>22 the money to the escrow holder.</p> <p>23 Q Let me see if I can find that in here. If you</p> <p>24 look at deposition Exhibit 36, when you talk about this</p> <p>25 subscription booklet in paragraph 14 of the complaint,</p>
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<p>1 to you prior to you giving your money?</p> <p>2 A I think in the e-mails and discussions, it was</p> <p>3 implied that the refinancing was to set up that cushion</p> <p>4 as I mentioned, three or four million, and to -- and I</p> <p>5 don't believe that that was the case, and it was also a</p> <p>6 cost saving measure because it was going to be a less</p> <p>7 expensive mezzanine loan than the one they had.</p> <p>8 Q What were you told about the refinancing?</p> <p>9 A I was told it was going to be 15 million</p> <p>10 dollars, all the things I just stated. What more do you</p> <p>11 want?</p> <p>12 Q Did you ask, or were you told who they were</p> <p>13 seeking the refinancing through?</p> <p>14 A I don't believe so.</p> <p>15 Q Did you ask to review any of the terms of that</p> <p>16 refinancing?</p> <p>17 A I don't believe so.</p> <p>18 Q Did you ask how that money was going to be</p> <p>19 used?</p> <p>20 A We discussed it was going to be used to cover</p> <p>21 this five or six million shortfall, pay off the first</p> <p>22 mezzanine and have a roughly three million, maybe four</p> <p>23 million dollar cushion.</p> <p>24 Q For any other unexpected costs?</p> <p>25 A Correct.</p>	<p>1 is this what you're talking about?</p> <p>2 A I believe so.</p> <p>3 Q Paragraph 14, the second sentence you indicate</p> <p>4 that you were also informed that there was still 1.5</p> <p>5 million dollars owed of founder units available for</p> <p>6 purchase of the 20 million dollars of founder units</p> <p>7 authorized under the subscription agreement and related</p> <p>8 offering materials.</p> <p>9 When were you informed that there was still 1.5</p> <p>10 million dollars available?</p> <p>11 A As far as I knew, I was informed before my</p> <p>12 investment or giving of the money and I didn't know it</p> <p>13 to be any different until much later.</p> <p>14 Q So let me break that down. When Mr. Marriner</p> <p>15 or you approached each other again in -- well, let me</p> <p>16 step back.</p> <p>17 He first approached you about the project in</p> <p>18 2014, we talked about that, right?</p> <p>19 A Right.</p> <p>20 Q You weren't interested at the time?</p> <p>21 A Correct.</p> <p>22 Q And then there was a hiatus or a period where</p> <p>23 you didn't really have any involvement, correct? And</p> <p>24 then either June or July of 2015, you got interested in</p> <p>25 making an investment?</p>

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1 A Uh-huh.
 2 Q Fair?
 3 A Uh-huh.
 4 Q Yes?
 5 A Correct. Sorry.
 6 Q And at that point in time, somebody told you an
 7 additional 1.5 million dollars had been released under
 8 the 20 million dollar subscription?
 9 A Yes.
 10 Q Who made that representation to you?
 11 A I think both Mr. Marriner and Mr. Radovan
 12 somewhere along the line mentioned it.
 13 Q Did you understand that that was the last 1.5
 14 million dollars available?
 15 A Yes.
 16 Q And at any time prior to you giving your money,
 17 were you told that another investor had purchased that
 18 1.5 million dollars?
 19 A No.
 20 Q Did you know Les -- do you know who Les Busick
 21 is?
 22 A I know him well.
 23 Q Did you know him prior to giving your money?
 24 A Yes.
 25 Q Did you know that he was an investor in the

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1 project?
 2 A Yes.
 3 Q Prior to giving your money, did you speak with
 4 Mr. Busick about the project?
 5 A I don't believe so.
 6 Q Did you speak with any of the investors before
 7 you made your decision to give your money?
 8 A I don't remember doing so.
 9 Q Before you gave your money, were you aware that
 10 Mr. Marriner and Mr. Radovan were offering this 1.5
 11 million dollars to other potential investors?
 12 A Absolutely not.
 13 Q Did you think that they were only looking at
 14 you to make that investment?
 15 A As far as I knew.
 16 Q Why did you believe that?
 17 A I was never told anything different.
 18 Q Did either of them tell you that you were the
 19 only person they were soliciting for that investment?
 20 A No.
 21 Q And if I'm understanding you, probably sometime
 22 in July is when they said to you, hey, there's an
 23 additional 1.5 million dollars, correct?
 24 A I believe so.
 25 Q And I think your position is before you gave

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1 your check, nobody said, hey, that amount was purchased
 2 by someone else?
 3 A Absolutely not.
 4 Q It's not that you re-asked and said, hey, is it
 5 still available or they told you it was -- nobody told
 6 you right before you gave your check that it was still
 7 available; nobody just told you otherwise, is that fair?
 8 A That's fair.
 9 Q And if I'm understanding you, you knew Mr.
 10 Busick was an investor in the project, but prior to
 11 giving your check, you didn't know that he was looking
 12 at that additional 1.5 million dollar piece?
 13 A Correct.
 14 Q In fact, you didn't know that anyone else was
 15 looking at that piece other than yourself?
 16 A Correct.
 17 Q In paragraph 14, you indicate that there were
 18 certain representations made by Mr. Radovan, Mr.
 19 Criswell, Mr. Marriner and their respective agents that
 20 induced you to purchase or send in your money. Fair?
 21 A Correct. By Mr. Criswell, I would say it's as
 22 CR, not Mr. Criswell directly with me.
 23 Q And outside of Mr. Radovan and Mr. Marriner,
 24 did you have any communications with anyone else from
 25 Criswell Radovan about the project or your contemplated

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1 investment prior to giving your money?
 2 A I don't believe so.
 3 Q So the only two people you spoke with was Mr.
 4 Marriner and Mr. Radovan at least on that side of the
 5 table?
 6 A Yes.
 7 Q You had conversations with other people during
 8 your due diligence, for example, the architect and your
 9 accountant, correct?
 10 A Correct.
 11 MR. CAMPBELL: Counsel, just to be clear for
 12 the record, conversations related to the project with
 13 the architect, or just general conversations?
 14 MR. LITTLE: No, related to the project.
 15 MR. CAMPBELL: Do you understand the
 16 distinction?
 17 THE WITNESS: I do, and I did.
 18 MR. CAMPBELL: I just want to make sure for the
 19 record.
 20 BY MR. LITTLE:
 21 Q Paragraph 15 says, on October 12, 2015, you as
 22 the owner of your IRA and the Trust Officer for Premiere
 23 Trust signed and delivered the subscription agreement,
 24 correct?
 25 A Correct.

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1 Q You signed it and then Premiere Trust, I guess,
2 sent it to Mr. Coleman?

3 A I believe so.

4 Q And you indicate on October 13, 2015, Criswell
5 as president of CR signed the acceptance of subscription
6 as manager of CNL. What did you base that statement on
7 at the time? In other words, the statement that
8 Criswell signed it?

9 A The document -- I saw his signature on the
10 document.

11 Q You recall sitting in both Mr. Criswell and Mr.
12 Radovan's depositions, correct?

13 A Yes.

14 Q And you understood that Mr. Criswell didn't
15 sign the document, Mr. Radovan did?

16 A Correct.

17 Q So you said that in paragraph 13 because you
18 believed it was Mr. Criswell's signature?

19 A I thought he said it was Mr. Radovan's
20 signature. It was hard to read, but -- I still can't
21 read that signature, so I'm not sure which one of them
22 it was. I don't know.

23 Q Let's talk about paragraph 16. It talks about
24 a December 12, 2015 meeting of members and investors in
25 the project at the Fairwinds Lodge near Cal-Neva,

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1 correct?

2 A Correct.

3 Q What's the distinction between members and
4 investors in your mind?

5 A I don't have a distinction as such.

6 Q They're one and the same?

7 A I would believe so.

8 Q You were present at this meeting?

9 TELEPHONE: Excuse me, Dave Marriner is on the
10 phone again.

11 BY MR. LITTLE:

12 Q You were present at that December 12th meeting
13 along with your wife?

14 A Yes.

15 Q There were other investors at the meeting?

16 A Oh, yes.

17 Q Was this an executive committee meeting that
18 you attended?

19 A No.

20 Q It was a meeting after the executive committee
21 met?

22 A That's what I understood.

23 Q Was there a discussion of a Mosaic loan at that
24 meeting?

25 A There could have been. I don't remember that.

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1 Q Do you have any recollection of the financing
2 plan as of this December, 2015 meeting?

3 A My biggest recollection of the meeting is the
4 shock and awe of finding out that the project was in
5 severe trouble.

6 Q Let's talk about that. In paragraph 16, the
7 second sentence, you say, "At that meeting for the first
8 time you were informed of several issues that were not
9 disclosed or were incorrectly represented to you prior
10 to your investment, primarily that the project was
11 substantially over budget and that the Cal-Neva Lodge
12 was not going to open as scheduled." Did I read that
13 correctly?

14 A Yes.

15 Q Are those the two things that you learned that
16 were either not disclosed or incorrectly represented to
17 you prior to giving your money?

18 A I believe so.

19 Q Was there anything else prior to your giving
20 your money that was either not disclosed or incorrectly
21 represented to you other than these two things?

22 A I've already mentioned about the refinancing
23 and all of that, so yes, I was informed earlier, but
24 yes, at this meeting those were the two big issues that
25 came up.

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1 Q As you sit here today, outside the meeting were
2 there any other things that were either not disclosed or
3 incorrectly represented to you about the project prior
4 to you giving your money other than what's shown here in
5 paragraph 16?

6 A I believe that they probably were in arrears
7 with the contractor that I did not know about at the
8 time, Penta, and the project was already in financial
9 trouble when I invested, and I found out Mr. Marriner
10 had stated in one of his e-mails that the contractor was
11 likely to pull off the job at the time of my investment.

12 Q So I want to make sure I have all of the
13 misrepresentations or omissions that you believe were
14 made to you prior to making your investment. One was
15 that the project was substantially over budget at the
16 time you made your investment, correct?

17 A Correct.

18 Q Second is that the project was not scheduled to
19 open in December as you believed?

20 A I think I knew at the time it wasn't going to
21 open in December, but it was not from lack of budget or
22 financial. It was because of the seasonality concern.

23 Q Okay. Another issue was that the project was
24 in financial trouble when you invested?

25 A Correct.

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1 Q And also that the company was in arrears with
 2 its contractor and they were likely to pull off the job?
 3 A Correct.
 4 Q Any other misrepresentations or omissions made
 5 to you before you made your investment?
 6 A Not that I can think of at this time except
 7 that my investment I guess was not going -- they did not
 8 contemplate it going to the initial 20 million dollars
 9 which is what I had been told it was.
 10 Q Any other misrepresentations or omissions?
 11 A Not that I can think of at this time.
 12 Q What information do you have that as of the
 13 date you gave your money, the company was in arrears
 14 with Penta and that Penta was likely to pull off the
 15 job?
 16 A I believe that was in e-mails later from Mr.
 17 Marriner, which I believe I should have been told before
 18 I invested.
 19 Q Well, as of the December meeting, Penta was
 20 still working on the job, correct?
 21 A As far as I know.
 22 Q Have you spoken with Penta or seen any
 23 information from them that would support that they were
 24 planning to walk off the job as of October 13, 2015?
 25 A I've not seen such information except for Mr.

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1 Marriner's e-mails.
 2 Q So you're relying solely on an e-mail from Mr.
 3 Marriner?
 4 A Correct.
 5 Q And this is an e-mail that was in January of
 6 2016?
 7 A I believe so.
 8 Q What information are you relying on that the
 9 project was in financial trouble when you invested?
 10 A I believe I was not informed, but I think I was
 11 later told, I think Mr. Radovan might have said
 12 something in his deposition that accounting was behind
 13 in its payments of the billings from Penta at that time.
 14 Q Any other information to support that claim?
 15 A I don't believe so. Not that I can identify at
 16 the moment.
 17 Q Do you know what the status of the company's
 18 refinancing efforts were as of the date you made your
 19 investment?
 20 A No. All I knew was that the mezzanine was
 21 supposedly being refinanced.
 22 Q Do you have any understanding why that didn't
 23 go forward?
 24 A No.
 25 Q Do you know why the Mosaic loan never closed?

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1 A I've heard, but don't know.
 2 Q Did you or any members of the IMC group or
 3 Molly Kingston play any role in Mosaic backing out of
 4 their loan efforts?
 5 A I played no role.
 6 Q Did any of the members of the IMC group or
 7 Molly Kingston, to your knowledge?
 8 A Only in some of the meetings, I believe Mr.
 9 Radovan and Criswell said that IMC had involvement in
 10 that.
 11 Q What information or evidence do you have that
 12 the project was substantially over budget as of the date
 13 you made your investment?
 14 A No firm knowledge.
 15 Q And following up on what we talked about
 16 earlier, you don't have any number that you can point to
 17 or even ballpark about how over budget it was?
 18 A I could guess, but I don't know.
 19 Q As of the date you gave your money, you don't
 20 have any information that the project was more than nine
 21 million dollars over budget, do you?
 22 A No. I thought it was only six, five to six.
 23 Q I'm talking in actuality.
 24 A Oh, I'm sorry. In hindsight do I know that?
 25 Q Yes.

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1 A I just think it was too much expenditure --
 2 there was too much overage showing now to have been in
 3 that period between my investment and December.
 4 Q But as of the date your made your investment,
 5 October 13, 2015, do you have any evidence or
 6 information that the project was more than nine million
 7 dollars over budget?
 8 A I have no firm knowledge.
 9 Q And then as of the date you made your
 10 investment, you knew that the project wasn't going to
 11 open in December, 2015, but you believed that was
 12 because of seasonality and the economy as opposed to
 13 construction?
 14 A That's what I was told.
 15 Q You had been given no information that any
 16 delays were necessitated by construction changes on the
 17 project?
 18 A No.
 19 Q Did you ask?
 20 A I asked Mr. Radovan soon before my investment
 21 that I was concerned in seeing some of the pictures in
 22 the newsletter or whatever you call that, that it seemed
 23 like there was a lot to be done in the period of time
 24 left. I was assured that it was okay.
 25 Q Was this in person or by phone?

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<p style="text-align: right;">Page 90</p> <p>1 A By phone -- well, by e-mail, I believe.</p> <p>2 Q So he told you that he thought that that work</p> <p>3 could still get done by December?</p> <p>4 A I believe so. I was never given any</p> <p>5 information that it was not opening in December because</p> <p>6 of anything to do with the construction.</p> <p>7 Q And then in terms of the nature of your</p> <p>8 investment, in other words, it being one of the carved</p> <p>9 out of that 1.5 million dollars or one of Criswell</p> <p>10 Radovan's shares, is it fair to say that prior to giving</p> <p>11 your check, no one told you specifically that you were</p> <p>12 buying that piece of 1.5 million dollars; they just</p> <p>13 didn't tell you you weren't?</p> <p>14 MR. CAMPBELL: I think that's been asked and</p> <p>15 answered a couple times.</p> <p>16 BY MR. LITTLE:</p> <p>17 Q Is that fair?</p> <p>18 A I guess so. Definitely I heard of no other</p> <p>19 concept except that I was buying one million of the</p> <p>20 1.5 million still remaining.</p> <p>21 Q We talked about all of the misrepresentations</p> <p>22 and omissions that you believe induced you to give your</p> <p>23 money in this project?</p> <p>24 A I believe so.</p> <p>25 Q Paragraph 17, you indicate that the revelations</p>	<p style="text-align: right;">Page 92</p> <p>1 A No. I actually -- I believe I found that out a</p> <p>2 little bit later by looking at the books and records</p> <p>3 soon thereafter.</p> <p>4 Q Was that after the end of January time frame</p> <p>5 where you were told by Mr. Criswell and Mr. Radovan</p> <p>6 about the nature of your investment?</p> <p>7 A I think it was about that same time. Whether</p> <p>8 it was a little before or a little after, I don't know.</p> <p>9 Q If it was before, what would have caused you to</p> <p>10 want to look at the records to see if your money was in</p> <p>11 the company?</p> <p>12 A I just was very concerned about the whole thing</p> <p>13 and what was the truth and what was not the truth, and</p> <p>14 since I was given access to that information, I thought</p> <p>15 it would be prudent to look into it.</p> <p>16 Q Had you received any information prior to</p> <p>17 making your investment that would have suggested that</p> <p>18 maybe you were purchasing one of Criswell Radovan's</p> <p>19 shares?</p> <p>20 A Absolutely not.</p> <p>21 Q How about up until the point in time they told</p> <p>22 you, was there anything that gave you any sort of</p> <p>23 suspicion?</p> <p>24 A No, not even when I found out the million</p> <p>25 dollars wasn't in there. I didn't have any clue</p>
<p style="text-align: right;">Page 91</p> <p>1 of the December 12th meeting caused great concern to you</p> <p>2 and the members and investors. Are you referring to</p> <p>3 Molly Kingston and the IMC people?</p> <p>4 A I'm referring to everybody in the room. It got</p> <p>5 extremely loud and upsetting to the point Dave Marriner</p> <p>6 said that he called his wife and told her not to come to</p> <p>7 that.</p> <p>8 Q Was it represented at this December meeting how</p> <p>9 over budget the project was?</p> <p>10 A I don't remember how much it was over budget,</p> <p>11 but it was shockingly in trouble.</p> <p>12 Q Was there any discussion that you recall about</p> <p>13 funding or financing for those cost overruns at this</p> <p>14 meeting?</p> <p>15 A I think they said that they were in</p> <p>16 negotiations in trying to find such financing, but</p> <p>17 nothing had been secured.</p> <p>18 Q Do you know if that was with Mosaic?</p> <p>19 A I don't remember if Mosaic was mentioned at</p> <p>20 that time or later. I certainly knew about it later.</p> <p>21 Q You indicate in the second sentence of</p> <p>22 paragraph 17 that, "Additionally at that time, the bank</p> <p>23 statements of CNL did not reflect that the one million</p> <p>24 dollars had been deposited into any CNL account." Did</p> <p>25 you know that as of the date of that meeting?</p>	<p style="text-align: right;">Page 93</p> <p>1 whatsoever that I was buying one of their shares or they</p> <p>2 thought I was.</p> <p>3 Q When you found that out, did you raise that</p> <p>4 issue with anyone?</p> <p>5 A When they told me that that's what they wanted</p> <p>6 to do, I said absolutely not. I would not invest under</p> <p>7 those circumstances.</p> <p>8 Q Why is that?</p> <p>9 A Because that is a clear indication to me that</p> <p>10 Criswell Radovan were taking money out of the project in</p> <p>11 anticipation of it failing.</p> <p>12 Q Or they just wanted to sell one of their</p> <p>13 shares?</p> <p>14 MR. CAMPBELL: Objection. That's</p> <p>15 argumentative.</p> <p>16 THE WITNESS: That's not my opinion.</p> <p>17 BY MR. LITTLE:</p> <p>18 Q Do you have any evidence that Criswell Radovan</p> <p>19 sold you one of their shares because they knew the</p> <p>20 project was in trouble?</p> <p>21 A No. It just seems obvious to me.</p> <p>22 MR. LITTLE: We've been going another hour. Do</p> <p>23 you want to take a break? Let's go off the record.</p> <p>24 (A recess was taken.)</p> <p>25</p>

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1 of rooms and redo the main section. This was not new
2 construction, this was like this, a remodel of a resort
3 hotel, and then as they brought money into the project,
4 they would do more rooms and more levels, more floors.

5 **Q Would it be reasonable in your mind for a**
6 **developer to rely on the architect and engineer and**
7 **their general contractor in terms of how to sequence a**
8 **job?**

9 **A** Not totally because they were experienced in
10 this regard, so their own experience should have told
11 them that, too.

12 **Q So Penta, the project engineer and the project**
13 **architect would all be negligent in how they went about**
14 **this project in your mind?**

15 **MR. CAMPBELL:** Objection, that calls for a
16 legal conclusion. I think it's way beyond the scope of
17 this witness's knowledge.

18 **BY MR. LITTLE:**

19 **Q I'm trying to understand the source of the**
20 **budget overruns that you believe are in the project.**
21 **Some are unforeseen construction costs, correct?**

22 **A** Correct.

23 **Q Some are mismanagement items, and I think the**
24 **only thing you're telling me about is the sequencing of**
25 **the job?**

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1 **A** Like I also said, the air conditioning system,
2 whether it's been budgeted or suggested or whatever, I
3 think was done in error.

4 **Q How did that issue present itself to you?**

5 **A** Actually, in talking with the subcontractor,
6 Savage Plumbing.

7 **Q Anything else that forms the basis for the**
8 **construction or the budget overruns?**

9 **A** I can't think of anything offhand.

10 **Q Do you have any information on when Penta told**
11 **the defendants about costs associated with these changes**
12 **in the project?**

13 **A** I have no knowledge of what Penta told CR or
14 when.

15 **Q Do you have any evidence that defendants knew**
16 **the budget overruns were more than they represented to**
17 **you at the time they made those representations?**

18 **A** I believe listening to Mr. Radovan's
19 deposition, he said that he was aware of more overruns
20 in July.

21 **Q And what's your understanding of his testimony?**

22 **A** I'm sorry?

23 **Q What's your understanding of his testimony in**
24 **that regard?**

25 **A** That he was aware it was substantially over

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1 budget more than six or even possibly nine million
2 during that time.

3 **Q Outside of --**

4 **A** It will speak for itself.

5 **Q Outside of what Mr. Radovan may or may not have**
6 **said in his deposition, are you aware of any evidence**
7 **that defendants knew that the budget overruns were more**
8 **than they represented to you at the time they made those**
9 **representations?**

10 **A** I don't believe so.

11 **Q Exhibit 26, the July progress report, that**
12 **would have been the first progress report you were**
13 **given, correct?**

14 **A** I may have been given one earlier, but I don't
15 remember it.

16 **Q But you would have been given some after that,**
17 **correct?**

18 **A** Yes.

19 **Q And before you gave your money?**

20 **A** I think there's a March one in there as well.

21 **Q But you were given others before you gave your**
22 **money?**

23 **A** As far as I know, it was the July one and maybe
24 March.

25 **Q And then you were also given financial**

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1 **information or records, correct?**

2 **A** Yes.

3 **Q And --**

4 **A** Financial reports.

5 **Q And financial reports were also provided**
6 **independently to your accountant?**

7 **A** I believe so.

8 **Q Have you done anything to see whether your**
9 **accountant has provided that information in this case?**

10 **A** Provided to who?

11 **Q To your attorney. In other words, have you**
12 **gone to your accountant and said, hey, can you give me**
13 **or my attorney whatever financial records you got from**
14 **the defendants?**

15 **A** I've not communicated with my accountant in
16 that regard. He may have done so, I don't know.

17 **Q Do you know if he got financial records that**
18 **you didn't get?**

19 **A** I do not know.

20 **Q Paragraph 18 of the complaint, you say on**
21 **January 22nd, 2016 you received a cap table indicating**
22 **your one million dollar investment was not in the**
23 **company, but was within Criswell Radovan's two million**
24 **dollar equity, correct?**

25 **A** I believe so.

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<p>1 Q That's the date that triggered your knowledge 2 of this event?</p> <p>3 A I believe so, but it was on or about that date 4 that Criswell Radovan spoke to me directly and said that 5 and I firmly -- I disagreed. I'm just not sure which 6 came first, the conversation or the cap table.</p> <p>7 Q Page 6 of your complaint, your first cause of 8 action is against CR Cal-Neva, LLC, Cal-Neva Lodge, LLC, 9 and Criswell Radovan, LLC, correct?</p> <p>10 A Yes.</p> <p>11 Q Who do you believe you entered into a contract 12 with to purchase shares?</p> <p>13 A Cal-Neva, LLC -- Cal-Neva Lodge, LLC.</p> <p>14 Q How did CR Cal-Neva or Criswell Radovan breach 15 that agreement to your knowledge?</p> <p>16 A They alleged that I was buying from them.</p> <p>17 Q Well, they're not parties to that agreement, 18 are they?</p> <p>19 A To which agreement, to the agreement of me 20 buying shares?</p> <p>21 Q Yes.</p> <p>22 A I don't understand. They're all related to the 23 Cal-Neva, LLC, aren't they?</p> <p>24 Q Prior to sending your money, did you receive 25 any information that suggested your money might go to</p>	<p>1 A To the best of my knowledge.</p> <p>2 Q Is it your testimony you would not have 3 invested had you known you were buying one of Criswell 4 Radovan's founding shares?</p> <p>5 A Absolutely and emphatically not a chance in 6 hell.</p> <p>7 Q Why not?</p> <p>8 A Because, as I've answered before, it gives a 9 clear indication to me that they could see the project 10 failing and were taking their money and running.</p> <p>11 Q Outside of that, is there any other reason you 12 would not have invested had you known that?</p> <p>13 A I was going to invest directly in the project. 14 I was never contemplating or considering buying anyone's 15 share.</p> <p>16 Q Aren't you investing in the project by buying 17 one of their shares?</p> <p>18 A Absolutely not. The money didn't go in the 19 project, it may well have caused the project to fail.</p> <p>20 Q Do you have any information that that one 21 million dollars, had it gone into the project, would 22 have salvaged it?</p> <p>23 A I don't know. It certainly couldn't have hurt. 24 It's a million more than they have now. It certainly 25 would have affected Hall's funding of their loan.</p>
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<p>1 Criswell Radovan?</p> <p>2 MR. CAMPBELL: Asked and answered several 3 times, counsel.</p> <p>4 THE WITNESS: I keep saying no, absolutely not. 5 BY MR. LITTLE:</p> <p>6 Q Let's go to Page 7 of your complaint. I want 7 to talk about your third cause of action. This is your 8 fraud claim against Mr. Criswell, Mr. Radovan, CR 9 Cal-Neva, Criswell Radovan, LLC, Cal-Neva Lodge, Mr. 10 Marriner and his company, and you indicate that these 11 defendants made a series of fraudulent 12 misrepresentations or omissions to you.</p> <p>13 My question is, did they make any other 14 fraudulent misrepresentations or omissions other than 15 what you and I have already discussed this morning?</p> <p>16 A It's my understanding that Criswell Radovan 17 asked and received my million dollars from Mr. Bruce 18 Coleman.</p> <p>19 Q Okay. How is that either a fraudulent 20 representation or a fraudulent omission?</p> <p>21 A It's a violation of the escrow instructions 22 that I signed here.</p> <p>23 Q Other than that, have we talked about all of 24 the ways you believe you were defrauded either through 25 affirmative misrepresentations or omissions?</p>	<p>1 Q Is the value of those shares any different, in 2 other words, what you thought you were buying and what 3 they thought they sold you, is the value in those shares 4 any different?</p> <p>5 MR. CAMPBELL: I'm going to object. I think it 6 calls for a legal conclusion, but if you can answer 7 that.</p> <p>8 THE WITNESS: To me, they're not worth the same 9 because of what I've stated. It's not an initial 10 investor in the project which is what I contemplated 11 being, and it shows that the developer is not to be 12 trusted because he's trying to take his money and run 13 before the project fails.</p> <p>14 BY MR. LITTLE:</p> <p>15 Q What information do you have that that was 16 their intent?</p> <p>17 A I don't. That's my opinion, as I've stated 18 before.</p> <p>19 Q Are the rights and obligations of those two 20 founding shares any different to your knowledge?</p> <p>21 MR. CAMPBELL: Objection insofar as it calls 22 for a legal conclusion.</p> <p>23 THE WITNESS: I don't know. I never saw any 24 documentation on that. 25</p>

<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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June 06, 2017

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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>
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<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>