

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Respondents.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Respondent/Cross-Appellant.

No. 84345

Electronically Filed
Aug 25 2022 02:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 84640

**JOINT APPENDIX,
VOLUME NO. 81**

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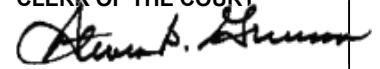
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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability
company, FORE STARS Ltd., DOE
INDIVIDUALS I through X, ROE
CORPORATIONS I through X, and ROE
LIMITED LIABILITY COMPANIES I through
X,

Plaintiff,

vs.

CITY OF LAS VEGAS, political subdivision of
the State of Nevada, ROE government entities I
through X, ROE CORPORATIONS I through X,
ROE INDIVIDUALS I through X, ROE
LIMITED LIABILITY COMPANIES I through
X, ROE quasi-governmental entities I through X,

Defendant.

Case No.: A-17-758528-J
Dept. No.: XVI

**APPENDIX OF EXHIBITS IN SUPPORT
OF PLAINTIFFS LANDOWNERS'
MOTION IN LIMINE NO. 1: TO
EXCLUDE 2005 PURCHASE PRICE**

Hearing Requested

Plaintiffs Landowners hereby submit this Appendix of Exhibits in Support of Plaintiff
Landowners' Motion in Limine No. 1: To Exclude 2005 Purchase Price.

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Exhibit No.	Description	Bates No.
1	Transcript of July 16, 2021 Deposition of William Bayne	1-62
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23	Excerpts of 65 Acre Transcript of Hearing re: Evidentiary Hearing on July 2, 2021	615-623
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Respectfully submitted this 7th day of September, 2021.

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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 7th day of September, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and
4 correct copy of **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFFS**
5 **LANDOWNERS' MOTION IN LIMINE NO. 1: TO EXCLUDE 2005 PURCHASE PRICE**
6 was served on the below via the Court's electronic filing/service system and/or deposited for
7 mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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22 */s/ Sandy Guerra*

23 Sandy Guerra, an Employee of the
24 Law Offices of Kermitt L. Waters

Exhibit 1

1	DISTRICT COURT	
2	CLARK COUNTY, NEVADA	
3		
4	180 LAND CO LLC, A Nevada)
	limited liability company,)
5	FORE STARS, LTD., a Nevada)
	limited liability company and)
6	SEVENTY ACRES, LLC, a Nevada)
	limited liability company, DOE)
7	INDIVIDUALS I-X, DOE)
	CORPORATIONS I-X, and DOE)
8	LIMITED LIABILITY COMPANIES)
	I-X,)
9)
)
10	Plaintiffs,)
)
11	vs.) CASE NO.: A-17-758528-J
) DEPT. NO.: XVI
12	CITY OF LAS VEGAS, a)
	political subdivision of the)
13	State of Nevada; ROE)
	GOVERNMENT ENTITIES I-X; ROE)
14	CORPORATIONS I-X; ROE)
	INDIVIDUALS I-X; ROE)
15	LIMITED-LIABILITY COMPANIES)
	I-X; ROE QUASI GOVERNMENTAL)
16	ENTITIES I-X,)
)
17)
	Defendants.)
18	_____)
19		
20	CONFIDENTIAL VIDEOCONFERENCE DEPOSITION OF	
21	NRCP 30(b)(6) DESIGNEE OF PECCOLE-NEVADA CORPORATION	
22	WILLIAM BAYNE	
23	LAS VEGAS, NEVADA; FRIDAY, JULY 16, 2021	
24	REPORTED BY: JOHANNA VORCE, CCR NO. 913	
25	JOB NO.: 777801	

0001

14030

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<p>1 CONFIDENTIAL DEPOSITION OF WILLIAM BAYNE, held at 2 remotely via Zoom videoconference, located at 2300 W. Sahara 3 Avenue, Suite 1200, Las Vegas, Nevada 89102, on Friday, July 4 16, 2021, at 9:10 a.m., before Johanna Vorce, Certified 5 Court Reporter, in and for the State of Nevada. 6 7 APPEARANCES: 8 For the Defendant, City of Las Vegas: 9 McDONALD CARANO LLP 10 GEORGE F. OGILVIE, III, ESQ. CHRISTOPHER MOLINA, ESQ. 11 2300 West Sahara Avenue Suite 1200 12 Las Vegas, Nevada 89102 (702) 873-4100 13 gogilvie@mcdonaldcarano.com 14 15 For PECCOLE-NEVADA CORPORATION and WILLIAM BAYNE: 16 WILLIAMS STARBUCK 17 DONALD WILLIAMS, ESQ. (Appeared remotely.) 612 South Tenth Street 18 Las Vegas, Nevada 89101 (702) 320-7755 19 dwilliams@dnhlawlv.com 20 21 For the Plaintiff, 180 LAND CO LLC: 22 LAW OFFICES OF KERMITT L. WATERS 23 JAMES LEAVITT, ESQ. (Appeared remotely.) AUTUMN WATERS, ESQ. (Appeared remotely.) 24 704 South 9th Street Las Vegas, Nevada 89101 25 (702) 733-8877 jim@kermittwaters.com</p>	<p>1 For the Plaintiff, FORE STARS,LTD: 2 EHB COMPANIES 3 ELIZABETH GHANEM HAM, ESQ. (Appeared remotely.) TODD DAVIS, ESQ. (Appeared remotely.) 4 1215 South Fort Apache Road Suite 120 5 Las Vegas, Nevada 89117 (702) 940-6930 6 eham@ehbcompanies.com tdavis@ehbcompanies.com 7 8 Also Present: 9 SANDY GUERRA (Appeared remotely.) 10 JENNIFER KNIGHTON (Appeared remotely.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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1	LAS VEGAS, NEVADA; FRIDAY, JULY 16, 2021		1	hopefully, we'll get lucky and one of my kids won't pop in,	
2	9:10 A.M.		2	but I can't guarantee that.	
3	-oOo-		3	Q. Okay.	
4	(The Court Reporter was relieved of her duties		4	A. I can identify them as they come in, if you'd	
5	under NRCP 30(b)(5).)		5	like. There's six of them.	
6	Whereupon,		6	Q. No, that's fine.	
7	WILLIAM BAYNE,		7	Mr. Bayne, I understand you have -- you're	
8	having been first duly sworn to testify to the truth, was		8	appearing today in response to the subpoena to	
9	examined and testified as follows:		9	Peccole-Nevada Corporation to designate a witness to testify	
10			10	on behalf of the corporation to certain matters that were	
11	EXAMINATION		11	identified as topics of deposition as Exhibit A to that	
12	BY MR. OGILVIE:		12	subpoena; is that correct?	
13	Q. Good morning, Mr. Bayne. It's -- maybe I didn't		13	A. That is correct.	
14	introduce myself. I'm George Ogilvie. I represent City of		14	Q. Okay. Just very briefly, let me -- let me go	
15	Las Vegas. With me today is Christopher Molina, who is an		15	through some formalities.	
16	attorney in my office, again representing the City of		16	Have you ever had your deposition taken before?	
17	Las Vegas.		17	A. I have.	
18	Could you identify where you are and who is in the		18	Q. On how many occasions?	
19	room with you?		19	A. Four or five.	
20	A. I am at my home address in Mapleton, Utah, 144		20	Q. Okay. In -- were those in professional capacity	
21	East 700 North, Mapleton, Utah.		21	or personal capacity?	
22	And in the room with me is my attorney Butch		22	A. Those were in professional capacity, typically on	
23	Williams and Jim Leavitt attorney for Yohan.		23	insurance lawsuits from slip and falls at different shopping	
24	Q. There's nobody else in the room?		24	centers.	
25	A. There is no one else in the room. Although,		25	Q. Okay. What is your current position -- or do you	

<p style="text-align: right;">Page 10</p> <p>1 currently work?</p> <p>2 A. I -- I do currently have a job. I do not work for</p> <p>3 Peccole-Nevada Corporation currently.</p> <p>4 Q. Okay. What position do you currently hold?</p> <p>5 A. Currently, I own and manage Peccole Management</p> <p>6 Consulting, which is a separate company that the Bayne</p> <p>7 Family owns, and we do our own real estate exogenous of the</p> <p>8 rest of the Peccole Family.</p> <p>9 Q. Did you previously work for Peccole-Nevada</p> <p>10 Corporation?</p> <p>11 A. I did.</p> <p>12 Q. Okay. Can you tell me from when to when and what</p> <p>13 positions you held?</p> <p>14 A. From -- I started working there in about February,</p> <p>15 March, 2006. And I worked there until December of 2019. At</p> <p>16 the beginning, I was just kind of there doing things. I</p> <p>17 don't know that there was an official position. I think I</p> <p>18 became the official CEO in 2010 or '11, I think. And I</p> <p>19 stayed with the company until we divested ourself from the</p> <p>20 bulk of our assets in December of 2019.</p> <p>21 Q. Are you related to William, Bill Peccole?</p> <p>22 A. Bill Peccole was my grandfather. I am the oldest</p> <p>23 grandchild of the overall Peccole Family.</p> <p>24 Q. Was Bill Peccole still alive when you started</p> <p>25 working for Peccole-Nevada Corporation?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. I need to restate.</p> <p>2 I actually started working for Peccole-Nevada</p> <p>3 Corporation in 1999 and then again in 2001. And then I left</p> <p>4 them from 2001 until 2006, and then came back in 2006.</p> <p>5 And, yes, my grandfather was there through the</p> <p>6 earlier parts. In 2006 -- I can't remember the year my</p> <p>7 grandfather died. I think he was -- he was passed away when</p> <p>8 I came back in '06.</p> <p>9 Q. Okay. So you identified the positions that you</p> <p>10 held from 2006 to 2019.</p> <p>11 What about the earlier tenure? What --</p> <p>12 A. I did accounts receivable, I did accounts payable,</p> <p>13 and I helped with various projects that would come up from</p> <p>14 time to time.</p> <p>15 Q. What is Peccole-Nevada Corporation?</p> <p>16 A. Say it again.</p> <p>17 Q. What is Peccole-Nevada Corporation?</p> <p>18 MR. WILLIAMS: What is?</p> <p>19 THE WITNESS: What is it?</p> <p>20 BY MR. OGILVIE:</p> <p>21 Q. Yes.</p> <p>22 A. It's a land development company that my</p> <p>23 grandfather started many years ago.</p> <p>24 THE COURT REPORTER: Is there a way you can hide</p> <p>25 the non-video participants so that way we can see them</p>
<p style="text-align: right;">Page 12</p> <p>1 better?</p> <p>2 (Discussion off the record.)</p> <p>3 MR. LEAVITT: Hey, George, I have a quick</p> <p>4 question. This is Jim Leavitt.</p> <p>5 Is this being videotaped or just transcribed?</p> <p>6 MR. OGILVIE: Just transcribed.</p> <p>7 MR. WILLIAMS: (Inaudible.)</p> <p>8 MR. OGILVIE: I'm sorry?</p> <p>9 MR. WILLIAMS: No. We were just talking about</p> <p>10 what we're all wearing. So yeah, good.</p> <p>11 MR. OGILVIE: Okay.</p> <p>12 THE WITNESS: You look good, Elizabeth. You're</p> <p>13 fine. We're just not as dressed up.</p> <p>14 MR. OGILVIE: Let me direct you to what will be</p> <p>15 marked as Exhibit 1, Identified as the Articles of</p> <p>16 Incorporation of Peccole-Nevada Corporation.</p> <p>17 (Defendant's Exhibit 1 was marked</p> <p>18 for identification.)</p> <p>19 BY MR. OGILVIE:</p> <p>20 Q. Are these the -- are these the articles of</p> <p>21 incorporation for Peccole-Nevada?</p> <p>22 A. Give me one second. I got to pull it up.</p> <p>23 MR. WILLIAMS: Are you going to flash them,</p> <p>24 George, or do you want us to dig through what you have sent?</p> <p>25 MR. OGILVIE: Hold on. We will -- we will put --</p>	<p style="text-align: right;">Page 13</p> <p>1 we will share our screen.</p> <p>2 THE WITNESS: I got it.</p> <p>3 MR. WILLIAMS: We think we got them pulled up if</p> <p>4 it's dated December 20th, 1993, George.</p> <p>5 MR. OGILVIE: Yes.</p> <p>6 THE WITNESS: Yeah, we got it.</p> <p>7 MR. WILLIAMS: That's it.</p> <p>8 MR. OGILVIE: So for purposes of the -- for</p> <p>9 Elizabeth's purposes -- Elizabeth, can you see the share</p> <p>10 screen?</p> <p>11 MS. HAM: Yes, I can. Thank you.</p> <p>12 MR. OGILVIE: Okay. Okay.</p> <p>13 Q (By Mr. Ogilvie) Mr. Bayne, are these the articles</p> <p>14 of incorporation for Peccole-Nevada Corporation, as you have</p> <p>15 previously described that entity?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And does -- does -- or did Peccole-Nevada</p> <p>18 ever manage other entities?</p> <p>19 A. Peccole-Nevada Corporation manages many other</p> <p>20 entities.</p> <p>21 Q. Was it -- does -- was it ever the trustee of any</p> <p>22 Peccole Family trust?</p> <p>23 A. I didn't catch the question.</p> <p>24 Q. Was Peccole-Nevada Corporation ever the trustee of</p> <p>25 any Peccole Family trusts?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. I believe they were for a little while, yes.</p> <p>2 Q. Let me direct you to what will be marked as</p> <p>3 Exhibit 2, which is entitled "Certificate of Amendment of</p> <p>4 the Articles of Incorporation of Peccole-Nevada</p> <p>5 Corporation."</p> <p>6 A. Got it up.</p> <p>7 (Defendant's Exhibit 2 was marked</p> <p>8 for identification.)</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Okay. Are these -- is this an amendment to the</p> <p>11 articles of incorporation of Peccole-Nevada Corporation?</p> <p>12 A. Yes.</p> <p>13 Q. And does the amendment, specifically Article 4,</p> <p>14 completely and accurately describe the business activities</p> <p>15 of Peccole-Nevada Corporation as of February 1994?</p> <p>16 A. Yes.</p> <p>17 Q. Generally, was Peccole-Nevada Corporation the</p> <p>18 entity that managed the Peccole Family's land holdings?</p> <p>19 A. Yes.</p> <p>20 Q. And did that include the -- what was known as the</p> <p>21 Peccole Ranch Master Plan Development?</p> <p>22 A. I do not know. Peccole Ranch Master Plan was a</p> <p>23 joint venture with Triple Five, and my understanding is that</p> <p>24 they were the managing member. And I don't know what</p> <p>25 function Peccole-Nevada Corporation served at that time</p>	<p style="text-align: right;">Page 15</p> <p>1 period. That was in 1992 when I was a sophomore in high</p> <p>2 school.</p> <p>3 MR. OGILVIE: Okay. Let me direct your attention</p> <p>4 to what will be marked as Exhibit 3.</p> <p>5 (Defendant's Exhibit 3 was marked</p> <p>6 for identification.)</p> <p>7 BY MR. OGILVIE:</p> <p>8 Q. Peccole -- Exhibit 3 is identified in the bottom</p> <p>9 right-hand corner as the "Peccole Generalized Land Use</p> <p>10 Plan," dated April 15th, 1981.</p> <p>11 Do you recognize the area that is depicted by this</p> <p>12 aerial map?</p> <p>13 A. I do. I've walked it a million times with my</p> <p>14 grandfather and -- yeah, I'm familiar them.</p> <p>15 Q. Okay. The -- there is an outlined area outlined</p> <p>16 in red that is bordered by Sahara Avenue on the south;</p> <p>17 Hualapai Way on the west; while it's not written here, Alta</p> <p>18 Drive on the north; and it's, again, not written here, but I</p> <p>19 believe it is Durango on the east. Is that correct?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. And then it's splitting -- probably about a</p> <p>22 third of the east side of the area outlined in red is a</p> <p>23 street Fort Apache Road, which turns into South Rampart; is</p> <p>24 that correct?</p> <p>25 A. That is correct.</p>
<p style="text-align: right;">Page 16</p> <p>1 Q. Okay. I wanted to direct your attention to the</p> <p>2 area that is bounded by Hualapai Way on the west, Fort</p> <p>3 Apache slash Rampart Boulevard on the east -- or on the</p> <p>4 east, Alta Drive on the north, and Sahara Avenue on the</p> <p>5 south.</p> <p>6 Is that the area that -- that is -- was Peccole</p> <p>7 Ranch Master Plan?</p> <p>8 A. That was the conceptual idea of the original</p> <p>9 master plan that I understand from historical documents.</p> <p>10 Q. Okay. And that was split into two phases, Phase I</p> <p>11 generally bounded by Hualapai, Fort Apache, Sahara, and</p> <p>12 Charleston; and Phase II, which was generally bounded by</p> <p>13 West Charleston, Alta, Hualapai, and Rampart, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And Phase II was ultimately developed into</p> <p>16 Queensridge, correct?</p> <p>17 A. Phase II was ultimately developed into Queensridge</p> <p>18 and Fore Stars and Suncoast Hotel and Sir Williams Court and</p> <p>19 Emerald Gardens and some Rampart Commons and then another</p> <p>20 little condo community, actually two other little condo</p> <p>21 communities.</p> <p>22 Q. Okay. So using Exhibit 3, could you designate for</p> <p>23 us the -- where on Exhibit 3 the areas that you just</p> <p>24 itemized?</p> <p>25 A. Well, I would have to go back. If you're talking</p>	<p style="text-align: right;">Page 17</p> <p>1 about original -- the original thought process of Peccole</p> <p>2 Ranch Master Plan from historical documents, Phase II would</p> <p>3 have been Charleston to Alta -- Charleston to South Alta on</p> <p>4 the north, Hualapai on the west, and Rampart on the -- on</p> <p>5 the east.</p> <p>6 Q. Okay.</p> <p>7 THE COURT REPORTER: Sorry, who was on the west?</p> <p>8 MR. OGILVIE: Hualapai.</p> <p>9 THE COURT REPORTER: Thank you.</p> <p>10 BY MR. OGILVIE:</p> <p>11 Q. Okay. So that was the area I described as</p> <p>12 Queensridge. And then you clarified that and threw in</p> <p>13 probably five, maybe six different components of that.</p> <p>14 Could you describe them for me both verbally and</p> <p>15 where they're located on Exhibit 3?</p> <p>16 A. Suncoast Hotel is on the -- it's on Rampart on</p> <p>17 the -- on the north, bordered by nothing. But it's between</p> <p>18 Alta and the property line and Rampart. Up in the top</p> <p>19 right-hand corner is the Suncoast Hotel and Casino.</p> <p>20 Q. Okay.</p> <p>21 A. That's the land leased with Suncoast.</p> <p>22 Sir Williams Court, if you come down Rampart, you</p> <p>23 can see Sir Williams Court depicted. There's three</p> <p>24 buildings. That's the next buildings just coming south on</p> <p>25 Rampart.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. Mid -- about mid -- about midway between Alta and</p> <p>2 Charleston on --</p> <p>3 A. Yep.</p> <p>4 Q. -- the west side of Rampart?</p> <p>5 A. Yep.</p> <p>6 Q. Okay.</p> <p>7 A. And then you come down from Sir Williams Court,</p> <p>8 and that is a water pumping station that's owned by the</p> <p>9 water district.</p> <p>10 Q. What appears to be vacant land?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay.</p> <p>13 A. And then you get to a shopping center next.</p> <p>14 That's called "Rampart Commons." And that's on the corner</p> <p>15 of Charleston and Rampart. That would be on the northwest</p> <p>16 corner of Charleston and Rampart.</p> <p>17 Q. And that's where, on the very corner, P.F. Chang's</p> <p>18 sits?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. What were the other areas you described?</p> <p>21 A. There's a little condo -- condominium community as</p> <p>22 you're going into the entrance of Badlands or Fore Stars.</p> <p>23 If you're going into the entrance off of Alta on your -- on</p> <p>24 the west side is a condominium community that is not part of</p> <p>25 Queensridge.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. On the -- does it border Charleston and it's</p> <p>2 directly to the --</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 A. It boards on Alta. So go back on Alta and Rampart</p> <p>6 and go north towards Hualapai from Alta.</p> <p>7 Q. West? West --</p> <p>8 A. And you go --</p> <p>9 Q. West on Al- -- Hual- -- west on Alta? Alta?</p> <p>10 A. All right. West on Alta towards Hualapai, and you</p> <p>11 run into --</p> <p>12 THE COURT REPORTER: I'm sorry, can you repeat</p> <p>13 that?</p> <p>14 THE WITNESS: You go west on Alta towards</p> <p>15 Hualapai, and the condominium community is right there. You</p> <p>16 can see it on the map.</p> <p>17 MR. WILLIAMS: Isn't there a way you can mark it?</p> <p>18 THE WITNESS: Yeah, there is.</p> <p>19 MR. LEAVITT: Yeah, but they -- the court reporter</p> <p>20 won't have the marking. She has physical copies.</p> <p>21 THE WITNESS: It might be easier for them to see.</p> <p>22 MR. LEAVITT: Yeah -- oh, yeah, the markings --</p> <p>23 MR. WILLIAMS: Just to get your --</p> <p>24 MR. LEAVITT: Oh, absolutely. See if we can mark</p> <p>25 that.</p>
<p style="text-align: right;">Page 20</p> <p>1 Do you know where he's talking about, George?</p> <p>2 THE WITNESS: Hold on. Let me see if I can do</p> <p>3 something.</p> <p>4 MR. OGILVIE: I think he's describing the area --</p> <p>5 THE WITNESS: I'm going to request remote control.</p> <p>6 Can you guys give me the remote?</p> <p>7 THE COURT REPORTER: Also, when they're having a</p> <p>8 discussion in the room, I can't tell who's saying what.</p> <p>9 MR. OGILVIE: Okay.</p> <p>10 THE WITNESS: I'm going to give you back the</p> <p>11 remote because all I did was take off your thing. Sorry. I</p> <p>12 thought I was smart. Apparently, I'm not.</p> <p>13 BY MR. OGILVIE:</p> <p>14 Q. So --</p> <p>15 A. You're going to have to -- there you go.</p> <p>16 MR. OGILVIE: You can -- you can mark it, right?</p> <p>17 MR. MOLINA: I think so.</p> <p>18 BY MR. OGILVIE:</p> <p>19 Q. Seems that you're referring to an area that's,</p> <p>20 what I will describe as, kitty-corner to --</p> <p>21 A. Yes.</p> <p>22 Q. -- the Suncoast?</p> <p>23 A. Yep.</p> <p>24 Q. Okay.</p> <p>25 A. That's it. That's what I was going to try to do.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. And what were the other area or areas that</p> <p>2 you identified that in -- within the Queensridge borders</p> <p>3 that I described?</p> <p>4 A. Within the borders that you described, there's</p> <p>5 another condominium community just west of Rampart Commons</p> <p>6 on the corner of Charleston and Rampart. So go to</p> <p>7 Charleston and Rampart, then just go -- just west of Rampart</p> <p>8 Commons is another condominium community that is not part of</p> <p>9 Queensridge.</p> <p>10 Q. Okay.</p> <p>11 A. Yep.</p> <p>12 MR. MOLINA: This one?</p> <p>13 THE WITNESS: Yep. Yep.</p> <p>14 BY MR. OGILVIE:</p> <p>15 Q. Okay. Anything else that is not part of</p> <p>16 Queensridge?</p> <p>17 A. The towers were not part of Queensridge.</p> <p>18 Q. When you refer to "the towers," you're referring</p> <p>19 to Queensridge Towers?</p> <p>20 A. Yeah, those two. But then the vacant land next to</p> <p>21 it where it's also part of Queensridge Towers.</p> <p>22 The other challenge that you have is that that --</p> <p>23 those -- well, that's done.</p> <p>24 Q. I'm sorry, what? You were saying something?</p> <p>25 A. If you go up to the corner of Alta and Hualapai,</p>

<p style="text-align: right;">Page 22</p> <p>1 the Hutchison & Steffen building is up there and the</p> <p>2 Merryhill school next to it and then two vacant lots as</p> <p>3 well.</p> <p>4 Q. Okay. Anything else that was not a part of</p> <p>5 Queensridge that was within the boundaries that I indicated?</p> <p>6 A. Boca Park would not be part of Queensridge. That</p> <p>7 was in the boundaries you initially indicated.</p> <p>8 Q. Yeah. I then -- my subsequent boundary was</p> <p>9 Rampart on the east.</p> <p>10 A. Okay. Then you're good.</p> <p>11 Q. Okay. Let me ask you about two other components</p> <p>12 of what was -- what is within this -- this red outlined</p> <p>13 boundary. First, what I believe is referred to as "Sahara</p> <p>14 commons." No?</p> <p>15 A. That's on the corner of Hualapai and Sahara?</p> <p>16 Q. Sahara Hual- --</p> <p>17 MR. MOLINA: Sahara Commons down.</p> <p>18 MR. OGILVIE: Yes.</p> <p>19 THE WITNESS: Yep.</p> <p>20 I have a question on how you handle Canyon Gate.</p> <p>21 BY MR. OGILVIE:</p> <p>22 Q. I'm not sure I understand your question.</p> <p>23 A. Well, it's identified in the red, but it wasn't</p> <p>24 part of Peccole Ranch Master Plan.</p> <p>25 Q. Okay. So the Peccole Ranch Master Plan, are you</p>	<p style="text-align: right;">Page 23</p> <p>1 saying, ended -- well, south of Charleston, ended at Fort</p> <p>2 Apache?</p> <p>3 A. I honestly don't know.</p> <p>4 Q. Okay.</p> <p>5 A. I don't -- I don't know what -- which ones we're</p> <p>6 referring to. I'd have to -- you'd have to show me some</p> <p>7 more maps.</p> <p>8 Q. Okay. Let me refer -- direct your attention to</p> <p>9 something that I believe was referred to as the "end cap."</p> <p>10 Are you familiar with the term "end cap"?</p> <p>11 A. I'm assuming you are referencing the end cap at</p> <p>12 Hualapai and Charleston. You have Home Depot, which is</p> <p>13 depicted as the big white building, and then the end cap</p> <p>14 coming west from Home Depot.</p> <p>15 Q. Coming east from Home Depot?</p> <p>16 A. No. Going west from Home Depot.</p> <p>17 So you have Home Depot is on Charleston.</p> <p>18 Q. Oh, I --</p> <p>19 A. You see the big white building? And then the end</p> <p>20 cap is this little gray end cap. Right there.</p> <p>21 Yeah. (Inaudible.)</p> <p>22 But that's Home Depot right there. And then the</p> <p>23 end cap is the end cap right there. I'm assuming that's</p> <p>24 what you're referring to. There's many, many end caps in</p> <p>25 all of our shopping centers, but I'm assuming that's the one</p>
<p style="text-align: right;">Page 24</p> <p>1 that's --</p> <p>2 Q. Okay.</p> <p>3 A. -- relevant for your conversation.</p> <p>4 Q. We'll get back to that as we go through some</p> <p>5 documents.</p> <p>6 THE COURT REPORTER: And then as far as this one,</p> <p>7 are you going to send that one to me and mark that as well?</p> <p>8 MR. MOLINA: How do I do that?</p> <p>9 THE COURT REPORTER: You can e-mail it to me and I</p> <p>10 can mark it as four.</p> <p>11 MR. OGILVIE: Mark it 3-A?</p> <p>12 THE COURT REPORTER: Yeah, however you want to do</p> <p>13 it.</p> <p>14 THE WITNESS: Might be easier if I do it for you.</p> <p>15 MR. MOLINA: We got it.</p> <p>16 (Defendant's Exhibit 3-A was marked</p> <p>17 for identification.)</p> <p>18 MR. OGILVIE: Am I waiting?</p> <p>19 MR. MOLINA: I don't know.</p> <p>20 BY MR. OGILVIE:</p> <p>21 Q. So let me identify a couple more people here. I'm</p> <p>22 looking at the list of Peccole-Nevada Corporation officers</p> <p>23 filed with the Secretary of State's office January 1st,</p> <p>24 1990- -- 1999. It reflects Wanda Peccole as the president.</p> <p>25 Is Wanda Peccole Bill Peccole's wife?</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Yes.</p> <p>2 Q. Your grandmother?</p> <p>3 A. She's my grandmother.</p> <p>4 Q. And then Lauretta P. Bayne, is that your mother?</p> <p>5 A. That's my mother.</p> <p>6 Q. She's identified as secretary and treasurer.</p> <p>7 A. Yeah.</p> <p>8 Q. And then Larry A. Miller, he is your uncle,</p> <p>9 correct?</p> <p>10 A. Yep.</p> <p>11 Q. Okay. What was -- he's identified as a director</p> <p>12 on this Secretary of State filing.</p> <p>13 What was your uncle Larry Miller's role with</p> <p>14 Peccole-Nevada Corporation?</p> <p>15 A. It would be hard for me to characterize, from my</p> <p>16 knowledge base, until 2006. In 2006, when I came back, he</p> <p>17 was the CEO. I do not know when he became the CEO.</p> <p>18 Q. Okay.</p> <p>19 A. Sometime between '99 and 2006.</p> <p>20 MR. OGILVIE: Let me refer you to another map, and</p> <p>21 this will be marked as Exhibit 4.</p> <p>22 (Defendant's Exhibit 4 was marked</p> <p>23 for identification.)</p> <p>24 BY MR. OGILVIE:</p> <p>25 Q. And Exhibit 4 is identified in the bottom</p>

<p style="text-align: right;">Page 26</p> <p>1 right-hand corner as "City of Las Vegas Peccole Ranch Phase 2 I Land Use Case Files." And it is -- appears to be, and 3 correct me if I'm wrong, a little bit of a zoomed in aerial 4 map or aerial photo zoomed in from Exhibit 3, identifying 5 Phase I of the Peccole Ranch Master Plan, bounded by Sahara 6 on the south, Charleston on the north, Hualapai somewhat on 7 the east -- or on the west. And I say "somewhat," because, 8 as I understand it, the area between Charleston and Sahara, 9 that was bounded by Hualapai Way on the -- on the far west, 10 was part of Phase II; is that correct? 11 A. That's my understanding based on the map. 12 Q. Okay. You don't have any independent knowledge of 13 that? 14 A. I do not. 15 Q. Okay. Do you have any reason to believe that what 16 is detailed on this map is incorrect? 17 A. What this map details would be consistent with 18 what Peccole Ranch HOA charges their fee for. And they do 19 not charge a fee for Hualapai Commons, depicted at 20 Charleston and Hualapai. So that -- that would seem logical 21 to me. 22 Q. Okay. And you were not involved in any of the 23 zoning cases that are identified on Exhibit 4; is that 24 correct? 25 A. That is correct.</p>	<p style="text-align: right;">Page 27</p> <p>1 We -- we do currently own Village Square, depicted 2 on exhibit -- on this exhibit, on the corner of Sahara and 3 Fort Apache. The Bayne Family owns that corner. 4 Q. Okay. That's where the movie theater is? 5 A. That's correct. 6 Q. Now, you mentioned -- you mentioned the Bayne 7 Family. 8 The Bayne Family owns that separate and apart from 9 Peccole? 10 A. We purchased it after our dissolution in 2019. We 11 took our proceeds and purchased that corner. 12 Q. Okay. When you say "our," you mean the Bayne 13 Family? 14 A. I do. 15 Q. So let me direct your attention specifically to a 16 couple of these zoning events that are identified on Exhibit 17 4. There's a string of them identified as Case Z-0139-88. 18 And on the west -- or on the east side of Peccole Ranch. 19 And then there's a set of indications identified as Case 20 Z-0040-89. 21 You didn't have any participation in those zoning 22 events, did you? 23 A. I did not. 24 Q. Did you ever have any participation in zoning 25 events for any of Peccole Ranch Master Plan?</p>
<p style="text-align: right;">Page 28</p> <p>1 MR. WILLIAMS: Let me just object to compound. 2 You can answer if you have -- 3 THE WITNESS: I would say that I have never had 4 any interaction with zoning events having to do with the 5 master plan. I've had interactions with zoning events at 6 Hualapai Commons and at properties north of Charleston. But 7 when we were doing the zoning, they were not identified at 8 the time as part of the master plan. 9 THE COURT REPORTER: And was that Mr. Leavitt who 10 objected? 11 MR. OGILVIE: No. It's Mr. Williams. 12 MR. WILLIAMS: No. It was Mr. Williams. 13 THE COURT REPORTER: Thank you. 14 MR. WILLIAMS: You're welcome. 15 MR. OGILVIE: Well, then let me direct you to 16 another aerial, which we will mark as Exhibit 5. 17 (Defendant's Exhibit 5 was marked 18 for identification.) 19 BY MR. OGILVIE: 20 Q. Exhibit 5 is identified in the bottom right-hand 21 corner as "City of Las Vegas Peccole Ranch Phase II Land Use 22 Case Files." And it identifies in shaded blue the area that 23 I understand, correct me if I'm wrong, was -- is Phase II of 24 the Peccole Ranch Master Plan. 25 A. I'm not seeing anything yet.</p>	<p style="text-align: right;">Page 29</p> <p>1 Do you want me to find it? 2 Q. Oh, I'm sorry. 3 A. From my understanding, the land depicted in blue, 4 my family did not annex into the Peccole Ranch Master Plan. 5 So maybe you could rephrase your question in a way I could 6 answer, or I could just muddle through an answer. 7 Q. Okay. So when you say -- when you use the word -- 8 the term "annexed," what do you mean? 9 A. Looking at historical documents and reading 10 through the original CC&Rs for Peccole Ranch, which I did 11 when we were in a lawsuit with Bob Peccole, my cousin, we 12 had an obligation or an opportunity to annex property as we 13 jointly developed it with Triple Five. We didn't just put 14 all of our property into the master plan with Triple Five as 15 partner. I will speculate that the reason for that was we 16 didn't know Triple Five, and they were new, and my 17 grandfather probably wanted to see how our relationship 18 would progress. 19 So in knowing my grandfather, it seems that he 20 would have been prudent and not put all of his property into 21 this giant master plan that you're depicting, and that we 22 would take the opportunity to annex property in as we 23 developed it as the partnership progressed. 24 Having said that, I am not aware of ever annexing 25 in the properties north of Charleston. I do think that at</p>

<p style="text-align: right;">Page 30</p> <p>1 some point the property south of Charleston, except for that</p> <p>2 Hualapai Commons shopping center, were annexed in. I also</p> <p>3 do not believe the Sahara Commons shopping center was ever</p> <p>4 annexed in.</p> <p>5 Q. Okay.</p> <p>6 A. So when you refer to all of the properties in the</p> <p>7 Phase II master plan, I would take issue that those</p> <p>8 properties became part of the master plan per the City of</p> <p>9 Las Vegas, not per Peccole.</p> <p>10 Q. Okay. Are you aware of Peccole generated</p> <p>11 documents that refer to Peccole Ranch Master Plan Phase I</p> <p>12 and Peccole Ranch Master Plan Phase II?</p> <p>13 A. I am -- this is pretty far outside of my</p> <p>14 wheelhouse and when I was there and involved. I would have</p> <p>15 to refer you to probably Clyde Spitze for how those</p> <p>16 documents were generated and what was generated. He would</p> <p>17 know more about that than I would by a lot.</p> <p>18 Q. Okay. Please describe to me your understanding of</p> <p>19 who Clyde Spitze is and what services he performed for</p> <p>20 Peccole-Nevada Corporation or any of -- and -- and let me</p> <p>21 just -- let me back up and say, when I refer to Peccole -- I</p> <p>22 don't know if I should refer --</p> <p>23 How do -- how do you refer to the -- the Peccole</p> <p>24 Family Holdings that -- well, actually, let me -- let me</p> <p>25 back up even further.</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Peccole Ranch, for us, is everything south of</p> <p>2 Charleston. The rest of it was Queensridge and other</p> <p>3 properties. Again, we never -- from 2006 forward, when I</p> <p>4 was there and then when I became CEO, I never -- I never was</p> <p>5 hampered or encumbered by dealing with the master plan.</p> <p>6 When I got things rezoned, there was no master plan</p> <p>7 discussion. When I went and did a commercial subdivision at</p> <p>8 Hualapai and Charleston, there was no master plan</p> <p>9 contemplated.</p> <p>10 Q. Okay.</p> <p>11 A. The city didn't ask us to conform. They didn't</p> <p>12 ask us if we conformed. It never got brought up.</p> <p>13 Q. Okay.</p> <p>14 A. It never became an issue until these lawsuits.</p> <p>15 Q. Let me -- let me back up.</p> <p>16 Did -- was Peccole-Nevada Corporation the manager</p> <p>17 of Fore Stars Limited prior to the sale of Fore Stars</p> <p>18 Limited to Yohan Lowie's entity in March of 2015?</p> <p>19 A. Yes.</p> <p>20 Q. Did Peccole-Nevada Corporation manage 21 Stars</p> <p>21 Limited?</p> <p>22 A. Yes.</p> <p>23 Q. Does 21 Stars Limited own the -- the property on</p> <p>24 which the Suncoast Hotel currently sits?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 32</p> <p>1 Q. What other entities did Peccole-Nevada Corporation</p> <p>2 manage?</p> <p>3 A. That's a really long list.</p> <p>4 Q. Okay. So that's kind of getting where I'm --</p> <p>5 where I was going.</p> <p>6 Did Peccole-Nevada Corporation generally act as</p> <p>7 the manager of the Peccole Family land holdings, the Peccole</p> <p>8 Family and its entities and trusts?</p> <p>9 A. It did. But in the case of Peccole Ranch, the</p> <p>10 property between Sahara and Charleston, the managing member,</p> <p>11 my understanding, was Triple Five. And again, my</p> <p>12 understanding is limited to just historical -- I don't have</p> <p>13 firsthand knowledge of that.</p> <p>14 Q. Okay. I'm not asking if it managed --</p> <p>15 A. I don't believe Peccole-Nevada Corporation managed</p> <p>16 Peccole Ranch.</p> <p>17 Q. Okay. But it managed the Peccole interest in</p> <p>18 Peccole Ranch?</p> <p>19 A. I -- I don't know how to characterize their -- the</p> <p>20 operating agreement or the partnership agreement with Triple</p> <p>21 Five. I honestly have never seen it.</p> <p>22 Q. I'm not asking that. I'm only -- I'm not asking</p> <p>23 about the relationship with Triple Five at all or who</p> <p>24 managed Peccole Ranch Master Plan Phase I.</p> <p>25 I'm just -- I'm just asking a -- more of a very</p>	<p style="text-align: right;">Page 33</p> <p>1 general question of --</p> <p>2 A. Peccole-Nevada Corporation managed all of the</p> <p>3 Peccole properties.</p> <p>4 THE COURT REPORTER: I'm sorry, who managed all of</p> <p>5 the Peccole properties?</p> <p>6 THE WITNESS: Peccole-Nevada Corporation managed</p> <p>7 all of the Peccole properties. When I was there in 2006</p> <p>8 forward, that was our manager.</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Okay. And when you say "the Peccole properties,"</p> <p>11 you're talking about the land holdings of Peccole entities</p> <p>12 and trusts; is that correct?</p> <p>13 A. The land holdings of Peccole's entities and</p> <p>14 trusts?</p> <p>15 There may have been a few trusts that</p> <p>16 Peccole-Nevada Corporation did not manage.</p> <p>17 Q. What about the William and Wanda Peccole Family</p> <p>18 Limited Partnership?</p> <p>19 A. It managed that.</p> <p>20 Q. Okay. Okay. So back to Exhibit 5.</p> <p>21 Were you -- there are various zoning case events</p> <p>22 identified on Exhibit 5. Were you involved in any of those</p> <p>23 zoning case events?</p> <p>24 A. I don't -- I don't know case event numbers. You</p> <p>25 don't have -- you don't have dates, do you?</p>

<p style="text-align: right;">Page 34</p> <p>1 Let me look.</p> <p>2 I don't think I was involved in any of these</p> <p>3 zoning case events depicted.</p> <p>4 Q. Okay. You mentioned --</p> <p>5 MR. WILLIAMS: George, George, this is Butch.</p> <p>6 Is the date -- the date referenced on the bottom,</p> <p>7 it has a case number, and then it hits like 90, 95, 90, 90;</p> <p>8 is that the date?</p> <p>9 MR. OGILVIE: Yes.</p> <p>10 MR. WILLIAMS: Okay.</p> <p>11 THE WITNESS: Yeah.</p> <p>12 MR. WILLIAMS: All right.</p> <p>13 THE WITNESS: Okay. If that's the date, then I</p> <p>14 don't think I was involved in any of them.</p> <p>15 BY MR. OGILVIE:</p> <p>16 Q. It is the year, rather than the date.</p> <p>17 A. Yeah.</p> <p>18 Q. Okay.</p> <p>19 A. Yeah. But I'm -- just got back from (inaudible.)</p> <p>20 Q. So you mentioned Clyde Spitze. I wanted to go</p> <p>21 back to Clyde.</p> <p>22 But who is Clyde Spitze and what role did he play</p> <p>23 with the -- with Peccole-Nevada Corporation?</p> <p>24 A. Clyde Spitze -- my understanding, Clyde Spitze</p> <p>25 worked with my grandfather in coming up with a lot of -- a</p>	<p style="text-align: right;">Page 35</p> <p>1 lot of the land use plans and then getting the zoning put</p> <p>2 together. And then when my grandfather stepped out of the</p> <p>3 picture -- I think my grandfather died -- my memory comes</p> <p>4 back. It's around '99. Clyde worked with my grandmother</p> <p>5 and Larry Miller, and he had the same role. He helped</p> <p>6 with -- all of these zoning things, Clyde could probably</p> <p>7 comment on.</p> <p>8 Q. Okay.</p> <p>9 A. Clyde probably presented them at the city. So his</p> <p>10 role was an outside third party. He worked for a land use</p> <p>11 company. I'm trying to remember the name. PentaCore at one</p> <p>12 point and then another name. And -- and that's -- that's</p> <p>13 Clyde -- Clyde's worked for my family and with my family for</p> <p>14 many, many years.</p> <p>15 Q. Is it fair to say that Clyde Spitze was the</p> <p>16 consultant through which Peccole-Nevada Corporation obtained</p> <p>17 the land use regulations allowing it to develop Queensridge?</p> <p>18 A. Yes, I think that's fair to say.</p> <p>19 Q. Is there anybody that you know of, whether within</p> <p>20 the family or outside the family, that has more</p> <p>21 institutional knowledge regarding the Peccole Family's</p> <p>22 development of Queensridge than Mr. Spitze?</p> <p>23 A. No. I would -- not more -- not more institutional</p> <p>24 knowledge than Mr. Spitze. My -- the next best guess would</p> <p>25 be Larry Miller, but I don't think he did as much as Clyde</p>
<p style="text-align: right;">Page 36</p> <p>1 did as -- as it relates to getting the zoning packages</p> <p>2 applied for, getting the zoning done, interfacing with the</p> <p>3 city. That was all Clyde.</p> <p>4 Q. Okay. Now, aside from Clyde and Larry -- where is</p> <p>5 Larry located?</p> <p>6 A. He's in Australia.</p> <p>7 Q. Okay. So you've been designated as the 30(b) --</p> <p>8 30(b)(6) designee, which is essentially a person most</p> <p>9 knowledgeable, but it's not simply a person most</p> <p>10 knowledgeable. It carries with it obligations to conduct</p> <p>11 research and be prepared to present testimony on behalf of</p> <p>12 the corporation. You've been designated as that individual,</p> <p>13 as opposed to Larry Miller. With respect to the development</p> <p>14 of Queensridge, you said other than Mr. Spitze, Mr. Miller</p> <p>15 would have the most institutional knowledge.</p> <p>16 Why is it that Mr. Miller is not being presented</p> <p>17 as the 30(b)(6) designee of Peccole-Nevada Corporation?</p> <p>18 A. Probably because when you sent over the subpoena,</p> <p>19 most of the items in the subpoena that were relevant were</p> <p>20 post 2006, and I have the most institutional knowledge of</p> <p>21 those items. The few items in the subpoena that were pre,</p> <p>22 as I -- as I've stated in the past, I did not know about</p> <p>23 those items. But the reason that we didn't try to find</p> <p>24 Larry and get Larry to do this was because those were --</p> <p>25 there were far fewer of those items.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Okay. Other than Larry Miller, is there anyone</p> <p>2 from the Peccole Family with more knowledge regarding the</p> <p>3 development of Queensridge than you?</p> <p>4 A. Well, Clyde.</p> <p>5 Q. No. I said within the Peccole Family.</p> <p>6 A. Oh, no. No. My -- my -- my dad did a lot of the</p> <p>7 construction. But as far as the development goes and the</p> <p>8 zoning goes, my -- my mother and father were on the board,</p> <p>9 in a few board meetings, but they -- they didn't have any --</p> <p>10 they didn't -- they weren't involved that way.</p> <p>11 Q. Okay. Let's move on to your dad.</p> <p>12 What -- what specifically -- what role</p> <p>13 specifically did he play, if any, relative to the</p> <p>14 development of Queensridge?</p> <p>15 A. My -- my dad was -- was involved in the</p> <p>16 construction. He could tell you where the sewer lines are.</p> <p>17 He could tell you the sewer lines capacity, the</p> <p>18 complications in Queensridge related to the sewer lines.</p> <p>19 He -- he just did the construction, and a lot of the super</p> <p>20 construction the -- the -- the roads, the -- that kind of</p> <p>21 thing. So that was his role, is he was on site doing most,</p> <p>22 if not all, the construction. And then Larry's role was --</p> <p>23 was working with Clyde on the development and on the zoning</p> <p>24 and on those things.</p> <p>25 Q. Okay. Who developed the golf course?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. I can't remember if it's American Golf or Senior 2 Tour Players. It was one of those two. 3 Q. Okay. Who participated in the development of the 4 golf course from the Peccole Family? 5 A. It would have been both Larry -- Larry and my 6 father and my grandmother. It would have been those three. 7 When you say "participated," they signed a land 8 lease, so they negotiated a land lease, and then the golf 9 course developed it. They -- they didn't do any of the 10 development other than they would drive out on it and look 11 at the development. I don't know what you mean. 12 Q. Okay. You said "the golf course developed it." 13 What -- who are you referring to when you say "the 14 golf course"? 15 A. Either American Golf or Senior Tour Players. They 16 had the original lease. I'd have to go back through the 17 documents and remember which one it was. 18 Q. Okay. 19 A. You probably -- 20 Q. When did -- do you know when development of the 21 golf course began? 22 A. About '92. 23 Q. Okay. And who paid to develop the golf course? 24 A. American Golf or Senior Tour Players, whichever 25 one had the lease. If you want, give me a minute. I can go</p>	<p style="text-align: right;">Page 39</p> <p>1 figure it out. 2 Q. Did the Peccole Family pay anything towards the 3 development of the golf course? 4 A. I am not aware of it. Though, it would be 5 consistent that if there was some zoning applications or 6 things like that, Peccole may have paid for some of those. 7 Q. Do you have an understanding of when -- well, 8 strike that. Let me -- let me back up a second. 9 My understanding is when the golf course was 10 initially developed, it was developed as an 18-hole golf 11 course; is that correct? 12 A. That is correct. 13 Q. Do you have an understanding as to when an 14 additional nine holes was incorporated into the golf course? 15 A. I do not remember the year. It would have been in 16 the late '90s, I think early 2000s. And we were getting 17 ready to develop Queensridge, and it became evident through 18 Clyde that we could -- we could add another -- another 19 little bit of golf course, and we could lease that to the 20 same individuals that at the time were leasing the golf 21 course. 22 Q. Okay. Let me direct your attention back to 23 Exhibit 3, the first aerial. 24 Exhibit 3 is the first aerial photograph that I 25 was asking you about, and you identified various areas that</p>
<p style="text-align: right;">Page 40</p> <p>1 were not included in the Queensridge property between 2 Charleston, Alta, Hualapai, and Rampart. 3 Can you identify on this aerial where the third 4 nine holes was, I guess, or the -- the additional nine holes 5 was developed? 6 A. Yeah. It was -- you see the lake off of Hualapai? 7 Q. Immediately to the east of Hualapai? 8 A. Yeah, that lake. 9 Q. Yes. 10 A. So all of that green right there where it's -- 11 where you can clearly see golf course land, all -- all -- 12 from that lake down to the lake on the west side by the 13 clubhouse. Yeah. That whole course was -- was it. 14 And then if you keep coming around -- no. Include 15 that little -- that little bit right there. And then come 16 back up against the golf course and the property on that 17 side, and you'll -- you'll -- you'll get most of it, if 18 that's not all of it. No. Come down. You'll include all 19 of these holes down below. Sorry. Yep, right there. Stay 20 on that line and go right along the houses. Stay right 21 along the houses. Yep. And then wiggle down there and stay 22 along the houses. 23 Q. So you're describing the string of -- the two 24 strings of fairways on the northern most portion of 25 Queensridge?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yes. And that's -- there was some other 2 configuration that was done, but that's -- that's a pretty 3 close approximation. 4 Q. Okay. 5 A. You can -- you can include those houses in the 6 redevelopment because a lot of Queensridge North came from 7 the redevelopment. 8 Q. Explain that to me. 9 A. So we had this -- Queensridge North hadn't been 10 built yet, and we didn't have the third nine holes. And so 11 when we started to want to develop Queensridge North, that's 12 when we decided we could go ahead and put in a third nine 13 holes. And so all of that property was -- was part of that 14 redevelopment process. 15 Q. Okay. 16 A. So the third line came from that. 17 Q. Okay. When you describe Queensridge North, you're 18 describing the housing development that borders Alta, 19 between the condominium project that you described was not 20 part of Queensridge to the east and extending up to Hualapai 21 on the west; is that correct? 22 A. That's correct. 23 THE COURT REPORTER: Save this as 3-B? 24 MR. OGILVIE: Yes, that's 3-B. 25 (Defendant's Exhibit 3-B was marked</p>

<p style="text-align: right;">Page 42</p> <p>1 for identification.)</p> <p>2 THE WITNESS: And I might be off -- you might be</p> <p>3 off a little bit on your drawing, but that's generally where</p> <p>4 it was.</p> <p>5 BY MR. OGILVIE:</p> <p>6 Q. After the completion of that additional nine</p> <p>7 holes, were there any significant changes to the golf course</p> <p>8 between when it was completed in 2015?</p> <p>9 A. Not from a zoning standpoint, no. There was -- we</p> <p>10 redid greens. We spent some money and redid a lot of</p> <p>11 greens. They're very expensive. But -- but other than just</p> <p>12 maintenance items, no.</p> <p>13 MR. OGILVIE: Let me direct your attention to what</p> <p>14 will be marked as Exhibit 6.</p> <p>15 (Defendant's Exhibit 6 was marked</p> <p>16 for identification.)</p> <p>17 BY MR. OGILVIE:</p> <p>18 Q. Exhibit 6 is a grant, bargain, and sale deed that</p> <p>19 was recorded at the Clark County Recorder's Office on</p> <p>20 April 14th, 2005.</p> <p>21 Is this the deed by which the William, Peter, and</p> <p>22 Wanda Ruth Peccole Family Limited Partnership deeded the</p> <p>23 Badlands Golf Course to Fore Stars Limited?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So after this 2005 deed -- grant, bargain,</p>	<p style="text-align: right;">Page 43</p> <p>1 and sale deed, Fore Stars was the fee simple owner of the</p> <p>2 golf course; is that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. Let me advance forward a little bit.</p> <p>5 You referenced the Queens- -- Queensridge Towers</p> <p>6 site and -- and identified on one of the exhibits where --</p> <p>7 where the towers were located.</p> <p>8 Was there an event related to the development of</p> <p>9 the Queensridge Towers in which there was a dispute relating</p> <p>10 to the encroachment of the towers' development onto the</p> <p>11 Badlands Golf Course?</p> <p>12 A. There was.</p> <p>13 Q. Okay. And was that dispute -- did that dispute</p> <p>14 arise as a result of the lease of the golf course property</p> <p>15 to -- you mentioned American Golf or Senior Tour Players?</p> <p>16 A. That is correct.</p> <p>17 Q. And specifically, could you describe what -- what</p> <p>18 happened there?</p> <p>19 A. My understanding is that we were developing</p> <p>20 jointly with Mr. Lowie the Queensridge Towers project, and</p> <p>21 we had allowed him to start construction on golf course</p> <p>22 leasehold proper- -- property.</p> <p>23 At the time, we had made a mistake in thinking</p> <p>24 that the golf course would have no problems with us doing</p> <p>25 that. We were wrong. The golf course did. And that became</p>
<p style="text-align: right;">Page 44</p> <p>1 a mess that had to be cleaned up. And the way we cleaned</p> <p>2 that up was we purchased the lease back for approximately</p> <p>3 30-some-odd-million dollars. I think it was 30 million or</p> <p>4 \$32 million.</p> <p>5 Q. Okay. When you say "we," are you referring to the</p> <p>6 Peccole Family?</p> <p>7 A. I am.</p> <p>8 Q. And when you say "purchased" -- I'm sorry, what</p> <p>9 did you purchase back for 30 to \$32 million?</p> <p>10 A. We purchased back the leasehold interest in the</p> <p>11 property.</p> <p>12 Q. Okay. And you purchased that back from American</p> <p>13 Golf or Senior Tour Players; is that correct?</p> <p>14 A. That is correct. And it may have even -- that</p> <p>15 lease may have even been transferred one more time, and I'd</p> <p>16 have to go back and tell you.</p> <p>17 Q. So I take it from your last response is you don't</p> <p>18 know who -- from whom at the time you resolved this in --</p> <p>19 A. I don't remember. I -- I did know, but I do not</p> <p>20 remember right now.</p> <p>21 MR. OGILVIE: Okay. Let me direct your attention</p> <p>22 to what will be marked as Exhibit 7.</p> <p>23 (Defendant's Exhibit 7 was marked</p> <p>24 for identification.)</p> <p>25 THE WITNESS: Yeah, it's American Golf. That's</p>	<p style="text-align: right;">Page 45</p> <p>1 correct. Okay.</p> <p>2 BY MR. OGILVIE:</p> <p>3 Q. Okay. Exhibit 7 is identified as a termination of</p> <p>4 operating lease agreement at Badlands Golf Club. The first</p> <p>5 paragraph says that it's a termination of operating lease by</p> <p>6 and between Badlands Golf Club, Inc. and American Golf</p> <p>7 Corporation.</p> <p>8 Who is the Badlands Golf Club, Inc.?</p> <p>9 A. I do not know.</p> <p>10 Can you scroll down to the signature page for me</p> <p>11 really fast?</p> <p>12 I don't know who that is.</p> <p>13 Q. You do not know who Elby J. Beal is?</p> <p>14 A. I do not. I think you're getting an interim</p> <p>15 agreement.</p> <p>16 What -- what's the year on this?</p> <p>17 Q. 2005.</p> <p>18 A. The Badlands Golf Club, Inc., I am not -- that's</p> <p>19 not a -- that is not one of our entities. When I say "our,"</p> <p>20 I mean the Peccole Family's. So I'm not sure who this is</p> <p>21 with. Hold on.</p> <p>22 Maybe this was an entity we formed to purchase</p> <p>23 back the leasehold, and we kept the leasehold in this entity</p> <p>24 while Fore Stars remained the land owner. But I don't know</p> <p>25 who the Ely [sic] guy is.</p>

<p style="text-align: right;">Page 46</p> <p>1 Scroll down again.</p> <p>2 I don't know who that is.</p> <p>3 There's Senior Tours, that's the original ground</p> <p>4 lease.</p> <p>5 Scroll down. Who is that with?</p> <p>6 My guess it's with the family limited partnership</p> <p>7 and the (inaudible) trust. Check that -- that's correct.</p> <p>8 Senior Tours, yeah, that's right. And 76 Trust</p> <p>9 they pledged and signed, yeah.</p> <p>10 THE COURT REPORTER: I'm sorry, can you speak more</p> <p>11 clearly for me?</p> <p>12 THE WITNESS: I'm just thinking -- thinking out</p> <p>13 loud. Sorry.</p> <p>14 THE COURT REPORTER: It's okay.</p> <p>15 BY MR. OGILVIE:</p> <p>16 Q. So is it -- as you sit here now, after reviewing a</p> <p>17 couple of documents, is it your belief that the original</p> <p>18 ground lease for the development of the golf club was</p> <p>19 between Peccole Family entities and trusts and Senior Tour</p> <p>20 Players, Inc.</p> <p>21 A. Yes, that is correct.</p> <p>22 Q. And then at the time that the lease was</p> <p>23 terminated, the lease was held by American Golf Corporation,</p> <p>24 correct?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. And you indicated that the Peccole Family or an</p> <p>2 entity of the Peccole Family paid 30 or \$32 million to</p> <p>3 terminate the lease that was then held by American Golf</p> <p>4 Corporation?</p> <p>5 A. That is correct.</p> <p>6 Q. Okay. Did Yohan Lowie contribute to that 30 to</p> <p>7 \$32 million termination price?</p> <p>8 A. Not from my family's perspective.</p> <p>9 MR. OGILVIE: Okay.</p> <p>10 (Defendant's Exhibit 8 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. OGILVIE:</p> <p>13 Q. Let me direct your attention to what has been</p> <p>14 marked as Exhibit 8, which is the appraisal of real property</p> <p>15 prepared for 180 Land Company, care of James J. Leavitt, by</p> <p>16 Tio S. -- Tio S. DiFederico.</p> <p>17 MR. LEAVITT: George, this is Jim Leavitt.</p> <p>18 Which exhibit is this?</p> <p>19 MR. OGILVIE: Eight.</p> <p>20 MR. LEAVITT: And so just for the record, would</p> <p>21 the memorandum of ground -- that wasn't referenced as an</p> <p>22 exhibit, so . . .</p> <p>23 MR. OGILVIE: Yeah. No, that was not -- that was</p> <p>24 not marked as an exhibit.</p> <p>25 MR. LEAVITT: Okay.</p>
<p style="text-align: right;">Page 48</p> <p>1 BY MR. OGILVIE:</p> <p>2 Q. Let me direct your attention to what is Bates</p> <p>3 numbered TDG Rpt 9, 000009. Second-to-last page of Exhibit.</p> <p>4 Are you with me?</p> <p>5 A. Yes. I'm sorry. Yes.</p> <p>6 Q. Okay. Underneath the photographs -- well, the</p> <p>7 photographs -- actually, let me ask you this: Do the</p> <p>8 photographs depict what we were just discussing, the area in</p> <p>9 which the --</p> <p>10 A. They do.</p> <p>11 Q. -- development of Queensridge Towers encroached</p> <p>12 into the ground lease of -- held by American Golf?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Immediately below the photographs, there is</p> <p>15 the paragraph, "In 2005, the golf course was being leased by</p> <p>16 American Golf. Mr. Lowie stated that after the above hole</p> <p>17 conversion was completed, at a cost of approximately</p> <p>18 \$800,000 to Mr. Lowie's company, American Golf informed the</p> <p>19 Peccole family that they had broken their lease by changing</p> <p>20 the course and using a portion of it for the development."</p> <p>21 Are those two -- two sentences generally accurate?</p> <p>22 A. Yes.</p> <p>23 Q. Then the next sentence says, "American Golf</p> <p>24 demanded the Peccole Family buy out the lease for</p> <p>25 \$30 million."</p>	<p style="text-align: right;">Page 49</p> <p>1 Is -- is that accurate?</p> <p>2 A. American Golf told us to vacate the property or</p> <p>3 buy out the lease.</p> <p>4 Q. Okay. "At the same time" -- the next sentence</p> <p>5 says, "At the same time, there was a cash call for the</p> <p>6 partners in Queensridge Towers, of which the Peccole family</p> <p>7 had a 30 percent interest. To" --</p> <p>8 A. That is my understanding.</p> <p>9 Q. Okay. And then it continues on, "To resolve the</p> <p>10 issues, Mr. Lowie worked a deal with his then partners to</p> <p>11 borrow money to cover the Peccole family obligation to</p> <p>12 American Golf and buy them out of their joint ventures."</p> <p>13 Is that accurate?</p> <p>14 A. That is not my understanding.</p> <p>15 Q. Okay. What is your understanding?</p> <p>16 A. We borrowed money against the Suncoast Hotel and</p> <p>17 paid American Golf.</p> <p>18 Q. And what is your understanding based on?</p> <p>19 A. The fact that we had a loan and we borrowed money</p> <p>20 from the Suncoast Hotel and wrote a check to American Golf.</p> <p>21 Q. Okay. Let me take you to a page immediately</p> <p>22 preceding where we were in Mr. DiFederico's report.</p> <p>23 Specifically the paragraph -- second-to-last paragraph on</p> <p>24 page 3, which is Bates No. 8. It says, "It was in early</p> <p>25 2001, while Mr. Lowie's company was building a home that he</p>

<p style="text-align: right;">Page 50</p> <p>1 noted dirt being moved behind it on what was known as the</p> <p>2 Badlands golf course. He stated that was when he learned</p> <p>3 that the Peccole family was looking to develop homes on what</p> <p>4 had been the Badlands golf course. Mr. Lowie stated that</p> <p>5 the Peccole family halted this development due to a</p> <p>6 waterline easement that ran under that portion of the site."</p> <p>7 Are you aware of any grading being performed by</p> <p>8 the Peccole -- Peccole Family or any of its entities on the</p> <p>9 golf course in 2001?</p> <p>10 A. Yes.</p> <p>11 MR. WILLIAMS: Let me just -- let me just object.</p> <p>12 Lack of foundation.</p> <p>13 THE COURT REPORTER: And I'm sorry, is that</p> <p>14 Mr. Leavitt or Mr. Williams?</p> <p>15 MR. WILLIAMS: Yes, sorry. That was Mr. Leavitt,</p> <p>16 lack of foundation.</p> <p>17 BY MR. OGILVIE:</p> <p>18 Q. What grading are you aware of being performed by</p> <p>19 the Peccole Family entities on the Badlands Golf Course in</p> <p>20 2001?</p> <p>21 A. When we were developing different properties, we</p> <p>22 used a part of the Badlands for landscape material. And</p> <p>23 once we finished, we were grading that out, and that was</p> <p>24 going to become a few homes on the Badlands, and that's when</p> <p>25 we ran into this problem.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. When you say "this problem," what problem are you</p> <p>2 describing?</p> <p>3 A. The easements and the challenges with getting</p> <p>4 those developed.</p> <p>5 Q. Specifically, where on the Badlands Golf Course</p> <p>6 was this?</p> <p>7 A. Pull up your map and I can probably show you.</p> <p>8 Q. Okay.</p> <p>9 A. Pull up exhibit -- I think it's Exhibit 1, the</p> <p>10 red -- the one with the red lines.</p> <p>11 MR. LEAVITT: Three.</p> <p>12 MR. WILLIAMS: I think it's three, yeah.</p> <p>13 THE WITNESS: Exhibit 3.</p> <p>14 MR. LEAVITT: Exhibit 3. Pull up three, George.</p> <p>15 THE WITNESS: Oh, yeah Exhibit 1 was --</p> <p>16 All right. Can you zoom in on the Badlands?</p> <p>17 Specifically, let's zoom in on that new nine holes.</p> <p>18 Okay. Stop for one second. Let me get my</p> <p>19 bearings.</p> <p>20 Do you see -- I'm going to refer to it as the</p> <p>21 Michael Galardi home. It's the big white home in the center</p> <p>22 of your screen. That one.</p> <p>23 I believe that that portion of that that you just</p> <p>24 read to me refers to the blank land across the street that's</p> <p>25 part of the golf course. Yes.</p>
<p style="text-align: right;">Page 52</p> <p>1 BY MR. OGILVIE:</p> <p>2 Q. Okay. Did -- did the Peccole entity obtain a</p> <p>3 grading permit for that, that grading?</p> <p>4 A. I -- I don't know. I -- I suspect we did, but I</p> <p>5 don't know. We wouldn't have just graded something on the</p> <p>6 off chance that we could do something with it. We would</p> <p>7 have gotten a permit. And I -- I know we had a dust control</p> <p>8 permit for the landscape area.</p> <p>9 Q. Okay.</p> <p>10 A. And I know -- I can -- I can say I know we had a</p> <p>11 dust control permit because that was one of my jobs back in</p> <p>12 2001.</p> <p>13 Q. Okay. We've been going for about an hour and a</p> <p>14 half. Why don't we take a five minute break.</p> <p>15 A. Okay.</p> <p>16 MR. OGILVIE: Thank you.</p> <p>17 (Off the record.)</p> <p>18 (Defendant's Exhibit 9 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. OGILVIE:</p> <p>21 Q. Okay. Let's go back on the record.</p> <p>22 Mr. Bayne, let me direct your attention to what's</p> <p>23 been marked as Exhibit 9, which is identified as the</p> <p>24 operating agreement of Queensridge Towers LLC.</p> <p>25 Who is Queensridge Highrise LLC, which is</p>	<p style="text-align: right;">Page 53</p> <p>1 identified as the property member in --</p> <p>2 A. I believe that is one of the Peccole entities.</p> <p>3 Q. Okay. So if we skip back to the last page of the</p> <p>4 exhibit and look at the signature page, we have an entity</p> <p>5 where the members are Queensridge Highrise LLC.</p> <p>6 Is that signed by your uncle Larry Miller?</p> <p>7 A. It is.</p> <p>8 Q. Okay. Does that confirm your understanding that</p> <p>9 Queensridge Highrise -- Queensridge Highrise LLC is a</p> <p>10 Peccole entity?</p> <p>11 A. It does.</p> <p>12 Q. Okay. Also in this document there is an entity</p> <p>13 identified as Executive QT Holdings LLC, and that's</p> <p>14 identified as the construction member.</p> <p>15 Do you have an understanding of who Executive QT</p> <p>16 Holdings LLC is?</p> <p>17 A. My understanding was that was Yohan's arm, as far</p> <p>18 as I know.</p> <p>19 THE COURT REPORTER: Yohan's what as far as I</p> <p>20 know?</p> <p>21 THE WITNESS: Yohan's construction arm of this</p> <p>22 partnership.</p> <p>23 BY MR. OGILVIE:</p> <p>24 Q. And just for clarity, when you refer to Yohan,</p> <p>25 you're referring to Mr. Lowie; is that correct?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. It is Mr. -- yes, that's correct.</p> <p>2 Q. Also identified in this document is an entity</p> <p>3 known as Queensridge Towers Investments LP, which is</p> <p>4 identified in the first paragraph as the investment member.</p> <p>5 Who is Queensridge Towers Investments LP?</p> <p>6 A. I do not know.</p> <p>7 Q. So if we look again at the signature page, there</p> <p>8 is a signature on behalf of Queensridge Towers Investments</p> <p>9 LP.</p> <p>10 Do you recognize Mr. Lowie's signature?</p> <p>11 A. It looks like Mr. Lowie's signatures.</p> <p>12 Q. Okay. In any event, that's not a Peccole entity,</p> <p>13 correct?</p> <p>14 A. That is correct.</p> <p>15 Q. At the time this operating agreement was entered</p> <p>16 into, the -- there was the Peccoles on one side and</p> <p>17 Mr. Lowie's entities on the other side, correct?</p> <p>18 A. That is correct.</p> <p>19 Q. No -- there weren't any other entities involved</p> <p>20 other than Peccole entities and Mr. Lowie's entities,</p> <p>21 correct?</p> <p>22 A. That is my understanding.</p> <p>23 Q. Okay. If we could turn to -- back to the first</p> <p>24 page of the actual agreement, Section 1.2, entitled</p> <p>25 "Business," it says, "The business of the company shall be</p>	<p style="text-align: right;">Page 55</p> <p>1 to engage in any lawful activity . . . without limitation,</p> <p>2 the acquisition, financing, and development of that certain</p> <p>3 real property consisting of approximately 14 acres of land</p> <p>4 depicted in Appendix i attached hereto and generally</p> <p>5 described as being situated at the southwest corner of the</p> <p>6 intersection of Rampart Boulevard and Alta Road in</p> <p>7 Las Vegas, Nevada," and then defines -- defines as "the</p> <p>8 'property,' which property is adjacent to the 'Badlands'</p> <p>9 Golf Course."</p> <p>10 The property that's being described here is the</p> <p>11 property on which the Queensridge Towers were ultimately</p> <p>12 developed, correct?</p> <p>13 A. That is what it sounds like.</p> <p>14 Q. Okay. Do you have any reason to believe that it</p> <p>15 isn't the property?</p> <p>16 A. I do not.</p> <p>17 Q. Okay. Section 2.1 states that the property -- the</p> <p>18 property member -- and again, the property member is</p> <p>19 identified on the first page as the Peccole entity</p> <p>20 Queensridge Highrise LLC, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. It says that the property member, or -- or</p> <p>23 the Peccole entity, shall execute and deliver for the</p> <p>24 property to convey to the company good and marketable title,</p> <p>25 right?</p>
<p style="text-align: right;">Page 56</p> <p>1 A. That's correct.</p> <p>2 Q. And the investment member -- and again, the</p> <p>3 investment member was Executive QT Holdings LLC. The</p> <p>4 executive [sic] member was to contribute \$4 million,</p> <p>5 correct?</p> <p>6 A. That is what it says.</p> <p>7 Q. So the Peccoles contributed the -- the property,</p> <p>8 and Mr. Lowie's entity contributed \$4 million; is that</p> <p>9 correct?</p> <p>10 A. That's what it says, yes.</p> <p>11 MR. LEAVITT: George, let me just enter an</p> <p>12 objection here that the documents that we're going through</p> <p>13 speak for themselves.</p> <p>14 MR. OGILVIE: Okay.</p> <p>15 THE COURT REPORTER: And was that Mr. Leavitt or</p> <p>16 Mr. Williams?</p> <p>17 MR. LEAVITT: Mr. Leavitt. Sorry.</p> <p>18 THE COURT REPORTER: That's okay.</p> <p>19 BY MR. OGILVIE:</p> <p>20 Q. So is it your understanding -- well, is it your</p> <p>21 understanding that Mr. Lowie contributed -- Mr. Lowie's</p> <p>22 entity contributed \$4 million and the -- that money was</p> <p>23 distributed to the Peccole entity?</p> <p>24 A. I do not know -- I do not know if that happened at</p> <p>25 that time.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Okay. Do you know if it happened at any time?</p> <p>2 A. I do not know.</p> <p>3 Q. Well, let's read through Section 2.1 then.</p> <p>4 A. Well, I've read this. So based on what this says,</p> <p>5 it was.</p> <p>6 Q. Okay. That --</p> <p>7 A. That is what it says.</p> <p>8 Q. So the -- the property had a value of -- an agreed</p> <p>9 upon value of \$8 million, and the Peccole Family contributed</p> <p>10 the \$8-million-valued property and Mr. Lowie's entity, in</p> <p>11 exchange for his interest in this company, Queensridge</p> <p>12 Towers LLC, paid the Peccole Family \$4 million?</p> <p>13 A. Based on what this document says, that's what it</p> <p>14 looks like it says.</p> <p>15 Q. Okay. And in terms of interest in the -- in the</p> <p>16 company Queensridge Towers LLC, the property member received</p> <p>17 40 shares of interest, the investment member 30 shares, and</p> <p>18 the construction member 30 shares, correct?</p> <p>19 A. I think that's what this says.</p> <p>20 Q. Okay. Do you have any reason to believe that</p> <p>21 that's not accurate?</p> <p>22 A. I do not.</p> <p>23 Q. So -- and the purpose of creating Queensridge</p> <p>24 Towers LLC was to develop the Queensridge Towers, correct?</p> <p>25 A. That is correct, as far as I know.</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. OGILVIE: Let me direct your attention to what 2 will be marked as Exhibit 10. 3 (Defendant's Exhibit 10 was marked 4 for identification.) 5 BY MR. OGILVIE: 6 Q. Exhibit 10 is entitled "Option to Purchase Real 7 Property." It is dated either the 4th or the 11th, I think 8 it's the 4th, day of August, 2004, between Hualapai Commons 9 Limited and EHC Hualapai LLC. 10 Who is Hualapai or what is Hualapai Commons 11 Limited LLC? 12 A. Hualapai Commons Limited LLC is a Peccole entity 13 that owns the shopping center on the corner of Hualapai and 14 Charleston. 15 Q. Okay. Do you have an understanding of what EHC 16 Hualapai LLC is? 17 A. I believe it is Mr. Lowie's entity that he ended 18 up using to purchase the end cap. 19 Q. Okay. And when you refer to the end cap, are you 20 referring to the portion of -- I can't remember which 21 shopping center. Hualapai -- 22 A. Hualapai Commons. 23 Q. Hualapai Commons, the little gray building that -- 24 that you identified on Exhibit 3? 25 A. Yes.</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. This is the property located at 9755 West 2 Charleston Boulevard? 3 A. I apologize. I don't know the address off the top 4 of my head, but it -- that sounds correct. 5 Q. Okay. Let's go back to Exhibit 3 so we make sure 6 we're -- we have an understanding of what we're referring 7 to. Three -- 8 A. Yeah, it's between Home Depot and the rest of the 9 shopping center. 10 Q. The grayed roofed building between Home Depot on 11 the right, which is white, big white roof, and the little 12 bit smaller white roofed building on the left, there is a -- 13 again, a grayed shade building, roofed building. And that's 14 the -- what you're referring to as the end cap? 15 A. Yes. 16 Q. And that was the subject of this option to 17 purchase real property that is Exhibit 10? 18 A. Yes. 19 Q. Describe what this transaction involved. 20 A. When we were doing -- Yohan had used -- excuse me. 21 Mr. Lowie had used the end cap as a sales showroom to show 22 potential buyers of tower units what their finishes would 23 look like. So he had taken and put a lot of money into 24 that -- that showroom, and, consequently, I assume, wanted 25 to buy it. We could not sell it easily at the time. We had</p>
<p style="text-align: right;">Page 60</p> <p>1 a loan on the property, as depicted on Item D of this option 2 to purchase real property agreement, and it had not become a 3 legal parcel, as stated in Item E of this agreement. And 4 those two things needed to be resolved before he could buy 5 it and we could condominiumize it and sell him that portion 6 of the shopping center. And so we entered into this 7 agreement so that he had some level of reliance that if he 8 continued to put money into that building he would be able 9 to own the building at some point. 10 Q. Okay. Under Section 2, "Purchase Price," at the 11 bottom of that paragraph, it says, "By way of illustration, 12 if 4 million of such distributions are made, then the sum 13 due from the buyer in respect of the purchase price for the 14 property under the option is only \$100, whereas if 15 \$1 million of such distributions are made, then such sum due 16 in respect of the purchase price is \$1,500,100." 17 Can you explain what was meant by that? 18 A. Actually, no, I can't. 19 As far as I understood it, there was -- this was a 20 complicated deal. We were selling him the end cap, and we 21 were anticipating that when they developed Phase II of 22 Queensridge Towers they had to relocate our golf course 23 clubhouse, and so it was somewhat of a "once you relocate 24 our golf course clubhouse, then we'll consummate the sale of 25 the end cap."</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. LEAVITT: And my same objection here, George. 2 This is Jim Leavitt again. Documents speak for themselves. 3 BY MR. OGILVIE: 4 Q. Okay. So Phase II of Queensridge Towers, that -- 5 that was originally anticipated to be an additional two 6 towers, correct? 7 A. That is my understanding, yes. 8 Q. Okay. And then -- and so if Phase II of 9 Queensridge Towers was built, it would require the 10 demolition and, I guess, disappearance of the existing 11 Badlands clubhouse, correct? 12 A. That is correct. 13 Q. And there was an agreement by which Queensridge 14 Towers was required to incorporate a new clubhouse in one of 15 the two towers of Phase II, correct? 16 A. I don't think that that -- that had been talked 17 about. I don't think that that was necessarily the 18 agreement. I think the agreement was they would do that 19 and/or replace our clubhouse somehow with a certain amount 20 of money, as -- as discussed here. 21 Q. Okay. So with that -- with your -- with that 22 testimony, this document, "Option to Purchase Real 23 Property," was the vehicle through which the Peccole Family 24 received assurances from Mr. Lowie's entity that, in fact, 25 that would occur, correct?</p>

<p style="text-align: right;">Page 62</p> <p>1 A. Yes. That's my understanding, yes. 2 (Defendant's Exhibit 11 was marked 3 for identification.) 4 BY MR. OGILVIE: 5 Q. Let me direct your attention to what's been marked 6 as Exhibit 11, which is identified as "Badlands Golf Course 7 Clubhouse Improvements Agreements" -- or agreement singular. 8 This is entered into by and between Fore Stars 9 Limited and Queensridge Towers LLC, on September 6th, 2005. 10 Are you familiar with this document? 11 A. Hold on. Okay. Yes, I am familiar with this 12 document. 13 Q. Okay. Fore Stars is, at this time, in 14 September 2005, a Peccole-Nevada entity, correct? 15 A. Yes. 16 Q. And Queensridge Towers is the entity that was 17 formed by the operating agreement that we went through as 18 Exhibit 9, correct? 19 A. Yes. That's what we read, yeah. 20 Q. Formed between the Peccole-Nevada entity and 21 Mr. Lowie's entity, correct? 22 A. Yep. 23 Q. Okay. In Recital A it says, "This agreement is 24 being made in advance of the closing of that certain 25 securities redemption agreement, by and among the Towers,"</p>	<p style="text-align: right;">Page 63</p> <p>1 which is defined above as Queensridge Towers LLC, "and 2 Queensridge Highrise LLC." 3 Are you familiar with a securities redemption 4 agreement between Queensridge -- Queensridge Towers LLC and 5 Queensridge Highrise LLC? 6 A. I'm not. I'm not familiar with it, but it -- 7 I'm -- I'm -- I'm under the impression that there was some 8 kind of -- of agreement that happened so that IDB could 9 ultimately buy -- buy into the towers. 10 Q. Okay. Recital C says, "Highrise has agreed to 11 have its securities redeemed by the Towers." 12 Is that what you were just stating was your 13 understanding? 14 A. Yes. 15 Q. Okay. "Highrise has agreed to have its securities 16 redeemed by the Towers, in exchange for the items and 17 consideration listed in Article 1 . . . including . . . The 18 transfer of approximately 5.13 acres from the company to 19 towers." 20 A. And that's the land where I believe the golf 21 course clubhouse was sitting. 22 Q. Okay. And then -- 23 MS. HAM: So can I just -- 24 MR. OGILVIE: Yes, go ahead. 25 MS. HAM: I'd like to put -- I'm sorry. I'd like</p>
<p style="text-align: right;">Page 64</p> <p>1 to put an objection on the record. 2 Can you hear me? Thank you. 3 As the documents speak for themselves. And I'm 4 just going to make that an ongoing objection so I don't 5 interrupt again on behalf of -- 6 MR. OGILVIE: Thank you. 7 Q (By Mr. Ogilvie) Recital D says, "Towers shall pay 8 an amount not to exceed \$4 million." And then allocated as 9 follows: A million dollars -- I'm sorry. 10 "Allocated as follows: (i) for the costs and 11 expenses related to the construction of the new golf course 12 clubhouse . . . in an amount not to exceed \$3,150,000; and 13 (ii) the payment of the reconfiguration costs in an amount 14 not to exceed \$850,000." 15 Did Queensridge Towers ever construct the new 16 clubhouse? 17 A. No, not while we owned the club- -- not while we 18 owned the golf course. 19 Q. Okay. And when you say "not while we owned the 20 golf course," as of March 2015, Queensridge Towers had not 21 constructed a new clubhouse, correct? 22 A. That is correct. 23 Q. Did Queensridge Towers ever pay the 24 reconfiguration cost reflected or referenced in Recital D? 25 A. I believe they did. I'm not 100 percent positive.</p>	<p style="text-align: right;">Page 65</p> <p>1 I'd have to go back and look, but I think they did. And 2 this was -- this -- this improvements agreement, all of this 3 was kind of resolved later on when IDB ended up releasing 4 our four units, and we kind of settled everything and 5 kept -- kept the land. 6 Q. Okay. Explain that. 7 A. Later on while I was there, part of this -- part 8 of these agreements, we were owed four units in Queensridge 9 Towers as part of the compensation on the overall big 10 hundred-million-dollar sale, and they didn't have to deliver 11 those units. And I can't remember the exact time period in 12 which they did. I think it was when the towers were 13 80 percent sold. And they had not done that. We did get 14 into a -- a lawsuit with IDB over that. And IDB ended up 15 releasing those units to us and we kept the golf course 16 clubhouse property in lieu of them building this. And 17 because all of that got resolved, we were able to go ahead 18 and release Yohan's end cap. So it's -- it's kind of a -- I 19 don't know how to describe it -- a complicated transaction. 20 Q. Okay. Moving to Section 2 of Exhibit 11, 21 entitled -- the paragraph entitled "Lease," says, 22 "Simultaneous with the execution of this agreement, Towers 23 shall execute a lease with the company for the sum of \$1 per 24 year to permit the company to continue to operate the 25 current golf course clubhouse that is located on a portion</p>

<p style="text-align: right;">Page 66</p> <p>1 of the land included in the lot line adjustment, a form of</p> <p>2 which is attached hereto as Exhibit 2(a)."</p> <p>3 Is it your understanding that as part of this</p> <p>4 improvement agreement that the Peccole Family entity, or</p> <p>5 Fore Stars --</p> <p>6 A. Fore Stars.</p> <p>7 Q. I'm sorry?</p> <p>8 A. You're correct, Fore Stars.</p> <p>9 Q. -- Fore Stars was allowed to lease the current</p> <p>10 Badlands clubhouse for a dollar per year?</p> <p>11 A. That is correct, and we did pay the dollar a year.</p> <p>12 Q. Okay. And it further says, "The lease will be for</p> <p>13 an initial term of ten years and with five additional</p> <p>14 ten-year options."</p> <p>15 Is that consistent with your understanding?</p> <p>16 A. It is consistent with how I understood it.</p> <p>17 Q. Moving on to Section 3, the "Pledge of Office</p> <p>18 Collateral." It says, "A condition to the execution of this</p> <p>19 agreement and to cause the lot line adjustment to be</p> <p>20 recorded is the receipt of the office collateral as</p> <p>21 described in this Section 3."</p> <p>22 And is it your understanding that this paragraph</p> <p>23 involves the end cap, which was subject of the option to</p> <p>24 purchase real property that is Exhibit 10?</p> <p>25 A. That is my understanding.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. Now, turning to the last page of Exhibit 11, it is</p> <p>2 an unsigned letter, which is redacted. Last sentence of</p> <p>3 which says -- well, the letter talks about the Badlands Golf</p> <p>4 Course Clubhouse Improvements Agreement, dated</p> <p>5 September 14th, 2005, which we've already gone through as</p> <p>6 exhibit -- oh, it is Exhibit 11. Okay.</p> <p>7 "This letter will confirm Executive Home</p> <p>8 Builder's, Inc." --</p> <p>9 Executive Home Builders, Inc. is Yohan Lowie</p> <p>10 entity, correct?</p> <p>11 A. That's my understanding, yes.</p> <p>12 Q. Okay. It says --</p> <p>13 A. It says he's the chief executive officer, I think,</p> <p>14 here.</p> <p>15 Q. Okay. "Agrees to pledge as collateral all of its</p> <p>16 rights to purchase its current corporate offices located at</p> <p>17 9755 West Charleston Boulevard."</p> <p>18 Does that address refresh your recollection as to</p> <p>19 that was where the end cap was located?</p> <p>20 A. Yep.</p> <p>21 Q. Okay. "On the terms and conditions as outlined in</p> <p>22 the lease with Hualapai Commons Limited, LLC dated on or</p> <p>23 about June 1, 2004."</p> <p>24 Last sentence says, "Both parties agree that the</p> <p>25 pledge of this collateral shall terminate in accordance with</p>
<p style="text-align: right;">Page 68</p> <p>1 the provisions of the Improvements Agreement and the rights</p> <p>2 to purchase this office space shall be reinstated in full."</p> <p>3 Do you know if this was -- this letter was ever</p> <p>4 signed?</p> <p>5 A. I don't know if it was signed, but this letter is</p> <p>6 stating what we've just read on all those other documents.</p> <p>7 Q. Okay. And it's consistent with your understanding</p> <p>8 of the pledge by Mr. Lowie's entity to secure the clubhouse</p> <p>9 improvements agreement and the terms that are stated</p> <p>10 therein?</p> <p>11 A. Yeah, that's my understanding.</p> <p>12 Q. Okay. So let's turn to something that you</p> <p>13 referenced a little earlier, and that was the buyout by IDB</p> <p>14 of the Peccole Family's interest in Queensridge Towers, so</p> <p>15 let me direct your attention to what's being marked as</p> <p>16 Exhibit 12.</p> <p>17 (Defendant's Exhibit 12 was marked</p> <p>18 for identification.)</p> <p>19 MR. OGILVIE: And while we're at it, why don't we</p> <p>20 mark Exhibit 13, also.</p> <p>21 (Defendant's Exhibit 13 was marked</p> <p>22 for identification.)</p> <p>23 MR. LEAVITT: This is Jim Leavitt, George.</p> <p>24 Which one is Exhibit 12 and which one is Exhibit</p> <p>25 13?</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. OGILVIE: Exhibit 12 is the "Securities</p> <p>2 Redemption Agreement." Exhibit 13 is the "Securities</p> <p>3 Purchase Agreement." Now, not to be confused with</p> <p>4 additional documents with the same names, but those will be</p> <p>5 marked as Exhibits 14 and 15 and then Exhibit 16 and 17, but</p> <p>6 we'll get to those.</p> <p>7 Q (By Mr. Ogilvie) So directing your attention to</p> <p>8 Exhibit 12, the Securities Redemption Agreement between</p> <p>9 Queensridge Towers LLC and Queensridge Highrise LLC.</p> <p>10 Again, Queensridge Towers is the entity formed by</p> <p>11 the Peccoles and Mr. Lowie for the development of</p> <p>12 Queensridge Towers, correct?</p> <p>13 A. That's my understanding.</p> <p>14 Q. And Queensridge Highrise is the Peccole entity</p> <p>15 that was formed or that was part of that formation, correct?</p> <p>16 A. It was -- it was the entity that was formed to be</p> <p>17 part of that, yes.</p> <p>18 Q. Okay. So in this document "Securities Redemption</p> <p>19 Agreement," Queensridge Towers, the development company of</p> <p>20 the towers is identified as "the company" and Queensridge</p> <p>21 Highrise LLC, the Peccole entity, is the -- is identified as</p> <p>22 "the seller" in this document.</p> <p>23 Is it your understanding that it was through this</p> <p>24 document that the Peccole entity, Queensridge --</p> <p>25 Queensridge -- Queensridge Highrise, agreed to sell its</p>

<p style="text-align: right;">Page 70</p> <p>1 interest in Queensridge Towers?</p> <p>2 A. That transaction was really complicated and large.</p> <p>3 I'm not sure the mechanism in which we -- we did it. But I</p> <p>4 think Queensridge Highrise had to go away so that IDB could</p> <p>5 then either buy into Queensridge Towers and/or Queensridge</p> <p>6 Towers was able to somehow merge with IDB. And there's</p> <p>7 other documents that talk to that that I don't -- I don't</p> <p>8 have in front of me. And I wasn't party to those documents.</p> <p>9 I came right after that.</p> <p>10 Q. Okay. So let me refer you then to Exhibit 13,</p> <p>11 which is the "Securities Purchase Agreement," which</p> <p>12 addresses the issues that you -- that you were just raising.</p> <p>13 The Securities Purchase Agreement, first paragraph</p> <p>14 says that it "is entered into in Las Vegas, Nevada and is</p> <p>15 made as of September 14th, 2005, by and among IDB Group USA</p> <p>16 Investments Inc., a Delaware corporation." I don't know if</p> <p>17 it's Lyton or "Lyton US Partnership, a Delaware corporation</p> <p>18 [sic], and Queensridge Towers LLC."</p> <p>19 This is the document by which IDB and, I'm going</p> <p>20 to say, Lyton purchased its interest in Queensridge Towers</p> <p>21 LLC, which funded the buyout of the Peccole entity,</p> <p>22 Queensridge Highrise LLC, correct?</p> <p>23 MR. WILLIAMS: Objection; vague.</p> <p>24 THE COURT REPORTER: Is that Mr. Williams or</p> <p>25 Mr. Leavitt?</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. OGILVIE: Williams.</p> <p>2 MR. WILLIAMS: Mr. Williams.</p> <p>3 THE WITNESS: Again, I would have to go back.</p> <p>4 There were several things that were being sold and purchased</p> <p>5 at the same time.</p> <p>6 BY MR. OGILVIE:</p> <p>7 Q. Okay. We're --</p> <p>8 A. And this --</p> <p>9 Q. I'm sorry. Let me just interrupt you.</p> <p>10 We're going to get to those other things. I just</p> <p>11 want to focus on this particular --</p> <p>12 A. This document states that IDB is purchasing into</p> <p>13 Queensridge Towers LLC. That's what it states, so I'm fine</p> <p>14 with that.</p> <p>15 Q. Okay. And the purchase -- the consideration that</p> <p>16 IDB and Lyton is -- are paying is set forth in Section 2, on</p> <p>17 the first page, of \$20 million each for a total of forty --</p> <p>18 \$40 million, correct?</p> <p>19 A. That is what it says.</p> <p>20 Q. Okay. Is it your understanding that those two</p> <p>21 entities purchased their interest in Queensridge --</p> <p>22 Queensridge Towers LLC through this document for</p> <p>23 \$40 million, correct?</p> <p>24 A. Could -- could you do me a favor and scroll down</p> <p>25 to the signature pages?</p>
<p style="text-align: right;">Page 72</p> <p>1 Yeah. I don't think that we were party to these.</p> <p>2 Q. No. You weren't.</p> <p>3 A. Okay. So I will say that it looks like from the</p> <p>4 document that's what it says.</p> <p>5 Q. Okay. Now, this document is dated the exact same</p> <p>6 day as the Exhibit 12, which is the Securities Redemption</p> <p>7 Agreement, which is the document that -- or through which</p> <p>8 the Peccole entity, Queensridge -- Queensridge Highrise LLC,</p> <p>9 sold its interest in Queensridge Towers on the very same day</p> <p>10 that IDB and Lyton purchased their interest, correct?</p> <p>11 A. That -- the dates -- the dates are the same.</p> <p>12 Q. Okay. Is it your in- -- is it your understanding</p> <p>13 that your interest, "your" being the Peccole Family entity,</p> <p>14 Queensridge Highrise LLC, was being purchased -- or its</p> <p>15 interest -- its interest in Queensridge Towers was being</p> <p>16 purchased and funded by the \$40 million consideration paid</p> <p>17 by IDB and Lyton under the Securities Purchase Agreement</p> <p>18 that is Exhibit 13?</p> <p>19 A. Are you referencing or referring just to</p> <p>20 Queensridge Highrise?</p> <p>21 Q. Yes.</p> <p>22 A. Probably. That would be my assumption, yes.</p> <p>23 Q. Okay. So let's look at the purchase price of the</p> <p>24 Peccole entity's interest in Queensridge Towers, which is</p> <p>25 page 2 of the Securities Redemption Agreement, or Exhibit --</p>	<p style="text-align: right;">Page 73</p> <p>1 Exhibit 12.</p> <p>2 The document says in Section 1.1 that the</p> <p>3 aggregate purchase price of the Peccole entity Queensridge</p> <p>4 Highrise LLC's interest in Queensridge Towers is</p> <p>5 \$28,387,167, correct?</p> <p>6 A. That's what it says.</p> <p>7 Q. And then it -- that Section 1.1 breaks out how</p> <p>8 that purchase price is arrived at. And it references in the</p> <p>9 following sentence the four condominium units in Queensridge</p> <p>10 Towers that you referenced earlier in your testimony, and it</p> <p>11 set a value for those -- for those four units at \$5,387,167,</p> <p>12 correct?</p> <p>13 A. That's what it says, yeah.</p> <p>14 Q. So all but \$23 million of the purchase price is</p> <p>15 derived through the assignment of those condominium units,</p> <p>16 correct?</p> <p>17 A. You broke up. Could you restate that sentence?</p> <p>18 Q. Doesn't matter.</p> <p>19 What I don't understand is the aggregate purchase</p> <p>20 price of \$28,387,167 set forth in the first sentence and the</p> <p>21 total of the value broken out in the second sentence, which</p> <p>22 allocates \$5,387,167 to the four condominium units, and then</p> <p>23 a cash payment of \$24 million. That adds up to \$29,387,167,</p> <p>24 as opposed to what's identified as the aggregate purchase</p> <p>25 price in par- -- in Sentence 1 \$28,387,167.</p>

<p style="text-align: right;">Page 74</p> <p>1 Can you clarify that reconciliation?</p> <p>2 A. I cannot. Sounds like somebody should give me</p> <p>3 another million dollars.</p> <p>4 Q. Okay.</p> <p>5 MR. WILLIAMS: That's what it sounds like.</p> <p>6 BY MR. OGILVIE:</p> <p>7 Q. Okay. In any event, the value associated and</p> <p>8 agreed upon between the parties for the four units was the</p> <p>9 \$5,387,167 that is set forth in paragraph -- or in Sentence</p> <p>10 2 of Section 1.1, correct?</p> <p>11 A. That's what it says, yeah.</p> <p>12 Q. Now, Section 1.4, on page 4 of Exhibit 12, talks</p> <p>13 about the lot line adjustment and references the golf course</p> <p>14 improvement -- Golf Course Clubhouse Improvement Agreement,</p> <p>15 correct?</p> <p>16 A. Yeah. That's what it says.</p> <p>17 Q. Okay.</p> <p>18 A. This follows the last -- the other documents that</p> <p>19 we've gone through.</p> <p>20 Q. Right.</p> <p>21 So it's all an interrelated transaction, that --</p> <p>22 that's what I was getting at, correct?</p> <p>23 A. Yes. That's what it looks like, all interrelated.</p> <p>24 That's -- all those documents match up to this.</p> <p>25 Q. And then specifically at Section 1.7, it kind of</p>	<p style="text-align: right;">Page 75</p> <p>1 wraps this -- it wraps that up in memorializing the fact</p> <p>2 that the last sentence of Section 1.7 says, "The term</p> <p>3 'closing' as used in this agreement shall assume that the</p> <p>4 proposed transaction by and among the company," and the --</p> <p>5 again, the company is Queensridge Towers LLC, the company</p> <p>6 developing the towers, "IDB Group USA Investments, a</p> <p>7 Delaware Corporation, and Lyton US Partnership, a Delaware</p> <p>8 general partnership, (the 'Israeli Transaction') is deemed</p> <p>9 to have occurred simultaneously with the transactions</p> <p>10 contemplated herein and shall not trigger the rights granted</p> <p>11 to the seller," the seller being the Peccole entity,</p> <p>12 Queensridge Highrise LLC, "as it relates to a change of</p> <p>13 control."</p> <p>14 Was it your understanding that if the parties --</p> <p>15 if the parties to the Securities Purchase Agreement, which</p> <p>16 is Exhibit 13, the parties being Queensridge Towers LLC, IDB</p> <p>17 Group, and Lyton Partnership, didn't close on the</p> <p>18 transaction reflected in the Securities Purchase Agreement,</p> <p>19 which is Exhibit 13, then Queensridge Towers did not have</p> <p>20 any obligation to close on this Securities Redemption</p> <p>21 Agreement, by which it was purchasing the Peccole entity's</p> <p>22 interest in Queensridge Towers for 28- or \$29,387,167?</p> <p>23 A. For some reason, I am not following what you're --</p> <p>24 what you're saying. Say it one more time.</p> <p>25 Q. Okay. I read -- I read to you the last sentence</p>
<p style="text-align: right;">Page 76</p> <p>1 of Section 7 --</p> <p>2 A. This has to close. I got that. I read the last</p> <p>3 sentence, too.</p> <p>4 Q. Okay. My question is: Is it your understanding</p> <p>5 that --</p> <p>6 A. My understanding is that if this doesn't happen,</p> <p>7 then nothing -- it all happens at once or it doesn't happen.</p> <p>8 Q. Okay.</p> <p>9 A. Is that --</p> <p>10 Q. When you say "it all happens at once," meaning --</p> <p>11 A. Both.</p> <p>12 Q. -- IDB and Lyton's purchase of an interest in</p> <p>13 Queensridge Towers LLC for \$40 million has to happen at the</p> <p>14 same time that --</p> <p>15 A. Yes, that's my understanding.</p> <p>16 Q. -- Queensridge Towers is redeeming the Peccole's</p> <p>17 interest in Queensridge Towers for 28- or \$29,387,167?</p> <p>18 A. Based on this document, that's my understanding,</p> <p>19 yes.</p> <p>20 Q. Well, I -- I'm just -- do you have any</p> <p>21 understanding independent of this that it -- that would be</p> <p>22 inconsistent with that?</p> <p>23 A. I do not.</p> <p>24 Q. It references "the Israeli transaction."</p> <p>25 Do you have an understanding that IDB and Lyton</p>	<p style="text-align: right;">Page 77</p> <p>1 were Israeli-owned entities and that's why it's being</p> <p>2 referred to as the Israeli tran- -- the Securities Purchase</p> <p>3 Agreement, by which IDB and Lyton entered in -- or purchased</p> <p>4 their interest in Queensridge Towers as "the Israeli</p> <p>5 transaction?"</p> <p>6 A. Yes. They were from Israel, and that's my</p> <p>7 understanding why it was quoted "Israeli transaction."</p> <p>8 Q. Okay.</p> <p>9 (Defendant's Exhibits 14 and 15</p> <p>10 were marked for identification.)</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. So I'm going to be referencing now two additional</p> <p>13 documents that are both named the same as Exhibits 12 and</p> <p>14 13. These will be Exhibits 14 and 15.</p> <p>15 Exhibit 14 being a Securities Redemption</p> <p>16 Agreement, and Exhibit 15 being a Securities Purchase</p> <p>17 Agreement.</p> <p>18 I should say it's not exactly identified as the</p> <p>19 same as Exhibit 13. Exhibit 15 -- Exhibit 13 was</p> <p>20 "Securities Purchase Agreement (QT)," presumably for</p> <p>21 Queens -- Queensridge Towers.</p> <p>22 Exhibit 15 is identified as "Securities Purchase</p> <p>23 Agreement (GW)," presumably relating to -- is it Great Wash?</p> <p>24 Great Wash Park, yes.</p> <p>25 Okay. Directing your attention to Exhibit 14,</p>

<p style="text-align: right;">Page 78</p> <p>1 Securities Redemption Agreement. You said that there were 2 other transactions, not just this purchase of the Peccole's 3 interest in Queensridge Towers. 4 This document reflects the purchase of the 5 Peccole's interest in Great Wash Park; is that correct? 6 A. That's what this document says. 7 Q. Okay. So Great Wash Park was the owner of the 8 property that -- where -- or on which Tivoli Village was 9 ultimately developed; is that correct? 10 A. Yes, that's my understanding. 11 Q. Okay. And Queensridge Wash LLC was a Peccole 12 entity, correct? 13 A. I'm sorry, say that again. Queensridge what, Wash 14 LLC? 15 Q. Yes. Let's go to the signature page. 16 A. My understanding is that's a Peccole entity. 17 Q. Okay. And this document reflects the transaction 18 by which Queens -- Queensridge -- Queensridge Wash LLC, in 19 other words the Peccole entity, was selling its interest in 20 Great Wash Park back to the company, correct? 21 A. Yes, that's what it looks like. 22 Q. Well, yeah. Let's look at some of the recitals 23 then. 24 It says "Whereas, the company," and the company is 25 identified as --</p>	<p style="text-align: right;">Page 79</p> <p>1 A. I'm fine to look at these recitals, but if it 2 states it on the document, I'm fine with saying it states it 3 on the document. 4 Q. Okay. But my question is going to be, is it -- 5 what your understanding was -- 6 A. Okay. 7 Q. -- and whether or not these documents reflect 8 anything that's inconsistent with your understanding. 9 A. Okay. 10 Q. So let's just go through the recitals. 11 It says, "the company is the owner of 12 approximately 28.5 acres of land," to be known -- "and 13 planned to be developed a mix-used commercial and 14 residential project to be known as 'The Village at 15 Queensridge.'" 16 It ultimately became Tivoli Village, correct? 17 A. That's my understanding, yes. 18 Q. Okay. And the company is -- is the company that 19 is identified in first -- the first paragraph as Great Wash 20 Park LLC. 21 So the company owns 28.5 acres and intends to 22 develop what has become Tivoli Village, correct? 23 A. Um-hmm. 24 Q. Is that a yes? 25 A. Yes.</p>
<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. And the seller, which is the Peccole 2 entity, is the owner of 40 shares of Great Wash Park, and 3 identifies the ownership of -- of the seller's interest. 4 And, essentially, if we go down to Section 1.1, 5 the purchase price, the Peccole entity Queensridge Wash LLC, 6 is selling back its interest in Great Wash Park LLC for 7 \$30 million, correct? 8 A. That's what it says. 9 Q. Okay. Do you have any understanding -- 10 A. I have no reason to think otherwise. 11 Q. Okay. If we go to Exhibit 15, the Securities 12 Purchase Agreement (GWI), it reflects that IDB Group USA 13 Investments and Lyton US Partnership are purchasing for the 14 sum of \$30 million, in Section 2, 15 from Lyton and 15 from 15 IDB. An interest in Great Wash Park -- I'm trying to find 16 the amount of the interest. Where is that? 17 It doesn't identify what percentage of the -- of 18 Great Wash Park LLC that IDB and Lyton is purchasing, but 19 it's -- they are purchasing for \$15 million each for an 20 aggregate amount of \$30 million, which is the exact amount 21 for which the Peccole entity, Queensridge -- Queensridge 22 Wash LLC, was selling its interest in Great Wash Park LLC on 23 the exact same day, correct? 24 A. Yeah. That's what it says, yeah. 25 Q. Do you have any understanding contrary to --</p>	<p style="text-align: right;">Page 81</p> <p>1 A. I do not. 2 Q. Okay. And again, this transaction was occurring 3 on the same date as the buyout of the Peccole entity's 4 interest in Queensridge Towers, correct? 5 A. Yeah, those are the -- those are the same dates. 6 Q. And Exhibit 14, the Securities Redemption 7 Agreement, has the same exact condition at the last page 8 of -- or last sentence of Paragraph 1.3. It says, "The term 9 'closing' as used in this agreement shall assume that the 10 proposed transaction by and among the company," company 11 being Great Wash Park LLC, "IDB Group Investments Inc., a 12 Delaware corporation, and Lyton US Partnership, a Delaware 13 partnership," again defining them -- defining it as "the 14 'Israeli Transaction,' is deemed to have occurred 15 simultaneously with the transactions contemplated herein and 16 shall not trigger the rights granted to the seller as it 17 relates to a change of control." 18 Is it your understanding that these two 19 transactions were tied to each other and the condition 20 placed on -- in the redemption of -- or the buyout of the 21 Peccole entity's interest in Great Wash Park was contingent 22 upon the closing of the \$30 million purchase by IDB and 23 Lyton of an interest in Great Wash Park? 24 A. My understanding was that these all closed 25 simultaneously and they all kind of worked together, yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. Well, and not only worked together but were</p> <p>2 conditioned upon each other; is that correct?</p> <p>3 A. That is what it says, yeah.</p> <p>4 Q. Well, do you have any understanding any different</p> <p>5 than that?</p> <p>6 A. I do not.</p> <p>7 (Defendant's Exhibits 16 and 17</p> <p>8 were marked for identification.)</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Let me direct your attention to what's been marked</p> <p>11 as Exhibits 16 and 17. Exhibit 16, being a "Securities</p> <p>12 Redemption Agreement." Exhibit 17 being a "Securities</p> <p>13 Purchase Agreement (SH)."</p> <p>14 First of all, to Exhibit 16, there is an entity</p> <p>15 known as "Sahara Hualapai LLC," and that is identified in</p> <p>16 this document as "the company."</p> <p>17 Is it your understanding that prior to this</p> <p>18 agreement, that is Exhibit 16, that a Peccole entity and a</p> <p>19 Lowie entity owned interests in an entity known as "Sahara</p> <p>20 Hualapai LLC"?</p> <p>21 A. No, I don't -- I don't believe that we owned</p> <p>22 interest together in that. And if we did, it was for like a</p> <p>23 few days until this transaction occurred so they could all</p> <p>24 be securities agreements, would be what I suspected. I</p> <p>25 don't think that it was -- we didn't -- I don't believe we</p>	<p style="text-align: right;">Page 83</p> <p>1 owned the property with Yohan for any significant amount of</p> <p>2 time.</p> <p>3 Q. Okay. So if we turn to the last page of Exhibit</p> <p>4 16, the signature page, it has an entity, Sahara -- Sahara</p> <p>5 Hualapai LLC, which is managed by Executive Homes Inc.,</p> <p>6 which is a Lowie --</p> <p>7 A. I don't remember being a member of Sahara Hualapai</p> <p>8 LLC. I do know that we owned Sahara Commons LTD.</p> <p>9 Q. Okay. Well, okay. So let's go back to the</p> <p>10 recitals, because that will maybe refresh your recollection.</p> <p>11 First recital says, "the company," which is Sahara</p> <p>12 Hualapai LLC, "is the owner of approximately 18 acres of</p> <p>13 land located on the northeast corner of West Sahara Avenue</p> <p>14 and Hualapai Way in Clark County."</p> <p>15 And then the next recital says, "Seller," the</p> <p>16 seller being Sahara --</p> <p>17 A. Right. The recitals lead me back down to what I</p> <p>18 said earlier. I believe that it was -- we were -- we were</p> <p>19 doing this as we were working on the overall global sale,</p> <p>20 and it was probably to make everything securities agreement,</p> <p>21 so we didn't have to do asset purchase and sale agreements.</p> <p>22 Q. Okay. So is it your understanding that the second</p> <p>23 recital is accurate, that the Peccole entity, Sahara Commons</p> <p>24 Limited, owned approximately -- or owned 49 percent of</p> <p>25 Sahara Hualapai LLC?</p>
<p style="text-align: right;">Page 84</p> <p>1 A. Based on this document, yes.</p> <p>2 Q. Okay. And the document reflects that it was</p> <p>3 selling -- it was allowing its interest in Sahara Hualapai</p> <p>4 LLC to be purchased for a total of \$20 million as set forth</p> <p>5 in Section 1.1?</p> <p>6 A. That's what it says.</p> <p>7 Q. Okay. And if we turn to Exhibit 17, Exhibit 17 is</p> <p>8 an agreement between IDB Group USA Investments, Lyton US</p> <p>9 Partnership, and Sahara Hualapai LLC. It's dated, again,</p> <p>10 September 14th, 2005, which is the same date on which the</p> <p>11 Peccoles were allowing their interest in Sahara Hualapai</p> <p>12 LLC, Great Wash Park LLC, and Queensridge Towers LLC to be</p> <p>13 bought out, correct?</p> <p>14 A. Yeah, that's what it says.</p> <p>15 Q. Okay. And in Section 2 of Exhibit 17, it reflects</p> <p>16 that IDB and Lyton were paying \$10 million each for an</p> <p>17 aggregate of \$20 million for an interest in Sahara Hualapai</p> <p>18 LLC, correct?</p> <p>19 A. Yep --</p> <p>20 Q. And if we --</p> <p>21 A. -- that's what it says.</p> <p>22 Q. If we go back to Exhibit 16, specifically</p> <p>23 Section 1.3, on the top of page 3, it again has --</p> <p>24 A. The same closing language as all the others.</p> <p>25 Q. Which is consistent with your understanding --</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Concurrent closings.</p> <p>2 THE COURT REPORTER: I'm sorry, what closing?</p> <p>3 THE WITNESS: Concurrent.</p> <p>4 BY MR. OGILVIE:</p> <p>5 Q. Okay. Not only concurrent but conditional, such</p> <p>6 that the Peccole's interest in Sahara Hualapai LLC would not</p> <p>7 be purchased without the closing of the transaction for IDB</p> <p>8 and Lyton's interest in Sahara Hualapai LLC, correct?</p> <p>9 A. Yep. That's what I understand.</p> <p>10 Q. Well, okay. Chris, reminded me that it's not</p> <p>11 exactly the same because there's some other parties included</p> <p>12 in the last sentence of the closing section of the</p> <p>13 security --</p> <p>14 A. That's why I referred to earlier, is that they</p> <p>15 were a little bit different on some of the pieces.</p> <p>16 Q. Okay. So in addition to the closing of the</p> <p>17 Securities Purchase Agreement that is Exhibit 17, there was</p> <p>18 also the requirement that a proposed transaction related to</p> <p>19 entities controlled by the Wyle Family, Meshulam Riklis, and</p> <p>20 the Leor Rozen also close as a condition for Peccole's</p> <p>21 interest to be purchased out of Sahara Hualapai LLC,</p> <p>22 correct?</p> <p>23 A. Yes. I believe -- to make it -- to try to make it</p> <p>24 simpler, I think that the idea from our family was we either</p> <p>25 close everything or we don't close. So whatever parties</p>

<p style="text-align: right;">Page 86</p> <p>1 they want to bring into individual pieces of property, we 2 didn't really care. We were getting the purchase price we 3 had agreed to, and we just needed to make sure that they all 4 closed. We didn't want to end up getting rid of one piece 5 of property here but then the bigger pieces didn't get sold. 6 Q. Okay. So if we -- and these were the only three 7 transactions that -- that you were entering into at this 8 time with Yohan Lowie related entities, correct? 9 A. No. I thought there was one more at Fort Apache 10 Commons. I could be wrong on timing, but I think it was 11 about the same time. 12 Q. Okay. As it relates to these three 13 transactions -- and when I say "these three transactions," 14 it's the buyout of the Peccole's interest in Sahara Hualapai 15 LLC, Great Wash Park LLC, and Queensridge Towers LLC -- the 16 total purchase price of the Peccole interest in those three 17 entities was \$90 million? 18 A. Yeah. I think you're missing one. I think 19 there's one more for Fort Apache Commons or Fort Apache 20 Park. I can't remember the names. There's a bunch of 21 different Fort Apaches, but -- 22 Q. Okay. 23 A. -- that Fort Apache Commons shopping center on the 24 corner of Charleston and Fort Apache, that -- our interest 25 got bought out of that at about the same time, in the same</p>	<p style="text-align: right;">Page 87</p> <p>1 way. 2 Q. So "in the same way," meaning through a securities 3 redemption agreement? 4 A. Yeah, it was -- I believe it was through a 5 securities redemption agreement. 6 Q. And a related securities purchase agreement 7 involving IDB and Lyton? 8 A. I do not know if IDB was party to that. That's 9 one of the ones I do not think IDB was party to, nor was 10 Lyton, I don't believe. 11 Q. Okay. What was the purchase -- what was the 12 purchase price of the Peccole -- 13 A. I couldn't tell you offhand. I -- my guess is it 14 rounded us out to the \$100 million approximately. 15 MR. OGILVIE: Okay. So let's look at the three 16 securities redemption agreements that we have been provided 17 with. 18 And, Elizabeth, I can represent to you that we 19 have not received a securities redemption agreement related 20 to this -- I think you described it Mr. Bayne as Fort Apache 21 Commons. And we would ask that that document be produced. 22 And -- 23 THE WITNESS: And it may not -- it may not be a 24 securities redemption agreement. It might be a purchase and 25 sale agreement, because I don't believe IDB was party to</p>
<p style="text-align: right;">Page 88</p> <p>1 that transaction. 2 MR. OGILVIE: Okay. Well, I would request that we 3 be provided with any and all documents related to that 4 buyout of the Peccole's interest in -- is it -- did you say 5 Fort Apache Commons? 6 THE WITNESS: Fort Apache Commons was the name of 7 the shopping center. And, again, my timing on that might be 8 off. It might not have happened exactly at the same time. 9 I don't think it was a concurrent closing on that one, but I 10 know it happened around the same time. 11 MR. OGILVIE: Okay. 12 MR. WILLIAMS: Let me look -- this is Butch 13 Williams. Let me look back at your subpoena, George, and 14 see if you've got that. Okay? 15 MR. OGILVIE: Well, I wasn't making that request 16 of you, Butch. I was making that of 180 Land. 17 MR. WILLIAMS: Oh, I see. All right. Thank you. 18 BY MR. OGILVIE: 19 Q. Okay. If we look at the three securities 20 redemption agreements that we do have, which are 21 Exhibits 12, 14, and 16, it appears that the total purchase 22 price is -- how does that add up to 90? -- 28 million -- 28- 23 or \$29,387 -- 387,167 for Queensridge Towers, \$30 million 24 for Great Wash Park, and \$20 million for Sahara Hualapai, so 25 20 and 30 is 50 and 28 million, so it's \$78,387,167.</p>	<p style="text-align: right;">Page 89</p> <p>1 So you believe that there was another transaction 2 that rounded the related transactions up to an even 3 \$100 million? 4 A. I'd -- yeah, I'd have to go back and look at the 5 -- all those docs -- let me see. I'd have to go back and 6 look at the docs. But yes, my understanding is there is -- 7 there was another -- another transaction with Fort Apache 8 Commons. I just don't remember the amount. 9 MR. OGILVIE: Okay. It's 11:45, and I'm just 10 about to move on to a different set of topics. Why don't we 11 break for lunch. 12 How long do you guys want to break for lunch? 13 MR. WILLIAMS: How are you doing with regard to 14 staying within the seven hours, George? 15 MR. OGILVIE: I am dead on it, Butch. 16 MR. WILLIAMS: Okay. So then you tell me how long 17 you want to break for lunch, and we'll break for lunch for 18 that amount of time. 19 MR. LEAVITT: This is Jim Leavitt. Just keeping a 20 heads-up that we're going to have some questions also. 21 Well, may have some questions also for Billy, if you want to 22 wrap up today to not have to come back. 23 MR. OGILVIE: Well . . . 24 MR. WILLIAMS: What do you think, 45 minutes? 25 MR. OGILVIE: Forty-five minutes for lunch?</p>

<p style="text-align: right;">Page 90</p> <p>1 MR. WILLIAMS: Is that good?</p> <p>2 MR. OGILVIE: Yeah.</p> <p>3 What's good for you?</p> <p>4 THE COURT REPORTER: That's fine.</p> <p>5 MR. OGILVIE: Okay. Forty-five minutes.</p> <p>6 (Off the record.)</p> <p>7 (Defendant's Exhibit 18 was marked</p> <p>8 for identification.)</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Okay. Mr. Bayne, I apologize. There was one</p> <p>11 thing I skipped over on the clubhouse improvements</p> <p>12 agreement, so if we could go back to Exhibit 11. The</p> <p>13 Recital C discusses the transfer from the Peccoles of</p> <p>14 approximately 5.13 acres from Fore Stars to Queensridge</p> <p>15 Towers LLC.</p> <p>16 Do you recall that transaction?</p> <p>17 A. Yeah. I think we talked about this.</p> <p>18 Isn't this the clubhouse?</p> <p>19 Q. Yeah, it is. But I don't -- well, maybe -- maybe</p> <p>20 your memory is better than mine. I don't -- I didn't -- I</p> <p>21 don't -- I don't recall --</p> <p>22 A. If you didn't have brain damage, I'm sure your</p> <p>23 memory is better than mine.</p> <p>24 Q. I don't -- I don't recall the -- addressing the</p> <p>25 transfer of the 5.13 acres, but anyway I just want to</p>	<p style="text-align: right;">Page 91</p> <p>1 identify that acreage. So we're going to go to what's been</p> <p>2 marked as Exhibit 18, which is a 2005 boundary line</p> <p>3 adjustment.</p> <p>4 A. This was probably done for the towers, yeah.</p> <p>5 Q. Okay.</p> <p>6 A. Very familiar with this one.</p> <p>7 Q. Okay. What can you tell me about this?</p> <p>8 A. That was the boundary line adjustment that that</p> <p>9 cut into, and that's -- that's why we had to move the</p> <p>10 clubhouse.</p> <p>11 Is this the '18 or the '05?</p> <p>12 Q. This is '05.</p> <p>13 A. Yeah. This is -- this is where -- that's where</p> <p>14 the second phase of the towers would have gone over to, and</p> <p>15 we were left with basically the parking lot, and the</p> <p>16 clubhouse had to be relocated.</p> <p>17 Q. Okay. You didn't actually relocate the clubhouse?</p> <p>18 That -- it would be if -- if -- if Queensridge Towers --</p> <p>19 A. We did not relocate the clubhouse.</p> <p>20 Q. If -- if --</p> <p>21 A. That was -- that was if everything happened.</p> <p>22 Q. If Queensridge Towers elected the option to build</p> <p>23 the second tower and provide you with up to 3.15 million for</p> <p>24 a new clubhouse, that's when you would have to move the</p> <p>25 clubhouse, right?</p>
<p style="text-align: right;">Page 92</p> <p>1 A. That is correct.</p> <p>2 Q. Okay. And --</p> <p>3 A. As far as I know.</p> <p>4 Q. I'm sorry?</p> <p>5 A. As far as I know, that's correct. That's how we</p> <p>6 understood it.</p> <p>7 Q. Okay. And I'm directing your attention to the</p> <p>8 third page of Exhibit 18, which is Bates No. CLV305598.</p> <p>9 What does this reflect?</p> <p>10 A. Well, this reflects what you just showed me. This</p> <p>11 is -- this is -- that's -- Parcel 2 is the new parking</p> <p>12 lot -- well, not the new parking lot. That's the parking</p> <p>13 lot for Badlands. Transfer Area 2 is the ingress/egress</p> <p>14 into Badlands Golf Course Clubhouse. Transfer Area 1 is the</p> <p>15 portion of Fore Stars that was being transferred to the</p> <p>16 second phase of the towers.</p> <p>17 Q. Okay. So that is part of the 5.13 acres, correct?</p> <p>18 A. Yeah. It might even say it right there.</p> <p>19 I don't see it. It might be on a table. Yeah.</p> <p>20 Yeah. There you go.</p> <p>21 Add those up, 4.66 plus the .48, gets you to the</p> <p>22 5.13, I think, or somewhere around that.</p> <p>23 Q. Okay. Area 1, Area 2, and Area 3 of the transfer</p> <p>24 areas add up to the 5.13 acres, roughly?</p> <p>25 A. Roughly.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. That was identified as the property that was being</p> <p>2 transferred by Fore Stars to Queensridge Towers LLC,</p> <p>3 correct?</p> <p>4 A. Yes. That's -- yep, that's what we understood.</p> <p>5 MR. OGILVIE: Okay. Let me move forward to some</p> <p>6 litigation that was instituted by BGC Holdings LLC against</p> <p>7 Fore Stars, and direct your attention to what's going to be</p> <p>8 marked as Exhibit 19.</p> <p>9 (Defendant's Exhibit 19 was marked</p> <p>10 for identification.)</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. Exhibit 19 is a complaint, BGC Holdings LLC versus</p> <p>13 Fore Stars, filed on August 22nd, 2007.</p> <p>14 At this point, are you the CEO of --</p> <p>15 A. I'm not the CEO. At this point, I'm a director on</p> <p>16 the board and I'm working every day at Peccole with</p> <p>17 different things.</p> <p>18 Q. Okay. Are you familiar with this lawsuit?</p> <p>19 A. I am.</p> <p>20 Q. What were the circumstances that gave rise to this</p> <p>21 lawsuit?</p> <p>22 A. Post the sale, the big sale, we had taken over --</p> <p>23 Q. I'm sorry, let me just clarify.</p> <p>24 When you talk about "the big sale," are you</p> <p>25 referring to the transactions that we went through earlier</p>

<p style="text-align: right;">Page 94</p> <p>1 in September of 2005?</p> <p>2 A. Yep.</p> <p>3 Q. Okay.</p> <p>4 A. So post --</p> <p>5 MS. HAM: I'd like to just -- sorry. Sorry.</p> <p>6 Sorry. Apologies. I just wanted to ensure that my</p> <p>7 objections are continuing on the record for the documents</p> <p>8 speak for themselves.</p> <p>9 MR. OGILVIE: Okay. Thank you.</p> <p>10 THE WITNESS: So post the big sale, we -- we took</p> <p>11 over operations of the golf course. The golf course was</p> <p>12 kind of -- kind of a losing venture for us, and we were</p> <p>13 trying to figure out how to make the golf course make money.</p> <p>14 Every year it was getting worse. I think the first couple</p> <p>15 of years we were kind of basically at a breakeven, and then</p> <p>16 it started to get worse and worse and worse.</p> <p>17 But at this early state, we talked to Hyatt and</p> <p>18 were contemplating having them come in and redo a bigger</p> <p>19 clubhouse for us and -- a clubhouse hotel and put the</p> <p>20 parking underneath or in a garage on that little piece -- if</p> <p>21 you go back to that other map, that little kind of</p> <p>22 light-bulby-looking piece. And then they were going to</p> <p>23 build casitas throughout the golf course where customers</p> <p>24 or -- their customers could stay, and we had started those</p> <p>25 conversations.</p>	<p style="text-align: right;">Page 95</p> <p>1 I believe Clyde Spitze was at a couple of those</p> <p>2 meetings as well at Bad- -- we met at the Badlands Golf</p> <p>3 Course Country Club at the restaurant in there. And we --</p> <p>4 we talked several -- talked to Hyatt several times. And</p> <p>5 then afterwards, at some point, Mr. Lowie -- he might have</p> <p>6 even walked -- walked through the middle of one of those</p> <p>7 meetings. I can't remember. But anyways, he found out, was</p> <p>8 upset, didn't feel that we had the -- the ability to do what</p> <p>9 we were contemplating doing, and then brought forth the</p> <p>10 lawsuit.</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. Do you have an understanding as to why he had that</p> <p>13 belief?</p> <p>14 A. After doing a little bit of research and</p> <p>15 understanding the situation more, I think it was because</p> <p>16 there was a -- there was a conversation, at some point,</p> <p>17 between him and other members of my family about, at some</p> <p>18 point, he would want to potentially buy the golf course.</p> <p>19 And so I felt -- I think he felt like we were not being</p> <p>20 honorable to that conversation.</p> <p>21 Q. Okay. So let me -- let me just take a slight</p> <p>22 detour and -- and discuss this negotiation with Hyatt, or</p> <p>23 the background of the negotiation with Hyatt.</p> <p>24 It was -- or was it -- was it Peccole -- the</p> <p>25 Peccole Family's understanding that it had an ability to</p>
<p style="text-align: right;">Page 96</p> <p>1 develop the golf course?</p> <p>2 A. We've always had the understanding that we could</p> <p>3 develop on the golf course. It was -- it's never been our</p> <p>4 intent to get rid of the golf course. So there was never a</p> <p>5 point in our family where we discussed just turning the golf</p> <p>6 course completely off and doing away with the golf course.</p> <p>7 But it always has been our intent -- we need to enhance the</p> <p>8 golf course and figure out a way for it to become a</p> <p>9 financially viable operation, whether that means adding a</p> <p>10 tennis club, whether that means adding a larger clubhouse</p> <p>11 that can support weddings and venues, whether that means</p> <p>12 adding a few lots here and there where we can carve out some</p> <p>13 lots onto the golf course. Those were all things that we</p> <p>14 had contemplated and talked about over the years.</p> <p>15 Q. Okay.</p> <p>16 A. But never talked about not having a golf course.</p> <p>17 (Defendant's Exhibit 20 was marked</p> <p>18 for identification.)</p> <p>19 BY MR. OGILVIE:</p> <p>20 Q. Let me direct your attention to what's been marked</p> <p>21 as Exhibit 20. Exhibit 20 is a Planning & Development</p> <p>22 Department -- City of Las Vegas Planning & Development</p> <p>23 Department Application/Petition Form that the -- I'm just</p> <p>24 going to go through it top to bottom.</p> <p>25 The application/petition for a general plan</p>	<p style="text-align: right;">Page 97</p> <p>1 amendment; project address, southwest corner of Rampart and</p> <p>2 Alta Drive; project name was Townhomes at Rampart and Alta.</p> <p>3 Are you familiar with that proposed project,</p> <p>4 Townhomes at Rampart and Alta?</p> <p>5 A. I am not. But at the time we were doing the</p> <p>6 tower -- based on that date of August 31st, 2005, we were</p> <p>7 working on the tower. And before the tower project with</p> <p>8 Mr. Lowie, we were working on a timeshare project. And this</p> <p>9 was probably having to do with some aspect of one of those.</p> <p>10 Q. Okay.</p> <p>11 (Defendant's Exhibit 21 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. OGILVIE:</p> <p>14 Q. Let me direct your attention to what's been marked</p> <p>15 as Exhibit 21, which is a site plan/landscape plan for a</p> <p>16 project known, or described down at the bottom left-hand</p> <p>17 corner, of "Townhomes at Rampart and Alta." It's a JMA</p> <p>18 schematic that has some plan development at the southwest</p> <p>19 corner of Alta and Rampart.</p> <p>20 Are you familiar with this project?</p> <p>21 A. I'm not. This is the first time I've ever seen</p> <p>22 this. But, again, this -- this would be consistent with</p> <p>23 what our intent with the golf course was.</p> <p>24 Q. Which -- what intent is that specifically?</p> <p>25 A. To make it a financially feasible venture and to</p>

<p style="text-align: right;">Page 98</p> <p>1 develop where we could in a way that kept the golf course 2 and allowed us to figure out how to make money on that land. 3 Q. Okay. So, again, Exhibit 21 references Townhomes 4 at Rampart and Alta. And if we go back to the 5 application/petition form, which is Exhibit 20, it 6 references the same project name. And then it is signed by 7 your uncle Larry Miller, right? 8 A. That is what the document showed, yes. 9 Q. And he is signing on behalf of Fore Stars Limited, 10 correct? 11 A. Yes. And that's because, at that point, Fore 12 Stars would have been the fee simple property owner. 13 Q. Okay. And then if we look down at the -- again, 14 up at the top, one, two, three, four, five lines down, it -- 15 there's an indication or a blank for general plan. It says 16 "existing PROS." 17 That is parks, recreation, and open space, 18 correct? 19 A. I don't know what PROS stands for, but that could 20 be. 21 Q. Okay. So there -- this general plan amendment is 22 seeking to amend from PROS to the proposed M-LA; is that 23 correct? 24 MR. LEAVITT: Let me make an objection here. I 25 want to make an objection --</p>	<p style="text-align: right;">Page 99</p> <p>1 MS. HAM: Let me put my objection on the record as 2 to lacks foundation. Thank you. 3 MR. OGILVIE: Well, it's a -- 4 MR. LEAVITT: Sorry. This is Jim Leavitt. 5 MR. OGILVIE: It's a public record. It's self 6 authenticating, but go ahead. 7 MR. LEAVITT: Hold on. Hold on. I'm going to 8 make an objection here that in addition to lacking 9 foundation, it assumes -- assumes facts not in evidence. As 10 you're well aware, this is an issue in the trial. 11 MR. OGILVIE: It -- so -- so -- so first of all, 12 let me -- let me ask this. 13 Can I -- can I limit the objections to one 14 attorney or the other and not both? 15 MR. LEAVITT: Sorry -- 16 MS. HAM: Mr. Ogilvie, I represent Fore Stars, so 17 I'm allowed to present separate objections than Mr. Leavitt, 18 who is here representing 180 Land. 19 BY MR. OGILVIE: 20 Q. Okay. All right. 21 Let me ask you this: Do you recognize your uncle 22 Larry Miller's signature, and is that his signature at the 23 bottom of this page? 24 A. I do recognize his signature, yes. 25</p>
<p style="text-align: right;">Page 100</p> <p>1 Q. And is that his signature? 2 A. Well, I wasn't there when he signed it, but that 3 looks like his signature. 4 Q. Okay. The representative is Moreno & Associates, 5 contact Greg Borgel. 6 Do you know of an individual by the name of Greg 7 Borgel? 8 A. I do know an individual by the name of Greg 9 Borgel. 10 Q. Did he perform land use regulation work for -- on 11 behalf of Fore Stars? 12 A. At about that time, when Clyde stopped, they did 13 use Greg Borgel, and they also used another company. The 14 name will come to me in a second. We used DC Wallace for a 15 few things. Roy Clark I think is his name, I think. 16 Q. Okay. 17 (Defendant's Exhibit 22 was marked 18 for identification.) 19 BY MR. OGILVIE: 20 Q. Let me direct your attention to what's been marked 21 as Exhibit 22. It is an August 31st, 2005 letter from 22 Cherie Guzman at JMA Architecture Studios. It is described 23 as "Queensridge Townhomes, Justification Letter/Project 24 Description," and it indicates that, "We are requesting a 25 general plan amendment for the development of a 34-unit</p>	<p style="text-align: right;">Page 101</p> <p>1 townhome project." It goes on to talk about the project a 2 little bit. The last sentence of the first paragraph says, 3 "The general plan designation is PROS and the site is zoned 4 R-PD7." 5 Do you see that? 6 A. I do. 7 Q. Do you have an understanding whether -- in 8 August 2005, whether the Peccole Family understood that the 9 general plan designation for the Badlands property was PROS? 10 A. Having gone back through our history a little bit 11 and going through some of our documents, I think we had an 12 understanding that it was -- the general plan was PROS 13 because we would often go in when we got tax bills, and the 14 tax bills would come in, and then we would go ahead and -- 15 and fight to get the tax bills reduced because it was under 16 a general plan designation of PROS. So I would say we did 17 understand that. 18 Q. Okay. 19 MR. LEAVITT: And just to lodge a continuing 20 objection on that, George. Lacks foundation and also calls 21 for a legal conclusion. 22 MR. OGILVIE: Duly noted. 23 THE COURT REPORTER: Was that Mr. Leavitt? 24 MR. OGILVIE: Yes, that was Mr. Leavitt. 25 (Defendant's Exhibit 23 was marked</p>

<p style="text-align: right;">Page 102</p> <p>1 for identification.)</p> <p>2 BY MR. OGILVIE:</p> <p>3 Q. Mr. Bayne, let me direct your attention to what's</p> <p>4 been marked as Exhibit 23. It is a September 1st, 2005</p> <p>5 letter from Cherie Guzman, again from Cherie Guzman at JMA</p> <p>6 Architecture Studios, to the City of Las Vegas. This is</p> <p>7 essentially a request for abeyance related to the same</p> <p>8 application number, SDR-8632, which you can compare to</p> <p>9 Exhibit 20. It doesn't identify it on Exhibit 22. Exhibit</p> <p>10 20 -- let's see. Same JMA number is on both 2003, 305.</p> <p>11 Same GPA, which is general plan amendment, No. 9069 on both.</p> <p>12 And that is the same as the general plan amendment number on</p> <p>13 Exhibit 20, which is the application itself GPA-9069.</p> <p>14 So in this letter, Exhibit 23, JMA is requesting</p> <p>15 that the hearing on the project, the 32-unit project known</p> <p>16 as "Townhomes at Rampart and Alta," be held until the</p> <p>17 October 6th planning commission meeting.</p> <p>18 You were not involved in this development at all?</p> <p>19 A. No. February '06 is when I came in.</p> <p>20 Q. Okay.</p> <p>21 A. Came back.</p> <p>22 (Defendant's Exhibit 24 was marked</p> <p>23 for identification.)</p> <p>24 BY MR. OGILVIE:</p> <p>25 Q. Let me direct your attention to what's been marked</p>	<p style="text-align: right;">Page 103</p> <p>1 as Exhibit 24, which is a November 10th, 2005 letter from J.</p> <p>2 Bruce Bayne, Vice President, on Peccole Nevada letterhead.</p> <p>3 Was your -- was your dad J. Bruce Bayne?</p> <p>4 A. Yes, that's my father.</p> <p>5 Q. Okay.</p> <p>6 A. And that's his signature.</p> <p>7 Q. Okay. And he was vice president of Peccole Nevada</p> <p>8 in 2005?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. This letter is addressed to Margo Wheeler,</p> <p>11 Director of Planning at City of Las Vegas, and it requests</p> <p>12 the removal of Case Item No. SDR86632, which has an</p> <p>13 additional six in it from the SDR number referenced in the</p> <p>14 other documents which reference SDR-8632. But "Please</p> <p>15 remove the case on Item SDR86632, the condominium project</p> <p>16 located at the southwest corner of Alta and Rampart. This</p> <p>17 request should be made as part of the file that Peccole</p> <p>18 Nevada no longer has further interest in pursuing this item.</p> <p>19 Thank you for your assistance in this matter."</p> <p>20 Let me direct your attention to the next in order,</p> <p>21 which will be Exhibit 25.</p> <p>22 (Defendant's Exhibit 25 was marked</p> <p>23 for identification.)</p> <p>24 BY MR. OGILVIE:</p> <p>25 Q. Exhibit 25 is the November 15th, 2005 letter to</p>
<p style="text-align: right;">Page 104</p> <p>1 the City of Las Vegas from, again, Cherie -- Cherie Guzman</p> <p>2 at JMA Architecture Studios regarding the Townhomes at</p> <p>3 Rampart and Alta. Again, the same GPA number, General Plan</p> <p>4 Amendment No. 9069, in which Ms. Guzman advises the city</p> <p>5 that the applicant would like to withdraw at the general</p> <p>6 plan amendment of PR -- PROS to M-LA in connection with</p> <p>7 SDR-8632 and Zoning Event No. 9006 for the development of</p> <p>8 32 -- of the 32-unit townhome project.</p> <p>9 Do you have any reason to question whether or not</p> <p>10 these documents, Exhibits 20, 21, 22, 23, 24, and 25, which</p> <p>11 are all -- all identify Townhomes at Rampart and Alta are</p> <p>12 not the same project?</p> <p>13 A. I do not have any reason to question that.</p> <p>14 Q. Okay.</p> <p>15 MS. HAM: I'm just going -- I don't know if we</p> <p>16 kept an ongoing foundational -- foundation objection to all</p> <p>17 of the documents that, according to Mr. Bayne's testimony,</p> <p>18 preceded his . . .</p> <p>19 MR. OGILVIE: Okay. So noted. Yeah. That's</p> <p>20 fine.</p> <p>21 Q. (By Mr. Ogilvie) So going back to how I started</p> <p>22 this, which was the complaint filed by BGC Holdings LLC</p> <p>23 against Fore Stars. And what prompted that complaint was</p> <p>24 some discussions between Fore Stars and Hyatt to develop</p> <p>25 a -- you indicated, I think it involved a new clubhouse.</p>	<p style="text-align: right;">Page 105</p> <p>1 Did you say that it also involved a new hotel and</p> <p>2 casitas?</p> <p>3 A. It was a non-gaming hotel and casitas, yeah.</p> <p>4 Q. Okay. And where would the casitas have been</p> <p>5 developed?</p> <p>6 A. They would have been spaced out throughout the</p> <p>7 golf course, was what we had talked about.</p> <p>8 Q. Okay. So if we turn to Exhibit 1 of Exhibit 19,</p> <p>9 it is a May 31st, 2007 letter on Executive Home Builders,</p> <p>10 Inc. letterhead to Mr. Larry Miller and Mr. Bruce Bayne at</p> <p>11 Fore Stars Limited. It is entitled -- or it's regarding</p> <p>12 Badlands Golf Course Las Vegas, Nevada. And the first</p> <p>13 sentence says, "This letter of intent, when countersigned by</p> <p>14 Fore Stars Limited, the owner of the real estate and</p> <p>15 business operation known as 'Badlands Golf Course,' will</p> <p>16 confirm the intent of seller," Fore Stars Limited, "and</p> <p>17 Yohan Lowie, or IDB Development Corporation Limited, and/or</p> <p>18 its subsidiary PBC Limited," and then it goes on to describe</p> <p>19 the sale and purchase of the Badlands Golf Course. And we</p> <p>20 go skip down to paragraph 2, has a purchase price of</p> <p>21 \$12 million.</p> <p>22 Are you familiar with the -- a negotiation in 2007</p> <p>23 for the -- for Mr. Lowie's purchase of the golf course for</p> <p>24 \$12 million?</p> <p>25 A. I was not, but I am now.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. Oh.</p> <p>2 A. So before our talk right this second, I became</p> <p>3 familiar with it.</p> <p>4 Q. Okay. So when I asked you before what -- if</p> <p>5 you're aware of the circumstances that gave rise to this</p> <p>6 dispute, at that time you were not aware of this exhibit</p> <p>7 which is described by Mr. Lowie in the letter as a letter of</p> <p>8 intent; is that correct?</p> <p>9 A. That is correct. And then I went back and</p> <p>10 reviewed the complaint and remembered it.</p> <p>11 Q. Okay.</p> <p>12 A. And could you scroll down to the signature line?</p> <p>13 Q. Sure. What -- what page?</p> <p>14 A. I think it's the last page or second-to-last page.</p> <p>15 Q. Of the complaint or the exhibit?</p> <p>16 A. Right here. Yeah. Okay. That's what I wanted to</p> <p>17 see.</p> <p>18 MR. LEAVITT: George, scroll back to that. Yeah.</p> <p>19 MR. OGILVIE: You good?</p> <p>20 MR. LEAVITT: Yes. Thank you, George.</p> <p>21 MR. OGILVIE: You bet.</p> <p>22 Q. (By Mr. Ogilvie) This lawsuit was ultimately</p> <p>23 resolved through a settlement agreement.</p> <p>24 Are you aware of that?</p> <p>25 A. I'm sorry. Say that one more time.</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. The lawsuit was ultimately resolved through a</p> <p>2 settlement agreement between --</p> <p>3 A. That was one of the first things I was out at Sam</p> <p>4 Lionel's office.</p> <p>5 THE COURT REPORTER: I'm sorry, out of who's</p> <p>6 office?</p> <p>7 MR. OGILVIE: Sam Lionel, S-a-m, L-i-o-n-e-l.</p> <p>8 Q. (By Mr. Ogilvie) Could you explain what you mean</p> <p>9 by what you -- what you just testified?</p> <p>10 A. Yeah. We went to that office to -- to settle it.</p> <p>11 Mr. Lowie came and I went myself, my father Bruce, my uncle</p> <p>12 Larry. I'm trying to think. Kerry Walters was there as</p> <p>13 well. I think -- I don't remember if -- I don't think Todd</p> <p>14 was there, Todd Davis. I think maybe Frank Pankratz was</p> <p>15 there. There was one other person with Mr. Lowie, but I</p> <p>16 don't remember who. And -- and we -- we kind of hashed this</p> <p>17 out and settled this.</p> <p>18 Our attorney at the time was -- what's his name?</p> <p>19 His office was over in Tivoli for a while. Yeah, maybe.</p> <p>20 Anyways, I guess it's probably not that important. But yes,</p> <p>21 I remember this settlement.</p> <p>22 Q. Matthew Forstadt at Kolesar & Leatham?</p> <p>23 A. Say the name again.</p> <p>24 Q. Matthew Forstadt, F-o-r-s-t-a-d-t.</p> <p>25 A. He was one of them, but he wasn't the one that was</p>
<p style="text-align: right;">Page 108</p> <p>1 doing most of the talking. It was a different man.</p> <p>2 MR. OGILVIE: Okay. Let me direct your attention</p> <p>3 to what's been marked as Exhibit 26.</p> <p>4 (Defendant's Exhibit 26 was marked</p> <p>5 for identification.)</p> <p>6 MR. OGILVIE: Why don't you scroll through it for</p> <p>7 them.</p> <p>8 Q. (By Mr. Ogilvie) And I'm going to ask you if you</p> <p>9 recognize this document and if this document is the</p> <p>10 settlement that Fore Stars and Mr. Lowie's entity, BGC</p> <p>11 Holdings LLC, entered into to resolve the lawsuit.</p> <p>12 A. Yes, I do recognize the document, and this is the</p> <p>13 document that resolved the lawsuit.</p> <p>14 Q. So on page 1 of Exhibit 26, the settlement</p> <p>15 agreement, it references in Section 2 a "Restrictive</p> <p>16 Covenant," where it states "Fore Stars has agreed that the</p> <p>17 real property" -- what's that word? Oh, that's "will remain</p> <p>18 a golf course or open space and have no development</p> <p>19 activities upon it, other than" -- and then can you -- could</p> <p>20 you read what it says handwritten?</p> <p>21 A. You have to Zoom in. I was just trying to figure</p> <p>22 out what Sam wrote.</p> <p>23 Q. Does it say --</p> <p>24 A. "Normal and usual course of business activities</p> <p>25 for the golf" something.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Golf course and those activities going back to</p> <p>2 the --</p> <p>3 A. Yeah.</p> <p>4 Q. So if I read it as I think it reads: Fore Stars</p> <p>5 has agreed that the real property, and the real property is</p> <p>6 defined above as -- with parcel numbers, but also with the</p> <p>7 name Badlands Golf Course located at 9119 Alta Drive, will</p> <p>8 remain a golf course or open space and have no development</p> <p>9 activities upon it, other than normal, in the usual course</p> <p>10 of business activities for the golf course and those</p> <p>11 activities expressly permitted by this agreement, unless</p> <p>12 consented to in writing by Queensridge Towers LLC (the</p> <p>13 "Restrictive covenant").</p> <p>14 Did I -- did I read that correctly?</p> <p>15 A. Yeah, I'm -- I'm reading the same thing.</p> <p>16 Q. Okay. And then it -- it has a -- a sunset of the</p> <p>17 restrictive covenant, which will be such time as Phase II of</p> <p>18 the Queensridge Towers Development is completed and all</p> <p>19 units offered to the public for sale are sold and have</p> <p>20 closed escrow.</p> <p>21 So that -- that -- I just -- just want to make</p> <p>22 sure have I your understanding of what that means.</p> <p>23 Phase II of the Queensridge Towers Development are</p> <p>24 the third and fourth towers that were anticipated at this</p> <p>25 time; is that correct?</p>

<p style="text-align: right;">Page 110</p> <p>1 A. That -- that is my understanding, yes.</p> <p>2 Q. So were you privy to the conversations in which</p> <p>3 Mr. Lowie and/or his attorney were making the request --</p> <p>4 making this request in these negotiations?</p> <p>5 A. I don't know how to answer that. I was privy to</p> <p>6 this negotiation at Sam -- Sam Lionel's office. I was in</p> <p>7 the room when it happened.</p> <p>8 Q. Do you have an understanding as to why Mr. Lowie</p> <p>9 was making this request for a restrictive covenant?</p> <p>10 MR. LEAVITT: Just a quick objection, calls for</p> <p>11 state of mind.</p> <p>12 MR. OGILVIE: No, no, it doesn't. The question</p> <p>13 is: Do you have an understanding? That's a yes or no.</p> <p>14 MR. LEAVITT: I'm simply stating an objection.</p> <p>15 You can move on.</p> <p>16 MR. OGILVIE: Okay.</p> <p>17 THE COURT REPORTER: And that was Mr. Leavitt?</p> <p>18 MR. OGILVIE: That was Mr. Leavitt.</p> <p>19 Q. (By Mr. Ogilvie) Do you have an understanding of</p> <p>20 why Mr. Lowie was making this request for a restrictive</p> <p>21 covenant?</p> <p>22 A. I think he was worried about us developing on the</p> <p>23 golf course and harming his ability to develop the second</p> <p>24 phase of the towers in a way that would -- that would hurt</p> <p>25 the sales of those towers. He didn't want anything that</p>	<p style="text-align: right;">Page 111</p> <p>1 would damage -- damage that situation for -- for him and</p> <p>2 IDB. That's why -- actually, you'll see later on when he</p> <p>3 gives us the parameters on what we can develop, they</p> <p>4 actually do allow us to develop, just not directly behind</p> <p>5 the towers.</p> <p>6 Q. Okay. And what's the basis of your understanding?</p> <p>7 A. This document.</p> <p>8 Q. Okay. Was -- did Mr. Lowie express that concern?</p> <p>9 A. Yeah. If you go back and read the complaint, they</p> <p>10 express it in the complaint, too, but yes.</p> <p>11 Q. Okay.</p> <p>12 A. Under 4.2, it -- it tells you what we can build,</p> <p>13 so they were clearly okay with us building on the golf</p> <p>14 course. They just didn't want it to hurt the towers, the</p> <p>15 second . . .</p> <p>16 Q. Okay. And you referred to Section 4.2, which says</p> <p>17 that Fore Stars may construct up to 30 single story, one</p> <p>18 bedroom, one bathroom casitas to be used solely for short</p> <p>19 term rental purposes.</p> <p>20 Was that last portion "short term rental</p> <p>21 purposes," did Mr. Lowie express his concern that if they</p> <p>22 were used for sale purposes that that may harm sales in</p> <p>23 Queensridge Towers?</p> <p>24 A. He did not express that to me.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 112</p> <p>1 A. No, not in that meeting.</p> <p>2 The issue was he didn't want us to develop things</p> <p>3 that were taller than the -- than the -- I can't remember</p> <p>4 the word. The -- kind of the first level of the towers, so</p> <p>5 he didn't want us to develop things so tall it would</p> <p>6 obstruct the views and cause people in the towers to be</p> <p>7 upset over their -- their views.</p> <p>8 Q. Is it -- was the word you were looking for the</p> <p>9 "podium"?</p> <p>10 A. Yes. Thank you. The podium level.</p> <p>11 Q. Okay.</p> <p>12 A. And that's why it says here -- and we can develop</p> <p>13 stuff to the west.</p> <p>14 Q. And you're referring to the second sentence, "To</p> <p>15 the extent the casitas are located west of Phase II of</p> <p>16 Queensridge Towers Development, the location, architecture,</p> <p>17 size, color, construction materials and overall design of</p> <p>18 the casitas will not require prior approval of BGC," which</p> <p>19 is Mr. Lowie's entity. But the next sentence says if</p> <p>20 they're located anywhere else on the Badlands Golf Course,</p> <p>21 Mr. Lowie's entity has to be given its prior -- has to give</p> <p>22 its prior written approval, correct?</p> <p>23 A. That is correct.</p> <p>24 Q. If we go back to -- it's the very bottom of the</p> <p>25 first page and continuing onto the second page, it gives an</p>	<p style="text-align: right;">Page 113</p> <p>1 expiration of the restrictive covenant, and that states</p> <p>2 specifically "the restrictive covenant shall expire ten</p> <p>3 years after its -- and I believe it says "delivery to</p> <p>4 Queensridge Towers LLC."</p> <p>5 Did I read that correctly?</p> <p>6 A. That is how I read it, too.</p> <p>7 Q. Okay. So in the sentence before that, Queensridge</p> <p>8 Towers was given the option to record the restrictive</p> <p>9 covenant with the Clark County Recorder's Office, but -- so</p> <p>10 essentially -- oh, I see.</p> <p>11 So it originally -- this originally said that the</p> <p>12 sunset provision was ten years after that recording, but it</p> <p>13 was changed by agreement to delivery --</p> <p>14 A. Once we delivered it to Queensridge Towers.</p> <p>15 Basically, once this was signed.</p> <p>16 Q. Okay. All right. So -- and it was --</p> <p>17 A. And we didn't know and couldn't force them to</p> <p>18 record it.</p> <p>19 Q. Right.</p> <p>20 A. So we just -- we were just -- once it's delivered,</p> <p>21 we're good.</p> <p>22 Q. Okay. So if we look at the signature page again,</p> <p>23 it's executed by both parties on Feb- -- January 28th, 2008.</p> <p>24 A. Right. So that -- that's correct. And then that</p> <p>25 would -- if you followed the -- the math, that would take</p>

<p style="text-align: right;">Page 114</p> <p>1 you to 2018, you still had the restrictive covenant in 2 place. 3 Q. Right. Okay. 4 Unless -- unless Phase II of Queensridge Towers 5 was completed and sold out before January 2018, correct? 6 A. Or if Queensridge Towers allowed you to build 7 something different, either way. 8 Q. Okay. So you either were restricted to building 9 west of Queensridge Towers Phase II or get approval of 10 Queensridge Towers for building casitas, anything east of 11 that demarcation line, or the sunset -- or the restrictive 12 covenant would sunset either upon the completion and sellout 13 of Queensridge Towers Phase II or ten years; is that right? 14 A. Yep, that's right. That's my understanding. 15 Q. There's also a right of first refusal that is 16 Section 3. It talks about BGC Holdings LLC will have a 17 right of first refusal to purchase the Badlands Golf 18 Course -- has a right of first refusal to purchase the 19 Badlands Golf Course until 75 percent of Phase II of 20 Queensridge Towers is completed and 75 -- well, I'm sorry, 21 until Phase II is completed and 75 percent of the units are 22 sold or seven years after this document is executed, which 23 is 2015, correct? 24 A. Yes. Well, no, it was executed in 2008, but seven 25 years post that would have been 2015.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. Okay. So the sunset of the right of first refusal 2 is one of those two conditions, the completion of Phase II 3 of Queensridge Towers and sale of 75 percent of its units or 4 seven years after the execution of this document; is that -- 5 A. Yes. Based on this paragraph, that's what that 6 says. 7 Q. Okay. Do you have any reason to believe that's 8 incorrect? 9 A. Nope. 10 (Defendant's Exhibit 27 was marked 11 for identification.) 12 BY MR. OGILVIE: 13 Q. Let me direct your attention to what's been marked 14 as Exhibit 27. It is a document entitled "Restrictive 15 Covenant," that was recorded with Clark County Recorder's 16 Office on March 14th, 2008. 17 Is this the restrictive covenant referenced in the 18 settlement agreement that is Exhibit 26? 19 A. That is my understanding, yes. 20 (Defendant's Exhibit 28 was marked 21 for identification.) 22 BY MR. OGILVIE: 23 Q. Let me direct your attention to what's been marked 24 as Exhibit 28. It is entitled "Settlement Agreement and 25 Mutual Release." This was entered into Queensridge Towers</p>
<p style="text-align: right;">Page 116</p> <p>1 LLC, Queensridge Highrise LLC, and Fore Stars. 2 A. Yeah. It's a different settlement agreement. 3 Q. Right. Yes. 4 A. Okay. 5 Q. It says -- 6 A. I -- I know this one as well. 7 Q. Okay. Good. 8 Were you -- did you participate in the -- 9 A. I -- I did this one. 10 Q. Okay. When you say you did this one, does that 11 mean on behalf of the Peccole -- 12 A. On behalf of Peccole, I negotiated this one with 13 our attorneys. 14 Q. Okay. Good. 15 Let me direct your attention to Section 3, which 16 is "Improvements Agreement Election or Lot Line Adjustment." 17 Can you explain to me what exhibit -- Section 3 is 18 all about? 19 A. Scroll down so I can see it and remind myself of 20 it. 21 Q. Oh, sorry. Do you want to go through the first 22 two pages first? 23 A. Oh, no, I don't need to do that. I just want to 24 look at this real fast. 25 Q. Okay.</p>	<p style="text-align: right;">Page 117</p> <p>1 A. So we agree here that they're going to give us 2 back where our clubhouse is and there's going to be a lot 3 line adjustment, and, thus, they're not going to have to 4 build us a clubhouse. 5 Q. Okay. Now, this references the "Improvements 6 Agreement," the -- yes, the "Improvements Agreement." Is that 7 Badlands Golf Course Clubhouse Improvements Agreement that 8 is Exhibit 11 that we previously went through? 9 A. Yes. That 3 1/2 million and 850,000 or whatever, 10 yes. 11 Q. Okay. By which Fore Stars -- or actually, 12 Highrise -- I'm sorry, Queensridge Highrise LLC transferred 13 the 5.13 acres to Queensridge Towers also, correct? 14 A. That's correct. 15 Q. Okay. 16 A. Now, in this agreement, they transferred the 17 property -- some of the property back. I don't think they 18 transferred all of it. I think we carved out like a 19 little -- they carved out a little bit -- piece. It might 20 even identify it. I think it does. 21 Q. So -- 22 A. And this agreement, I don't think Yohan -- I don't 23 think Mr. Lowie signs this agreement. I don't think he's 24 party to this agreement. 25 Q. Okay. Is it your understanding that at some point</p>

<p style="text-align: right;">Page 118</p> <p>1 Mr. Lowie was no longer a part of I- -- of Queensridge 2 Towers LLC? 3 A. That is my understanding. 4 Q. Okay. And that IDB Group and Lyton were bought -- 5 bought Mr. Lowie out of Queensridge Towers? 6 A. I don't -- I don't know if they -- I don't know 7 how they did their divorce. And Lyton, I've never been very 8 familiar with Lyton. IDB Group, I knew, I knew them. I 9 knew a man named Noam Ziv that kind of ran the IDB Group in 10 Las Vegas. But how -- how him and Mr. Lowie did their 11 breakup, I -- I am not privy to, nor do I -- I know about. 12 Q. Okay. 13 THE COURT REPORTER: I'm sorry, what was the other 14 name you mentioned? 15 THE WITNESS: Noam Ziv, N-o-a-m, Z-i-v. 16 THE COURT REPORTER: Thank you. 17 BY MR. OGILVIE: 18 Q. So if we turn to page 11 of Exhibit 28, the 19 Settlement Agreement and Mutual Release, that is the 20 signature page. It is signed on behalf of Queensridge 21 Towers by Noam Ziv, as you indicated, and Matthew Bunin. 22 And then Queens- -- on behalf of Queensridge Highrise LLC, 23 which is managed by Peccole-Nevada, by your uncle Larry A. 24 Miller as CEO of Peccole-Nevada Corporation; is that 25 correct?</p>	<p style="text-align: right;">Page 119</p> <p>1 A. That is all correct, based on this document, yep. 2 Q. Okay. And then on behalf of Fore Stars, by its 3 manager Peccole-Nevada Corporation, by Peccole-Nevada 4 Corporation's CEO Larry Miller, correct? 5 A. That is. 6 Q. Okay. So I want to go back to Section 3. And in 7 the -- just above the middle of that paragraph, it says 8 "Towers," meaning Queensridge Towers, "and Fore Stars have 9 agreed that at any time between the effective date," the 10 effective date is defined as June 18th, 2013 in the first 11 paragraph, "and 18 months thereafter," defined as the 12 election date, "Towers shall have the option to terminate in 13 full all obligations . . . under the Improvements Agreement 14 as of the election date, including the Improvements 15 Agreements agreement financial obligation, in exchange for 16 the additional golf course property (defined in this Section 17 3) (the option set forth in this sentence referred to as the 18 'termination option.'" 19 So at this time, Queensridge Towers is not making 20 an election at -- it's -- it's agreeing to -- the parties 21 are agreeing to an 18-month election period, correct? 22 A. Yeah, that's what it says. 23 Q. Okay. And the election -- 24 A. If I remember right, I think Queensridge was in 25 the process of trying to get -- they were -- they were going</p>
<p style="text-align: right;">Page 120</p> <p>1 from two more towers on Phase II to one single tower on 2 Phase II, and they were going back through zoning and 3 planning on that, and so they needed some wiggle room to -- 4 to do that. 5 Q. Okay. So this agreement allowed -- allowed 6 Queensridge Towers to terminate the improvement -- the 7 clubhouse improvement agreement by transferring what is 8 described on Exhibit C, which I believe we've already 9 discussed in a prior document; is that correct? 10 A. Yeah. 11 Q. So let's turn to Exhibit C real quick. 12 There's a legal description and then there is a 13 boundary line adjustment, which we went through as, whatever 14 the prior exhibit was, Exhibit 18. 15 A. Yeah. 16 Q. Right. There we go. 17 At page Bates No. LO 21130, it has this record of 18 survey boundary line adjustment. And, again, it is if -- if 19 Queensridge Towers transfers to Fore Stars Transfer Areas 1, 20 2, and 3 -- oh, I'm sorry. It's not 1, 2, and 3. 21 A. No. No. No. 22 Q. Not -- 23 A. It's just one transfer area. 24 Q. Just -- just -- yes. Just transfer area -- 25 A. Yeah, there's a transfer area.</p>	<p style="text-align: right;">Page 121</p> <p>1 And see where it says "adjusted parcel boundary 2 line?" 3 Q. Yeah. 4 A. We slid that over like 12 feet. 5 Q. Okay. Okay. So that -- I believe that's Transfer 6 Area 1, but -- can we go down? 7 A. No. It's just transfer area. 8 Q. Oh. 9 A. Because it doesn't correlate into the old one that 10 you saw before. 11 Q. Okay. 12 A. It's a little different. 13 Q. Okay. Okay. So it's -- it's -- it is the only 14 area in the legend that is defined as "transfer area." 15 And -- 16 A. That's correct. 17 Q. And that -- that transfer area is where the 18 clubhouse was located, correct? 19 A. That -- that is, yeah. 20 Q. Okay. 21 A. Approximately. The clubhouse sits -- sits between 22 the transfer area and Parcel 2. It sits on that border. 23 See where it says "Parcel 2"? 24 Q. Yes. 25 A. And then you see the transfer area, that line that</p>

<p style="text-align: right;">Page 122</p> <p>1 surrounds the transfer area? The clubhouse sits actually</p> <p>2 between the two.</p> <p>3 Q. Okay.</p> <p>4 A. Yeah. It's on top of that line.</p> <p>5 Q. Oh, so at this time, Fore Stars still owned Parcel</p> <p>6 2, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. It never -- that -- Parcel 2 was never</p> <p>9 transferred out of Fore Stars' possession?</p> <p>10 A. Up to this point, Parcel 2 has never been</p> <p>11 transferred out of Fore Stars.</p> <p>12 Q. Okay. Good.</p> <p>13 Okay. So let me direct your attention to Exhibit</p> <p>14 H of Exhibit 28.</p> <p>15 A. Of 28.</p> <p>16 Q. Exhibit H is "Form of Release Letter to Executive</p> <p>17 Home Builders, Inc." from Fore Stars Limited, care of</p> <p>18 Peccole-Nevada Corporation, addressed to Yohan Lowie and</p> <p>19 Vickie DeHart at Executive Home Builders, Inc. And it says,</p> <p>20 "Dear Yohan and Vickie: Reference is made to that certain</p> <p>21 Badlands Golf Course Clubhouse Improvements Agreement dated</p> <p>22 as of September 6, 2005," which was Exhibit 11 that we've</p> <p>23 already gone through.</p> <p>24 Second paragraph says, "As you are aware, in</p> <p>25 connection with the Improvements Agreement, and to secure</p>	<p style="text-align: right;">Page 123</p> <p>1 Queensridge Towers' obligation to perform the construction</p> <p>2 obligations and pay the new golf course clubhouse costs (as</p> <p>3 such terms are defined in the Improvements Agreement) as</p> <p>4 required thereunder, Executive Home Builders granted a</p> <p>5 pledge in favor of Fore Stars with respect to EHB's interest</p> <p>6 in certain corporate offices located at 9755 West Charleston</p> <p>7 Boulevard, Las Vegas, Nevada (the 'Office Collateral'),</p> <p>8 which pledge may be terminated in accordance with Section 3</p> <p>9 of the Improvements Agreement."</p> <p>10 Third paragraph: "This is letter hereby confirms</p> <p>11 that, pursuant to Section 3 of the Improvements Agreement</p> <p>12 EHB's pledge of office collateral is hereby released, deemed</p> <p>13 terminated in full and of no further force or effect.</p> <p>14 Notwithstanding the foregoing release, all other agreements</p> <p>15 that exist between Hualapai Commons Limited, LLC,</p> <p>16 Peccole-Nevada Corporation and EHB with respect to the</p> <p>17 actual transfer of ownership of the office collateral are</p> <p>18 not altered or modified by this letter, including the</p> <p>19 understanding that until the existing debt covering the</p> <p>20 office collateral is paid in full, the title of the property</p> <p>21 cannot transfer."</p> <p>22 Can you explain to me what that last paragraph</p> <p>23 means?</p> <p>24 A. Yeah. If you go, actually, to -- back to the</p> <p>25 other agreement we were just looking at, there's a paragraph</p>
<p style="text-align: right;">Page 124</p> <p>1 underneath where we were looking that explains it to you, if</p> <p>2 you want to know specifically. If you want my impression of</p> <p>3 this letter right here --</p> <p>4 Q. Yep. Okay. Go ahead.</p> <p>5 A. So do you -- back in the office collateral</p> <p>6 agreement, there was the stipulation that we wouldn't</p> <p>7 transfer collateral until we had the loan released from the</p> <p>8 loan and we were able to do a commercial subdivision and</p> <p>9 condominiumize out the end cap. So what this is saying is</p> <p>10 that those aren't being waived. We still have to be able to</p> <p>11 do those.</p> <p>12 Q. Okay.</p> <p>13 A. But we're releasing it as collateral as it relates</p> <p>14 to Queensridge Towers and that transaction. It's no longer</p> <p>15 part of us getting a new clubhouse.</p> <p>16 Q. So you're releasing Yohan Lowie from the</p> <p>17 collateral that he pledged for Queensridge Towers commitment</p> <p>18 relative to build Fore Stars a new clubhouse?</p> <p>19 A. That's -- that's my understanding, yes.</p> <p>20 Q. Okay.</p> <p>21 A. And we had to do this letter because, again,</p> <p>22 Mr. Lowie wasn't really a party to the Queensridge Towers</p> <p>23 transaction, as it relates to transferring the units,</p> <p>24 because he was no longer with Queensridge Towers.</p> <p>25 Q. Got it.</p>	<p style="text-align: right;">Page 125</p> <p>1 (Defendant's Exhibit 29 was marked</p> <p>2 for identification.)</p> <p>3 BY MR. OGILVIE:</p> <p>4 Q. Let me direct your attention to what's been marked</p> <p>5 as Exhibit 29. It is a "Lot Line Adjustment Agreement,"</p> <p>6 dated November 14th, 2014.</p> <p>7 A. This is a culmination of that lot line adjustment</p> <p>8 referenced earlier.</p> <p>9 Q. And this -- this is the document by which</p> <p>10 Queensridge Towers transferred that two-point-something</p> <p>11 acres to -- back to Fore Stars to satisfy its obligation</p> <p>12 under the clubhouse improvements agreement; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. So after this document is signed,</p> <p>15 Queensridge Towers no longer has any obligation to Fore</p> <p>16 Stars relative to building it a new clubhouse, correct?</p> <p>17 A. Yep.</p> <p>18 Q. And --</p> <p>19 A. That's what it says.</p> <p>20 Q. I'm sorry?</p> <p>21 A. That's what it says.</p> <p>22 MR. OGILVIE: Give me just a second. This is off</p> <p>23 the record.</p> <p>24 (Off the record.)</p> <p>25 MR. OGILVIE: Okay. Back on the record.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q (By Mr. Ogilvie) You with us?</p> <p>2 A. Yeah, we're with you. Sorry.</p> <p>3 Q. Okay. So if -- if Fore Stars and Queensridge</p> <p>4 Towers LLC had not entered into the "Settlement Agreement</p> <p>5 Mutual Release," which is Exhibit 28, and the "Lot Line</p> <p>6 Adjustment Agreement," which is Exhibit 29, in accordance</p> <p>7 with the "Badlands Golf Course Club" -- "Golf Course</p> <p>8 Clubhouse Improvements Agreement," which is Exhibit 11,</p> <p>9 clubhouse -- or the Queensridge Towers would either be</p> <p>10 obligated to build a clubhouse, a new clubhouse, not to</p> <p>11 exceed 3 -- \$3,150,000 or transfer this property; is that</p> <p>12 correct?</p> <p>13 A. Or transfer this property? I'm not sure what</p> <p>14 "this property" is.</p> <p>15 I think it's the improvement, the 5.13, the three</p> <p>16 trans free parcels, going back to Document 11.</p> <p>17 Q. Okay.</p> <p>18 A. Yes. I thi- -- I believe that's correct.</p> <p>19 Q. So if it didn't -- if Queensridge Towers did not</p> <p>20 build the clubhouse or a clubhouse, a new clubhouse, for an</p> <p>21 amount not to exceed \$3,150,000, or transfer the property to</p> <p>22 Fore Stars, it would owe Fore Stars, what, \$3,150,000?</p> <p>23 A. Add up -- well, you have to go back.</p> <p>24 So if they -- if they -- if they transferred the</p> <p>25 property to Fore Stars, they wouldn't owe us the money.</p>	<p style="text-align: right;">Page 127</p> <p>1 That's how it ended.</p> <p>2 Q. Right.</p> <p>3 A. Okay. So if they didn't transfer the prop- -- the</p> <p>4 property, then they would have had to give us \$3.15 million.</p> <p>5 And then based on our settlement with BGC, they would have</p> <p>6 had to identify where I could build a clubhouse.</p> <p>7 Q. Okay. Okay. So it was either \$3.15 million and</p> <p>8 identify some place to build a clubhouse or transfer the</p> <p>9 property that is the subject of the Lot Line Adjustment</p> <p>10 Agreement that is Exhibit 29, correct?</p> <p>11 A. Yeah. I think we're -- yes. We're -- we're</p> <p>12 talking about kind of three different documents and three</p> <p>13 different time periods, but I think that's the end, yes.</p> <p>14 Q. Okay. So let me move on to a new topic.</p> <p>15 At some point in 2014, Fore Stars -- well,</p> <p>16 Peccole-Nevada Corporation and -- well, I guess Fore Stars</p> <p>17 is the entity, began negotiating for the sale of certain</p> <p>18 assets, essentially all of the assets of Fore Stars, the</p> <p>19 golf course, personal property, correct?</p> <p>20 A. Okay. So in 2014, we decided to take the golf</p> <p>21 course out to market.</p> <p>22 Q. Okay. So why don't you tell me -- tell me how</p> <p>23 that went.</p> <p>24 A. Me and my CFO got together, and we tried to figure</p> <p>25 out what we could do and how we could try to make the golf</p>
<p style="text-align: right;">Page 128</p> <p>1 course make money. We knew that the 2018 sunset was coming</p> <p>2 up in a few years. We also knew that the golf course was</p> <p>3 losing about a half a million dollars a year, and it just</p> <p>4 didn't make sense to keep carrying it. We also had done</p> <p>5 some research and found out that developing on the golf</p> <p>6 course, for us, unless we wanted to take on a lot of debt,</p> <p>7 just didn't make any sense. And we didn't want to take on a</p> <p>8 lot -- a lot of debt to do the development. So we decided</p> <p>9 we would explore the idea of trying to sell the golf course.</p> <p>10 Q. Okay.</p> <p>11 A. So we had, I don't know, three or four preliminary</p> <p>12 conversations with kind of golf course companies on whether</p> <p>13 or not they would like to buy the golf course.</p> <p>14 Per the BGC settlement, we knew that there was a</p> <p>15 first right of refusal back to Yohan, which he called me</p> <p>16 about, and he said, "Hey, you owe me the first right of</p> <p>17 refusal, so if you go out there and are trying to sell it,</p> <p>18 you have to let me buy it."</p> <p>19 But if you go back and look at the BGC document, I</p> <p>20 had to get an offer first. So the \$12 million number from</p> <p>21 the earlier, the prior first right of refusal, in my mind,</p> <p>22 was moot once I had the BGC document, the settlement</p> <p>23 agreement. So I had to get a bona fide buyer to come in and</p> <p>24 buy the golf course, and then Yohan had seven days to look</p> <p>25 and see if he wanted to buy the golf course for that price</p>	<p style="text-align: right;">Page 129</p> <p>1 or greater.</p> <p>2 Yohan said he wanted to buy the golf course. I</p> <p>3 said I had two or three meetings set up. He said, "No, let</p> <p>4 me buy it." I said, "Make an offer." And that's -- that's</p> <p>5 what happened in 2014, like in July.</p> <p>6 Q. Okay.</p> <p>7 A. June, July, right around there.</p> <p>8 (Defendant's Exhibit 30 was marked</p> <p>9 for identification.)</p> <p>10 BY MR. OGILVIE:</p> <p>11 Q. Let me direct your attention to what's been marked</p> <p>12 as Exhibit 30. It is an e-mail exchange between Yohan Lowie</p> <p>13 and you, dated June 12th, 2014. And then you forwarded</p> <p>14 it -- forwarded it to -- to Larry Miller.</p> <p>15 At the -- at the bottom of the -- or in the middle</p> <p>16 of the page is the first e-mail from Yohan to William Bayne,</p> <p>17 you, which Mr. Lowie says, "Billy, pursuant to our</p> <p>18 conversations, I respectfully submit the attached LOI for</p> <p>19 your consideration. Kindness regards, Yohan." And then it</p> <p>20 indicates that there are two attachments, one of which is a</p> <p>21 PDF that is identified as "Badlands GC LOI Fore Stars</p> <p>22 Limited, June 12th, 2014 PDF." And then -- then you forward</p> <p>23 it to your uncle Larry Miller. Says "check it out. Thanks,</p> <p>24 Billy" -- or "Billy Bayne."</p> <p>25 This -- I mean, as I -- as I reconcile what you</p>

<p style="text-align: right;">Page 130</p> <p>1 were just testifying with, this document, it seems like</p> <p>2 this -- this e-mail came out of blue, as opposed to having</p> <p>3 prior conversations.</p> <p>4 Oh, I take that back. Take it back. Clearly it</p> <p>5 says "pursuant to our conversations."</p> <p>6 So you were expecting this LOI; is that correct?</p> <p>7 A. Yeah. As I -- as I just said, I had talked to a</p> <p>8 couple of people very preliminary, and then Yohan called and</p> <p>9 said, "Hey, I heard you're trying to sell the golf course.</p> <p>10 I have the right to buy it. I want to buy it."</p> <p>11 Q. Okay.</p> <p>12 A. And I said, "My understanding is I got to get an</p> <p>13 offer." He says, "Well, I'll make an offer." So I said,</p> <p>14 "Send the offer over," and that's what this is.</p> <p>15 MR. OGILVIE: Let me direct your attention to</p> <p>16 Exhibit 31.</p> <p>17 (Defendant's Exhibit 31 was marked</p> <p>18 for identification.)</p> <p>19 BY MR. OGILVIE:</p> <p>20 Q. Exhibit 31 is a letter to Mr. Billy Bayne from a</p> <p>21 Yohan Lowie.</p> <p>22 A. This is -- this is the attachment.</p> <p>23 Q. This -- this was what was attached to Exhibit 30?</p> <p>24 A. Okay.</p> <p>25 Q. I'm sorry, I -- this was -- this -- Exhibit 31 is</p>	<p style="text-align: right;">Page 131</p> <p>1 what was the attachment to the e-mail that was Exhibit 30?</p> <p>2 A. Okay. Thank you.</p> <p>3 Q. I'm sorry. Did you hear me?</p> <p>4 A. Yeah. That -- that's fine. I just wondered if</p> <p>5 that's -- if I was correct in stating that.</p> <p>6 MR. LEAVITT: Hold on. Let me enter an objection</p> <p>7 here, George.</p> <p>8 Do you have a question to present to Mr. Bayne</p> <p>9 here? Because I think you're making -- he thinks you're</p> <p>10 making a statement, and I think you're asking a question.</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. We're clearly not communicating.</p> <p>13 I'm asking if -- I'm asking if Exhibit 31 is the</p> <p>14 letter or the LOI that is referenced in Mr. Lowie's e-mail</p> <p>15 that is Exhibit 30.</p> <p>16 A. I don't know. I'd have to click on that and see.</p> <p>17 Q. Well --</p> <p>18 A. I can go back and find it and click on it and see,</p> <p>19 but it looks like the LOI that I got from Yohan.</p> <p>20 Q. Okay. So if we look at Exhibit 30 --</p> <p>21 A. I mean, I'm assuming that's where you got this,</p> <p>22 was you clicked on it.</p> <p>23 Q. No.</p> <p>24 A. Okay.</p> <p>25 Q. If we go to Exhibit 30 and look at the attachments</p>
<p style="text-align: right;">Page 132</p> <p>1 to Mr. Lowie's e-mail to you on June 12th, 2014, it says</p> <p>2 "Badlands GC LOI Fore Stars Limited 061214.1.pdf," right?</p> <p>3 A. Yeah. I'm trying to pull up that e-mail so I can</p> <p>4 click on. I don't know unless I click on it. I've done</p> <p>5 lots of e-mails. Hold on one second.</p> <p>6 Okay. I have -- I have that e-mail. Hold on.</p> <p>7 Yes, that -- that appears to be the e-mail.</p> <p>8 Q. Okay. And then --</p> <p>9 A. Pull that -- pull that -- pull that up again. I</p> <p>10 think it is the correct one.</p> <p>11 Yeah, that looks -- that's it. That's it.</p> <p>12 That's -- that's the attachment.</p> <p>13 Q. So Exhibit 31, the June 12th, 2014 letter of</p> <p>14 intent is what was attached to Exhibit 30, Mr. Lowie's</p> <p>15 June 12th, 2014 e-mail to you?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now, in this letter of intent, Exhibit 31,</p> <p>18 Mr. Lowie describes the property to be Fore Stars fee</p> <p>19 interest in the Badlands Golf Course land, including the</p> <p>20 existing clubhouse and parking lot and all of Fore Stars</p> <p>21 right, title, and interest in and to all improvements on the</p> <p>22 land, together with all easements, covenants, water rights</p> <p>23 and all other rights pertaining to the premises. In section</p> <p>24 B -- or sub paragraph B, it talks about personal property</p> <p>25 and assets comprising Badlands Golf Course operations, and</p>	<p style="text-align: right;">Page 133</p> <p>1 then all right, title, and interest to the water rights, and</p> <p>2 he describes water rights and assignment of the water rights</p> <p>3 leased from Allen Nel.</p> <p>4 So essentially, this letter of intent is proposing</p> <p>5 the sale of all of Fore Stars' assets, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay. At this time, Fore Stars did not have --</p> <p>8 did not own the 2.37 acres that was trans- -- that</p> <p>9 ultimately was transferred back to Fore Stars by Queensridge</p> <p>10 Towers under the lot line adjustment agreement that resolved</p> <p>11 the clubhouse improvements agreement, correct?</p> <p>12 A. I think that is correct.</p> <p>13 Q. And the purchase price at this time for those</p> <p>14 assets was \$12 million, as reflected in paragraph 2,</p> <p>15 correct?</p> <p>16 A. Correct. That's what it says.</p> <p>17 Q. Okay.</p> <p>18 (Defendant's Exhibit 32 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. OGILVIE:</p> <p>21 Q. Directing your attention to what's been marked as</p> <p>22 Exhibit 32. It is a two-part exhibit, the first part being</p> <p>23 an e-mail exchange between Henry Lichtenberger and Yohan</p> <p>24 Lowie and Todd Davis.</p> <p>25 A. Am I allowed to object?</p>

<p style="text-align: right;">Page 134</p> <p>1 MR. WILLIAMS: Yeah, go ahead. What's your --</p> <p>2 THE WITNESS: I'm not sure -- I'm not sure that we</p> <p>3 can review e-mails between my attorney and Yohan's attorney.</p> <p>4 BY MR. OGILVIE:</p> <p>5 Q. Because of attorney-client privilege?</p> <p>6 A. I think, but I don't know. I'm not an attorney.</p> <p>7 Q. Yeah, okay. Duly noted.</p> <p>8 A. Thanks.</p> <p>9 MS. HAM: I'll make the proper objection and</p> <p>10 that's lacks foundation. And I think, again, I would ask</p> <p>11 that any of the -- lacks foundation and the documents speak</p> <p>12 for themselves, but I would ask -- I would ask those to both</p> <p>13 be continuing objections as well. I think -- I think we're</p> <p>14 clear on that for all of these documents. Just wanted to</p> <p>15 note it again for the record.</p> <p>16 MR. OGILVIE: Yeah, we're -- we're clear on the</p> <p>17 documents speaks for themselves, but a lot of these</p> <p>18 documents are clearly authenticated because Mr. Bayne is</p> <p>19 included in the e-mail exchanges or was a party to the --</p> <p>20 the agreements.</p> <p>21 MR. WILLIAMS: All right. Let's move along.</p> <p>22 Let's move along.</p> <p>23 BY MR. OGILVIE:</p> <p>24 Q. So the first component of Exhibit 32 is the e-mail</p> <p>25 exchanges. The second is a document entitled "Purchase and</p>	<p style="text-align: right;">Page 135</p> <p>1 Sale Agreement," which is a little over 20 pages, maybe 25</p> <p>2 pages long.</p> <p>3 The first e-mail -- who's Henry Lichtenberger?</p> <p>4 A. He's my attorney.</p> <p>5 Q. And he works at Sklar Williams Law Firm?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And he is -- was he charged by you to draft</p> <p>8 a purchase agreement that related to or formalized the</p> <p>9 letter of intent dated June 12th, 2014?</p> <p>10 A. Yes. And -- and Butch pointed out correctly, he's</p> <p>11 actually the company's attorney, not my attorney.</p> <p>12 MR. OGILVIE: Okay. Thank you, Butch.</p> <p>13 MR. WILLIAMS: You're very welcome, sir.</p> <p>14 BY MR. OGILVIE:</p> <p>15 Q. There's an e-mail exchange about preparing a</p> <p>16 draft, and then the -- there's a July 25th, 2014 e-mail from</p> <p>17 Mr. Lichtenberger to Todd Davis and Yohan Lowie that says,</p> <p>18 "Attached is the initial draft of the Badlands Golf Course</p> <p>19 purchase agreement for your review and comment." And then</p> <p>20 there is attached -- the first -- the e-mail exchanges are</p> <p>21 Bates No. LO 5237, 5238. Beginning at 5239 is a purchase</p> <p>22 and sale agreement.</p> <p>23 Do you recall receiving a purchase -- a draft</p> <p>24 purchase and sale agreement in or around -- on or around</p> <p>25 July 25th, 2014 for the sale of Fore Stars' real property</p>
<p style="text-align: right;">Page 136</p> <p>1 and personal property?</p> <p>2 A. Yes, I do. This is -- this is what we -- we went</p> <p>3 through.</p> <p>4 Q. Okay. When you say, "This is what we went</p> <p>5 through," it is the purchase and sale agreement that is</p> <p>6 attached as part of Exhibit 32 and begins at LO 5239?</p> <p>7 A. Yes. I don't know what LO -- oh, there it is down</p> <p>8 at the bottom. Yeah, sorry.</p> <p>9 MS. HAM: Can I just ask a question? I'm sorry,</p> <p>10 because I don't -- I don't have the full documents. When --</p> <p>11 some of these documents that you've referenced were drafts.</p> <p>12 Are these -- is this an executed document?</p> <p>13 MR. OGILVIE: No, this is -- this is a draft.</p> <p>14 MS. HAM: This is still the draft. Okay. Thank</p> <p>15 you.</p> <p>16 BY MR. OGILVIE:</p> <p>17 Q. Okay. And at this time, again, the -- the</p> <p>18 contemplation was the sale of assets rather than the sale of</p> <p>19 the entity; is that right?</p> <p>20 A. At this point, it was the sale of the assets, yes.</p> <p>21 Q. And the assets included the golf course -- as we</p> <p>22 look at paragraph A of the recitals, it includes the golf</p> <p>23 course and the water rights, correct?</p> <p>24 A. Yes, and the personal property for the golf course</p> <p>25 operations.</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Okay. Well, let me ask you this: Did you have a</p> <p>2 valuation of the personal property, essentially the</p> <p>3 equipment, that was sold as part of your transaction for the</p> <p>4 sale of Fore Stars?</p> <p>5 MR. WILLIAMS: Objection; vague. Mr. Williams.</p> <p>6 Do you understand the question?</p> <p>7 THE WITNESS: No. I'm not sure what you mean.</p> <p>8 Do you mean, do I have an appraisal on the -- the</p> <p>9 operational property, like the -- the tractors and mowers</p> <p>10 and stuff?</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. Yeah. Ultimately, we'll get to an executed</p> <p>13 document, purchase and sale agreement, that has various</p> <p>14 items of equipment. I think it's two and a half pages of</p> <p>15 equipment.</p> <p>16 A. We had -- we had Troon prepare us a -- no, it</p> <p>17 wasn't Troon at this point. I think it was Par 4. I had</p> <p>18 Par 4 prepare us a -- what the operational equipment cost</p> <p>19 or -- or what its valuation was, so I believe so, yes.</p> <p>20 Q. Okay. And do you have a recollection as to what</p> <p>21 the valuation of that equipment was?</p> <p>22 A. I don't remember. It wasn't -- it wasn't a very</p> <p>23 significant number. Less -- probably less than 2- or</p> <p>24 \$300,000. I don't remember.</p> <p>25 Q. Okay. Let me -- let me ask you a different</p>

<p style="text-align: right;">Page 138</p> <p>1 question.</p> <p>2 Prior to your receipt of Mr. Lowie's June 12th,</p> <p>3 2014 letter of intent, had the Peccoles ever performed a</p> <p>4 valuation or had an appraisal of the Badlands Golf Course?</p> <p>5 A. We had had an appraisal of the Badlands Golf</p> <p>6 Course when my Aunt Leann passed away.</p> <p>7 Q. What year was that?</p> <p>8 A. Hold on.</p> <p>9 Q. Well, let me ask you this: Was it prior to --</p> <p>10 A. Probably around 2011 or '12. And then we had some</p> <p>11 more estate, an updated valuation, and a -- and a discount</p> <p>12 applied for when her boys owed the IRS, probably in around</p> <p>13 2013.</p> <p>14 Q. So are you referring to two separate appraisals,</p> <p>15 one roughly --</p> <p>16 A. Well, one was an appraisal by an appraiser named</p> <p>17 Keith Harper, and then one was an updated appraisal from</p> <p>18 Keith Harper and then a valuation discount. And I can't</p> <p>19 remember that guy's name, but if you give me a minute I can</p> <p>20 find it.</p> <p>21 MR. LEAVITT: George, what I want to do really</p> <p>22 quick is I want to lodge an objection and just have it</p> <p>23 running, because I know you're going to have a lot of</p> <p>24 questions here, that any questions regarding the sale of the</p> <p>25 property or the acquisition of the property and any</p>	<p style="text-align: right;">Page 139</p> <p>1 valuations related to the acquisition of the property are</p> <p>2 irrelevant to any of the issues in these proceedings,</p> <p>3 particularly for the valuation of the property as they're</p> <p>4 not as of the date of the value, they're not relevant to the</p> <p>5 date of value, therefore would be inadmissible, that they</p> <p>6 lack foundation and all -- that applies to all of the</p> <p>7 issues, but I'll have one additional objection in regards to</p> <p>8 the appraisal reports from 2011, 2012, 2013, as I just heard</p> <p>9 were done for estate purposes, there'd be an eminent domain</p> <p>10 action and (inaudible) proceeding. Those type of appraisals</p> <p>11 are legally inadmissible, No. 1. And No. 2, they're not as</p> <p>12 of the relevant date of valuation. Just with your</p> <p>13 permission, I'll just have that objection running during</p> <p>14 this entire time so I don't have to continue objecting.</p> <p>15 MR. OGILVIE: That's fine.</p> <p>16 MR. LEAVITT: Thank you.</p> <p>17 BY MR. OGILVIE:</p> <p>18 Q. So I'm sorry, Mr. Bayne. I thought you were</p> <p>19 looking on your computer for something. Maybe --</p> <p>20 A. Oh, no, I'm not. What was the last question you</p> <p>21 want me to answer? I was looking up when Leann died, but I</p> <p>22 don't know that you need a date, but I can find one if you</p> <p>23 want.</p> <p>24 Q. Well, I'd like to --</p> <p>25 A. Give me one second.</p>
<p style="text-align: right;">Page 140</p> <p>1 She died 24, February, 2008, so we had the</p> <p>2 appraisals done in probably '10.</p> <p>3 Q. Okay.</p> <p>4 A. '9 or '10.</p> <p>5 Q. Do you have a copy of that appraisal?</p> <p>6 A. I have a copy of the appraisal.</p> <p>7 MR. OGILVIE: I'd ask that you produce it.</p> <p>8 Butch, is that okay?</p> <p>9 MR. WILLIAMS: I'm going to see -- I was just</p> <p>10 getting ready to see if there was going to be an objection.</p> <p>11 MR. LEAVITT: So my first objection -- this is Jim</p> <p>12 Leavitt.</p> <p>13 THE COURT REPORTER: I'm sorry, can you speak up,</p> <p>14 please?</p> <p>15 MR. LEAVITT: Yeah. This is Jim Leavitt. My</p> <p>16 first objection is it's untimely or past the discovery</p> <p>17 deadline in this 34 -- or is going to be past the discovery</p> <p>18 deadline in this 35 acre case. And my -- continuing with my</p> <p>19 same objections that I stated previously.</p> <p>20 MR. OGILVIE: Okay.</p> <p>21 MR. WILLIAMS: So back to answering the question,</p> <p>22 the short answer is if you and Mr. Leavitt or you and</p> <p>23 Ms. Ham work that out, I -- we don't have a reason to not</p> <p>24 produce it other than --</p> <p>25 THE WITNESS: If I produce it, it will be</p>	<p style="text-align: right;">Page 141</p> <p>1 redacted, because it's a whole appraisal for estate tax</p> <p>2 purposes, and I don't -- I don't feel it's appropriate -- I</p> <p>3 mean, as it relates to Fore Stars, I guess I don't care, but</p> <p>4 everything else would be weird.</p> <p>5 BY MR. OGILVIE:</p> <p>6 Q. I'm absolutely fine with that. I don't have any</p> <p>7 interest in a valuation of any other assets in the Peccole</p> <p>8 Holdings other than Fore Stars.</p> <p>9 Is that what you're talking about?</p> <p>10 A. That's what I'm referring to, but I don't -- I</p> <p>11 mean, it's up to . . .</p> <p>12 MR. WILLIAMS: So let me have Billy redact it and</p> <p>13 produce it to me, and then see what you guys work out in the</p> <p>14 next few days. When I say "you guys," excuse me, you and</p> <p>15 Mr. Leavitt or you and Ms. Ham.</p> <p>16 MR. OGILVIE: Well, Jim, you're going to make me</p> <p>17 file a motion to compel?</p> <p>18 MR. LEAVITT: That's not where we're at right now.</p> <p>19 I just -- I'm just lodging an objection, and then we'll --</p> <p>20 we'll discuss it after.</p> <p>21 MR. OGILVIE: Okay.</p> <p>22 MR. WILLIAMS: I don't have a dog in the fight, so</p> <p>23 I -- again, I don't mind producing it. I just -- I don't</p> <p>24 want to get into that battle if there's -- I don't know what</p> <p>25 the objections might be, right. I mean, obviously we don't</p>

<p style="text-align: right;">Page 142</p> <p>1 have -- we don't have a subpoena on it, and so just</p> <p>2 voluntarily producing it makes me a little uneasy.</p> <p>3 MR. OGILVIE: Well, okay.</p> <p>4 MR. WILLIAMS: But why don't you guys talk about</p> <p>5 it after the deposition and then see if you can work it out,</p> <p>6 and then I'll have it in my office, I'm sure, by no later</p> <p>7 than Monday. Billy gives me stuff pretty quickly.</p> <p>8 BY MR. OGILVIE:</p> <p>9 Q. Okay. So this appraisal that you believe was</p> <p>10 conducted on Fore Stars in 2010, I think that's the year you</p> <p>11 said, do you have a recollection as to the appraised value</p> <p>12 of Fore Stars?</p> <p>13 A. Yes, I do. It's \$3.9 million.</p> <p>14 Q. And then --</p> <p>15 A. That did not -- let me clarify. That did not</p> <p>16 include the operational assets, nor did that include the</p> <p>17 water rights.</p> <p>18 Q. Okay.</p> <p>19 A. That was just for the -- the fee simple property.</p> <p>20 Q. Okay. And I think you indicated that the -- your</p> <p>21 recollection of the operational assets, essentially the</p> <p>22 equipment, was -- was less than 2- or \$300,000?</p> <p>23 A. Yeah. I don't -- I don't remember the exact</p> <p>24 number, but it -- it didn't -- it didn't strike me when we</p> <p>25 got it that it was very much money.</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. Okay.</p> <p>2 A. And the water rights have some level of value.</p> <p>3 There's a lot of water rights, and so you'd have to add that</p> <p>4 on to get a -- a number based on that --</p> <p>5 Q. Understood.</p> <p>6 A. -- appraisal.</p> <p>7 Q. Understood.</p> <p>8 So going back to the draft purchase and sale</p> <p>9 agreement that is Exhibit 32. At -- on page 2, at paragraph</p> <p>10 3, the purchase price is \$15 million, which is \$3 million</p> <p>11 more than the letter of intent of Mr. Lowie's June 12th,</p> <p>12 2014 letter of intent.</p> <p>13 Do you have an understanding as to why the</p> <p>14 \$3 million increase?</p> <p>15 A. Yeah. I think -- in reading about this in</p> <p>16 preparation for this and trying to go back and remember all</p> <p>17 the little things that happened, I think Larry just told me</p> <p>18 to tack on \$3 million and see if Yohan would be okay with</p> <p>19 it.</p> <p>20 Q. Okay. At Section 5.3 of the purchase -- draft</p> <p>21 purchase sale agreement that is Exhibit 32, it says that one</p> <p>22 of the deliverables by the seller Fore Stars to the</p> <p>23 purchaser is a copy of that certain settlement agreement and</p> <p>24 mutual release dated June 28th, 2013 by and among</p> <p>25 Queensridge Towers LLC, Queensridge Highrise LLC, and Fore</p>
<p style="text-align: right;">Page 144</p> <p>1 Stars, which agreement covers certain agreements covering</p> <p>2 the property and obligations, events or decisions that would</p> <p>3 be triggered after the closing and assumed in full by the</p> <p>4 purchaser.</p> <p>5 Is that -- is that referring to simply a copy of</p> <p>6 the document, or is it a -- is the transaction that is</p> <p>7 anticipated by that document would be included in the assets</p> <p>8 purchase?</p> <p>9 A. So you remember we hadn't finished the lot line</p> <p>10 adjustment at this stage, and so this is saying that all of</p> <p>11 that agreement from that lot line adjustment document -- we</p> <p>12 contemplated finishing that lot line adjustment before we</p> <p>13 signed this, before this would be executed. And so that</p> <p>14 adjustment of lot line and all of that stuff from that</p> <p>15 agreement would be included in this.</p> <p>16 Q. So essentially you would be assigning that</p> <p>17 settlement agreement to the purchaser as part of this</p> <p>18 transaction?</p> <p>19 A. Correct. Which is at -- at this time remember,</p> <p>20 too, this is an asset purchase. So it was messy. Because</p> <p>21 at this stage, they weren't buying -- buying Fore Stars,</p> <p>22 which was already a party to.</p> <p>23 Q. Okay.</p> <p>24 A. Which is part of the reason why it made sense to</p> <p>25 convert it to a securities agreement later on.</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. Okay. Moving on to page 5 of this agreement.</p> <p>2 Section 7.1 says a condition of closing is that Fore Stars</p> <p>3 is going to terminate the golf course lease that it then had</p> <p>4 with, at this point, Elite?</p> <p>5 A. No, with Par 4.</p> <p>6 Q. Par 4. Okay.</p> <p>7 And so -- so what I believe this -- this paragraph</p> <p>8 means is up until the closing date you were going to pay Par</p> <p>9 4 anything and everything owed to Par 4 under the lease.</p> <p>10 You would --</p> <p>11 A. No.</p> <p>12 Q. No?</p> <p>13 A. No.</p> <p>14 So what this is, is Par 4 in 2000 and -- I don't</p> <p>15 remember if it was 2012 or 2013 converted over from a</p> <p>16 management agreement for us. They replaced Troon. So when</p> <p>17 we bought the golf course back for the \$30 million, we hired</p> <p>18 Troon. Troon operated it for us for two years or maybe</p> <p>19 three years. And then we got rid of Troon because they were</p> <p>20 doing a poor job, and we hired Par 4. And Par 4 managed it</p> <p>21 for us. So all of the expenses, all of the cost, all of the</p> <p>22 maintenance was us, and we were losing money a lot. And Par</p> <p>23 4 ran it for us for a couple of -- of -- I want to say a</p> <p>24 couple of months. I don't think it was years. I think they</p> <p>25 ran it for us for eight months or ten months. And then I</p>

<p style="text-align: right;">Page 146</p> <p>1 had a meeting with Paul Jaramillo and Keith, his partner, 2 and they felt that if we lowered the rate per -- rate per 3 play significantly that it would generate a tremendous 4 amount of business and we would be very successful. And I 5 disagreed. I thought that was not going to work out. The 6 math didn't make sense to me. I said to them, "If you feel 7 strongly about it, I'm happy to lease you the golf course." 8 So in 2012 or '13 we entered into a lease with Par 4, and 9 they leased the golf course. So they went from being a 10 manager to having leasehold interest and operating the golf 11 course, and they paid us about \$20,000 a month, I believe 12 was the lease fee. 13 Q. Okay. 14 A. And so what this does in 7.1, Yohan wanted us to 15 cancel the lease. And so I had to go to Par 4 and get them 16 to agree to cancel the lease. 17 Q. Okay. 18 A. It was way complicated, yeah. 19 Q. So then this -- this contemplates that you're 20 going to cancel the lease, you're going to be responsible 21 for anything and everything related to the lease with Par 4 22 up to the closing date, and -- and so when -- when 23 Mr. Lowie's entity closed on this transaction and obtained 24 the golf course there wouldn't be any lease entanglements, 25 correct?</p>	<p style="text-align: right;">Page 147</p> <p>1 A. That is correct. 2 Q. Okay. And then the next section, 7.2, terminates 3 the prior right of first refusal, correct? 4 A. That is correct. That's what it says. 5 Q. Okay. 6 (Defendant's Exhibit 33 was marked 7 for identification.) 8 BY MR. OGILVIE: 9 Q. Directing your attention to what's been marked as 10 Exhibit 33. It is an August 11th, 2014 e-mail from Henry 11 Lichtenberger to Mr. Lowie, Todd Davis, with CC to you, with 12 attachments including a fully executed assignment and 13 assumption of lease. 14 Do you recall what that fully executed assignment 15 and assumption of lease that was attached was? 16 A. Hold on. Fully executed assignment and assumption 17 of lease? Assumption of lease? 18 I'm not sure what that's referencing. "Fully 19 executed cancellation instructions," that's the unit, yeah. 20 Clubhouse. 21 So this is -- this is closing the transaction with 22 IDB. The only thing I can think of is the fully executed 23 assignment and assumption of lease is maybe when we canceled 24 the lease for a dollar a year, and just cleaned up that 25 language, is my guess.</p>
<p style="text-align: right;">Page 148</p> <p>1 Q. Okay. Mr. Lichtenberger's e-mail says, "Billy," 2 presumably -- 3 A. That's me. 4 Q. Okay. "Asked that I forward to you copies of the 5 closing documents with IDB as it relates to the golf 6 course." 7 Do you recall Mr. Lichtenberger forwarding copies 8 to Mr. Lowie and Mr. Davis of the closing documents with 9 IDB? 10 A. Yes. 11 Q. If the sale of the golf course to Mr. Lowie's 12 entity closed before the transaction with IDB closed, what 13 would have happened relative to IDB's obligations to Fore 14 Stars? 15 A. Well, again, remember that that's part of why we 16 switched from an asset sale to a securities agreement. That 17 way he had Fore Stars, and that's who the obligations were 18 to. 19 Q. Okay. So the obligations would have been to Fore 20 Stars. He wouldn't have any -- 21 A. I didn't have to pay any assignment assumption 22 agreements. I didn't have to do anything because basically 23 Mr. Lowie would have stepped in, become Four Stars, and all 24 of those agreements contemplating the Queensridge Towers 25 settlement agreement would have --</p>	<p style="text-align: right;">Page 149</p> <p>1 THE COURT REPORTER: I'm sorry, I'm sorry, you 2 have to slow down. You're talking too fast. Can you start 3 over? 4 THE WITNESS: Yeah. 5 THE COURT REPORTER: "I didn't have to pay any 6 assignment assumption agreements. I didn't have to do 7 anything because basically Mr. Lowie would have stepped in." 8 THE WITNESS: He would have stepped in to Fore 9 Stars' position. And by stepping into Fore Stars' position, 10 there was no need for an assignment and assumption 11 agreements, and so it -- it just made it cleaner. That was 12 part of the reason that we -- we contemplated switching. 13 That's not all the reason, but that's -- that's a chunk of 14 it. 15 BY MR. OGILVIE: 16 Q. Was part of the reason also the claim of a first 17 right of refusal by some third-party other than Mr. Lowie's 18 entities? 19 A. No. Actually, we settled that before we -- no, 20 that's not why. 21 The other part of the reason for switching to a 22 securities agreement was I felt it gave us more protection 23 as we went forward, not knowing how or what Yohan would do 24 from a development standpoint. It was my family's intention 25 to always keep the golf course. And because that was our</p>

<p style="text-align: right;">Page 150</p> <p>1 intention, we weren't very nervous about developing on the</p> <p>2 golf course. But we didn't know exactly what Yohan would</p> <p>3 do, and so that was another way to kind of buffer us from --</p> <p>4 from what he chose to do.</p> <p>5 Q. When you say "buffer" you, buffer you from what?</p> <p>6 A. Liability.</p> <p>7 Q. Okay.</p> <p>8 A. I didn't want to try to go back in and rep and</p> <p>9 warranty everything that Fore Stars or my family had ever</p> <p>10 done or said. It was too complicated and it's too old. And</p> <p>11 so if I switch it to a securities agreement, he's Fore</p> <p>12 Stars.</p> <p>13 MR. OGILVIE: Okay. Let's move forward. We</p> <p>14 jumped ahead a little bit there, but let's move forward with</p> <p>15 another document, another e-mail.</p> <p>16 (Defendant's Exhibit 34 was marked</p> <p>17 for identification.)</p> <p>18 BY MR. OGILVIE:</p> <p>19 Q. Exhibit 34 is an e-mail exchange between Henry</p> <p>20 Lichtenberger, Yohan Lowie, yourself, and Todd Davis. And</p> <p>21 there's an e-mail -- initial e-mail from Mr. Lichtenberger.</p> <p>22 It says, "I have received consent from the Peccole Family</p> <p>23 for the revised purchase terms as it relates to the</p> <p>24 \$3 million that was initial drafted as a term note."</p> <p>25 What -- do you have an understanding of what</p>	<p style="text-align: right;">Page 151</p> <p>1 Mr. Lichtenberger is talking about there?</p> <p>2 A. No, not exactly. I'm trying to remember. I -- I</p> <p>3 think that we were going to take a portion of the payment in</p> <p>4 the form of a note until we kind of finished everything on</p> <p>5 the end cap, but I'm not positive that's correct.</p> <p>6 Q. Okay.</p> <p>7 A. I really don't remember this little piece.</p> <p>8 Q. Okay.</p> <p>9 A. I'd have to go back and do a lot more research.</p> <p>10 Q. And then at the top -- or above that, Mr. Davis</p> <p>11 indicates that he's working on a red line and will</p> <p>12 hopefully -- will have back to you hopefully by end of day</p> <p>13 today, which was August 25th, or tomorrow.</p> <p>14 A. That's what it says, yeah.</p> <p>15 MR. OGILVIE: Moving on to what's been marked as</p> <p>16 Exhibit 35.</p> <p>17 (Defendant's Exhibit 35 was marked</p> <p>18 for identification.)</p> <p>19 BY MR. OGILVIE:</p> <p>20 Q. It is an August 26th, 2014 e-mail from Mr. Davis</p> <p>21 to Mr. Lichtenberger with Mr. Lowie and you copied, in</p> <p>22 which -- so that's, what did I say, August 26th, the day</p> <p>23 following Mr. Davis' e-mail of August 25th, which is</p> <p>24 exhibit -- part of Exhibit 34.</p> <p>25 And here Mr. Licht- -- Mr. Davis says, "Henry,</p>
<p style="text-align: right;">Page 152</p> <p>1 attached is a redline draft of the PSA. I am currently</p> <p>2 sending to Yohan prior to his review." And then attached to</p> <p>3 that is a redlined copy of the purchase and sale agreement.</p> <p>4 Do you recall receiving this red lined copy of the</p> <p>5 purchase and sale agreement?</p> <p>6 A. I'm sorry. Say that again.</p> <p>7 Q. Do you recall receiving this?</p> <p>8 A. Yeah.</p> <p>9 Q. Okay. And at this time, it's a redline of the</p> <p>10 asset sale of the golf course and the water rights and the</p> <p>11 equipment, correct?</p> <p>12 A. Yeah. This -- this was the other reason we</p> <p>13 thought about going to the securities agreement.</p> <p>14 Q. What -- what specifically are you --</p> <p>15 A. There's a lot of red.</p> <p>16 Q. Okay. Okay. On page 2 of the redline draft, at</p> <p>17 paragraph 3, evidently Mr. Lowie didn't agree with the</p> <p>18 \$15 million purchase price; is that correct?</p> <p>19 A. Yes. That's what it's -- that's what the strike</p> <p>20 is showing, yes.</p> <p>21 Q. Okay. So he went back to the \$12 million that was</p> <p>22 referenced in the June 12th, 2014 letter of intent?</p> <p>23 A. Yes.</p> <p>24 And if you go back up, there's a stricken portion</p> <p>25 that describes your \$3 million question that you have. You</p>	<p style="text-align: right;">Page 153</p> <p>1 just skipped it. Right there.</p> <p>2 "The remaining \$3 million to be paid in the form a</p> <p>3 deed of trust secured promissory note with full payment due</p> <p>4 in 14 months from the date of note with annual interest rate</p> <p>5 of 6 percent with purchaser to deliver" --</p> <p>6 THE COURT REPORTER: I'm sorry. I'm sorry. I</p> <p>7 can't write that fast.</p> <p>8 THE WITNESS: I'm sorry. I was just reading it</p> <p>9 for me. I apologize.</p> <p>10 MR. WILLIAMS: Which section are you reading?</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. You're at 3.1?</p> <p>13 A. 3.2. That's where that 3 million -- you asked me</p> <p>14 earlier what it was for, and that -- that's telling you. It</p> <p>15 was just a note. I'm guessing that it was part of making</p> <p>16 sure the end cap transferred properly or -- or whatever, but</p> <p>17 I -- I honestly couldn't -- I can't remember.</p> <p>18 I apologize to the court reporter. Sometimes when</p> <p>19 I talk, I talk really fast.</p> <p>20 THE COURT REPORTER: Thank you.</p> <p>21 BY MR. OGILVIE:</p> <p>22 Q. Directing your attention to page 5 of this</p> <p>23 redlined purchase agreement, specifically Section 7.2.</p> <p>24 The redline says "Upon the election of Queensridge</p> <p>25 Towers LLC under Section 3(a) and 3(b) of the settlement</p>

<p style="text-align: right;">Page 154</p> <p>1 agreement and mutual release with Fore Stars Limited, 2 executed June 28, 2013 between Queensridge Towers LLC and 3 Fore Stars Limited," open -- defined as a settlement 4 agreement, "one of the following shall apply." 5 And then it says that if Queensridge Towers elects 6 to satisfy the Improvement Agreement Financial Obligation, 7 that Fore Stars shall pay Mr. Lowie's entity \$1 million 8 within five days of seller's -- of Fore Stars' receipt of 9 the funds from Queensridge Towers, or, B, if Queensridge 10 Towers elects the termination option, then the purchaser 11 shall purchase the additional golf -- additional golf 12 property for \$3 million. 13 So if Queensridge Towers gives you cash, you're 14 going to pay -- 15 A. I'm giving some to Yohan. 16 Q. You're -- the -- this \$12 million purchase price 17 gets reduced to \$11 million, right? 18 A. That's how I read it, yes. 19 And then if -- if we got the property back, he 20 would pay us the additional \$3 million that -- that we had 21 asked for. 22 Q. Which would take it from 12 million to 15 million? 23 A. Yes. 24 Q. Okay. 25</p>	<p style="text-align: right;">Page 155</p> <p>1 (Defendant's Exhibit 36 was marked 2 for identification.) 3 BY MR. OGILVIE: 4 Q. Directing your attention to what has now been 5 marked as Exhibit 36. It is an e-mail exchange between you, 6 Todd Davis, Yohan Lowie, and Harry -- I'm sorry Henry 7 Lichtenberger on August 26th and August 27th, 2014. The 8 last e-mail in this chain is an e-mail from you to your 9 attorney Mr. Lichtenberger with copy to Todd Davis and Yohan 10 Lowie, and it's -- if we look at the first paragraph -- 11 A. I just read -- 12 Q. I'm sorry? 13 A. I just read it. You don't have to read it. 14 Q. Okay. What's this about? 15 A. This letter is just kind of clarifying and trying 16 to not go through all of the Todd's redlines. It's me being 17 lazy. 18 Q. Okay. Tell me what paragraphs 2 and 3 mean. 19 A. Two is if IDB gives us the money instead of the 20 property, we're going to give you anything in addition to 21 the \$3 million. And paragraph 3 is if we go ahead and get 22 the land, that he'll give us the \$3 million for it. And 23 then also paragraph 3 says we don't care how you break up 24 the transactional price between the property and the water 25 rights, provided that it ends up being the full price.</p>
<p style="text-align: right;">Page 156</p> <p>1 Q. Okay. So is it fair to say that Fore Stars or the 2 Peccoles -- the Peccoles were valuing that clubhouse 3 improvement or the land on which the clubhouse improvement 4 was going to be developed at \$3 million? 5 A. No. I think it's fair to say that Peccole was 6 going back to that original agreement, Item 11. And -- and 7 we were using their math. I think it was 3 1/2 million. So 8 if they gave us \$3 1/2 million, we would give Yohan three 9 and -- or we would keep three and then put half a million 10 over to Yohan or whatever the difference was. And -- and 11 depending on how the lot line adjustment was going to 12 happen, we had talked about with IDB at some point they may 13 have to give us a little money to even everything up. And 14 that's -- that's what this is contemplating. 15 Q. Okay. But rough -- but it's either the property 16 or \$3 million, right? 17 A. Yeah, basically. 18 MR. OGILVIE: Okay. Let's take a five-minute 19 break, if we could. 20 (Off the record.) 21 BY MR. OGILVIE: 22 Q. So, Mr. Bayne, let me go back to this appraisal 23 that the family had for estate purposes. 24 You said that there was an appraisal in roughly 25 2010, and then there was something followed up later.</p>	<p style="text-align: right;">Page 157</p> <p>1 What -- and you talked about a discount. What was that? 2 A. So when -- if I say anything you already know, you 3 can tell me to skip it, because I'm not an expert on this. 4 But when a person dies, you have an appraisal on date of 5 death, as per the date of death. And then you have a 6 follow-up appraisal for the IRS. And then we were going to 7 do some -- moving some stuff for Leann's sons in and out of 8 trusts, a step up in basis, and so we were getting a 9 discount. Because she only owns one third of the asset 10 base, there's a discount applied to the overall appraisal 11 for her interest. So it was the discounted -- it's a 12 discounted portion. So the \$3.9 million was the full 13 appraisal, and then Leann had a discounted portion of that 14 as part of her estate. 15 Q. Okay. So it wasn't that the appraisal changed, it 16 was that because she was, for lack of a better word -- 17 A. (Inaudible.) 18 Q. -- lack of a better word, a minority interest 19 holder, there was a minority interest holder discount placed 20 on the 3.9 appraisal? 21 A. That is correct. 22 Q. Okay. Let me -- so in the -- in the last draft of 23 the purchase and sale agreement, we went through Section 24 7.2, and there was the either or, either the million dollars 25 that would be paid to Mr. Lowie's entity or the transfer</p>

<p style="text-align: right;">Page 158</p> <p>1 of -- or the transfer of the property that was transferred 2 by Queensridge Towers to Mr. Lowie for \$3 million. 3 Now I want to -- I'm curious about the -- the 4 million-dollar option. And I have to go back to Exhibit 11, 5 which is the Badlands Golf Course Clubhouse Improvements 6 Agreement that we went through earlier. And I'm not going 7 to spend a lot of time on it. I just want to clarify 8 something. 9 At Recital D it talked about "Tower shall pay an 10 amount not to exceed \$4 million," and then talked about how 11 that was comprised of costs and expenses related to 12 construction of a new clubhouse in an amount not to exceed 13 \$3,150,000 and payment of the reconfiguration costs in an 14 amount not to exceed \$850,000. And I asked -- 15 A. You jogged my memory. Let me make a comment. 16 So \$850,000, you asked me before if we paid that. 17 The answer I gave you was yes and we did. 18 But now that you said that again and now in 19 context, I want to say that we were reimbursed for that 20 from, I think, Queensridge Towers or from -- some entity 21 reimbursed us for that out of pocket, and I don't remember 22 exactly why. 23 Q. Well -- 24 A. But we were -- we were reimbursed for that, so I 25 assume that that million dollars go back to the difference</p>	<p style="text-align: right;">Page 159</p> <p>1 between the total 4 million and the \$3 million. 2 Q. Yes. Well, that was the correlation that I was 3 making, the million dollars was -- was the difference 4 between the three and the four. I just didn't understand 5 the correlation. 6 A. Yeah. That -- that's it. Somehow I think it went 7 back to this. This is -- that's my understanding. 8 Q. Okay. I'm -- I'm sorry. I'm still a little 9 confused as to the correlation. I get that they're 10 connected. And when I say "they," I'm talking about Recital 11 D of the Improvements Agreement and Section 7.2 of the 12 August 26th, 2014 draft of the purchase and sale agreement. 13 I just don't know how -- how they're related. 14 A. Go to the settlement agreement with IDB with 15 Queensridge Towers. I think the answer lies in that 16 settlement agreement. 17 Q. The 2013 settlement agreement? 18 A. Yeah. Let's go in there and look for a second. 19 MR. LEAVITT: What exhibit is this? 20 MR. OGILVIE: Hold on. Give me a second. 21 That is Exhibit 28. 22 THE WITNESS: Okay. Let me look at this for a 23 second. 24 Can you scroll down? All right. Keep going. 25 Okay. Keep going.</p>
<p style="text-align: right;">Page 160</p> <p>1 MR. MOLINA: Are you looking for the definition of 2 the improvements obligation? 3 THE WITNESS: No. I don't think there is one. 4 I'm looking more for -- I don't think it's after this, but 5 go down. Go all the way to the bottom. Let's just make 6 sure there's no addendums or exhibits. I don't think there 7 is, but . . . 8 BY MR. OGILVIE: 9 Q. Well, there's -- there's plenty of exhibits. 10 A. Yeah, but I don't think there's an exhibit that 11 gives me numbers. 12 I -- I can't remember exactly how we came up with 13 that -- that number. It had something to do with this, but 14 I just don't remember what. 15 Q. When you say "that number," you're talking about 16 the million dollars? 17 A. The million dollars, yeah. 18 Q. Okay. But the million dollars would be the 19 difference -- I mean, it's -- I wouldn't -- it isn't the 20 difference. It is equal to the difference between -- 21 A. Yeah. It could be the difference between the 4- 22 and 3 million, which is what I think it is. But I wish it 23 stated it more clearly, and it would help me remember. I 24 just don't remember. And a lot of that was just 25 hypothetical math, what if, what if, what if.</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Okay. Let's move forward. 2 A. Yeah, sorry. 3 (Defendant's Exhibit 37 was marked 4 for identification.) 5 BY MR. OGILVIE: 6 Q. Directing your attention to what's been marked as 7 Exhibit 37. It is an e-mail and a new draft of purchase and 8 sale agreement e-mail from Todd Davis to your attorney 9 Mr. Lichtenberger, Frank Pankratz, Mr. Lowie, and you, with 10 the -- the e-mail references an attachment of a PSA redline. 11 A. I remember it. 12 Q. Okay. Now, it says, "Henry, attached is a redline 13 of the PSA with changes incorporated from our meeting." 14 Were you a participant in this meeting that's 15 referenced in this e-mail? 16 A. I was. 17 Q. Okay. And was there -- was the subject of 18 indemnity discussed at that meeting? 19 A. Yes, I'm sure it was. We discussed it a lot. 20 Q. Okay. And tell me about that. 21 A. Because of our complicated relationship, we wanted 22 to make sure that we were indemnified from anything that 23 Mr. Lowie decided to do. 24 Q. And that's "decided to do" in regards to 25 developing the golf course?</p>

<p style="text-align: right;">Page 162</p> <p>1 A. Or -- or operating or managing or -- or anything</p> <p>2 having to do with the golf course.</p> <p>3 We just had a long relationship. We -- I can't</p> <p>4 say it was a bad relationship. I think it was a good</p> <p>5 relationship. We made a hundred million dollars, so that's</p> <p>6 good. But it's a complicated relationship. And so we just</p> <p>7 wanted to be identi- -- indemnified so that we weren't</p> <p>8 coming back years later and having all of these depositions.</p> <p>9 Q. Okay. Congratulations. So --</p> <p>10 A. I failed at that, apparently, but anyways.</p> <p>11 Q. In Exhibit 37, I want to direct your attention to</p> <p>12 a new section, 11.5, which is on page --</p> <p>13 A. We're still talking about a purchase agreement,</p> <p>14 right, or excuse me, an asset agreement?</p> <p>15 Q. Well, let's confirm that then. Let's go to page</p> <p>16 1. 1.1 says "Assets."</p> <p>17 A. Yeah. Okay. I just wanted to make sure it hadn't</p> <p>18 converted over, yeah.</p> <p>19 MR. LEAVITT: When can we go to the real</p> <p>20 agreement?</p> <p>21 MR. OGILVIE: Just hold your horses. We'll get</p> <p>22 there.</p> <p>23 Q. (By Mr. Ogilvie) So Section 11.5 talks about</p> <p>24 settlement agreement -- the 2008 settlement agreement</p> <p>25 between Fore Stars and BGC Holdings, the settlement</p>	<p style="text-align: right;">Page 163</p> <p>1 agreement of the lawsuit by which, as part of that, Fore</p> <p>2 Stars gave Mr. Lowie's entity, BGC Holdings, a right of</p> <p>3 first refusal. And this is talking that this representation</p> <p>4 and warranty by Mr. Lowie's entity, that the -- that</p> <p>5 Mr. Lowie is not in default and the restrictive covenant</p> <p>6 would be deemed terminated in full -- terminated in full and</p> <p>7 of no further force and effect as of closing. The restrict-</p> <p>8 -- is this the restrictive covenant or is this the -- or I</p> <p>9 guess it applies to both, the restrictive covenant and --</p> <p>10 A. It does apply to both.</p> <p>11 Q. Pardon me?</p> <p>12 THE COURT REPORTER: I'm sorry?</p> <p>13 THE WITNESS: It does apply to both.</p> <p>14 BY MR. OGILVIE:</p> <p>15 Q. Okay. And it says "Henry to revise."</p> <p>16 What does that mean?</p> <p>17 A. I think that I kept asking -- I was confused</p> <p>18 because it was weird to me that we were talking about</p> <p>19 Mr. Lowie having a first right of refusal when IDB became</p> <p>20 the owner of Queensridge Towers. And so in some of my</p> <p>21 negotiations with Noam Ziv, when I was getting back the</p> <p>22 units and settling up with IDB on the transfer back of the</p> <p>23 property, it became evident that they did not have the first</p> <p>24 right of refusal. And that was confusing to me. And so I</p> <p>25 wanted us to make sure that was all cleaned up and done</p>
<p style="text-align: right;">Page 164</p> <p>1 before we did this document. And so I brought that up in a</p> <p>2 meeting, and that's -- that's what this is referencing, we</p> <p>3 need to clean up that and make sure that that's all put to</p> <p>4 rest, put to bed, IDB doesn't have those documents, how did</p> <p>5 Yohan get those documents from IDB, how did IDB not have</p> <p>6 part of BGC Holdings, blah, blah, blah.</p> <p>7 I don't know. Can you the court reporter type</p> <p>8 blah, blah, blah?</p> <p>9 MR. WILLIAMS: Yep.</p> <p>10 THE WITNESS: Sorry.</p> <p>11 MR. LEAVITT: She can.</p> <p>12 BY MR. OGILVIE:</p> <p>13 Q. Did you learn who ultimately had that right of</p> <p>14 first refusal?</p> <p>15 A. It came out in another meeting that I had with</p> <p>16 Yohan. I had gone up to his office. We were trying to get</p> <p>17 this resolved. And we went to lunch at Leone Cafe. And at</p> <p>18 Leone Cafe, it came out that that had been transferred to a</p> <p>19 man named Assaf Lang or Yang or Lang or something. I can't</p> <p>20 remember his last name. I'd have to go find it. But that</p> <p>21 caused us to kind of hit -- we had to hit the pause button</p> <p>22 while we tried to extinguish the first right of refusal</p> <p>23 because I was under the impression up to that point that</p> <p>24 that was Mr. Lowie's.</p> <p>25 (Defendant's Exhibit 38 was marked</p>	<p style="text-align: right;">Page 165</p> <p>1 for identification.)</p> <p>2 BY MR. OGILVIE:</p> <p>3 Q. Wasn't it the right of first refusal the reason</p> <p>4 that you were in negotiations with Mr. Lowie to begin with?</p> <p>5 A. It was.</p> <p>6 Q. Okay. And so at some point in this negotiation,</p> <p>7 you learned that Mr. Lowie no longer held that right of</p> <p>8 first refusal, correct?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay.</p> <p>11 A. Around this time period.</p> <p>12 Q. Let me --</p> <p>13 A. Go back in my e-mails. It's like in, I don't</p> <p>14 know, late September, mid September.</p> <p>15 Q. Let me direct you to what's been marked as Exhibit</p> <p>16 38, which is -- the bottom e-mail is dated September 15th,</p> <p>17 2014, from Mr. Lichtenberger to Todd Davis, you, and Yohan</p> <p>18 Lowie for review and comment, and there's an attachment.</p> <p>19 The attachment is the next page. It's a letter from -- an</p> <p>20 unsigned letter from -- from you to Assaf Lang of BGC</p> <p>21 Holdings.</p> <p>22 Is this the individual that you're referring to</p> <p>23 that you learned --</p> <p>24 A. It is.</p> <p>25 Q. -- that you learned currently -- or held the right</p>

<p style="text-align: right;">Page 166</p> <p>1 of first refusal as of September 15th, 2014?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And in this letter you're explaining that</p> <p>4 you've received an offer for \$12 million with a 35-day</p> <p>5 closing and telling him he's got 7 days to exercise his</p> <p>6 right of refusal, correct?</p> <p>7 A. Per the BGC settlement agreement, yes.</p> <p>8 Q. Okay. Did you learn how Mr. Assaf Lang came into</p> <p>9 control of that right of first refusal?</p> <p>10 A. I did not. I do not know. To this day, I don't</p> <p>11 know.</p> <p>12 Q. Okay. How do you know he owned it?</p> <p>13 A. At one point, Yohan told -- told me at that lunch,</p> <p>14 and my attorney Henry Lichtenberger was there. That's when</p> <p>15 we found out about it. So then we got the -- the address</p> <p>16 and the contact information from Mr. Lowie's group. I can't</p> <p>17 remember who sent it over to us.</p> <p>18 Q. Did Mr. -- so this letter is addressed to Assaf</p> <p>19 Lang, Manager of BGC Holdings LLC, which was, at least,</p> <p>20 Mr. Lowie's entity.</p> <p>21 Did Mr. Lowie explain to you that he had</p> <p>22 transferred his entity to Mr. Assaf Lang?</p> <p>23 A. I did not -- I did not get the particulars. At</p> <p>24 the point that I was demanding that we extinguish his first</p> <p>25 right of refusal, Mr. Lowie went ahead and said that they</p>	<p style="text-align: right;">Page 167</p> <p>1 wanted to discontinue talking about purchasing the golf</p> <p>2 course.</p> <p>3 (Defendant's Exhibit 39 was marked</p> <p>4 for identification.)</p> <p>5 BY MR. OGILVIE:</p> <p>6 Q. Let me direct your attention to what's been marked</p> <p>7 as Exhibit 39. It's a September 24th, 2014 letter from you</p> <p>8 to Assaf Lang, advising him, Mr. Lang, that the offer for</p> <p>9 the sale of Badlands had been withdrawn; and, therefore, he</p> <p>10 no longer had a right of first refusal. If there was</p> <p>11 another offer made during the period of the right of first</p> <p>12 refusal, you would notify him, and he would have his --</p> <p>13 his -- his right, correct?</p> <p>14 A. Yes. And if you look, it says "Mathew Kane (via</p> <p>15 e-mail: mathew.kane@trustee).".</p> <p>16 If I remember right, there was something that</p> <p>17 happened where Mr. Lang -- or we were notified that Mr. Lang</p> <p>18 had gone into bankruptcy, I think.</p> <p>19 I think he had gone into bankruptcy, and so there</p> <p>20 was a bankruptcy trustee that was appointed that had no</p> <p>21 interest. At some point, there's -- there's probably an</p> <p>22 e-mail that talks about that.</p> <p>23 Q. Okay. We'll get to that.</p> <p>24 A. Why are you making me work my brain if you know</p> <p>25 the answer? I guess you have to. Sorry.</p>
<p style="text-align: right;">Page 168</p> <p>1 Q. Well, you just got a little ahead of me. It was</p> <p>2 the next exhibit.</p> <p>3 So the first sentence says, "Please be advised</p> <p>4 that the offer referenced in my letter dated September 15,</p> <p>5 2014 for the sale of Badlands Golf Course to a third party</p> <p>6 has been withdrawn."</p> <p>7 Had --</p> <p>8 A. Correct.</p> <p>9 Q. Had Mr. Lowie withdrawn his offer to purchase the</p> <p>10 assets of Fore Stars?</p> <p>11 A. Yes. As I just said, that once we sent that</p> <p>12 letter, he withdrew pursuing purchasing the Badlands.</p> <p>13 Q. Do you know why?</p> <p>14 A. Nope.</p> <p>15 Q. Did he send you an e-mail? Did he call you? How</p> <p>16 did he tell you that he was withdrawing his interest?</p> <p>17 A. If I remember right, I think he called me and said</p> <p>18 that he didn't want to buy it anymore.</p> <p>19 Q. And he didn't say why?</p> <p>20 A. I do not recall if he gave me a reasoning for why.</p> <p>21 Q. But in your mind, it was related to your extension</p> <p>22 of the offer of the right of first refusal?</p> <p>23 A. Yes.</p> <p>24 (Defendant's Exhibit 40 was marked</p> <p>25 for identification.)</p>	<p style="text-align: right;">Page 169</p> <p>1 BY MR. OGILVIE:</p> <p>2 Q. Let me direct your attention to what's been marked</p> <p>3 as Exhibit 40, which is an e-mail exchange, beginning with</p> <p>4 an e-mail from Lenard Schwartz to Todd Davis dated</p> <p>5 October 30th, and ending with an e-mail from Mr. Davis to</p> <p>6 Henry Lichtenberger, Billy Bayne, and Yohan Lowie on</p> <p>7 November 3rd, 2014.</p> <p>8 Mr. Schwartz says, "The bankruptcy judge orally</p> <p>9 granted the Trustee's motion to dismiss this case. A</p> <p>10 written order will be issued in a few days."</p> <p>11 Todd Davis forwarded that to Henry Lichtenberger</p> <p>12 on November 3rd, 2014, saying, "Good morning, FYI - see</p> <p>13 below. What is the status of the Fore Star transaction</p> <p>14 documents?"</p> <p>15 So evidently, at some point between</p> <p>16 September 24th, 2014 and November 3rd, 2014, Mr. Lowie had</p> <p>17 reengaged in his interest to purchase Fore Stars or -- or --</p> <p>18 A. I think once -- I think once it came out that</p> <p>19 Mr. Lang was in bankruptcy, Mr. Yohan decided that we were</p> <p>20 okay to proceed and continue to go forward.</p> <p>21 Q. Okay.</p> <p>22 A. I think.</p> <p>23 Q. So then Mr. Lichtenberger responds to Mr. Davis</p> <p>24 with a CC to you, saying, "Are you able to get Assif [sic]</p> <p>25 to waive the right of refusal? If so, do you just want to</p>

<p style="text-align: right;">Page 170</p> <p>1 purchase the course or the LLC? Understand that it is 2 prudent to get his waiver." 3 And then Mr. Davis responds, "Henry, I agree. 4 Perhaps . . . the BGC waiver a condition which must be 5 satisfied within xx days of the execution of the agreement. 6 The intent is to purchase the LLC." 7 So as of November, at least November 3rd, 2014, 8 it's being represented by Mr. Davis that Mr. Lowie changed 9 his interest in purchasing the LLC instead of the assets, 10 correct? 11 A. I don't think the LLC purchase was Mr. Lowie's 12 change. That was mine. And it was all tied to all of these 13 different things. It's just -- I felt like it gave us more 14 protection, because there was a lot more going on behind the 15 scenes than I could identify. 16 Q. So the -- they're -- you were learning of hair on 17 the deal, essentially? 18 MR. WILLIAMS: Learning -- learning of what? 19 THE WITNESS: Of hair on the deal. 20 MR. WILLIAMS: Yeah. Okay. Fair enough. 21 THE WITNESS: Essentially. 22 MR. WILLIAMS: Essentially. 23 BY MR. OGILVIE: 24 Q. You've heard that term before, right? 25 A. Yes, I have.</p>	<p style="text-align: right;">Page 171</p> <p>1 Q. Okay. 2 A. And by him buying Fore Stars, again, if there was 3 a problem with that right of first refusal, it was no longer 4 our problem. 5 (Defendant's Exhibit 41 was marked 6 for identification.) 7 BY MR. OGILVIE: 8 Q. Okay. Directing your attention to what's been 9 marked as Exhibit 41, very quickly. It's an e-mail from 10 your attorney to you -- or to Mr. Davis and copied to you, 11 with -- attaching a letter from Mr. Assaf Lang waiving his 12 right of first refusal. 13 Do you recall that? 14 A. Yes, I do recall it. 15 Q. Now, this isn't signed, but it came via e-mail. 16 Is this -- is this a way that it -- is this the 17 way that it arrived in your in box? 18 A. Go back to the main thing so I can look it up 19 really fast. Yeah. Hold on right there. Now go back to 20 the e-mail. Right there, yeah. Hold -- hold still right 21 there. Let me look it up. 22 Yeah, I'm sure I have. 23 From Friday, 7, November, 2014. 24 This is going to take me a second to find it. 25 Hold on.</p>
<p style="text-align: right;">Page 172</p> <p>1 Q. Don't -- don't worry about it. It's fine. 2 In any event, it was your understanding that 3 the -- that Mr. Lang had terminated his right to -- right to 4 first refusal? 5 A. That was my understanding, yes. 6 Q. Okay. 7 A. Here. I got the waiver letter. Hold on. 8 It looks just like you -- you're showing it. 9 Q. Okay. 10 A. Not signed. It's just a Word doc. 11 I -- I have on there an e-mail, a subsequent 12 e-mail, from Todd that says, "Looks good to me. Send to 13 Yohan to send to BCG requesting signature." So whatever 14 that's worth. 15 Q. Okay. Were you having telephone conversations 16 with Yohan Lowie at this point in time regarding this right 17 of first refusal? 18 A. By November, no. We had kind of just -- we were 19 just finishing this. Once we converted over to a securities 20 purchase agreement, I was less stressed about it. 21 Q. Okay. Let me direct your attention to Exhibit 42. 22 (Defendant's Exhibit 42 was marked 23 for identification.) 24 BY MR. OGILVIE: 25 Q. "Lot Line Adjustment Agreement" between</p>	<p style="text-align: right;">Page 173</p> <p>1 Queensridge Towers and Fore Stars. And this is the document 2 that finalized the transfer back to Fore Stars of the 3 two-point-something acres that was the subject of the 4 election for -- to conclude the clubhouse improvements 5 agreement, correct? 6 A. Yep. 7 Q. So you -- is it true and accurate to say that as 8 of the date of this document, November 14th, 2014, that you 9 had resolved that Golf Course Clubhouse Improvements 10 Agreement? 11 A. Yes. And that's -- the purchase price went from 12 12 to 15. 13 Q. When you say "the purchase price," you're talking 14 about the purchase price of Fore Stars -- 15 A. Fore Stars. 16 Q. -- and the water rights? 17 A. That is correct. 18 (Defendant's Exhibit 43 was marked 19 for identification.) 20 BY MR. OGILVIE: 21 Q. Directing your attention to what's been marked as 22 Exhibit 43. It is an e-mail exchange and "Membership 23 Interest Purchase and Sale Agreement" from -- the e-mail is 24 from Mr. Lichtenberger to you, Yohan Lowie, and Todd Davis 25 dated -- what did I say -- November 26th, 2014. The</p>

<p style="text-align: right;">Page 174</p> <p>1 attached -- and Mr. Lichtenberger says, "Attached is initial 2 draft of the Stock Purchase Agreement for the Golf Course." 3 So this -- and he goes on to say in the second 4 sentence, "The document differs greatly from the former 5 draft of the Asset Purchase Agreement so creating a marked 6 version would not be very beneficial." 7 And so the attachment -- the second through, what, 8 20th page, whatever it is, of Exhibit 43 is the first 9 iteration of a purchase and sale agreement for the entity, 10 as opposed to the prior iterations that were for the assets 11 of the entity, correct? 12 A. That's correct. 13 Q. And this is this -- references the fact that Fore 14 Stars owns the real property that constitutes the Badlands 15 Golf Course, and WRL LLC is the entity that owns the water 16 rights that are appertinent to the golf course, correct? 17 A. That is correct. Yeah, that was correct. 18 Q. And if we go to page 2, the purchase price now, as 19 a result of the lot line adjustment agreement between 20 Queensridge Towers and Fore Stars from November 14th, 2014, 21 is \$15 million because you are now transferring that 22 additional two-point-something acres where the clubhouse 23 sits? 24 A. That's correct. 25 Q. Under Section --</p>	<p style="text-align: right;">Page 175</p> <p>1 A. Well, yeah. It's -- it's worth -- it's worth that 2 money because not only are we transferring the additional -- 3 we're transferring the clubhouse. 4 Q. Right. 5 A. We got the clubhouse back. 6 Q. Right. 7 A. Okay. 8 Q. So you're valuing the clubhouse, you and -- in 9 this case -- 10 A. It wasn't just that additional two acres. It 11 was -- it was the clubhouse -- 12 Q. The club -- okay. 13 A. -- meaning we had the clubhouse. 14 Q. The real property and the improvements? 15 A. Yeah. 16 Q. And you're valuing that at \$3 million? 17 A. Yeah. 18 Q. So in Section 2.01(b), it talks about a 19 feasibility period. 20 Is that like a -- do you have an understanding 21 that that was the purchaser's due diligence period? 22 A. Yes. 23 Q. And it was 30 days from the effective date, 24 effective date being -- oh, not actually -- not filled in at 25 this point because it's just a draft, right?</p>
<p style="text-align: right;">Page 176</p> <p>1 A. Yeah. And it's going to be, yeah, from the date 2 that this was signed. 3 Q. Right. Okay. 4 (Defendant's Exhibit 44 was marked 5 for identification.) 6 BY MR. OGILVIE: 7 Q. Directing your attention what's been marked as 8 Exhibit 44, which is an e-mail exchange between 9 Mr. Lichtenberger, you, Yohan Lowie, and Todd Davis. The 10 first e-mail is the same as the e-mail in Exhibit 43, by 11 which Mr. Lichtenberger transmitted -- 12 MR. WILLIAMS: Hold on, George. 13 THE WITNESS: Hold on. My compressor just came 14 on. Let me go turn it off. Give me one second. 15 MR. WILLIAMS: Hey, George, Billy -- let's go off 16 the record. 17 (Off the record.) 18 BY MR. OGILVIE: 19 Q. The initial e-mail on Exhibit 44 was the 20 transmittal e-mail on Exhibit 43, by which Mr. Lichtenberger 21 transmitted the initial iteration of the -- of the 22 membership -- stock membership purchase and sale agreement. 23 And then -- so that -- he transmitted that on November 26th. 24 Mr. Davis responds on December 1st to 25 Mr. Lichtenberger, you, Yohan Lowie, and Frank Pankratz,</p>	<p style="text-align: right;">Page 177</p> <p>1 saying, "Attached is the purchaser executed signature page." 2 Mr. Lichtenberger responds a few minutes later, an 3 hour later, saying, "Should we assume that you have no 4 comments to the document?" 5 Mr. Davis responds 14 minutes later, "Correct." 6 And you received a signed Membership Interest 7 Purchase and Sale Agreement, right? 8 A. That's correct. 9 Q. Were you surprised? 10 A. No. We had negotiated with Yohan for four months. 11 And let me say, that's a -- that's a lot of work. 12 (Defendant's Exhibit 45 was marked 13 for identification.) 14 BY MR. OGILVIE: 15 Q. Directing your attention to what's been marked as 16 Exhibit 45. That is the fully executed signature page for 17 the Membership Interest Purchase and Sale Agreement; is that 18 correct? 19 A. Yes. Go back. But I do want to highlight one 20 thing. Go back to the -- the -- the agreement -- 21 Q. Okay. 22 A. -- the securities agreement. 23 Q. Okay. 24 A. Go down to the section that talks about the lease 25 with Par 4. I believe that got put back in. I'm not</p>

<p style="text-align: right;">Page 178</p> <p>1 100 percent positive, but I'm 90 percent positive.</p> <p>2 Q. Section 5.9, on page 4?</p> <p>3 A. Right there where it says 1.02. "'Golf Course</p> <p>4 Lease' shall mean that certain golf course lease dated as of</p> <p>5 June 1, 2010, as amended" -- I -- I did an amendment. We</p> <p>6 canceled the lease with Par 4. And then in November, after</p> <p>7 we got through the Assaf Lang mess, Yohan wanted the lease</p> <p>8 back in place, and so I had to go and get that lease back</p> <p>9 on.</p> <p>10 Q. Okay. So whereas the prior negotiations for the</p> <p>11 purchase of the assets anticipated a termination of that</p> <p>12 lease and no more entanglements relative to -- between Fore</p> <p>13 Stars and Par 4, Mr. Lowie changed his mind and asked that</p> <p>14 you go back and extend the lease; is that -- is that what</p> <p>15 I'm hearing?</p> <p>16 A. That is what you are understanding. That's --</p> <p>17 that's what I understood. That's what I did.</p> <p>18 Q. Okay.</p> <p>19 A. And I -- when I did it, I did tell Paul Jaramillo,</p> <p>20 who owns Par 4, that I didn't understand all of what was</p> <p>21 going on, that it was complicated. So when we did the</p> <p>22 amendment, in order to induce Paul to do the amendment</p> <p>23 because of the complication, he had a 30-day or 60-day out</p> <p>24 clause. I can't remember. So there was a lease in place.</p> <p>25 It was a week lease with an out clause.</p>	<p style="text-align: right;">Page 179</p> <p>1 Q. So at this point, with the execution of the</p> <p>2 Membership Interest Purchase and Sale Agreement, you're --</p> <p>3 you have a binding contract to sell Fore Stars and WRL to</p> <p>4 Mr. Lowie's entity for 15 million, correct?</p> <p>5 A. That is correct.</p> <p>6 (Defendant's Exhibit 46 was marked</p> <p>7 for identification.)</p> <p>8 BY MR. OGILVIE:</p> <p>9 Q. We go back to the -- Exhibit 45 --</p> <p>10 So on Exhibit 44 was the e-mail exchange where</p> <p>11 Mr. Davis sent back the executed signature page for the</p> <p>12 purchaser on December 1st.</p> <p>13 Did you countersign it that same day?</p> <p>14 A. Oh, I couldn't tell you. I don't know. If -- I'm</p> <p>15 sure there's a date on it.</p> <p>16 Q. Actually, there's not.</p> <p>17 A. I think -- I mean, I -- it didn't -- we didn't</p> <p>18 hold it. So yeah, I assume that once he sent it over, I</p> <p>19 signed it and sent it back.</p> <p>20 Let me see the signature. I can tell you if I</p> <p>21 signed it on my iPad. And if I signed it on my iPad, it was</p> <p>22 probably right away.</p> <p>23 Yep, that's my iPad.</p> <p>24 Q. Okay.</p> <p>25 A. I probably signed that within 15 minutes of</p>
<p style="text-align: right;">Page 180</p> <p>1 getting it.</p> <p>2 Q. Okay. And so if we go back to Exhibit 43, the</p> <p>3 feasibility period of 30 days, is it your recollection that</p> <p>4 that would have expired on or about December 30th or 31st,</p> <p>5 2014?</p> <p>6 A. Yep, that's my recollection.</p> <p>7 Q. Let me direct your attention to what's been marked</p> <p>8 as Exhibit 46. It's an e-mail exchange between Todd Davis,</p> <p>9 Henry Lichtenberger, you eventually are included, Kerry</p> <p>10 Walters, Billy Bayne.</p> <p>11 The first e-mail on the second page says, "Henry."</p> <p>12 Go to the second page.</p> <p>13 A. This is just where they wanted to split the</p> <p>14 transactions up into two transactions, one for the water</p> <p>15 rights and one for the golf course.</p> <p>16 Q. Okay. And so -- so prior to December 23rd, 2014,</p> <p>17 it was your understanding you were proceeding with the</p> <p>18 single membership interest purchase and sale agreement that</p> <p>19 was executed on or about December 1st, 2014?</p> <p>20 A. Yep.</p> <p>21 (Defendant's Exhibit 47 was marked</p> <p>22 for identification.)</p> <p>23 BY MR. OGILVIE:</p> <p>24 Q. Directing your attention to what's been marked as</p> <p>25 Exhibit 47. It's an e-mail exchange, again, between</p>	<p style="text-align: right;">Page 181</p> <p>1 Mr. Davis, Mr. Lichtenberger, Mr. Lowie, you, and Frank</p> <p>2 Pankratz, that begins on February 4th, 2015 and ends on</p> <p>3 February 19th, 2015. The February 19th e-mail from you --</p> <p>4 I'm not sure. It doesn't say who it's to.</p> <p>5 It says, "In the e-mail string below you will find</p> <p>6 the last set of notes and clarifications to our PSA."</p> <p>7 Are you referring to the two PSAs for -- one for</p> <p>8 WRL and one for Fore Stars?</p> <p>9 A. I actually think that Yohan -- if you look up</p> <p>10 above, it's from Yohan to me, and he says, "Why are you</p> <p>11 doing this?"</p> <p>12 I think I responded. I wrote, "In the e-mail</p> <p>13 string below," so that's what you said, I apologize, "you</p> <p>14 will find the last set of notes and clarifications to our</p> <p>15 PSA."</p> <p>16 This was a little bit of a renegotiation thing</p> <p>17 that was going on, and it just made -- it was more</p> <p>18 complicated.</p> <p>19 Q. And so, essentially, you're saying the Peccole</p> <p>20 Family doesn't have any interest in the renegotiation?</p> <p>21 A. Essentially, that's what I'm saying. They --</p> <p>22 yeah, I didn't want to rep and warrant any more than what</p> <p>23 was repped and warrantied in the document, and that had</p> <p>24 become an issue.</p> <p>25 Q. Do you know why Yohan wanted to extend the option</p>

<p style="text-align: right;">Page 182</p> <p>1 on the end cap?</p> <p>2 A. No, I don't remember why. What -- hold on. Let</p> <p>3 me think for a second.</p> <p>4 He wanted to go back and talk about getting the</p> <p>5 end cap and -- and using that basically as collateral for</p> <p>6 the \$3 million that he would owe us in taking that note back</p> <p>7 and trying to close with \$12 million. And I just stated</p> <p>8 that's -- I didn't have approval to do that from the family,</p> <p>9 we have to close or we're done.</p> <p>10 (Defendant's Exhibit 48 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. OGILVIE:</p> <p>13 Q. Directing your attention to what's been marked as</p> <p>14 Exhibit 48. It's an e-mail exchange from Mr. Lichtenberger,</p> <p>15 you, Kerry Walters, Frank Pankratz, Alan Mikal, Todd</p> <p>16 Davis --</p> <p>17 THE WITNESS: I thought we did it back in</p> <p>18 December.</p> <p>19 MR. WILLIAMS: You just had some stuff that I</p> <p>20 wasn't aware back then. The next year is --</p> <p>21 THE WITNESS: It was just the closing.</p> <p>22 MR. WILLIAMS: Yeah.</p> <p>23 BY MR. OGILVIE:</p> <p>24 Q. Mr. Lichtenberger, on February 26th, it appears</p> <p>25 circulating --</p>	<p style="text-align: right;">Page 183</p> <p>1 A. We (inaudible) them and changed the pricing to \$7</p> <p>2 1/2 million for the water rights and \$7 1/2 million for the</p> <p>3 land.</p> <p>4 Q. Okay. And that was the final purchase price for</p> <p>5 each one of those entities, WRL and Fore Stars?</p> <p>6 A. Yes, sir.</p> <p>7 (Defendant's Exhibits 49 and 50</p> <p>8 were marked for identification.)</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Directing your attention, I guess, first to</p> <p>11 Exhibit 49 and then to Exhibit 50. I'm going to ask you if</p> <p>12 these are the final executed version -- final executed</p> <p>13 membership interest and pur- -- membership purchase and sale</p> <p>14 agreement for -- well, strike that.</p> <p>15 The first one, 49, is the "Membership Interest</p> <p>16 Purchase and Sale Agreement" that was executed for the sale</p> <p>17 of Fore Stars to Mr. Lowie's entity, correct?</p> <p>18 A. Yes, I believe so.</p> <p>19 Can you scroll down to the signature pages for me?</p> <p>20 Yes.</p> <p>21 Q. Okay. And then exhibit -- oh, okay. Yes. Good.</p> <p>22 Exhibit B to --</p> <p>23 A. That gives you your list of stuff.</p> <p>24 Q. Lists equipment. It's identified as "Equipment</p> <p>25 List." This is the operation assets that you referenced</p>
<p style="text-align: right;">Page 184</p> <p>1 earlier that you had a valuation done. You can't remember</p> <p>2 exactly what it was, but it was less than 200 or \$300,000?</p> <p>3 A. That's what I remember.</p> <p>4 Q. Okay. If we turn to Section 2.01 of Exhibit 49 --</p> <p>5 and again, Exhibit 49 is the Membership Interest Purchase</p> <p>6 and Sale Agreement for Fore Stars.</p> <p>7 It says that the purchase price is \$7,500,000; is</p> <p>8 that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Did the seller, which is identified as The William</p> <p>11 Peter Peccole and Wanda Ruth Peccole Family Limited</p> <p>12 Partnership, receive any consideration in addition to \$7 1/2</p> <p>13 million for selling Fore Stars to Mr. Lowie's entity Ramalta</p> <p>14 LLC?</p> <p>15 MR. WILLIAMS: Objection; vague and ambiguous.</p> <p>16 MR. LEAVITT: Repeat the objection.</p> <p>17 MR. WILLIAMS: He asked you if you received any --</p> <p>18 if the company received any consideration in addition to the</p> <p>19 7.5 million. If you can answer, answer.</p> <p>20 THE WITNESS: I don't know what consideration</p> <p>21 means. More money?</p> <p>22 MR. WILLIAMS: That's why I objected.</p> <p>23 MR. LEAVITT: It could be anything.</p> <p>24 THE WITNESS: We got \$7.5 million for the sale of</p> <p>25 the property and \$7.5 million for the water rights.</p>	<p style="text-align: right;">Page 185</p> <p>1 BY MR. OGILVIE:</p> <p>2 Q. Anything else other than money? Any other land?</p> <p>3 Anything else that was given to The William Peter Peccole</p> <p>4 and Wanda Ruth Peccole Family Limited Partnership for WRL or</p> <p>5 Fore Stars?</p> <p>6 A. No. That's kind of why we had to stop. Like, I</p> <p>7 was afraid that going back and talking about the end cap</p> <p>8 and -- and all of that stuff would just open up a bigger</p> <p>9 Pandora's box. That's why we stopped. We just said, "close</p> <p>10 or don't close."</p> <p>11 (Defendant's Exhibit 51 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. OGILVIE:</p> <p>14 Q. Directing your attention to what's been marked as</p> <p>15 Exhibit 51. It is a "Grant, Bargain, and Sale Deed,"</p> <p>16 whereby Hualapai Commons Limited LLC -- I believe you</p> <p>17 testified earlier that that was a Peccole entity, correct?</p> <p>18 A. Yes.</p> <p>19 Q. -- granted and sold to EHC Hualapai LLC what is</p> <p>20 identified on Exhibit A. We look to Exhibit A.</p> <p>21 A. This is for the end cap.</p> <p>22 Q. That's all I needed to know. So this is --</p> <p>23 A. Yeah. Because if you go up, it says -- go scroll</p> <p>24 up, right there, to the exhibit for me.</p> <p>25 You can see where it says exhibit. This is a</p>

<p style="text-align: right;">Page 186</p> <p>1 condominiumized piece because it's going through -- "said</p> <p>2 exterior facade, 2.63 feet to the center of the common wall;</p> <p>3 thence north . . . feet to the northerly extension of the</p> <p>4 common wall."</p> <p>5 This is measuring out the interior of that end cap</p> <p>6 space.</p> <p>7 Q. Okay. So this is the Grant, Bargain and Sale Deed</p> <p>8 by which the Peccole Family transferred title to Mr. Lowie</p> <p>9 of the end cap, correct?</p> <p>10 A. Yeah. And I think our -- I think our loan paid</p> <p>11 off in July of '15. And after that, we had to do the</p> <p>12 commercial subdivision and the record of survey, which is</p> <p>13 what this legal description was generated from. And then we</p> <p>14 could transfer that property to Yohan.</p> <p>15 So what's the date on this deed? Is this like</p> <p>16 August? September?</p> <p>17 MR. WILLIAMS: I thought July.</p> <p>18 THE WITNESS: It might have been July, because we</p> <p>19 might have been working on it concurrently.</p> <p>20 MR. WILLIAMS: Right there.</p> <p>21 THE WITNESS: Yeah.</p> <p>22 MR. WILLIAMS: 7/13.</p> <p>23 THE WITNESS: Yeah. That's fine.</p> <p>24 We were working on this concurrently to give</p> <p>25 overture in anticipation of our loan closing.</p>	<p style="text-align: right;">Page 187</p> <p>1 BY MR. OGILVIE:</p> <p>2 Q. This is dated July 11, 2017.</p> <p>3 A. Well, that's 2017, so I'm right.</p> <p>4 So 2015 the loan paid off. And then we had to</p> <p>5 finish the record of survey and the commercial subdivision,</p> <p>6 which took about six, nine months.</p> <p>7 Q. Okay.</p> <p>8 A. So yeah, that's what this is. But this has</p> <p>9 nothing to do with the golf course.</p> <p>10 Q. Understood.</p> <p>11 A. It does have to do with that -- that collateral</p> <p>12 agreement and all that other stuff.</p> <p>13 (Defendant's Exhibit 52 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. OGILVIE:</p> <p>16 Q. Directing your attention to what's been marked as</p> <p>17 Exhibit 52. You previously just -- you just mentioned the</p> <p>18 record of survey that you had to complete.</p> <p>19 Is this the record of survey that you were</p> <p>20 referring to?</p> <p>21 A. That is.</p> <p>22 Q. Okay. And the -- the building that is referenced</p> <p>23 or reflected on this Exhibit 52, that's the end cap,</p> <p>24 correct?</p> <p>25 A. That is.</p>
<p style="text-align: right;">Page 188</p> <p>1 MR. OGILVIE: Okay. Mr. Leavitt may have some</p> <p>2 questions for you, but, at this point, I will pass the</p> <p>3 witness.</p> <p>4 MR. LEAVITT: All right. Butch, switch seats,</p> <p>5 man.</p> <p>6 (Brief pause in the proceedings.)</p> <p>7 EXAMINATION</p> <p>8 BY MR. LEAVITT:</p> <p>9 Q. All right. Mr. Bayne, thank you for your time,</p> <p>10 and I'll have a few questions with you. Hopefully I can get</p> <p>11 through them relatively quickly.</p> <p>12 You talked about an individual named Clyde Spitze,</p> <p>13 correct?</p> <p>14 A. I did.</p> <p>15 Q. And you said that Clyde Spitze understood the</p> <p>16 property probably better than anybody; is that correct?</p> <p>17 A. Understood the zoning and -- and those things,</p> <p>18 yes.</p> <p>19 Q. So zoning and land use, he would be the guy to go</p> <p>20 to to find out what was happening on the property, correct?</p> <p>21 A. Yes. And for most of the applications before --</p> <p>22 before 2004, 2005, that would be Clyde.</p> <p>23 Q. Okay. And there was some questions in regards to</p> <p>24 this PROS designation.</p> <p>25 You remember those? And we can go back to the</p>	<p style="text-align: right;">Page 189</p> <p>1 exhibits to --</p> <p>2 A. I remember.</p> <p>3 Q. Okay. All right. And you have a basic</p> <p>4 understanding of how zoning applications are filed with the</p> <p>5 City of Las Vegas; is that correct?</p> <p>6 A. A basic one, yep.</p> <p>7 Q. Okay. And when you go to the City of Las Vegas,</p> <p>8 the City of Las Vegas tells you what applications are</p> <p>9 necessary to file, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And the City of Las Vegas directs you on how to</p> <p>12 fill out those applications, correct?</p> <p>13 A. Typically.</p> <p>14 Q. Okay.</p> <p>15 A. And we don't typically fill them out. We usually</p> <p>16 hire somebody to do it.</p> <p>17 Q. Right.</p> <p>18 And so it's your understanding that that</p> <p>19 individual would go to the City of Las Vegas and get the</p> <p>20 information on how to fill out that application; is that</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. All right. So give me just a second here.</p> <p>24 George did so much, I can't even find out where the</p> <p>25 questions were. Hold on a second.</p>

<p style="text-align: right;">Page 190</p> <p>1 Okay. Sorry, Billy.</p> <p>2 A. No, you're good.</p> <p>3 MS. HAM: Jim, are you looking for the exhibit</p> <p>4 numbers?</p> <p>5 MR. LEAVITT: I'm looking for the exhibit number</p> <p>6 for the application that was submitted that had -- was</p> <p>7 signed by -- signed by Larry Miller.</p> <p>8 MS. HAM: Twenty, twenty-one, and twenty-two,</p> <p>9 believe.</p> <p>10 MR. LEAVITT: What?</p> <p>11 THE WITNESS: Twenty, twenty-one, and twenty-two.</p> <p>12 MR. LEAVITT: Okay. Can you pull up, please,</p> <p>13 Exhibits No. 20, 21, and 22? There we go.</p> <p>14 MR. OGILVIE: Who are you talking to? Do you</p> <p>15 have --</p> <p>16 MR. LEAVITT: You guys, George. George, I don't</p> <p>17 have a copy of your exhibits. You never sent them to me, so</p> <p>18 someone is going to have to pull them up.</p> <p>19 MR. OGILVIE: Well, you could have been here with</p> <p>20 me. I would have provided -- I have a copy for you right</p> <p>21 here.</p> <p>22 MR. LEAVITT: All right, George. All right.</p> <p>23 Well, if you don't mind pulling up Exhibit No. 20,</p> <p>24 please.</p> <p>25 MR. MOLINA: Which -- which one is that?</p>	<p style="text-align: right;">Page 191</p> <p>1 BY MR. LEAVITT:</p> <p>2 Q. Actually, hold on just a second. Let's hold on a</p> <p>3 second. So I want to come back to that.</p> <p>4 So Clyde Spitze was an individual who worked with</p> <p>5 your grandfather, and he was one of the individuals that</p> <p>6 went to the City of Las Vegas and asked the City of Las</p> <p>7 Vegas how to fill out applications for zoning; is that</p> <p>8 correct.</p> <p>9 A. That is correct.</p> <p>10 Q. So he would be an individual who has probably the</p> <p>11 most knowledge regarding the zoning on the property and any</p> <p>12 potential master plan land use designations on the property;</p> <p>13 is that correct?</p> <p>14 A. That's correct.</p> <p>15 MR. OGILVIE: Objection; lacks -- lacks</p> <p>16 foundation.</p> <p>17 MR. WILLIAMS: Let's slow it down just a little</p> <p>18 bit guys, just because I'm concerned about the court</p> <p>19 reporter as well as making sure that people can get</p> <p>20 objections in.</p> <p>21 MR. LEAVITT: You got it.</p> <p>22 MR. WILLIAMS: I'm the one who speeded it up</p> <p>23 trying to save my client, but we'll have to slow down just a</p> <p>24 little bit.</p> <p>25 MR. LEAVITT: Butch just told me to hurry up. Now</p>
<p style="text-align: right;">Page 192</p> <p>1 he's telling me to slow down.</p> <p>2 MR. WILLIAMS: To slow down, right. Yeah.</p> <p>3 Welcome to my life.</p> <p>4 BY MR. LEAVITT:</p> <p>5 Q. All right. So I'm going to read to you something</p> <p>6 that Mr. Spitze stated, and I want to ask you whether you</p> <p>7 agree with it. This was during his deposition that was</p> <p>8 taken on August 21st, 2019, at 9:00 o'clock a.m. And this</p> <p>9 is Volume II. And this is from page 356 of his deposition</p> <p>10 line 3.</p> <p>11 The question is:</p> <p>12 "Question: Understood. Are you aware of any time</p> <p>13 that the William Peccole or anyone -- that William Peccole</p> <p>14 or anyone from the Peccole Family went to the City of Las</p> <p>15 Vegas and requested that a parks, recreation, or open space</p> <p>16 designation be placed on any part of the property?</p> <p>17 "Answer: Not that I -- that I know of."</p> <p>18 Would you agree with that?</p> <p>19 A. I would agree with that.</p> <p>20 Q. Okay. So would you agree that there's never any</p> <p>21 time that the Peccole Family went to the City of Las Vegas</p> <p>22 and said, Hey, put a parks, recreation, open space</p> <p>23 designation on your master plan on our 250-acre property?</p> <p>24 A. (Inaudible).</p> <p>25 MR. OGILVIE: Objection; lacks foundation, calls</p>	<p style="text-align: right;">Page 193</p> <p>1 for speculation.</p> <p>2 THE COURT REPORTER: I didn't get the answer.</p> <p>3 THE WITNESS: I would -- I would agree that as far</p> <p>4 as I know, we never asked the city to do that.</p> <p>5 BY MR. LEAVITT:</p> <p>6 Q. Okay. And are you aware of any point in time when</p> <p>7 the City of Las Vegas gave you or anybody else in the</p> <p>8 Peccole Family notice that it was going to change a land use</p> <p>9 designation on the 250-acre property to a PROS designation?</p> <p>10 A. I'm not aware of that. I don't -- I don't know</p> <p>11 when that would have occurred, and I'm not -- I'm not aware</p> <p>12 of that, no.</p> <p>13 Q. Okay. Do you know if there ever was a PROS</p> <p>14 designation put on the property under the city's master</p> <p>15 plan?</p> <p>16 A. Under the city's master plan, I do not know. What</p> <p>17 I do know is that when we got the tax bill every year, we</p> <p>18 would go and appeal to the taxing authority that the land</p> <p>19 was being used as open space.</p> <p>20 Q. Okay. And that actually brings me to a question.</p> <p>21 So when you went to appeal your taxes, was that</p> <p>22 appeal based on the use that was being made of the property</p> <p>23 or was it based on zoning of the property?</p> <p>24 A. It was being based on the use, how we were using</p> <p>25 the property as a golf course.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. Okay. And was the tax appeal based on the use 2 that was being made of the property, or was it based upon a 3 potential master plan land use designation of PROS? 4 A. Just the use, as far as I know, when we were doing 5 the appeals. 6 Q. Okay. 7 A. We would show them that it was a golf course. We 8 would show our licensure as a golf course. 9 Q. Okay. All right. And by showing the tax assessor 10 that the property was being used as a golf course, the 11 argument you were making is that the property is currently 12 being used a golf course; therefore, it should be taxed as a 13 golf course for open space, correct? 14 A. That is correct. 15 Q. You were not conceding to the tax assessor that 16 the property could only be used as open space into 17 perpetuity, were you? 18 A. No. And I don't know that the tax assessor -- 19 THE COURT REPORTER: I'm sorry, could only be used 20 as open space and what? 21 MR. LEAVITT: Into perpetuity, were you, question. 22 Q. (By Mr. Leavitt) Go ahead. 23 A. No. We weren't conceding anything other than we 24 were using it as a golf course, and we didn't want to pay a 25 lot of taxes for residential land.</p>	<p style="text-align: right;">Page 195</p> <p>1 Q. Okay. And so -- well, let me -- let me read to 2 you something else that Mr. -- Mr. Spitze stated in his 3 deposition. This is from Volume I of Mr. Spitze's 4 deposition, taken on August 16th, 2019. And this is Page 5 No. 178. This is the question. And by the way, I'm 6 questioning him. It says: 7 "And, again, I have read through tens of thousands 8 of pages of documents here, and I have not seen anywhere in 9 any of these documents where the City of Las Vegas 10 conditioned the development of the Queensridge property upon 11 the construction of a golf course. Would you agree with 12 that? 13 "Absolutely it did not." 14 Would you agree with Mr. Spitze's statement there? 15 A. To the best of my understanding. 16 Q. Okay. And then I said -- then the next question 17 was: 18 "So was there any point in time when anybody at 19 the City of Las Vegas came to you and stated we will not 20 allow you to build the Queensridge development unless you 21 will build a golf course?" 22 And then Mr. Ogilvie states: "Objection; lacks 23 foundation, mischaracterizes the evidence." 24 And then he answers: "No." 25 In other words, nobody from the city ever came to</p>
<p style="text-align: right;">Page 196</p> <p>1 you and said you can't build Queensridge unless you build 2 the golf course; would you agree with that? 3 A. To my -- to my understanding, there were no limits 4 placed on us. 5 Q. Okay. And then the -- turning to page 187 of 6 Mr. Spitze's deposition, he -- he has a -- the question is 7 presented: 8 "Okay. And then the City of Las Vegas never 9 specifically required you or made a condition to have open 10 space?" 11 And he answered: "That's right." 12 Would you agree with that? 13 A. To the -- to the best of my knowledge. Again, I 14 wasn't there for any of that, but I would defer to Clyde. 15 Q. Okay. And -- but you're not aware of any time 16 when the City of Las Vegas stated to you or anybody at your 17 family that you could not build on Queensridge unless you 18 had a golf course? 19 A. We contemplated building on that golf course all 20 through and up unto our negotiations with Yohan to sell the 21 golf course. 22 Q. And what evidence do you have of that? 23 A. The Hyatt meetings -- 24 Q. Okay. 25 A. -- where we talked to Hyatt.</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. Okay. 2 A. I asked GC Wallace to do a study on how much it 3 was going to cost to pipe and deal with the flood control 4 and the FEMA issues on the corner of Alta. That was 5 probably in April or May of 2014. So all the way up until 6 the point that we decided that -- once I got back from GC 7 Wallace that it was going to be very, very expensive is when 8 we decided let's see if we can just sell the golf course to 9 somebody that can operate a golf course better than we can. 10 Q. Okay. And did the Queensridge CC&Rs give you any 11 indication of whether your family was reserving the -- or I 12 don't know, maybe reserving is not the best way to say it, 13 of whether your family kept the right to develop on the golf 14 course? 15 A. In contemplating what we would do with GC Wallace, 16 we were not under the impression that we could not develop 17 on the golf course. But we also were not under the 18 impression that we could turn off the golf course. 19 Q. Okay. And in the Queensridge CC&Rs it states, 20 does it not, that the golf course is not part of the 21 Queensridge community, correct? 22 A. States -- states it clearly. 23 Q. Okay. And in the Queensridge CC&Rs it also states 24 that the golf course is available for development; is that 25 correct?</p>

<p style="text-align: right;">Page 198</p> <p>1 A. It says it in the CC&Rs that I've read, yes.</p> <p>2 Q. Okay. And so based upon the facts and information</p> <p>3 that you have, and also the CC&Rs, was it you and your</p> <p>4 family's belief that you could actually develop the golf</p> <p>5 course into residential units, if you wanted?</p> <p>6 MR. OGILVIE: Objection; lacks foundation, calls</p> <p>7 for speculation.</p> <p>8 THE WITNESS: I would say that it was my family's</p> <p>9 understanding that the golf course could be developed on.</p> <p>10 When you say "into residential units," again, we never would</p> <p>11 have gotten rid of the 27 holes.</p> <p>12 BY MR. LEAVITT:</p> <p>13 Q. Totally understand that. And I understand that.</p> <p>14 A. So could we fit houses here and there, yes, we</p> <p>15 contemplated that.</p> <p>16 Q. Okay. But did you -- do you feel like you had the</p> <p>17 right to develop homes on the property, on the 250-acre</p> <p>18 property?</p> <p>19 MR. OGILVIE: Objection; lacks foundation, calls</p> <p>20 for expert -- or calls for a legal conclusion.</p> <p>21 THE WITNESS: I'm not sure that we felt we had the</p> <p>22 right to develop where the golf course was.</p> <p>23 BY MR. LEAVITT:</p> <p>24 Q. Okay. And when you sold the property to</p> <p>25 Mr. Lowie, were there any restrictions on the property that</p>	<p style="text-align: right;">Page 199</p> <p>1 were disclosed to him?</p> <p>2 A. No. Everything -- everything's in our reps and</p> <p>3 warranties in that securities agreement.</p> <p>4 Q. Okay. And in that securities agreement, is there</p> <p>5 any rep or warranty that says Mr. Lowie cannot build on the</p> <p>6 golf course?</p> <p>7 A. No. I don't believe -- I don't believe the reps</p> <p>8 and warranties -- we did not rep that he could build. We</p> <p>9 did not rep that he could not build.</p> <p>10 MR. OGILVIE: Objection; the document speaks for</p> <p>11 itself.</p> <p>12 BY MR. LEAVITT:</p> <p>13 Q. Go ahead. You can continue.</p> <p>14 A. And we acknowledged that there was the BGC</p> <p>15 restriction, orally we talked about that a little bit. And,</p> <p>16 again, that was his to go and deal with.</p> <p>17 Q. Right.</p> <p>18 And he could actually terminate the BGC</p> <p>19 restriction on his own, correct?</p> <p>20 A. How -- however -- once he owned Fore Stars LLC,</p> <p>21 he could do what he needed to as Fore Stars LLC.</p> <p>22 Q. Understood.</p> <p>23 All right. And do you know -- do you know if --</p> <p>24 whether the property was zoned R-PD7?</p> <p>25 A. When we looked --</p>
<p style="text-align: right;">Page 200</p> <p>1 THE COURT REPORTER: Was zoned what, R? I'm</p> <p>2 sorry, what is it?</p> <p>3 MR. LEAVITT: R-PD7.</p> <p>4 THE WITNESS: When we looked it up for the rep and</p> <p>5 warranty section, we just went to the county and looked it</p> <p>6 up and saw that it was zoned R-PD7, so we put it into the</p> <p>7 document.</p> <p>8 BY MR. LEAVITT:</p> <p>9 Q. And I'll represent to you that Mr. Spitze, in his</p> <p>10 deposition, said that meant -- said that R-PD7 meant that</p> <p>11 residential units could be developed in R-PD7 zoning.</p> <p>12 Is that your understanding also?</p> <p>13 MR. OGILVIE: Objection; lacks foundation.</p> <p>14 THE WITNESS: I don't have an -- an understanding</p> <p>15 of what R-PD7 meant, other than -- I don't know where it</p> <p>16 means that you can develop that.</p> <p>17 BY MR. LEAVITT:</p> <p>18 Q. Understood.</p> <p>19 A. I know that it means residential plan development,</p> <p>20 seven units per acre. But where that applies exactly, I</p> <p>21 didn't have an understanding of.</p> <p>22 Q. Okay. But as far as you know, were there any</p> <p>23 restrictions in place -- let's start with: Were you aware</p> <p>24 of any legal restrictions in place that would prohibit the</p> <p>25 development of homes on the golf course?</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Other than our BGC restrictive covenant, other</p> <p>2 than that, I am not aware of any legal restrictions. But</p> <p>3 I'm -- I would go to our attorney and ask if there's legal</p> <p>4 restrictions.</p> <p>5 Q. So --</p> <p>6 MR. OGILVIE: I object to the last question as</p> <p>7 calling for a legal conclusion.</p> <p>8 BY MR. LEAVITT:</p> <p>9 Q. Okay. Okay. So if you wanted to know whether you</p> <p>10 could build where the grass was on the golf course, you</p> <p>11 would go to your attorney and you would get a legal opinion</p> <p>12 from him to make that determination?</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 A. And he would probably go to land use and check</p> <p>16 with land use. It would go to planning, I assume. But --</p> <p>17 but that's how it would go. I wouldn't just decide it.</p> <p>18 Q. And then would land use -- and when you say "land</p> <p>19 use," are you referring --</p> <p>20 A. The City.</p> <p>21 Q. Okay. City of Las Vegas Planning Department,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And then what would the City of Las Vegas Planning</p> <p>25 Department do? Would they give you a zoning verification</p>

<p style="text-align: right;">Page 202</p> <p>1 letter; is that what they would do?</p> <p>2 A. Um-hmm, typically.</p> <p>3 MR. OGILVIE: Objection; lacks foundation.</p> <p>4 BY MR. LEAVITT:</p> <p>5 Q. Okay. And what do you mean by --</p> <p>6 THE COURT REPORTER: I'm sorry, what was the</p> <p>7 answer?</p> <p>8 THE WITNESS: I said, yes, typically.</p> <p>9 BY MR. LEAVITT:</p> <p>10 Q. Okay. And what do you mean by, "yes, typically,"</p> <p>11 that's how the process works?</p> <p>12 A. When I'm -- when we're developing a piece of</p> <p>13 property, typically we'll go to land use and find out what's</p> <p>14 allowed, what's not allowed, what's the zoning, what it</p> <p>15 allows us to do. And so typically, I would go down or we</p> <p>16 would hire somebody to go down and -- and do that. It</p> <p>17 depends on the site, the piece of property, and the</p> <p>18 complexity.</p> <p>19 Q. Is that how you've done it for every one of your</p> <p>20 properties?</p> <p>21 A. Yes.</p> <p>22 MR. LEAVITT: Okay. All right. Okay. And if we</p> <p>23 could pull up Exhibit No. 20.</p> <p>24 THE COURT REPORTER: And can you guys try to slow</p> <p>25 down a little bit for me? It's been a long day.</p>	<p style="text-align: right;">Page 203</p> <p>1 MR. LEAVITT: Yes.</p> <p>2 THE WITNESS: Sorry.</p> <p>3 THE COURT REPORTER: Thank you.</p> <p>4 (Discussion off the record.)</p> <p>5 THE WITNESS: Okay. Go ahead.</p> <p>6 BY MR. LEAVITT:</p> <p>7 Q. Okay. Exhibit No. 20 is the application</p> <p>8 Mr. Peccole [sic] was referring to previously. And you'll</p> <p>9 remember that he referenced one, two, three, four, five</p> <p>10 lines down where it says PROS.</p> <p>11 You see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. Is there anything on this document where</p> <p>14 Mr. Miller is affirming that the general plan existing is</p> <p>15 PROS, or is this a document you would typically fill out and</p> <p>16 submit to the City because this is the type of document the</p> <p>17 City would want you to submit in order to get a general plan</p> <p>18 application?</p> <p>19 A. Generally --</p> <p>20 MR. OGILVIE: Objection; lacks foundation, vague</p> <p>21 and ambiguous, calls for speculation.</p> <p>22 BY MR. LEAVITT:</p> <p>23 Q. Go ahead. You can --</p> <p>24 A. Generally we would go down and we would get -- we</p> <p>25 would get this line, the general plan line. We would get</p>
<p style="text-align: right;">Page 204</p> <p>1 that from city planning.</p> <p>2 Q. Right.</p> <p>3 So this isn't something where you were signing and</p> <p>4 saying and committing and affirming, Hey, we believe that</p> <p>5 there's a PROS on the property; that's not what this</p> <p>6 document means?</p> <p>7 A. That is not what this document mean --</p> <p>8 Q. Okay.</p> <p>9 A. -- for us.</p> <p>10 MR. OGILVIE: Objection; lacks foundation, calls</p> <p>11 for a legal conclusion.</p> <p>12 MR. LEAVITT: Well, seems how you asked him</p> <p>13 questions about it, George, I thought I could ask him</p> <p>14 questions about it.</p> <p>15 MR. OGILVIE: I didn't ask him what it meant. I</p> <p>16 asked him what it was.</p> <p>17 MR. LEAVITT: I'm just -- I'm just getting on you</p> <p>18 a little bit, George. It's getting late.</p> <p>19 Q. (By Mr. Leavitt) Okay. All right. Let's turn</p> <p>20 to -- there were questions about the Peccole Ranch Master</p> <p>21 Plan, and Mr. Ogilvie asked you just a couple of questions</p> <p>22 on that and moved off the topic. I actually call it the</p> <p>23 "Peccole Ranch Concept Plan." But I just have a couple of</p> <p>24 questions for you there.</p> <p>25 There's an argument that's being made that the</p>	<p style="text-align: right;">Page 205</p> <p>1 Peccole Ranch Master Plan applied to the 250-acre property</p> <p>2 in this case, or otherwise known as the Badlands Golf</p> <p>3 Course, and what -- that was -- that was sold to Mr. Lowie</p> <p>4 or some other -- I shouldn't say it that way. That</p> <p>5 Mr. Lowie acquired through the Fore Stars transaction.</p> <p>6 Okay. So that argument is being made. I'm just</p> <p>7 representing that to you. And the arguments being made is</p> <p>8 that Phase II -- well, hold -- let's go back.</p> <p>9 The 250-acre property, the golf course property,</p> <p>10 is located in Phase II of the Peccole Ranch Concept Plan,</p> <p>11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Okay. Do you agree or disagree that the 250-acre</p> <p>14 property in this case is subject to the Peccole Ranch</p> <p>15 Concept Plan?</p> <p>16 A. I do not believe that the property north of</p> <p>17 Charleston was part of Peccole Ranch, as -- for the reason</p> <p>18 that none of that property is subject to Peccole Ranch HOA,</p> <p>19 we don't pay fees. If you talk to Jan Porter who</p> <p>20 administers the Peccole Ranch HOA, she will tell you none of</p> <p>21 that property is part of Peccole Ranch. And it's not</p> <p>22 contemplated that it -- it was part of Peccole Ranch other</p> <p>23 than by the City.</p> <p>24 Q. Okay. And what do you mean by there's -- you said</p> <p>25 it's not subject to HOA. What do you mean by that?</p>

<p style="text-align: right;">Page 206</p> <p>1 A. So when we created -- when the 1992 master plan 2 was created and we had the opportunity to annex property 3 into the master plan, as we annexed property into the master 4 plan, it became subject to it, and, thus, the declarant was 5 Peccole Ranch HOA. The person responsible to collect fees 6 and assessments was Peccole Ranch HOA. 7 Peccole Ranch HOA doesn't get fees or assessments 8 from Queensridge. It doesn't get them from the golf course. 9 It doesn't get them from Rampart Commons, Sir Williams 10 Court, 21 Stars, any of those entities that we talked about 11 earlier. And so it's never made sense to me that it was 12 part of Peccole Ranch Master Plan Phase II. 13 I agree with your idea that there's a concept 14 plan. Clearly there was a concept. There's no doubt about 15 it. We have the maps. But it -- it was never -- we did not 16 annex that property in. 17 Q. Okay. So that concept was never applied to the 18 250-acre property; is that correct? 19 A. That concept wasn't applied to any property north 20 of Charleston. 21 Q. Got it. Okay. 22 A. Not just the 250 acres. 23 Q. And so let me make sure I understand this. 24 So in order for the 250-acre property in this 25 case, the golf course, to be subject to the Peccole Ranch</p>	<p style="text-align: right;">Page 207</p> <p>1 Master Plan or Concept Plan, however you want to call it, it 2 would have had to have been annexed into that plan; is that 3 correct? 4 A. That's my understanding -- 5 MR. OGILVIE: Objection; calls for a legal 6 conclusion. 7 THE WITNESS: That's my understanding based on 8 reading the CC&Rs for Peccole Ranch. 9 BY MR. LEAVITT: 10 Q. Perfect. All right. And is that the un- -- is 11 that also written in the -- well, let me take a step back. 12 Are you familiar with the Queensridge CC&Rs? 13 A. I am familiar with the Queensridge CC&Rs. 14 Q. And isn't it true that the Queensridge CC&Rs also 15 include a provision that the Queensridge CC&Rs will only 16 apply to that property which is annexed into the Queensridge 17 CC&Rs? 18 A. That is correct. 19 Q. And isn't it true that the 250-acre property that 20 we've been discussing here, the golf course property, has 21 never been annexed into the Queensridge CC&Rs either? 22 A. Hence the designation "not a part of." 23 Q. Not a part of. Okay. 24 And when you say "not a part of," what are you 25 referring to?</p>
<p style="text-align: right;">Page 208</p> <p>1 A. Not a part of Queensridge. 2 Q. Got it. 3 A. Now, again, I would point you to Clyde. Clyde is 4 going to know more about that history than me. 5 Q. Okay. Well, actually, we can see what Clyde said 6 right here. This is on page -- this is Volume I of 7 Mr. Spitze's deposition. It's August 16th, 2019. And the 8 question is -- 9 MR. OGILVIE: What -- what -- what -- where are 10 you, Jim? 11 MR. LEAVITT: Sorry. Sorry, Mr. Ogilvie. Page 12 147, Volume I, line 24. 13 Q. (By Mr. Leavitt) The question is: 14 "And on Phase II," we're referring to the Peccole 15 Ranch Phase II, "there were two different plans. There was 16 the Peccole and the Triple Five plan." 17 And the Triple Five plan was the original plan 18 that your grandfather had entered into with Triple Five; is 19 that correct? 20 A. I don't know. 21 Q. Okay. Well, he had entered into some type of 22 arrangement with Triple Five to begin with, correct? 23 A. Yes. 24 Q. Okay. And then later on, that original Phase II 25 plan was abandoned, and a Queensridge plan was put in</p>	<p style="text-align: right;">Page 209</p> <p>1 place -- 2 A. Yes. 3 Q. -- is that correct? Okay. 4 A. That's the picture that's in our office. 5 Q. All right. Perfect. 6 So then -- let me continue. 7 "Question: And on Phase II, there were two 8 different plans. There was the Peccole and the Triple Five 9 plan?" 10 And the answer is: "Yes." 11 Then the question is: "Back in 1990, correct?" 12 The answer is: "Yes." 13 "And then after Mr. Peccole got into the 14 litigation with Triple Five and broke with Triple Five, then 15 a new plan came in, correct?" 16 "Yes." 17 You agree with that so far? 18 A. Yes. 19 Q. Okay. Then the next question is: 20 "Okay. That's your plan that you worked on." And 21 of course I'm speaking with Mr. Spitze right now. And he 22 said -- and I say, "right?" 23 And then he said: 24 "Answer: Yes." 25 "Question: And that would be -- maybe that would</p>

<p style="text-align: right;">Page 210</p> <p>1 be better to refer to the second plan as Phase II as the 2 Queensridge plan, correct?" 3 And he answers: "That's true." 4 Do you agree with all that? 5 A. I do. 6 Q. Okay. To summarize all that, there was this 7 Peccole Ranch Concept Plan for Phase II that was a concept 8 that may have, at some time in the future, applied to be 9 joined with the 250-acre property, correct? 10 A. That is how I understood it. 11 Q. And that Phase II Peccole Ranch Concept Plan that 12 may have applied to the 250-acre golf course property, in 13 this that we're talking about here, was abandoned; is that 14 correct? 15 MR. OGILVIE: Objection; lacks foundation. 16 THE WITNESS: (Inaudible) And they changed it for 17 the Queensridge plan. 18 MR. LEAVITT: Okay. 19 THE COURT REPORTER: I'm sorry, what was the 20 beginning of the answer? I didn't get the beginning. 21 THE WITNESS: And they changed it for the 22 Queensridge plan. 23 THE COURT REPORTER: No, the beginning, while 24 there was -- during the objection. 25 MR. LEAVITT: No, that's what he said.</p>	<p style="text-align: right;">Page 211</p> <p>1 THE COURT REPORTER: Okay. 2 MR. LEAVITT: Oh, let me rephrase. Let me -- let 3 me rephrase this. Okay? 4 MR. OGILVIE: Let me -- let me object so I don't 5 cut anyone off, because this is going to lack foundation. 6 He testified he doesn't have any understanding of what -- or 7 doesn't really have any intimate knowledge or -- he didn't 8 use those terms, but essentially no intimate knowledge of 9 what happened prior to him arriving in 2006. 10 MR. LEAVITT: Okay. 11 THE WITNESS: That's true. 12 BY MR. LEAVITT: 13 Q. Okay. And -- but you -- through your efforts as 14 the CEO and through your work as the CEO from 2005 and 2006 15 forward, you gained information and knowledge regarding the 16 historical use of the property, correct? 17 A. I gained some from reading the CC&Rs and trying to 18 go back and put this together when we were sued by Bob 19 Peccole. 20 Q. Okay. So as of 2006, while you were CEO, were you 21 aware of whether the Peccole Ranch Concept Plan applied to 22 the 250-acre property or not? 23 A. Let me restate -- 24 MR. OGILVIE: Objection; lacks, foundation, vague. 25 THE WITNESS: And let me restate, I was not the</p>
<p style="text-align: right;">Page 212</p> <p>1 CEO when I was six. Sorry. But my understanding is that 2 the -- the original master plan was not the Queensridge 3 master plan. They are -- they are different. 4 BY MR. LEAVITT: 5 Q. Right. 6 And so the original master plan, make sure I get 7 that right, is the Peccole Ranch Master Plan? 8 A. From 1992. 9 Q. From 1992. 10 Which was abandoned and replaced with the 11 Queensridge plan; is that your understanding? 12 A. (Inaudible.) 13 MR. OGILVIE: Objection; lacks foundation, calls 14 for a legal conclusion. 15 BY MR. LEAVITT: 16 Q. And Mr. Spitze was -- 17 THE COURT REPORTER: I'm sorry, what was the 18 answer? Because I can hear the attorneys louder than I can 19 hear the witness. Since I'm not in the room, I didn't hear 20 the answer. 21 MR. LEAVITT: He said, "Absolutely." 22 THE COURT REPORTER: Thank you. 23 MR. LEAVITT: Can -- can you confirm that you said 24 absolutely? 25 THE WITNESS: Yes, I -- I did say absolutely.</p>	<p style="text-align: right;">Page 213</p> <p>1 THE COURT REPORTER: I'm sorry. Just wait a 2 second before you answer in case there's an objection. 3 THE WITNESS: Okay. I'll go slower. 4 BY MR. LEAVITT: 5 Q. And you stated that Mr. Spitze would also have 6 information and knowledge regarding that because he was the 7 person who was actually involved in the planning documents 8 back in the 1990s, correct? 9 MR. WILLIAMS: Objection; speculation. 10 THE WITNESS: Yes, as far as I know, that's 11 correct. 12 BY MR. LEAVITT: 13 Q. Okay. All right. I'm going to come back to some 14 other questions here real quick. 15 But, Billy, you're not an appraiser -- did you 16 ever get an MAI designation as an appraiser? 17 A. No. 18 Q. Okay. And so you're not an appraiser? Okay. 19 A. No -- 20 Q. But you know how to -- 21 A. -- I'm not. 22 Q. You know how to value land, of course? 23 A. I feel that I can figure out a price for me to 24 purchase a piece of property for. 25 MR. LEAVITT: Okay. Butch, has an objection.</p>

<p style="text-align: right;">Page 214</p> <p>1 MR. WILLIAMS: Well, yeah. Again, lacks four- --</p> <p>2 lacks foundation.</p> <p>3 Go ahead.</p> <p>4 BY MR. LEAVITT:</p> <p>5 Q. Okay. Have you done an analysis to value that,</p> <p>6 the 250-acre property, as of September 14th, 2017?</p> <p>7 A. I have not.</p> <p>8 Q. Therefore, I assume that you don't know what the</p> <p>9 value of the 250-acre property is as of September 14th,</p> <p>10 2017.</p> <p>11 MR. OGILVIE: Objection; vague.</p> <p>12 THE WITNESS: I would say that the value of the</p> <p>13 property as of December 1st, 2014, was \$15 million owed.</p> <p>14 BY MR. LEAVITT:</p> <p>15 Q. Okay. But my question was a little different.</p> <p>16 Do you know what the value of the 250-acre</p> <p>17 property was as of September 14th, 2017?</p> <p>18 A. I do not.</p> <p>19 Q. Okay. And do you know what the value of the</p> <p>20 250-acre property is as of today?</p> <p>21 A. I do not.</p> <p>22 Q. Okay. Let me try and speed this up a little here.</p> <p>23 A. You're good. Go slow so she can type it good.</p> <p>24 Q. All right. At the time the 250-acre property</p> <p>25 was -- let me rephrase this.</p>	<p style="text-align: right;">Page 215</p> <p>1 At the time of the transfer or acquisition of the</p> <p>2 -- actually, I'm going to rephrase that.</p> <p>3 At the time of the acquisition of the Fore Stars</p> <p>4 entity by Mr. Lowie or his related entities, were there five</p> <p>5 separate parcels that were involved in that transfer?</p> <p>6 A. I'd have to go back and look at the document.</p> <p>7 Q. But the deed would say what those -- what those</p> <p>8 parcels were; is that correct?</p> <p>9 A. The deed would say what the parcels were.</p> <p>10 MR. LEAVITT: Let me grab one exhibit here, Billy,</p> <p>11 real quick.</p> <p>12 Jennifer, are you -- are you on the line there?</p> <p>13 MR. WILLIAMS: Doesn't look like it.</p> <p>14 MR. LEAVITT: Is Jennifer there, Elizabeth, or</p> <p>15 someone who can pull up an exhibit for me?</p> <p>16 MR. WILLIAMS: I can't hear.</p> <p>17 THE WITNESS: She's not answering.</p> <p>18 MS. HAM: Sorry. Hold on. She is here. I don't</p> <p>19 know that she has volume, though.</p> <p>20 THE WITNESS: The exhibit that you sent me is --</p> <p>21 MS. HAM: She has no microphone, so she can't</p> <p>22 answer, but she can hear what you're saying.</p> <p>23 MR. LEAVITT: Okay. Let's -- George, how do you</p> <p>24 want to do this? Do you want me to mark this as Exhibit No.</p> <p>25 53?</p>
<p style="text-align: right;">Page 216</p> <p>1 MR. OGILVIE: Sure. Yeah.</p> <p>2 MR. LEAVITT: All right.</p> <p>3 MR. OGILVIE: Yes, that's fine.</p> <p>4 MR. LEAVITT: Okay. So we're going to mark as</p> <p>5 Exhibit No. 53. And if Jennifer can pull it up, it's --</p> <p>6 it's B-PP 30 million memo.</p> <p>7 (Exhibit 53 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. LEAVITT:</p> <p>10 Q. Okay. All right. Let me hand this to you. I'm</p> <p>11 going to give you a hard copy here. So this is going to be</p> <p>12 marked as Exhibit No. -- what did we say?</p> <p>13 A. Fifty-three.</p> <p>14 Q. Fifty-three.</p> <p>15 Okay. And then I want you to take just a moment</p> <p>16 to familiarize yourself with that document.</p> <p>17 A. Okay.</p> <p>18 MR. MOLINA: We can't see it.</p> <p>19 THE WITNESS: I can -- you can't see it on the</p> <p>20 screen?</p> <p>21 MR. MOLINA: No.</p> <p>22 MR. OGILVIE: No.</p> <p>23 MR. LEAVITT: We can see it.</p> <p>24 MR. MOLINA: Okay. Now we can see it.</p> <p>25 MR. OGILVIE: Is this Bates numbered?</p>	<p style="text-align: right;">Page 217</p> <p>1 MR. LEAVITT: Yes. I'll -- actually, I'll</p> <p>2 identify the document right now. It's Bates No. LO 00037342</p> <p>3 and 37343, and it has been produced in this matter.</p> <p>4 Q (By Mr. Leavitt) Okay. And I want to come back,</p> <p>5 and I want to keep this document up. But what I want --</p> <p>6 what I want to do first really quick, Billy, is I want to</p> <p>7 put in a nutshell, because we just had probably like three</p> <p>8 hours of back and forth on what the hundred-million-dollar</p> <p>9 deal was.</p> <p>10 Can you just describe that very briefly, in your</p> <p>11 own words, what the hundred-million-dollar deal was, rather</p> <p>12 than going through all the documents? I understand it to</p> <p>13 be --</p> <p>14 A. Yeah. I just was waiting for an objection.</p> <p>15 Q. Yeah. You can describe it. There's no objection</p> <p>16 to you describing it.</p> <p>17 A. So --</p> <p>18 MR. OGILVIE: I will object that the documents</p> <p>19 speak for themselves.</p> <p>20 MR. LEAVITT: I agree with you on that one,</p> <p>21 George, but we're going to get his opinion on what the --</p> <p>22 THE WITNESS: The hundred million dollars</p> <p>23 represented us selling out of Queensridge Towers, the Tivoli</p> <p>24 piece of property, the Sahara and Hualapai piece of</p> <p>25 property, and -- and I believe Fort Apache, but I'm not 100</p>

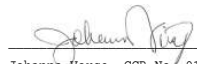
<p style="text-align: right;">Page 218</p> <p>1 percent certain on Fort Apache, if that was a separate 2 transaction that was outside of the IDB transactions. 3 BY MR. LEAVITT: 4 Q. Okay. And there was a hundred million dollars 5 that was paid to your family as part of those transactions; 6 is that correct? 7 A. That is correct. 8 Q. Okay. And that -- that agreement or that overall 9 agreement has been -- has been referred to as the 10 "Securities Agreement;" is that how it's been referred to? 11 A. Yes. 12 Q. Okay. And referring over to Exhibit No. 53, this 13 is minutes of a special meeting of board of directors of 14 Peccole-Nevada Corporation, correct? 15 A. That's what it looks like, yes. 16 Q. Okay. And on the back it's signed. 17 A. What's the date? 18 Q. Let's go there. It's right here. 19 A. September 6th, 2005. So this was before the 20 closing. 21 Q. Exact -- so it's actually right around the time of 22 the closing, correct? 23 A. Because the closing we determined was the 15th. 24 Q. Of September 2005, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 219</p> <p>1 Q. Okay. All right. And so this is the -- the meet- 2 -- or at least the minutes of this meeting that occurred on 3 September 6th, 2005, correct? 4 A. Um-hmm. 5 Now, if you'll notice, I was there too. 6 Q. Okay. So you were present at this -- do you 7 recall this meeting? 8 A. I do. 9 Q. Okay. And there has been, I'll represent to you, 10 an assertion by Mr. Lowie, or a representation by Mr. Lowie, 11 that as part of that hundred-million-dollar transaction, he 12 spoke to an individual at Peccole and advised them that as 13 part of this whole deal he wanted \$30 million to go to pay 14 American -- is it American Golf? 15 A. Um-hmm. 16 Q. -- American Golf, so that their leasehold interest 17 could be removed from the 250-acre property, so that he 18 could move forward, at some point in time in the future, 19 with purchasing that 250-acre property. So that -- that's 20 been the representation by Mr. Lowie, generally, that's been 21 made. Okay? And I'm going to walk through this a little 22 bit with you. 23 A. I don't agree with that, but go ahead. 24 Q. I got -- I understand. 25 So there's some disagreement over -- at least</p>
<p style="text-align: right;">Page 220</p> <p>1 Mr. Lowie says that a portion of that hundred million 2 dollars was supposed to be attributed to removing American 3 Golf from the golf course, and you disagree with that? 4 A. I disagree that Mr. Lowie -- Mr. Lowie weighed in 5 on how we should spend the hundred million dollars. 6 Q. Okay. And if you can -- can you turn over to -- 7 A. The second page? 8 Q. Yeah, the second page. 9 And on the second page there's a portion that's 10 highlighted. And I don't want to have to read, but I'm 11 going to read this part here. 12 It says, "Resolved further that this 13 corporation" -- and that's Peccole Corporation, correct? 14 A. Correct. 15 Q. -- "is directed to reserve a portion of the 16 proceeds" -- and the proceeds that's being referred to there 17 is \$100 million, correct? 18 A. Correct. 19 Q. -- "in a separate interest earning account prior 20 to any distributions to any shareholders of the corporation 21 from the sale of the securities." And the securities was 22 the hundred million dollars, correct? 23 A. Correct. 24 MR. OGILVIE: Objection; I don't see hundred 25 million dollars in here anywhere.</p>	<p style="text-align: right;">Page 221</p> <p>1 MR. LEAVITT: Understood. I'm asking him if 2 that's what it is. 3 MR. OGILVIE: Okay. The document speaks for 4 itself, and there's no reference to a hundred million 5 dollars in here. 6 MR. LEAVITT: Okay. We'll continue. Thank you 7 for the objection. 8 Q (By Mr. Leavitt) So it says, "from the sale of the 9 securities of approximately \$30 million to pay off the 10 current loan in full with Nevada State Bank related to the 11 purchase of the leasehold interest of the Badlands Golf 12 Course, when such loan can be paid." 13 Did that action occur? 14 A. This action occurred. 15 Q. Okay. 16 A. It did not occur in my recollection the way 17 Mr. Lowie remembers it occurring. 18 Q. Okay. 19 A. And if you'll note, this paragraph says "to pay 20 off the loan with Nevada State Bank." 21 We closed on the leasehold interest of the 22 property far before this with the loan that we originated 23 from collateralizing the Suncoast Hotel and Casino. 24 Q. Okay. 25 A. So once we realized our mistake on where the golf</p>

<p style="text-align: right;">Page 222</p> <p>1 course towers was being built, we went out, got a loan, and 2 fixed this problem before IDB came into the picture. So 3 then it was up to us at this meeting -- this was a family 4 meeting. The signatories on this signature was Larry, 5 Bruce, Kerry, my mom, and Jared Shafer was the trustee for 6 Leann, and I was on the -- the meeting as well over a phone 7 call. I was on the phone. And we decided as a family that 8 we needed to be careful and make sure that we paid off this 9 loan and not let this loan go because we were going to have 10 to take over operations of the golf course, and we did not 11 know how the golf course could support this loan going 12 forward. The Suncoast Hotel Casino could, but the golf 13 course could not.</p> <p>14 Q. Understood.</p> <p>15 Do you know whether Mr. Lowie had an option to 16 purchase or right of first refusal to purchase the 250-acre 17 golf course prior to 2006?</p> <p>18 A. From these documents that we looked at today, it 19 looks like he did.</p> <p>20 Q. Okay. And do you think he would have exercised 21 that right of first refusal or that option to purchase if 22 there was a \$30 million obligation on the golf course 23 property?</p> <p>24 MR. WILLIAMS: Objection; speculation.</p> <p>25 MR. OGILVIE: Calls -- yes, agreed.</p>	<p style="text-align: right;">Page 223</p> <p>1 BY MR. LEAVITT:</p> <p>2 Q. With that objection, go ahead.</p> <p>3 A. Do I think he would have?</p> <p>4 Q. Yeah.</p> <p>5 A. I don't think that he would have bought a golf 6 course with a \$30 million note on it and assumed that 7 obligation.</p> <p>8 Q. Okay.</p> <p>9 A. But I don't think that that happened the way that 10 he recollects.</p> <p>11 Q. I -- and I totally understand that. You have a 12 different recollection than him. And I'm -- every -- and 13 I'm here to tell you that you swore to tell the truth, so I 14 don't want to hear anything but other than what you think.</p> <p>15 A. That's my opinion.</p> <p>16 Q. Okay. I'm going to read to you a statement here 17 regarding the acquisition of the Fore Stars entity. Okay. 18 And I want you to tell me if it's true.</p> <p>19 MR. OGILVIE: What is it that you're reading from, 20 Counsel?</p> <p>21 MR. LEAVITT: It's going to be something I'm just 22 reading from. I'll -- I'm -- I'm going to read him a 23 statement, and I'm going to ask him if it's true. That's 24 all.</p> <p>25 MR. OGILVIE: What is it? What is it that you're</p>
<p style="text-align: right;">Page 224</p> <p>1 reading from?</p> <p>2 MR. LEAVITT: A document that I'm holding in my 3 hand, George. You'll -- you'll recognize it here in a 4 minute. Okay? So --</p> <p>5 MR. OGILVIE: Really? I object. Can you not play 6 games and just tell me what it is you're reading from?</p> <p>7 BY MR. LEAVITT:</p> <p>8 Q. I'm going to make a statement, and I'm going to 9 ask you if you agree with it. Okay?</p> <p>10 Mr. Lowie or his -- and/or his entities paid less 11 than 4.5 million for the land that comprised the golf course 12 and drainage; do you agree with that statement?</p> <p>13 A. Say it again.</p> <p>14 Q. Mr. Lowie or his entities, right -- and this is 15 referring to the acquisition of the 250-acre property.</p> <p>16 A. Okay.</p> <p>17 Q. Okay. So Mr. Lowie and/or his entities paid less 18 than \$4.5 million for the land that comprised the golf 19 course and drainage.</p> <p>20 A. Paid less? He paid 7.5 million for the golf 21 course. He paid 7.5 million for the water rights.</p> <p>22 Q. Okay. Let me ask that, how that -- how that is. 23 So you -- when that negotiation occurred, you sent 24 a price to Mr. Lowie for the purchase or the acquisition of 25 the Fore Stars entity, correct?</p>	<p style="text-align: right;">Page 225</p> <p>1 A. Well, I think we pretty comprehensively just went 2 over all of that.</p> <p>3 MR. WILLIAMS: (Inaudible), right?</p> <p>4 THE WITNESS: Yeah.</p> <p>5 MR. LEAVITT: Yeah.</p> <p>6 THE COURT REPORTER: I'm sorry, what was that, 7 Mr. Williams?</p> <p>8 MR. WILLIAMS: I'm sorry, I shouldn't have 9 commented. It was kind of a speaking objection. Let me 10 just pull it back.</p> <p>11 BY MR. LEAVITT:</p> <p>12 Q. Okay. So who set the price at 15 million?</p> <p>13 A. Yohan proposed in his LOI 12 million. We 14 countered at 15. He struck it in the redlines. He came 15 back and said that he would pay 3 million if we could 16 consummate the deal with IDB. We consummated the deal with 17 IDB, and we did a total price of \$15 million.</p> <p>18 Q. Okay. So that's my -- that's my point. Is there 19 was a total price of \$15 million that was agreed upon for 20 the golf course property, correct?</p> <p>21 A. That's correct.</p> <p>22 MR. OGILVIE: Objection; mischaracterizes the 23 documents.</p> <p>24 MR. LEAVITT: Okay.</p> <p>25 MR. OGILVIE: It's the golf course property and</p>

<p style="text-align: right;">Page 226</p> <p>1 the water rights.</p> <p>2 BY MR. LEAVITT:</p> <p>3 Q. Okay. Mr. Ogilvie is right, the golf course</p> <p>4 property, which included the water rights, correct?</p> <p>5 A. For those two documents, those two agreements, it</p> <p>6 was \$15 million total, 7 1/2 million for each one.</p> <p>7 Q. Okay. I want to take a step back. Okay.</p> <p>8 Before the price was separated out, you and Mr. --</p> <p>9 the Peccoles and Mr. Lowie had agreed upon \$15 million for</p> <p>10 that global asset, which would be all of the assets that</p> <p>11 Fore Star owned, including the property, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. That's what the initial agreement was, correct?</p> <p>14 A. Well, the initial agreement was 12 million from</p> <p>15 the LOI -- yes, we got to 15 million.</p> <p>16 Q. Got it.</p> <p>17 And then at some later date, that 15 million was</p> <p>18 separated out into 7.5 million for the land and 7.5 million</p> <p>19 for the water, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Do you know why that was done?</p> <p>22 A. They had to put a -- a price -- I don't know why.</p> <p>23 They had to put a price on the water rights, and -- and it's</p> <p>24 somewhat arbitrary. Water rights go for various prices</p> <p>25 based on the types of water rights they are. And so they --</p>	<p style="text-align: right;">Page 227</p> <p>1 that's the price they ascribed to them.</p> <p>2 Q. Okay. And you didn't care how they did that,</p> <p>3 correct?</p> <p>4 A. I didn't even get involved. You saw my e-mail.</p> <p>5 "Sounds great."</p> <p>6 Q. So you wanted -- you just wanted to make sure you</p> <p>7 got paid your \$15 million for the Fore Stars entity, which</p> <p>8 included the land with the water rights, correct?</p> <p>9 A. We needed \$15 million for the whole thing, yes.</p> <p>10 Q. And did you ever do an analysis to determine how</p> <p>11 much would be attributed to the land versus how much would</p> <p>12 be attributed to the water rights?</p> <p>13 A. No. Never cared.</p> <p>14 MR. LEAVITT: Okay. And, George, you're right. I</p> <p>15 apologize. George, I was reading from the declaration of</p> <p>16 Chris Molin- -- Molina. That was -- that was page 1, lines</p> <p>17 16 to 17.</p> <p>18 THE COURT REPORTER: How do you spell Molina?</p> <p>19 MR. MOLINA: M-o-l-i-n-a.</p> <p>20 THE COURT REPORTER: Thank you. You.</p> <p>21 BY MR. LEAVITT:</p> <p>22 Q. During the questioning, Mr. Bayne, in regards to</p> <p>23 this hundred-million-dollar transaction that occurred, I</p> <p>24 believe you used the word several times that it was a</p> <p>25 complicated transaction. Would you agree with that?</p>
<p style="text-align: right;">Page 228</p> <p>1 A. It was a complicated transaction.</p> <p>2 Q. And Mr. Ogilvie actually even said it had a lot of</p> <p>3 hair on it. Would you agree with that?</p> <p>4 A. I agree with Mr. Ogilvie it had a lot of hair on</p> <p>5 it.</p> <p>6 MR. OGILVIE: Objection; that mischaracterizes</p> <p>7 what I said. I said the asset purchase agreement, as</p> <p>8 opposed to the purchase of the entity, was beginning to get</p> <p>9 a lot of hair on it.</p> <p>10 THE WITNESS: I agree with that too.</p> <p>11 MR. LEAVITT: I agree with that too, George, and</p> <p>12 thanks for clarifying that.</p> <p>13 MS. HAM: I'm just going to object to the term of</p> <p>14 "a lot of hair on it," as (inaudible). I have no clue what</p> <p>15 you all are talking about, but sounds okay, I guess.</p> <p>16 MR. WILLIAMS: Oh, my mercy.</p> <p>17 MR. LEAVITT: What you gonna do, Butch?</p> <p>18 MR. WILLIAMS: You ride it out, is what you do.</p> <p>19 You just practice law.</p> <p>20 Sorry, Billy.</p> <p>21 THE WITNESS: You're fine.</p> <p>22 BY MR. LEAVITT:</p> <p>23 Q. I can probably wrap up like a whole bunch of</p> <p>24 questions with just one very pointed question.</p> <p>25 Would you agree that a golf course operation on</p>	<p style="text-align: right;">Page 229</p> <p>1 the -- based upon your past experience, a golf course</p> <p>2 operation on the 250-acre property was a financial failure?</p> <p>3 MR. OGILVIE: Lacks -- objection; lacks</p> <p>4 foundation, calls for an expert opinion.</p> <p>5 BY MR. LEAVITT:</p> <p>6 Q. Let me rephrase that.</p> <p>7 Based upon your experience, do you believe that</p> <p>8 the -- a golf course operation on the 250-acre property was</p> <p>9 not financially feasible?</p> <p>10 MR. OGILVIE: Same objection.</p> <p>11 THE WITNESS: It was not financially feasible for</p> <p>12 us.</p> <p>13 MR. LEAVITT: Okay. And briefly, Mr. -- actually,</p> <p>14 you know what, I'm not going to ask you that question.</p> <p>15 Okay. Can we take just a five-minute -- quick</p> <p>16 five-minute break?</p> <p>17 THE WITNESS: Sure.</p> <p>18 (Off the record.)</p> <p>19 MR. LEAVITT: Can you hear me, George?</p> <p>20 Okay. So, George, here's what I want to do, is</p> <p>21 I'm going to end my questioning here. It's -- but it's real</p> <p>22 late, so I'm going to reserve the right to call Mr. Bayne</p> <p>23 for a continued deposition, if I need to. There was a lot</p> <p>24 of documents that I saw today that were used as part of the</p> <p>25 deposition that I had not seen that were going to be used,</p>

<p>Page 230</p> <p>1 and so I haven't had a full and complete opportunity to go 2 through those documents that had been used and had been 3 marked. I don't know if I need to. But, if necessary, in 4 order to have the opportunity to review the documents and 5 because it's 6:00 o'clock -- almost 6:00 o'clock Utah time, 6 I'm going to just reserve that right, if necessary, again, 7 to continue the deposition of Mr. Bayne, and I'm not closing 8 my questioning, I guess is what I'm saying.</p> <p>9 MR. WILLIAMS: Right. And I'm going to -- I'm 10 going to object to continuing the deposition. We've gone -- 11 we've gone to seven hours that's allowed by the rule, so 12 we'll see what happens. I mean, if you guys want to get 13 together and have a few more questions for Billy, based upon 14 some things you look at, obviously we'll work with you any 15 way that we can. But I just -- I don't want to get into 16 another six or seven hours. It's trying enough, so --</p> <p>17 MR. OGILVIE: Well --</p> <p>18 MR. WILLIAMS: Anyway, that's all.</p> <p>19 MR. OGILVIE: -- I'm going to join your objection, 20 Butch.</p> <p>21 Jim, you can seek whatever you want, but I'm not 22 going to stipulate to that.</p> <p>23 MR. LEAVITT: Well, I'll depose Billy without you, 24 George.</p> <p>25 MR. WILLIAMS: All right. Are we wrapped up? How</p>	<p>Page 231</p> <p>1 do you want to work out Mr. Bayne's signing?</p> <p>2 MR. OGILVIE: Wait. Wait. Wait. So I didn't 3 realize Jim was -- was finishing for the day. I have some 4 follow-up.</p> <p>5 MR. WILLIAMS: You got about three minutes. Go.</p> <p>6 FURTHER EXAMINATION</p> <p>7 BY MR. OGILVIE:</p> <p>8 Q. Okay. Mr. Bayne, Mr. Leavitt covered with you 9 some Clyde Spitze testimony and -- and got from you that 10 Clyde Spitze would know better than -- than anybody the -- 11 the land use history of Badlands of -- well, first of all, 12 of Peccole Ranch Phase II.</p> <p>13 And my question was going to be: You would defer 14 to Mr. Spitze's testimony regarding the land use of Peccole 15 Ranch Phase I and Phase II; would you not?</p> <p>16 A. I would defer to Clyde on -- on that historical 17 stuff for sure.</p> <p>18 Q. And so Mr. Leavitt read for you a couple pieces of 19 Mr. Spitze's testimony. Let me read to you a couple more 20 and see if you agree with this.</p> <p>21 So in his deposition Volume I, at page 115, 22 beginning at line 21, I asked him:</p> <p>23 "So you had an understanding that there were 24 portions of Phase II," meaning Queensridge -- or, I mean, 25 meaning Peccole Ranch Master Plan Phase II, "that were</p>
<p>Page 232</p> <p>1 designated by the City in its general plan to be parks, 2 recreation, and open space. But as you were taking down the 3 applications needed to develop the property, advising the 4 City that you wanted to change what is reflected by the 5 general plan map on 2825 to what is designated in the map on 6 3607?"</p> <p>7 That was the question.</p> <p>8 He said: "Yes."</p> <p>9 And I said: "Okay."</p> <p>10 And he answered: "And they evidently did accept 11 it because that's exactly what it shows."</p> <p>12 And I asked him: "Right. That it was -- your 13 plans were incorporated into the City's general plan?"</p> <p>14 And he answered: "Yes."</p> <p>15 You don't have any knowledge or information 16 that -- that would be contrary to that, do you?</p> <p>17 A. I do not.</p> <p>18 MR. LEAVITT: Objection; lacks foundation and 19 contrary to the legal rulings in this case.</p> <p>20 BY MR. OGILVIE:</p> <p>21 Q. And Mr. -- I further asked Mr. Spitze: 22 "Okay. And earlier you testified that before you 23 took plans in, before your staff, you and your staff" --</p> <p>24 MR. LEAVITT: Hold on. Hold on. Hold on. 25 George, where are you at?</p>	<p>Page 233</p> <p>1 MR. OGILVIE: Page 116, beginning at line 25.</p> <p>2 MR. LEAVITT: Got you.</p> <p>3 BY MR. OGILVIE:</p> <p>4 Q. I said: "Okay. And earlier you testified that 5 before you took the plans in, before your staff -- you and 6 your staff took the plans in, you would sit down with Bill 7 Peccole and perhaps his attorney and maybe Larry Miller, 8 maybe Larry Miller, maybe not, and went through these 9 applications with Bill Peccole?"</p> <p>10 And he answered: "Absolutely."</p> <p>11 Is that consistent with your understanding of 12 the -- Mr. -- your grandfather's oversight of the 13 development of Peccole Ranch and Badlands, that -- that all 14 applications would have gone -- been gone through with him?</p> <p>15 A. That's my understanding of how -- how Clyde and my 16 grandfather interacted.</p> <p>17 Q. Okay. And he -- he testified further at line 14 18 on page -- whatever the next page is, Jim. Give me a 19 second.</p> <p>20 MR. LEAVITT: 117.</p> <p>21 BY MR. OGILVIE:</p> <p>22 Q. 117, he testified further, "We didn't do anything 23 without Mr. Peccole's approval of everything we did."</p> <p>24 Does that sound consistent with your understanding 25 of the way your grandfather operated Peccole-Nevada?</p>

<p style="text-align: right;">Page 234</p> <p>1 Peccole -- yes, Peccole-Nevada.</p> <p>2 A. It does. And I would be surprised if they did</p> <p>3 anything without my grandfather at least knowing about it.</p> <p>4 Q. Okay. And further on, on page 119, beginning at</p> <p>5 line 6, I asked him:</p> <p>6 "Do you have an understanding of whether or not</p> <p>7 Mr. Peccole -- I'm not asking you if Mr. Peccole had an</p> <p>8 understanding. I'm asking: Do you have an understanding of</p> <p>9 whether or not Mr. Peccole knew that there were portions of</p> <p>10 Phase II that were designated by the City in its general</p> <p>11 plan as parks, recreation, and open space?"</p> <p>12 And Mr. Spitze answered: "I am absolutely sure he</p> <p>13 did."</p> <p>14 Is that consistent with your understanding?</p> <p>15 MR. LEAVITT: Well, hold on. I'm going to object</p> <p>16 right there. I don't see that answer.</p> <p>17 MR. OGILVIE: "I am absolutely sure he did," at</p> <p>18 line 12.</p> <p>19 MR. LEAVITT: Which page are you on, George?</p> <p>20 MR. OGILVIE: I think 119.</p> <p>21 MR. LEAVITT: You skipped two pages. Okay.</p> <p>22 Sorry. Okay. I got you. Okay. Go ahead.</p> <p>23 BY MR. OGILVIE:</p> <p>24 Q. Let me restate it.</p> <p>25 I asked Mr. Spitze:</p>	<p style="text-align: right;">Page 235</p> <p>1 "Do you have an understanding of whether or not</p> <p>2 Mr. Peccole knew that there were portions of Phase II that</p> <p>3 were designated by the City in its general plan as parks,</p> <p>4 recreation, and open space?"</p> <p>5 And his response was: "I am absolutely sure he</p> <p>6 did."</p> <p>7 Do you have any knowledge or information that</p> <p>8 would be contrary to that testimony?</p> <p>9 A. I do not.</p> <p>10 Q. Now, Mr. Leavitt asked you about the annexation of</p> <p>11 Phase II of Peccole Ranch Master Plan into -- into Phase I</p> <p>12 or into Peccole Ranch. And I believe you were testifying</p> <p>13 that Phase II was never annexed into the CC&Rs or to the --</p> <p>14 the community, the Peccole Ranch Community, or -- or, I'm</p> <p>15 sorry, common interest community.</p> <p>16 That's -- whether or not it was annexed into the</p> <p>17 Peccole Ranch Common Interest Community doesn't mean that it</p> <p>18 wasn't part of the Peccole Ranch Master Plan, does it?</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. But that -- that was a distinction you were</p> <p>21 drawing, was that you don't believe anything north of</p> <p>22 Charleston was annexed into the common interest community,</p> <p>23 the Peccole Ranch Common Interest Community?</p> <p>24 A. That is what -- that is what I said, yes.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 236</p> <p>1 A. That is my belief.</p> <p>2 Q. Mr. Leavitt asked you some questions about</p> <p>3 valuation, and you said you -- your knowledge is that the</p> <p>4 value was \$15 million total as of December 1st, 2014.</p> <p>5 That \$15 million total, that's for the -- the --</p> <p>6 what ultimately became the purchase agreement for WRL and</p> <p>7 the purchase agreement of Fore Stars, correct?</p> <p>8 A. And the business interest, yes.</p> <p>9 Q. Okay. And the business interest.</p> <p>10 And then Mr. -- addressing -- addressing</p> <p>11 Mr. Leavitt's quote of Mr. Molina's declaration, which I'm</p> <p>12 paraphrasing, Lowie paid -- Mr. Lowie paid less than \$4 1/2</p> <p>13 million for the golf course.</p> <p>14 You know how he came to that, that valuation,</p> <p>15 right? He took the \$7 1/2 million and reduced it by the</p> <p>16 value of the equipment that you testified was worth no more</p> <p>17 than 2- or \$300,000, so let's -- let's call it \$100,000,</p> <p>18 just for sake of the question. So it reduces the \$7 1/2</p> <p>19 million purchase price of Fore Stars to 7.4 for the real</p> <p>20 property. And then the -- the 250 acres that's at issue in</p> <p>21 these lawsuits doesn't include the property -- the</p> <p>22 two-point-something acres that you valued at \$3 million that</p> <p>23 you got in the -- in the election by Queensridge Towers on</p> <p>24 the Clubhouse Improvements Agreement. So reducing that --</p> <p>25 call it 7.4 by \$3 million, that would be less than \$4 1/2</p>	<p style="text-align: right;">Page 237</p> <p>1 million for the 250-acre golf course, correct?</p> <p>2 MS. HAM: I'll make an objection on the record to</p> <p>3 the form of the question.</p> <p>4 MR. LEAVITT: Yeah. And it lacks foundation and</p> <p>5 assumes evidence not in -- or assumes facts not in evidence.</p> <p>6 It's speculative, conjectural, and confusing.</p> <p>7 Do you have another one?</p> <p>8 MR. WILLIAMS: Objection; vague and ambiguous.</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. You can answer.</p> <p>11 A. I got to learn how this objection stuff works.</p> <p>12 I mean, based on what you said, I don't have an</p> <p>13 argument.</p> <p>14 MR. OGILVIE: Okay. I don't have anything</p> <p>15 further.</p> <p>16 FURTHER EXAMINATION</p> <p>17 BY MR. LEAVITT:</p> <p>18 Q. Okay. Let me ask a question here, though.</p> <p>19 Because previously I asked you if it was true that Mr. Lowie</p> <p>20 paid less than \$4.5 million for the land, and you said that</p> <p>21 was not true, correct?</p> <p>22 A. It was not. The purchase and sales securities</p> <p>23 agreement was for 7.5 million.</p> <p>24 Q. Okay.</p> <p>25 A. But if you want to do the math that way --</p>

<p style="text-align: right;">Page 238</p> <p>1 Q. Yeah.</p> <p>2 A. -- I guess you could elect to do the math that</p> <p>3 way.</p> <p>4 Q. But you -- you don't necessarily agree with that</p> <p>5 math?</p> <p>6 A. When -- when you asked the question: Did he pay</p> <p>7 me less than \$4 1/2 million, I got \$7.5 million --</p> <p>8 Q. Okay.</p> <p>9 A. -- on my end.</p> <p>10 MR. OGILVIE: Is that it?</p> <p>11 MR. LEAVITT: That's it.</p> <p>12 MR. OGILVIE: Thank you, Mr. Bayne. Appreciate</p> <p>13 it.</p> <p>14 THE WITNESS: Thanks guys.</p> <p>15 MR. WILLIAMS: Hold on. Let's figure out about</p> <p>16 this reading and signing little thing that we have to figure</p> <p>17 out.</p> <p>18 MR. OGILVIE: Oh, and -- and there was Exhibit 53.</p> <p>19 How is that going to get transmitted to the court reporter?</p> <p>20 MR. LEAVITT: Elizabeth, does your office want to</p> <p>21 handle that, transmitting that to the court reporter?</p> <p>22 MS. HAM: Yes. Remind me, I'm sorry, what Exhibit</p> <p>23 No. 53 was.</p> <p>24 MR. LEAVITT: That's the -- Jennifer knows which</p> <p>25 one it is.</p>	<p style="text-align: right;">Page 239</p> <p>1 MS. HAM: Can we share the court reporter's</p> <p>2 information with my office, please?</p> <p>3 (Discussion off the record.)</p> <p>4 MR. WILLIAMS: All right. Everybody jumped the</p> <p>5 gun here. Reading and signing, let's go back to that. How</p> <p>6 do you want to do it? Billy's in Mapleton, Utah. If you</p> <p>7 want to send it to me at my e-mail, I can give it to Billy.</p> <p>8 MR. OGILVIE: Perfect. Works for me. Any</p> <p>9 notary -- any notary works.</p> <p>10 MR. WILLIAMS: Okay. And, George, if you'll just</p> <p>11 share with the court reporter my e-mail, that would be</p> <p>12 fabulous.</p> <p>13 (The deposition was concluded at</p> <p>14 5:01 p.m.)</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>																																																								
<p style="text-align: right;">Page 240</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF NEVADA)</p> <p>3) SS</p> <p>4 COUNTY OF CLARK)</p> <p>5 I, Johanna Vorce, Certified Court Reporter, do</p> <p>6 hereby certify:</p> <p>7 That I reported the taking of the deposition of</p> <p>8 the witness, WILLIAM BAYNE, commencing on Friday, July 16,</p> <p>9 2021, at 9:10 a.m.</p> <p>10 That prior to being examined, the witness was by</p> <p>11 me duly sworn to testify to the truth.</p> <p>12 That I thereafter transcribed my shorthand notes,</p> <p>13 and the typewritten transcript of said deposition is a</p> <p>14 complete, true, and accurate transcription of said shorthand</p> <p>15 notes.</p> <p>16 That a request has been made to review the</p> <p>17 transcript.</p> <p>18 I further certify that I am not a relative or</p> <p>19 employee of an attorney or counsel of any party involved in</p> <p>20 said action, nor a relative or employee of the parties</p> <p>21 involved, nor a person financially interested in said</p> <p>22 action.</p> <p>23 Dated this 27th day of July, 2021.</p> <p>24 </p> <p>25 Johanna Vorce, CCR No. 913</p>	<p style="text-align: right;">Page 241</p> <p>1 ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4 I declare under penalty of perjury that I have read the</p> <p>5 foregoing _____ pages of my testimony, taken</p> <p>6 on _____ (date) at</p> <p>7 _____ (city), _____ (state),</p> <p>8</p> <p>9 and that the same is a true record of the testimony given</p> <p>10 by me at the time and place herein</p> <p>11 above set forth, with the following exceptions:</p> <p>12</p> <table border="1"> <thead> <tr> <th>Page</th> <th>Line</th> <th>Should read:</th> <th>Reason for Change:</th> </tr> </thead> <tbody> <tr><td>13</td><td></td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td><td></td></tr> </tbody> </table>	Page	Line	Should read:	Reason for Change:	13				14				15				16				17				18				19				20				21				22				23				24				25			
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ERRATA SHEET				Page 242	Page 243			
Page	Line	Should read:	Reason for Change:					
1					1	HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE		
2					2	Litigation Services is committed to compliance with applicable federal		
3					3	and state laws and regulations ("Privacy Laws") governing the		
4					4	protection and security of patient health information. Notice is		
5					5	hereby given to all parties that transcripts of depositions and legal		
6					6	proceedings, and transcript exhibits, may contain patient health		
7					7	information that is protected from unauthorized access, use and		
8					8	disclosure by Privacy Laws. Litigation Services requires that access,		
9					9	maintenance, use, and disclosure (including but not limited to		
10					10	electronic database maintenance and access, storage, distribution/		
11					11	dissemination and communication) of transcripts/exhibits containing		
12					12	patient information be performed in compliance with Privacy Laws.		
13					13	No transcript or exhibit containing protected patient health		
14					14	information may be further disclosed except as permitted by Privacy		
15					15	Laws. Litigation Services expects that all parties, parties'		
16					16	attorneys, and their HIPAA Business Associates and Subcontractors will		
17					17	make every reasonable effort to protect and secure patient health		
18					18	information, and to comply with applicable Privacy Law mandates,		
19	Date:				19	including but not limited to restrictions on access, storage, use, and		
20					20	disclosure (sharing) of transcripts and transcript exhibits, and		
21					21	applying "minimum necessary" standards where appropriate. It is		
22					22	recommended that your office review its policies regarding sharing of		
23					23	transcripts and exhibits - including access, storage, use, and		
24					24	disclosure - for compliance with Privacy Laws.		
25					25	© All Rights Reserved. Litigation Services (rev. 6/1/2019)		

Exhibit 2

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 180 LAND COMPANY, LLC, a Nevada)
5 limited liability company; DOE)
6 INDIVIDUALS I through X; DOE)
7 CORPORATIONS I through X; and DOE)
8 LIMITED LIABILITY COMPANIES I)
9 through X,)
10 Plaintiffs,)
11) CASE NO: A-17-758528-J
12 vs.) DEPT NO: XVI
13)
14 CITY OF LAS VEGAS, a political)
15 subdivision of the State of)
16 Nevada; ROE GOVERNMENT ENTITIES I)
17 through X; ROE CORPORATIONS I)
18 through X; ROE INDIVIDUALS I)
19 through X; ROE LIMITED-LIABILITY)
20 COMPANIES I through X; ROE)
21 QUASI-GOVERNMENTAL ENTITIES I)
22 through X,)
23 Defendants.)
24)
25)

16
17
18
19 CONFIDENTIAL DEPOSITION OF YOHAN LOWIE
20 LAS VEGAS, NEVADA
21 THURSDAY, AUGUST 12, 2021
22
23 REPORTED BY: VANESSA LOPEZ, CCR NO. 902
24 JOB NO.: 784812
25

CONFIDENTIAL TRANSCRIPT OF YOHAN LOWIE - 08/12/2021

<p align="right">Page 2</p> <p>1 CONFIDENTIAL DEPOSITION OF YOHAN LOWIE held at 2 McDonald Carano, located at 2300 West Sahara Avenue, Suite 3 1200, Las Vegas, Nevada, on THURSDAY, August 12, 2021, at 4 9:22 a.m., before Vanessa Lopez, Certified Court Reporter, 5 in and for the State of Nevada. 6 APPEARANCES: 7 For Plaintiff 180 Land Company, LLC: 8 9 LAW OFFICES OF KERMITT L. WATERS 10 BY: JAMES LEAVITT, ESQ. 11 704 South 9th Street 12 Las Vegas, Nevada 89101 13 (702) 733-8877 14 jim@kermittwaters.com 15 For Plaintiff Fore Stars, Limited: 16 EHB COMPANIES 17 BY: ELIZABETH GHANEM HAM, ESQ. 18 TODD DAVIS, ESQ. 19 1215 South Fort Apache Road, Suite 120 20 Las Vegas, Nevada 89117 21 (702) 940-6930 22 eham@ehbcompanies.com 23 tdavis@ehbcompanies.com 24 For Defendant City of Las Vegas: 25 McDONALD CARANO 26 BY: GEORGE F. OGILVIE III, ESQ. 27 CHRISTOPHER MOLINA, ESQ. 28 2300 West Sahara Avenue, Suite 1200 29 Las Vegas, Nevada 89102 30 (702) 873-4100 31 gogilvie@mcdonaldcarano.com 32 33 - AND - 34 35 LAS VEGAS CITY ATTORNEYS OFFICE 36 BY: REBECCA WOLFSON, ESQ. 37 495 South Main Street, 6th Floor 38 Las Vegas, Nevada 89101 39 (702) 229-6629 40 rwolfson@lasvegasnevada.gov</p>	<p align="right">Page 3</p> <p align="center">I N D E X</p> <p>1 WITNESS: YOHAN LOWIE 2 EXAMINATION 3 4 By Mr. Ogilvie 5 By Mr. Leavitt 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p align="right">PAGE</p> <p align="right">6, 226 218</p> <p align="center">I N D E X</p> <p>9 NUMBER 10 Exhibit 1 11 Exhibit 2 12 13 Exhibit 3 14 15 Exhibit 4 16 Exhibit 5 17 Exhibit 6 18 19 Exhibit 7 20 21 Exhibit 8 22 Exhibit 9 23 Exhibit 10 24 Exhibit 11 25</p> <p align="right">PAGE</p> <p align="right">Ownership Chart 8 Interrogatories 12 Verification Dated August 1, 2019 Interrogatories 19 Verification Dated October 31, 2019 Interrogatories 2nd Supplement 22 Interrogatories 3rd Supplement 23 June 25, 2015, Letter from 25 The Calida Group Agreement of Purchase and Sale 27 of Property Declaration of Yohan Lowie 29 CLV125530 37 Declaration of Yohan Lowie 39 Record of Survey Boundary Line 57 Adjustment</p>
<p align="right">Page 4</p> <p>1 Exhibit 12 Flash Drive and Flash Drive 63 2 Contents 3 Exhibit 13 Terms Sheet 70 4 Exhibit 14 Securities Redemption Agreement 93 5 dated September 14, 2005 6 Exhibit 15 Securities Purchase Agreement (QT) 93 7 Exhibit 16 Securities Redemption Agreement 93 8 Exhibit 17 Securities Purchase Agreement (GW) 93 9 Exhibit 18 Securities Redemption Agreement 93 10 Exhibit 19 Securities Purchase Agreement (SH) 93 11 Exhibit 20 Badlands Golf Course Clubhouse 119 12 Improvements Agreement 13 Exhibit 21 Complaint 124 14 Exhibit 22 Settlement Agreement 127 15 Exhibit 23 Restrictive Covenant 152 16 Exhibit 24 Settlement Agreement and Mutual 153 17 Release 18 Exhibit 25 PNC000748 154 19 Exhibit 26 June 12, 2014, Letter 155 20 Exhibit 27 E-mail Exchange and Purchase and 157 21 Sale Agreement 22 Exhibit 28 E-mails 162 23 Exhibit 29 PNC000756-PNC000757 163 24 Exhibit 30 PNC000082 165 25 Exhibit 31 PNC001648-PNC001650 166</p>	<p align="right">Page 5</p> <p>1 Exhibit 32 E-mail and Membership Interest 169 2 Purchase and Sale Agreement 3 Exhibit 33 E-mails 171 4 Exhibit 34 LO 0018084 172 5 Exhibit 35 PNC001241-PNC001242 176 6 Exhibit 36 LO 0024862 - LO 0024863 178 7 Exhibit 37 Membership Interest Purchase 180 8 and Sale Agreement 9 Exhibit 38 PNC000373-PNC000380 187 10 Exhibit 39 LO 0018083 - LO 0018084 187 11 Exhibit 40 December 23, 2014, Letter from 194 12 Bobby Weed Golf Design 13 Exhibit 41 LO 00009125 195 14 Exhibit 42 Badlands Conceptual Land 206 15 Use Scenario 16 Exhibit 43 February 16, 2017, Letter 209 17 Exhibit 44 May 27, 2016, Letter from 214 18 The Calida Group 19 20 21 22 23 24 25</p>

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<p style="text-align: right;">Page 6</p> <p>1 LAS VEGAS, NEVADA; THURSDAY, AUGUST 12, 2021</p> <p>2 9:22 A.M.</p> <p>3 -000-</p> <p>4 (The Reporter was relieved of her duties</p> <p>5 under NRCP 30(b)(4).)</p> <p>6 Whereupon,</p> <p>7 YOHAN LOWIE,</p> <p>8 having been first duly sworn by the court reporter to</p> <p>9 testify to the truth, the whole truth, and nothing but the</p> <p>10 truth, was examined and testified under oath as follows:</p> <p>11</p> <p>12 EXAMINATION</p> <p>13 BY MR. OGILVIE:</p> <p>14 Q. Good morning, Mr. Lowie. My name is George</p> <p>15 Ogilvie. I represent City of Las Vegas in this action that</p> <p>16 180 Land has brought against the City relative to the 35</p> <p>17 acre case.</p> <p>18 Would you please state and spell your full name</p> <p>19 for the record.</p> <p>20 A. Yohan Lowie, Y-O-H-A-N, L-O-W-I-E.</p> <p>21 Q. Mr. Lowie, you have still a little bit of an</p> <p>22 accent and you speak relatively quickly. So there may be</p> <p>23 times that I ask you to repeat something or to slow down a</p> <p>24 little bit just so the court reporter seated to your left</p> <p>25 can get -- make a clear record. Okay?</p>	<p style="text-align: right;">Page 7</p> <p>1 A. Okay.</p> <p>2 Q. Not trying to be rude. I just want to make sure</p> <p>3 we have a clear record.</p> <p>4 Mr. Lowie, we're here for your deposition this</p> <p>5 morning in the -- well, what the lawyers refer to as the 35</p> <p>6 acre case. Are you familiar with that reference?</p> <p>7 A. Yes.</p> <p>8 Q. And is it consistent with your understanding that</p> <p>9 the 35 acre case involves inverse condemnation actions</p> <p>10 against City of Las Vegas for the City's denial of land use</p> <p>11 applications relative to 35 acres -- a 35-acre portion of</p> <p>12 the Badlands -- former Badlands Golf Course?</p> <p>13 A. I don't understand what you mean. I understand</p> <p>14 this case about inverse condemnation.</p> <p>15 Q. Okay. And -- but you understand it relates to a</p> <p>16 35-acre parcel of the former Badlands Golf Course. Is that</p> <p>17 right?</p> <p>18 A. I do.</p> <p>19 Q. Okay. What did you do in preparation for your</p> <p>20 deposition today?</p> <p>21 A. I went over some materials. That -- exhibits.</p> <p>22 Q. What materials, specifically, did you go over?</p> <p>23 A. My declarations, some of the plans for the</p> <p>24 property, and some -- the valuation that we came -- we came</p> <p>25 up with.</p>
<p style="text-align: right;">Page 8</p> <p>1 Q. Did you speak with anyone in preparation for your</p> <p>2 deposition today?</p> <p>3 A. I spoke with my lawyers.</p> <p>4 Q. Your lawyers?</p> <p>5 A. Yes.</p> <p>6 Q. And specifically whom?</p> <p>7 A. The two to my right, Elizabeth and Jim.</p> <p>8 Q. Ms. Ghanem Ham and Mr. Leavitt. Correct?</p> <p>9 A. Correct.</p> <p>10 Q. What is -- well, let me have a document marked.</p> <p>11 (Exhibit 1 was marked.)</p> <p>12 THE WITNESS: Thank you.</p> <p>13 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>14 what's been marked as Exhibit 1, it's entitled Badlands Land</p> <p>15 Ownership Ownership Chart. It was produced by Fore Stars.</p> <p>16 I don't know -- is it in this litigation?</p> <p>17 MR. MOLINA: In Allen Nel litigation.</p> <p>18 Q. (By Mr. Ogilvie) In, oh, Allen Nel litigation.</p> <p>19 Have you seen this document before?</p> <p>20 A. Not specifically this one --</p> <p>21 Q. Okay. Let me --</p> <p>22 A. -- that I recall.</p> <p>23 Q. That's fine. Let me take you to the second line</p> <p>24 of the ownership chart. There are three blue boxes that</p> <p>25 reference some entities. There is the first box to the left</p>	<p style="text-align: right;">Page 9</p> <p>1 identified as merger of Ramalta, LLC, into Fore Stars</p> <p>2 Limited, LLC. Indicates the manager of -- or the manager is</p> <p>3 EHB Companies, LLC.</p> <p>4 Are you familiar with those entities?</p> <p>5 A. With 180 Land Company and the manager EHB company,</p> <p>6 yes, I do.</p> <p>7 Q. I just want to focus, first of all, on the box on</p> <p>8 the far left. Ramalta, LLC, Fore Stars, Limited, LLC, and</p> <p>9 EHB Companies, LLC, are you familiar with those entities?</p> <p>10 A. With EHB company, I'm very familiar, LLC. I'm not</p> <p>11 as -- I don't recall the membership interest in Ramalta that</p> <p>12 acquired Fore Stars. I understand that this black above,</p> <p>13 but I don't recall.</p> <p>14 (Reporter requested clarification.)</p> <p>15 THE WITNESS: That it's the black above. If</p> <p>16 that's correct, I don't know. I don't recall.</p> <p>17 Q. (By Mr. Ogilvie) So when you say at the black</p> <p>18 above, you're referring to the top black box, the first line</p> <p>19 that says LM Crown Estate, comma, LLC?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. So you indicated you're very familiar with</p> <p>22 EHB Companies, LLC. What is EHB Companies, LLC?</p> <p>23 A. EHB Company, LLC, is brand-new.</p> <p>24 Q. Okay. Are you a participant in that entity?</p> <p>25 A. I believe I am. I'm a member.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. You're a member of --</p> <p>2 A. Correct.</p> <p>3 Q. -- EHB Companies, LLC? Who are the other members</p> <p>4 of EHB?</p> <p>5 A. Paul Dehart and Vickie Dehart.</p> <p>6 Q. Moving to the -- I'm sorry. Staying in that same</p> <p>7 box, Fore Stars limited. Are you familiar with Fore Stars?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. What is Fore Stars?</p> <p>10 A. Fore Stars is a company that we acquired.</p> <p>11 Q. And when you say "we," who are you referring to?</p> <p>12 A. See -- would show here that Ramalta acquired to LM</p> <p>13 Crown, LLC.</p> <p>14 Q. Are you familiar with LM Crown Estate, LLC?</p> <p>15 A. I'm repeating my testimony. I'm familiar. I just</p> <p>16 don't recall, you know -- I don't recall too much about it.</p> <p>17 I know this company was created as a holding company.</p> <p>18 Q. Okay?</p> <p>19 A. I don't . . .</p> <p>20 Q. And from this chart, it would appear that at least</p> <p>21 at one time Fore Stars was a subsidiary of LM Crown Estate,</p> <p>22 LLC.</p> <p>23 A. I cannot say that. I don't know.</p> <p>24 Q. Okay. Moving to the next box to the right, 180</p> <p>25 Land Company, LLC. Are you familiar with 180 Land Company?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Yes.</p> <p>2 Q. And what is 180 Land Company, LLC?</p> <p>3 A. It's a company that is holding about 180 acres of</p> <p>4 land, mostly back to people homes of Queensridge which we</p> <p>5 created.</p> <p>6 Q. When you say "we," who are you referring to?</p> <p>7 A. At the time, that's how the vision was created. A</p> <p>8 company to acquire -- to -- to acquire that portion of the</p> <p>9 property.</p> <p>10 Q. Okay. I understand. I'm -- you said "we," "we</p> <p>11 created." Who is "we"?</p> <p>12 A. Management.</p> <p>13 Q. Management?</p> <p>14 A. Myself and -- myself and my partners at the time.</p> <p>15 Q. Paul Dehart and Vickie Dehart?</p> <p>16 A. Paul Dehart, Vickie Dehart, and the lawyers.</p> <p>17 Management. Entire management team in the office.</p> <p>18 Q. Okay. I think I understand it, but I'm just</p> <p>19 trying to make sure the record is clear who you're referring</p> <p>20 to.</p> <p>21 A. Management would be managers in the company and</p> <p>22 people that holding positions in the company.</p> <p>23 Q. When you say "the company," you are referring to</p> <p>24 EHB Companies?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 12</p> <p>1 Q. Is that -- strike that.</p> <p>2 Moving to the right, the next box, 70 Acres, LLC.</p> <p>3 What is 70 Acres?</p> <p>4 A. It's a company that holds approximately 70 Acres.</p> <p>5 Q. Of the former Badlands Golf Course?</p> <p>6 A. Yes.</p> <p>7 (Exhibit 2 was marked.)</p> <p>8 Q. (By Mr. Ogilvie) Let me direct your attention to</p> <p>9 what's been marked as Exhibit 2, which is entitled Plaintiff</p> <p>10 180 Land Company, LLC's, Responses to Defendant City of Las</p> <p>11 Vegas' First Set of Interrogatories to Plaintiff.</p> <p>12 And, specifically, I would refer your -- direct</p> <p>13 your attention to what's page 20 and ask you if that is your</p> <p>14 signature on behalf of 180 Land Company.</p> <p>15 A. It is.</p> <p>16 Q. Okay. And the verification above that states, I,</p> <p>17 Yohan Lowie, being duly sworn, hereby depose and say that</p> <p>18 the undersigned has read the foregoing Plaintiff 180 Land</p> <p>19 Company, LLC's, Response to Defendant City of Las Vegas'</p> <p>20 First Set of Interrogatories to Plaintiff and those are the</p> <p>21 contents thereof, that the same are true to the best of the</p> <p>22 undersigned's own knowledge or to the best of the</p> <p>23 undersigned's information and belief.</p> <p>24 Did you review these interrogatories or these</p> <p>25 responses to interrogatories prior to signing that</p>	<p style="text-align: right;">Page 13</p> <p>1 verification?</p> <p>2 A. I don't -- probably I have, but I don't recall</p> <p>3 specifically.</p> <p>4 MR. LEAVITT: George, for the record, can we just</p> <p>5 identify what date that is that you're -- the supplements,</p> <p>6 the interrogatories.</p> <p>7 MR. OGILVIE: This is dated August 1st, 2019.</p> <p>8 Q. (By Mr. Ogilvie) So your testimony is you</p> <p>9 probably reviewed these before signing the verification, but</p> <p>10 you don't know if you did?</p> <p>11 A. I don't recall.</p> <p>12 Q. You don't recall?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Would you have signed this verification if</p> <p>15 you didn't review the contents of this document?</p> <p>16 A. Sometimes I would sign what my attorneys put in</p> <p>17 front of me as true and correct from collection of</p> <p>18 information that I had, but I don't recall if I reviewed.</p> <p>19 It was two years ago.</p> <p>20 Q. So it is not your custom and practice to review</p> <p>21 documents prior to signing a verification stating that you,</p> <p>22 after being duly sworn, deposed, and say that you have read</p> <p>23 the foregoing document?</p> <p>24 A. No, it's my custom to read -- you ask me if I</p> <p>25 remember reading it. I don't.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. No, I didn't ask if you remembered. I asked if</p> <p>2 you did?</p> <p>3 A. If I did, I don't recall. I said I probably did.</p> <p>4 My answer was I probably did. I just don't recall.</p> <p>5 Q. Let me ask you this --</p> <p>6 A. Yes.</p> <p>7 Q. -- is it your custom and practice, when signing</p> <p>8 something under oath, that you -- when you say that you have</p> <p>9 read the foregoing document, that you've actually read it?</p> <p>10 A. No, my custom would be to read it.</p> <p>11 Q. Okay.</p> <p>12 A. Yes.</p> <p>13 Q. Let me direct your attention to page 12 of</p> <p>14 Exhibit 2, specifically Interrogatory No. 10, which asks if</p> <p>15 there have been any offers to lease, purchase, or sell</p> <p>16 Badlands property on the part or any part thereof since</p> <p>17 June 1, 2015, through the present. Identify each potential</p> <p>18 lessee and buyer and their agents and brokers. Identify the</p> <p>19 date of each offer. State whether the offer was written or</p> <p>20 verbal. State whether the offer was rejected or accepted.</p> <p>21 (Todd Davis entered the proceedings.)</p> <p>22 Q. (By Mr. Ogilvie) State if a controller was</p> <p>23 made -- or a counteroffer was made and state the terms of</p> <p>24 each offer and counteroffer.</p> <p>25 After a series of objections, the response says,</p>	<p style="text-align: right;">Page 15</p> <p>1 Without waiving the stated objections, all discussions</p> <p>2 regarding lot purchases were strictly verbal. There were no</p> <p>3 written agreements, no counteroffers in writing, and no</p> <p>4 specific terms. Due to the ongoing litigation, the land</p> <p>5 owners were unable to come to specific terms. Other than an</p> <p>6 agreed purchase price, they were unable to determine when</p> <p>7 they could deliver the lots.</p> <p>8 The prospective purchasers of lots were several,</p> <p>9 including, but not limited to, Dr. Arnold, Will Kemp, Noel</p> <p>10 Gage, John Staluppi, Scott Monroe, Ben Girardin, Robert</p> <p>11 Eglet, and others. The anticipated lot sizes varied from 2</p> <p>12 to 5 acres. Purchase price is approximately \$1 million per</p> <p>13 acre, on average.</p> <p>14 Did you review that answer to Interrogatory No. 10</p> <p>15 prior to signing the verification on page 20?</p> <p>16 A. Yes, I just think that it's missing the Calida</p> <p>17 contract.</p> <p>18 Q. Okay. Tell me about the Calida contract.</p> <p>19 A. It was offer to sell. I -- I think produced in</p> <p>20 this litigation. It was offer to sell 17 acres for about</p> <p>21 \$30 million or 32. I don't recall exactly the number, and</p> <p>22 they end up cancel the offer, withdraw the offer because of</p> <p>23 litigation.</p> <p>24 (Pause in proceedings.)</p> <p>25 Q. (By Mr. Ogilvie) So your testimony today is that,</p>
<p style="text-align: right;">Page 16</p> <p>1 in addition to the individuals identified in answer to</p> <p>2 Interrogatory No. 10, there was an offer to sell 17 acres of</p> <p>3 the Badlands property to the Calida Group that would have</p> <p>4 been responsive to this interrogatory?</p> <p>5 A. I can't tell you if it's responsive. It's mention</p> <p>6 some other place. I do not know. I remember now reading</p> <p>7 it, but I don't see the Calida and about 20 other names that</p> <p>8 were here. I just don't recall the names, but there were a</p> <p>9 lot more interest in . . .</p> <p>10 MS. GHANEM HAM: Let me just interject an</p> <p>11 objection to the term "Badlands." I don't see in the</p> <p>12 document you've produced, the definition and whether it's</p> <p>13 just the 35 acres or the entire acres or how we referenced</p> <p>14 it. And I certainly don't recall from that time.</p> <p>15 So my objection is ambiguity.</p> <p>16 THE WITNESS: That's right.</p> <p>17 MS. GHANEM HAM: You agree with my objection?</p> <p>18 THE WITNESS: No, it's good -- it's a good point.</p> <p>19 MS. GHANEM HAM: Okay.</p> <p>20 THE WITNESS: It's a 35 acre case.</p> <p>21 MS. GHANEM HAM: Okay. That's fine.</p> <p>22 THE WITNESS: That's why it's not here. So it's</p> <p>23 not a mistake.</p> <p>24 MR. OGILVIE: Pull up the actual interrogatories.</p> <p>25 THE WITNESS: Thirty-five.</p>	<p style="text-align: right;">Page 17</p> <p>1 MR. LEAVITT: George, if I can just -- we -- at</p> <p>2 the beginning of the deposition, prior to the deposition, we</p> <p>3 handed you the agreement of purchase and sale of property</p> <p>4 which is dated December 1st, 2015, which is that Calidas or</p> <p>5 Calida PSA.</p> <p>6 And as I stated at the beginning of the -- prior</p> <p>7 to the deposition, that's the Calida PSA that's referenced</p> <p>8 in Mr. Lowie's -- Lowie's disclosure. And it's produced</p> <p>9 as -- the cover Bate number is LO 37070.</p> <p>10 MR. OGILVIE: When you say "Mr. Lowie's</p> <p>11 disclosure," are you referring to his declaration?</p> <p>12 MR. LEAVITT: No. I apologize. His disclosure</p> <p>13 where we disclosed what his testimony would be in the</p> <p>14 supplement to the 16.1. I apologize. Should have made that</p> <p>15 clear.</p> <p>16 This -- hold on, Yohan.</p> <p>17 So in his supplement 16.1 disclosure, we disclosed</p> <p>18 several items that he would rely upon for his opinion of</p> <p>19 value. And this Calida PSA was referenced in his</p> <p>20 disclosure, and I -- and it had been previously produced and</p> <p>21 we wanted to produce it at this time to make it clear that</p> <p>22 that was the PSA he was referring to in his 16.1 disclosure.</p> <p>23 Q. (By Mr. Ogilvie) Okay. So let me read to you the</p> <p>24 definition of the Badlands property which was included in</p> <p>25 the City's first set of interrogatories to plaintiff.</p>

<p style="text-align: right;">Page 18</p> <p>1 Paragraph 4 of the definitions, it says, The term, 2 open quote, "Badlands property," close quote, means and 3 refers to all or a portion of that certain real property 4 consisting of approximately 250 acres located in Clark 5 County, Nevada and commonly referred to as successor parcel 6 numbers and then identifies -- one, two, three, four, five, 7 six, seven, eight, nine -- ten parcel numbers. 8 So with that definition in mind, is it your 9 testimony today that this agreement of purchase and sale 10 property -- sale of property that Mr. Leavitt just 11 referenced as being produced immediately before the 12 deposition this morning would have been included within the 13 scope of Interrogatory No. 10? 14 A. I don't know. 15 Q. You don't know? 16 A. I have no -- I'm confused now. 17 Q. Okay. 18 A. This is 35 acre case. I don't understand. I need 19 clarification. I thought this is about 35 acres. 20 Q. Correct. So -- 21 A. That's -- 22 Q. -- the definition of the Badlands property, which 23 you and your counsel raised as potentially being vague and 24 ambiguous, is defined as I just read to you, All or a 25 portion of the -- that certain property consisting of</p>	<p style="text-align: right;">Page 19</p> <p>1 approximately 250 acres with the specific parcel numbers. 2 So my question is: With that definition of the 3 Badlands property, is it your testimony today that the 4 Calida Group had -- that there were offers to lease, 5 purchase, or sell any part of the Badlands since June 1st, 6 2015, to the Calida Group? 7 A. Yes, there was an offer to -- to purchase. I 8 think it's covered under the not limited to. 9 Q. Okay. 10 (Exhibit 3 was marked.) 11 MS. GHANEM HAM: No, to me. You're going to get 12 the one with the number on it. 13 Q. (By Mr. Ogilvie) Directing your attention to 14 what's been marked as Exhibit 3, it is entitled Plaintiff 15 180 Land Company, LLC's, Responses to Defendant City of Las 16 Vegas' First Set of Interrogatories to Plaintiff. 17 It relates to the very same set of 18 interrogatories, and I would direct your attention to page 19 23, which is the verification page with a date of 20 October 31, 2019. 21 Is that your signature under the verification? 22 A. Seems to be. 23 Q. Okay. Direct your attention, again, to the 24 Interrogatory No. 10 which is -- appears at the bottom of 25 page 14. Again, the interrogatory asks if there have been</p>
<p style="text-align: right;">Page 20</p> <p>1 any offers to lease, purchase, or sell the Badlands property 2 or any part thereof since June 15, 2015. And then there is 3 the same answer as was set forth in Exhibit 2. 4 And following on to page 15, there is what's 5 identified as First Supplement to Answer to Interrogatory 6 No. 10. There -- and it states, In addition to the above, 7 Rick Hildreth and Dr. Jasvinder Grover. See also the 8 declaration of Dr. Arnold with a Bates number. 9 Did you review this first supplemental response 10 prior to signing the verification that is on page 23 of 11 Exhibit 3? 12 A. It appear that I did. 13 Q. Okay. And, again, you didn't reference the Calida 14 Group in that document. 15 A. I believe the Calida Group was common knowledge, 16 because was given to City -- the contract was given to the 17 City -- to the mayor -- to the City attorney as it was 18 generated by Calida. And all we ask for is to build 19 17 acres. 20 MS. GHANEM HAM: And let me -- wait for me to make 21 an objection. 22 THE WITNESS: Sorry. 23 MS. GHANEM HAM: I just want to object to the form 24 of the question, in that it is clearly identified in the 25 answer that it was lot purchases.</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. OGILVIE: So I would ask counsel to refrain 2 from making speaking objections. You're free to make 3 objections to form and foundation, but speaking objections 4 are specifically prohibited in this jurisdiction. 5 Q. (By Mr. Ogilvie) So your testimony, Mr. Lowie, is 6 because it was common knowledge to the City that the Calida 7 Group was interested in purchasing a portion of the Badlands 8 property that you did not need to identify them in this 9 response to Interrogatory No. 10? 10 MS. GHANEM HAM: Object to the form. Misstates 11 his testimony. 12 THE WITNESS: I have no idea. 13 Q. (By Mr. Ogilvie) What do you mean? 14 Well, then, let me ask you this then: Why didn't 15 you include the Calida Group in your -- either your first 16 response, your initial response, or the first supplemental 17 response to Interrogatory No. 10? 18 A. I can't answer that. I don't understand why. I 19 believe that it's common knowledge, that the City has it, 20 that it's common knowledge around town that that was a 21 parcel that Calida wanted. And I can't tell you anything 22 other than that. 23 But I think what I understood from this question 24 is about lots, the 180, and what prospective buyers for the 25 entire -- for the lots were. That was my understanding.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. So if we look at the interrogatory, it says,</p> <p>2 Offers to purchase -- or, Offers to lease, purchase, or sell</p> <p>3 the Badlands property or any part thereof.</p> <p>4 A. Okay.</p> <p>5 Q. You understood that to be lots?</p> <p>6 A. I understood to be lots. I understood it to be</p> <p>7 only about the 35 acres. Apparently, I was mistaken. I</p> <p>8 give the information.</p> <p>9 So, to me, in this litigation of the 35 acres,</p> <p>10 it's only what was planned for the 35 acres, not what was</p> <p>11 planned for the whole property. So those individuals --</p> <p>12 specifically, all those were in deal of the 35 acres.</p> <p>13 (Exhibit 4 was marked.)</p> <p>14 (Pause in proceedings.)</p> <p>15 Q. (By Mr. Ogilvie) Mr. Lowie, let me direct your</p> <p>16 attention to what's been marked as Exhibit 4. It's</p> <p>17 identified as Plaintiff 180 Land Company, LLC's, Responses</p> <p>18 to Defendant City of Las Vegas' First Set of Interrogatories</p> <p>19 to Plaintiff Second Supplement.</p> <p>20 This is, apparently, 180 Land's second supplement</p> <p>21 to the same set of interrogatories served by the City of Las</p> <p>22 Vegas. Directing your attention to page 24, which is the</p> <p>23 verification page, I'd ask you -- and it's dated</p> <p>24 January 23rd, 2020. Ask you if that is your signature under</p> <p>25 the verification.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Appear to be. Appear to be.</p> <p>2 Q. Thank you.</p> <p>3 THE WITNESS: Sorry.</p> <p>4 Q. (By Mr. Ogilvie) Directing your attention, again,</p> <p>5 to Interrogatory No. 10, which appears at the bottom of</p> <p>6 page 15, in the same interrogatories asking about offers to</p> <p>7 lease, purchase, or sell the Badlands property or any part</p> <p>8 thereof since June 1, 2015, through the present.</p> <p>9 There is the same answer to -- as was in the</p> <p>10 original responses by 180 Land and then the supplement as</p> <p>11 set forth in the first supplement, which is Exhibit 3.</p> <p>12 There was no additional information provided in response to</p> <p>13 answer to -- or in response to Interrogatory 10 in the</p> <p>14 second supplement. And it still did not reference the</p> <p>15 Calida Group.</p> <p>16 And could you tell me why it does not reference</p> <p>17 the Calida Group?</p> <p>18 A. Same answer. My understanding, this is only about</p> <p>19 the 35 acres, and it identifies as only 2 -- between 2 and</p> <p>20 5-acre parcel sales.</p> <p>21 (Reporter requested clarification.)</p> <p>22 THE WITNESS: Parcel -- lot sales. Sorry, I -- I</p> <p>23 apologize. Lot sales, not parcel sales.</p> <p>24 (Exhibit 5 was marked.)</p> <p>25 Q. (By Mr. Ogilvie) Directing your attention to</p>
<p style="text-align: right;">Page 24</p> <p>1 what's been marked as Exhibit 5, which is entitled Plaintiff</p> <p>2 180 Land Company, LLC's, Responses to Defendant City of Las</p> <p>3 Vegas' First Set of Interrogatories to Plaintiff,</p> <p>4 specifically -- no, Third Supplement.</p> <p>5 Let me direct your attention to page 26 which is</p> <p>6 the verification page with a date of February 7th, 2020.</p> <p>7 Ask you if that is your signature under the verification.</p> <p>8 A. Appear to be.</p> <p>9 Q. Let me direct your attention to page 14 of</p> <p>10 Exhibit 5, the third supplement. At the bottom of page 14,</p> <p>11 the same interrogatory, No. 10, appears -- asking to</p> <p>12 identify any offers to lease, purchase, or sell the Badlands</p> <p>13 property or any part thereof since June 1st, 2015, through</p> <p>14 the present.</p> <p>15 And then the answers to Interrogatory No. 10 on</p> <p>16 page 15 -- the answer is the same original answer set forth</p> <p>17 in Exhibit 2. And the first supplement is the same</p> <p>18 supplement as existed in Exhibits 3 and 4 with no additions</p> <p>19 to 180 Land's response to Interrogatory No. 10.</p> <p>20 Why did you not include the Calida Group in</p> <p>21 response to Interrogatory No. 10 in this third supplement?</p> <p>22 MS. GHANEM HAM: Object to the form. Asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: For some reason, I believe it's only</p> <p>25 35 acres.</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. (By Mr. Ogilvie) You believe that the</p> <p>2 Interrogatory No. 10 is only inquiring about offers to</p> <p>3 lease, purchase, or sell related to the 35 acres?</p> <p>4 A. Correct.</p> <p>5 Q. Okay.</p> <p>6 (Exhibit 6 was marked.)</p> <p>7 MR. OGILVIE: Oh, you know what, we need to handle</p> <p>8 some housekeeping. Same confidential issue --</p> <p>9 confidentiality issue that we did with Billy Bayne.</p> <p>10 So I believe what we asked the court reporter to</p> <p>11 do in Mr. Bayne's deposition was to mark the entire</p> <p>12 deposition and all of the exhibits confidential and then the</p> <p>13 parties, subsequently, would work out what was confidential</p> <p>14 and what was not confidential. Is that correct?</p> <p>15 MS. GHANEM HAM: I believe that's correct and we</p> <p>16 do have, I believe, the protective order in place that</p> <p>17 addresses it as well. So we'll handle it along those terms.</p> <p>18 MR. OGILVIE: So irrespective of how we handled it</p> <p>19 with Mr. Bayne's deposition, can we agree to -- can we agree</p> <p>20 that the protective order would be satisfied by marking the</p> <p>21 entire deposition and all of the exhibits confidential with</p> <p>22 the -- with counsel having the opportunity to work out what</p> <p>23 portions are and are not confidential later?</p> <p>24 MS. GHANEM HAM: Yes.</p> <p>25 MR. OGILVIE: Okay. Thank you.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. (By Mr. Ogilvie) Directing your attention to 2 what's been marked as Exhibit 6, it is on letterhead from 3 the Calida Group. It's a letter to Yohan Lowie dated 4 June 25th, 2015. Do you recognize this document? 5 A. Yeah, I've seen it before. 6 Q. What is this? 7 A. A long time ago. 8 Q. What is this document? 9 A. It's -- it's appears same thing. It's appear the 10 same purchase and sale agreement. 11 Q. Well, it's identified in the subject line as a 12 letter of intent to acquire approximately 60 -- 13 A. Apologize. That's a letter of intent. Apologize. 14 (Reporter requested clarification.) 15 THE WITNESS: I apologize. Go ahead. 16 Q. (By Mr. Ogilvie) I believe you just made a 17 clarification. You said, I apologize. It's a letter of 18 intent. Is that is that correct? 19 A. That's correct. 20 Q. Okay. 21 MR. OGILVIE: Do you have more copies of this? 22 MR. LEAVITT: No, we have copies. Oh, do you -- 23 MR. OGILVIE: I want to mark it as -- 24 MR. LEAVITT: Oh, yeah. You can go ahead and mark 25 it. Do you want me to give you a copy? Oh, I see what</p>	<p style="text-align: right;">Page 27</p> <p>1 you're saying. Yes. There you go. 2 MR. OGILVIE: Thank you. 3 (Pause in proceedings.) 4 (Exhibit 7 was marked.) 5 MS. GHANEM HAM: Have we moved on to a different 6 exhibit? No? 7 MR. OGILVIE: I'm going to, but you asked him to 8 review the document first. So I'm letting -- 9 MS. GHANEM HAM: No, I'm sorry. I -- this -- 10 wrong -- he's reviewing the wrong document. I'm just 11 wondering what -- what document are we on? 12 MR. OGILVIE: I'm about to ask him about 13 Exhibit 7, which is the purchase and sale agreement. 14 MS. GHANEM HAM: Okay. So -- 15 MR. OGILVIE: I'm still going to be -- 16 MS. GHANEM HAM: On 6? 17 MR. OGILVIE: -- asking 6 -- 18 MS. GHANEM HAM: Okay. 19 MR. OGILVIE: -- but I want to direct his 20 attention to Exhibit 7. 21 MS. GHANEM HAM: Okay. 22 Q. (By Mr. Ogilvie) Mr. Lowie? 23 A. Yes. 24 Q. Exhibit 7 that was just marked is entitled 25 Agreement of Purchase and Sale of Property, and it is</p>
<p style="text-align: right;">Page 28</p> <p>1 between -- by and between Calida Residential, LLC, and 2 70 Acres, LLC. Do you see that in the first paragraph? 3 A. Yes. 4 Q. Okay. When I was asking you a moment ago about 5 Exhibit 6, which is this letter of intent -- 6 A. Yes. 7 Q. -- you first said it's a purchase and sale 8 agreement. Is Exhibit 7 the purchase and sale agreement 9 that you were referring to? 10 A. That's correct. 11 Q. Okay. So let me go back to Exhibit 6, the letter 12 of intent. Again, the subject line says, Letter of intent 13 to acquire approximately 16 to 18 acres of land located at 14 the south -- or SWC of Alta and Rampart. 15 Do you have an understanding that "SWC" refers to 16 southwest corner? 17 A. Yes. 18 Q. Okay. And earlier in your testimony, you 19 referenced selling approximately 17 acres to the Calida 20 Group. Is this the transaction that you were referring to? 21 A. Yes. 22 Q. This letter of intent is dated June 25th, 2015. 23 Did you have communications with the Calida Group prior to 24 June 25th, 2015, about the purchase of this 16 to 18 acres 25 of land?</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes. 2 Q. When did those communications begin? 3 A. A few months before. 4 Q. When you say a few months before, two to three? 5 Four? What? 6 A. I don't recall. Six years ago. Maybe a couple 7 months. 8 Q. Couple months? 9 A. That's my estimation. 10 Q. Okay. 11 (Exhibit 8 was marked.) 12 Q. (By Mr. Ogilvie) Directing your attention to 13 what's been marked as Exhibit 8, it's identified as 14 Declaration of Yohan Lowie with a date of November 23rd, 15 2020. On page 7 -- directing your attention to the last 16 page of this Exhibit 8, which is page 7, there is an 17 electronic signature of Yohan Lowie. 18 Was -- did you authorize whoever prepared this 19 document to affix your electronic signature to this 20 document? 21 A. I don't recall. I may have been out of town and 22 probably sign it, but I don't -- but I don't recall. 23 Q. Okay. 24 MS. GHANEM HAM: Can I just -- can you take a 25 minute and review this so you know which one it is.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Help . . .</p> <p>2 MR. OGILVIE: That's fine.</p> <p>3 THE WITNESS: Which parcel, if I can ask? What --</p> <p>4 what is he talking about? What case?</p> <p>5 MS. GHANEM HAM: I -- I don't know.</p> <p>6 THE WITNESS: Yeah, it looks familiar to me. I</p> <p>7 remember that now.</p> <p>8 Q. (By Mr. Ogilvie) Okay. You ready?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Just want to make sure.</p> <p>11 A. Yeah, yeah.</p> <p>12 Q. Okay. Back at paragraph 1, it states -- at the --</p> <p>13 the last sentence of paragraph 1 says, I have personal</p> <p>14 knowledge of the facts stated herein and if called to</p> <p>15 testify as a witness, I could and would competently testify</p> <p>16 as set forth below.</p> <p>17 I asked you if you authorized someone to affix</p> <p>18 your electronic signature on page 7. I believe your</p> <p>19 testimony was you don't recall. Would you have had this</p> <p>20 declaration submitted if you did not review it and</p> <p>21 understand and affirm all the facts set forth therein?</p> <p>22 A. I don't believe so.</p> <p>23 Q. The first sentence of paragraph 1 says, At all</p> <p>24 times, I have served as a manager of each of 180 Land</p> <p>25 Company, LLC; 70 Acres; and Fore Stars. Is that true and</p>	<p style="text-align: right;">Page 31</p> <p>1 accurate?</p> <p>2 A. Yeah. Well, if you acquire Fore Stars, you're the</p> <p>3 manager, obviously. First you need to acquire Fore Stars.</p> <p>4 Q. So it is true and accurate that you have served --</p> <p>5 well, strike that.</p> <p>6 Let me ask this: It says at all times. What are</p> <p>7 you -- what do you mean by "at all times"?</p> <p>8 A. Since I acquired it.</p> <p>9 Q. Okay. So we'll get to some documents later, but</p> <p>10 the documents reflect that your entity acquired Fore Stars,</p> <p>11 Limited, in March 2015. Is that your recollection?</p> <p>12 A. Sounds right.</p> <p>13 Q. Okay. So when you say -- when -- I asked, What do</p> <p>14 you mean by "at all times"? And you said, Since I acquired</p> <p>15 it.</p> <p>16 Are you saying that the statement "at all times"</p> <p>17 in the first sentence of paragraph 1 means that, from the</p> <p>18 closing of the transaction for the purchase of Fore Stars in</p> <p>19 March 2015 through today, you have served as manager of each</p> <p>20 of 180 Land Company, LLC; 70 Acres; and Fore Stars?</p> <p>21 A. Correct.</p> <p>22 Q. And you said something to your attorney as an</p> <p>23 aside a moment ago that -- and it was something about -- I</p> <p>24 think you didn't under- -- you didn't know specifically</p> <p>25 which case that this declaration related to.</p>
<p style="text-align: right;">Page 32</p> <p>1 A. Correct.</p> <p>2 Q. Is it your understanding that you -- and when --</p> <p>3 you and/or your entities have brought four inverse</p> <p>4 condemnation cases against the City of Las Vegas, one for a</p> <p>5 35 acre parcel, one for the 17 acre parcel, one for the 133</p> <p>6 acre parcel, and one for the 65 acre parcel?</p> <p>7 A. Correct. But I think we missing one, the PD. It</p> <p>8 is 5. It may be. 4 or 5. I thought it was 5, but it may</p> <p>9 be 4. I -- I recognize those. That's correct.</p> <p>10 Q. And if I refer to those parcels -- 133 acre, 35</p> <p>11 acre, 65 acre, and 17 acre, you have an understanding of</p> <p>12 what I'm referring to?</p> <p>13 A. That's correct.</p> <p>14 MS. GHANEM HAM: And I'm just going to object to</p> <p>15 the form, and the -- and the terminology use.</p> <p>16 Q. (By Mr. Ogilvie) I'm sorry. You said you have an</p> <p>17 understanding of what those refer to?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. When you were speaking with Mr. Dehart and</p> <p>20 Ms. Dehart about the various parcels at the Badlands -- the</p> <p>21 former Badlands Golf Course, did you refer to them as the</p> <p>22 17 acres, 133 acres, 65 acres, and 35 acre parcels?</p> <p>23 A. No, we have different way to refer to them.</p> <p>24 Q. Okay. So how do you refer to the 35 acre parcel?</p> <p>25 A. Corner.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Corner? As in the corner of Hualapai and Alta?</p> <p>2 A. Correct.</p> <p>3 Q. And how do you refer to the 133 acres?</p> <p>4 MS. GHANEM HAM: I'm going to object to the form.</p> <p>5 THE WITNESS: The Schreck piece.</p> <p>6 (Reporter requested clarification.)</p> <p>7 THE WITNESS: Schreck.</p> <p>8 Q. (By Mr. Ogilvie) The Schreck piece?</p> <p>9 A. Right. Behind his house.</p> <p>10 MR. OGILVIE: Schreck is S-C-H-R-E-C-K.</p> <p>11 Q. (By Mr. Ogilvie) Schreck piece, as in Frank</p> <p>12 Schreck?</p> <p>13 A. Right. Because behind his house the majority of</p> <p>14 the acre.</p> <p>15 Q. Okay. And when you refer to Mr. Dehart and</p> <p>16 Ms. Dehart about the 65 acres, how do you refer to that?</p> <p>17 A. The multi-family.</p> <p>18 Q. Multi-family?</p> <p>19 A. Correct.</p> <p>20 Q. And when you refer to -- refer to the 17acre</p> <p>21 parcel with Mr. Dehart and Ms. Dehart, how do you refer to</p> <p>22 that?</p> <p>23 A. The condos or the 17 acres. They familiar with</p> <p>24 those two with this, you know, parcel, obviously. They less</p> <p>25 familiar with the other parcel.</p>

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<p style="text-align: right;">Page 34</p> <p>1 Q. I'm sorry. I think you said they're less familiar 2 with the other parcels? 3 A. With -- if I said 65, they would not know it's 70 4 or 65, so we call it the multi-family. 5 Q. Okay. Directing your attention back to Exhibit 8, 6 which is your declaration dated November 23rd, 2020, on the 7 second page at paragraph 4 -- 8 A. Second page, paragraph 4, yes, sir. 9 Q. -- it says, In or about 2001, I was informed by 10 Peccole family members that Badlands Golf Course was zoned 11 R-PD7 and intended for residential development. 12 When you refer to "Peccole family members" in that 13 sentence who are you referring to? 14 A. Larry Miller, Greg Goorjian. 15 MR. OGILVIE: And Goorjian is spelled 16 G-O-O-R-G-I-A-N. 17 THE WITNESS: I can't tell you how it spelled. I 18 would spell it with one O. I think you said double O. 19 MR. OGILVIE: That's not how you spell it? 20 MS. GHANEM HAM: No. 21 MR. OGILVIE: How do you spell it? 22 MS. GHANEM HAM: You said -- I believe it's 23 G-O-O-R-G-I-A-N. 24 MR. OGILVIE: Okay. 25 MR. DAVIS: J-I-A-N.</p>	<p style="text-align: right;">Page 35</p> <p>1 MS. GHANEM HAM: J-I-A-N, okay. 2 MR. DAVIS: Three people. 3 MS. GHANEM HAM: We all got it wrong. 4 THE WITNESS: Do you know . . . 5 MS. GHANEM HAM: Just one O? Okay. We don't -- 6 nobody knows. 7 MS. WOLFSON: No, it's two Os. 8 MR. LEAVITT: It's two Os. 9 MS. WOLFSON: J-I-A-N. 10 MS. GHANEM HAM: Okay. Well . . . 11 THE WITNESS: My answer was correct. I have no 12 idea. 13 Q. (By Mr. Ogilvie) The second sentence of 14 paragraph 4 says, I further learned that the original owners 15 of various parcels that comprise the Badlands Golf Course, 16 open paren, sometimes referred to as, open quote, "the 17 Land," close quote, or the, open quote, "250 acre 18 residentially zoned property," close quote, close paren, had 19 never imposed any restrictions on the use of the land and 20 that the land would eventually be developed. 21 I was further informed that the land is, open 22 quote, "developable at any time," close quote, and, open 23 quote, "we're never going to put a deed restriction on the 24 property," period, close quote. 25 The land abuts the common interest community</p>
<p style="text-align: right;">Page 36</p> <p>1 commonly known as, open quote, "Queensridge," close quote, 2 open paren, the, open quote, "Queensridge CIC," close quote, 3 close paren. 4 When you are referring to, in the second sentence, 5 the original owners, are you referring, again, to Larry 6 Miller and Greg Goorjian? 7 A. That's correct. 8 Q. And when you say that, I was further informed that 9 the land is developable at any time. We're never going to 10 put a deed restriction on the property, did Mr. Miller and 11 Mr. Goorjian make those statements to you? 12 A. Both. 13 Q. Both of them made those -- 14 A. Yes. 15 Q. -- statements to you? Anybody else? 16 A. I don't recall. There was a fight. There was a 17 big fight, and it came to big meeting and were few neighbors 18 and I think Bruce Bayne was there as well and -- 19 Q. Did you say Bruce Bayne? 20 A. In that meeting. Bruce Bayne was there too. And 21 that's what I remember. There was a meeting. The meeting 22 was about development that Peccoles were trying to -- to put 23 and that was -- the statements were made in those meeting. 24 Q. What year was this? 25 A. 2001.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. And who were the meetings with? 2 A. With, I believe, some neighbors, myself, and 3 Peccoles. 4 Q. And do you have a recollection as to any neighbors 5 that were present at those meetings? 6 A. I remember that Clyde Turner was in the meeting. 7 There were others and I think that Clyde -- that, you know, 8 that you researched, that you asked for, did restriction and 9 we were not restricting. That's it. 10 (Exhibit 9 was marked.) 11 Q. (By Mr. Ogilvie) Let me direct your attention to 12 what's been marked as Exhibit 9. It is a December 30, 2014, 13 letter to Frank Pankratz from Nicole Eddowes from the City 14 of Las Vegas. Do you recognize this document? 15 A. Yes. 16 Q. Did your companies -- did you or your companies 17 request this document? 18 A. Yes. 19 Q. And you requested it to confirm the zoning on the 20 250 acres. Is that correct? 21 A. Yes. 22 Q. The letter has a stamp stamped received. Is that 23 a stamp that you are familiar with? 24 A. I think my office they stamp letters when they 25 come in.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. That's essentially what I was asking. Is -- do</p> <p>2 you recognize that as a stamp that your office uses?</p> <p>3 A. Yes. I -- I don't -- I know that my office stamps</p> <p>4 it. I don't -- like, I see accounting. I don't know why</p> <p>5 accounting, but maybe went to accounting. So they stamped</p> <p>6 it.</p> <p>7 Q. Okay. And they -- they stamped it as the mail is</p> <p>8 open on any given day?</p> <p>9 A. Most likely.</p> <p>10 Q. Okay. It's stamped, Received Jan 05, 2015,</p> <p>11 accounting department. You have any reason to believe that</p> <p>12 it was not received by your accounting department on</p> <p>13 January 5th, 2015?</p> <p>14 A. No.</p> <p>15 Q. And this letter, essentially, confirmed what you</p> <p>16 learned in 2001 from the meetings that you described with</p> <p>17 Peccoles and the neighbors, that the land was zoned R-PD7?</p> <p>18 A. I learned that prior. I didn't take word for it.</p> <p>19 I taken -- I hired lawyers to investigate the zoning in</p> <p>20 2001. This letter was requested by the bank.</p> <p>21 Q. I'm sorry?</p> <p>22 A. This letter was requested by the bank.</p> <p>23 Q. By the bank?</p> <p>24 A. Yes.</p> <p>25 Q. When you say "this letter," you're referring to</p>	<p style="text-align: right;">Page 39</p> <p>1 Exhibit 9. Correct?</p> <p>2 A. Yeah, it's a standard letter the bank requires in</p> <p>3 every -- every lender.</p> <p>4 Q. I didn't understand you. I apologize.</p> <p>5 A. I apologize. It's a standard bank -- a standard</p> <p>6 letter that the bank would request in every -- encumbering</p> <p>7 of any property.</p> <p>8 Q. Okay. So your lender requested a letter from the</p> <p>9 City confirming the zoning and you or your company requested</p> <p>10 the letter from the City. Is that correct?</p> <p>11 A. Correct.</p> <p>12 (Exhibit 10 was marked.)</p> <p>13 MS. GHANEM HAM: Is this No. 10?</p> <p>14 MR. OGILVIE: Yes.</p> <p>15 Q. (By Mr. Ogilvie) Let me direct your attention to</p> <p>16 what's been marked as Exhibit 10. This is another</p> <p>17 declaration of Yohan Lowie. Ask you to look at the second</p> <p>18 page. Date on this declaration is January 27th, 2021.</p> <p>19 There is an electronic signature of Yohan Lowie. Did you</p> <p>20 authorize someone to affix your electronic signature to this</p> <p>21 document?</p> <p>22 A. Yes.</p> <p>23 Q. Did -- did you review and approve the contents of</p> <p>24 the seven paragraphs of this declaration prior to</p> <p>25 authorizing someone to affix your electronic signature?</p>
<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. So you, just prior to me introducing this exhibit,</p> <p>3 said that you hired an attorney or counsel or lawyer in 2001</p> <p>4 to, I believe, do some research on the property. Is that</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And in . . . oh, oh, oh, oh. I'm sorry. I got</p> <p>8 ahead of myself.</p> <p>9 Let -- we'll get back to Exhibit 10 in a minute.</p> <p>10 Going back to Exhibit 8 -- wrong declaration. I apologize.</p> <p>11 Exhibit 8. Exhibit 8, again, is your November 23rd, 2020,</p> <p>12 declaration.</p> <p>13 A. Yes.</p> <p>14 Q. Paragraph 5. We were talking about paragraph 4 on</p> <p>15 page 2 a moment ago. Paragraph 5, you state, Thereafter, in</p> <p>16 2001, I retained counsel and learned that the land is, open</p> <p>17 quote, "not a part," close quote, of the Queensridge CIC,</p> <p>18 the land was residentially zoned, there existed rights to</p> <p>19 develop the land, land was intended for residential</p> <p>20 development and that as a homeowner within the Queensridge</p> <p>21 CIC, according to the covenants, conditions, and</p> <p>22 restrictions, open paren, the, open quote, "CC&Rs," close</p> <p>23 quote, close paren, I had no right to interfere with</p> <p>24 development of the land.</p> <p>25 Who was the counsel that you retained in 2001?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. I believe it to be Alan Sklar.</p> <p>2 Q. Alan Sklar?</p> <p>3 A. Right.</p> <p>4 MR. OGILVIE: Sklar is S-K-L-A-R.</p> <p>5 Q. (By Mr. Ogilvie) And, specifically, what did</p> <p>6 Mr. Sklar advise you?</p> <p>7 A. I think it's attorney-client privilege, but I was</p> <p>8 warn not to interfere.</p> <p>9 MS. GHANEM HAM: And, again, just keep give us a</p> <p>10 minute to make the objection. As it relates to any</p> <p>11 discussions with counsel at the time, we object as to</p> <p>12 attorney-client privilege and advise you not to respond to</p> <p>13 that question.</p> <p>14 Q. (By Mr. Ogilvie) Okay. Let me ask you this: You</p> <p>15 state here, I retained counsel and learned that the land is</p> <p>16 not part of Queensridge CIC. Did Mr. Sklar tell you that?</p> <p>17 A. Mr. Sklar tell me that, but I could read myself.</p> <p>18 I just wanted to know if there's something I can do to stop</p> <p>19 development of the property. And for that, I was told to</p> <p>20 read specific sections. I think it was 12.2. Do not</p> <p>21 interfere with the right of the land owner to develop these</p> <p>22 land -- the Badlands, basically.</p> <p>23 MS. GHANEM HAM: Okay.</p> <p>24 Q. (By Mr. Ogilvie) Did Mr. Sklar advise you that</p> <p>25 there existed rights to develop the land?</p>

<p style="text-align: right;">Page 42</p> <p>1 MS. GHANEM HAM: Object to attorney-client 2 privilege and advise you not to answer. 3 MR. OGILVIE: I have to have the opportunity to 4 ask him who told him what he said in his declaration. 5 MS. GHANEM HAM: Right. If you phrase it with the 6 declaration -- 7 MR. OGILVIE: Well -- 8 MS. GHANEM HAM: I didn't find that that was 9 phrased within -- 10 Q. (By Mr. Ogilvie) Second portion -- third portion 11 says, There existed rights to develop the land. Did 12 Mr. Sklar tell you that? 13 A. See, there's a period. According to covenant, 14 condition, and restrictions, CC&Rs -- 15 (Reporter requested clarification.) 16 THE WITNESS: I apologize. I'm just reading. 17 After the period, According to the covenant, condition, and 18 restrictions, in paren, the CC&Rs, I had no right to 19 interfere with development of the land. I think they 20 referred me to sections of the CC&Rs that read, Do not 21 interfere. You have no right to interfere. 22 And you can imagine discussion with the lawyers. 23 Q. (By Mr. Ogilvie) What was the last part of your 24 testimony? 25 A. I think you can imagine what would the lawyers</p>	<p style="text-align: right;">Page 43</p> <p>1 recommend that point. 2 Q. So Mr. Sklar didn't tell you anything that's in 3 paragraph 5? 4 A. Oh, he did. 5 Q. What did he tell you -- 6 A. Exactly what it says here. They researched it, 7 they found declaration, they pull the declaration, say read 8 those items. They also referred me to a page that shows 9 future development and also for unit plans on Badlands at 10 the time and saying -- you can conclude yourself what happen 11 there. 12 But, yes, I can tell you that they told me, Do not 13 interfere. They have a right to build it. It's record on 14 the land. 15 Q. What is the interference that you're speaking 16 about? 17 A. Read the declaration. 18 Q. I don't understand your response. 19 A. Read the declaration. 20 Q. No, I heard what you said. I don't -- what is the 21 interference that was part of this discussion? 22 A. I was trying to see if there's something I can do 23 to stop development on the property. I had -- I had four, 24 five lots going at the time. I purchase from the 25 colleagues -- from Larry four lot -- five lots. I was in</p>
<p style="text-align: right;">Page 44</p> <p>1 construction of four. 2 And all of a sudden, they grading the property 3 behind me to put houses behind on the one quarter acre -- 4 one half acre and, you know, blew my sales right away. 5 People that were interested to buy just disappeared that 6 point. 7 And they start building up 15 feet mounds of dirt 8 behind -- behind the units, and I was concerned about what's 9 going to happen. That's when I learned -- that's why I 10 hired lawyers. That was after the meeting that I told you 11 about. 12 Q. The meeting with the neighbors and the Peccoles, 13 including Frank Schreck? 14 A. No. 15 Q. I'm sorry. Did I get that wrong? 16 MS. GHANEM HAM: Yes. 17 THE WITNESS: You did. 2000- -- 18 Q. (By Mr. Ogilvie) Oh, I'm sorry. Clyde Turner. 19 A. Clyde Turner. 20 Q. Yes. 21 A. That's correct. 22 Q. Thank you. Is Badlands property subject to 23 Queensridge CC&Rs? 24 A. No. 25 Q. Is it subject to any CC&Rs?</p>	<p style="text-align: right;">Page 45</p> <p>1 A. No. 2 Q. What's the basis of your knowledge that it isn't? 3 A. Twenty years of research and walk on the property. 4 Q. Did Mr. Sklar or anyone from his law firm provide 5 you with any legal opinions or written advice relative to 6 what's stated in paragraph 5 of Exhibit 8? 7 A. I don't recall. That was 20 years ago. 8 Q. Okay. Now, moving to Exhibit 10, which is the 9 January 27th, 2021, declaration, directing your attention to 10 paragraph 2, ask you to read that to yourself. 11 A. Yes, sir. 12 Q. Okay. You reference an approximately \$100 million 13 deal with Peccole. And a third party that involved complex 14 land transaction related to large tracts of land, including 15 Tivoli Village, Queensridge Towers, and Hualapai Commons. 16 Was it just those three properties, Tivoli 17 Village, Queensridge Towers, and Hualapai Commons, that 18 you're referencing when you reference the approximately \$100 19 million deal? 20 A. No. 21 Q. What other deal? 22 A. Many properties and trade-offs, including the 23 Badlands, including Hualapai Sahara, including interest in 24 office building, including Tavern, Peccole on -- including 25 money they owed me, including money that we trade hand. So</p>

<p style="text-align: right;">Page 46</p> <p>1 there was about to be -- between all of us -- said there --</p> <p>2 very short period of time -- period of time -- period -- at</p> <p>3 the time -- put this together -- to about \$75 million in</p> <p>4 cash, \$10 million in units, and \$15 million owed to close</p> <p>5 the golf.</p> <p>6 Q. Okay. So you, specifically, reference Tivoli</p> <p>7 Village, Queensridge Towers, and Hualapai Commons. And your</p> <p>8 testimony is that there were other transactions or other</p> <p>9 properties involved. Specifically, which properties, in</p> <p>10 addition to those three?</p> <p>11 A. Specifically? I can't tell you specifically. I</p> <p>12 just answered. It was a very complex transaction that</p> <p>13 Peccoles have to be bought out and we bought it between us.</p> <p>14 And a lot of money that was owed between companies and</p> <p>15 partners. And I mentioned to you a few. The office</p> <p>16 building right behind Mimi's.</p> <p>17 Q. Right behind?</p> <p>18 A. Mimi Cafe. Used to be a restaurant called Mimi</p> <p>19 Cafe on Charleston and Rampart. That big mall in the back.</p> <p>20 Sahara and Hualapai, where the shopping center is today in</p> <p>21 the -- Center.</p> <p>22 And the money that Peccole owed me on</p> <p>23 infrastructure they put into the project on Hualapai and</p> <p>24 Charleston, Smith Center, the end cap of where we conducted</p> <p>25 business as One Queensridge Place. The money that Peccole</p>	<p style="text-align: right;">Page 47</p> <p>1 owed me on building the infrastructure to build the towers,</p> <p>2 the warehouses, the steel shop, the marble shop, the</p> <p>3 carpentry shop, they never funded their portion of that.</p> <p>4 So it involved -- and -- and few other ones</p> <p>5 that -- I don't want to say it this way, but it was a</p> <p>6 million here, a million there. So . . . It's a membership</p> <p>7 purchase.</p> <p>8 Q. Who is the third party that's referenced in that</p> <p>9 statement?</p> <p>10 MS. GHANEM HAM: Object to the form.</p> <p>11 THE WITNESS: Who is the third party?</p> <p>12 Q. (By Mr. Ogilvie) In paragraph 2 of Exhibit 10.</p> <p>13 A. It's a public company that came -- that was able</p> <p>14 to convince to buy the shares. To sell -- I was convince</p> <p>15 them to buy shares from me to come as a partner in those</p> <p>16 three projects. Mainly those three projects.</p> <p>17 Q. Is this IDB?</p> <p>18 A. That's correct. Was different company at the</p> <p>19 time. Yes, we call that -- you can call that.</p> <p>20 Q. It's called IDB now? It was a different company</p> <p>21 at the time?</p> <p>22 A. Yes.</p> <p>23 Q. What was it at the time?</p> <p>24 A. It was Lyton. And in-between -- and they have --</p> <p>25 I was negotiating -- we negotiate with conglomerate with</p>
<p style="text-align: right;">Page 48</p> <p>1 head companies. In end, IDB was the manager. So if you</p> <p>2 want to call IDB, that's who in the end purchase, but the</p> <p>3 negotiation was with Building and Property Development.</p> <p>4 That's the name of the company. And other companies, I</p> <p>5 can't -- I really can't tell you the name. I can't even</p> <p>6 translate the names, but they -- all four entities, some in</p> <p>7 London, some in Tel Aviv.</p> <p>8 Q. Have you -- strike that.</p> <p>9 Do you have an understanding that Billy Bayne's</p> <p>10 deposition was taken in this litigation a couple weeks ago?</p> <p>11 A. Yeah, I saw it.</p> <p>12 Q. You saw Mr. Bayne's deposition?</p> <p>13 A. No, I did not.</p> <p>14 Q. Okay. Do you have an understanding of what</p> <p>15 Mr. Bayne's testimony was?</p> <p>16 A. I was told some of his -- some of his -- taking by</p> <p>17 my -- by my -- just talking at the office, but I did not</p> <p>18 read his deposition. I do not know what Billy Baynes would</p> <p>19 have to opine on this. Never met him at the time. I met</p> <p>20 him a couple years after. So he had no idea about -- I</p> <p>21 don't know how he would have any knowledge. Any.</p> <p>22 Q. Okay. I believe my question -- maybe I'm wrong,</p> <p>23 but I believe my question was: Do you have an understanding</p> <p>24 of what Mr. Bayne's testimony was in his deposition?</p> <p>25 A. Your question was, if I have any understanding of</p>	<p style="text-align: right;">Page 49</p> <p>1 what he said. He said he answered many different things in</p> <p>2 his deposition. What do you refer to?</p> <p>3 Q. Minus a few feet above what -- I mean, mine's very</p> <p>4 general. Just, generally, do you have an understanding of</p> <p>5 Mr. Bayne's deposition testimony?</p> <p>6 A. No, I do not.</p> <p>7 Q. Okay.</p> <p>8 A. Generally, no. I don't know because it's many</p> <p>9 pieces for his deposition that I have. So I don't know if</p> <p>10 it's one -- if you asking me regard the purchase, I can tell</p> <p>11 you I do not understand his position.</p> <p>12 Q. I think we're not communicating. So it sounds to</p> <p>13 me, from the periphery of your answer, that you have an</p> <p>14 understanding of some of his testimony.</p> <p>15 A. Correct.</p> <p>16 Q. And you disagree with it?</p> <p>17 A. No, I didn't say disagree.</p> <p>18 Q. Okay.</p> <p>19 A. I'm saying -- I just -- I totally disagree with</p> <p>20 portion of the testimony; some testimony I heard I agree</p> <p>21 with. That's what I said.</p> <p>22 Q. Okay.</p> <p>23 A. That's what I meant.</p> <p>24 Q. Okay. You may not know everything he testified,</p> <p>25 but you have an understanding of some of his testimony. Is</p>

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<p style="text-align: right;">Page 50</p> <p>1 that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 A. Yes.</p> <p>5 Q. And how did you come to learn of -- come to learn</p> <p>6 what you know of his testimony?</p> <p>7 A. Just talk in the office with attorney and some</p> <p>8 staff.</p> <p>9 Q. So your attorney discussed it with you?</p> <p>10 A. Yes, told me what he said about certain thing.</p> <p>11 Q. Okay. What portions that you know of do you</p> <p>12 disagree with his testimony?</p> <p>13 A. I don't know how Billy Bayne can opine what</p> <p>14 happened in 2005.</p> <p>15 Q. Okay.</p> <p>16 A. No -- no understanding how he can opine on</p> <p>17 anything prior to even knowing or being involved in</p> <p>18 anything.</p> <p>19 Q. Anything else that you have an understanding about</p> <p>20 his testimony that you disagree with?</p> <p>21 A. I disagree with his -- I think that he</p> <p>22 contradicted himself --</p> <p>23 (Reporter requested clarification.)</p> <p>24 THE WITNESS: Contradicted himself in a few areas</p> <p>25 and I disagree with a lot of thing he says. I don't recall,</p>	<p style="text-align: right;">Page 51</p> <p>1 now, exactly, but if you put in front of me, I'll be happy</p> <p>2 to go over.</p> <p>3 Q. (By Mr. Ogilvie) Okay. This -- you referenced</p> <p>4 that you don't know how Mr. Bayne could know anything about</p> <p>5 what he testified about in 2005. What about 2005 is it that</p> <p>6 you're referring to?</p> <p>7 A. This business deal.</p> <p>8 Q. Which specific business dealing --</p> <p>9 A. The purchase -- the purchase of the property.</p> <p>10 Q. Which property?</p> <p>11 A. All the property, including Badlands that you ask</p> <p>12 about.</p> <p>13 Q. Okay. So --</p> <p>14 A. The membership --</p> <p>15 Q. I think we identified earlier that Fore Stars</p> <p>16 closed in March 2015.</p> <p>17 A. So what?</p> <p>18 Q. Okay.</p> <p>19 A. That's correct.</p> <p>20 Q. So I'm talking about 2005. You mentioned business</p> <p>21 dealings in 2005. I'm asking you: Which business dealing</p> <p>22 in 2005?</p> <p>23 A. The golf was paid for with majority in 2005.</p> <p>24 Q. Okay.</p> <p>25 A. It was a \$100 million deal.</p>
<p style="text-align: right;">Page 52</p> <p>1 Q. And that's the \$100 million deal that IDB was</p> <p>2 involved in?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And that involved buying out the Peccoles's</p> <p>5 interest in Queensridge Towers and Tivoli Village and</p> <p>6 Hualapai Commons?</p> <p>7 A. IDB purchase -- they did not purchase it from</p> <p>8 Peccole. Peccole did not sell to IDB.</p> <p>9 Q. Okay. But those are the transactions in 2005.</p> <p>10 Right?</p> <p>11 A. There's a series of transaction in this -- at this</p> <p>12 time.</p> <p>13 Q. But even though IDB didn't purchase from Peccole,</p> <p>14 those -- IDB was involved in those transactions?</p> <p>15 A. IDB was the buyer or some of the -- as I sold. So</p> <p>16 I acquired some and sold some and sold less.</p> <p>17 Q. Acquired some from the Peccoles and sold less to</p> <p>18 IDB?</p> <p>19 A. Correct.</p> <p>20 Q. Going to paragraph 3 of Exhibit 10, you state,</p> <p>21 Additionally, the acquisition of Fore Stars, Limited, which</p> <p>22 owned the 250 acre residential zoned land comprised all of</p> <p>23 its assets and liabilities, which included the land, which</p> <p>24 the golf course was operating on, at a substantial loss; the</p> <p>25 post-closing obligation to resolve a lot line dispute</p>	<p style="text-align: right;">Page 53</p> <p>1 wherein the Queensridge Towers were constructed on part of</p> <p>2 the 250 acre zoned land.</p> <p>3 What -- explain that post closing obligation to</p> <p>4 me.</p> <p>5 MS. GHANEM HAM: I'm sorry. Which paragraph did</p> <p>6 you . . .</p> <p>7 MR. OGILVIE: Paragraph 3.</p> <p>8 MS. GHANEM HAM: Okay.</p> <p>9 THE WITNESS: Okay. So we couldn't acquire the</p> <p>10 golf course unless this lot line is being -- we couldn't</p> <p>11 close on the golf course till the lot line has been</p> <p>12 adjusted.</p> <p>13 So what happen is, in this series of transaction,</p> <p>14 Queensridge Towers acquired -- Peccoles have contributed</p> <p>15 5.66 acres for, again, exchange. They need money at the</p> <p>16 time. And they have promised to deliver clear title. Told</p> <p>17 us they have clear title, there is no problem. We buy the</p> <p>18 parcelment and we start building building.</p> <p>19 And for --</p> <p>20 Q. I'm sorry. What year is this?</p> <p>21 A. This is beginning of 2005, maybe late 2004. We</p> <p>22 started -- business dealing started on this -- the -- the</p> <p>23 acquisition piece form Peccoles.</p> <p>24 Q. For Queensridge Towers?</p> <p>25 A. Form the golf course to Queensridge Towers.</p>

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<p style="text-align: right;">Page 54</p> <p>1 Q. Okay.</p> <p>2 A. And Peccoles have contributed a piece. They got</p> <p>3 money for it. I had to pay -- you know, I did multiple</p> <p>4 deals with them. And so they have deliver that piece of</p> <p>5 property and got us a parcelment.</p> <p>6 And for -- for a while I was okay with it. And</p> <p>7 then I start concerning that maybe something is not right.</p> <p>8 I want to see the deal. And I couldn't get a deal. So I</p> <p>9 meeting with them. I ask for, you know --</p> <p>10 MS. GHANEM HAM: Hold on. Hold on. She's trying</p> <p>11 to take your words down. So please --</p> <p>12 THE WITNESS: Sorry.</p> <p>13 MS. GHANEM HAM: -- a little --</p> <p>14 THE WITNESS: I apologize.</p> <p>15 MS. GHANEM HAM: -- louder and clearer.</p> <p>16 THE WITNESS: Got it.</p> <p>17 So, anyway -- so in the end of period of time, we</p> <p>18 found out that there was no title -- there was no clear</p> <p>19 title and the operator on the golf course have -- call</p> <p>20 that -- call -- he said, well, that Peccole say give us the</p> <p>21 deal or get off the property, when I was already \$50 million</p> <p>22 in the ground and almost to the third tower.</p> <p>23 Q. (By Mr. Ogilvie) \$15 million in construction</p> <p>24 costs on Queensridge Towers? Is that --</p> <p>25 A. Five, oh. 50 million at the time.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Fifty?</p> <p>2 A. I was already 50 million in it.</p> <p>3 Q. Okay.</p> <p>4 A. And we had a problem. At the same time, Peccole</p> <p>5 had -- it's unfortunate, but had difficulties paying their</p> <p>6 bill, paying the share. They couldn't fund. They had</p> <p>7 issues.</p> <p>8 And so we got a notice from the bank at the time.</p> <p>9 You know, got a phone call from the bank. Terrible phone</p> <p>10 call with the Bank of New York, head of HSBC lending, I</p> <p>11 think.</p> <p>12 (Reporter requested clarification.)</p> <p>13 THE WITNESS: Of lending. I had a phone call from</p> <p>14 New York from the head of HSBC, Hongkong Shanghai Bank,</p> <p>15 telling me that we got serious problem and that brought this</p> <p>16 series of attempt of how we remedy the situation.</p> <p>17 Colleagues couldn't pay. They owed \$30 million</p> <p>18 for the operator. They had to take an emergency loan, and</p> <p>19 that encumbered the Sun Coast, encumbered the golf course.</p> <p>20 And, you know, there was negotiation to let a piece out</p> <p>21 between banks. It was a mess. And so -- little options</p> <p>22 what to do. So . . .</p> <p>23 Q. (By Mr. Ogilvie) Okay. So -- so I'm not back in</p> <p>24 2005. I'm -- paragraph 3, you're referencing the</p> <p>25 acquisition of Fore Stars which was 2015. And you said that</p>
<p style="text-align: right;">Page 56</p> <p>1 there was a post-closing obligation to resolve a lot line</p> <p>2 dispute wherein Queensridge Towers were constructed on a</p> <p>3 part of the 250 acre residential zoned land.</p> <p>4 Are you suggesting that there was this</p> <p>5 post-closing obligation, post-closing of the Fore Stars</p> <p>6 transaction in 2015 to resolve a lot line dispute?</p> <p>7 A. It's simple. It's very simple. There is</p> <p>8 Queensridge Towers.</p> <p>9 MS. GHANEM HAM: Wait a minute. Wait a minute.</p> <p>10 THE WITNESS: It's Queensridge Towers.</p> <p>11 MS. GHANEM HAM: Answer the question.</p> <p>12 THE WITNESS: That has a piece of property that</p> <p>13 right now belong -- belong to Queensridge Towers but wasn't</p> <p>14 paid and is need for operation of the Badlands at that time.</p> <p>15 So -- and the tower sits on it. So the idea was</p> <p>16 that, only when phase 2 would be built, then Peccoles going</p> <p>17 to get paid from Queensridge Tower for the clubhouse or, in</p> <p>18 lieu, money would be paid up to 3.15, which we call the</p> <p>19 \$3 million deal -- will be paid to build a new clubhouse on</p> <p>20 the golf course.</p> <p>21 Q. (By Mr. Ogilvie) That's the lot line dispute that</p> <p>22 you're referencing in paragraph 3 of Exhibit 10?</p> <p>23 A. Yes.</p> <p>24 Q. Has to do with the clubhouse?</p> <p>25 A. Has to do with clubhouse, yes. And other</p>	<p style="text-align: right;">Page 57</p> <p>1 trade-off of areas of utility runs here. We need to move</p> <p>2 the lot line here. It's business. You know, sewer needs to</p> <p>3 be within this piece of property. The fire loop had to be</p> <p>4 in this one, because if it's on the golf course, then we</p> <p>5 don't . . .</p> <p>6 So it's -- you know, there's -- in the -- in the</p> <p>7 line, with the vicinity or area, there was trade-off of a</p> <p>8 lot line. This could only be done when -- either -- to</p> <p>9 build -- either they take the property or either they pay</p> <p>10 for it.</p> <p>11 (Exhibit 11 was marked.)</p> <p>12 MR. LEAVITT: What are we on, George?</p> <p>13 MR. OGILVIE: Hmm?</p> <p>14 MR. LEAVITT: What number are we on?</p> <p>15 MS. GHANEM HAM: Eleven.</p> <p>16 MR. OGILVIE: Eleven.</p> <p>17 MR. LEAVITT: Oh.</p> <p>18 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>19 what's been marked as Exhibit 11, specifically, if you could</p> <p>20 go to the page that is Bates numbered CLV 305598, it is a</p> <p>21 record of survey boundary line adjustment.</p> <p>22 Does this document -- do you recognize what this</p> <p>23 document reflects?</p> <p>24 A. I think it's the parcel you talking about, going</p> <p>25 back, but I'm not sure what it is. If you let me read it --</p>

<p style="text-align: right;">Page 58</p> <p>1 I signed it, so I want to see what it is.</p> <p>2 Q. Take your time.</p> <p>3 A. Yeah. That's the boundary line adjustment, yes.</p> <p>4 Q. Okay. When you say it's "the boundary line</p> <p>5 adjustment," what do you mean?</p> <p>6 A. It's a boundary line adjustment. Document speak</p> <p>7 for itself.</p> <p>8 Q. Okay. Is it the boundary line adjustment that</p> <p>9 you're referring to -- you were just referring to in your</p> <p>10 testimony?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 A. That would be future one. This is a 2005</p> <p>14 document. Am I right?</p> <p>15 Q. Correct.</p> <p>16 A. So this is acquiring a piece from Peccole that had</p> <p>17 no title, in the end of day. It had a bad title. The</p> <p>18 building was built on it.</p> <p>19 Q. Okay.</p> <p>20 A. Okay. So --</p> <p>21 Q. But this addresses the Queensridge Towers</p> <p>22 encroachment on the golf course that the lessee of the golf</p> <p>23 course objected to. Correct?</p> <p>24 A. Correct.</p> <p>25 Q. And what portion of page -- Bates No. ending</p>	<p style="text-align: right;">Page 59</p> <p>1 in 598 was the portion that encroached on the golf course?</p> <p>2 A. All portions.</p> <p>3 (Reporter requested clarification.)</p> <p>4 THE WITNESS: All portions. Because twin tower</p> <p>5 sitting right here. So they taking -- they sitting on top</p> <p>6 of this portion and the two other tower sitting right here.</p> <p>7 Q. (By Mr. Ogilvie) Okay.</p> <p>8 A. And there was utilities that were running right</p> <p>9 here. So they interfere, you know, on the property.</p> <p>10 Q. Okay. So there is -- identified on page 598,</p> <p>11 parcel 1. That's where Queensridge Towers phase 1 was</p> <p>12 built. Correct?</p> <p>13 MS. GHANEM HAM: Let me object to the form.</p> <p>14 You're referencing 598 as the last three numbers of the</p> <p>15 Bates?</p> <p>16 MR. OGILVIE: Correct.</p> <p>17 MS. GHANEM HAM: Okay.</p> <p>18 THE WITNESS: Okay. Parcel 1 shows the first two</p> <p>19 towers, yes.</p> <p>20 Q. (By Mr. Ogilvie) Okay. And then parcel 2 is --</p> <p>21 A. I don't see parcel 2.</p> <p>22 Q. To the left side.</p> <p>23 A. Oh, I do see parcel --</p> <p>24 MR. LEAVITT: Let's be clear. There's parcel --</p> <p>25 MS. GHANEM HAM: There's two.</p>
<p style="text-align: right;">Page 60</p> <p>1 MR. LEAVITT: -- 2 to the right and parcel 2 to</p> <p>2 the left.</p> <p>3 THE WITNESS: Just so you -- I know. There's --</p> <p>4 there's two --</p> <p>5 MR. LEAVITT: Okay.</p> <p>6 THE WITNESS: There's area 2, too, as well. Okay.</p> <p>7 So what would you like to know?</p> <p>8 Q. (By Mr. Ogilvie) What does parcel 2 reflect?</p> <p>9 A. Which parcel 2?</p> <p>10 Q. Both.</p> <p>11 A. Both. The golf course.</p> <p>12 Q. Okay. So --</p> <p>13 A. So transfer area 1 -- see transfer area 1?</p> <p>14 Q. Correct.</p> <p>15 A. Is taken out of the golf course. Parcel 1 was</p> <p>16 encumbered -- area 1 was encumbered into parcel 1. All that</p> <p>17 was taken from the golf course while they were on the lease.</p> <p>18 Q. So transfer area 1 is an area that -- there's a</p> <p>19 big portion to the left side of the page and then it extends</p> <p>20 the small strip to the south of parcel 1. Correct?</p> <p>21 A. The area before this parcel 2 --</p> <p>22 Q. Okay.</p> <p>23 A. -- belongs to the golf course.</p> <p>24 Q. Okay.</p> <p>25 A. The area that you see on the right down south</p>	<p style="text-align: right;">Page 61</p> <p>1 toward Rampart to the east golf course at the time. Parcel</p> <p>2 1 and area 1 -- parcel 1 is the original parcel that the</p> <p>3 buildings were built -- supposed to be built on. Area --</p> <p>4 area 1 was required in order to increase the size of tower</p> <p>5 so that Peccoles can get a bigger piece and add the four</p> <p>6 tower. So they gave us the land to -- for four towers</p> <p>7 instead of, originally, two towers. And contributing to</p> <p>8 area 1. And there was serious dealings of the price to</p> <p>9 reconfigure here and pay for this.</p> <p>10 Q. When you say pay for this, what --</p> <p>11 A. Pay for area 1 in -- there was -- because there</p> <p>12 was a club owner. It was either we encumber the club into</p> <p>13 Tower 4, if there was a golf course. We could have built it</p> <p>14 and told them in the end. We can either put them in towers</p> <p>15 or we'll build you a new one. It's Queensridge Tower. You</p> <p>16 know, it's two hats I have. Okay.</p> <p>17 Q. You can either put the clubhouse in the towers or</p> <p>18 build Peccoles a new clubhouse. Is that what you're saying?</p> <p>19 A. Well, the original idea was maybe we don't have to</p> <p>20 do anything. We can build into towers, going to be okay,</p> <p>21 but you couldn't promise it's going to happen because you</p> <p>22 don't know what's going to happen in the future. And the</p> <p>23 recession come in and prove that you cannot make deals like</p> <p>24 that.</p> <p>25 So this area was traded in a contract.</p>

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<p style="text-align: right;">Page 62</p> <p>1 Q. When you say "this area" --</p> <p>2 A. Area No. 1 --</p> <p>3 Q. -- area 1? Okay.</p> <p>4 A. -- was contracted for that in the future they can</p> <p>5 make election what to do and either pay \$3.1 million so</p> <p>6 Peccole can go build himself a clubhouse or either build him</p> <p>7 a clubhouse with \$3.1 million and keep the property. In the</p> <p>8 end, it was another option nobody thought, that Queensridge</p> <p>9 Towers was willing to give it back.</p> <p>10 So I can have it with my purchase.</p> <p>11 (Reporter requested clarification.)</p> <p>12 THE WITNESS: Have it with my purchase. So I can</p> <p>13 have the whole thing . . .</p> <p>14 MR. OGILVIE: It's 11:00 o'clock. Do you want to</p> <p>15 take a break? Or we can keep going.</p> <p>16 (Pause in proceedings.)</p> <p>17 MR. OGILVIE: Back on the record.</p> <p>18 Q. (By Mr. Ogilvie) Mr. Lowie, you can set that</p> <p>19 boundary line adjustment --</p> <p>20 A. Thank you.</p> <p>21 Q. -- aside. Let me go back to Exhibit 8, though,</p> <p>22 which is the seven-page declaration.</p> <p>23 A. Eight.</p> <p>24 Q. Eight, yes.</p> <p>25 A. Yes. Okay.</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. Okay. Second page --</p> <p>2 A. Yes.</p> <p>3 Q. -- paragraph 7.</p> <p>4 A. Still not there. Still not there. Eight. Okay.</p> <p>5 Where are we?</p> <p>6 Q. Exhibit 8, second page, paragraph 7.</p> <p>7 A. Paragraph 7. Yes, sir.</p> <p>8 Q. You say, In or around June of 2014, the Peccole</p> <p>9 family gave me six months' notice to exercise the right to</p> <p>10 purchase the entire 250 acres of residentially zoned land.</p> <p>11 What do you mean by that?</p> <p>12 A. What do I mean by that?</p> <p>13 Q. Yes.</p> <p>14 A. Larry called me up and saying, Get ready to go.</p> <p>15 You getting the property.</p> <p>16 Q. So I saw in a prior deposition that you gave --</p> <p>17 that you testified that you had an option to buy the</p> <p>18 property.</p> <p>19 A. I did.</p> <p>20 Q. Okay. Can we -- oh, I'm sorry. Here. We've had</p> <p>21 marked as -- well, we haven't marked it yet. So let's mark</p> <p>22 this as 12.</p> <p>23 (Exhibit 12 was marked.)</p> <p>24 THE WITNESS: What is this?</p> <p>25 MR. OGILVIE: We'll play it in a minute.</p>
<p style="text-align: right;">Page 64</p> <p>1 MS. GHANEM HAM: Okay.</p> <p>2 MR. LEAVITT: Oh, oh, I see.</p> <p>3 THE WITNESS: Oh.</p> <p>4 MR. OGILVIE: Just want to give you a copy of</p> <p>5 everything that we play.</p> <p>6 MR. LEAVITT: So Exhibit 12 is -- can you identify</p> <p>7 what this is?</p> <p>8 MR. OGILVIE: It's a series of clips of video.</p> <p>9 MR. LEAVITT: Got it.</p> <p>10 MR. OGILVIE: That -- this would be the first.</p> <p>11 (Pause in proceedings.)</p> <p>12 Q. (By Mr. Ogilvie) So, Mr. Lowie, we're going to</p> <p>13 play you a clip of a deposition -- videotaped deposition</p> <p>14 that was taken on August 3rd, 2017, in the matter of Jack</p> <p>15 Binion vs. Fore Stars.</p> <p>16 MR. OGILVIE: Go ahead.</p> <p>17 MR. MOLINA: Oops.</p> <p>18 (Video played.)</p> <p>19 Q. (By Mr. Ogilvie) Okay. In that clip, you</p> <p>20 testified that you had an option that was either eight or</p> <p>21 ten years to purchase the golf course. Is that correct?</p> <p>22 A. Seven years.</p> <p>23 Q. Seven years?</p> <p>24 A. That's from --</p> <p>25 MS. GHANEM HAM: Hold --</p>	<p style="text-align: right;">Page 65</p> <p>1 THE WITNESS: Yes, correct.</p> <p>2 MS. GHANEM HAM: No.</p> <p>3 THE WITNESS: That's correct.</p> <p>4 MS. GHANEM HAM: I was going to make an objection,</p> <p>5 but --</p> <p>6 MR. OGILVIE: Go ahead.</p> <p>7 MS. GHANEM HAM: I just want to remind you to give</p> <p>8 a minute for the objection.</p> <p>9 MR. OGILVIE: You can place it.</p> <p>10 MS. GHANEM HAM: Object to form of the question.</p> <p>11 Q. (By Mr. Ogilvie) Okay. And the option was given</p> <p>12 to you by the Peccoles?</p> <p>13 A. Yes.</p> <p>14 Q. Is there a document that reflects this option?</p> <p>15 A. There should have been with settlement of lawsuit.</p> <p>16 Q. It was a settlement of a lawsuit?</p> <p>17 A. Correct.</p> <p>18 Q. It was a settlement of the BGC lawsuit?</p> <p>19 A. Correct.</p> <p>20 Q. And did that option relate in any way to the first</p> <p>21 sentence in paragraph 7 of Exhibit 8 that says, in or around</p> <p>22 June 2014, the Peccole family gave me six months' notice to</p> <p>23 exercise the right to purchase the entire 250 acres of</p> <p>24 residentially zoned land?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. So correct me if I'm wrong. In -- as part of the</p> <p>2 resolution of the BGC lawsuit, the Peccoles gave you a</p> <p>3 seven-year option to purchase the property and then, in or</p> <p>4 around June 2014, they came to you and said, Here it is.</p> <p>5 We're exercising that option. You've got six months to</p> <p>6 purchase the golf course. Is that generally what happened?</p> <p>7 A. Generally, yes.</p> <p>8 Q. Okay. What did I get wrong there?</p> <p>9 A. With the Peccoles, it's -- they pick up the phone,</p> <p>10 they call you up, and option. Nothing -- it wasn't formal</p> <p>11 like you trying to make it to be.</p> <p>12 Q. Okay. It was less formal than I described it?</p> <p>13 A. Way less.</p> <p>14 Q. Okay. But, generally, that was the idea?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And so explain this option. I don't</p> <p>17 understand it. They said to you that sometime in the next</p> <p>18 seven years we can come to you and demand that you purchase</p> <p>19 the property?</p> <p>20 A. There's a deal in 2005 that went wrong. There was</p> <p>21 a lawsuit. The settlement was, on a certain date, that I</p> <p>22 was willing to take an option, because they only had</p> <p>23 somebody to lease and they thought maybe can turn around and</p> <p>24 make some more money. And they ask me wait few years. And</p> <p>25 coming into what became the financial crisis recession, we</p>	<p style="text-align: right;">Page 67</p> <p>1 took that option. And in the end of the option or toward</p> <p>2 the end, not even the end of it, they call me up and say,</p> <p>3 Six months can close. That's it. I'm getting the -- I</p> <p>4 think that he is telling me on this phone call that he is</p> <p>5 getting settle with IDB and getting the -- the golf -- the</p> <p>6 property back. At this point, you know, 5 acre piece, 2.38</p> <p>7 and 2.58, two pieces getting there.</p> <p>8 Q. They were getting what was identified as area 1 in</p> <p>9 Exhibit 11?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 (Exhibit 13 was marked.)</p> <p>13 (Pause in proceedings.)</p> <p>14 Q. (By Mr. Ogilvie) Mr. Lowie, directing your</p> <p>15 attention to what's been marked as Exhibit 12. It's</p> <p>16 identified as a terms sheet --</p> <p>17 MS. WOLFSON: George, really quick, this is 13.</p> <p>18 THE WITNESS: Thirteen.</p> <p>19 MS. WOLFSON: Twelve is the video.</p> <p>20 MR. OGILVIE: Oh, thank you.</p> <p>21 Q. (By Mr. Ogilvie) Let me direct your attention to</p> <p>22 what's been marked as Exhibit 13. It's identified as a</p> <p>23 terms sheet. Do you recognize this document?</p> <p>24 A. Do I remember? No, I don't -- I don't remember.</p> <p>25 I know what this document is. I don't think I read it</p>
<p style="text-align: right;">Page 68</p> <p>1 for -- 15 years. So I don't recognize anything in it. If</p> <p>2 you want to read it, I'll be happy to read it.</p> <p>3 Q. Well -- okay. So question was: Do you recognize</p> <p>4 the document? Not that you remember specifically the</p> <p>5 details of it.</p> <p>6 A. I recognize as a term sheet. It says right</p> <p>7 here . . .</p> <p>8 MS. GHANEM HAM: There's no way she can get your</p> <p>9 testimony when you --</p> <p>10 THE WITNESS: Sorry. Recognize the term sheet.</p> <p>11 MR. LEAVITT: George, this document -- for</p> <p>12 identification purposes, we don't have a Bates stamp for</p> <p>13 this. So we don't know what this document is, for</p> <p>14 identification purposes.</p> <p>15 MR. OGILVIE: I'm not sure I understand.</p> <p>16 MR. LEAVITT: There's no Bates stamp on it.</p> <p>17 MR. OGILVIE: Okay.</p> <p>18 MR. LEAVITT: There's no document control. So we</p> <p>19 don't have a way to properly identify this in the record is</p> <p>20 what I'm saying.</p> <p>21 MR. OGILVIE: Okay.</p> <p>22 MR. LEAVITT: That's all I'm saying.</p> <p>23 MR. OGILVIE: Okay.</p> <p>24 MR. LEAVITT: Is there a better way to identify</p> <p>25 it?</p>	<p style="text-align: right;">Page 69</p> <p>1 MS. GHANEM HAM: I don't know where it came from.</p> <p>2 Something we produced or -- it doesn't have our number on</p> <p>3 it.</p> <p>4 MR. OGILVIE: We'll look for a Bates number.</p> <p>5 MR. LEAVITT: All right. Thank you.</p> <p>6 MR. MOLINA: I can give you the Bates number or we</p> <p>7 can print copies.</p> <p>8 MR. OGILVIE: Why don't we print four more copies.</p> <p>9 And we'll just mark that as 13A, the Bates numbered copies.</p> <p>10 Q. (By Mr. Ogilvie) Mr. Lowie, I want to give you</p> <p>11 the opportunity to review it. So you just tell me when</p> <p>12 you're --</p> <p>13 A. I have to read this. This is complex. Do you</p> <p>14 have the contract by any chance or just the term sheet?</p> <p>15 Going on term sheet, okay. For change . . .</p> <p>16 MS. GHANEM HAM: Are you asking to see another</p> <p>17 document?</p> <p>18 THE WITNESS: No, not asking. Sorry, sorry.</p> <p>19 Q. (By Mr. Ogilvie) You know, since I haven't asked</p> <p>20 any questions, why don't we substitute the Bates number</p> <p>21 for --</p> <p>22 MR. LEAVITT: Just --</p> <p>23 MR. OGILVIE: Pardon me?</p> <p>24 MR. LEAVITT: Yeah. This will just be 13?</p> <p>25 MR. OGILVIE: Yeah.</p>

<p style="text-align: right;">Page 70</p> <p>1 MR. LEAVITT: Yeah. Okay. Let's just do that.</p> <p>2 (Previously marked Exhibit 13 was withdrawn.)</p> <p>3 (Exhibit 13 was marked.)</p> <p>4 (Pause in proceedings.)</p> <p>5 THE WITNESS: Page 8, I think, this is idea of the</p> <p>6 deal. You want me to read the rest of it?</p> <p>7 Q. (By Mr. Ogilvie) No. If ever I ask a question</p> <p>8 that you feel --</p> <p>9 A. Ask it, okay.</p> <p>10 Q. -- you feel you need to review it more --</p> <p>11 A. Yeah.</p> <p>12 Q. -- feel free. Okay.</p> <p>13 MS. GHANEM HAM: You should look at the last page.</p> <p>14 Just . . .</p> <p>15 THE WITNESS: Yes?</p> <p>16 Q. (By Mr. Ogilvie) Okay. This is a document that</p> <p>17 was produced by 180 Land in this litigation. And it --</p> <p>18 again, it's entitled Term Sheet and describes a group of</p> <p>19 transactions wit -- between various parties.</p> <p>20 And parties identified in Section 1 of the</p> <p>21 document -- there is the properties involved that are</p> <p>22 identified in Section 2 of the document. And then Section 3</p> <p>23 identifies the key terms of the transaction.</p> <p>24 I first want to go through some of the parties</p> <p>25 involved in the transaction. You previously testified about</p>	<p style="text-align: right;">Page 71</p> <p>1 some transactions that involved the Peccoles and your</p> <p>2 entities and IDB. You also referenced Lyton. And I believe</p> <p>3 your prior testimony related to the group of transactions as</p> <p>4 referenced in here, but I just want to confirm that.</p> <p>5 So Queensridge Towers was, at first, a partnership</p> <p>6 between the Peccoles and your entities, generally. Is that</p> <p>7 correct?</p> <p>8 A. No.</p> <p>9 Q. No, okay. So what was it? Who was involved from</p> <p>10 the outset -- at the very outset of Queensridge Towers?</p> <p>11 A. It was three parties.</p> <p>12 Q. Okay.</p> <p>13 A. So was -- Peccoles put land in. There was group</p> <p>14 of investors and it was my construction group and my</p> <p>15 investment group and my development group all under one.</p> <p>16 And there was . . .</p> <p>17 Q. Okay. So --</p> <p>18 A. Three.</p> <p>19 Q. Investors, Lowie entities, and Peccoles. Is that</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. So as we look at Section 1.1, there is two</p> <p>23 entities -- three entities, Executive QT Holdings, LLC;</p> <p>24 Executive GWP Holdings, LLC; and SHCP 18, LLC, that are</p> <p>25 identified as the construction members.</p>
<p style="text-align: right;">Page 72</p> <p>1 So was -- and the members of -- the construction</p> <p>2 members, it states, are under the direct or indirect control</p> <p>3 of Yohan Lowie and Paul and Vickie Dehart.</p> <p>4 Executive QT Holdings, LLC, that was the Lowie</p> <p>5 entity -- or the Lowie entity that held you and Mr. and</p> <p>6 Mrs. Dehart's interest in Queensridge Towers. Correct?</p> <p>7 A. I -- I don't know which company, how it work.</p> <p>8 Q. Okay.</p> <p>9 A. I don't know. Be incorrect if I said yes.</p> <p>10 Q. Okay. That's fine.</p> <p>11 A. But --</p> <p>12 Q. Do you have any reason to believe that QT does not</p> <p>13 refer to Queensridge Towers?</p> <p>14 A. QT does refers to it, but I know there were few</p> <p>15 companies in-between it, because they had separate --</p> <p>16 because we had too many hats. So it was separated. So it</p> <p>17 was another complex layer of -- of -- the structure had to</p> <p>18 be created in order to create this deal to take the Peccoles</p> <p>19 out.</p> <p>20 Q. Okay. So QT stands for Queensridge Towers?</p> <p>21 A. Correct.</p> <p>22 Q. Then there's Executive GWP Holdings. GWP, does</p> <p>23 that stand for Great Wash Properties?</p> <p>24 A. No, Great Wash Park.</p> <p>25 Q. Great Wash Park, okay. And SHCP, is that Sahara</p>	<p style="text-align: right;">Page 73</p> <p>1 Hualapai Commons?</p> <p>2 A. I think it's corner piece.</p> <p>3 Q. Corner piece. Sahara Hualapai Corner Piece?</p> <p>4 A. I think so.</p> <p>5 Q. Okay. And these were all -- okay. You described</p> <p>6 the three-partner partnership. Strike that.</p> <p>7 Okay. Moving to Section 1.2, there is a</p> <p>8 description of two investment limited partnerships and it's</p> <p>9 defined as the original investment members. Is that --</p> <p>10 original investment members, was that the third party of the</p> <p>11 partnership that you described earlier?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And --</p> <p>14 A. I suspect that's what it is.</p> <p>15 Q. Okay.</p> <p>16 A. I can't remember the name of the company, but it</p> <p>17 should be this one.</p> <p>18 Q. Okay. And then in Section 1.3, there is the</p> <p>19 identification of three entities collectively, the PNC</p> <p>20 sellers. That's Peccole Nevada's interest. Correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And then Section 1.4 identifies IDB</p> <p>23 Development Corporation, Property and Building Corporation,</p> <p>24 Limited, and the Lyton U.S. Partnership. And they're</p> <p>25 identified as the new investment members. Correct?</p>

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<p style="text-align: right;">Page 74</p> <p>1 A. Correct.</p> <p>2 Q. And then Section 1.5 identifies another Lowie</p> <p>3 entity, Executive Homes, Inc. Correct?</p> <p>4 MS. GHANEM HAM: Wait. I'm just going to object</p> <p>5 to the form.</p> <p>6 THE WITNESS: Where is Lowie . . .</p> <p>7 Q. (By Mr. Ogilvie) It says that the manager --</p> <p>8 A. Which line? 1.4? Which line?</p> <p>9 Q. 1.5.</p> <p>10 A. I apologize. That's -- okay.</p> <p>11 Q. I'm sorry. Maybe I didn't make --</p> <p>12 A. Yeah.</p> <p>13 Q. -- myself clear. Executive Homes, Inc. --</p> <p>14 A. Yes, correct.</p> <p>15 Q. -- is another Lowie entity?</p> <p>16 A. Right.</p> <p>17 Q. Okay. So you -- in your testimony earlier, you</p> <p>18 described a group of transactions in which you and your</p> <p>19 entities were purchasing the Peccoles' interest in various</p> <p>20 properties and then selling a portion -- not all but a</p> <p>21 portion of those interests to IDB. Is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Is this term sheet -- does this term sheet</p> <p>24 reflect, generally, the transaction that you previously</p> <p>25 described in your testimony?</p>	<p style="text-align: right;">Page 75</p> <p>1 MS. GHANEM HAM: Object to the form.</p> <p>2 THE WITNESS: So, first thing, it's a term sheet,</p> <p>3 not a contract. So it's not as exact as it should be. It's</p> <p>4 not -- it's not what got into the final contract.</p> <p>5 MR. OGILVIE: Understood.</p> <p>6 THE WITNESS: Then if you read 3.2 . . . 3.2, Key</p> <p>7 Term of the Transaction. PNC seller wish to sell all of the</p> <p>8 holding in each of the companies provided that they will</p> <p>9 remain profit participant. Ten units, the ten . . .</p> <p>10 The construction member and/or the other designee</p> <p>11 of the construction member and/or companies, the purchaser</p> <p>12 entities selected, the purchaser, will, under the Peccole</p> <p>13 sale transaction, acquire or redeem, as applicable, from the</p> <p>14 PNC seller all of the PNC sellers' respective interest in</p> <p>15 companies, upon term and condition as the PNC sellers and</p> <p>16 the purchaser agree upon in advance.</p> <p>17 So in our agreement, because we have so many</p> <p>18 issues between us to settle before we taking -- taking them</p> <p>19 out, all they got into it, into one number. Here it say 76.</p> <p>20 I think it close 74. It still was, you know, dealing</p> <p>21 because we were not paying the 2, because we -- they left</p> <p>22 the building as collateral on what they owe us.</p> <p>23 So . . . So that's explains . . .</p> <p>24 Q. Okay.</p> <p>25 A. So . . .</p>
<p style="text-align: right;">Page 76</p> <p>1 MS. GHANEM HAM: Did you get that?</p> <p>2 (Reporter requested clarification.)</p> <p>3 THE WITNESS: That explains what -- you ask me --</p> <p>4 that was the answer to your question, if -- describe it.</p> <p>5 Describe, you know, what happen here.</p> <p>6 Q. (By Mr. Ogilvie) I'm just asking if the</p> <p>7 transaction, as referenced here, is the transaction that</p> <p>8 was -- you were describing in your earlier testimony about</p> <p>9 purchasing the Peccoles' interest and selling a portion of</p> <p>10 those interests to IDB.</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And further in the entities that are</p> <p>13 identified in the transaction, there's Queensridge Towers,</p> <p>14 LLC. That's the entity that -- well, it says the owner and</p> <p>15 developer of One Queensridge Place. That's Queensridge</p> <p>16 Towers. Right?</p> <p>17 MS. GHANEM HAM: I'm going to object to the form</p> <p>18 and just -- you're on page 2. Is that correct?</p> <p>19 MR. OGILVIE: Yes, I am.</p> <p>20 MS. GHANEM HAM: Okay.</p> <p>21 Q. (By Mr. Ogilvie) Okay.</p> <p>22 A. Queensridge Tower, LLC, my knowledge and my</p> <p>23 belief, is the company that own the project.</p> <p>24 Q. Okay. When you say "the project," you're talking</p> <p>25 about the Queensridge Towers project?</p>	<p style="text-align: right;">Page 77</p> <p>1 A. One Queensridge Tower.</p> <p>2 Q. So let me just ask you this. My understanding</p> <p>3 that One Queensridge Place is the Queensridge Tower project.</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And then Great Wash Park, LLC, is</p> <p>6 identified here as the owner and developer of The Village at</p> <p>7 Queensridge project, Queensridge project described below.</p> <p>8 That, eventually, became Tivoli Village. Correct?</p> <p>9 A. Correct.</p> <p>10 Q. And then -- so Sahara Hualapai, LLC, and</p> <p>11 collectively with Queensridge Towers and Great Wash -- oh,</p> <p>12 okay. So all three -- Sahara Hualapai, LLC; Queensridge</p> <p>13 Towers LLC; and Great Wash Park, LLC -- were the owners and</p> <p>14 developer of Sahara Hualapai Commons. Is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. I don't -- I think it's a mistake. Commons is</p> <p>18 different project, but I think they meant -- that's why we</p> <p>19 call it SHP the Hualapai corner, because they have commons</p> <p>20 everywhere. The colleagues had other few small project and</p> <p>21 they got confused. They put wrong, but it means they</p> <p>22 talking about the corner of Sahara and Hualapai. The</p> <p>23 northeast corner of Sahara and Hualapai, that's what they</p> <p>24 mean.</p> <p>25 Q. So if we go back to the first page, Section 1.3,</p>

<p style="text-align: right;">Page 78</p> <p>1 it references Sahara Commons, Limited, LLC. That's one of</p> <p>2 the Peccole entities. You're saying that that is a misnomer</p> <p>3 or misnamed. Is that . . .</p> <p>4 A. I'm not saying anything. I'm saying there's a lot</p> <p>5 of things wrong here. I'm saying, to my knowledge, we</p> <p>6 identified the property in the contract as the corner of</p> <p>7 Sahara and Hualapai. So it's SHCP, because of all these</p> <p>8 issues at the time.</p> <p>9 Q. Okay.</p> <p>10 A. And for use afterward, still call it the wrong</p> <p>11 name. So that's what I . . .</p> <p>12 Q. Okay. And then if we move to Section 2, which is</p> <p>13 the Background, it says, Each of the companies holds the</p> <p>14 rights in each of the three real estate properties located</p> <p>15 in Las Vegas, Nevada, in which the following projects are --</p> <p>16 A. I apologize. Page -- page 3?</p> <p>17 MS. GHANEM HAM: What page are you --</p> <p>18 MR. OGILVIE: I said --</p> <p>19 MS. GHANEM HAM: You said Section 2.</p> <p>20 MR. OGILVIE: Section 2, which starts --</p> <p>21 MS. GHANEM HAM: So page 2.</p> <p>22 THE WITNESS: Can I just stop and say that I --</p> <p>23 MS. GHANEM HAM: Hold on.</p> <p>24 THE WITNESS: -- want to correct --</p> <p>25 MS. GHANEM HAM: Hold on.</p>	<p style="text-align: right;">Page 79</p> <p>1 THE WITNESS: -- an answer?</p> <p>2 MS. GHANEM HAM: Wait. Hold on.</p> <p>3 THE WITNESS: Because I didn't give him the</p> <p>4 right . . .</p> <p>5 MS. GHANEM HAM: Oh, okay.</p> <p>6 Q. (By Mr. Ogilvie) You want to correct something?</p> <p>7 MS. GHANEM HAM: Yes.</p> <p>8 Q. (By Mr. Ogilvie) Did I --</p> <p>9 MS. GHANEM HAM: Go ahead.</p> <p>10 THE WITNESS: Yeah. I told you -- I -- I say the</p> <p>11 name of another company that I negotiated with --</p> <p>12 MR. OGILVIE: Yes.</p> <p>13 THE WITNESS: -- originally to go to talk to them.</p> <p>14 That's who it was. It was PBC. I -- I -- I missed it and I</p> <p>15 said different name. I thought it was Property Development.</p> <p>16 It was actually PBC, the company.</p> <p>17 MR. OGILVIE: Okay.</p> <p>18 THE WITNESS: That's who started this whole deal.</p> <p>19 Q. (By Mr. Ogilvie) Oh, oh, oh. Okay. I think I</p> <p>20 understand. You testified earlier that it wasn't originally</p> <p>21 IDB, it was another entity, and that other entity was PBC?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay.</p> <p>24 A. So I apologize.</p> <p>25 Q. Okay. So moving to the bottom of page 2, the</p>
<p style="text-align: right;">Page 80</p> <p>1 Background section --</p> <p>2 A. Yes.</p> <p>3 Q. -- it says, again, Each of the companies holds the</p> <p>4 entire rights in one of the three real estate properties</p> <p>5 located in Las Vegas, Nevada, in which the following</p> <p>6 projects -- and then "projects" is defined -- are conducted</p> <p>7 and/or planned. And then it mentions in 2.11, 2.1.1, One</p> <p>8 Queensridge Place. That's Queensridge Towers. Correct?</p> <p>9 A. Correct.</p> <p>10 Q. And then 2.12, on page 4, is The Village at</p> <p>11 Queensridge, which became Tivoli Village. Correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then 2.1.3, Sahara Hualapai, which I believe</p> <p>14 you're saying you refer to as Sahara Hualapai Corner Piece.</p> <p>15 Is --</p> <p>16 A. Yes.</p> <p>17 Q. Yes, okay. And then we get to -- so it identifies</p> <p>18 the three projects involved in the transaction and then gets</p> <p>19 to Section 3, The Key Terms of the -- of the Transaction,</p> <p>20 and it identifies the fact that the Peccoles want to sell</p> <p>21 all their holdings in these three projects. Right?</p> <p>22 A. Section 3.1? 3.1, you mean?</p> <p>23 Q. 3.1.</p> <p>24 A. Yeah, yeah, yeah, I got it. Yes.</p> <p>25 Q. Okay. And then it talks about, in Section 3.2,</p>	<p style="text-align: right;">Page 81</p> <p>1 that your entities, which are the construction members, are</p> <p>2 going to acquire from the Peccoles all of their interest in</p> <p>3 these three projects and . . .</p> <p>4 A. And more --</p> <p>5 MS. GHANEM HAM: There's no question pending.</p> <p>6 Q. (By Mr. Ogilvie) And the approximate purchase</p> <p>7 price will be \$90 million.</p> <p>8 A. Yeah, but you -- you have jumped over what the</p> <p>9 construction member is buying. The construction member is</p> <p>10 buying -- agree upon -- whatever agree upon in advance.</p> <p>11 Q. Okay.</p> <p>12 A. So I didn't know about the deal that we have.</p> <p>13 Q. Right.</p> <p>14 A. Didn't want to be a part of it.</p> <p>15 Q. I'm sorry?</p> <p>16 A. Did not want to be a part of it and couldn't be a</p> <p>17 part of it and saying, Keep it out. You do the deal between</p> <p>18 you. I'm only buying these three entities. Peccole here is</p> <p>19 only guaranteeing these three entities. Deal between us and</p> <p>20 Peccole is different. Deal is that's the deal.</p> <p>21 Q. Okay. This term sheet references three projects</p> <p>22 that the Lowie entities are buying the Peccoles out of and</p> <p>23 selling a portion of to IDB and Lyton and PBC. Correct?</p> <p>24 A. No, it's incorrect. Referencing -- the -- IDB is</p> <p>25 making us purchase, among other things, the rights from</p>

<p style="text-align: right;">Page 82</p> <p>1 those three companies and only they coming into these three</p> <p>2 companies. They only interested in development. They're</p> <p>3 not interested in the golf course.</p> <p>4 Q. Where does it mention anything other than the</p> <p>5 three projects that are identified in Section 2 --</p> <p>6 Section 2?</p> <p>7 A. It does not identify any of the property -- any of</p> <p>8 the properties, but it says that, We -- you go and settle</p> <p>9 with the Peccoles and do all your bartering between you two.</p> <p>10 Do whatever it is you have to do. All I'm interested in is</p> <p>11 a free and clear -- free and clear interest in those three</p> <p>12 companies, and that's all I'm referring that I'm buying, but</p> <p>13 I'm telling you that you have to produce it. You have to</p> <p>14 produce to me those three companies. You go ahead and do</p> <p>15 whatever you have to do in order to do -- in order to --</p> <p>16 otherwise, they would have gone and buy the -- from</p> <p>17 Peccole -- from Peccole interest. They couldn't because we</p> <p>18 were keeping something.</p> <p>19 Q. Something -- when you say something, you're</p> <p>20 keeping a portion of the Peccoles' interest in the three</p> <p>21 projects identified in Section 2?</p> <p>22 A. No.</p> <p>23 Q. Okay. So Section -- Section 3.1 says that the PNC</p> <p>24 sellers -- that's Peccoles -- wish to sell all of their</p> <p>25 holdings in each of the companies provided they will remain</p>	<p style="text-align: right;">Page 83</p> <p>1 profit participants. "Companies" are defined in Section 1.8</p> <p>2 as Sahara Hualapai, LLC; Queensridge Towers; and Great Wash.</p> <p>3 A. That's correct.</p> <p>4 Q. So there's only --</p> <p>5 MS. GHANEM HAM: There's no question.</p> <p>6 Q. (By Mr. Ogilvie) -- three projects in which this</p> <p>7 term sheet references the Peccoles selling. Correct?</p> <p>8 A. So I'm buying something from you and I make a deal</p> <p>9 with you.</p> <p>10 Q. It's a yes-or-no question.</p> <p>11 A. It's not yes-or-no question, because I'm trying</p> <p>12 tell you it's two deals here in one. One is in order to</p> <p>13 deliver those three things that I'm interested to buy from</p> <p>14 you, you go and finishing your business with Peccoles.</p> <p>15 That's what it says here. Whatever you agree to do with the</p> <p>16 Peccoles, I don't care. I only care about one single thing,</p> <p>17 that you give me these three properties. That's what 3.2 --</p> <p>18 Q. I think that -- I understand that IDB, PBC, and</p> <p>19 Lyton weren't interested in your negotiations with the</p> <p>20 Peccoles. What I'm saying is this document references three</p> <p>21 interests that the Peccoles are selling to you and your</p> <p>22 entities. Correct?</p> <p>23 A. These document, yes. It reference three</p> <p>24 properties, but it mention that there is a bigger deal to</p> <p>25 be -- that you have to make in order to purchase it. That's</p>
<p style="text-align: right;">Page 84</p> <p>1 why we have to purchase them and sell the membership to</p> <p>2 third party.</p> <p>3 Q. I understand. There was a second part of the deal</p> <p>4 that after you purchased the Peccole interest in the three</p> <p>5 projects identified in Section 2 of Exhibit 13, that you</p> <p>6 were, then, going to sell a portion of those interests to</p> <p>7 IDB, PBC, and Lyton?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And it was anticipated in Section 3.3 that</p> <p>10 IDB, PBC, and Lyton were going to pay \$90 million for</p> <p>11 whatever interest in these three projects that you agreed to</p> <p>12 sell to them?</p> <p>13 MS. GHANEM HAM: Object to the form. Document</p> <p>14 speaks for itself.</p> <p>15 THE WITNESS: That's correct. The -- that's</p> <p>16 correct. That's -- we sold a portion of interest for</p> <p>17 \$90 million. Correct.</p> <p>18 Q. (By Mr. Ogilvie) For?</p> <p>19 A. For \$90 million.</p> <p>20 Q. Okay.</p> <p>21 A. For -- no, not for 90. Yes, for 90 million.</p> <p>22 Sorry.</p> <p>23 Q. And then lower in --</p> <p>24 A. I'm not sure that that's what's goes on the</p> <p>25 contract. That's why I'm say we are talking here about term</p>	<p style="text-align: right;">Page 85</p> <p>1 sheet.</p> <p>2 Q. Yes.</p> <p>3 A. This is not the contract --</p> <p>4 Q. I understand. I'm just talking about what was</p> <p>5 generally anticipated in -- under this term sheet.</p> <p>6 A. Okay. This was a chaotic time. Done very</p> <p>7 quickly. So I didn't read this thing in 15 years. Reading</p> <p>8 it here right now. So -- but I remember how it went.</p> <p>9 So I don't remember it was 90. You ask me if it</p> <p>10 was 90. I think it was 90, 92, or 91, 89. There was a</p> <p>11 bartering deal all the way to the closing because it was</p> <p>12 issues coming up all the time. The Peccoles, you know, had</p> <p>13 issues. It had to be a trade.</p> <p>14 Q. Okay. So, then, lower in Section 3.3 right near</p> <p>15 the bottom of page 5, it talks about what was anticipated</p> <p>16 for the Lowie entities to pay to the Peccole entities for</p> <p>17 their interest in these three projects, and that was</p> <p>18 \$76 million. Right?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. And then the difference between the</p> <p>21 90 million that your entities was selling interest to IDB,</p> <p>22 PBC, and Lyton and the \$76 million that you were paying to</p> <p>23 Peccoles would be distributed amongst your entities?</p> <p>24 A. It was -- yes, correct. It was paid. It -- it</p> <p>25 was the -- part of the barter to pay the Peccoles' debt to</p>

<p style="text-align: right;">Page 86</p> <p>1 us on equipment, material, and change on that waterfall.</p> <p>2 Q. And --</p> <p>3 A. So we -- when we -- this transaction -- you know,</p> <p>4 my -- my entities were the king. You know, in each business</p> <p>5 you have a king piece. Right? It's mean the -- the entity</p> <p>6 that controls everything.</p> <p>7 So I have a hat everywhere. I'm the developer,</p> <p>8 I'm the contractor, I'm, you know, the real estate, you</p> <p>9 know, if you will, broker. I'm running the whole deal.</p> <p>10 There is two part -- parties of investors. One is land</p> <p>11 owner. One is putting some money in.</p> <p>12 So in the waterfall, we were getting paid -- but</p> <p>13 we had an extra that we getting. You get construction, you</p> <p>14 get developer fees, you get all the other fees. So you</p> <p>15 become 75 percent of the deal, everybody else is 25 percent</p> <p>16 of the deal.</p> <p>17 So what happen when IDB came in saying, We don't</p> <p>18 care. Listen, we trust you. Here is what we want to do.</p> <p>19 We are going to do the deal the way you going tell us. Go</p> <p>20 finish with them. Deliver the title for those -- the</p> <p>21 interest with those three properties. And we just want to</p> <p>22 be first in the waterfall.</p> <p>23 So everybody right now -- we changing the</p> <p>24 position. You no longer the king. We are the king.</p> <p>25 Q. IDB?</p>	<p style="text-align: right;">Page 87</p> <p>1 A. So we will take the first 90 million.</p> <p>2 Q. I interrupted you and I apologize. I just wanted</p> <p>3 the record to be clear. When you said, We want to be king,</p> <p>4 you were referring "we" to be --</p> <p>5 A. IDB. IDB entities --</p> <p>6 Q. Yes.</p> <p>7 A. -- wanted to get the \$90 million first. There was</p> <p>8 already sales over \$90 million at the time. By the time</p> <p>9 close this contract, we have probably \$150 million in sales</p> <p>10 in building. So they had to come very quickly. So instead</p> <p>11 me taking first 74 -- 79 million, 78, 7 million under</p> <p>12 original budget that we had, they came in my shoes and they</p> <p>13 taking the first 90 million.</p> <p>14 And for that, I told the Peccoles, I'm selling my</p> <p>15 position. I'm taking you out. I'm going to make you very</p> <p>16 rich, instead of bankrupting your company. So I'm going to</p> <p>17 make you very rich. You -- I'm subordinate position. You</p> <p>18 have to pay me all the debt in the -- everything you owe me,</p> <p>19 I want to get paid for.</p> <p>20 So distribution went to the EHI members, EHB</p> <p>21 Companies, but mainly EHI to pay for the warehouse, pay for</p> <p>22 the equipment the Peccoles share. In the agreements</p> <p>23 originally, Peccoles have to share.</p> <p>24 Q. EHI is Executive Homes, Inc.?</p> <p>25 A. Yeah, it was -- it was contractor.</p>
<p style="text-align: right;">Page 88</p> <p>1 Q. I'm just trying to make the record clear.</p> <p>2 A. EHI was contractor that did construction of all</p> <p>3 the finishes of all the -- you know, we -- we -- building</p> <p>4 companies, they give us shell and we finished it.</p> <p>5 Q. Okay. And then in Section 3.4, on page 6, it says</p> <p>6 that the following trans- -- following the transactions</p> <p>7 contemplated in Section 3.3 above, the membership interest</p> <p>8 in each of the companies shall be as set forth in</p> <p>9 attachment -- in the attachment hereto.</p> <p>10 If we turn to page 20, the last page of</p> <p>11 Exhibit 13 --</p> <p>12 A. Yes.</p> <p>13 Q. -- does this set forth the membership interest</p> <p>14 that were anticipated as a result of these transactions?</p> <p>15 A. Yes. So we can see that, instead of being 88 or</p> <p>16 90 percent or 80 percent, if you will, I've changed to hard</p> <p>17 number 40.5 because the waterfall. So that's what they did.</p> <p>18 Q. Because the waterfall -- because IDB says, We want</p> <p>19 to be king?</p> <p>20 A. IDB came in with lot of money to take the</p> <p>21 Peccole -- to save the family. Right? We came up with this</p> <p>22 deal saying, I'll give you everything. You know what, here.</p> <p>23 I'll take what I'm taking out the deal. Here is my portion.</p> <p>24 Here is my 30 million out of -- here's my money out of this.</p> <p>25 Here is -- you going to put additional 30 and Peccole reach</p>	<p style="text-align: right;">Page 89</p> <p>1 30. At the end of that, reach the whole deal. Recession</p> <p>2 come in and there was nothing left for us, basically. So</p> <p>3 when we bought out, that's only time I got paid.</p> <p>4 Q. Bought out by IDB?</p> <p>5 A. At 2007. When the end of day, we -- we got bought</p> <p>6 out from IDB. And that was the end of the deal with IDB was</p> <p>7 November 2007 -- is the only time I got paid for these</p> <p>8 buildings was 2007, because the waterfall got depleted by</p> <p>9 IDB in the recession. So first 250 went to them.</p> <p>10 Q. Okay. So page 20, the attachment, was the</p> <p>11 anticipated percentage ownerships of the members following</p> <p>12 this transaction. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. And then I think what you said was after this,</p> <p>15 which was 2005, August 10, 2005, approximately two years</p> <p>16 after that, you got bought out by -- your -- the Lowie</p> <p>17 entities got bought out by IDB's entities?</p> <p>18 A. No, that's 2012.</p> <p>19 Q. Okay. I thought you said 2007.</p> <p>20 MS. GHANEM HAM: He did.</p> <p>21 MR. OGILVIE: Okay.</p> <p>22 THE WITNESS: I did? I apologize. 2 -- I --</p> <p>23 November 6th or 7th of 2012 I got bought out.</p> <p>24 Q. (By Mr. Ogilvie) Maybe. Okay.</p> <p>25 A. I'm sorry.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. No, I think you probably thought seven years later</p> <p>2 and came up with 2007.</p> <p>3 A. I'm sorry.</p> <p>4 Q. Whatever. 2012 is when you got -- when the Lowie</p> <p>5 entities got bought out of the --</p> <p>6 A. The whole structure.</p> <p>7 Q. The three projects identified in Section -- in</p> <p>8 Exhibit 13?</p> <p>9 A. With all the dealings with IDB, we clean the</p> <p>10 table, yes, and I just became a builder for them in 2012.</p> <p>11 Q. So November 2012 the Peccole entities got bought</p> <p>12 out of Queensridge Towers, of Tivoli Village, and --</p> <p>13 A. EH -- EHB, not Peccoles.</p> <p>14 MS. GHANEM HAM: Hold on. Hold on. Let him</p> <p>15 finish.</p> <p>16 Q. (By Mr. Ogilvie) Oh, I'm sorry. I misstated.</p> <p>17 In --</p> <p>18 A. Okay.</p> <p>19 Q. -- 2012, the Lowie entities were purchased -- got</p> <p>20 bought out of Tivoli Village, Queensridge Towers, and Sahara</p> <p>21 Hualapai Corner Piece?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. All right. So -- I'm sorry.</p> <p>24 THE WITNESS: Hmm?</p> <p>25 MS. GHANEM HAM: I was going to object to the</p>	<p style="text-align: right;">Page 91</p> <p>1 form.</p> <p>2 MR. OGILVIE: Okay.</p> <p>3 THE WITNESS: Okay.</p> <p>4 MR. OGILVIE: It's 12:10. Why don't -- why don't</p> <p>5 we take a lunch.</p> <p>6 THE WITNESS: Okay. They -- I just want -- they</p> <p>7 bought -- they bought our share and they bought our</p> <p>8 memberships and I think that, also, distribution . . .</p> <p>9 So let me put it this way: It's -- again, as</p> <p>10 complex as this deal, was take us out, because I was the</p> <p>11 manager of the management company. And as a manager, I had</p> <p>12 to sign documents that I -- you know, that I couldn't no</p> <p>13 longer sign when I didn't have certain interest in.</p> <p>14 So it became a mess of how to release this. Has</p> <p>15 nothing to do that. Just so you know that my answer is</p> <p>16 that, in my eyes, I got bought in November 7, 2007, from all</p> <p>17 the --</p> <p>18 MS. GHANEM HAM: He said '07 again.</p> <p>19 THE WITNESS: November 7th, 2012. I apologize.</p> <p>20 Q. (By Mr. Ogilvie) I'm sorry. I thought I</p> <p>21 understood it when you first testified. What was the</p> <p>22 clarification that you just made?</p> <p>23 A. That it's a complex -- it's -- it's something like</p> <p>24 this. Like -- like this contract, not term sheet, that is</p> <p>25 buying memberships and buying -- and buying the memberships</p>
<p style="text-align: right;">Page 92</p> <p>1 and buying responsibility and the distribution.</p> <p>2 Q. Essentially just buying the Lowie entities</p> <p>3 completely out. Is that correct?</p> <p>4 A. No, I -- I wouldn't say it's completely out. I</p> <p>5 said it's not -- I have maybe interest but the interest is</p> <p>6 worth nothing. It's not worth paper.</p> <p>7 Q. Is not worth?</p> <p>8 A. Doesn't worth a dollar even. It can never be</p> <p>9 worth anything, because there -- otherwise, would have to go</p> <p>10 and do new public offerings over there. It's a public</p> <p>11 companies. So they said, We want take you out this way, and</p> <p>12 we agree. We got paid and we walk.</p> <p>13 Q. So I guess because of Israeli securities laws they</p> <p>14 couldn't buy you out completely. Is that --</p> <p>15 MS. GHANEM HAM: I think the issue is the term</p> <p>16 bought out and what that means and he's using it -- and</p> <p>17 maybe the better word is division from IDB. I don't know.</p> <p>18 So . . .</p> <p>19 THE WITNESS: You and I would call it, in here, as</p> <p>20 we do business here, as a buyout, but if a public company</p> <p>21 buys you out, they have to go through a whole process when</p> <p>22 they do it.</p> <p>23 MR. OGILVIE: Okay.</p> <p>24 THE WITNESS: So they didn't want to go to -- you</p> <p>25 know, to public meetings and declarations and what have you</p>	<p style="text-align: right;">Page 93</p> <p>1 and effect reportings. So they purchased. They -- they</p> <p>2 made it -- in effect, I may have an interest, but I have</p> <p>3 nothing in there. There's no interest that is worth</p> <p>4 anything. That's what I'm trying tell you.</p> <p>5 Q. This area isn't really critical, just --</p> <p>6 A. Okay.</p> <p>7 Q. But, generally, they bought you out?</p> <p>8 A. I want to just qualify.</p> <p>9 Q. I understand.</p> <p>10 A. Bought me out.</p> <p>11 Q. I get it.</p> <p>12 A. Have no more management responsibility and I</p> <p>13 believe that I have no profit or any interest coming out of</p> <p>14 there. That's what I mean.</p> <p>15 Q. Okay. Good.</p> <p>16 MR. OGILVIE: Let's break for lunch.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 (A lunch recess was taken.)</p> <p>19 (Exhibit 14 through Exhibit 19 were marked.)</p> <p>20 Q. (By Mr. Ogilvie) Okay. Mr. Lowie, I've had the</p> <p>21 court reporter set in front of you six -- the next six</p> <p>22 exhibits that we will talk about in order. They are --</p> <p>23 A. She's to my side.</p> <p>24 Q. I'm sorry?</p> <p>25 A. She sits to my side. You say court reporter sits</p>

<p style="text-align: right;">Page 94</p> <p>1 in front of you.</p> <p>2 Q. Oh.</p> <p>3 MS. GHANEM HAM: Placed in front of you.</p> <p>4 THE WITNESS: Oh, I apologize. I didn't</p> <p>5 understand. Mis- -- totally misunderstood.</p> <p>6 Q. (By Mr. Ogilvie) No worries. So Exhibit 14 is a</p> <p>7 document entitled Securities Redemption Agreement, dated</p> <p>8 September 14th, 2005, between Queensridge Towers, LLC, and</p> <p>9 Queensridge Highrise, LLC.</p> <p>10 Queensridge Highrise, LLC, is the vehicle through</p> <p>11 which or the entity through which the Peccoles own their</p> <p>12 interest in One Queensridge Place or otherwise known as</p> <p>13 Queensridge Towers. Correct?</p> <p>14 A. It's assumption. I'm not sure. I think it is,</p> <p>15 but I'm not sure.</p> <p>16 Q. Okay. So if we refer back to Exhibit 13, the term</p> <p>17 sheet, it identifies that Queensridge Highrise, LLC, is one</p> <p>18 of the PNC sellers. It's the 1.3 -- Section 1.3.</p> <p>19 A. Yes, I see.</p> <p>20 Q. Okay. So -- and that's identified as Peccole</p> <p>21 Nevada Corporation and its principals?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And Queensridge Towers, LLC, is the entity</p> <p>24 that owned the property. Correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 95</p> <p>1 Q. And was developing the project?</p> <p>2 A. That's my belief.</p> <p>3 Q. Okay. So this is -- you can review it if you need</p> <p>4 to, but my question is -- this is the document through which</p> <p>5 your entity purchased the Peccoles out of Queensridge</p> <p>6 Towers. Correct?</p> <p>7 A. Oh, the documents are going speak -- speak for</p> <p>8 themselves. And I -- if you want me to read this, they are</p> <p>9 reading for me. This is very entailed, as -- as you see for</p> <p>10 yourself, but . . . yeah, that agreement between the</p> <p>11 Peccoles and EHB entities. Correct.</p> <p>12 Q. To purchase or to buy out the Peccoles' interest</p> <p>13 in Queensridge Towers?</p> <p>14 A. Correct.</p> <p>15 Q. If we go back to --</p> <p>16 MS. GHANEM HAM: Just -- I'm going to have to --</p> <p>17 I -- I know we're not waiting for any objections, but let me</p> <p>18 just object to the form of the question as misstating the</p> <p>19 documents and the evidence.</p> <p>20 MR. OGILVIE: Okay. I don't have any problem if</p> <p>21 you don't slide it in before he answers.</p> <p>22 MS. GHANEM HAM: I know you don't have a problem</p> <p>23 with me not giving it beforehand, but if we could just take</p> <p>24 a minute so I can get it on.</p> <p>25 MR. OGILVIE: Okay.</p>
<p style="text-align: right;">Page 96</p> <p>1 MS. GHANEM HAM: Thank you.</p> <p>2 Q. (By Mr. Ogilvie) The last page that is numbered</p> <p>3 is page 10. So if you would go back to page -- following</p> <p>4 page 10 which is signature page.</p> <p>5 A. Okay.</p> <p>6 Q. Actually, two signature pages. There is a</p> <p>7 signature as -- appears to be on or by Yohan Lowie as chief</p> <p>8 executive officer of Executive Homes, Inc., which is</p> <p>9 identified as the operations manager of Queensridge Towers,</p> <p>10 LLC. Is that right?</p> <p>11 A. Operation manager . . .</p> <p>12 Q. I'm sorry?</p> <p>13 A. I'm not following to where are you.</p> <p>14 Q. So do you --</p> <p>15 A. Yes.</p> <p>16 Q. Are you on the signature page? Okay. I'm looking</p> <p>17 at the top signature which --</p> <p>18 A. Yes.</p> <p>19 Q. -- the signature block says Yohan Lowie, chief</p> <p>20 executive officer of Executive Homes, which is the</p> <p>21 operations manager of Queensridge Towers, LLC. Correct?</p> <p>22 A. Okay. I don't -- I -- the signature block says</p> <p>23 Yohan Lowie, chief executive officer.</p> <p>24 Q. Let me just shorten it. Is that your signature?</p> <p>25 A. It is.</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Okay. And immediately below that, there is a</p> <p>2 signature of Yohan Lowie as chief executive officer of</p> <p>3 Executive Home Builders. Is that your signature?</p> <p>4 A. Correct.</p> <p>5 Q. And on the next page, there is a signature on</p> <p>6 behalf of Queensridge Towers Investments, LP. Is that your</p> <p>7 signature?</p> <p>8 A. Yes.</p> <p>9 Q. As manager of Queensridge Towers Investments, LP?</p> <p>10 A. Yes.</p> <p>11 Q. And immediately next to that is that your</p> <p>12 signature for -- as manager of Executive QT Holdings, LLC?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. On page 2 of Exhibit 14, there is</p> <p>15 Section 1.1, Agreement to Purchase and Sell. And it says,</p> <p>16 The company hereby agrees to purchase securities and seller</p> <p>17 hereby agrees to sell the securities to the company for an</p> <p>18 aggregate purchase price of \$28,387,167. And then it</p> <p>19 goes -- it continues on to say, The purchase amount includes</p> <p>20 deferred compensation. It talks about four condominium</p> <p>21 units.</p> <p>22 A. Consideration.</p> <p>23 MS. GHANEM HAM: Let him ask the question, please.</p> <p>24 THE WITNESS: Well, he didn't read it properly.</p> <p>25 Q. (By Mr. Ogilvie) Did I -- okay. I'm sorry.</p>

<p style="text-align: right;">Page 98</p> <p>1 Purchase amount includes deferred consideration --</p> <p>2 A. Mm-hmm.</p> <p>3 Q. -- equaling the value of four condominiums in</p> <p>4 Queensridge Towers project being delivered pursuant to this</p> <p>5 agreement, as described in Section 1.3, with such value</p> <p>6 being set at 5 million -- three different values -- along</p> <p>7 with a cash payment of \$24 million. Oh, okay. Okay.</p> <p>8 So the consideration being paid is the combination</p> <p>9 of \$24 million in cash and \$5,387,167 in condominium units.</p> <p>10 Correct?</p> <p>11 MS. GHANEM HAM: Object to the form.</p> <p>12 THE WITNESS: That's what it says. If you read it</p> <p>13 correctly, that's what it says.</p> <p>14 Q. (By Mr. Ogilvie) Okay. So that would total</p> <p>15 \$29,387,167. Correct?</p> <p>16 A. This is accounting numbers. Peccoles, in days</p> <p>17 before then, the deal, had to produce, you know, how they</p> <p>18 want to take it -- how did they want to write the deal,</p> <p>19 because there was a lot of trade-off. So they said, Okay.</p> <p>20 For this property, pay us 28,387,167. For this property,</p> <p>21 pay us 12. In this \$100 million deals, you know, I took the</p> <p>22 Smith Centers, 4.5.</p> <p>23 Anyway, the deal here is made out of different</p> <p>24 deals and they just plug it in for accounting numbers</p> <p>25 into -- you know, to make something that they can do taxes</p>	<p style="text-align: right;">Page 99</p> <p>1 for.</p> <p>2 Q. Okay.</p> <p>3 A. So that's done on this.</p> <p>4 Q. So --</p> <p>5 A. We never negotiate these numbers like this.</p> <p>6 MS. GHANEM HAM: Wait for the question, please.</p> <p>7 Q. (By Mr. Ogilvie) I'm sorry. I don't think I let</p> <p>8 you finish. So the aggregate purchase price which is</p> <p>9 identified in line 3 of Section 1.1 is \$28,387,167. That's</p> <p>10 the entire amount of consideration that was paid for the</p> <p>11 Peccoles' interest in Queensridge Towers. Correct?</p> <p>12 MS. GHANEM HAM: Object -- object to the form of</p> <p>13 the question as misstates the documents and the testimony.</p> <p>14 THE WITNESS: The document speak for itself.</p> <p>15 That's what it says.</p> <p>16 Q. (By Mr. Ogilvie) Do you have any reason to</p> <p>17 believe that that is not the accurate amount of</p> <p>18 consideration paid for Peccoles' interest in Queensridge</p> <p>19 Towers -- in Queensridge Towers?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 A. It's incorrect number for Queensridge Tower. They</p> <p>23 had no value for Queensridge Tower. They had nothing. They</p> <p>24 owed money and they didn't give us the title to the land.</p> <p>25 So they basically had a negative money. So this is their</p>
<p style="text-align: right;">Page 100</p> <p>1 number to plug into a deal to sell for the accounting</p> <p>2 purposes.</p> <p>3 The deal was not any- -- anything to do with these</p> <p>4 numbers. So this is incorrect. If -- your question was if</p> <p>5 I have a reason to believe if this number is correct, it's</p> <p>6 incorrect.</p> <p>7 Q. You signed the document though. Right?</p> <p>8 A. I did. How do I care -- why would I care how they</p> <p>9 write it?</p> <p>10 Q. Well, because it says that you're purchasing their</p> <p>11 interest for \$28,387,167.</p> <p>12 A. We had a deal between us for more than purchasing.</p> <p>13 The way they write the deal on their sides, I don't care.</p> <p>14 So that's what's reflected, but the document speak for</p> <p>15 itself. You can use any way you want to.</p> <p>16 Q. Okay. We're going to go through the contract</p> <p>17 documents for the purchase of the Peccoles' interest in</p> <p>18 Queensridge Towers, Tivoli Village, and Sahara Hualapai.</p> <p>19 Okay?</p> <p>20 And I think what I heard you saying just now is</p> <p>21 the total purchase price was total purchase price. You</p> <p>22 didn't care how the Peccoles split it up in those three</p> <p>23 transactions, and it's just that they came up with</p> <p>24 \$28,387,167 for this transaction the Queensridge</p> <p>25 transaction?</p>	<p style="text-align: right;">Page 101</p> <p>1 A. No, I told you it's incorrect. Told you this</p> <p>2 transaction and the other three transaction that are here</p> <p>3 encompassing five, six other transactions between us and the</p> <p>4 Peccoles. In the end day, since we only showing three, they</p> <p>5 going to be sold to IDB, they had to plug numbers to them,</p> <p>6 and that's the number they chose to plug into it. So to ask</p> <p>7 me exactly, no.</p> <p>8 Q. So it's your testimony that the number is</p> <p>9 incorrect, the consideration for the reference to their</p> <p>10 interest in Queensridge Towers?</p> <p>11 MS. GHANEM HAM: I'm going to -- let me just</p> <p>12 object to the form of the question.</p> <p>13 THE WITNESS: My testimony is very clear on this.</p> <p>14 This deal that's going to be sold to IDB reflects three</p> <p>15 transaction, but the side deal that -- in the term sheet led</p> <p>16 to reduce to numbers in three properties only going to be</p> <p>17 sold to third party.</p> <p>18 All the rest -- all the rest of it is between us,</p> <p>19 between me and the Peccoles. And settle -- we settle our</p> <p>20 accounts. We came into agreement between us how we do it.</p> <p>21 And then they call back saying, Here's our accountant --</p> <p>22 from the accountant. We need you plug these numbers in.</p> <p>23 They produce the document, this numbers, how they want to</p> <p>24 write it.</p> <p>25 Q. So this morning you testified that Exhibit 13, the</p>

<p style="text-align: right;">Page 102</p> <p>1 term sheet, wasn't the final purchase contract. Right?</p> <p>2 A. That's correct.</p> <p>3 Q. And now I'm showing you the final purchase</p> <p>4 contract and you're saying that the purchase contract is not</p> <p>5 accurate? Is that your testimony?</p> <p>6 A. My testimony is -- you ask me -- you ask me and I</p> <p>7 answer that and I answer it again.</p> <p>8 The term sheet tells me to go deal with Peccoles</p> <p>9 and deliver membership to a third party for only three</p> <p>10 properties. I have deals on five, six properties on</p> <p>11 Peccoles and monies owed between us.</p> <p>12 Q. Five, six deals in addition to the deals that are</p> <p>13 referenced in the term sheet, the three projects --</p> <p>14 A. Yeah.</p> <p>15 Q. -- in Section 2?</p> <p>16 A. Yes.</p> <p>17 Q. Where are the documents relating to those deals?</p> <p>18 A. No documents. Why would we need documents?</p> <p>19 MS. GHANEM HAM: Don't answer the question with a</p> <p>20 question.</p> <p>21 Q. (By Mr. Ogilvie) Okay. So the Securities</p> <p>22 Redemption Agreement, which is Exhibit 14, is the document</p> <p>23 by which you -- the Peccoles transferred their interest in</p> <p>24 Queensridge Towers to your entities. Correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. Let me direct your attention to what's been marked</p> <p>2 as Exhibit 15. It is the next document in order. It's</p> <p>3 entitled Securities Purchase Agreement, open paren, QT,</p> <p>4 close paren. This is the document by which you transferred</p> <p>5 a portion of the interest that you purchased from the</p> <p>6 Peccoles to -- in Queensridge Towers to IDB, Lyton, and PBC.</p> <p>7 Correct?</p> <p>8 A. Correct.</p> <p>9 MS. GHANEM HAM: Let me just object to the form.</p> <p>10 And can I ask, are we starting with -- this is what's been</p> <p>11 marked as LO 37485, beginning with that document? I just</p> <p>12 want to be sure I'm on the right one, since there's multiple</p> <p>13 securities --</p> <p>14 MR. OGILVIE: Oh, I'm sorry. You're right. I</p> <p>15 should have done that. Yes.</p> <p>16 MS. GHANEM HAM: Okay.</p> <p>17 MR. OGILVIE: 37485.</p> <p>18 MS. GHANEM HAM: Correct. Okay.</p> <p>19 MR. LEAVITT: Just -- is that Exhibit 15?</p> <p>20 MS. GHANEM HAM: Yes.</p> <p>21 MR. OGILVIE: Exhibit 15.</p> <p>22 MR. LEAVITT: Got it.</p> <p>23 MR. OGILVIE: And just so the record is clear,</p> <p>24 Exhibit 14 began with -- or had the Bates No. 37571.</p> <p>25 MS. GHANEM HAM: Yes.</p>
<p style="text-align: right;">Page 104</p> <p>1 MR. OGILVIE: Okay.</p> <p>2 Q. (By Mr. Ogilvie) So Exhibits 14 and 15 reference</p> <p>3 the first part of the transaction that you testified about</p> <p>4 earlier this morning. And that was the purchase of the</p> <p>5 Peccoles' interest in Queensridge Towers and then the sale</p> <p>6 of a portion of that interest to IDB, PBC, and Lyton.</p> <p>7 Correct?</p> <p>8 A. Correct.</p> <p>9 Q. Directing your attention to what's been marked as</p> <p>10 Exhibit 16.</p> <p>11 MR. OGILVIE: And, Exhibit 16, Counsel, is 37547.</p> <p>12 First page is 37547.</p> <p>13 MS. GHANEM HAM: Yes.</p> <p>14 Q. (By Mr. Ogilvie) This is a securities redemption</p> <p>15 agreement between Great Wash Park, LLC, and Queensridge</p> <p>16 Wash, LLC. If I refer back to Exhibit 13, which is the term</p> <p>17 sheet, Exhibit 13 identifies Queensridge Wash, LLC, as a</p> <p>18 Peccole entity at Section 1.3 and Queensridge -- or, I'm</p> <p>19 sorry, Great Wash Park, LLC, as the owner and developer of</p> <p>20 The Village at Queensridge project, otherwise known as</p> <p>21 Tivoli Village. Correct?</p> <p>22 A. Correct. Great Wash Park. It's Tivoli.</p> <p>23 (Reporter requested clarification.)</p> <p>24 MR. OGILVIE: Great Wash.</p> <p>25 THE WITNESS: Great Wash Park. It's Tivoli</p>	<p style="text-align: right;">Page 105</p> <p>1 Village, correct.</p> <p>2 Q. (By Mr. Ogilvie) So Exhibit 16 is the document by</p> <p>3 which your entities purchased the Peccoles' entities in</p> <p>4 Tivoli Village. Correct?</p> <p>5 A. I thought it was the sale.</p> <p>6 Q. Maybe I misspoke. Exhibit 16 is the contract by</p> <p>7 which your entities acquired the Peccoles' interest in --</p> <p>8 A. You going too fast. I apologize.</p> <p>9 Q. That's okay.</p> <p>10 A. And I need to read this. If you want me to</p> <p>11 respond to any of this, I need to read this.</p> <p>12 Q. Absolutely.</p> <p>13 A. I don't want no mistake.</p> <p>14 Q. Absolutely.</p> <p>15 A. Let me read it.</p> <p>16 Q. Okay.</p> <p>17 A. Okay. This is between us and Peccole purchasing.</p> <p>18 That's what it is. This is purchasing the Great Wash Park</p> <p>19 interest. Yes, that's the document.</p> <p>20 Q. So Exhibit 16 is the contract by which your</p> <p>21 entities acquired the Peccole entities' interest in Tivoli</p> <p>22 Village. Correct?</p> <p>23 A. That's -- that's exactly -- that's written</p> <p>24 agreement that belongs to this building, yes. To the</p> <p>25 purchase. It's a purchasing -- it's a purchasing of the --</p>

<p style="text-align: right;">Page 106</p> <p>1 of the three companies that we had to buy for IDB -- to sell 2 to IDB. 3 Q. Okay. So going back a step. Exhibit 14 was 4 the -- there's -- Exhibit 14, Exhibit 16, and Exhibit 18 are 5 all securities redemption agreements. 6 My understanding -- and I'm just asking you to 7 confirm my understanding -- that those three documents are 8 the contracts by which your entities acquired the Peccoles' 9 interest in Queensridge Towers, Tivoli Village, and Sahara 10 Hualapai? 11 MS. GHANEM HAM: I'm going to object to the form. 12 You referenced 14, 16, and which one? 13 MR. OGILVIE: Eighteen. 14 MS. GHANEM HAM: Which we haven't gotten to yet. 15 Okay. Got it. 16 MR. OGILVIE: I understand that. 17 MS. GHANEM HAM: Okay. 18 MR. OGILVIE: I'm just -- I'm just -- 19 MS. GHANEM HAM: I just want to know if -- 18 20 being -- can you reference which one it is so we're on -- 21 MR. OGILVIE: Yes. 22 MS. GHANEM HAM: Just maybe -- 23 MR. OGILVIE: 37560. 24 MS. GHANEM HAM: Okay. Thank you. 25 MR. OGILVIE: Okay --</p>	<p style="text-align: right;">Page 107</p> <p>1 MS. GHANEM HAM: And -- 2 Q. (By Mr. Ogilvie) So I'm -- and there's no 3 question. I'm just telling you the background of where I'm 4 going. Okay? 5 A. I will tell you -- 6 Q. Because -- 7 MS. GHANEM HAM: Wait. Let him -- there's no 8 question. 9 Q. (By Mr. Ogilvie) Because I think what you just 10 said was Exhibit 16 was the document by which you purchased 11 their -- the Peccoles' interest in these three projects. 12 And I'm -- I'm clarifying that -- I'm going to talk about 13 three documents all entitled Securities Redemption 14 Agreement. They are Exhibits 14, 16, and 18. 15 And from my understanding, they are all separate 16 transactions by which your entities purchased the Peccoles' 17 interest in Queensridge Towers, Tivoli Village, and Sahara 18 Hualapai. 19 So I went through exhibit 14 with you, Securities 20 Redemption Agreement between Queensridge Towers, LLC, and 21 Queensridge Highrise, LLC, and you testified that's the 22 document that -- or that's the contract that -- through 23 which you acquired the Peccoles' interest in Queensridge 24 Towers. Okay? 25 A. I think I told you document speaks for itself.</p>
<p style="text-align: right;">Page 108</p> <p>1 Q. Okay. And now I'm talking about Exhibit 16. This 2 is the document by which your entities acquired the 3 Peccoles' interest in Tivoli Village. Correct? 4 A. Document speaks for itself. 5 Q. Okay. 6 A. It's easy to read. 7 Q. Is there -- I'm sorry? 8 A. It's easy to read. 9 Q. Okay. Is there any other document of which you 10 are aware of that -- by which the Peccoles transferred their 11 interest in Tivoli Village to your entities, other than 12 Exhibit 16? 13 A. Not aware. Not aware. 14 Q. Not aware, okay. And as we look at the purchase 15 price down in Section 1.1, on page 1, it says, The -- 16 MS. GHANEM HAM: Of Exhibit 16? 17 MR. OGILVIE: Yes. 18 MS. GHANEM HAM: Okay. 19 Q. (By Mr. Ogilvie) The aggregate purchase price is 20 \$30 million for the Peccoles' interest in Tivoli Village. 21 Correct? 22 A. Same thing I told you before. That's Peccoles 23 number to it and we add the numbers into it. 24 Q. Okay. So you -- you say that number -- the 25 \$30 million purchase price identified in Section 1.1 of</p>	<p style="text-align: right;">Page 109</p> <p>1 Exhibit 16 is incorrect? 2 A. No, not saying it's incorrect. That's what's in 3 the contract. I'm just telling you that the deal was 4 aggregate sum of -- we -- we bought a bag and in this bag 5 saying -- this is between us. You get this. We got this. 6 You know, Peccoles taking some. I take some. I get the 7 golf course. They get interest in the Mimi project. They 8 get Tavern and there was swaps in-between us. 9 And the only thing reflects on the deal is what 10 IDB wanted to see. They purchasing only this and they want 11 to see a number that feeds their -- their number. That's 12 all it is. 13 Q. Okay. But, again, there's no other documents 14 that -- or that reflect a contract by which your entities 15 acquired the Peccoles' interest in Tivoli Village. Correct? 16 A. I don't believe there is. 17 Q. Directing your attention to what's been marked as 18 Exhibit 17, it's entitled Securities Purchase Agreement, 19 open paren, GW, close paren, and starts with Bates 20 No. 37459. This is the document by which your entities, 21 after acquiring the Peccoles' interest in Tivoli Village, 22 transferred an interest in Tivoli Village to IDB, Lyton, 23 and -- I think it's just IDB and Lyton in this deal. Yes. 24 Correct? 25 MS. GHANEM HAM: Object to form.</p>

CONFIDENTIAL TRANSCRIPT OF YOHAN LOWIE - 08/12/2021

<p style="text-align: right;">Page 110</p> <p>1 THE WITNESS: IDB and Lyton, I think. With all</p> <p>2 them, because I think they --</p> <p>3 MS. GHANEM HAM: Wait. Take a minute and look at</p> <p>4 the document, please.</p> <p>5 THE WITNESS: Okay. You -- what's your question,</p> <p>6 please?</p> <p>7 Q. (By Mr. Ogilvie) Exhibit 17 is the contract by</p> <p>8 which you transferred at least a portion of the Peccoles'</p> <p>9 interest in Tivoli Village to IDB and Lyton. Correct?</p> <p>10 A. No, it's incorrect.</p> <p>11 Q. Okay.</p> <p>12 A. I bought it. It was mine and then I sold it.</p> <p>13 Q. Okay. So Exhibit 17 is the contract by which you</p> <p>14 transferred a portion of -- strike that. Let me rephrase</p> <p>15 it.</p> <p>16 Exhibit 17 is the contract by which your entities</p> <p>17 transferred interest in Tivoli Village after your entities</p> <p>18 acquired the Peccoles' interest in Tivoli Village. Correct?</p> <p>19 MS. GHANEM HAM: Object to the form.</p> <p>20 THE WITNESS: Generally correct, yes.</p> <p>21 Q. (By Mr. Ogilvie) Generally yes?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. How is that incorrect in any way?</p> <p>24 A. Because we bought X shares and we sold basically</p> <p>25 less. We bought, you know, bigger deal and sold less.</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. Okay.</p> <p>2 A. So --</p> <p>3 Q. So you bought Peccoles' interest in Tivoli Village</p> <p>4 by Exhibit 16 and you sold, in Exhibit 17, less than what</p> <p>5 you purchased in Exhibit 16?</p> <p>6 A. I'm not sure. I didn't read the whole agreement,</p> <p>7 the -- you know, both agreements. But, generally, the deal</p> <p>8 was like that, I'm describing to you. We bought bag and we</p> <p>9 took few pieces out the bag and we sold the rest of it.</p> <p>10 Q. Are you aware of any other documents, other than</p> <p>11 16 and 17, that reflect the two transaction that you just</p> <p>12 referenced, the purchase of Peccoles' interest in Tivoli and</p> <p>13 the sale of interest to IDB and Lyton?</p> <p>14 A. No, those are the documents.</p> <p>15 Q. Okay.</p> <p>16 A. Yes.</p> <p>17 Q. Directing your attention to Exhibit 18, it's</p> <p>18 entitled Securities Redemption Agreement and it begins with</p> <p>19 Bates No. 37560. This is the contract by which your</p> <p>20 entities acquired the Peccoles' interest in Sahara Hualapai</p> <p>21 Corner Pieces -- I believe you described it -- is that</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 MS. GHANEM HAM: Object to the form.</p> <p>25 THE WITNESS: Well, we put it here, Sahara Common,</p>
<p style="text-align: right;">Page 112</p> <p>1 LTD. Oh, it's a Peccole entity, yes. That's a purchase</p> <p>2 agreement, yes.</p> <p>3 MS. GHANEM HAM: It's . . .</p> <p>4 THE WITNESS: Okay.</p> <p>5 Q. (By Mr. Ogilvie) It's the purchase agreement</p> <p>6 relative to Sahara Hualapai, as you described Sahara</p> <p>7 Hualapai Corner Piece. Correct?</p> <p>8 A. Correct.</p> <p>9 Q. And the aggregate purchase price in Section 1.1 is</p> <p>10 \$20 million. Correct?</p> <p>11 A. That's what -- again, document speaks for itself.</p> <p>12 That's what it says.</p> <p>13 Q. Okay. Going back to page . . .</p> <p>14 A. Hmm.</p> <p>15 Q. -- the last page of the document -- it's a</p> <p>16 signature page -- is Bates No. 37567. There is a redacted</p> <p>17 signature block, but there are two signature blocks on the</p> <p>18 left-hand side. Those are both your signatures. Correct?</p> <p>19 A. Correct.</p> <p>20 Q. And going back to Exhibit 17, if we go to page --</p> <p>21 the four pages following page 6 which are not numbered -- so</p> <p>22 the first page is Bates numbered 37465. There are three</p> <p>23 signatures on that page, one for Great Wash Park, one for --</p> <p>24 I'm sorry. Did I get ahead?</p> <p>25 A. What page?</p>	<p style="text-align: right;">Page 113</p> <p>1 MS. GHANEM HAM: There's no page. He's</p> <p>2 referencing the number on the bottom, 37465.</p> <p>3 THE WITNESS: It's not this one?</p> <p>4 MS. GHANEM HAM: Let me help you. Let me help</p> <p>5 you.</p> <p>6 THE WITNESS: Say Exhibit 17. It's not that.</p> <p>7 MS. GHANEM HAM: Yes, it is.</p> <p>8 THE WITNESS: There's no Bates stamp.</p> <p>9 MS. GHANEM HAM: Yes, there is.</p> <p>10 MR. OGILVIE: Thank you.</p> <p>11 MS. GHANEM HAM: Yes.</p> <p>12 THE WITNESS: Yes?</p> <p>13 Q. (By Mr. Ogilvie) At the bottom, it's LO 00037465.</p> <p>14 Are you with me?</p> <p>15 A. Yes.</p> <p>16 Q. And there are three signed, executed signature</p> <p>17 blocks on this page, one for Great Wash Park, LLC, one for</p> <p>18 GW Management, LLC, and one for Executive GWP Holdings, LLC.</p> <p>19 Those are all your signatures. Correct?</p> <p>20 A. Correct.</p> <p>21 Q. And then, I apologize, I didn't ask these</p> <p>22 questions in Documents 15 or 16 also. So let's go back to</p> <p>23 page 16 -- or, I'm sorry, Document -- or Exhibit 16.</p> <p>24 A. 7547?</p> <p>25 MS. GHANEM HAM: Hold on.</p>

<p style="text-align: right;">Page 114</p> <p>1 Q. (By Mr. Ogilvie) 37547, yes. And if we -- the</p> <p>2 last numbered page is page 7. So if we go to the page</p> <p>3 immediately after page 7 which is Bates No. 37554, there is</p> <p>4 a signature on behalf of Great Wash Park, LLC. Under the</p> <p>5 signature, it says Yohan Lowie, chief executive officer. Is</p> <p>6 that your signature?</p> <p>7 A. Yes.</p> <p>8 Q. And then at the bottom, there is two signature</p> <p>9 blocks, one for Great Wash Investments, LP, and one for</p> <p>10 Executive GWP Holdings, LLC. Are those both your</p> <p>11 signatures?</p> <p>12 A. Yes.</p> <p>13 Q. And then going back one more to Exhibit 15.</p> <p>14 A. Fifteen.</p> <p>15 Q. Fifteen.</p> <p>16 MS. GHANEM HAM: It's right here.</p> <p>17 Q. (By Mr. Ogilvie) The last numbered page is page</p> <p>18 6. Following page 6 is a -- one, two, three -- four pages</p> <p>19 of signature pages. The first signature page is Bates</p> <p>20 No. 37491, and there are signature blocks for Queensridge</p> <p>21 Towers, LLC; QT Management, LLC; and Executive QT Holdings,</p> <p>22 LLC. Is that your signature in each one of those three</p> <p>23 signature blocks?</p> <p>24 A. Yes.</p> <p>25 Q. And I think I already asked you this, but I just</p>	<p style="text-align: right;">Page 115</p> <p>1 need to make sure. Back to --</p> <p>2 A. I think on page -- I apologize. On 7493 -- I</p> <p>3 think you ask me about it, if I'm not mistaken -- there's no</p> <p>4 signatures here on my -- on my copy.</p> <p>5 MS. GHANEM HAM: Because . . .</p> <p>6 THE WITNESS: No.</p> <p>7 Q. (By Mr. Ogilvie) I believe --</p> <p>8 A. There's only one page. You told me it's four</p> <p>9 pages signatures.</p> <p>10 MS. GHANEM HAM: Correct.</p> <p>11 Q. (By Mr. Ogilvie) Right.</p> <p>12 A. So there's only on the first page, on 7491.</p> <p>13 MS. GHANEM HAM: Right.</p> <p>14 Q. (By Mr. Ogilvie) Right.</p> <p>15 A. Okay.</p> <p>16 Q. Okay.</p> <p>17 A. That's only one.</p> <p>18 Q. Thank you.</p> <p>19 A. That's fine.</p> <p>20 Q. Where I was going was -- I think I asked you this,</p> <p>21 but I can't remember. If we go back to Exhibit 18 --</p> <p>22 A. Eighteen, yes.</p> <p>23 Q. -- and if you turn to the last page, there is --</p> <p>24 there are two signature blocks, one for Sahara Hualapai,</p> <p>25 LLC, and one for SHCP 18, LLC. Are those both your</p>
<p style="text-align: right;">Page 116</p> <p>1 signatures?</p> <p>2 A. Correct.</p> <p>3 Q. Now directing your attention to Exhibit 19.</p> <p>4 A. Nineteen.</p> <p>5 MS. GHANEM HAM: Right here.</p> <p>6 Q. (By Mr. Ogilvie) We haven't talked about --</p> <p>7 A. I know. I know. Just hang on a second. Keep</p> <p>8 them in order here. Okay.</p> <p>9 Q. Exhibit 19 is entitled Securities Purchase</p> <p>10 Agreement, open paren, SH, close paren. It begins with</p> <p>11 Bates No. 37523. My understanding is this is the document</p> <p>12 through which you sold interest in Sahara Hualapai or the --</p> <p>13 the Sahara Hualapai project to Lyton and IDB. Is that</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And if we turn to the page following page 6,</p> <p>17 signature page, that is Bates numbered 37529.</p> <p>18 A. Yes.</p> <p>19 Q. There are three signature blocks, one for Sahara</p> <p>20 Hualapai, LLC, one for SH Management, LLC, and one for SHCP</p> <p>21 18 Holdings, LLC. Are the signatures in each one of those</p> <p>22 signature blocks your signature?</p> <p>23 A. Yes.</p> <p>24 Q. So the documents that we just -- the six documents</p> <p>25 that we just went through, Exhibits 14, 15, 16, 17, 18, and</p>	<p style="text-align: right;">Page 117</p> <p>1 19, are the documents by which your entities acquired the</p> <p>2 Peccoles' interest in Queensridge Towers, Tivoli Village,</p> <p>3 and Sahara Hualapai Commons or Sahara Hualapai Corner Piece</p> <p>4 and transferred or -- and sold interest in those three</p> <p>5 projects to IDB and Lyton. Correct?</p> <p>6 MS. GHANEM HAM: Object to the form.</p> <p>7 THE WITNESS: Document speaks for itself.</p> <p>8 Q. (By Mr. Ogilvie) Are there any other documents,</p> <p>9 other than the six exhibits -- Exhibit 14, 15, 16, 17, 18,</p> <p>10 and 19 -- that reference or reflect the transaction or group</p> <p>11 of transactions set forth in Exhibit 13 the term sheet?</p> <p>12 A. In these document, if you understand how to read</p> <p>13 it, you know that there is other properties involved,</p> <p>14 because it's \$100 million deal in aggregate. And there's</p> <p>15 only \$90 million or -- or 75 -- 70 -- round number, 75</p> <p>16 millions that -- that changing hand. Is \$10 million in</p> <p>17 future.</p> <p>18 MS. GHANEM HAM: Let me just -- please --</p> <p>19 THE WITNESS: And --</p> <p>20 MS. GHANEM HAM: The question is: Is there any</p> <p>21 more documents?</p> <p>22 THE WITNESS: There's no more documents, but in</p> <p>23 these documents, you can understand the deal. Anybody know</p> <p>24 how to read this know -- know what the deal is.</p> <p>25 Q. (By Mr. Ogilvie) Okay. You just used the number</p>

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<p style="text-align: right;">Page 118</p> <p>1 of \$100 million. Are you -- you would agree with me, would 2 you not, that nowhere in any of the seven documents -- 3 Exhibits 13, 14, 15, 16, 17, 18, and 19 -- is the \$100 4 million number used?</p> <p>5 A. You know what, I'm not sure. I need to read it, 6 but I think all parties agree on what the deal is. All five 7 parties involve agree what the deal is.</p> <p>8 Q. The deal that's anticipated in the term sheet and 9 reflected in the contracts that are Exhibits 14, 15, 16, 17, 10 18, and 19. Correct?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 A. The deal -- the business deal that was done. It's 14 a \$100 million deal.</p> <p>15 Q. Where is that \$100 million referenced in any 16 document?</p> <p>17 A. On discussion in the table of how to write it up. 18 So that's how the parties agree to write it up.</p> <p>19 Q. Tell me what document refer- -- any document that 20 you have that references a \$100 million deal instead of a 21 \$90 million deal.</p> <p>22 A. I don't have a document to show you, and it may be 23 here also talking about \$100 million. Need to read -- to 24 read the documents, but I can tell you what the deal was. 25 That's okay. The documents speak for themselves.</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. But your testimony is there aren't any other 2 documents?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Okay.</p> <p>5 (Exhibit 20 was marked.)</p> <p>6 Q. (By Mr. Ogilvie) Directing your attention to 7 what's been marked as Exhibit 20, it's entitled Badlands 8 Golf Course Clubhouse Improvements Agreement. Are you 9 familiar with this document?</p> <p>10 A. Familiarize myself with it.</p> <p>11 Q. Take your time.</p> <p>12 A. Yes, I think I know what it is.</p> <p>13 Q. What is it?</p> <p>14 A. It's an agreement.</p> <p>15 Q. Agreement between Fore Stars, Limited, and 16 Queensridge Towers, LLC, dated September 6th, 2005. 17 Correct?</p> <p>18 A. Yes.</p> <p>19 Q. So the transactions that are reflected in 20 Exhibits 14 through 19 are -- all indicate that they are 21 entered into as of September 14th, 2005. This is eight days 22 earlier. Is there a connection between this document and 23 the six exhibits -- "this document" being Exhibit 20 -- and 24 the six exhibits that are Exhibits 14 through 19?</p> <p>25 A. I can't tell you. That was 15 years ago.</p>
<p style="text-align: right;">Page 120</p> <p>1 Q. Okay. So, at this time -- "this time" being 2 September 2005 -- Fore Stars is owned by the Peccoles. 3 Correct?</p> <p>4 A. Correct.</p> <p>5 Q. And Queensridge Towers, LLC, is, as you've 6 testified earlier, the owner and developer of the 7 Queensridge Towers. Correct?</p> <p>8 A. Correct.</p> <p>9 Q. And you testified a little bit earlier that there 10 was a deal by which Queensridge Towers was either going to 11 incorporate a new clubhouse in phase 2 of the towers or 12 build the Peccoles a new clubhouse or pay them \$3.1 million. 13 Is that correct?</p> <p>14 MS. GHANEM HAM: Object to the form. 15 THE WITNESS: Correct. Correct.</p> <p>16 Q. (By Mr. Ogilvie) Okay. Is this (gesturing), 17 Exhibit 20, the Badlands Golf Course Clubhouse Improvements 18 Agreement, a document that reflects the transaction that you 19 were talking about?</p> <p>20 A. I think so.</p> <p>21 Q. Okay. Why don't you take a moment to review it 22 and tell me if it is or isn't.</p> <p>23 A. Yeah, I remember this agreement.</p> <p>24 Q. Did you say, I remember this agreement?</p> <p>25 A. Yeah. No, I remember the deal. I remember the</p>	<p style="text-align: right;">Page 121</p> <p>1 numbers now, clearly . . . Yeah.</p> <p>2 Q. So if we go back to the signature page, which 3 follows page 4, there is a signature on behalf of 4 Queensridge Towers, LLC. Is that your signature? It's 5 Bates No. 37624.</p> <p>6 A. What page?</p> <p>7 Q. 37624.</p> <p>8 A. What -- okay. There you go. Yeah, that's my 9 signature.</p> <p>10 Q. What prompted this agreement?</p> <p>11 MS. GHANEM HAM: Object to the form. Vague and 12 ambiguous.</p> <p>13 THE WITNESS: This deal is about to happen. 14 Fifteen (phonetic) more days close this deal. We want to 15 recall the boundary line adjustment in favor of this 16 (gesturing). So we got to sign this (gesturing) before you 17 sign (gesturing) to recall the . . .</p> <p>18 Q. (By Mr. Ogilvie) So you're -- let the record 19 reflect you're using your left hand to put on top of the 20 prior exhibits. Are you referring to Exhibits 14 through 21 19, which is the six documents that we just went through?</p> <p>22 A. Okay. I'll try to do it verbally without -- I'm 23 referring that in order to close the big deal, the -- this 24 boundary line adjustment have to be included and has to be 25 met.</p>

<p style="text-align: right;">Page 122</p> <p>1 So in order to close this deal, you have to</p> <p>2 provide the land. You -- to get title to land. And the</p> <p>3 Peccoles took that piece of property -- took -- basically</p> <p>4 gave, before closing, to the new entity -- they have to deal</p> <p>5 to the old -- to QT 5.13 acres. So it can be included in</p> <p>6 this. So it was a week before, eight days before. That's</p> <p>7 the reason.</p> <p>8 Q. You mentioned the big deal. Are you referring to</p> <p>9 the purchase of Peccole interest and the sale of interest in</p> <p>10 Queensridge Towers, Tivoli Village, and Sahara Hualapai?</p> <p>11 A. Yeah, yes.</p> <p>12 Q. That's the big deal --</p> <p>13 A. Yes.</p> <p>14 Q. -- that you're referring to? And this --</p> <p>15 A. The series of transaction. The reason we call it</p> <p>16 series transaction, because this trigger transaction. So to</p> <p>17 close the rest of transaction, you're not -- you start this</p> <p>18 one.</p> <p>19 Q. And, again, the rest of the transaction are the</p> <p>20 transactions reflected in Exhibits 14 through 19. Correct?</p> <p>21 A. I don't recall, you know, the documents, but it's</p> <p>22 what we just went over. Those contracts we went over.</p> <p>23 Q. The contract by which your entities acquired</p> <p>24 Peccoles' interest in the three projects and your entities</p> <p>25 sold interest in those projects to IDB and Lyton?</p>	<p style="text-align: right;">Page 123</p> <p>1 A. Correct.</p> <p>2 Q. Okay. So at paragraph D of the recitals on page 1</p> <p>3 of Exhibit 20, it says, Pursuant to this agreement and</p> <p>4 independent of any other obligation contained in the</p> <p>5 redemption agreement, Towers shall pay an amount not to</p> <p>6 exceed \$4 million with such monies to be allocated as</p> <p>7 follows: For the costs and expenses related to the</p> <p>8 construction of the new golf course clubhouse pursuant to</p> <p>9 the plans, open paren, defined later, close paren, by an</p> <p>10 entity affiliated with or contracted by Towers, in an amount</p> <p>11 not to exceed \$3,150,000; two, the payment of the</p> <p>12 reconfiguration costs in an amount not to exceed \$850,000,</p> <p>13 open paren, collectively, the new golf course clubhouse</p> <p>14 costs, close paren.</p> <p>15 Now, earlier you testified the consideration was</p> <p>16 \$3,100,000. Is your recollection refreshed by looking at</p> <p>17 this document that it was actually \$3,150,000?</p> <p>18 A. No. I said we call -- we call the \$3 million</p> <p>19 remaining, 'cause I think we -- I think to another</p> <p>20 transaction we paid 850. In here, dealing before, it was</p> <p>21 another barter, and then -- and then, you know, the</p> <p>22 3,000,050 [sic], we -- 3,150,000, we call it 3 million --</p> <p>23 Q. Okay.</p> <p>24 A. -- transaction, yes.</p> <p>25 Q. I'm just asking if your testimony about \$3,100,000</p>
<p style="text-align: right;">Page 124</p> <p>1 earlier is the same as this \$3,150,000?</p> <p>2 A. Yes.</p> <p>3 Q. Thank you. And Queensridge Towers never built a</p> <p>4 new clubhouse, did it?</p> <p>5 A. No.</p> <p>6 Q. And, in fact, ultimately, the property on which</p> <p>7 the -- the -- this obligation on behalf of Queensridge</p> <p>8 Towers, LLC, was ultimately resolved by Queensridge Towers,</p> <p>9 LLC, deeding back to the Peccoles the property on which the</p> <p>10 clubhouse sits. Correct?</p> <p>11 MS. GHANEM HAM: Object to the form.</p> <p>12 THE WITNESS: Yes, yes.</p> <p>13 Q. (By Mr. Ogilvie) Okay. And I think you said we</p> <p>14 paid the 850,000 reconfiguration costs.</p> <p>15 A. Yes.</p> <p>16 Q. When -- when -- when did Queensridge Towers pay</p> <p>17 that?</p> <p>18 A. Not Queensridge. I think I paid it. It was an</p> <p>19 issue. Peccole needed money and I paid --</p> <p>20 Q. So any documentation reflecting that?</p> <p>21 A. No. We had business -- again, between us and the</p> <p>22 Peccoles . . . okay.</p> <p>23 Q. You're lucky. Chris just saved us a half hour.</p> <p>24 MR. LEAVITT: Nice.</p> <p>25 (Exhibit 21 was marked.)</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>2 what's been marked as Exhibit 21. It is a complaint filed</p> <p>3 on August 22nd, 2007, on behalf of BGC Holdings, LLC, vs.</p> <p>4 Fore Stars, Limited. Have you seen this document before?</p> <p>5 A. Of course I've seen it. I just don't remember.</p> <p>6 It's a long time ago.</p> <p>7 Q. BGC Holdings -- is BGC Holdings, LLC -- is that --</p> <p>8 does that stand for Badlands Golf Course Holdings, LLC?</p> <p>9 A. Yes.</p> <p>10 Q. And BGC Holdings, LLC, that's your entity.</p> <p>11 Correct?</p> <p>12 A. Was my entity.</p> <p>13 Q. Was your entity?</p> <p>14 A. At the time.</p> <p>15 Q. In 2007 --</p> <p>16 A. Yes, correct.</p> <p>17 Q. Did you sell that entity?</p> <p>18 A. It was sold.</p> <p>19 Q. When did you sell BGC Holdings, LLC?</p> <p>20 A. November 7th or 6th of 2012.</p> <p>21 Q. So --</p> <p>22 A. When we separate from IDB, we had to sell in -- we</p> <p>23 had to sell all the companies. We had any connection to</p> <p>24 anything, we had to sell them off. So that's when I sold</p> <p>25 it.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. So at the same time as you, for lack of a better 2 term, sold -- got bought out of Queensridge Towers, Tivoli, 3 and Sahara Hualapai? 4 A. Yes. 5 Q. Okay. Did IDB purchase your interest in BGC 6 Holdings, LLC? 7 A. No, they forced a sale to third party. They 8 needed -- probably companies have different issues. They 9 could not buy themselves. They had to sell to third party, 10 because . . . 11 Q. Okay. So in -- up to 2012, BGC Holdings, LLC, was 12 your entity? 13 A. Yes. 14 Q. Okay. And you transferred it to a third party? 15 A. We sold it out to third party. 16 Q. To a third party? 17 A. Yes. 18 Q. And who was that? 19 A. Assaf Lang. 20 Q. Now, the complaint alleges that there was a 21 failure by Fore Stars, which, at the time, in 2007, was 22 owned by the Peccoles, to sell the golf course pursuant to a 23 letter of agreement to your entity. Is that correct? 24 A. Correct. 25 Q. Okay.</p>	<p style="text-align: right;">Page 127</p> <p>1 (Exhibit 22 was marked.) 2 THE WITNESS: Okay. 3 Q. (By Mr. Ogilvie) Directing your attention what's 4 been marked as Exhibit 22. It is entitled Settlement 5 Agreement. You, BGC Holdings, LLC entered into a settlement 6 agreement that resolved the lawsuit that is reflected by 7 Exhibit 21. Is that correct? 8 A. Yes. 9 Q. And is Exhibit 22 the memorialization of that 10 settlement agreement that resolved the BGC lawsuit against 11 Fore Stars? 12 A. Yes. 13 Q. Going to the last page, which is page 6 of 6 of 14 Exhibit 22, there is a signature block for BGC Holdings, 15 LLC. Do you recognize that signature? 16 A. Yes. 17 Q. Whose signature is that? 18 A. It's my signature, the one on top corner, left 19 corner. 20 Q. Top left corner? 21 A. Correct. 22 Q. That's your signature, okay. 23 A. And . . . 24 Q. Okay. So if we look at this settlement agreement, 25 Section 1 talks about dismissal of the lawsuit and</p>
<p style="text-align: right;">Page 128</p> <p>1 Section 2 -- it says -- just to be clear, Section 1, 2 dismissal of lawsuit, says, The lawsuit shall be dismissed 3 with prejudice within five business days after the delivery 4 of the restrictive covenant, open paren, defined in 5 Section 2, close paren, to BGC. 6 Section 2 is entitled restricted covenant. It 7 says, Fore Stars -- and, again, at this time, Fore Stars was 8 owned by the Peccoles. Correct? 9 A. Correct. 10 Q. Okay. It says, Fore Stars has agreed that the 11 real property -- and if we go up above, to the first 12 recital, real property is defined as the real property known 13 as the Badlands Golf Course located -- 14 A. Where are you reading? I'm sorry. 15 Q. Sorry? 16 A. Where are you reading? 17 Q. I went up to the top the first recital. 18 A. Okay. 19 Q. And I -- because -- because the restrictive 20 covenant references real property, I wanted to -- 21 A. Let me read it. I'll read it real quick. 22 Q. Okay. Go ahead. 23 A. Please. Okay. Go ahead. 24 Q. Okay. So the signature page says that this is 25 executed on January 28th, 2008. So in January 2008 --</p>	<p style="text-align: right;">Page 129</p> <p>1 MS. GHANEM HAM: Just object to that. You said 2 January 8? January -- 3 MR. OGILVIE: January 28. 4 MS. GHANEM HAM: Maybe I misheard you. Apologize. 5 Q. (By Mr. Ogilvie) Okay. As of the date this was 6 executed, January 28th, 2008, the Peccoles had already been 7 bought out of Queensridge Towers. Right? 8 A. Yes. 9 Q. And it's prior to the transaction whereby IDB 10 acquired your interest in Queensridge Tower. Right? 11 A. Correct. 12 Q. Okay. So you're still manager of Queensridge 13 Tower? 14 A. Yes. 15 Q. Okay. The first -- on the first page, the first 16 recital says, Whereas BGC and Fore Stars are parties to a 17 lawsuit, titled BGC Holdings, LLC, vs. Fore Stars. Mentions 18 the case number of the complaint that is Exhibit 21, 19 concerning the real property known as, open quote, the 20 Bad- -- or, open quote, "Badlands Golf Course," close quote, 21 located at 9119 Alta Drive, Las Vegas, Nevada and more 22 particularly described is AP -- Clark County APN 1 -- and it 23 gives three APNs. Right? 24 A. Correct. 25 Q. Okay. So, then, if we go down to the restrictive</p>

<p style="text-align: right;">Page 130</p> <p>1 covenant, it says, Fore Stars has agreed that the real</p> <p>2 property -- and, again, the real property is as defined in</p> <p>3 the first recital, will remain a golf course or open space</p> <p>4 and have no development activities upon it, other than</p> <p>5 normal -- in the usual course of business activities for the</p> <p>6 golf course and those activities expressly permitted by this</p> <p>7 agreement, unless consented to in writing by Queensridge</p> <p>8 Towers, LLC, open paren, the, open quote, "restricted</p> <p>9 covenant," close quote, close paren.</p> <p>10 Did I read that correctly?</p> <p>11 A. I think so.</p> <p>12 Q. The reason I ask that is because there's the</p> <p>13 handwritten words above and to the side.</p> <p>14 A. I try to read it myself. I couldn't.</p> <p>15 Q. Okay. Did you just -- do you have any</p> <p>16 disagreement with the way I read it?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 A. I wasn't following you. I was trying to figure</p> <p>20 out what it says in the handwriting.</p> <p>21 Q. Okay. So I'm going to repeat that, just so you</p> <p>22 can follow along. Normal, comma, in the course of business</p> <p>23 activities for the golf course and --</p> <p>24 A. What row you in?</p> <p>25 MS. GHANEM HAM: He's reading (gesturing).</p>	<p style="text-align: right;">Page 131</p> <p>1 THE WITNESS: Okay. I couldn't read it. What it</p> <p>2 says normal?</p> <p>3 Q. (By Mr. Ogilvie) So the way I read it --</p> <p>4 A. Normal, okay.</p> <p>5 Q. The way I read it, starting from the</p> <p>6 typewritten --</p> <p>7 A. Other than?</p> <p>8 Q. Other than normal, comma, in the usual course of</p> <p>9 business activities for the golf course and.</p> <p>10 A. Okay.</p> <p>11 Q. Okay? Okay. So this is a restrictive covenant in</p> <p>12 favor of Queensridge Towers, LLC, which is building</p> <p>13 developing Queensridge Towers. Right?</p> <p>14 A. Yeah. In my favor, yes.</p> <p>15 Q. Yes. Why was it important for you to receive a</p> <p>16 restrictive covenant?</p> <p>17 A. Trying to build my property.</p> <p>18 Q. Okay. But what does a restrictive covenant have</p> <p>19 to do with you building a property?</p> <p>20 A. I had -- I had a contract to buy the golf course.</p> <p>21 It started in 2005. Somebody tried to rename. Went to</p> <p>22 court, 2007. Lawsuit took time. We got into the recession</p> <p>23 2008. In September of 2007, we couldn't close any more</p> <p>24 units in the tower -- or October we couldn't close any more</p> <p>25 units.</p>
<p style="text-align: right;">Page 132</p> <p>1 We start having a financial -- it start having</p> <p>2 financial impact and we were very much worried where it's</p> <p>3 going. And I said, Fine. I'll take a settlement, and</p> <p>4 here's what I want you to do. I want you to restrict the</p> <p>5 property. You can build anything, this area. If you want</p> <p>6 to build -- if you want, you build the casitas because it's</p> <p>7 going to generate the golf course, go ahead. The golf</p> <p>8 course is losing money anyway. You know, there is no way</p> <p>9 you going to hold golf course.</p> <p>10 And so I locked them up, put a restrict covenant.</p> <p>11 So I switch my contract into an option, because they got an</p> <p>12 offer. Was an issue in the family between two members of</p> <p>13 the family and -- yielded this document. So wanted to make</p> <p>14 sure they don't build anything for the time period that my</p> <p>15 option is.</p> <p>16 Q. Okay. Why was that important to you?</p> <p>17 A. Because I want to build my property -- my property</p> <p>18 myself. And . . .</p> <p>19 Q. So the next sentence says, The restricted covenant</p> <p>20 shall remain in effect until such time as phase 2 of the</p> <p>21 Queensridge Towers development is completed and all units</p> <p>22 offered to the public for sale are sold and have closed</p> <p>23 escrow. So . . .</p> <p>24 A. And the Peccoles have tried to develop portion of</p> <p>25 the property, including -- I heard the -- talks about a</p>	<p style="text-align: right;">Page 133</p> <p>1 highrise. They try to sell portion of the piece to highrise</p> <p>2 for somebody and . . .</p> <p>3 Q. And -- and what?</p> <p>4 A. They --</p> <p>5 MS. GHANEM HAM: Repeat what you said.</p> <p>6 THE WITNESS: They -- we -- we got word that they</p> <p>7 trying to build a highrise. Somebody in the family is</p> <p>8 talking to somebody else to buy -- to build -- to buy his</p> <p>9 part -- build highrise, which could have cause us damages</p> <p>10 right in front the building.</p> <p>11 One part of the family promise me, Never going to</p> <p>12 happen. It's not going to happen, but I heard the rumors</p> <p>13 and resulted in this -- resulted in lawsuit that ended up</p> <p>14 into this document -- restricted document, restricted</p> <p>15 covenant.</p> <p>16 Q. (By Mr. Ogilvie) Okay. You heard rumors that one</p> <p>17 part of the family wanted today build a highrise and it</p> <p>18 sounded like you were describing it as anticipated to be</p> <p>19 built right in front of or, in other words, to the east and</p> <p>20 a little bit south of Queensridge Towers. Is that correct?</p> <p>21 A. To the south.</p> <p>22 Q. To the south?</p> <p>23 A. Right.</p> <p>24 Q. And that would have impacted the sales of your</p> <p>25 condominiums and Queensridge Towers. Right?</p>

<p style="text-align: right;">Page 134</p> <p>1 A. Rumors always impacting something in real estate.</p> <p>2 Q. I was referring to the actual building, the</p> <p>3 highrise. That would have impacted your sales. Right?</p> <p>4 A. Oh, they try to develop the corner. Then they</p> <p>5 came back to develop 800 units -- 550 units, I apologize.</p> <p>6 And then they come back and then when the tower came in, it</p> <p>7 was the end of that. End up in court.</p> <p>8 Q. Is that what prompted the lawsuit?</p> <p>9 A. Yes. No, there was renege -- renege on the</p> <p>10 contract. That's what prompted the lawsuit on the deal we</p> <p>11 made in 2005.</p> <p>12 Q. Well, letter of intent that's attached to the</p> <p>13 complaint that is Exhibit 21 is dated May 31st, 2007.</p> <p>14 A. Yeah, Larry signed it.</p> <p>15 Q. Right.</p> <p>16 A. Give me my -- give me the deal. 12 million.</p> <p>17 Because the 3 million is tied up. So it's 15 million. It's</p> <p>18 12 million.</p> <p>19 MS. GHANEM HAM: Wait -- wait for the question.</p> <p>20 MR. OGILVIE: Okay.</p> <p>21 THE WITNESS: So I got my contract --</p> <p>22 MS. GHANEM HAM: Wait -- wait a minute. Wait a</p> <p>23 minute. What's the question?</p> <p>24 MR. OGILVIE: I have about eight of them.</p> <p>25 MS. GHANEM HAM: Okay.</p>	<p style="text-align: right;">Page 135</p> <p>1 THE WITNESS: You can have 800.</p> <p>2 Q. (By Mr. Ogilvie) So the renege on the deal --</p> <p>3 the deal was the letter of intent dated May 31st, 2007.</p> <p>4 Correct?</p> <p>5 A. There was already a contract submitted. Portion</p> <p>6 of the -- somebody in the family, you know, honor the</p> <p>7 contract, and somebody else say, I don't care.</p> <p>8 MS. GHANEM HAM: Question . . .</p> <p>9 Q. (By Mr. Ogilvie) I'm not --</p> <p>10 A. So the question is, yes, this is -- the -- the</p> <p>11 lawsuit is specifically for -- specific for performance to</p> <p>12 transfer the property.</p> <p>13 Q. Okay.</p> <p>14 MS. GHANEM HAM: That wasn't the question.</p> <p>15 Q. (By Mr. Ogilvie) And the purchase price, as you</p> <p>16 indicated, was \$12 million. Then you made reference to</p> <p>17 another \$3 million. Explain that to me.</p> <p>18 A. It's a \$100 million deal. So \$100 million deals,</p> <p>19 I owe Peccole 15 million to complete. If \$3 million are</p> <p>20 going to come, somebody going to keep a portion of the</p> <p>21 property and \$3 million going to stay with Queensridge</p> <p>22 Towers, then I owe you \$12 million. If you give me this</p> <p>23 piece, it's 15 million.</p> <p>24 Q. Walk me through the math with the \$100 million,</p> <p>25 \$15 million, and the \$3 million.</p>
<p style="text-align: right;">Page 136</p> <p>1 A. Okay. So deal -- you get to the 75 million.</p> <p>2 That -- equal number, 75 million plus 10 million deal. 75</p> <p>3 million and \$10 million --</p> <p>4 Q. Plus 10 --</p> <p>5 A. \$10 million in units. Right? On the day of</p> <p>6 closing in 2005, here's what Peccole got out of that -- for</p> <p>7 that moment.</p> <p>8 Q. The transaction document, Exhibit 14, says not</p> <p>9 \$10 million in units, \$5.3 million in units.</p> <p>10 A. The deal was \$10 million in units. We wrote them</p> <p>11 as -- for 5.3 because was member -- what you call it when</p> <p>12 you do family and friends? They took -- you know, they took</p> <p>13 \$10 million of inventory for 6 million, 500 or whichever the</p> <p>14 number was written. So there -- because we had, like,</p> <p>15 40 percent discount for, you know, members.</p> <p>16 So they wrote them down at high -- at -- at low.</p> <p>17 So it's \$10 million in unit, \$75 million in -- in cash.</p> <p>18 85 million. 15 million to \$100 million. However, this</p> <p>19 company owns a piece of this. This -- Queensridge Tower has</p> <p>20 a piece. They just look like that, too, huh? Like this.</p> <p>21 And Queensridge Tower took the piece that belong to this</p> <p>22 piece of property and took it to itself. So not Queensridge</p> <p>23 Towers. All these -- either to give this back or to pay it.</p> <p>24 Right? So this is 15 million back. So what happen is in</p> <p>25 the end of day, Queensridge Tower just get this piece back.</p>	<p style="text-align: right;">Page 137</p> <p>1 So I only owe \$12 million.</p> <p>2 Q. Okay.</p> <p>3 A. That's how . . .</p> <p>4 Q. Okay.</p> <p>5 A. And it's a guarantee this will happen because</p> <p>6 you're the manager. I just want to guarantee to make sure</p> <p>7 it happens.</p> <p>8 Q. What happens? Guarantee what happens?</p> <p>9 A. Guarantee.</p> <p>10 MS. GHANEM HAM: He's asking guaranteed of what?</p> <p>11 What -- what happens?</p> <p>12 THE WITNESS: Peccole wanted me to guarantee this</p> <p>13 deal is going to happen. Either get cash from this company,</p> <p>14 this company to the golf course, from Queensridge Tower to</p> <p>15 the golf course. Either they going to get the check, the</p> <p>16 \$3 million, take 1, 1, 5 million, \$3 million, as we call it</p> <p>17 or either give the property back. Either/or.</p> <p>18 Q. (By Mr. Ogilvie) And so --</p> <p>19 A. Or build a golf course. Yeah, sorry.</p> <p>20 Q. I'm sorry. I didn't mean to -- I apologize for</p> <p>21 interrupting.</p> <p>22 Peccoles wanted you to guarantee that -- and I</p> <p>23 don't even know how to describe for the record what you just</p> <p>24 did. Used two pieces of paper and tear a piece off. The</p> <p>25 piece off -- that you tore off is the clubhouse. Right?</p>

<p style="text-align: right;">Page 138</p> <p>1 A. Yes.</p> <p>2 Q. Yes.</p> <p>3 A. I tore the -- here it is. Looks like clubhouse.</p> <p>4 Q. And the Peccoles wanted you to guarantee they were</p> <p>5 going to get that \$3 million. And that's -- and you pledged</p> <p>6 the end cap as that collateral. Correct?</p> <p>7 A. Remember, I'm the manager of this company.</p> <p>8 Q. "This company" being Queensridge --</p> <p>9 A. Queensridge --</p> <p>10 Q. -- Tower?</p> <p>11 A. -- Tower. I'm the manager and I'm also the buyer</p> <p>12 of the -- of the -- of the golf course.</p> <p>13 Q. You're the --</p> <p>14 A. And I'm also the owner of the end cap. I'm not</p> <p>15 the owner of the end cap. I have a promise to get the end</p> <p>16 cap on the settlement that we done. Instead of paying me</p> <p>17 2.2 million they owed, take the end cap for a half. Okay.</p> <p>18 You pay 2 1/2 and I -- 2.2 and I pay 2.2 and you just take</p> <p>19 it instead.</p> <p>20 Q. That's --</p> <p>21 A. And that's what reduced the number.</p> <p>22 Q. That's the half hour that Chris just saved us. So</p> <p>23 I don't want to get into the --</p> <p>24 A. Okay.</p> <p>25 Q. -- end cap?</p>	<p style="text-align: right;">Page 139</p> <p>1 A. So what happened is, in order to make sure this</p> <p>2 deal happens -- I had this one property. Remember, I told</p> <p>3 you the 100 million was done out of all the debts that</p> <p>4 Peccole had. So I will pay the debt for them. So I got the</p> <p>5 end cap. I said, This is not going to be -- you can't pay</p> <p>6 it, because you have securitize loan . . . was 1.6 million</p> <p>7 at one point. I don't remember. Some heavy number. And</p> <p>8 you cannot pay it till 2015 anyway.</p> <p>9 So only after you pay it you can give it to me.</p> <p>10 Meanwhile, I have contract that I'm operating here and it's</p> <p>11 mine. Just the day that you paying it, you have to cut it</p> <p>12 and give it to me. So I guarantee with that -- with this.</p> <p>13 I put a note and I guarantee this deal will consummate,</p> <p>14 because I can cause it myself. I can make it. I guarantee</p> <p>15 with that. That's it.</p> <p>16 Q. Okay. So the difference between the 12 -- the 15</p> <p>17 million and the 12 million is the clubhouse?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MS. GHANEM HAM: Did that answer your question?</p> <p>21 MR. OGILVIE: It answered a few of them.</p> <p>22 MS. GHANEM HAM: Okay.</p> <p>23 Q. (By Mr. Ogilvie) So you mentioned earlier</p> <p>24 about -- when we were talking about the restrictive</p> <p>25 covenant, you talked about casitas. Did you hear rumors</p>
<p style="text-align: right;">Page 140</p> <p>1 that the -- or did, maybe -- you spoke to the Peccoles</p> <p>2 directly about their intent to build casitas around the golf</p> <p>3 course?</p> <p>4 A. I didn't have -- yes, I did spoke to them. Yes, I</p> <p>5 speak with them, casitas.</p> <p>6 Q. And what was the plan for the casitas?</p> <p>7 A. They were plugging down in areas of the golf</p> <p>8 course. They were smaller units and they're actually -- I</p> <p>9 thought it was -- I knew they never going to do it because</p> <p>10 of cost and because property not --</p> <p>11 (Reporter requested clarification.)</p> <p>12 MS. GHANEM HAM: No, she needs to --</p> <p>13 THE WITNESS: And because that -- the property is</p> <p>14 going to lose money regardless.</p> <p>15 Q. (By Mr. Ogilvie) The highrise that you referenced</p> <p>16 that -- that one faction of the family wanted to build, was</p> <p>17 that in conjunction with Hyatt?</p> <p>18 A. No, separate from the Hyatt. It wasn't Hyatt.</p> <p>19 It's not a Hyatt.</p> <p>20 Q. It's not a Hyatt?</p> <p>21 A. They told me that it was not a Hyatt. It was</p> <p>22 Hawthorn Suites.</p> <p>23 Q. Hawthorn Suites?</p> <p>24 A. That's right. Sorry, Hawthorn Suites.</p> <p>25 Q. You described the factions. One part of the</p>	<p style="text-align: right;">Page 141</p> <p>1 family or someone in the family wanted to build a highrise,</p> <p>2 others didn't. Who was on which side?</p> <p>3 A. I'm -- all my dealing -- business dealing I've</p> <p>4 done only with Larry.</p> <p>5 Q. Larry Miller?</p> <p>6 A. Larry Miller was the CO of family and he was</p> <p>7 running the business side. So since 2000 -- since 1996, I</p> <p>8 was dealing with Larry Miller. Greg Goorjian was the</p> <p>9 go-between when, you know, I need something. Then later on,</p> <p>10 I -- you know, was an open door and I was doing business</p> <p>11 with Larry. So there's one faction of the family and the</p> <p>12 other faction is Bruce and Laurie.</p> <p>13 Q. Bruce and Billy Bayne?</p> <p>14 A. I didn't know Billy Baynes.</p> <p>15 MS. GHANEM HAM: Can you maybe remove your mask.</p> <p>16 She cannot get your testimony. I don't --</p> <p>17 THE WITNESS: I apologize. And the other -- and,</p> <p>18 you know, the other partners are Bruce and Laurie Baynes.</p> <p>19 Q. (By Mr. Ogilvie) Oh, I thought you said Billy.</p> <p>20 You said --</p> <p>21 A. No, I said Bruce.</p> <p>22 Q. No.</p> <p>23 A. At that time, it was Bruce.</p> <p>24 Q. I thought you said Bruce and Billy, but you said</p> <p>25 Bruce and Lorraine?</p>

<p style="text-align: right;">Page 142</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. That's what I said.</p> <p>4 Q. So at the bottom of the first page of Exhibit 22,</p> <p>5 there is a sentence that starts the middle of the last --</p> <p>6 last line, then goes over to the next page.</p> <p>7 It says, The foregoing notwithstanding, the</p> <p>8 restrictive covenant shall expire ten years after -- and</p> <p>9 then it originally stated, Its recording with the Clark</p> <p>10 County Recorder's Office by Queensridge Towers, LLC, and</p> <p>11 then the language, Recording with the Clark County</p> <p>12 Recorder's Office was stricken and the words, Delivery to</p> <p>13 were put in its place. Is that right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. So it says, The foregoing notwithstanding,</p> <p>16 the restrictive covenant shall expire ten years after its</p> <p>17 delivery to Queensridge Towers, LLC. Correct?</p> <p>18 A. That's my handwriting, yes.</p> <p>19 Q. Okay. So this restrictive covenant was at the</p> <p>20 earlier of the completion of phase 2 of Queensridge Towers</p> <p>21 and the sale of -- and the closing of all the units in</p> <p>22 Queensridge Towers or ten years after delivery of the</p> <p>23 restrictive covenant. Correct?</p> <p>24 A. This owner, QT, have -- restricting this piece of</p> <p>25 property from being developed at all. Only in his favor,</p>	<p style="text-align: right;">Page 143</p> <p>1 because it's -- recall it here -- you can come in, sue and</p> <p>2 send restrictive covenant.</p> <p>3 So if the restricted covenant is to be in the</p> <p>4 contract, I can build whatever I want to. When I take this</p> <p>5 over, I can do whatever I want.</p> <p>6 Q. But there was no guarantee that you were going to</p> <p>7 acquire it within the time frame of the restricted covenant.</p> <p>8 Right?</p> <p>9 A. No. What you mean it's no guarantee?</p> <p>10 MR. LEAVITT: I'm going to object.</p> <p>11 MS. GHANEM HAM: Yeah.</p> <p>12 THE WITNESS: Wait. I'm sorry. What -- what was</p> <p>13 the question?</p> <p>14 Q. (By Mr. Ogilvie) So the restrictive covenant</p> <p>15 expired either upon the completion and close of escrow of</p> <p>16 all the units in phase 2 or ten years?</p> <p>17 A. No, it's whenever I want to.</p> <p>18 Q. Sorry, what?</p> <p>19 A. Whenever we want to. Queensridge Tower decide</p> <p>20 when it ends. The Peccoles are obligated for ten years or</p> <p>21 to the -- or to the end of phase 2. So -- I apologize.</p> <p>22 Q. So, then, I guess I'm not understanding this,</p> <p>23 because the second sentence of the restrictive covenants</p> <p>24 says, The restrictive covenant shall remain in effect until</p> <p>25 such time as phase 2 of the Queensridge Towers development</p>
<p style="text-align: right;">Page 144</p> <p>1 is completed and all units offered to the public for sale</p> <p>2 are sold and have closed escrow.</p> <p>3 So if phase 2 of Queensridge Towers was built and</p> <p>4 all of the units sold and closed escrow by 2014, the</p> <p>5 restrictive covenant, under those terms, would have ended.</p> <p>6 Correct?</p> <p>7 A. For the Peccoles, yes. Yes, for the -- if the</p> <p>8 Peccoles own the land and I disappear, yes, they'll -- they</p> <p>9 can do whatever they -- they want to with the property at</p> <p>10 that point.</p> <p>11 However, if I acquire the property in 2009 -- if</p> <p>12 they put the property in 2009, the restrictive covenant goes</p> <p>13 away, because it's in my favor.</p> <p>14 Q. Sure.</p> <p>15 A. And it's not -- and it's not record on the land.</p> <p>16 That's what I'm telling. So it was designed -- you -- you</p> <p>17 understand? To me, I don't -- I kept the property for me to</p> <p>18 develop in this restriction.</p> <p>19 Q. Okay.</p> <p>20 A. And prevented them for ten years to do anything</p> <p>21 with the property. We knew that phase 2 is not going to go</p> <p>22 for a long time because we just got into recession. We</p> <p>23 started -- we -- we knew there's no more lending and</p> <p>24 something serious is happening. And we were not wrong . . .</p> <p>25 Q. Okay. But my -- my question is: The restrictive</p>	<p style="text-align: right;">Page 145</p> <p>1 covenant could have ended and they could have built</p> <p>2 something if they still owned the property?</p> <p>3 A. Ten years later, yes.</p> <p>4 Q. Okay.</p> <p>5 A. Yes.</p> <p>6 Q. Or after phase 2 was completed and all the units</p> <p>7 closed escrow?</p> <p>8 A. We control that.</p> <p>9 Q. Well, I don't think you're going to hold up escrow</p> <p>10 just for this restrictive covenant. Right?</p> <p>11 A. You don't know what I can do and can't.</p> <p>12 Q. Okay. So then let's go to Section 3 of</p> <p>13 Exhibit 22.</p> <p>14 A. That was . . .</p> <p>15 MS. GHANEM HAM: Section -- I'm sorry, section?</p> <p>16 MR. OGILVIE: Three of Exhibit 22.</p> <p>17 Q. (By Mr. Ogilvie) Why were you laughing?</p> <p>18 A. Because you want \$400 million to close few units.</p> <p>19 Anyway . . .</p> <p>20 Q. Section 3 is entitled Right of First Refusal.</p> <p>21 A. Yes.</p> <p>22 Q. Says, For a period ending the earlier of, one,</p> <p>23 seven years after the delivery of the restrictive covenant</p> <p>24 or, two, such time as phase 2 of the Queensridge Towers</p> <p>25 development is completed and 75 percent of all units offered</p>

<p style="text-align: right;">Page 146</p> <p>1 to the public are -- for sale are sold and have closed</p> <p>2 escrow, BGC shall have the right of first refusal to</p> <p>3 purchase the property, and then there's some words scratched</p> <p>4 out at the end.</p> <p>5 Upon receipt of any bona fide offer to purchase</p> <p>6 the real property on terms acceptable to Fore Stars for cash</p> <p>7 and/or cash and financing, open paren, the, open quote,</p> <p>8 "offer to purchase," close quote, close paren, Fore Stars</p> <p>9 shall provide written notice of the offer to purchase to</p> <p>10 BGC, open paren, the, open quote, "first refusal notice,"</p> <p>11 close quote, close paren.</p> <p>12 BGC shall then have seven business days after</p> <p>13 receipt of the first refusal notice to exercise its right of</p> <p>14 first refusal by giving written notice of its intention to</p> <p>15 purchase the real property on the same terms and conditions</p> <p>16 as set forth in the offer to purchase.</p> <p>17 So in your prior testimony today and in your</p> <p>18 testimony in the Jack Binion vs. Fore Stars litigation, you</p> <p>19 referenced an option. You didn't have an option. You had a</p> <p>20 right of first refusal. Right?</p> <p>21 MS. GHANEM HAM: Object to the form.</p> <p>22 THE WITNESS: I call it an option.</p> <p>23 Q. (By Mr. Ogilvie) Okay. Do you have an</p> <p>24 understanding of what the difference between an option and</p> <p>25 right of first refusal is?</p>	<p style="text-align: right;">Page 147</p> <p>1 A. I -- to me, it's the same thing. I understand</p> <p>2 where you going, you know, but, to me, it's an option to</p> <p>3 purchase property. Peccoles were not holding. We block</p> <p>4 them every which way. They couldn't develop anymore. So</p> <p>5 that's what it was. That's how I understood it, that it's</p> <p>6 an option. I think that Billy Baynes understood the same</p> <p>7 way.</p> <p>8 Q. What makes you think that?</p> <p>9 A. Because he called me up and say, You have six</p> <p>10 months. He didn't call me up and say, Listen, I'm going to</p> <p>11 sell somebody else. I have an offer. Here is -- do you</p> <p>12 want to match it?</p> <p>13 Q. He called you -- Billy Bayne called you up in</p> <p>14 2014, said you have six months to buy the golf course?</p> <p>15 A. Get ready. You getting the property. Giving you</p> <p>16 six months notice.</p> <p>17 Q. So in prior testimony regarding an option and in</p> <p>18 your testimony in the Jack Binion litigation, your reference</p> <p>19 to an option was reference to this right of first refusal?</p> <p>20 A. Yes. I don't think they put the document in front</p> <p>21 of me. Otherwise, I would call it what it is, but I</p> <p>22 understood it as an option. If you didn't show it to me</p> <p>23 today, I would tell you I had option for seven years.</p> <p>24 Q. So in Section 4 -- strike that.</p> <p>25 So you had an option, as stated in -- or right of</p>
<p style="text-align: right;">Page 148</p> <p>1 first refusal, as stated in Section 3 of Exhibit 22. If</p> <p>2 nobody made an offer -- if no third party made an offer to</p> <p>3 purchase the golf course, you wouldn't have had any rights.</p> <p>4 Correct? Any rights to purchase the golf course?</p> <p>5 MS. GHANEM HAM: Object to the form. Document</p> <p>6 speaks for itself.</p> <p>7 THE WITNESS: Okay. So . . .</p> <p>8 MS. GHANEM HAM: Wait. Take your -- please.</p> <p>9 THE WITNESS: This is a put option.</p> <p>10 Q. (By Mr. Ogilvie) A put offer?</p> <p>11 A. That's what it is.</p> <p>12 Q. Okay.</p> <p>13 A. It's a put option. Peccoles can put at any time</p> <p>14 to me. And I think I said in my deposition -- the other</p> <p>15 one. I think that I heard or -- or I remember or -- I think</p> <p>16 that I said that it was one way. Only the Peccoles can put</p> <p>17 it to me. I could not force a sale.</p> <p>18 So if you going to go to my testimony, you'll find</p> <p>19 that I said I could not force a sale. It was a put</p> <p>20 option --</p> <p>21 Q. Okay. But --</p> <p>22 A. -- which is -- which, basically, right of first</p> <p>23 refusal is a put option.</p> <p>24 Q. But it was only triggered if some other party made</p> <p>25 an offer to purchase the golf course?</p>	<p style="text-align: right;">Page 149</p> <p>1 A. No, it's not. My right will trigger, but their</p> <p>2 right, they could put it to me anytime. They didn't have to</p> <p>3 get another offer. They call me up, just like he did, say,</p> <p>4 Yohan, you got six months. Get ready. You getting the</p> <p>5 course.</p> <p>6 Q. Is there any document, other than Exhibit 22, that</p> <p>7 describes what you're testifying to?</p> <p>8 A. No, I'm telling you the deals, that my dealings</p> <p>9 with Peccoles for 20 years straight, more, for 25 years, is</p> <p>10 just like that. Papers -- we -- mostly no -- no papers.</p> <p>11 Lawsuit was different.</p> <p>12 Q. Let me explain where I'm going.</p> <p>13 A. Yeah.</p> <p>14 Q. I don't want to get into an argument with you</p> <p>15 about an interpretation --</p> <p>16 A. Okay.</p> <p>17 Q. -- of this provision, right of first refusal. It</p> <p>18 says what it says.</p> <p>19 A. Exactly.</p> <p>20 Q. I'm just asking if there's anything else that</p> <p>21 describes what you're testifying this means?</p> <p>22 A. No, that's my understanding what it means.</p> <p>23 Q. Okay.</p> <p>24 A. That's -- and I'm telling you --</p> <p>25 Q. That's fine.</p>

<p style="text-align: right;">Page 150</p> <p>1 A. -- that's Peccoles understanding what it means.</p> <p>2 Q. Section 4 of Exhibit 22, same page, page 2, The</p> <p>3 parties agree to the following development on the real</p> <p>4 property will be permitted. Fore Stars can replace existing</p> <p>5 clubhouse, in accordance with the Badlands Golf Course</p> <p>6 Clubhouse Improvements Agreement or as the parties agree</p> <p>7 otherwise in writing.</p> <p>8 Fore Stars may construct up to 30 single-story one</p> <p>9 bedroom, one bathroom casitas to be used solely for</p> <p>10 short-term rental purposes. Casitas shall not exceed</p> <p>11 20 feet in height. Is that height restriction -- does that</p> <p>12 go to your concern about the highrise that you were</p> <p>13 describing earlier?</p> <p>14 A. No, it wasn't there. This was in the back. So it</p> <p>15 had nothing to do with the highrise. It was to do -- which,</p> <p>16 in the end, I would have to pay for it when I purchase. I</p> <p>17 would have to pay for it. So I didn't want to put two</p> <p>18 stories and three stories on these -- on these casitas.</p> <p>19 Those were not below the towers. Those were up on</p> <p>20 the golf course and all the area -- the desert area that</p> <p>21 they have always challenges with, they were trying to, you</p> <p>22 know, build -- do something nice and do tournament and</p> <p>23 professional . . .</p> <p>24 Q. So if it -- if these casitas --</p> <p>25 A. Okay. Here.</p>	<p style="text-align: right;">Page 151</p> <p>1 MS. GHANEM HAM: Thank you.</p> <p>2 THE WITNESS: You all want to get sick? Go ahead.</p> <p>3 MS. GHANEM HAM: Are you sick?</p> <p>4 THE WITNESS: No.</p> <p>5 MS. GHANEM HAM: Okay.</p> <p>6 THE WITNESS: Put that in your favor.</p> <p>7 MS. GHANEM HAM: Well, she can't take your -- she</p> <p>8 can't take your testimony down. I can see her eyes like,</p> <p>9 What?</p> <p>10 THE WITNESS: That was a joke. Maybe, maybe not.</p> <p>11 Q. (By Mr. Ogilvie) So why did you care about the</p> <p>12 height if it wasn't going to be built in front of</p> <p>13 Queensridge Towers?</p> <p>14 A. Well, if you know what I was dealing with,</p> <p>15 something say and something else will be built.</p> <p>16 Q. I didn't understand you. I'm sorry.</p> <p>17 A. If you know what -- if I could -- try to explain</p> <p>18 it before -- explain you before what I was dealing with is</p> <p>19 one thing would be said and something else could have been</p> <p>20 built at this time.</p> <p>21 So decide to box it in. I'll decide what you</p> <p>22 going to do. I'm going to restrict you on height. It</p> <p>23 doesn't take -- understand what the deal is behind those</p> <p>24 walls. Right?</p> <p>25 Q. I understand what the deal is. I was just</p>
<p style="text-align: right;">Page 152</p> <p>1 wondering what the motivation was about the 20 feet height</p> <p>2 restriction if it wasn't going to be in front of Queensridge</p> <p>3 Towers.</p> <p>4 A. Because I don't want you touch my property. I'm</p> <p>5 taking it. It's my property. I don't want you to invest</p> <p>6 more millions and they going to have to pay for it.</p> <p>7 (Exhibit 23 was marked.)</p> <p>8 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>9 what's been marked as Exhibit 23, it's entitled Restrictive</p> <p>10 Covenant. It was recorded in Clark County Recorder's Office</p> <p>11 on August -- I'm sorry, March 14th, 2008. This is the</p> <p>12 restrictive covenant that was referenced in Exhibit 23. Is</p> <p>13 that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. It references right of first refusal. I'm</p> <p>16 sorry. It references restrictive covenant and it sets forth</p> <p>17 the terms and says in the first paragraph that Badlands Golf</p> <p>18 Course -- skipping down to the fourth line.</p> <p>19 A. Please let me finish reading.</p> <p>20 Q. Oh, sorry.</p> <p>21 A. Yes, go ahead.</p> <p>22 Q. In the first paragraph, it says the Badlands Golf</p> <p>23 Course will remain a golf course or open space and have no</p> <p>24 development activities upon it, other than the activities</p> <p>25 specified below, without prior written approval of</p>	<p style="text-align: right;">Page 153</p> <p>1 Queensridge Towers, LLC.</p> <p>2 Why was it important to you that the golf course</p> <p>3 remain a golf course or open space and have no development</p> <p>4 activities on it for the duration of this restrictive</p> <p>5 covenant?</p> <p>6 A. Because it also held my tower sales. Keep it as a</p> <p>7 golf course green. And as I testified before, that I was</p> <p>8 very much in control of what's going to happen down there.</p> <p>9 So nobody is going to build anything else or try</p> <p>10 to build anything or represent to anybody anything or file</p> <p>11 with the City anything anymore.</p> <p>12 (Exhibit 24 was marked.)</p> <p>13 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>14 what's been marked as Exhibit 24, it's entitled Settlement</p> <p>15 Agreement and Mutual Release. It's by and among Queensridge</p> <p>16 Towers, LLC; Queensridge Highrise, LLC; and Fore Stars,</p> <p>17 dated June 28th, 2013.</p> <p>18 So as I understand your testimony earlier, as of</p> <p>19 June 28th, 2013, your entities had been bought out, for lack</p> <p>20 of a better term, subject to the way you phrased it before,</p> <p>21 for about seven months. Is that correct?</p> <p>22 A. For what?</p> <p>23 Q. About seven months. I think you said that IDB</p> <p>24 bought you out of Queensridge Towers in November 2012.</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 154</p> <p>1 Q. Okay.</p> <p>2 A. What you mean seven months?</p> <p>3 Q. Well, this is dated June 28th, 2013.</p> <p>4 A. Okay.</p> <p>5 Q. And I was just clarifying that this was entered</p> <p>6 into approximately seven months after you had been bought</p> <p>7 out of Queensridge Towers. Is that incorrect?</p> <p>8 A. I'm not aware of this document. First time I see</p> <p>9 it. Am I a party to it?</p> <p>10 Q. You've never seen it before?</p> <p>11 A. Of course not. I don't think you'll find a</p> <p>12 signature of mine and that part of the family. Would you</p> <p>13 like to ask me question about the document I don't know</p> <p>14 anything about?</p> <p>15 Q. So let's move to 2014. You indicated that Billy</p> <p>16 Bayne called you and said, Okay. You got six months to</p> <p>17 purchase the property. Right?</p> <p>18 MS. GHANEM HAM: Object to the form.</p> <p>19 Q. (By Mr. Ogilvie) Is that correct?</p> <p>20 A. Early 2014 Billy Bayne called me, yes.</p> <p>21 Q. Okay.</p> <p>22 (Exhibit 25 was marked.)</p> <p>23 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>24 what's been marked as Exhibit 25, it's an e-mail exchange.</p> <p>25 First one is from Yohan Lowie to Billy -- to William Bayne.</p>	<p style="text-align: right;">Page 155</p> <p>1 It says, Billy, pursuant to our conversations, I</p> <p>2 respectfully submit the attached LOI for your consideration.</p> <p>3 It has two attachments, one of which is Badlands GC LOI,</p> <p>4 Fore Stars, Limited.</p> <p>5 So was it Billy Bayne's call to you that said --</p> <p>6 in which he said, You got six months that prompted this</p> <p>7 e-mail and the letter of intent?</p> <p>8 A. I would believe so, yes.</p> <p>9 (Exhibit 26 was marked.)</p> <p>10 Q. (By Mr. Ogilvie) And Mr. Bayne testified that</p> <p>11 what's now been marked as Exhibit 26 is the letter of intent</p> <p>12 that accompanied your June 12th, 2014, e-mail. It is a --</p> <p>13 as described in the first paragraph -- non-binding letter of</p> <p>14 intent between Fore Stars and Yohan Lowie or such other</p> <p>15 nominee as may be named. And it is signed, I believe, if</p> <p>16 you look at the back page, by you. Is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So is Mr. Bayne accurate in his testimony</p> <p>19 that this June 12th, 2014, non-binding letter of intent is</p> <p>20 the document that accompanied your June 12th, 2014, e-mail</p> <p>21 to Mr. Bayne?</p> <p>22 MS. GHANEM HAM: Object to the form.</p> <p>23 THE WITNESS: I don't know. The document would</p> <p>24 speak for itself. I have no idea. That's Billy Bayne's</p> <p>25 record, not mine.</p>
<p style="text-align: right;">Page 156</p> <p>1 Q. (By Mr. Ogilvie) I'm sorry?</p> <p>2 A. That's Billy Bayne's record, but the same date,</p> <p>3 June 12th. So it sounds like it.</p> <p>4 Q. So let me ask you: Do you have any reason to</p> <p>5 believe that you didn't send this e-mail to Billy Bayne that</p> <p>6 is Exhibit 25 on June 12th, 2014?</p> <p>7 A. No.</p> <p>8 Q. Okay.</p> <p>9 A. I don't have any reason not to believe it.</p> <p>10 Q. Do you have any reason to believe that this</p> <p>11 non-binding letter of intent, dated June 12th, 2014, is not</p> <p>12 the attachment identified as Badlands GC LOI, Fore Stars,</p> <p>13 Limited, 06/12/14?</p> <p>14 A. That's one document. It says it's two</p> <p>15 attachments.</p> <p>16 Q. Okay. I'm asking if you have any reason to</p> <p>17 believe that Exhibit 26 is not the attachment referenced</p> <p>18 Badlands GC LOI, Fore Stars, Limited, 6/12/14.</p> <p>19 A. I don't have a reason, but I'm pointing that</p> <p>20 there's two attachments and only one. That's what -- why</p> <p>21 I'm giving a hesitation to answer yes, because on the same</p> <p>22 day there's two attachment and only one you showing me.</p> <p>23 Q. Okay. This -- you do acknowledge, do you not,</p> <p>24 that you prepared and sent this June 12th, 2014, letter of</p> <p>25 intent that is Exhibit 26 to Billy Bayne?</p>	<p style="text-align: right;">Page 157</p> <p>1 A. Yes. I like to read it, please. Okay. Go ahead.</p> <p>2 Q. Okay. Your non-binding letter of intent that is</p> <p>3 dated June 12th, 2014, indicates that you or your nominee is</p> <p>4 willing to purchase the fee interest in the golf -- Badlands</p> <p>5 Golf Course. All of the business, personal property,</p> <p>6 intellectual property, and assets comprising the Badlands</p> <p>7 Golf Course operations and all right, title, and interest to</p> <p>8 the water rights, 399 acre feet, and 21.7 acre feet and</p> <p>9 assignment of the water rights leased from Allen Nel of</p> <p>10 217.35 acre feet for a purchase price of \$12 million.</p> <p>11 Correct?</p> <p>12 A. Correct.</p> <p>13 Q. And it was this letter of intent that formed the</p> <p>14 frame work for your -- the negotiations that, ultimately,</p> <p>15 led to your purchase of Fore Stars, the entity. Correct?</p> <p>16 A. Correct.</p> <p>17 (Exhibit 27 was marked.)</p> <p>18 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>19 what's been marked as Exhibit 27, it is an e-mail exchange</p> <p>20 and a purchase agreement -- purchase and sale agreement.</p> <p>21 The e-mail exchange is between Henry Lichtenberger, Yohan</p> <p>22 Lowie, and Todd Davis. You received this. Is that correct?</p> <p>23 A. It's between lawyers. I don't think I'm on the</p> <p>24 e-mail. Am I? Oh, I am. Obviously, I received it. I</p> <p>25 probably reviewed it, but I think it's between the lawyers.</p>

<p style="text-align: right;">Page 158</p> <p>1 Q. Okay.</p> <p>2 A. Yes.</p> <p>3 Q. This is July 23rd. It's about five weeks after</p> <p>4 you sent Billy Bayne the letter of intent for the purchase</p> <p>5 of the Badlands Golf Course. Right?</p> <p>6 A. Okay. Yes, July 25th.</p> <p>7 Q. Okay.</p> <p>8 A. Or July 12th.</p> <p>9 Q. And --</p> <p>10 A. No, June 12th.</p> <p>11 Q. This -- yes, the letter of intent is dated</p> <p>12 June 12th. I'm saying this e-mail exchange and this draft</p> <p>13 purchase and sale agreement is about five weeks later.</p> <p>14 A. Five weeks . . . yeah. Yes, go ahead.</p> <p>15 Q. Did I say ten days? Okay. If I did, I apologize.</p> <p>16 A. If I heard [sic], I apologize. Misheard.</p> <p>17 Q. So you send the June 12, 2014, letter of intent to</p> <p>18 Billy Bayne. I presume you had some conversations back and</p> <p>19 forth about it and then said, Let's send it to the lawyers</p> <p>20 to write up a document.</p> <p>21 A. Right.</p> <p>22 Q. Is that correct? Yes?</p> <p>23 MS. GHANEM HAM: Object to the form.</p> <p>24 THE WITNESS: Like that.</p> <p>25 Q. (By Mr. Ogilvie) Okay. And Exhibit 27 is, again,</p>	<p style="text-align: right;">Page 159</p> <p>1 the e-mails. And the last e-mail in the series is from</p> <p>2 Henry Lichtenberger to Todd Davis and Yohan Lowie. It says,</p> <p>3 Attached is the initial draft of the Badlands Golf Course</p> <p>4 purchase agreement. Thank you. Thank you.</p> <p>5 Sorry, it didn't really say that, but -- Thanks</p> <p>6 and safe travels.</p> <p>7 So, at this point, it is anticipated to be, as</p> <p>8 reflected in the purchase and sale agreement that's attached</p> <p>9 to the e-mails, to be a asset agreement. Correct?</p> <p>10 MS. GHANEM HAM: Object to the form.</p> <p>11 THE WITNESS: Asset agreement?</p> <p>12 Q. (By Mr. Ogilvie) Asset purchase agreement. At</p> <p>13 this point -- I'm sorry.</p> <p>14 A. This was property agreement.</p> <p>15 Q. Right. Okay. So going back to Exhibit 26 -- take</p> <p>16 your time.</p> <p>17 A. Yeah, this between Fore Stars and myself. So this</p> <p>18 is buying the asset, the property.</p> <p>19 Q. Yes.</p> <p>20 A. That's what you meant?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. That's right.</p> <p>24 MR. OGILVIE: Do you want to take a break?</p> <p>25 THE WITNESS: No. Yeah, I have to go to the</p>
<p style="text-align: right;">Page 160</p> <p>1 restroom.</p> <p>2 (Pause in proceedings.)</p> <p>3 MR. OGILVIE: Back on the record.</p> <p>4 Q. (By Mr. Ogilvie) Mr. Lowie, we were talking about</p> <p>5 the purchase and sale agreement that is a portion of</p> <p>6 Exhibit 27. It was prepared by the Peccoles' attorney,</p> <p>7 right, Henry Lichtenberger?</p> <p>8 MS. GHANEM HAM: I'm just going to object to the</p> <p>9 form of the question as it misstates the document.</p> <p>10 Q. (By Mr. Ogilvie) Purchase and sale agreement.</p> <p>11 MR. MOLINA: Not Fore Stars. You said --</p> <p>12 MR. OGILVIE: Oh.</p> <p>13 MR. MOLINA: -- Fore Stars.</p> <p>14 MR. OGILVIE: It's an asset agreement -- asset</p> <p>15 purchase agreement for the assets of . . .</p> <p>16 MS. GHANEM HAM: Right. My -- my objection -- I</p> <p>17 know you don't want speaking objections -- is just to</p> <p>18 clarify I don't believe this is the final signed agreement.</p> <p>19 It may just be a draft.</p> <p>20 MR. OGILVIE: Oh.</p> <p>21 MS. GHANEM HAM: That's all.</p> <p>22 MR. OGILVIE: Yes. Right. No.</p> <p>23 MS. GHANEM HAM: Okay.</p> <p>24 MR. OGILVIE: Absolutely.</p> <p>25 Q. (By Mr. Ogilvie) Do you need more time to review</p>	<p style="text-align: right;">Page 161</p> <p>1 it, sir? My questions about it aren't going to be detailed.</p> <p>2 A. Go ahead, please.</p> <p>3 Q. Okay. This was prepared by the Peccoles'</p> <p>4 attorney, Mr. Lichtenberger. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And it anticipates, as the June 12th, 2014</p> <p>7 letter of intent, to be a asset purchase agreement of the</p> <p>8 assets of Badlands Golf Course. Correct?</p> <p>9 A. Can you ask the question again? I apologize. I</p> <p>10 was just reading and I'm just trying to figure out what's</p> <p>11 going on here, but I just realize it wasn't the deal.</p> <p>12 Yeah, go ahead, please.</p> <p>13 Q. Just realized what?</p> <p>14 A. This wasn't the deal.</p> <p>15 Q. Oh, oh, oh.</p> <p>16 A. Yeah, yeah, just --</p> <p>17 Q. This -- this is --</p> <p>18 A. Remembering it was, again, another chaotic deal,</p> <p>19 because they don't know what they have, yeah.</p> <p>20 Q. Okay. So this is a preliminary draft of an asset</p> <p>21 purchase agreement?</p> <p>22 A. Correct.</p> <p>23 Q. Let's just be clear. You ended up not making an</p> <p>24 asset purchase. You purchased the membership interest in</p> <p>25 Fore Stars?</p>

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<p style="text-align: right;">Page 162</p> <p>1 A. Yes.</p> <p>2 Q. So, essentially, you bought the company, rather</p> <p>3 than the assets of the company?</p> <p>4 A. Yeah, bought liability as well. The whole issue</p> <p>5 was liabilities. Yes.</p> <p>6 Q. Okay.</p> <p>7 (Exhibit 28 was marked.)</p> <p>8 THE WITNESS: Thank you.</p> <p>9 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>10 what's been marked as Exhibit 28. It is an e-mail exchange</p> <p>11 between Billy Bayne, Henry Lichtenberger, Todd Davis, and</p> <p>12 Yohan Lowie between August 26 and August 27, 2014.</p> <p>13 In the last e-mail which is from Billy Bayne,</p> <p>14 there is -- there are five enumerated paragraphs and the</p> <p>15 first paragraph is making reference to a demand for full</p> <p>16 indemnification to -- from Mr. Lowie to -- or, yes, from</p> <p>17 Mr. Lowie to the Peccoless. And then there's a reference to</p> <p>18 this clubhouse issue.</p> <p>19 So, as I understand it, the purchase price was</p> <p>20 going to be \$12 million without the land on which the</p> <p>21 clubhouse sits and \$15 million if the -- if the land on</p> <p>22 which the clubhouse sits was included in this deal. Is that</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 MS. GHANEM HAM: Object to the form.</p>	<p style="text-align: right;">Page 163</p> <p>1 THE WITNESS: Sorry.</p> <p>2 MS. GHANEM HAM: Two seconds.</p> <p>3 Q. (By Mr. Ogilvie) I'm sorry. Is that -- is that</p> <p>4 correct? She objected.</p> <p>5 MS. GHANEM HAM: I already objected.</p> <p>6 THE WITNESS: Correct.</p> <p>7 Q. (By Mr. Ogilvie) Okay. And at this point, it's</p> <p>8 still an asset purchase that's being contemplated. Correct?</p> <p>9 A. Correct.</p> <p>10 (Exhibit 29 was marked.)</p> <p>11 THE WITNESS: Thank you.</p> <p>12 Q. (By Mr. Ogilvie) So then there were some wrinkles</p> <p>13 in the deal, from what I understand. One of them is</p> <p>14 referenced in what's been marked as Exhibit 29 that's before</p> <p>15 you, and it is whether or not you, at this point in time,</p> <p>16 actually held the right of first refusal.</p> <p>17 And as you testified earlier, in November 2012,</p> <p>18 you had sold BGC Holdings, LLC, to Mr. Assaf Lang. Right?</p> <p>19 A. Yes.</p> <p>20 Q. And with that sale of BGC Holdings went the -- the</p> <p>21 technical right of first refusal. Correct?</p> <p>22 MS. GHANEM HAM: Object to the form. Lacks</p> <p>23 foundation.</p> <p>24 THE WITNESS: Technically? Technically, yes. I</p> <p>25 don't think anybody notice at the time.</p>
<p style="text-align: right;">Page 164</p> <p>1 Q. (By Mr. Ogilvie) But -- so going back to the BGC</p> <p>2 settlement agreement, it was BGC that actually held that</p> <p>3 right of first refusal. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And without anyone really realizing it,</p> <p>6 when you sold BGC to Mr. Lang, you also sold the right of</p> <p>7 first refusal, which created a little wrinkle in this</p> <p>8 transaction. Correct?</p> <p>9 A. Correct.</p> <p>10 Q. And was there discussions between you and Billy</p> <p>11 Bayne about -- upon realization of this right of first</p> <p>12 refusal being held by Mr. Lang, that there had to be an</p> <p>13 offer to him for the purchase price of \$12 million?</p> <p>14 A. What I remember from then, that Billy side was --</p> <p>15 raised it and Billy's -- I said, Let me just put the --</p> <p>16 let -- let me just -- with BGC -- put it to BGC, and I think</p> <p>17 they done. I think they put out.</p> <p>18 Q. Would it be -- there's -- the second page of</p> <p>19 Exhibit 29 is a letter from Mr. Bayne to Assaf Lang offering</p> <p>20 the right of first refusal.</p> <p>21 A. I don't think.</p> <p>22 MS. GHANEM HAM: This page.</p> <p>23 THE WITNESS: Oh.</p> <p>24 MS. GHANEM HAM: This page.</p> <p>25 THE WITNESS: Dear Mr. Lang, okay. There you go.</p>	<p style="text-align: right;">Page 165</p> <p>1 Sorry. Okay.</p> <p>2 Q. (By Mr. Ogilvie) So Mr. Bayne's letter to Assaf</p> <p>3 Lang, that's consistent with your recollection of -- and</p> <p>4 what you just said about the Peccoless putting the offer --</p> <p>5 the \$12 million offer for the golf course to Mr. Lang.</p> <p>6 Correct?</p> <p>7 A. Yes.</p> <p>8 (Exhibit 30 was marked.)</p> <p>9 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>10 what's been marked as Exhibit 30. It is a letter from</p> <p>11 Mr. Bayne to Assaf Lang which states, Please be advised that</p> <p>12 the offer referenced in my letter dated September 15th, 2014</p> <p>13 for the sale of Badlands Golf Course to a third party has</p> <p>14 been withdrawn.</p> <p>15 Was there a point in time that you withdrew your</p> <p>16 offer to purchase the assets of Badlands Golf Course for --</p> <p>17 of \$12 million?</p> <p>18 MS. GHANEM HAM: Just going to object to the form.</p> <p>19 THE WITNESS: No.</p> <p>20 Q. (By Mr. Ogilvie) From the time that you sent your</p> <p>21 June 12th, 2014, letter of intent to Mr. Bayne through the</p> <p>22 March 2015 closing, you never withdrew your offer to</p> <p>23 purchase the golf course?</p> <p>24 A. I don't think so. I don't recall. I mean, I</p> <p>25 don't recall.</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q. Okay.</p> <p>2 A. I think that's what yielded this purchase of</p> <p>3 membership. Which not going to be under there because BGC</p> <p>4 still have options. I think that's what yielded it, but I</p> <p>5 don't -- I don't recall exactly.</p> <p>6 Q. So Mr. Bayne testified that there were few things</p> <p>7 in the mix or factors that changed the deal from an asset</p> <p>8 purchase agreement to an interest purchase agreement. And</p> <p>9 one of which he explained was Mr. Lang didn't have right of</p> <p>10 first refusal on the entity. He only did on the golf</p> <p>11 course.</p> <p>12 Does that -- is that consistent with your</p> <p>13 recollection?</p> <p>14 A. I think that reason was they didn't want to get</p> <p>15 sued by IDB. Well, that's probably part of it. There were</p> <p>16 few pieces. So they -- you know, at one point, they said,</p> <p>17 Just -- you got to buy the company. You -- you building a</p> <p>18 big project. You got to take the company. And I want</p> <p>19 indemnity and I don't get sued by IDB. So that's what I</p> <p>20 recall, but it may be a part of that.</p> <p>21 (Exhibit 31 was marked.)</p> <p>22 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>23 Exhibit 31, which is an e-mail exchange that starts on</p> <p>24 October 30th, oh, and goes through November 3rd, 2014, the</p> <p>25 last e-mail -- you are included on the last e-mail from Todd</p>	<p style="text-align: right;">Page 167</p> <p>1 Davis to Henry Lichtenberger, Billy Bayne, and you are CC'd.</p> <p>2 And going back to the original e-mails from a</p> <p>3 bankruptcy trustee, Lenard Schwartz, in which</p> <p>4 Mr. Schwartz advises Mr. Davis that the bankruptcy judge</p> <p>5 orally granted trustee's motion to dismiss this case.</p> <p>6 Written order will be issued in a few days.</p> <p>7 Do you have an -- a recollection that BGC</p> <p>8 Holdings, LLC, was in bankruptcy at the time of this</p> <p>9 transaction?</p> <p>10 MS. GHANEM HAM: Object to the form.</p> <p>11 THE WITNESS: I don't remember the time BGC</p> <p>12 Holding went into bankruptcy.</p> <p>13 Q. (By Mr. Ogilvie) Okay. After you sold it to</p> <p>14 Mr. Lang?</p> <p>15 A. Yes.</p> <p>16 Q. And then advancing forward a couple days, there's</p> <p>17 an e-mail from Mr. Lichtenberger to Mr. Davis asking, Are</p> <p>18 you able to get Assaf to waive the right of first -- right</p> <p>19 of refusal? If so, do you just want to purchase the course</p> <p>20 or the LLC? Understand that it is prudent to get his</p> <p>21 waiver.</p> <p>22 And then Mr. Davis responds and CCs you, saying,</p> <p>23 Henry, I agree. Perhaps the BGC waiver -- perhaps make the</p> <p>24 BGC waiver a condition which must be satisfied within XX</p> <p>25 days of execution of the agreement. The intent is to</p>
<p style="text-align: right;">Page 168</p> <p>1 purchase the LLC.</p> <p>2 So is it consistent with your recollection that as</p> <p>3 of early November 2014, you and your entities had made a</p> <p>4 determination that it would be best to purchase the entity,</p> <p>5 Fore Stars, rather than the assets of Fore Stars?</p> <p>6 MS. GHANEM HAM: Object to the form. Go ahead.</p> <p>7 THE WITNESS: I think that -- I think there were</p> <p>8 many discussion at that time.</p> <p>9 Q. (By Mr. Ogilvie) I -- I'm sorry?</p> <p>10 A. I think there were many discussions at that time</p> <p>11 about how to proceed. Peccoles have issues their side. You</p> <p>12 know, this came up and decision was to go. I don't think I</p> <p>13 was reading these e-mails, because it was between lawyers,</p> <p>14 but that's my recollection from that.</p> <p>15 Q. Is it your recollection that at or about November</p> <p>16 2014 while you were in negotiations for the purchase of</p> <p>17 either the assets or the entity of Fore Stars that the</p> <p>18 Peccoles resolved the clubhouse issue with Queensridge</p> <p>19 Towers?</p> <p>20 A. I think they have -- I think they resolve most of</p> <p>21 it and it was something else. There was discussion between</p> <p>22 them. There was issues.</p> <p>23 Q. But with respect to the election of whether or not</p> <p>24 to include a new clubhouse in phase 2 or to build a new</p> <p>25 clubhouse or to transfer the land, do you have an</p>	<p style="text-align: right;">Page 169</p> <p>1 understanding that in or around November 2014 that</p> <p>2 Queensridge Towers, LLC, and the Peccoles resolved how that</p> <p>3 would be handled?</p> <p>4 MS. GHANEM HAM: Object to the form.</p> <p>5 THE WITNESS: My recollection is that it was --</p> <p>6 they were dealing between them. And portion of it would</p> <p>7 resolve and other portions -- I think it was entitlements</p> <p>8 issue. I can't recall when, but Queensridge Towers going</p> <p>9 to -- you know, to -- to -- you know, to step off this</p> <p>10 property, to put one tower instead of two.</p> <p>11 Q. (By Mr. Ogilvie) Let me ask it this way:</p> <p>12 Ultimately, you ended up purchasing the entity Fore Stars,</p> <p>13 and when you closed on that purchase, the assets of Fore</p> <p>14 Stars now included -- in addition to the 250 acres, it now</p> <p>15 included the clubhouse acreage and the clubhouse. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Yes, okay. And that was reflected in the increase</p> <p>18 of the purchase price from 12 million to 15 million.</p> <p>19 Correct?</p> <p>20 A. Correct.</p> <p>21 (Exhibit 32 was marked.)</p> <p>22 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>23 what's been marked as Exhibit 32. It is -- the first page</p> <p>24 of which is an e-mail exchange from Henry -- or an e-mail</p> <p>25 from Henry Lichtenberger to Billy Bayne, Yohan Lowie, and</p>

<p style="text-align: right;">Page 170</p> <p>1 Todd Davis.</p> <p>2 Mr. Lichtenberger says, Attached is the initial</p> <p>3 draft of the stock purchase agreement for golf course.</p> <p>4 Document differs greatly from the former draft of the asset</p> <p>5 purchase agreement, so creating a marked version would not</p> <p>6 be very beneficial.</p> <p>7 So -- and then attached to that is a document</p> <p>8 entitled Membership Interest Purchase and Sale Agreement.</p> <p>9 This -- am I correct that this membership interest purchase</p> <p>10 and sale agreement is the first draft reflecting the change</p> <p>11 from the asset purchase to the interest purchase of Fore</p> <p>12 Stars?</p> <p>13 A. It may be the case. I think so, but I don't know</p> <p>14 if it was a draft before.</p> <p>15 Q. I didn't --</p> <p>16 A. I don't know if there was another draft before --</p> <p>17 Q. Okay.</p> <p>18 A. -- but if you ask me -- it was -- if this the</p> <p>19 first draft, I don't know.</p> <p>20 Q. Okay.</p> <p>21 A. If you ask me --</p> <p>22 Q. So Mr. Lichtenberger says in his e-mail, Attached</p> <p>23 is the initial draft of the stock purchase agreement for</p> <p>24 golf course.</p> <p>25 Do you have any reason to believe that Exhibit 32</p>	<p style="text-align: right;">Page 171</p> <p>1 does not reflect the initial draft of the membership</p> <p>2 interest -- membership interest purchase and sale agreement</p> <p>3 for Fore Stars?</p> <p>4 A. I don't, but I don't know for a fact. I don't --</p> <p>5 I don't -- I don't have any reason not to believe.</p> <p>6 Q. Okay.</p> <p>7 (Exhibit 33 was marked.)</p> <p>8 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>9 what's been marked as Exhibit 33, it is an e-mail exchange</p> <p>10 that begins with the cover e-mail to Exhibit 32 from</p> <p>11 Mr. Lichtenberger.</p> <p>12 Bottom of page 1, it says, Attached is the initial</p> <p>13 draft for the stock purchase agreement for golf course,</p> <p>14 which was the e-mail that was the first page of Exhibit 32.</p> <p>15 That was transmitted by Mr. Lichtenberger to Billy Bayne,</p> <p>16 Yohan Lowie, and Todd Davis on November 26, 2014.</p> <p>17 The next e-mail in this exchange is from Mr. Davis</p> <p>18 to Henry Lichtenberger with a CC to Billy Bayne or William</p> <p>19 Bayne, Yohan Lowie, and Frank Pankratz, in which Mr. Davis</p> <p>20 says, Henry, I hope you had a great holiday. Attached is</p> <p>21 the purchaser executed signature page.</p> <p>22 So -- and that's dated December 1st, 2014. So</p> <p>23 effective December 1st of 2014, you had signed the stock</p> <p>24 purchase and sale agreement. Is that correct?</p> <p>25 MS. GHANEM HAM: Object to the form. Vague and</p>
<p style="text-align: right;">Page 172</p> <p>1 ambiguous as to which purchase and sale agreement.</p> <p>2 THE WITNESS: I don't know date of purchase I</p> <p>3 sign. You have the contract? It has date on it? That's</p> <p>4 what it says here. Must speak for myself. We sign it the</p> <p>5 time. I don't know what date. You ask me what date. Maybe</p> <p>6 a day before, day after . . .</p> <p>7 (Exhibit 34 was marked.)</p> <p>8 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>9 what's been marked as Exhibit 34. Is a signature page.</p> <p>10 Page 12, which is identical to page 12 of the membership</p> <p>11 interest purchase and sale agreement that Mr. Lichtenberger</p> <p>12 transmitted to William Bayne, Yohan Lowie, and Todd Davis on</p> <p>13 November 26th, with a signature block for purchaser entitled</p> <p>14 LV Golf Company, LLC.</p> <p>15 Who is LV Golf Company, LLC?</p> <p>16 A. Company we created to -- I -- I don't know. I</p> <p>17 can't tell you. Can't -- I don't recall who is LV Golf.</p> <p>18 Q. Is that your signature as -- on -- or as the</p> <p>19 manager of LV Golf Company, LLC?</p> <p>20 A. Yeah, I think it was, for short period of time,</p> <p>21 some entity we put it in. Transfer it to a different</p> <p>22 company.</p> <p>23 Q. Okay. So you believe that you and your people</p> <p>24 created LV Golf Company, LLC, to be the actual purchaser for</p> <p>25 a short period of time of Fore Stars. Is that correct?</p>	<p style="text-align: right;">Page 173</p> <p>1 A. I don't recognize LV Golf. Alan Sklar did the</p> <p>2 transaction of this.</p> <p>3 MS. GHANEM HAM: Okay. Hold on. I'm going to</p> <p>4 object and instruct you not to answer to the extent that</p> <p>5 you're providing attorney-client privileged information or</p> <p>6 advice from your counsel.</p> <p>7 THE WITNESS: I don't recall what LV Golf</p> <p>8 Company -- I thought it would be LM Crown, but it's -- it</p> <p>9 appear there is another company in-between.</p> <p>10 Q. (By Mr. Ogilvie) You said LM Crown. Is that</p> <p>11 correct?</p> <p>12 A. That's what I thought.</p> <p>13 Q. No, I'm just making sure the court reporter got</p> <p>14 it --</p> <p>15 A. Yeah.</p> <p>16 Q. -- correct. Okay. Sorry.</p> <p>17 And that's your signature. Correct?</p> <p>18 A. Yes, I still don't see a date here.</p> <p>19 Q. That's also your signature on behalf of Executive</p> <p>20 Home Builders as president?</p> <p>21 A. Yes.</p> <p>22 Q. And looking back at Exhibit 33, which is the</p> <p>23 e-mail exchange between Todd Davis, Henry Lichtenberger,</p> <p>24 with you and Mr. Bayne, CC'd, Mr. Davis says, on</p> <p>25 December 1st, 2014, Henry, hope you had a great holiday.</p>

<p style="text-align: right;">Page 174</p> <p>1 Attached is the purchaser executed signature page.</p> <p>2 Do you have any reason to believe that you did not</p> <p>3 sign the membership interest purchase and sale agreement by</p> <p>4 which you acquired Fore Stars on or before December 1st,</p> <p>5 2014?</p> <p>6 MS. GHANEM HAM: Object to the form and</p> <p>7 foundation.</p> <p>8 THE WITNESS: Yes, I do.</p> <p>9 Q. (By Mr. Ogilvie) You have reason to believe that</p> <p>10 you did not sign the membership interest purchase and sale</p> <p>11 agreement on or before December 1st, 2014?</p> <p>12 A. Yeah, I do.</p> <p>13 Q. What is the basis of that belief?</p> <p>14 A. My memory is that we closed on March in 2015.</p> <p>15 Q. Okay. We -- we're going to get there, and I think</p> <p>16 your memory is accurate. Okay? I'm just saying the initial</p> <p>17 execution that led to the closing -- that's what I'm</p> <p>18 referencing, that you signed the membership interest</p> <p>19 purchase and sale agreement on or before December 1st, 2014,</p> <p>20 and then there was a period of time before you closed.</p> <p>21 MS. GHANEM HAM: And, again, I'm going to object</p> <p>22 to the form. Lacks foundation. Misstates the documents.</p> <p>23 Q. (By Mr. Ogilvie) Is that consistent with your</p> <p>24 recollection?</p> <p>25 A. That's consistent with documents I see, that it's</p>	<p style="text-align: right;">Page 175</p> <p>1 likely. I just cannot be certain. I don't have a reason to</p> <p>2 doubt it, but I cannot be certain.</p> <p>3 Where is the date? Usually there's date on</p> <p>4 contract.</p> <p>5 Q. Understood. If I --</p> <p>6 A. I don't want to be test. I don't -- I do not want</p> <p>7 it to be a test on the date.</p> <p>8 Q. Okay.</p> <p>9 A. So --</p> <p>10 Q. My question is: Based on Mr. Davis' e-mail to</p> <p>11 Mr. Lichtenberger that says, Attached is the purchaser</p> <p>12 executed signature page, do you have any reason to believe</p> <p>13 that you did not sign the membership interest purchase and</p> <p>14 sale agreement by which you acquired Fore Stars on or before</p> <p>15 December 1st, 2014?</p> <p>16 MS. GHANEM HAM: Same objection.</p> <p>17 THE WITNESS: And I don't have a reason to believe</p> <p>18 it, but I cannot be certain without seeing a date.</p> <p>19 Q. (By Mr. Ogilvie) That's good enough. Okay.</p> <p>20 And then Mr. Lichtenberger writes back to</p> <p>21 Mr. Davis and said, Should we assume that you have no</p> <p>22 comments to the document? Mr. Davis responds, Correct, and</p> <p>23 then forwards the e-mail to you. It says, FYI.</p> <p>24 Did you have -- strike that. I'm just -- I was</p> <p>25 going to ask if you had any conversations with Mr. Davis,</p>
<p style="text-align: right;">Page 176</p> <p>1 but strike that.</p> <p>2 A. My answer would be I don't recall.</p> <p>3 MS. GHANEM HAM: No, you don't answer, for God's</p> <p>4 sake.</p> <p>5 Q. (By Mr. Ogilvie) In any event, you enter into a</p> <p>6 membership interest purchase and sale agreement for the</p> <p>7 purchase of Fore Stars. Is that correct?</p> <p>8 A. Yes.</p> <p>9 MS. GHANEM HAM: I'm sorry. Could you -- okay --</p> <p>10 answer the question.</p> <p>11 (Pause in proceedings.)</p> <p>12 (Exhibit 35 was marked.)</p> <p>13 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>14 what's been marked as Exhibit 35, it is an e-mail exchange</p> <p>15 dated December 23rd, 2014, between Todd Davis and Henry</p> <p>16 Lichtenberger to begin with and then including Billy Bayne</p> <p>17 and Yohan Lowie as the e-mails go forward.</p> <p>18 First e-mail from Mr. Davis says -- on page 2</p> <p>19 says, Henry, Yohan mentioned that we are separating the WRL</p> <p>20 and Fore Stars, Limited, purchases into two separate</p> <p>21 transactions. Are you preparing the docs? WRL owned the</p> <p>22 water rights that are appurtenant to the Badlands Golf</p> <p>23 Course. Correct?</p> <p>24 MS. GHANEM HAM: Object to the form.</p> <p>25 THE WITNESS: I beg your pardon. Again, please.</p>	<p style="text-align: right;">Page 177</p> <p>1 I was reading. So . . .</p> <p>2 Q. (By Mr. Ogilvie) I'm sorry. Are you finished</p> <p>3 reading?</p> <p>4 A. Yeah, I was just trying to figure out what it is.</p> <p>5 Q. Okay. Sorry. I was looking at the e-mail on the</p> <p>6 second page, and it's an e-mail from Mr. Davis to Henry</p> <p>7 Lichtenberger in which Mr. Davis says, Yohan mentioned</p> <p>8 you're separating the WRL and Fore Stars, Limited, purchases</p> <p>9 into two separate transactions. Are you preparing the docs?</p> <p>10 WRL is the entity that owned the water rights</p> <p>11 appurtenant to the Badlands Golf Course. Correct?</p> <p>12 MS. GHANEM HAM: Same objection.</p> <p>13 THE WITNESS: Correct.</p> <p>14 Q. (By Mr. Ogilvie) Okay. And whereas the original</p> <p>15 membership interest purchase and sale agreement anticipated</p> <p>16 one document covering the purchase of both WRL and Fore</p> <p>17 Stars, there was a discussion on one side or the other that</p> <p>18 there would be two separate purchase agreements. Correct?</p> <p>19 MS. GHANEM HAM: Object to the form. You can</p> <p>20 answer.</p> <p>21 THE WITNESS: Correct. I've asked to separate it,</p> <p>22 but I want to go back and correct the answer before. WRL is</p> <p>23 a company that hold water rights. I don't want to use the</p> <p>24 word "appurtenant." I don't know what it means, and I don't</p> <p>25 agree with water appurtenant. It's water. It can travel</p>

<p style="text-align: right;">Page 178</p> <p>1 anywhere with entity. So, yes -- but WRL held water rights.</p> <p>2 Q. (By Mr. Ogilvie) Well, Badlands called it water</p> <p>3 rights.</p> <p>4 A. It's not Badlands' water rights.</p> <p>5 MS. GHANEM HAM: Hold on. Object to the form.</p> <p>6 THE WITNESS: It's not Badlands' water rights.</p> <p>7 It's water rights. Those kind of water rights like a car.</p> <p>8 You can park --</p> <p>9 MS. GHANEM HAM: Hold on.</p> <p>10 Q. (By Mr. Ogilvie) Okay. So I believe it was --</p> <p>11 your side of the transaction decided that you wanted to</p> <p>12 split the transaction into two purchase agreements, one for</p> <p>13 WRL which held water rights and one for Fore Stars.</p> <p>14 Correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And, ultimately, there was an agreement for</p> <p>17 those two separate contracts. Correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 (Exhibit 36 was marked.)</p> <p>21 Q. (By Mr. Ogilvie) And as you testified a few</p> <p>22 minutes ago, because Fore Stars had now acquired the land on</p> <p>23 which the clubhouse sits, the purchase price was adjusted</p> <p>24 from 12 million to 15 million. And then, ultimately, the</p> <p>25 15 million was allocated between Fore Stars and WRL for</p>	<p style="text-align: right;">Page 179</p> <p>1 \$7 1/2 million each. Correct?</p> <p>2 MS. GHANEM HAM: Object to the form.</p> <p>3 THE WITNESS: It's arbitrarily. It was</p> <p>4 arbitrarily for accounting purposes. We -- you know, we put</p> <p>5 equal. You know, the accountant said just split it down the</p> <p>6 middle.</p> <p>7 Q. (By Mr. Ogilvie) Okay.</p> <p>8 A. It was no -- there was no reason for it. The</p> <p>9 property was going -- the -- the property -- the golf course</p> <p>10 was coming in in the original deal with the water. So we</p> <p>11 can build what we want to or we can operate the course,</p> <p>12 whatever it is that we need to -- property -- always was</p> <p>13 part of the deal.</p> <p>14 But in the purchase, that become a issue, how did</p> <p>15 you -- how do you recall it? What you do with that? So</p> <p>16 accountant raised it. The lawyers and the accountants and</p> <p>17 tax lawyers raised it and asked us to do -- split</p> <p>18 in-between. So it start discussion, Well, what do you do?</p> <p>19 How do you apply this? What you put it in? And end up in</p> <p>20 the middle.</p> <p>21 Q. Okay. So your group -- you and/or your entities</p> <p>22 made the determination of the split. Is that correct?</p> <p>23 A. I think the accounting -- the accounting -- I</p> <p>24 can't recall if it's lawyers, the accountant --</p> <p>25 Q. Let me ask a different question.</p>
<p style="text-align: right;">Page 180</p> <p>1 A. Yeah, outside -- ask, yes.</p> <p>2 Q. The Peccoles didn't ask for the split of 7 1/2</p> <p>3 and 7 1/2. That was your side. Correct?</p> <p>4 A. This is exactly equal to what happened in the</p> <p>5 original purchase and sale agreement of the membership</p> <p>6 agreement. It's the same exact thing. The Peccoles counted</p> <p>7 numbers and start plugging the number, write it this way,</p> <p>8 put this -- this is for accounting purposes. Same thing.</p> <p>9 You reconcile your accounting into the deal, then you sew it</p> <p>10 into the deal. So it's the same thing.</p> <p>11 Q. So my question is far less complex. It was your</p> <p>12 side that said 7 1/2 and 7 1/2, not the Peccoles' side.</p> <p>13 Correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And it was, as you said, arbitrary and it</p> <p>16 came from the lawyers and the accountants. Correct?</p> <p>17 A. Correct. Yeah, the water was --</p> <p>18 MS. GHANEM HAM: Hold on.</p> <p>19 THE WITNESS: -- always a part of the deal.</p> <p>20 Q. (By Mr. Ogilvie) I'm sorry?</p> <p>21 A. The water was always a part of that deal.</p> <p>22 Q. Yes, yes.</p> <p>23 (Exhibit 37 was marked.)</p> <p>24 THE WITNESS: You know, I got to correct it. I</p> <p>25 just -- I just recall that. So I think -- think that Billy</p>	<p style="text-align: right;">Page 181</p> <p>1 called me for this first.</p> <p>2 Q. (By Mr. Ogilvie) About splitting the deal into</p> <p>3 two separate contracts?</p> <p>4 A. No. He wanted water -- they needed -- on their</p> <p>5 books, they needed to clear the water. They need to get a</p> <p>6 price from us which started discussion on our side. That's</p> <p>7 my recollection.</p> <p>8 My recollection now that Billy called Kerry</p> <p>9 Waters. Wanted to get the number for what -- how do we</p> <p>10 register the water and the property? And that started</p> <p>11 discussion at Sklar's office and, you know, on our side of</p> <p>12 how to do that.</p> <p>13 So we want -- then we -- then we decide to split</p> <p>14 it, because, otherwise, we'll be -- we'd have to recall it.</p> <p>15 It was -- how do you recall same property? How do you</p> <p>16 recall going to buy land? How do you recall the water</p> <p>17 rights? The value. How do you -- how -- how does it work?</p> <p>18 That's why it had to be separate. That's what I want to</p> <p>19 know.</p> <p>20 Q. So let me direct your attention to Exhibit 36, and</p> <p>21 I'm going to direct your attention to see if it refreshes</p> <p>22 your recollection. Not that -- not that you are on this</p> <p>23 e-mail exchange, but there is a February 27th, 2015, e-mail</p> <p>24 from Todd Davis to Henry Lichtenberger.</p> <p>25 It says, Henry, the allocation between Fore Stars</p>

CONFIDENTIAL TRANSCRIPT OF YOHAN LOWIE - 08/12/2021

<p style="text-align: right;">Page 182</p> <p>1 and WRL is 7.5 million each. I will send revised docs</p> <p>2 shortly. And Mr. Lichtenberger responds the same day two</p> <p>3 minutes later. Is that the only comment? If so, I will</p> <p>4 revise and circulate updated copies.</p> <p>5 It would seem to me from this e-mail exchange from</p> <p>6 Mr. Lichtenberger and -- Mr. Davis and Mr. Lichtenberger</p> <p>7 that it was the -- the low east side of the transaction, as</p> <p>8 opposed to the Peccole side of the transaction that came up</p> <p>9 with the allocation of 7 1/2 million dollars each for Fore</p> <p>10 Stars and WRL.</p> <p>11 Does this refresh your recollection that that's,</p> <p>12 in fact, what happened?</p> <p>13 A. That's, in fact, what happened. We get the</p> <p>14 number. Had to plug it in. They demand the number. They</p> <p>15 couldn't give it to us. They couldn't write zero, in other</p> <p>16 words.</p> <p>17 MS. GHANEM HAM: Hold on. To the extent -- I'm</p> <p>18 going to make an attorney-client privilege objection, to the</p> <p>19 extent that the -- I don't think the question calls for it</p> <p>20 but that you are providing an answer that includes</p> <p>21 attorney-client privilege, I would advise you and instruct</p> <p>22 you not to provide that as part of your answer.</p> <p>23 THE WITNESS: Okay. So I recall that Billy called</p> <p>24 me and say that they need a number for each one of the --</p> <p>25 they -- they need to allocate different number to the water</p>	<p style="text-align: right;">Page 183</p> <p>1 rights. I don't care what you write. I don't care.</p> <p>2 And then triggered outside. Start thinking, How</p> <p>3 you do it? We went to accountant. We -- we didn't -- we</p> <p>4 didn't want to make a mistake ourself. So that's how it</p> <p>5 ended up.</p> <p>6 Q. (By Mr. Ogilvie) Okay.</p> <p>7 A. But I think that it was more than one time that he</p> <p>8 call. He said, I need -- I still need an answer. You guys</p> <p>9 need to make a decision. So that's why I recall.</p> <p>10 Q. So it came from the Peccoles that numbers had to</p> <p>11 be allocated and then it came from your side that the</p> <p>12 allocation of the numbers was 7 1/2 for WRL and 7 1/2 for</p> <p>13 Fore Stars. Correct?</p> <p>14 A. Yes, yes.</p> <p>15 Q. Directing your attention to what's been marked as</p> <p>16 Exhibit 37, it is entitled Membership Interest and Purchase</p> <p>17 Agreement -- or, I'm sorry, Membership Interest Purchase and</p> <p>18 Sale Agreement, effective December 1st, 2014, and references</p> <p>19 the sale of Fore Stars by The William Peter Peccole and</p> <p>20 Wanda Ruth Peccole Family Limited Partnership to Ramalta,</p> <p>21 LLC.</p> <p>22 I believe, at the very outset of the deposition,</p> <p>23 you indicated that you didn't have a recollection of what</p> <p>24 Ramalta, LLC, was. Is that -- do you still not have a</p> <p>25 recollection of Ramalta, LLC?</p>
<p style="text-align: right;">Page 184</p> <p>1 A. No, I know what Ramalta --</p> <p>2 Q. Oh, you do?</p> <p>3 A. Ramalta is a company that purchase. I don't</p> <p>4 remember what the membership interest in it and who owns</p> <p>5 what.</p> <p>6 Q. Oh, I apologize. I misunderstood --</p> <p>7 A. That's what I --</p> <p>8 Q. -- your --</p> <p>9 A. -- said.</p> <p>10 Q. -- your testimony. So Ramalta, LLC, is a Yohan</p> <p>11 Lowie entity. Correct?</p> <p>12 MS. GHANEM HAM: Object to the form.</p> <p>13 THE WITNESS: Yohan Lowie entity, it's a</p> <p>14 partnership entity that I'm involved in, yes.</p> <p>15 Q. (By Mr. Ogilvie) Okay. And it was the formal</p> <p>16 purchaser of Fore Stars. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Directing your attention to page 11 of</p> <p>19 Exhibit 37. It's a signature page where the purchaser is</p> <p>20 identified as Ramalta, LLC. There's a signature block for</p> <p>21 Yohan Lowie, manager. Is that your signature?</p> <p>22 A. Yes, it's my signature. That tells me that this</p> <p>23 document was already changed.</p> <p>24 Q. I'm sorry. It tells you what?</p> <p>25 A. The PSA was a different company.</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. The PSA was LV Golf Company, and so --</p> <p>2 A. So it's different dates. Something change between</p> <p>3 them.</p> <p>4 Q. Right. So the -- the -- the initial document that</p> <p>5 you are referring to -- and let's be clear -- that it was --</p> <p>6 A. Yeah, we need to be clear on it.</p> <p>7 Q. Exhibits 33 and 34 identify the purchaser of Fore</p> <p>8 Stars as LV Golf Company, LLC. And we have your testimony</p> <p>9 about your understanding or lack thereof of LV Golf Company,</p> <p>10 LLC.</p> <p>11 A. No, it's --</p> <p>12 Q. I'm sorry?</p> <p>13 A. Go ahead.</p> <p>14 Q. And then the company that ultimately closed on the</p> <p>15 deal was Ramalta, LLC?</p> <p>16 A. Which mean there is another -- another contract or</p> <p>17 another amendment. Do you have it? Here's this document.</p> <p>18 It's 8084. It's --</p> <p>19 Q. Right, right.</p> <p>20 A. Purchaser is LV Golf Company, LLC.</p> <p>21 Q. Correct.</p> <p>22 A. And its manager is Yohan Lowie.</p> <p>23 Q. Correct.</p> <p>24 A. And Executive Home Builders. Here it's a total</p> <p>25 different company purchasing the company.</p>

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<p style="text-align: right;">Page 186</p> <p>1 Q. Okay. So Mr. Molina is showing me amendment to</p> <p>2 articles of organization dated -- it's on file with the</p> <p>3 Secretary of State's office which changed the name of LV</p> <p>4 Golf Company, LLC, to Ramalta, LLC. Does that refresh your</p> <p>5 recollection?</p> <p>6 A. No, but I'm happy that you found it. So at least</p> <p>7 we know the document is correct.</p> <p>8 Q. Okay.</p> <p>9 A. Yes.</p> <p>10 Q. So do you recognize Frank Pankratz' signature if</p> <p>11 you see it?</p> <p>12 A. Yes.</p> <p>13 MS. GHANEM HAM: Object to the form. Lacks</p> <p>14 foundation.</p> <p>15 Q. (By Mr. Ogilvie) Is that his signature for -- or</p> <p>16 on behalf of Executive Home Builders, Inc., on page 11 of</p> <p>17 Exhibit 37?</p> <p>18 A. Yes.</p> <p>19 Q. That's quite a signature.</p> <p>20 A. It's not as nice as mine.</p> <p>21 Q. Okay.</p> <p>22 MS. GHANEM HAM: There's somebody that finds you</p> <p>23 funny.</p> <p>24 (Pause in proceedings.)</p> <p>25</p>	<p style="text-align: right;">Page 187</p> <p>1 (Exhibit 38 was marked.)</p> <p>2 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>3 what's been marked as Exhibit 38, my understanding is this</p> <p>4 is the other membership interest purchase agreement. When I</p> <p>5 say "the other," the first one being Exhibit 37 for Fore</p> <p>6 Stars and Exhibit 38 being for WRL. Is that -- is my</p> <p>7 understanding correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And going to page 7, there is a signature</p> <p>10 block for the buyer, Ramalta, LLC. I would ask you if that</p> <p>11 is your signature over Yohan Lowie, manager?</p> <p>12 A. Correct.</p> <p>13 Q. And is that Frank Pankratz' signature in the</p> <p>14 Executive Home Builders, Inc., signature block?</p> <p>15 A. Yes.</p> <p>16 (Exhibit 39 was marked.)</p> <p>17 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>18 what's been marked as Exhibit 39, the first page of which is</p> <p>19 an e-mail dated March -- or December 1st, 2014, from Bill</p> <p>20 Bayne to Yohan Lowie with attachment 2014/12/01 Stock</p> <p>21 Purchase Agreement Signature Page PDF.</p> <p>22 And the second page, which was produced by your</p> <p>23 counsel in this litigation, along with the e-mail, is a</p> <p>24 fully executed signature page that is identical to page 12</p> <p>25 of the membership interest purchase and sale agreement that</p>
<p style="text-align: right;">Page 188</p> <p>1 was transmitted by Mr. Lichtenberger on November 26, 2014.</p> <p>2 Does this address your concern that you didn't</p> <p>3 know when you signed the membership interest purchase and</p> <p>4 sale agreement?</p> <p>5 MS. GHANEM HAM: Object to the form. Misstates</p> <p>6 the documents.</p> <p>7 THE WITNESS: Think it confirms it.</p> <p>8 Q. (By Mr. Ogilvie) I'm sorry?</p> <p>9 A. I think it confirms it.</p> <p>10 Q. Confirms?</p> <p>11 A. That was November 26 and this is December 1st. So</p> <p>12 within those days, it was signed, obviously.</p> <p>13 Q. Okay.</p> <p>14 A. So that's why I'm hesitant to tell you that moment</p> <p>15 it was signed. Probably signed days later.</p> <p>16 Q. My understanding of your -- I'm shifting gears</p> <p>17 now. Okay?</p> <p>18 A. Going to fall.</p> <p>19 Q. My understanding of your original concept or plan,</p> <p>20 when purchasing the Badlands Golf Course, was that you were</p> <p>21 going to develop some acreage at the front or the east end</p> <p>22 of the 250 acres for multi-family and maintain 18 holes as a</p> <p>23 luxurious championship golf course. Is that correct?</p> <p>24 MS. GHANEM HAM: Object to the form.</p> <p>25 THE WITNESS: In part.</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. (By Mr. Ogilvie) Okay. So you were going to take</p> <p>2 out nine holes and maintain 18 holes. So take out the</p> <p>3 eastern most nine holes and maintain the rest of the golf</p> <p>4 course for -- as a golf course. Correct?</p> <p>5 MS. GHANEM HAM: Object to the form.</p> <p>6 THE WITNESS: No.</p> <p>7 MR. OGILVIE: Okay.</p> <p>8 THE WITNESS: So . . .</p> <p>9 MR. OGILVIE: Play the interview.</p> <p>10 Let me direct your attention to an interview that</p> <p>11 you participated in. It's part of --</p> <p>12 (Video played.)</p> <p>13 MS. GHANEM HAM: And I'm just going to object to</p> <p>14 identifying it as an interview.</p> <p>15 MR. OGILVIE: I'm sorry. It was a different clip</p> <p>16 that I was referring to.</p> <p>17 MS. GHANEM HAM: Okay.</p> <p>18 MR. OGILVIE: So let me clarify that.</p> <p>19 This was your August 3rd, 2017, deposition in the</p> <p>20 matter of Jack Binion vs. Fore Stars. That was your</p> <p>21 testimony, correct, that original plan was to remove the</p> <p>22 nine holes and then maintain a luxurious golf course on the</p> <p>23 remaining 18 holes? Correct?</p> <p>24 MS. GHANEM HAM: Again, object to the form.</p> <p>25 THE WITNESS: That's different -- that's different</p>

<p style="text-align: right;">Page 190</p> <p>1 than the question you ask me. You notice the answer was 2 correct. That's why I told you no, because it was -- other 3 property was involve in it to close more than the nine hole. 4 There's no nine hole that you can take, you know, to develop 5 the badland. 6 You have to reconfigure the entire property. 7 That's what I meant. So you take nine holes and you keep 18 8 holes, not just close nine holes, as you presented. 9 Q. (By Mr. Ogilvie) Okay. So the original plan was 10 to -- so let me back up. As of, call it, the date of your 11 letter of intent, June 12th, 2014, the letter of intent that 12 you sent to Billy Bayne that initiated the negotiations 13 for -- that ultimately resulted in the purchase of WRL and 14 Fore Stars -- as of that date, June 12th, 2014, the golf 15 course was configured as 27 holes. Correct? 16 A. Correct. 17 Q. Okay. And your original plan, as I understand 18 what you just said to me, was to reconfigure -- well -- 19 okay. Strike that. Let me . . . 20 The 27 holes was three 9 holes, three sets of 9 21 holes. Correct? 22 A. I don't know what it mean. I guess. It's 27; 23 three 9s, but I don't -- 24 Q. Okay. 25 A. -- play golf. So I wouldn't --</p>	<p style="text-align: right;">Page 191</p> <p>1 Q. Okay. So what I'm understanding your testimony to 2 be is that there wasn't a specific 9 that you were going to 3 close and keep two other 9s open, that you were going to 4 close nine holes, but it might be portions of more than one 5 9 holes? 6 A. I need to understand to qualify the question of 7 when. You telling me on the date -- on a certain date, on 8 spring or June of 2014, what was my intention? 9 Q. No, I'm not asking that. 10 A. You ask me what was the grand plan? 11 Q. No, not asking that either. 12 I was inarticulate and I apologize. I just -- I 13 used the June 12, 2014, date as a date to say what the 14 course was and it was 27 holes. And then as you were 15 anticipating purchasing and developing the golf course, your 16 original plan was to close 9 holes, wasn't any particular 17 set of 9 holes. It may be nine holes that included more 18 than one -- I'm not articulating it. You said it better 19 than I did. 20 A. You -- I think I understand what you asking. 21 My answer is this: There was a grand plan that 22 was done years prior to that. We know this golf course 23 going to close and we going to develop it. My plan in 2014 24 when I -- to start that plan was to operate -- to close nine 25 out of 27, nine holes, not in particular. Let's -- let's</p>
<p style="text-align: right;">Page 192</p> <p>1 identify. 27 holes. To close nine to reconfigure the rest 2 so it can -- for luxurious golf course for period of eight 3 years. So we can finish all the multi-family and then come 4 back. Put all the trees on the perimeter. We want to bring 5 15,000 sycamore and -- and very large canopy trees to put 6 them on up and down on the sides, you know, the neighbors. 7 So by time they going to grow, you won't be able to see 8 anything and then we going to start taking the property and 9 develop it. That was the plan. 10 Q. Then start what? 11 A. Then take off the -- take out the golf course and 12 then start developing the interior. That was the plan -- 13 the original plan. 14 Q. But you didn't mention the development of the 15 interior in response to Mr. Bice's deposition question to 16 you on August 3rd, 2017, did you? 17 MS. GHANEM HAM: And I'm just going to object to 18 the form, as you didn't show us the question that was asked, 19 only the answer. 20 MR. OGILVIE: Let's play it again. 21 (video played.) 22 THE WITNESS: You can stop it. 23 (Video played.) 24 Q. (By Mr. Ogilvie) You didn't mention development 25 of the remaining 18 holes that you developed into a</p>	<p style="text-align: right;">Page 193</p> <p>1 luxurious golf course, did you? 2 A. Did you hear the question? 3 Q. Yes. 4 A. The question was, At the time of purchase, your 5 plan was? At the time. Certain date. 6 Q. Okay. 7 A. He didn't ask me what's the grand plan, what you 8 propose. 9 Q. Okay. Okay. So when you say "at the time of 10 purchase," we've identified that you signed the document 11 between November 26 and December 1st, 2014. Correct? 12 A. Right. 13 Q. Okay. At that -- in that time frame, between 14 November 26, 2014, and December 1st, 2014, your plan was to 15 take out nine holes, to develop multi-family, and 16 reconfigure the golf course and build a luxury course of 18 17 holes. Correct? 18 A. My plan was, again, to run the golf course for 19 eight years. We planned it. We discussed it, you know, 20 for -- in our office internally how we going to develop 21 property. And the intent was to plant it heavily and to 22 come back later on and build it. We know we have the 23 rights. We didn't have to ask anybody for anything. We 24 didn't share it with anybody. That was my plan. 25 Q. But in answer to Mr. Bice's question on</p>

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<p style="text-align: right;">Page 194</p> <p>1 August 3rd, 2017, you didn't make reference to any 2 development of the 18 holes? 3 A. I don't think that they ask me what was my total 4 plan or -- or -- and I'm not sure. You need to listen to 5 the whole deposition. He may ask me and I answered it 6 correctly, answer the -- the total plan, but the plan was to 7 close -- the -- the plan was to develop the whole property. 8 My plan. That's my personal property. And the Peccole knew 9 about it, including Billy Baynes. 10 MR. OGILVIE: Let's go to the interview. 11 Let me show you another clip. 12 What? 13 MR. MOLINA: Took it out. 14 Q. (By Mr. Ogilvie) Never mind. I took that one 15 off. 16 In refining your plan for the Badlands Golf 17 Course, you hired a golf course consultant, Bobby Weed. Is 18 that correct? 19 A. Correct. 20 Q. And -- I'm sorry go ahead. 21 (Exhibit 40 was marked.) 22 Q. (By Mr. Ogilvie) Directing your attention to 23 what's been marked as Exhibit 40. It's a December 23rd, 24 2014, letter from Bobby Weed to Frank Pankratz at LV Golf 25 Company, LLC. Have you ever seen this letter before?</p>	<p style="text-align: right;">Page 195</p> <p>1 A. Yes. 2 Q. Okay. 3 A. I . . . 4 Q. So you hired Mr. Weed to do some consulting on the 5 27 hole golf course. Correct? 6 A. I beg your pardon? 7 Q. You hired Mr. Weed to do some consulting on the -- 8 about the 27 hole golf course. Correct? 9 A. Yes. I -- I thought -- I thought it was -- oh, 10 had to reconfigure for eight years. 11 MS. GHANEM HAM: No. 12 THE WITNESS: Yeah, I don't think it was -- I 13 listen to the question. 14 It wasn't 27 holes. I think the answer was 15 directly if I -- if we hired him to consult on 27 holes. 16 No, I don't think so. I think it was how to -- how to 17 reconfigure 18 holes for period of eight years. 18 (Exhibit 41 was marked.) 19 Q. (By Mr. Ogilvie) Direct your attention to what's 20 been marked as Exhibit 41. It is an e-mail exchange that 21 you are not a party to. And I'm just going to ask you if 22 you have ever seen this e-mail before. 23 A. This e-mail . . . 24 Q. I'm sorry? 25 A. Nothing. No, no, I did not.</p>
<p style="text-align: right;">Page 196</p> <p>1 Q. Okay. So the e-mail -- first e-mail is from Bobby 2 Weed to Frank Pankratz. The subject is, Revise Badlands 3 agreement. He says, Frank, attached is corrected version 4 and then asks Frank Pankratz some questions. 5 My understanding is that LV Golf Company has a 6 contract to purchase the course, as in due diligence period 7 December 1 -- oh, okay. And then there's some 8 interlineations, apparently, by Mr. Pankratz -- after which 9 they must proceed to close or back out of the deal. Is -- 10 A. Where -- where are you reading? 11 Q. Paragraph No. 1. 12 A. Okay. 13 Q. Okay. So -- so I understand that you're not -- 14 you're not a party to this e-mail, a recipient of the 15 e-mail. 16 A. I don't think you read correctly. Didn't talk 17 about, you know, if you don't proceed to close -- 18 Q. Okay. So -- so what Mr. Pankratz responds in his 19 e-mail to Mr. Weed is, Responses in CAPS to stand out. 20 So the way I read it is there are some questions 21 being asked by Mr. Weed and some responses by Mr. Pankratz 22 in caps and in blue. Okay. With that understanding, let me 23 ask you some questions. 24 Mr. Weed writes, My understanding is that LV Golf 25 Company has a contract to purchase the course and is in due</p>	<p style="text-align: right;">Page 197</p> <p>1 diligence period and then Mr. Pankratz, in parentheses, says 2 December 1 through 30. 3 Is that consistent with your recollection of the 4 due diligence period, December 1st to -- through 5 December 30, 2014? 6 A. This is not -- 7 MS. GHANEM HAM: Objection. Foundation. 8 Q. (By Mr. Ogilvie) Okay. 9 A. Yeah. 10 Q. Question is: Is that consistent with your 11 recollection? 12 A. Is that -- is that natural document or it's a 13 document you prepare? 14 Q. This is produced by your counsel -- 15 A. Okay. 16 Q. -- in this litigation. 17 A. Thank you. I don't know what's in Frank's head. 18 I don't know what's -- what it means. I -- 19 Q. Okay. 20 A. I see it -- 21 Q. I understand that. 22 A. Yeah. 23 Q. And my question is: Is that consistent with your 24 recollection, that your due diligence period was 25 December 1st through December 30, 2014?</p>

<p style="text-align: right;">Page 198</p> <p>1 MS. GHANEM HAM: That misstates the document.</p> <p>2 Q. (By Mr. Ogilvie) Okay.</p> <p>3 A. I don't -- I didn't -- I don't think so. I don't</p> <p>4 think it was due diligence. I don't think it was December.</p> <p>5 I think -- maybe. I don't recall.</p> <p>6 Q. Okay. So without going back through Exhibit -- I</p> <p>7 can't remember. Without going back through Exhibits 32</p> <p>8 and 39, you'll agree, will you not, that the original</p> <p>9 purchase -- membership interest purchase and sale agreement</p> <p>10 would identify the due diligence period? And if you want to</p> <p>11 go back to Exhibit 32, feel free.</p> <p>12 A. The documents speak for itself. Whatever it says,</p> <p>13 it says. You ask me if my recollection is this. I didn't</p> <p>14 read the contract as well. So I don't -- don't recall, but</p> <p>15 it may be -- may be the right dates.</p> <p>16 Q. Okay.</p> <p>17 A. I'm sure they're in the contract.</p> <p>18 Q. Okay. In paragraph 2, Mr. Pankratz says --</p> <p>19 there's a question there. Does the seller know of this</p> <p>20 intention -- of the intention of closing nine holes for</p> <p>21 development?</p> <p>22 And Mr. Pankratz says, They have some idea that we</p> <p>23 want to close nine holes, as well as to do some development,</p> <p>24 but have no idea as to density we want to achieve, nor the</p> <p>25 development layout.</p>	<p style="text-align: right;">Page 199</p> <p>1 Was that your understanding as of December 4th,</p> <p>2 2014?</p> <p>3 MS. GHANEM HAM: Object as to form.</p> <p>4 THE WITNESS: Firstly, let me read it. No, I</p> <p>5 don't believe it's correct.</p> <p>6 Q. (By Mr. Ogilvie) Okay.</p> <p>7 A. Yeah. I don't think that Frank knew that I'm --</p> <p>8 that Billy was aware of --</p> <p>9 (Reporter requested clarification.)</p> <p>10 THE WITNESS: That Billy was very aware of the</p> <p>11 plan.</p> <p>12 Q. (By Mr. Ogilvie) Of the plan to --</p> <p>13 A. Yeah.</p> <p>14 Q. -- close nine holes and develop the multi-family?</p> <p>15 A. I think that -- I can't tell if it's nine hole.</p> <p>16 Maybe the whole property at that point. Prior to closing,</p> <p>17 Billy knew about the whole plan -- the whole plan.</p> <p>18 Q. Okay.</p> <p>19 A. Yeah.</p> <p>20 Q. So is it true that, in or around November and</p> <p>21 December 2014, that you engaged Mr. Bobby Weed to consult on</p> <p>22 the golf course?</p> <p>23 A. True.</p> <p>24 Q. Okay. And then Exhibit 40 is a letter to</p> <p>25 Mr. Pankratz. I believe you testified that you've seen this</p>
<p style="text-align: right;">Page 200</p> <p>1 document before.</p> <p>2 A. Which one?</p> <p>3 Q. The letter from Mr. Weed.</p> <p>4 A. Yes, I did. I saw it at the time. I had to read</p> <p>5 it now. I think it came -- he present the letter, but we</p> <p>6 had a meeting. So I more recall the meeting.</p> <p>7 Q. You had a meeting on or about December 23rd, 2014?</p> <p>8 A. Yeah, I think he came to our office.</p> <p>9 Q. Okay. So the first line confirms that. He says,</p> <p>10 Dear, Frank, I'm drafting this letter as a summation of our</p> <p>11 recent visit, which Chris and I both enjoyed immensely.</p> <p>12 So Mr. Weed was out here with a colleague named</p> <p>13 Chris and met with you and your group?</p> <p>14 A. I beg your pardon? Chris and -- I -- I was just</p> <p>15 reading.</p> <p>16 Q. That's okay.</p> <p>17 A. Try . . . catch up. Can you restate the question,</p> <p>18 please?</p> <p>19 Q. Mr. Weed came out with a colleague named Chris and</p> <p>20 met with you and your group?</p> <p>21 A. Yes, sir. That's correct.</p> <p>22 Q. And you believe, at that time, he made a</p> <p>23 presentation that was consistent with what is contained in</p> <p>24 this December 23rd, 2014, letter?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Okay. And so --</p> <p>2 A. I think we went over this letter. Put on the</p> <p>3 board . . .</p> <p>4 Q. Okay. In this meeting in December of 2014, you</p> <p>5 believe that you and your group and Mr. Weed and Chris went</p> <p>6 through this letter?</p> <p>7 A. It may be January -- beginning of January, but it</p> <p>8 was very close.</p> <p>9 Q. Okay.</p> <p>10 A. If we get this -- and then we had a meeting</p> <p>11 afterward because we brought him back and . . .</p> <p>12 MS. GHANEM HAM: Don't guess.</p> <p>13 THE WITNESS: I don't want to guess. I -- maybe</p> <p>14 even prior to that.</p> <p>15 Q. (By Mr. Ogilvie) Maybe prior to?</p> <p>16 A. We had a meeting that we went over information he</p> <p>17 had. He came up with a chart of what it's going to cost if</p> <p>18 we want to repurpose the golf course and what needs to be</p> <p>19 done and with the condition of the property, condition of</p> <p>20 piping.</p> <p>21 The irrigation has to, you know -- to be totally</p> <p>22 torn and replace. Need two more points of diversions with</p> <p>23 the wells, all this.</p> <p>24 So maybe this letter comes afterward as a -- as a</p> <p>25 report, but I don't recall when the meeting was, but we had</p>

<p style="text-align: right;">Page 202</p> <p>1 a big meeting which we -- broke us the bad news of being the 2 condition of the property and what you can do -- what 3 industry was allowing.</p> <p>4 Q. Okay. So let me ask you this. Prior to this 5 meeting -- and I think you said -- you referenced some bad 6 news. Prior to that meeting, your plan was -- the original 7 plan that you've said earlier in your testimony today, to 8 take out nine holes, redevelop that for -- or develop that 9 to multi-housing or multi-family housing, sorry --</p> <p>10 A. Yes.</p> <p>11 Q. -- and then build luxurious golf course for -- on 12 the remaining 18 holes?</p> <p>13 A. My plan all along was to run -- to try to maintain 14 green behind the houses till we get to it and till the 15 vegetation behind the houses will grow that they can't see 16 the property. So the plan always was to develop the whole 17 thing.</p> <p>18 Q. Isn't it true that until Mr. Weed gave you the bad 19 news, either through this letter, which is Exhibit 40, or 20 the meeting that you described, that you anticipated you'd 21 be able to run the 18 hole luxurious golf course profitably?</p> <p>22 A. No, as a loss. See, if you read this, in the end, 23 when he writes this, he know all about the plan, the grand 24 plan. He know about the big lots. He know about the eight 25 years. He probably know about everything we intend to do.</p>	<p style="text-align: right;">Page 203</p> <p>1 This going to be a model conclusion. The 2 repurposing of Badland Golf Course could become the national 3 precedent that illustrate how the significant political and 4 emotional resistant to golf course decommissioning can be 5 overcome. I was wrong about that, but -- but he knew about 6 the plan.</p> <p>7 He knew about, you know, 3 acre lots. Then he was 8 blown away when we put the plan in front of him. When he 9 come back, he said, Bad news. You won't be able to run it. 10 You got to close the hole thing because -- and -- and do it 11 one shot.</p> <p>12 Q. Do it one shot?</p> <p>13 A. One shot, which mean you got to close the property 14 and -- and build on it, because the golf course would not be 15 able to be operating because physical findings. That's my 16 recollection.</p> <p>17 Q. So on the third page of Exhibit 40, Mr. Weeds 18 letter, he talks about repurposing of Badlands GC. And he 19 reiterates in the first paragraph some of what he talks 20 about in the pages leading up to this.</p> <p>21 It says, For many existing golf courses, the 22 primary asset is the size, quality, and location of the real 23 estate. With zoning for up to 7 DUA, this is particularly 24 true of Badlands. We agree with EHB's assessment that this 25 vested density would result in heavy competition for the</p>
<p style="text-align: right;">Page 204</p> <p>1 purchase of the golf course and likely result in an attempt 2 to construct a high number of lower price point homes on the 3 property, devaluing the surrounding real estate.</p> <p>4 And he says, There appears to be a middle ground 5 that exists, one that contemplates the gradual 6 decommissioning of the golf course in a thoughtful 7 value-added manner, adding to the local tax base and 8 preserving surrounding real estate values.</p> <p>9 This strategy, as illustrated in the attached 10 drawings, involves two steps. The first is the shorter term 11 closure of nine holes in conjunction with a more intensive 12 development where surrounding neighborhoods are least 13 affected.</p> <p>14 The second, longer term step is implementation of 15 a limited development scenario in conjunction with the use 16 of a conservation easement.</p> <p>17 So he's -- he introduces the second paragraph by 18 saying, There appears to be a middle ground that exists, and 19 that middle ground is between, what he says in the first 20 paragraph, "high number of low price point homes on the 21 property," and your original plan, which was development of 22 just nine holes and the development of a luxurious 18 hole 23 golf course.</p> <p>24 And he says this middle ground contemplates the -- 25 the nine holes immediately -- first -- he says, The first is</p>	<p style="text-align: right;">Page 205</p> <p>1 the shorter term closure of nine holes in conjunction with a 2 more intensive level of development, multi-family housing, 3 and then the later gradual decommissioning of the golf 4 course. He's proposing that as a middle ground. Correct?</p> <p>5 A. No.</p> <p>6 Q. You maintain that before you received this bad 7 news, as you described it, from Mr. Weed, that your plan all 8 along was to close nine holes, develop multi-family on that 9 nine holes, build a luxurious 18 hole golf course with lush 10 trees lining fairways and then, after eight years, begin to 11 develop the rest of the 18 holes?</p> <p>12 A. That's correct.</p> <p>13 Q. Notwithstanding the fact that you didn't mention 14 one aspect of developing the 18 holes when Mr. Bice asked 15 you what the original plan was?</p> <p>16 MS. GHANEM HAM: Objection to the question.</p> <p>17 Misstates Mr. Lowie's testimony.</p> <p>18 MR. LEAVITT: And asked and answered.</p> <p>19 MS. GHANEM HAM: Mm-hmm.</p> <p>20 THE WITNESS: I'll repeat my answer for you.</p> <p>21 Mr. Bice asked me on a certain date. On the day you closed 22 the golf course, what were your plans? He didn't ask me 23 what's my -- the entire plans.</p> <p>24 And when I got the bad news, I had no choice -- I 25 couldn't even operate a golf course for eight years and</p>

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<p style="text-align: right;">Page 206</p> <p>1 invest 20 or 15.7 or \$15.4 million into it -- but to close</p> <p>2 it.</p> <p>3 And document speak for itself. I think you can</p> <p>4 tell what Mr. Weed knows when he writes it.</p> <p>5 (Exhibit 42 was marked.)</p> <p>6 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>7 what's been marked as Exhibit 42, which is a Bobby Weed Golf</p> <p>8 Design document that was produced by your counsel in this</p> <p>9 litigation. Do you recognize this document?</p> <p>10 A. I don't remember seeing it, but I understand</p> <p>11 document. I'm sure I looked at it.</p> <p>12 Q. Okay.</p> <p>13 A. I thought it was the 2007 plans to develop. It</p> <p>14 looks like it.</p> <p>15 Q. I'm sorry. It looks like what?</p> <p>16 A. 2007 plans to development. It may be copy 2007</p> <p>17 plans.</p> <p>18 Q. Okay. So there's two pages on Exhibit 42. The</p> <p>19 first one has phase 1 development in blue, landscape in</p> <p>20 green, and the rest of it is pretty much black and white.</p> <p>21 The landscape portion, that's immediately behind your home.</p> <p>22 Correct?</p> <p>23 A. Correct.</p> <p>24 Q. Is your home on the market, by the way?</p> <p>25 A. Yes, correct.</p>	<p style="text-align: right;">Page 207</p> <p>1 Q. Okay. You're selling it?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And that's -- is that the acreage that you</p> <p>4 didn't, in response to Mr. Bice's questioning, didn't</p> <p>5 remind -- or remember exactly how big the acreage is, but --</p> <p>6 but that's what you refer to to Mr. Bice that you were going</p> <p>7 to landscape?</p> <p>8 MS. GHANEM HAM: Object to the form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 Q. (By Mr. Ogilvie) Okay. And then the phase 1</p> <p>11 development that's in blue, is that the development area</p> <p>12 that you, in your original plan, were going to develop into</p> <p>13 multi-family housing?</p> <p>14 MS. GHANEM HAM: Object to the form. Misstates</p> <p>15 the testimony and the document.</p> <p>16 THE WITNESS: No, my plan was different.</p> <p>17 MR. OGILVIE: Okay.</p> <p>18 THE WITNESS: I think he -- I think he took my</p> <p>19 plan and play with it, because he had my plans for what I</p> <p>20 want to do with whole property. Bobby Weed. In 2015, I</p> <p>21 already design the plan.</p> <p>22 In 2000- -- prior to closing. I think in -- in so</p> <p>23 in 2'14, I had -- I had the concept, I think. And we gave</p> <p>24 him the concept of what we want to do and how long we want</p> <p>25 to do it. And I think that's what he came back with and</p>
<p style="text-align: right;">Page 208</p> <p>1 that's how he suggested based on golf standards of . . .</p> <p>2 You were not listening, so I stopped talking.</p> <p>3 Q. (By Mr. Ogilvie) I'm sorry. We're getting close</p> <p>4 to the end of my time with you. So I need to make use of it</p> <p>5 well. I apologize.</p> <p>6 A. I have no --</p> <p>7 Q. I wasn't intending to be rude.</p> <p>8 So in implementation of your original plan, you</p> <p>9 have -- you entered into a letter of -- letter of intent</p> <p>10 with Calida Group to sell 16 to 18 acres in the southwest</p> <p>11 corner area of Alta and Rampart. Correct?</p> <p>12 A. (Witness shakes head.)</p> <p>13 MR. LEAVITT: Wait. Compound.</p> <p>14 THE WITNESS: Incorrect.</p> <p>15 MR. OGILVIE: Okay.</p> <p>16 MR. LEAVITT: Go ahead.</p> <p>17 Q. (By Mr. Ogilvie) You entered into a letter of</p> <p>18 intent with Calida Group. Correct?</p> <p>19 A. Yes, I did.</p> <p>20 Q. And that's --</p> <p>21 A. Not in the southwest corner. Southeast corner.</p> <p>22 The northeast -- northeast -- northeast corner.</p> <p>23 Q. I'm sorry. Okay.</p> <p>24 A. There was discussion of southwest.</p> <p>25 Q. Okay. So we marked as Exhibit 6 the June 25th,</p>	<p style="text-align: right;">Page 209</p> <p>1 2015, letter of intent between Calida residential and Yohan</p> <p>2 Lowie. And it described approximately 16 to 18 acres of</p> <p>3 land located at a portion of APN -- identifies the APN. And</p> <p>4 it has a sales price.</p> <p>5 Your development or anticipated development of the</p> <p>6 17 acres that's anticipated by this letter of intent was</p> <p>7 approved by the City. Correct?</p> <p>8 MS. GHANEM HAM: Object. Object to the form of</p> <p>9 the question. Misstates the evidence.</p> <p>10 THE WITNESS: No, it was not.</p> <p>11 (Pause in proceedings.)</p> <p>12 (Exhibit 43 was marked.)</p> <p>13 Q. (By Mr. Ogilvie) Let me direct your attention to</p> <p>14 what's been marked as Exhibit 43. It is an April or, I'm</p> <p>15 sorry, February 16, 2017, letter from the City of Las Vegas</p> <p>16 to Frank Pankratz at 70 Acres, LLC.</p> <p>17 And it states, Dear, Mr. Pankratz. The City</p> <p>18 Council, at regular meeting held on February 15, 2017, voted</p> <p>19 to approve a request for a general plan amendment --</p> <p>20 amendment from PR-OS, open paren, Park, slash, Recreation,</p> <p>21 slash, open space, to: M, open paren, medium density</p> <p>22 residential, close paren, on 17.49 acres at the southwest</p> <p>23 corner of Alta Drive and Rampart. Identifies the APN</p> <p>24 number, Ward 2. Do you recall seeing this approval letter?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 210</p> <p>1 Q. Okay. And this is the same 17 acres that you</p> <p>2 entered into the letter of intent with Calida Group. Is</p> <p>3 that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And then page 2 of Exhibit 43 is another</p> <p>6 February 16th, 2017, letter from the City of Las Vegas to</p> <p>7 Mr. Pankratz, in which Tom Perrigo, director of department</p> <p>8 of planning state, Dear, Mr. Pankratz, City Council at a</p> <p>9 regular meeting held on February 15th, 2017, voted to</p> <p>10 approve a request for a rezoning from R-PD7, open paren,</p> <p>11 residential plan development, hyphen, 7 units per acre,</p> <p>12 close paren, to R-3, open paren, medium density residential,</p> <p>13 close paren, on 17.49 acres at the southwest corner of Alta</p> <p>14 Drive and Rampart Boulevard. States the APN number, Ward 2.</p> <p>15 This is the same 17.49 acres that were the subject</p> <p>16 of the June 25th, 2015, letter of intent with the Calida</p> <p>17 Group?</p> <p>18 MS. GHANEM HAM: Object to the form.</p> <p>19 THE WITNESS: It's the same acreage, not the same</p> <p>20 project. Not same approval. Approval -- they did not grant</p> <p>21 us the approval for the -- that was for letter of intent.</p> <p>22 Q. (By Mr. Ogilvie) Okay. Same acreage?</p> <p>23 A. Correct.</p> <p>24 Q. Same parcel?</p> <p>25 A. Same general parcel.</p>	<p style="text-align: right;">Page 211</p> <p>1 Q. The 17 acres?</p> <p>2 A. It wasn't 17. It was 16 to 18. We identify --</p> <p>3 the parcel number was created out of it in this vicinity and</p> <p>4 this was not the project that Calida asked.</p> <p>5 Q. What is currently the 17 acres. Correct?</p> <p>6 A. Yes, the parcel. It's the same parcel, correct.</p> <p>7 Q. Directing your attention to the third, fourth,</p> <p>8 fifth, and sixth pages of Exhibit 43. Again, it is a</p> <p>9 February 16, 2017, letter to Frank Pankratz at 70 Acres from</p> <p>10 Tom Perrigo, director of department of planning, in which</p> <p>11 Mr. Perrigo go advises Mr. Pankratz the City Council, at a</p> <p>12 regular meeting held on February 15th, 2017, voted to</p> <p>13 approve or request for a site development plan review for</p> <p>14 proposed --</p> <p>15 A. Where are you reading? Sorry.</p> <p>16 Q. Oh, I'm sorry.</p> <p>17 A. Same document?</p> <p>18 Q. It is the -- it begins at the third page of the</p> <p>19 same --</p> <p>20 A. Okay.</p> <p>21 Q. -- document.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And while I'm on it, it's -- there's,</p> <p>24 again, the stamp received accounting department. Do you see</p> <p>25 that?</p>
<p style="text-align: right;">Page 212</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And do you believe that to be the stamp of</p> <p>3 your accounting department as the date on which your</p> <p>4 accounting department received this document?</p> <p>5 MS. GHANEM HAM: I apologize. I'm going to just</p> <p>6 object to referencing this as the actual document received</p> <p>7 by any of the entities managed by EHB because there's no</p> <p>8 Bates number here. So I don't know where this came from.</p> <p>9 Q. (By Mr. Ogilvie) Okay. You recognize this</p> <p>10 document. Right?</p> <p>11 A. I don't recognize document. I read first time,</p> <p>12 but I -- I think that this is -- I can recognize it as</p> <p>13 something like what my office -- my accounting department</p> <p>14 would do, stamp it.</p> <p>15 Q. Okay. And you recall that the City Council did,</p> <p>16 in fact, approve 70 Acres' request for site development plan</p> <p>17 review for a proposed 720 multi-family residential, open</p> <p>18 paren, condominium development consisting of four 4-story</p> <p>19 buildings on 17.49 acres at the southwest corner of Alta</p> <p>20 Drive and Rampart Boulevard. Correct?</p> <p>21 MS. GHANEM HAM: Object. Object. Sorry. Object</p> <p>22 to -- as it misstates the document.</p> <p>23 THE WITNESS: It's incorrect.</p> <p>24 Q. (By Mr. Ogilvie) Okay. What did it approve?</p> <p>25 A. It approve 435 condos, instead of 720 apartments</p>	<p style="text-align: right;">Page 213</p> <p>1 that we entitled to.</p> <p>2 Q. Okay. So is it -- it is true, isn't it, that</p> <p>3 during the February 15th, 2017, hearing on this site</p> <p>4 development plan review that you, as the developer or 70</p> <p>5 Acres as the developer, reduced its request from 720</p> <p>6 units -- multi-family units to 435?</p> <p>7 A. No, it's incorrect.</p> <p>8 Q. So --</p> <p>9 A. It was forced on us by City attorney. If you</p> <p>10 don't agree to it now, you are not going to get anything.</p> <p>11 And we want to get something to move. As soon as we agree</p> <p>12 to that -- even that, which blew the Calida deal and we</p> <p>13 couldn't get them back now -- and then immediately right</p> <p>14 after, the City start interfering with those rights after</p> <p>15 they grant this.</p> <p>16 Q. Okay. And so the city, on February 15th, 2017,</p> <p>17 approved a site development plan review for 435 units on the</p> <p>18 17.49 acres. Correct?</p> <p>19 A. I would -- again, we ask for 720 apartments when</p> <p>20 we have a purchaser for those apartments. In around the</p> <p>21 meeting -- the day of the meeting, City attorney enforced on</p> <p>22 us -- Brad Jerbic -- 435 condos with restriction for condos</p> <p>23 or else we not going to get anything. So that was approve.</p> <p>24 That's what was approved. And the plans -- this was the</p> <p>25 first time, I think in City history ever, that the plans and</p>

<p style="text-align: right;">Page 214</p> <p>1 SDR is different than the approval.</p> <p>2 Q. Okay.</p> <p>3 A. So you have 720 apartments approve on the SDR and</p> <p>4 condition for 435. And condition verbally just changing to</p> <p>5 condominiums. You can submit the plan afterward. You have</p> <p>6 to give City the plan. So submit a plan. Just . . .</p> <p>7 Q. So it is true that on February 15th, 2017, the</p> <p>8 City Council voted to approve 435 units of multi-family</p> <p>9 residential on the 17-acre parcel. Correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 (Exhibit 44 was marked.)</p> <p>13 Q. (By Mr. Ogilvie) Directing your attention to</p> <p>14 what's been marked as Exhibit 44, it is a May 27th, 2016,</p> <p>15 letter from the Calida Group to 70 Acres in which the</p> <p>16 subject line says Notice of Termination.</p> <p>17 And it says, Dear, Frank, this letter constitutes</p> <p>18 buyer's notice pursuant to Section 2.2 of the agreement of</p> <p>19 buyer's termination of the agreement. We have performed our</p> <p>20 due diligence on the physical and financial feasibility of</p> <p>21 the 720-unit project, defined as the project, and feel that</p> <p>22 it is physically and financially viable.</p> <p>23 Additionally, we have received significant</p> <p>24 interest from potential equity investors through our</p> <p>25 marketing efforts for investment in the project. We,</p>	<p style="text-align: right;">Page 215</p> <p>1 therefore, feel confident we would be prepared to close out</p> <p>2 our acquisition of the property via closing date as defined</p> <p>3 in the agreement.</p> <p>4 Unfortunately, we are concerned about exogenous --</p> <p>5 exogenous factors -- I don't know that word -- especially --</p> <p>6 or, specifically, the pending litigation and possible</p> <p>7 further litigation involving the property.</p> <p>8 After discussions with our legal counsel, we do</p> <p>9 not believe that it is in our best interest to continue to</p> <p>10 pursue the project, given the uncertainty of the outcome of</p> <p>11 the litigation and how said outcome will inevitably delay</p> <p>12 our ability to complete the project.</p> <p>13 As a result, we feel we have no other choice at</p> <p>14 this time than to terminate the agreement.</p> <p>15 So Calida Group terminated the letter of intent or</p> <p>16 the agreement to purchase the property, the 17 acres, in May</p> <p>17 of 2016, which was ten months before the hearing on</p> <p>18 February 15th, 2017, in which the City approved 435 acres of</p> <p>19 multi-family development. Correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. You've been designated as an expert witness</p> <p>22 in this litigation as to the value of properties.</p> <p>23 Have you ever been certified as an appraiser?</p> <p>24 A. No.</p> <p>25 Q. Have you ever -- do you have any education</p>
<p style="text-align: right;">Page 216</p> <p>1 relating to appraisals?</p> <p>2 MR. LEAVITT: George, I'm just going to object.</p> <p>3 Misstate how he's been disclosed as a witness, but you can</p> <p>4 go ahead.</p> <p>5 Q. (By Mr. Ogilvie) Any education -- formal</p> <p>6 education on appraisals?</p> <p>7 A. No.</p> <p>8 Q. No? Okay.</p> <p>9 A. I have 30 years of experience and 28 of them in</p> <p>10 that very corner in all real estate matters, more than a</p> <p>11 billion dollars of real estate. So I should know a thing or</p> <p>12 two about what's going on.</p> <p>13 Q. Okay.</p> <p>14 MR. OGILVIE: Thank you, Mr. Lowie.</p> <p>15 THE WITNESS: Thank you, sir.</p> <p>16 MR. LEAVITT: George, can I just -- before you</p> <p>17 pass the witness, really quick -- I just -- I didn't want to</p> <p>18 interrupt because I didn't want you to accuse me of a</p> <p>19 speaking objection --</p> <p>20 MR. OGILVIE: Sorry. Do you have questions for</p> <p>21 him?</p> <p>22 MR. LEAVITT: Well, hold on. Before you pass the</p> <p>23 witness, I just want to lodge an objection in regards to all</p> <p>24 the Bobby Weed questions and original plan questions.</p> <p>25 They're contrary and irrelevant in regards to the inverse</p>	<p style="text-align: right;">Page 217</p> <p>1 condemnation and eminent domain standard on highest and best</p> <p>2 use. I just want to make sure that --</p> <p>3 (Reporter requested clarification.)</p> <p>4 MR. OGILVIE: Highest --</p> <p>5 MR. LEAVITT: On the -- on -- in regards to -- did</p> <p>6 you get my whole objection up to that point?</p> <p>7 MR. OGILVIE: She just needs "highest and best</p> <p>8 use."</p> <p>9 MR. LEAVITT: Yeah, highest and best use, that's</p> <p>10 it. In regards to highest and best use -- the highest and</p> <p>11 best use issue.</p> <p>12 MR. OGILVIE: Okay.</p> <p>13 MR. DAVIS: George, when -- your last question on</p> <p>14 the approval, you said 435 acres. You said yes. I know you</p> <p>15 guys meant units, but for the record.</p> <p>16 MR. OGILVIE: Good point. Thank you for -- that</p> <p>17 was my intention, 435 units, not 435 acres.</p> <p>18 THE WITNESS: We wouldn't be here it was</p> <p>19 435 acres.</p> <p>20 MR. LEAVITT: Can we take a quick break, George?</p> <p>21 Are you going to pass the witness now?</p> <p>22 MR. OGILVIE: I am.</p> <p>23 MR. LEAVITT: Okay. Can we take a quick break?</p> <p>24 MR. OGILVIE: Yeah.</p> <p>25 (Pause in proceedings.)</p>

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<p style="text-align: right;">Page 218</p> <p>1 2 3 EXAMINATION 4 BY MR. LEAVITT: 5 Q. Mr. Lowie, there's been several questions today 6 which were presented to you in regards to the acquisition of 7 Fore Stars, which was the owner of the golf course property. 8 Could you briefly describe for us, on the record, 9 how you came to acquire the golf course property and the 10 amount of money that you paid to acquire the golf course 11 property. 12 A. So it start in 2001 when we were trying to -- when 13 Peccole was trying develop the property. I had a contract 14 and handshake to buy 29 lots with Peccole. I closed on 15 four -- five and was building on four and they were trying 16 to develop. 17 And we got into meetings that we had and 18 disclosure of the land rights and research we have done to 19 understand the land rights. 20 And then I told Peccoles then, you know, I want to 21 deal that if you want me to continue buying and closing 22 the -- the remainder 25 properties that when this golf 23 course ever going to become available I'm going to get it. 24 And we had a handshake deal. I was promised by Larry Miller 25 that I don't have to worry about it. That's my deal. 26 And in 2003, I came to offer another deal to</p>	<p style="text-align: right;">Page 219</p> <p>1 purchase more land to create the Queensridge Towers and was 2 just substantially completed with those 29 lots and others 3 that we purchased in -- in a different parcel of land, a 4 different parcel in -- in Queensridge from the Peccoles. 5 And in 2005, the Peccole family were not able to 6 deliver clear title to a piece of property that we building 7 the tower on. And it got the family into a very bad 8 position, in which they could not fund their obligation -- 9 ongoing obligation to QT. 10 We were -- the same exact time, we were going from 11 a \$50 million loan, which was phase 1 loan, to 280, that the 12 additional 230 required financials and cash. The Peccoles 13 cannot come up with it. And at the same time, the golf 14 operator have told the family to get off the land or buy the 15 lease for \$30 million. 16 So I was tasked to try to find a solution and save 17 the companies. And in this series of events that happened 18 very quickly in 2005, we realize that the Peccole no longer 19 can be a partner. 20 And if we are -- we have a choice, either to 21 basically destroy the family, go after their asset for the 22 actions that -- that -- the events that happened, for the 23 action they took, or we can save the family and save ourself 24 the same time. And that brought this very complex deal of 25 what -- each piece a party is going to take from that table</p>
<p style="text-align: right;">Page 220</p> <p>1 to a successful deal for everybody. 2 It was -- I think the idea came to me because of a 3 meeting I had with somebody, says that has a public company 4 that very much interested to get into the U.S. and maybe you 5 should go and talk to them. And that's how I went to meet 6 the PBC guys in London. 7 And I came back to the Peccoles and say, Listen -- 8 I should say that within days or weeks -- a week after the 9 golf course operator give a notice -- send a notice to 10 Peccole Nevada to get off the property or give them 11 \$30 million, Bruce Bayne came to my office. 12 And was rarely that I was meeting Bruce outside 13 of, you know, board meeting, if you will. Came to my office 14 unannounced and say, Yohan, you got to help out -- you got 15 to help the family and you got to buy us out. Can you get 16 us 45 million? We owe \$30 million right now. This give us 17 lot of problem. If we can get 15 million, we will get out 18 of everything. We going to leave the properties and walk. 19 And I think that I was laughing at the time, 20 sarcastically, not -- not because I thought we did anything 21 wrong, because it was unachievable, you know, the condition 22 that we were. 23 And then I had a conversation with some of my 24 other partners and find out about this public company and 25 went to meet them in London. I think within couple days I</p>	<p style="text-align: right;">Page 221</p> <p>1 took a plane and went to London, start having discussion. 2 Within couple weeks, I had a frame work of a deal, 3 came back. I start negotiating with Larry Miller. There 4 was no discussion with anybody in the family outside of 5 Larry Miller at the time. 6 And he called to break me the news and it was a 7 pretty devastating call for him, you know, when he told me 8 what happened, because we smelled it coming. 9 So the deal was, with Larry, Look, Larry, I'm 10 going to have to give everything. You going to have to give 11 some. I'm going to have to give everything, in order to 12 save you guys and save the project, for that matter, and 13 give further (phonetic) to the new -- the new comer, to the 14 buyer. 15 And so I told him, You should not -- I remember 16 saying it clearly, and I know that I have no disparagement. 17 It's not a disparagement. It's just attesting to what 18 happened. 19 I told Larry, Larry, you should not be in 20 business. You should never do business again. You have 21 history of getting to these points. You should take all the 22 money and run. I compensate you very well. And let's sit 23 down together and figure out what's your debt. And I took 24 all the debt of that family, the Peccoles, and came up with 25 this \$100 million deal.</p>

<p style="text-align: right;">Page 222</p> <p>1 It was pretty aggressively. And the agreement 2 with Larry Miller was that, once I clean the family, I can 3 have, on top of that, whatever I want because they just want 4 out. 5 So what I've ask is re- -- a trade or re-trade or 6 trade of all the properties we have together -- to clean the 7 table so we don't have any more business relationship, so we 8 don't have any more partnerships or pieces, who owes to who. 9 No partnerships together and no future and no past, for that 10 matter, and we make one deal that we can all get a piece. 11 I ask for the golf course. I ask for Hualapai and 12 Charleston. I ask for Hualapai and Sahara. I ask for Fort 13 Apache and Charleston. I've asked for the warehousing and 14 all the infrastructure compensation in that deal, for the 15 golf course, and I ask for something that had to do with a 16 piece that may be available on the corner of -- of the west 17 corner of Charleston and Hualapai where this warehousing 18 storage is. 19 When I got in the end of trade, I think -- just 20 got everything. I don't think we got -- in the end of day, 21 we couldn't do the deal because it was -- it was too 22 complex, the one on Charleston and Hualapai where the 23 storage is. 24 And I went to IDB and I spoke to Raffi Bispel 25 (phonetic), the head of the -- I think PBC -- the CO of PBC,</p>	<p style="text-align: right;">Page 223</p> <p>1 and I spoke to Noki Dahnkna (phonetic), the CEO of IDB. And 2 I told him, Here's the deal. Here's what I'm willing to do. 3 Put it all on paper, whole thing. 4 And said, We cannot have any of that. You cannot 5 have any of the trades that you doing with Peccoles in the 6 contract. Got to give us a clear contract that shows just 7 three properties we getting into the business with you. 8 This is yours. Do whatever you want to. The waterfall is 9 ours. This is yours. 10 Q. When you say "this is yours," what are you 11 referring to that's outside of the -- 12 A. The deal that I made with Peccoles. The 13 re-trades. All the trades that we had between us, the 14 barter, and the golf course. 15 Q. Okay. Go ahead. 16 A. And they could not have it in the contract. They 17 did not want to see it because they take it to public 18 approvals. Larry promise me, You don't have to worry. We 19 work together for, that time -- for, I don't know, 12 years, 20 13 years, that time, in lot of -- did -- did most of the 21 deals in -- just build Queensridge for them and some with 22 partnership with them prior. And that's how this deal came 23 down. 24 What happened later -- so the promise was, I'm 25 going to get you \$100 million. I keep, you know -- I get --</p>
<p style="text-align: right;">Page 224</p> <p>1 I get paid. We got to walk this three -- the clubhouse 2 deal, you know, to complete it, because you take it, you 3 taking this piece with it or you taking without it. 4 I didn't mind to wait, but I think within six or 5 eight months after I had this deal Larry got on plane and 6 left. And left town, went to Australia or wherever. Went 7 to -- I think before he went to Lake Tahoe and then all of a 8 sudden Peccole had no CO. This was -- other people 9 managing, I think, at that -- at that point. I don't think 10 that Billy Baynes were there. I think that -- hired help. 11 And my deal got further and further to try to get 12 the golf course. Later on in time, I start putting serious 13 pressure on Larry through the phone and he came to town. I 14 said, You got to finish this deal. 15 Say, I know. I got a problem with the family. 16 But I got the contract. And I got this \$12 million contract 17 and the fighting started again over there and -- and refuse 18 to close. So that's the story of how I got to acquire this 19 piece of property. 20 In 2007, they -- Larry suggested right before the 21 contract -- say, Why don't we develop together? And take 22 those plans and -- I think they were produce in this 23 litigation. There were plans and there was studies on the 24 whole -- whole property, how to develop it. And in the end, 25 we acquire the property. So that's the story.</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. Okay. What was the amount of money you paid for 2 the property? 3 A. I paid 30 in the barter. In the total of the \$100 4 million deal, there was \$30 million in it for the golf 5 course and I owe 15 million to finish the deal, to take the 6 property . . . 7 Q. Okay. And, Mr. Lowie, is there any document 8 you're aware of that reflects that \$30 million? 9 A. I don't think -- there is no contract \$30 million 10 you paying me for this, because it would have caused a 11 problem with -- you know, with IDB at the time, as I just 12 testified. 13 But I know that Peccoles -- we -- the Peccole were 14 required to have minutes -- they had board meeting prior to 15 closing to recognize the \$30 million and paid the loan 16 with -- pay the loan back to Sun Coast to release the 17 collateral on the golf course. So that's a document I know 18 that exist. 19 And -- but the deal speaks for itself. There's 20 100 -- none of the property, the 30, 20, and 40 -- the 21 Peccoles -- the Peccole portion of it, none of them was 22 worth it, any which way you took it. So you can tell by 23 then by the value of -- 30 percent -- if \$40 million is 24 30 percent -- so the property was worth \$125 million. Why 25 they can't make the obligation? You know, everybody was</p>

<p style="text-align: right;">Page 226</p> <p>1 diluted (phonetic). It wasn't worth it.</p> <p>2 So, therefore, you know there's no deal just by</p> <p>3 looking at -- position. Nobody know, really, what happen,</p> <p>4 except people that were in the deal. That's why I was very</p> <p>5 surprised that Billy attest to things he doesn't know. I'm</p> <p>6 sure -- I'm almost sure Billy did not know.</p> <p>7 Q. And that's okay. I just want you to testify to</p> <p>8 what you know.</p> <p>9 A. Okay.</p> <p>10 MR. LEAVITT: Okay. All right.</p> <p>11 Okay. That's all my questions for Mr. Lowie,</p> <p>12 George.</p> <p>13 MR. OGILVIE: Thank you, Jim.</p> <p>14</p> <p>15 EXAMINATION</p> <p>16 BY MR. OGILVIE:</p> <p>17 Q. Mr. Lowie, do you have an understanding of what</p> <p>18 you just testified is directly contrary to everything or to</p> <p>19 what Billy Bayne testified?</p> <p>20 MR. LEAVITT: Objection. Misstates Mr. Bayne's</p> <p>21 testimony.</p> <p>22 MS. GHANEM HAM: Mm-hmm.</p> <p>23 MR. OGILVIE: Does he have an understanding.</p> <p>24 MR. LEAVITT: Oh, does he have an understanding.</p> <p>25 Q. (By Mr. Ogilvie) Do you have an understanding of</p>	<p style="text-align: right;">Page 227</p> <p>1 what you just testified is directly contrary to what</p> <p>2 Mr. Bayne testified?</p> <p>3 A. All I can tell you about that and be generous to</p> <p>4 Billy --</p> <p>5 MR. LEAVITT: It's a yes or no.</p> <p>6 THE WITNESS: No, I don't know his entire</p> <p>7 testimony. No, I do not.</p> <p>8 Q. (By Mr. Ogilvie) You don't have an understanding</p> <p>9 of what you just testified was contrary to what he</p> <p>10 testified?</p> <p>11 A. No. I tell you, again, Billy has no -- Billy</p> <p>12 wasn't there. I was the table. His uncle was the table.</p> <p>13 His father was not at the table. His mother was not at the</p> <p>14 table.</p> <p>15 MR. LEAVITT: But that's --</p> <p>16 Q. (By Mr. Ogilvie) His testimony was that there was</p> <p>17 no consideration, other than \$15 million for Fore Stars and</p> <p>18 WRL.</p> <p>19 MR. LEAVITT: There's not a question pending.</p> <p>20 Q. (By Mr. Ogilvie) And so your testimony is that</p> <p>21 not only did you pay \$15 million for WRL and Fore Stars, you</p> <p>22 paid \$45 million. Is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And there isn't one document that evidences this</p> <p>25 \$30 million, in addition to what's set forth in Exhibits 37</p>
<p style="text-align: right;">Page 228</p> <p>1 and 38?</p> <p>2 MR. LEAVITT: Wait. I forgot what the question</p> <p>3 was. It was such a long pause.</p> <p>4 MR. OGILVIE: Can you read the question back.</p> <p>5 (Record read.)</p> <p>6 MR. LEAVITT: Objection. Form.</p> <p>7 THE WITNESS: When you have a deal under serious</p> <p>8 duress that you have no choice -- both parties have no</p> <p>9 choice, many of the things that you see in normal contract</p> <p>10 don't get into there.</p> <p>11 So I don't know about anything in these document.</p> <p>12 Was lot of people knew about the deal as it happen, at the</p> <p>13 time.</p> <p>14 MR. OGILVIE: Can you read my question back.</p> <p>15 (Record read.)</p> <p>16 THE WITNESS: The meeting minutes of Peccole.</p> <p>17 Meeting -- the minutes of the Peccole board meeting on the</p> <p>18 day of closing.</p> <p>19 Q. (By Mr. Ogilvie) Anything else?</p> <p>20 A. Not I know of.</p> <p>21 Q. I'm sorry?</p> <p>22 A. Not that I know.</p> <p>23 Q. Okay. So you contend that you entered into a</p> <p>24 \$30 million transaction and you didn't memorialize it in any</p> <p>25 way. Is that correct?</p>	<p style="text-align: right;">Page 229</p> <p>1 A. I made \$100 million on a handshake, and I didn't</p> <p>2 memorialize in any way.</p> <p>3 Q. So you contend that you entered into a \$30 million</p> <p>4 contract with Larry Miller without memorializing it in any</p> <p>5 way.</p> <p>6 A. Yes.</p> <p>7 Q. Is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And if you had not ended up -- if you did not</p> <p>10 ultimately purchase Fore Stars and WRL, did you have a claim</p> <p>11 to \$30 million from the Peccoles?</p> <p>12 A. No. If I didn't purchase it, no. Did not. That</p> <p>13 wasn't . . .</p> <p>14 Q. So you gave them \$30 million and it was, according</p> <p>15 to you, part of the consideration for the purchase of the</p> <p>16 golf course?</p> <p>17 A. I give them \$100 million. I didn't have to give .</p> <p>18 . .</p> <p>19 (Reporter requested clarification.)</p> <p>20 THE WITNESS: \$100 million. Didn't have to</p> <p>21 give -- they were not in position to ask for anything. They</p> <p>22 never ask for it. They ask for \$45 million, maybe you</p> <p>23 can --</p> <p>24 MS. GHANEM HAM: Let me -- let me instruct.</p> <p>25 Please answer the question.</p>

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<p style="text-align: right;">Page 230</p> <p>1 THE WITNESS: Yes.</p> <p>2 MS. GHANEM HAM: Could you --</p> <p>3 THE WITNESS: Yes.</p> <p>4 MS. GHANEM HAM: Do you want to repeat it?</p> <p>5 THE WITNESS: Please repeat the question. I'll</p> <p>6 answer just the question.</p> <p>7 MR. OGILVIE: Could you read it back.</p> <p>8 (Record read.)</p> <p>9 THE WITNESS: Yes.</p> <p>10 Q. (By Mr. Ogilvie) And even though it was part of</p> <p>11 the consideration for the golf course, they would not owe</p> <p>12 you that \$30 million if they didn't sell you the golf</p> <p>13 course?</p> <p>14 A. No --</p> <p>15 MR. LEAVITT: Objection. That's a different</p> <p>16 question.</p> <p>17 MR. OGILVIE: Well -- okay.</p> <p>18 MR. LEAVITT: Oh, I'm sorry.</p> <p>19 MR. OGILVIE: It's a different question.</p> <p>20 MR. LEAVITT: You're right. It's the way you</p> <p>21 worded it. It made it sound like -- any way, sorry, George.</p> <p>22 I shouldn't -- I withdraw my objection. I apologize,</p> <p>23 George.</p> <p>24 MR. OGILVIE: I'm sorry, Vanessa. Can you read</p> <p>25 that back.</p>	<p style="text-align: right;">Page 231</p> <p>1 (Record read.)</p> <p>2 Q. (By Mr. Ogilvie) Let me back up. So even though</p> <p>3 this \$30 million was part of the consideration for the</p> <p>4 purchase of the golf course, if you didn't end up purchasing</p> <p>5 the golf course, the Peccoles wouldn't owe you that</p> <p>6 \$30 million?</p> <p>7 A. If I didn't purchase the golf course, they didn't</p> <p>8 have to pay me. If they did not give it to me, give me the</p> <p>9 contract, I would sue them. And I did.</p> <p>10 Q. You didn't sue them for \$30 million. You sued</p> <p>11 them, as you stated, for specific performance for the</p> <p>12 purchase of the property, the golf course. Correct?</p> <p>13 A. Property was worth 100 million bucks. Why would I</p> <p>14 take 30?</p> <p>15 Q. I'm sorry?</p> <p>16 A. The property was worth 100 million bucks to me.</p> <p>17 Why would I take 30?</p> <p>18 Q. You keep referencing \$100 million. All of the</p> <p>19 documents that we've gone through today reference -- well,</p> <p>20 not all of them. All the documents that reference these</p> <p>21 transactions reference \$90 million.</p> <p>22 There's no documents that reference \$100 million,</p> <p>23 is there?</p> <p>24 A. There's no 90. \$90 million was my purchase.</p> <p>25 Myself to IDB.</p>
<p style="text-align: right;">Page 232</p> <p>1 Q. Okay. But --</p> <p>2 A. What? You're confused.</p> <p>3 Q. The documents -- the documents reflect a group of</p> <p>4 transactions amounting to \$100 million -- or, I mean,</p> <p>5 amounting to \$90 million. Correct?</p> <p>6 A. No.</p> <p>7 Q. No?</p> <p>8 A. Myself is 90 million. I sold my shares for</p> <p>9 90 million bucks.</p> <p>10 Q. Okay.</p> <p>11 A. I paid Peccole 100 million bucks.</p> <p>12 Q. There's no document in any- -- anything that we've</p> <p>13 gone through today or anything that your counsel has</p> <p>14 produced in this litigation that references you paying --</p> <p>15 you giving the Peccoles \$100 million.</p> <p>16 A. You can see in documents \$85 million, and the</p> <p>17 promise for \$15 million for golf course makes it to \$100</p> <p>18 million. To me, the value of the golf course was \$100</p> <p>19 million when I take it at the time.</p> <p>20 Q. I didn't understand that. Say it again.</p> <p>21 A. See, IDB got the first 90 plus 11 was 110 -- 101.</p> <p>22 There's IDB's \$100 million. Peccole got \$100 million from</p> <p>23 the deal, the way to close the deal together. And, to me,</p> <p>24 the property was worth \$100 million.</p> <p>25 Instead of bankruptcy of a company, everybody</p>	<p style="text-align: right;">Page 233</p> <p>1 losing, everybody made \$100 million. That's how I saw the</p> <p>2 deal.</p> <p>3 Q. So Exhibits 14, 16, and 18 are not reflective of</p> <p>4 the deal that you cut with the Peccoles?</p> <p>5 A. I've testified --</p> <p>6 MS. GHANEM HAM: Objection. Hold on. Object to</p> <p>7 the form. Misstates the testimony.</p> <p>8 THE WITNESS: It reflects the deal as it was made.</p> <p>9 As I testified before, the deal reflects exactly the</p> <p>10 purchase price that -- that we allocating to properties so</p> <p>11 IDB, in the documents, doesn't see any -- any other barter</p> <p>12 deal or any golf course in it.</p> <p>13 Q. (By Mr. Ogilvie) So you were prevented from</p> <p>14 documenting this \$30 million deal as a result of your sale</p> <p>15 of interest in Queensridge Towers, Tivoli, and Sahara</p> <p>16 Hualapai to IDB?</p> <p>17 A. Correct.</p> <p>18 MR. OGILVIE: Thank you.</p> <p>19 THE WITNESS: You're welcome.</p> <p>20 (Proceedings concluded at 5:53 p.m.)</p> <p>21 -oOo-</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 234</p> <p style="text-align: center;">CERTIFICATE OF DEPONENT</p> <p>PAGE LINE CHANGE REASON</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;">* * * * *</p> <p>I, Yohan Lowie, Deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected, and do hereby affix my signature to said deposition, under penalty of perjury.</p> <p style="text-align: center;">_____ YOHAN LOWIE, Deponent</p>	<p style="text-align: right;">Page 235</p> <p>STATE OF NEVADA) COUNTY OF CLARK)</p> <p style="text-align: center;">CERTIFICATE OF REPORTER</p> <p>I, Vanessa Lopez, a duly commissioned and licensed court reporter, Clark County, State of Nevada, do hereby certify:</p> <p>That I reported the taking of the deposition of Yohan Lowie, commencing on Thursday, August 12, 2021, at the hour of 9:22 a.m.;</p> <p>That the witness was, by me, duly sworn to testify to the truth and that I thereafter transcribed my said shorthand notes into typewriting, and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of said shorthand notes;</p> <p>I further certify that I am not a relative or employee of any of the parties involved in said action, nor a relative or employee of an attorney involved in nor a person financially interested in said action;</p> <p>That the reading and signing of the transcript was not requested.</p> <p>IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 24th day of August, 2021.</p> <p style="text-align: center;"> _____ VANESSA LOPEZ, CCR NO. 902</p>
<p style="text-align: right;">Page 236</p> <p>HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE</p> <p>Litigation Services is committed to compliance with applicable federal and state laws and regulations ("Privacy Laws") governing the protection and security of patient health information. Notice is hereby given to all parties that transcripts of depositions and legal proceedings, and transcript exhibits, may contain patient health information that is protected from unauthorized access, use and disclosure by Privacy Laws. Litigation Services requires that access, maintenance, use, and disclosure (including but not limited to electronic database maintenance and access, storage, distribution/ dissemination and communication) of transcripts/exhibits containing patient information be performed in compliance with Privacy Laws. No transcript or exhibit containing protected patient health information may be further disclosed except as permitted by Privacy Laws. Litigation Services expects that all parties, parties' attorneys, and their HIPAA Business Associates and Subcontractors will make every reasonable effort to protect and secure patient health information, and to comply with applicable Privacy Law mandates, including but not limited to restrictions on access, storage, use, and disclosure (sharing) of transcripts and transcript exhibits, and applying "minimum necessary" standards where appropriate. It is recommended that your office review its policies regarding sharing of transcripts and exhibits - including access, storage, use, and disclosure - for compliance with Privacy Laws.</p> <p>© All Rights Reserved. Litigation Services (rev. 6/1/2019)</p>	

Exhibit 3

In the Matter Of:

Binion vs

Fore Stars

YOHAN LOWIE

August 04, 2017



702-805-4800
scheduling@envision.legal

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D R A F T

T R A N S C R I P T

Binion vs. Fore Stars

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Deposition of Yohan Lowie, Volume I

Thursday, August 4, 2017

By: Monice K. Campbell, NV CCR 312

monice@envision.legal

Envision Legal Solutions

702-805-4800

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000917

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<p style="text-align: right;">Page 2</p> <p>1 ROUGH DRAFT TRANSCRIPT</p> <p>2 REALTIME AND INTERACTIVE REALTIME TRANSCRIPT</p> <p>3 ROUGH DRAFT DISCLAIMER</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 IMPORTANT NOTICE: AGREEMENT OF PARTIES</p> <p>9</p> <p>10</p> <p>11 We, the party working with realtime and</p> <p>12 rough draft transcripts, understand that if we choose</p> <p>13 to use the realtime rough draft screen or the</p> <p>14 printout, that we are doing so with the understanding</p> <p>15 that the rough draft is an uncertified copy.</p> <p>16 We further agree not to share, give, copy,</p> <p>17 scan, fax or in any way distribute this realtime</p> <p>18 rough draft in any form (written or computerized) to</p> <p>19 any party. However, our own experts, co-counsel,</p> <p>20 and staff may have limited internal use of same with</p> <p>21 the understanding that we agree to destroy our</p> <p>22 realtime rough draft and/or any computerized form, if</p> <p>23 any and replace it with the final transcript upon its</p> <p>24 completion.</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: This begins the video</p> <p>2 recorded deposition of Yohan Lowie. Today's date is</p> <p>3 August 3rd, 2017. The time is 2:15 p.m. We are at</p> <p>4 400 South 7th Street, Third Floor, Las Vegas,</p> <p>5 Nevada for the matter entitled Jack B. Binion, et</p> <p>6 al., versus Fore Stars, Limited, et al., Case Number</p> <p>7 A-15729053-C, in the District Court, Clark County,</p> <p>8 Nevada.</p> <p>9 I'm the videographer, Becky Ulrey. The</p> <p>10 court reporter is Monice Campbell with Envision Legal</p> <p>11 Solutions.</p> <p>12 Will counsel please identify yourselves</p> <p>13 and the reporter will administer the oath.</p> <p>14 MR. JIMMERSON: Good afternoon. Jim</p> <p>15 Jimmerson. I have the privilege of representing Fore</p> <p>16 Stars, Limited, 180 Land Company, LLC and 70 Acres,</p> <p>17 LLC and today's deponent, Mr. Yohan Lowie. Good</p> <p>18 afternoon.</p> <p>19 MR. BYRNES: Phil Byrnes representing the</p> <p>20 City of Las Vegas.</p> <p>21 MR. BICE: And Todd Bice on behalf of the</p> <p>22 plaintiff.</p> <p>23 Whereupon,</p> <p>24 YOHAN LOWIE,</p> <p>25 having been sworn to testify to the truth, the whole</p>
<p style="text-align: right;">Page 3</p> <p>1 Since this deposition has been provided in</p> <p>2 real time and is in rough draft form, please be aware</p> <p>3 that there may be a discrepancy regarding page and</p> <p>4 line number when comparing the realtime screen, the</p> <p>5 rough draft, rough draft disk, and the final</p> <p>6 transcript.</p> <p>7</p> <p>8 Also please be aware that the realtime</p> <p>9 screen and the uncertified rough draft transcript may</p> <p>10 contain untranslated steno, reporter's notes,</p> <p>11 asterisks, misspelled proper names, incorrect or</p> <p>12 missing Q/A symbols or punctuation, and/or</p> <p>13 nonsensical English word combinations. All such</p> <p>14 entries will be corrected on the final, certified</p> <p>15 transcript.</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>	<p style="text-align: right;">Page 5</p> <p>1 truth, and nothing but the truth, was examined and</p> <p>2 testified under oath as follows:</p> <p>3</p> <p>4 EXAMINATION</p> <p>5 BY MR. BICE:</p> <p>6 Q. Can you state your full name for the</p> <p>7 record, please?</p> <p>8 A. Yohan Lowie.</p> <p>9 Q. Mr. Lowie, can you tell me where you</p> <p>10 currently work?</p> <p>11 A. I work at EHB Company.</p> <p>12 Q. And what is EHB Company?</p> <p>13 A. Now it's a corporation. I work various</p> <p>14 companies that we own, directly or indirectly own,</p> <p>15 and it's a developer and contractor, land owner.</p> <p>16 Q. Okay. And EHB Companies, are you the</p> <p>17 principle owner of it?</p> <p>18 A. No. I'm co-owner of EHB Companies.</p> <p>19 Q. And how much of it do you own?</p> <p>20 A. I own 50 percent.</p> <p>21 Q. You own 50 percent. Who owns the other 50</p> <p>22 percent?</p> <p>23 A. Paul and Vicki DeHart.</p> <p>24 Q. Okay. Do you own any other companies</p> <p>25 other than EHB Companies?</p>

<p style="text-align: right;">Page 6</p> <p>1 A. All the other companies within our family 2 of companies, I only own 50 percent or less. 3 Q. All right. Can you tell me what -- I 4 don't understand what you mean by "your family of 5 companies." So would it be accurate to say if you 6 drew a corporate chart, EHB would be the top company? 7 A. No, it would be incorrect. Up to about a 8 year ago, year and a half ago, EHB Company was just a 9 brand name and we have a separate single purpose LLC 10 for whichever we developed. And EHB is one of those. 11 But since everybody recognizes EHB, we incorporated 12 and that's what it is. 13 Q. I got you. But -- so you use EHB, it 14 sounds like, sort of in two senses: One is there is 15 an actual EHB entity but then you use the name EHB as 16 just sort of the whole conglomerate; is that fair? 17 A. The world outside of us uses as such and 18 we adopt it, yes. 19 Q. Okay. And so how long have you gone or 20 your companies gone by the name EHB? How many years? 21 A. Everybody referred to us as EHB as a brand 22 name for years because we had a company called 23 Executive Home Builders which was one of the original 24 companies. So everybody recognizes Executive Home 25 Builders. So later on (inaudible) EHB and we</p>	<p style="text-align: right;">Page 8</p> <p>1 Home Builders and EHB was a brand name, if you will. 2 Q. Got it. Okay. And then you indicated 3 that EHB, does it -- you said it serves as the 4 manager of other companies? 5 A. Yes. In some cases, yes. 6 Q. Okay. Does EHB also own assets other than 7 other companies? 8 A. I don't recall. I don't think so. 9 Q. Okay. 10 A. But I don't recall. The structure of the 11 company is very complicated, 30(b)(6) designee. 12 Mr. Sklar would be able to answer better. 13 Q. {Allen Sklar? 14 A. Yes. 15 Q. So EHB, though, is the manager, is it not, 16 of the defendants in this action? 17 A. I would -- I would believe that's correct. 18 Q. And that would be Seventy Acres, LLC would 19 be one of the companies, right? 20 A. Correct. 21 Q. And how much of Seventy Acres, LLC do you 22 own? 23 A. It would be about 50 percent or less 24 because there's a trust and kids, other kids -- other 25 owners in these partnerships.</p>
<p style="text-align: right;">Page 7</p> <p>1 incorporated about a year, year and a half ago, EHB -- 2 Companies. 3 Q. So EHB -- but EHB in terms of just sort of 4 the trade name, how long have you been using that? 5 A. For the recent past. Last two years. 6 Q. Within the last two years? 7 A. Year and a half, maybe. 8 Q. Okay. And did you have letterhead that 9 you had EHB on it, that you would send out 10 letterhead? 11 A. At what point? 12 Q. Within the last five years. 13 A. Yes. 14 Q. Okay. Now, was that letterhead? Is that 15 for Executive Home Builders, or is that for just sort 16 of the company-wide name that you were using? 17 A. Seeing as how it was incorporated, there's 18 one logo and it's different, if you will, company, 19 EHB Companies. EHB Companies is also the manager of 20 other companies so if that's the company you refer 21 to, yes, we sent out -- 22 Q. So EHB, the actual entity, has existed for 23 a couple of years? 24 A. The one that we are referring to in this 25 conversation, yes. Prior to that it was Executive</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Let me ask you, is the ownership of 2 Seventy Acres, LLC the same as the ownership of EHB? 3 A. I'm not sure. No, I don't think so. It's 4 different. 5 Q. And then there is an another entity known 6 as 180 -- 180 Land Company? 7 A. That's correct. 8 Q. And is that also EHB? 9 A. I believe so. 10 Q. Do you own the same amount of 180 Land 11 Company as the same as you do in EHB? 12 A. I would suspect so but I'm not sure. It 13 may be that it's different. It's rather complicated. 14 Q. Well, do you -- let me put it this way: 15 Are there owners in EHB -- strike that. 16 Are there owners in Seventy Acres, LLC 17 that are different than the owners of EHB? 18 A. If you can repeat the question. 19 Q. Sure. Let me try and break it down this 20 way. In EHB you own half and -- 21 A. DeHarts. 22 Q. Yes. They own half, Vicki and Paul, 23 correct? 24 A. Correct. 25 Q. Now, for your half, do you have some of</p>

<p style="text-align: right;">Page 10</p> <p>1 that in like your family trust and things like that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So when you say you own 50 percent</p> <p>4 and they own 50 percent, your 50 percent might be</p> <p>5 broken up into various --</p> <p>6 A. Correct.</p> <p>7 Q. -- trusts or other -- other entities that</p> <p>8 are subject to your ownership; is that fair?</p> <p>9 A. That's correct.</p> <p>10 Q. The same would be true for the DeHarts, I</p> <p>11 suspect?</p> <p>12 A. I would believe so.</p> <p>13 Q. Okay. So what I'm trying to understand is</p> <p>14 in Seventy Acres, LLC, the 50 percent of that entity</p> <p>15 that you control, is that sort of the same structure</p> <p>16 as you have in EHB?</p> <p>17 A. No, it's not.</p> <p>18 Q. It's not?</p> <p>19 A. It's different.</p> <p>20 Q. Are there different owners in Seventy</p> <p>21 Acres, LLC other than you and Vicki and Paul?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Who?</p> <p>24 A. From the top of my head, kids,</p> <p>25 partnerships and trusts.</p>	<p style="text-align: right;">Page 12</p> <p>1 kids' trusts in there, but is that how it's set up as</p> <p>2 well?</p> <p>3 A. I'm not sure there's trusts involved. I'm</p> <p>4 not sure there are kids involved.</p> <p>5 Q. Are there any members outside of your</p> <p>6 family and the DeHarts' family that are involved in</p> <p>7 Fore Stars?</p> <p>8 A. I don't recall.</p> <p>9 Q. All right.</p> <p>10 A. It may be. I don't recall.</p> <p>11 Q. How about for EHB?</p> <p>12 A. For EHB?</p> <p>13 Q. Is it your -- just your family and the</p> <p>14 DeHarts family?</p> <p>15 A. I believe there's no trust, no kids. No</p> <p>16 other interest.</p> <p>17 Q. And then for Seventy Acres, is it just</p> <p>18 your family and the DeHart family as the owners?</p> <p>19 A. No, I believe there's other trusts.</p> <p>20 Q. Trusts belonging to kids, though?</p> <p>21 A. Kids, adult kids.</p> <p>22 Q. Adult kids. Okay. But other than your</p> <p>23 family members which, I mean by your family members,</p> <p>24 I mean you, your wife, your children, even if they're</p> <p>25 adult children.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Your kids' partnerships?</p> <p>2 A. My kids, their kids. We have kids in</p> <p>3 different ages. So it's different owners.</p> <p>4 Q. Sure. I understand that.</p> <p>5 A. We both have two adults.</p> <p>6 Q. Other than your kids and their kids, are</p> <p>7 there any other owners of Seventy Acres, LLC?</p> <p>8 A. I don't recall.</p> <p>9 Q. How about 180 Land Company?</p> <p>10 A. I don't recall. Same answer.</p> <p>11 Q. Bear with me one second, sir.</p> <p>12 Now, are you also an owner of an entity</p> <p>13 known as Fore Stars, Limited?</p> <p>14 A. Yes.</p> <p>15 Q. And Fore Stars, Limited, how much of that</p> <p>16 do you own?</p> <p>17 A. I think it's the same, similar to 180.</p> <p>18 Look I don't answer because I really don't know. I</p> <p>19 didn't study and it's rather complex. There are</p> <p>20 other companies that owned it prior to the company</p> <p>21 that purchased Fore Star. I don't know what the</p> <p>22 company that purchased Fore Star did.</p> <p>23 Q. Just generally speaking, is the ownership</p> <p>24 in Fore Star split up between you and the DeHarts? I</p> <p>25 mean, I understand there may be some trusts or some</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I cannot conclusively answer that, but I</p> <p>2 don't recall. I believe not but I don't recall.</p> <p>3 Q. Fair enough. And I assume your answer</p> <p>4 would be the same for 180?</p> <p>5 A. That's correct.</p> <p>6 Q. All right. When did you first approach</p> <p>7 Fore Star about buying the golf course?</p> <p>8 A. In 2006, I believe '5 or '6. '5 or '6.</p> <p>9 Q. And who owned Fore Star at that point in</p> <p>10 time?</p> <p>11 A. I'm not sure it was Fore Stars at the</p> <p>12 time. It may be a different company. At the time I</p> <p>13 believe it to be -- I don't - I shouldn't say that.</p> <p>14 I don't -- there were other companies that were</p> <p>15 involved. I'm not sure who owned it at the time.</p> <p>16 {But at the time is the family Larry Miller was</p> <p>17 varying managers that they had from time to time.</p> <p>18 Q. So the people that you would have spoken</p> <p>19 to back in that 2006 time frame about purchasing it,</p> <p>20 was {Mr. Baines and Mr. Miller?</p> <p>21 A. And Mr. Miller. Mr. Bennett was involved</p> <p>22 that I know, but Mr. Miller was the direct contact,</p> <p>23 the ongoing contact. I don't believe we talked about</p> <p>24 buying Fore Stars. I don't think we -- there was any</p> <p>25 Fore Stars at the time. I'm not sure. I think we</p>

<p style="text-align: right;">Page 14</p> <p>1 talked about buying the property.</p> <p>2 Q. When you say you approached them about</p> <p>3 buying the property, was that a particular entity</p> <p>4 that you had at that point in time that was going to</p> <p>5 buy the property?</p> <p>6 A. I do not recall.</p> <p>7 Q. Who all was involved in those --</p> <p>8 A. No. No, this is not simple. I {didn't</p> <p>9 call them to buy the property. I don't want to have</p> <p>10 a record insinuating that I have called to buy the</p> <p>11 property. There is a factor of business dealings</p> <p>12 that end up in the need to purchase the property.</p> <p>13 Q. There is a factor of business dealings</p> <p>14 that ended up in a need to purchase the property?</p> <p>15 A. Yes.</p> <p>16 Q. This was in the 2006 time frame?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And what was that -- what was that</p> <p>19 need?</p> <p>20 A. The Peccoles need to be bought out at the</p> <p>21 time. And we had other businesses with the family,</p> <p>22 and they need to be bought out, and mainly because of</p> <p>23 issues of the golf course and as a result of it we</p> <p>24 got into a contract to purchase the property.</p> <p>25 Q. And you got into a contract with whom, do</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Right after we close on the deal with them</p> <p>2 and paid them for Queensridge towers. It was one</p> <p>3 global sum but it was made out of pieces to get to</p> <p>4 the number. A portion of it was Queensridge towers,</p> <p>5 a portion of it was Tivoli, a portion of it was -- I</p> <p>6 believe correctly, and I may be mistaken, {center</p> <p>7 center and a portion was Badlands.</p> <p>8 Q. And did you have this agreement in writing</p> <p>9 with them?</p> <p>10 A. There was a global settlement agreement.</p> <p>11 One number, you pay me. I don't remember what it was</p> <p>12 75 million or something, 100 million, 90 million and</p> <p>13 we're out.</p> <p>14 Q. And what happened to that deal?</p> <p>15 A. The deal consummated. We bought them out.</p> <p>16 Q. You bought them out. Okay. So you</p> <p>17 bought -- as part of that deal, did you acquire the</p> <p>18 golf course?</p> <p>19 A. No, we did not.</p> <p>20 Q. And why was that?</p> <p>21 A. Because I had a promise to purchase the</p> <p>22 golf course for \$15 million and got into an agreement</p> <p>23 and they decided to develop the property themselves</p> <p>24 and the proposed development they need to fill with</p> <p>25 the towers at the time, and we had to hire attorneys</p>
<p style="text-align: right;">Page 15</p> <p>1 you remember?</p> <p>2 A. With -- contract with Peccole. I don't</p> <p>3 remember who with. We got into agreement, not even a</p> <p>4 contract. We got into an agreement that -- that -- I</p> <p>5 can't recall you know, who it was, which company but</p> <p>6 we got into an understanding that we are purchasing</p> <p>7 the property and later on the Peccoles reneged on the</p> <p>8 promise.</p> <p>9 Q. Why back then did the Peccoles need to</p> <p>10 sell?</p> <p>11 A. Because the tower, the Queensridge towers</p> <p>12 that we built together, we were still partners with,</p> <p>13 is actually sitting on the golf course. They have</p> <p>14 taken a piece of about six acres out of the golf</p> <p>15 course at the location, and the towers are built, a</p> <p>16 portion of them are built on the golf course. The</p> <p>17 lessee at the time of the golf course wanted out of</p> <p>18 the golf course. Apparently they were not making</p> <p>19 money even then and Fore Star purchased the lease</p> <p>20 back and put the Peccoles in a bad position.</p> <p>21 Q. And that was the Senior Tour which was the</p> <p>22 lessee of the golf course at the time?</p> <p>23 A. I can't tell you what it was.</p> <p>24 Q. And when do you say that the Peccoles then</p> <p>25 reneged?</p>	<p style="text-align: right;">Page 17</p> <p>1 and the settlement was they gave us eight years,</p> <p>2 within eight years or so, period of time, I think</p> <p>3 eight years, to purchase the property. So we had an</p> <p>4 option to purchase.</p> <p>5 Q. You had an option to purchase?</p> <p>6 A. It became an option, yes.</p> <p>7 Q. The court reporter, because I'm not sure I</p> <p>8 heard the number correctly, did you have a promise to</p> <p>9 purchase the golf course for 50 million or 15?</p> <p>10 A. Fifteen, 15.</p> <p>11 Q. It was hard to hear and she put 50, so I</p> <p>12 just wanted to clarify. So for 15 million, that is</p> <p>13 what they were supposed to have sold it to you for;</p> <p>14 is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And this is part of the global settlement</p> <p>17 that you had with them?</p> <p>18 A. That's correct.</p> <p>19 Q. Then they later, as I understand it, you're</p> <p>20 saying they later reneged and wouldn't sell you the</p> <p>21 golf course?</p> <p>22 A. Correct.</p> <p>23 Q. So did you have a lawsuit with them?</p> <p>24 A. I believe we had a lawsuit, yes.</p> <p>25 Q. And do you recall who your lawyers were?</p>

<p style="text-align: right;">Page 18</p> <p>1 A. Sam Lionel. 2 Q. Mr. Lionel? 3 A. Mr. Lionel. 4 Q. And do you recall who the Peccoles' 5 lawyers were? 6 A. No, I do not. 7 Q. And do you recall whether it actually ever 8 went to like an actual complaint was filed in court, 9 or was it just settled before it got that far? 10 A. I think it settled before. 11 Q. All right. And then part of your 12 settlement, it sounds like, as the resolution, they 13 gave you an option to buy the golf course for 15 14 years? 15 A. No. 16 Q. No? 17 A. For -- they had an internal issue with the 18 family, the golf course at the time, per the 19 agreement they made earlier, and the resolution was 20 to give us the time and within eight years you can 21 buy it. 22 Q. Eight years? 23 A. Yeah, I think. Don't hold me on the 24 number. It was eight years, seven years. I think it 25 was eight years or something. And when the time</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. If they put it to you, were you obligated 2 to buy at that price? 3 A. No. 4 Q. So from 2006 to 2007, the Peccoles and 5 whatever entity they had was operating the golf 6 course, correct? 7 A. I don't know. I can't tell you what the 8 Peccoles done. I don't believe so. I don't think 9 they operated the golf course themselves. 10 Q. They always had a lessee? 11 A. Lessee -- I think there was -- I'm not 12 sure. It was -- there were companies. The ones you 13 mentioned, the name Senior Tour or American Golf. 14 American Golf I think. I don't know if it's the same 15 company or different. 16 Q. Okay. So they -- they kept the golf 17 course property, but what did they sell you as part 18 of -- you got an option in the golf course. I 19 understand that. But what did they sell you in that 20 2006 settlement? 21 A. What did they sell me? 22 Q. Did you buy some other property from them? 23 A. What did they sold me? 24 Q. Yes, sir. 25 A. They sold their interest.</p>
<p style="text-align: right;">Page 19</p> <p>1 came -- just about eight years, I think. 2 Q. Just about eight years. And you had 3 the -- 4 A. I apologize. I don't recall. I think it 5 was eight or ten years, but at any time you can put 6 it through and have that. 7 Q. Got it. And did you have a price for that 8 option? 9 A. I believe it was \$15 million. 10 Q. So it was still \$15 million? 11 A. That's correct. 12 Q. Okay. So from that time period on -- now 13 let's deal with -- you think this is around 2005 when 14 you entered into this option, 2006? 15 A. I believe it's 2006. 16 Q. Got it. It's a while ago. I got it. So 17 you get the option. So from 2006 to 2010, let's deal 18 with that window for a moment. During that four year 19 window, did they ever ask you to exercise the option? 20 A. No. 21 Q. Did you ever ask them to exercise the 22 option? 23 A. It was one sided. 24 Q. Okay. So they got to put it to you? 25 A. Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. They sold their interest? 2 A. Two different agreements. There was a 3 handshake agreement for some time until we get the 4 contract. We had to close with them -- the issue 5 with them -- purchased membership -- their membership 6 interest from Tivoli, from towers and I think another 7 property. I'm not sure. I think it was Sahara and 8 Hualapai. 9 Q. Sahara and Hualapai? 10 A. I think they had an interest in the land, 11 a small interest, and I think we purchased it from 12 them. I'm not sure -- I think I may have purchased 13 it personally which has nothing to do with it, but I 14 don't recall. 15 Q. But is it fair to say that somewhere there 16 is a written agreement of what they agreed to sell 17 you? 18 A. That has nothing to do with the golf 19 course. They agreed -- there there's an agreement of 20 what they agreed to sell me on the golf course, 21 separate and apart. 22 Q. The agreement on the golf course, and 23 correct me if I'm misunderstanding you, it sounds 24 like the original agreement did include the golf 25 course but they reneged and then you entered into a</p>

<p style="text-align: right;">Page 22</p> <p>1 subsequent agreement about an option on the golf 2 course, or did I misunderstand you? 3 A. I may have -- I didn't explain this 4 correctly. The membership purchase had nothing to do 5 with the golf course. It's just a membership 6 purchase included in the \$30 million for the golf 7 course. I didn't mention the golf course. I didn't 8 mention the properties. We bought their shares. 9 Q. You bought their interest in an entity? 10 A. An entity. It wasn't in the property. 11 And subsequently, because we had a great 12 relationship, they came back and said, here's the 13 golf course and here's your contract. Whatever it 14 is. It was a very simple contract. You can buy it 15 for 15 million or something. And I don't know if it 16 was this contract or nominal amounts of money or 17 maybe even more. Either I owe them or they owe me 18 and reflected in the agreement and then they reneged 19 on it and there was a new agreement option that is 20 just an option to purchase. 21 Q. And that option to purchase is only for 22 the golf course? 23 A. That's correct. 24 Q. So you bought Tivoli from them; is that 25 right?</p>	<p style="text-align: right;">Page 24</p> <p>1 that was around the golf course where the residences 2 are today? 3 A. Yeah. I want to just qualify the "you." 4 Every time that you say "you," we're going to talk 5 about companies that I was involved with, right? 6 Q. Yes, sir. 7 A. Not personally anything? 8 Q. Well, if you need to clarify for me that 9 you personally want to distinguish yourself from the 10 companies, feel free to do that. That's why I 11 specified when I meant you, I meant you being the 12 head of the EHB organization. 13 A. I'm co-head. 14 Q. A co-head. All right. The co-head Of 15 the EHB organization. That's what I'm talking about. 16 A. Yes, as a co-head. 17 MR. JIMMERSON: And the less attractive 18 one I might add. 19 MR. BICE: I'll let you guys sort that 20 out. That's none of my business. 21 THE WITNESS: Yes. I -- we owned -- I 22 owned, prior that, the land to the towers. So we 23 just bought the Peccoles membership. So I was -- I'm 24 not sure I understand the question. If you can 25 repeat it.</p>
<p style="text-align: right;">Page 23</p> <p>1 A. We bought the membership interest. -- -- 2 Q. You bought the membership interest which 3 gave you -- 4 A. {Control their interest. I always had the 5 control because I had more shares. As a matter of 6 fact, we introduced another party into it which came 7 back and basically purchased -- purchased their 8 interest, plus some interest of mine, and I took a 9 second position, you know, because of that issue on 10 the golf course. 11 Q. And that interest that you purchased from 12 them included then their interest in the towers; is 13 that right? 14 A. Yes. Again, I just want to make sure, the 15 purchase of the interest in the towers in Tivoli had 16 nothing to do with the golf course. 17 Q. Right. 18 A. But it was the deal that triggered the 19 issue with the golf course because the buildings were 20 sitting on the golf course. 21 Q. I think I've got that straight now and I 22 apologize. It's taken me a while to get my arms 23 around all the transactions. So did you also 24 own -- when I said you, you or any of your 25 entities -- did you also own any of the real property</p>	<p style="text-align: right;">Page 25</p> <p>1 BY QUESTIONER: 2 Q. Sure. There's the land that the towers 3 are on, then there's also the land where people have 4 homes. You have a home there. Mr. Jimmerson has a 5 home there. Did you at any point in time set aside 6 your personal residence as a developer in the EHB 7 organization, did you ever own any of that real 8 property that the homes are now built on? 9 A. That's what I want clarified. Yes, I did. 10 We owned a lot of them. 11 Q. And how many acres did you own that 12 ultimately was then divided and built homes on; do 13 you remember? 14 A. Acres? 15 Q. Yeah. 16 A. At the time we owned probably 29 lots. I 17 just don't know what you mean by acreage. 18 Q. That's fair. Let me clarify. When you 19 bought the property, you bought it -- it had already 20 been subdivided into lots, correct? 21 A. Fully improved lots. I don't know what 22 subdivide into lots. We purchased when the property 23 was completed and there were finished lots to be had. 24 Q. And those finished lots, you purchased 25 them to then build residences on, correct?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. That's correct.</p> <p>2 Q. And you think you built somewhere or</p> <p>3 bought somewhere between 25 and 30 of those lots?</p> <p>4 A. To date we built 42 homes there.</p> <p>5 Q. Oh, you built 42. Were some of those</p> <p>6 homes that you built, people bought the lots and then</p> <p>7 just hired you to build the house?</p> <p>8 A. No. I believe that all of them we</p> <p>9 purchased the lots, either sold to somebody like</p> <p>10 yourself or Mr. Jimmerson and then built a house.</p> <p>11 Q. And then built a house for him?</p> <p>12 A. Some people wanted to finance the whole</p> <p>13 deal. Other than that it was all lots we purchased.</p> <p>14 Q. When you purchased the lots, did you</p> <p>15 purchase them all at once?</p> <p>16 A. No, I did not.</p> <p>17 Q. And do you recall who you purchased them</p> <p>18 from?</p> <p>19 A. That's interesting. I'm giving you an</p> <p>20 answer of my best belief.</p> <p>21 Q. Sure.</p> <p>22 A. But it was Legacy 14, LLC and later on was</p> <p>23 different companies. I don't recall which.</p> <p>24 Q. And do you recall, who was it that you</p> <p>25 dealt with -- who was running Legacy, LLC?</p>	<p style="text-align: right;">Page 28</p> <p>1 the option?</p> <p>2 A. I believe the golf course was in</p> <p>3 construction.</p> <p>4 Q. In construction?</p> <p>5 A. When I started my purchasing, I don't</p> <p>6 think the {nine holes was existing at the time.</p> <p>7 Q. So when you acquired the option to buy the</p> <p>8 land --</p> <p>9 A. On which land are we talking?</p> <p>10 Q. Let me specify. You said that you settled</p> <p>11 with the Peccoles, it sounds like, in 2006?</p> <p>12 A. The golf course was completed.</p> <p>13 Q. The golf course was completed?</p> <p>14 A. Totally. If you're talking about that.</p> <p>15 If you're talking about the purchase of the interest</p> <p>16 of Fore Stars and the real estate called Badlands,</p> <p>17 yes, it was in 2006 and everything was completed at</p> <p>18 the time. When we started purchasing homes -- we</p> <p>19 were on a different topic prior -- when I purchased</p> <p>20 the first lots, the golf course was in construction</p> <p>21 in 1996, I believe.</p> <p>22 Q. Understood. But when you acquired the</p> <p>23 option -- you settled your dispute with the Peccoles</p> <p>24 by way of, it sounds like, a settlement agreement</p> <p>25 where you acquired an option?</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Larry Miller was running, I believe, -- --</p> <p>2 Legacy. I can't tell you his position, but I -- to</p> <p>3 me he was a -- you know, the managing member, if you</p> <p>4 will.</p> <p>5 Q. He was the person you dealt with; is that</p> <p>6 fair?</p> <p>7 A. I dealt with him and Greg {Gorjian.</p> <p>8 Q. And?</p> <p>9 A. Greg Gorjian.</p> <p>10 Q. So you built -- I think you indicated was</p> <p>11 it 42 houses in there?</p> <p>12 A. Yes. In the custom homes, yes.</p> <p>13 Q. In the custom homes. And you still live</p> <p>14 there today yourself?</p> <p>15 A. Yes.</p> <p>16 Q. So in 20 -- did you have -- strike that.</p> <p>17 Did you have any involvement in the</p> <p>18 building of the golf course?</p> <p>19 A. No.</p> <p>20 Q. Did any of your companies have any</p> <p>21 involvement in the building of the golf course?</p> <p>22 A. No.</p> <p>23 Q. But as the golf course was being built,</p> <p>24 did you already have your option for that land, or</p> <p>25 was the golf course already done when you acquired</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes.</p> <p>2 Q. And when you acquired that option, the</p> <p>3 golf course had been fully completed, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And the golf course was subject to a</p> <p>6 lease, correct?</p> <p>7 A. When I purchased the property?</p> <p>8 Q. When you acquired that option in 2006.</p> <p>9 A. Yeah. No, I'm not sure it was subsequent.</p> <p>10 I think they had an issue at the time and didn't</p> <p>11 have -- I believe when we acquired it, the option</p> <p>12 that we are talking about -- I apologize. I don't</p> <p>13 believe that that they had an operator. I think the</p> <p>14 operator gave them a notice to pay or they'll be, you</p> <p>15 know, in default of their agreement. So I don't</p> <p>16 believe they had an operator at the time. So in this</p> <p>17 period of time I don't believe they did.</p> <p>18 Q. Your belief is that by -- at this time</p> <p>19 when you settled with them and you acquired that</p> <p>20 option, the tenant may have been threatening to</p> <p>21 leave?</p> <p>22 A. I think they noticed them they are</p> <p>23 leaving. They violated the contract, so on and so</p> <p>24 forth, and the Peccoles had to buy the contract out.</p> <p>25 That was the whole issue we. Gave them the money to</p>

<p style="text-align: right;">Page 30</p> <p>1 go buy them out. Now give us the golf course.</p> <p>2 Q. Okay.</p> <p>3 A. So at that time you wouldn't have an</p> <p>4 operator. At the time the option would be</p> <p>5 consummated you wouldn't have the operator.</p> <p>6 Q. And so who -- after you acquired the</p> <p>7 option, who ran the golf course?</p> <p>8 A. That's a good question. Now that you</p> <p>9 remind me of the events, they found a company to</p> <p>10 manage the golf course and it wasn't Senior Tour or</p> <p>11 American Golf. It was a different company. I can't</p> <p>12 remember the name, but if I remember, I'll let you</p> <p>13 know. It's in the top of my head.</p> <p>14 Q. Okay. But you acquired the option in '06</p> <p>15 but you didn't have anything to do with the</p> <p>16 operations of the golf course, or did you, after '06?</p> <p>17 A. Troon is the company.</p> <p>18 Q. Troon? Yeah, Troon Golf.</p> <p>19 MR. JIMMERSON: Troon. T-R-O-O-N.</p> <p>20 BY MR. JIMMERSON:</p> <p>21 Q. Troon. It's a golf course management</p> <p>22 company</p> <p>23 A. That's who at the time was negotiating --</p> <p>24 at the time we acquired the option, that's who was</p> <p>25 interested in it. That's my belief.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. This was just an oral conversation you had</p> <p>2 with Billy?</p> <p>3 A. I have a great -- I had and have a great</p> <p>4 relationship with the family, and most of my deals</p> <p>5 with them are like that. {Handshakes, and this is</p> <p>6 the way we did our business.</p> <p>7 Q. And that would have been -- you had that</p> <p>8 conversation with Mr. Bayne somewhere in the summer</p> <p>9 of 2014?</p> <p>10 A. Yes.</p> <p>11 Q. And then when did you -- I guess when did</p> <p>12 he sort of formally put it to you, that they were</p> <p>13 going to ask you to exercise the option?</p> <p>14 A. A few months later. I believe it was</p> <p>15 three months, four months later or something. Maybe</p> <p>16 late spring when I got the call.</p> <p>17 Q. Okay.</p> <p>18 A. And then they -- they had a serious</p> <p>19 discussion. He called me again and said, Listen, I'm</p> <p>20 preparing a contract -- or a contract, I don't know</p> <p>21 who did it, to take over and then we started looking.</p> <p>22 We had 90 days. I think we started actually earlier</p> <p>23 on the property so we had enough time. When they</p> <p>24 gave me the heads up, we started looking at the</p> <p>25 property again..</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. After you acquired the option, did you --</p> <p>2 have any -- did you or your companies have any</p> <p>3 involvement in the management of their operation of</p> <p>4 the golf course?</p> <p>5 A. I had no involvement at all at the golf</p> <p>6 course.</p> <p>7 Q. Okay. And do you recall which of your</p> <p>8 entities the option was held by?</p> <p>9 A. I don't recall.</p> <p>10 Q. But it was an entity that you controlled?</p> <p>11 A. It must be -- it was probably a single</p> <p>12 purpose LLC or something coming on. I don't recall.</p> <p>13 I don't recall the name. I usually don't do that.</p> <p>14 Q. So when did you first discuss with the</p> <p>15 Peccoles exercising the option to purchase the golf</p> <p>16 course property?</p> <p>17 A. I'd been contacted by Billy {Bayne which</p> <p>18 tells me, listen, I got problems with the golf course</p> <p>19 and I may put it to you. I just want you to get the</p> <p>20 heads up. I'm in discussion with family. It came up</p> <p>21 and I want to give you notice. And that was at least</p> <p>22 summer of 2014, I believe.</p> <p>23 Q. Was that -- did you get any form of</p> <p>24 writing from them?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. All right. So who was handling the due</p> <p>2 diligence for you?</p> <p>3 A. Frank Pankratz was managing entitlements</p> <p>4 and property research and -- so Frank and other</p> <p>5 professionals that were hired for it.</p> <p>6 Q. Did you have any law firms representing</p> <p>7 you?</p> <p>8 A. I believe that Sklar -- somebody at</p> <p>9 Sklar's office was {walking because it may have been</p> <p>10 in conflict with somebody who represents the family.</p> <p>11 They all agreed that's who was representing to {</p> <p>12 Q. So somebody in {Allen's office was</p> <p>13 representing you?</p> <p>14 A. Yes.</p> <p>15 Q. All right. And who was representing the</p> <p>16 Peccoles?</p> <p>17 A. Somebody at Allen Sklar's office.</p> <p>18 Q. So this due diligence that was done, that</p> <p>19 was Mr. Pankratz's responsibility?</p> <p>20 A. It was a collective responsibility in the</p> <p>21 company. Todd Davis did research. Title companies</p> <p>22 did research. Frank Pankratz did research.</p> <p>23 Ultimately all the information flowed to Frank</p> <p>24 Pankratz to a management team to, you know, Vicki and</p> <p>25 myself. We were pretty involved with thing. A lot</p>

<p style="text-align: right;">Page 34</p> <p>1 of people were involved.</p> <p>2 Q. And when did you close on the transaction?</p> <p>3 A. I believe that we closed early April '15.</p> <p>4 Q. Early April of '15?</p> <p>5 A. Yeah. I think at one point the families</p> <p>6 say that -- or we concluded with the family that they</p> <p>7 wanted us to buy the companies and not what we had an</p> <p>8 option for for the property, so we took on the</p> <p>9 liabilities too. So that's what we had to buy. So,</p> <p>10 you know, basically they said just -- you remind me</p> <p>11 during this conversation and I'm remember everything</p> <p>12 I think we purchased -- we purchased the companies</p> <p>13 and not the assets, the golf course itself, the real</p> <p>14 property, is the option purchase -- option to</p> <p>15 purchase was?</p> <p>16 Q. So you purchased the entity that owned the</p> <p>17 golf course land?</p> <p>18 A. That owned the golf course and all the</p> <p>19 liabilities and the -- the reason we couldn't is</p> <p>20 because there was a piece of property in there --</p> <p>21 there was a piece of property there was a contract on</p> <p>22 that there was an obligation, post closing obligation</p> <p>23 that needed to be subdivided and gave Queensridge</p> <p>24 tower a piece of the property and gave a portion of</p> <p>25 the parcel to Fore Stars.</p>	<p style="text-align: right;">Page 36</p> <p>1 fix the infrastructure, the failing infrastructure.</p> <p>2 They didn't want to do it anymore. So we determined</p> <p>3 that we could buy the golf course, I believe, for</p> <p>4 seven and a half million. And we also at the time</p> <p>5 acquired -- inquired about buying water rights that</p> <p>6 the Peccoles have in another company, another entity</p> <p>7 that owned, you know, certain water rights, and we're</p> <p>8 going to -- we negotiated the purchase for that too.</p> <p>9 Q. Okay. So you -- what you ended up really</p> <p>10 purchasing was you purchased the entity known as Fore</p> <p>11 Star; is that correct?</p> <p>12 A. We purchased -- during the closing, we</p> <p>13 purchased a few entities, a couple entities minimum.</p> <p>14 It may be more.</p> <p>15 Q. Was Fore Star --</p> <p>16 A. I think Fore Stars. I think we bought</p> <p>17 WRL, which is -- it's a different company. And it</p> <p>18 has no real property, no real estate property. And</p> <p>19 we purchased -- I don't remember if there was a</p> <p>20 manager to it. I remember some discussion about who</p> <p>21 is managing who is what if we need to purchase that</p> <p>22 too. I don't recall the entire structure.</p> <p>23 Q. Okay. And at the time that you -- why did</p> <p>24 you purchase WRL?</p> <p>25 A. Because I want to own water rights.</p>
<p style="text-align: right;">Page 35</p> <p>1 So there was no way to do it -- to buy the</p> <p>2 real property and Peccole said you're going to have</p> <p>3 to buy the company with all its liabilities including</p> <p>4 the contract, so we purchased the company.</p> <p>5 Q. Got it. And that contract was to take a</p> <p>6 portion of the property and put it in the entity that</p> <p>7 owned the tower, Queensridge --</p> <p>8 A. There's -- in the initial parcel map, you</p> <p>9 see a small parcel. There was two different zonings</p> <p>10 on the property. They never do this. They've done</p> <p>11 it but prior to our dealings. So there were two</p> <p>12 different zonings, two different distinct categories</p> <p>13 of zoning on the property. And under the law,</p> <p>14 the new law, at least the law, the way the city does</p> <p>15 business, it had to be two separate properties. A</p> <p>16 portion of it was in another property because of the</p> <p>17 business end, so the lot had to be amended.</p> <p>18 So it was a shifting of lot lines to</p> <p>19 capture that piece of property -- Queensridge Towers,</p> <p>20 whatever they deserved and gave Fore Stars what it</p> <p>21 deserved, and then the price was changed because at</p> <p>22 that point everybody knew it was the golf course.</p> <p>23 The Peccoles admitted that the golf course lost last</p> <p>24 year 1,200,000. They had to put four million dollars</p> <p>25 into it in the year prior to it to fix the greens and</p>	<p style="text-align: right;">Page 37</p> <p>1 Otherwise I would have to go buy them.</p> <p>2 Q. So WRL was the entity that held the water</p> <p>3 rights?</p> <p>4 A. WRL is the company that owned the water</p> <p>5 rights, yeah.</p> <p>6 Q. Okay. And did -- your contract to</p> <p>7 acquire, did it break out -- you paid seven and a</p> <p>8 half million for the golf course, Fore Star?</p> <p>9 A. Fore Stars, yes.</p> <p>10 Q. And then you had separate consideration</p> <p>11 you paid for these other entities?</p> <p>12 A. Yes, correct.</p> <p>13 Q. Do you recall how much you paid for WRL?</p> <p>14 A. I think it happened to be also seven and a</p> <p>15 half million. It was an arbitrary number.</p> <p>16 Q. All in, under your were, option you to pay</p> <p>17 15. Is that it?</p> <p>18 A. No, it's not. The numbers changed.</p> <p>19 Before when we were buying only the golf course for</p> <p>20 15 and we would have leased the water rights.</p> <p>21 Q. Okay.</p> <p>22 A. And in 2015, we were buying the company</p> <p>23 that owns the real estate for seven and a half</p> <p>24 million and then we buy water rights for seven and a</p> <p>25 half million. So we didn't have to lease the water</p>

<p style="text-align: right;">Page 38</p> <p>1 rights. Because the Peccoles realized the golf 2 course have --- 3 Q. So you got the golf course at a better 4 price than what the original option called for? 5 A. That's right. 6 Q. Got you. Okay. 7 MR. JIMMERSON: For what it matters, I 8 really think the close is about March 2 and not 9 April. Within 30 days. 10 MR. BICE: That's fine. He said he 11 thought it was around that time. That's fair. 12 BY MR. BICE: 13 Q. Okay. So when you were doing your due 14 diligence on the property, I assume you were not 15 buying this to run a golf course? 16 A. That's not exactly true. 17 Q. Okay. So you -- at the time that you were 18 purchasing it, you were -- you may have been willing 19 to run a golf course? 20 A. My original idea was to try to build a 21 very luxurious 18 hole golf course and develop the 22 lower nine holes, including a piece of many acres. I 23 can't remember, maybe 12 acres behind my house that 24 would be free because it's part of the lower nine and 25 develop that and run the golf course on the rest.</p>	<p style="text-align: right;">Page 40</p> <p>1 company, and they came in and spent a few weeks on 2 the property and they do due diligence and they went 3 back to Florida, I believe, and they come back and 4 made a presentation and toward the end of December of 5 2014, to my recollection. 6 Q. They made a -- they made a recommendation? 7 A. A presentation. 8 Q. Presentation? 9 A. The findings. 10 Q. The findings in December of '14? 11 A. Yes. 12 Q. AND what were their findings to you? 13 A. Their findings were that he had -- I 14 remember that we were sitting around the table like 15 that. And they were on one side. And this man that 16 came was named Bobby, was his name, Bobby Weed. So 17 this gentleman said I've got bad news actually. I 18 think that this golf course is not going to make it. 19 And I think that -- because he saw the proposal to 20 put a lot of trees on the sides on the golf course. 21 And I don't think it's going to make it. And he gave 22 us the bad news are where the golf course is, what 23 the infrastructure looked like, and then he told us 24 what the industry is doing and where is it heading, 25 you know, in published opinions and his opinion. And</p>
<p style="text-align: right;">Page 39</p> <p>1 But in the due diligence -- 2 Q. So you -- so when you were doing this due 3 diligence to acquire the property, was your original 4 plan that you were going to eliminate nine holes and 5 then just have an 18 hole luxury golf course? 6 A. That was the original plan. 7 Q. That was your original plan. Okay. 8 A. The original. It's not a plan. It's all 9 conceptual because, you know, when you purchase a 10 piece of property, you think what to do with it. 11 Q. I understand. But that was originally 12 what you hoped to do? 13 A. That's what I was hoping to do, that's 14 correct. 15 Q. When did you -- when did that sort of -- 16 when did you change what you ultimately were going to 17 do? 18 A. I believe around November or December of 19 2014, Frank had hired a very able and qualified golf 20 builder. People that do due diligence on golf 21 courses manage golf courses but they also do due 22 diligence. I can't recall the name of the 23 individual. It's on the top of my head but I can't 24 get it but in a second I'll get the name. I'll let 25 you know when I get the name. So we hired the</p>	<p style="text-align: right;">Page 41</p> <p>1 I remember him saying that five and a half golf 2 courses have to be closed in this town just for the 3 other ones to make it but he suspected that even more 4 are going to close because the industry is in 5 trouble. That's the first time. 6 Q. And that was in December of '14? 7 A. Yes. 8 Q. And how much time -- when he made that 9 presentation to you, how much time did you have left 10 on the option? 11 A. I think we closed on March, is it? Early 12 March. 13 Q. Okay. Early March. So did you get an 14 extension of the closing at any point in time? 15 A. No, I don't think there was an extension 16 because we purchased a company, so the option was not 17 there anymore. 18 Q. Got it. 19 A. I think that's what happened. 20 Q. Okay. Okay. Because your option was to 21 purchase the land? 22 A. That's correct. 23 Q. And you ultimately didn't even exercise 24 the option because you ended up purchasing the 25 company?</p>

<p style="text-align: right;">Page 42</p> <p>1 A. That's what I think happened.</p> <p>2 Q. So you really weren't -- at that point in</p> <p>3 time, it sounds like you weren't really under time</p> <p>4 restrictions, or were you?</p> <p>5 A. I think so. I think they gave us -- I</p> <p>6 can't remember. They gave us 90 days, 120 days,</p> <p>7 whatever, to close, and during that period of time we</p> <p>8 closed. As I mentioned to you prior, we have done --</p> <p>9 we started due diligence. When he gave me the heads</p> <p>10 up, we started due diligence, including, I think,</p> <p>11 hiring this company, the Weed company.</p> <p>12 Q. And did the Weed Company give you -- was</p> <p>13 it a written presentation?</p> <p>14 A. I believe it was Weed. Weed. W-E-E-D.</p> <p>15 Q. Bobby Weed?</p> <p>16 A. Bobby Weed. Frank Pankratz would know.</p> <p>17 MR. JIMMERSON: Bad name for a golf</p> <p>18 course.</p> <p>19 BY MR. BICE:</p> <p>20 Q. Did he give you a written presentation?</p> <p>21 A. I believe he also left a written document.</p> <p>22 They had extensively drawn on the board all the</p> <p>23 issues one by one, prepared it, hour and a half,</p> <p>24 couple hours. I remember this meeting because it was</p> <p>25 so memorable because of the bad news. But they</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. And what did you find out in 2001?</p> <p>2 A. We got into -- you know, a conversation</p> <p>3 and not comfortable conversation with the Peccoles,</p> <p>4 and they said, look at your documents. You purchased</p> <p>5 the property. Look at your book and see what it is.</p> <p>6 This property is developable any time. You have no</p> <p>7 promises. No issuances. And I remember I said, I'm</p> <p>8 not closing the rest of the 24 lots, I think I had</p> <p>9 left to close on that street, and they said, Well,</p> <p>10 then don't buy them. Just give me a deed restriction</p> <p>11 on this section so I can have it. They said</p> <p>12 absolutely not. Other people asked for them. People</p> <p>13 that live behind you in big homes here asked for the</p> <p>14 same thing and didn't get it. We're never going to</p> <p>15 put a deed restriction on the property. I wasn't</p> <p>16 happy with that conversation with Greg Gorjian, so I</p> <p>17 went to talk to Larry Miller and basically got the</p> <p>18 same answer from him.</p> <p>19 Q. So you attempted -- when you were</p> <p>20 purchasing lots, you attempted to get a restriction</p> <p>21 on the golf course property?</p> <p>22 A. I wanted to get a restriction, deed</p> <p>23 restriction, and the Peccoles refused to grant it</p> <p>24 because the property is developable and valuable.</p> <p>25 Q. Did you attempt to get that restriction</p>
<p style="text-align: right;">Page 43</p> <p>1 prepared every line item on the board and it was a --</p> <p>2 huge board of here's where you are and here's what we</p> <p>3 think you should do.</p> <p>4 Q. All right. So when you got that bad news,</p> <p>5 did you contemplate canceling the deal?</p> <p>6 A. No, not at all.</p> <p>7 Q. Why not?</p> <p>8 A. Because I wanted the property.</p> <p>9 Q. Why did you want the property?</p> <p>10 A. I had been living on it, and I knew that</p> <p>11 land rights exist on this piece of property, and if I</p> <p>12 don't do it, somebody else will do it and develop it.</p> <p>13 Q. When did you know that the land rights</p> <p>14 existed on the property?</p> <p>15 A. 2000 or there about, that time frame.</p> <p>16 Q. How did you know that?</p> <p>17 A. Peccoles moved to develop a piece of the</p> <p>18 golf course in Queensridge -- the connection between</p> <p>19 Queensridge north and south. I wanted a piece of</p> <p>20 property on a portion of the golf course that was not</p> <p>21 used and they started grading it and there was a big</p> <p>22 hula hooo and I was building a few homes right behind</p> <p>23 it, four or five homes, and that's -- you know,</p> <p>24 that's how I find out what I -- you know, what the</p> <p>25 land rights are of the property.</p>	<p style="text-align: right;">Page 45</p> <p>1 from them in writing?</p> <p>2 A. I inquired about getting the restriction</p> <p>3 and then I learned about the vast zoning rights of</p> <p>4 this piece of property. They clearly walked me</p> <p>5 through the documents. We had an attorney reviewing</p> <p>6 the documents and they said this property is also</p> <p>7 developable, just like the Peccoles are telling you.</p> <p>8 So I did not ask any more to restrict views or</p> <p>9 anything. That's it. And I decided to move forward</p> <p>10 and close the rest of the lots.</p> <p>11 Q. So that was in 2001?</p> <p>12 A. That was the first time, yes.</p> <p>13 Q. And so your testimony is that you knew in</p> <p>14 2001 that the golf course property was developable;</p> <p>15 is that right?</p> <p>16 A. That's correct. You know, now that I'm</p> <p>17 talking about it, I just remember, and I want a very</p> <p>18 clear record here, in 2006 we also acquired a</p> <p>19 restriction on the property, on the properties right</p> <p>20 below the towers for the time period of the option.</p> <p>21 Only for the piece that would disturb, you</p> <p>22 know -- where the nine holes is, because we were very</p> <p>23 concerned that it would -- Peccole would try to build</p> <p>24 in our tower right there on the front. He's going to</p> <p>25 hurt Queensridge towers. And since we had -- we</p>

<p style="text-align: right;">Page 46</p> <p>1 bought their shares, we restricted it.</p> <p>2 Q. You wanted a restriction so he couldn't</p> <p>3 build something on that property?</p> <p>4 A. For the time that we have the option. If</p> <p>5 they decide not to sell us the property, then they</p> <p>6 can build it themselves.</p> <p>7 Q. Okay. So in 20 -- so from 2001 forward,</p> <p>8 how many houses -- how many lots did you buy and</p> <p>9 build on?</p> <p>10 A. Probably about 29, 29 or 30 lots.</p> <p>11 Q. And so do you know, was -- did you have</p> <p>12 anything to do with Mr. Binion's home?</p> <p>13 A. No.</p> <p>14 Q. How about any of the plaintiffs in this</p> <p>15 lawsuit, did you have anything to do with any of</p> <p>16 their homes?</p> <p>17 A. No. Not at all.</p> <p>18 Q. Okay. How about -- do you know Dale</p> <p>19 Reisner (ph)?</p> <p>20 A. I do.</p> <p>21 Q. Did you have anything to do with his home?</p> <p>22 A. Not as a builder. I just helped him when</p> <p>23 he had problems in his house.</p> <p>24 Q. How did you help him?</p> <p>25 A. He asked me to be -- he asked me to help</p>	<p style="text-align: right;">Page 48</p> <p>1 had buyers when this was going on. So the people</p> <p>2 that I sold at the time and after knew the</p> <p>3 possibility the golf course would be built.</p> <p>4 Q. But do you know whether you discussed that</p> <p>5 with any of them?</p> <p>6 A. Yes, I did. Of course I did.</p> <p>7 Q. Who did you discuss it with?</p> <p>8 A. The own -- I can tell you by lots. I</p> <p>9 can't remember the names anymore of the buyers. The</p> <p>10 owner of lot number 5. I can't remember the buyer's</p> <p>11 name, but I can remember the house. The gentleman's</p> <p>12 name is Milton Homer. And a gentleman named -- that</p> <p>13 bought lot four at the same time those houses were</p> <p>14 already sold and being built when that lot was going</p> <p>15 on. We discussed with people -- buyers coming and</p> <p>16 going the possibility of the golf course being</p> <p>17 developed. I think Clyde Turner was involved too.</p> <p>18 Q. You say he knew that the golf course was</p> <p>19 going to be developed?</p> <p>20 A. Yes.</p> <p>21 Q. And when did he learn that?</p> <p>22 A. He learned it when he purchased -- what I</p> <p>23 understood at the time from all the commotion over</p> <p>24 the lot, because it was bordering his house, that he</p> <p>25 had asked for the restriction on the golf course and</p>
<p style="text-align: right;">Page 47</p> <p>1 him out on issues he had at his house. I became an --</p> <p>2 expert witness or something.</p> <p>3 Q. And did he pay you to do so?</p> <p>4 A. No, I didn't want --</p> <p>5 Q. Just helping him out?</p> <p>6 A. Yeah.</p> <p>7 Q. Now, of those -- all those lots -- of</p> <p>8 those 29 to 30 lots that you sold after 2001 and that</p> <p>9 you built houses on, did you tell any of those people</p> <p>10 that the golf course was developable?</p> <p>11 A. It's recorded on the deed. It expressly</p> <p>12 shows in the -- in the book that you get with it and</p> <p>13 it shows the development rights on this piece of</p> <p>14 property.</p> <p>15 Q. So --</p> <p>16 A. So we give all disclosure, disclosures,</p> <p>17 proper disclosures and signed the individuals of</p> <p>18 every single sheet that had to be signed and initial,</p> <p>19 including the initials that the zoning exists.</p> <p>20 Q. And did you -- again, did you disclose --</p> <p>21 did you talk to any of those people to whom you were</p> <p>22 selling these homes that the golf course could be</p> <p>23 developed?</p> <p>24 A. I don't know that I discussed the golf</p> <p>25 course could be developed but absolutely because I</p>	<p style="text-align: right;">Page 49</p> <p>1 the Peccoles refused to give it to him. He had</p> <p>2 attorneys that negotiated it and was trying to get a</p> <p>3 release and they did not. They said, don't buy the</p> <p>4 lot. And in 2001 it came back. And when he</p> <p>5 discussed it with them again, they told me -- because</p> <p>6 we were trying to organize and I believe I talked to</p> <p>7 Clyde Turner at the time to try to stop it. And the</p> <p>8 Peccoles told me that Clyde Turner had -- you know,</p> <p>9 had known about these rights when he purchased the</p> <p>10 property and his attorney was trying to negotiate a</p> <p>11 special provision for him and others in the</p> <p>12 neighborhood as well.</p> <p>13 Q. So did you ever talk to Clyde Turner about</p> <p>14 the fact that the golf course was developable?</p> <p>15 A. In 2001?</p> <p>16 Q. Yes. Okay.</p> <p>17 A. I don't think we talked about the golf</p> <p>18 course was developable. Let's make -- you know, the</p> <p>19 piece we're dealing with, those acreage behind -- you</p> <p>20 know, the documents, the property's basically</p> <p>21 developed. The property's developed. There's zoning</p> <p>22 and there's land rights.</p> <p>23 Q. Okay. The property upon which the golf</p> <p>24 course sits?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. You and Mr. Turner discussed the fact that 2 it was developable? 3 A. Yes. 4 Q. In 2001? 5 A. Yes. 6 Q. Did you do that in writing? 7 A. No. 8 Q. Anyone else that you can recall in 2001 9 discussing that with? 10 A. In the neighborhood? 11 Q. Yes. 12 A. Or outside the neighborhood? 13 Q. Inside the neighborhood. Let's deal with 14 that first, in 2001. 15 A. I don't recall. We spoke, many of us, 16 because there were a lot of people were concerned 17 there was a lot going on, and in the end, you know, 18 fortunately for us, the golf course operator could 19 not have -- could not have -- get out of his lease. 20 And there was an easement that was tied up to the 21 lease and he couldn't get the lessor to release it 22 and they had to give up. 23 Q. Which lot are you talking about? 24 A. A portion of the golf course. They were 25 taking about an acre, really an acre and a half just</p>	<p style="text-align: right;">Page 52</p> <p>1 rights of the golf course. 2 Q. That would have been 2001? 3 A. Yes. I remember we had an additional set 4 of attorneys at the time. 5 Q. All right. So you then believed, as of 6 2001, that the golf course property could be 7 developed into residential; is that right? 8 A. I believe that the property -- I knew, 9 yes. The answer would be yes. But what I knew is 10 after carrying out the (inaudible) zoning, and that's 11 what the attorneys all concluded. 12 Q. So in 2015 when you're closing on the 13 property, in March it sounds like in 2015, was it 14 your intent to purchase the property or were you 15 closing on the entity? Was it your intent to acquire 16 the property for residential development? 17 A. The front for mixed use type of 18 development. And the back, at the time, when we 19 closed, we only knew we were going to have to develop 20 the whole thing, yes, but the mixed use on the front, 21 the type of mixed use and building a residential, low 22 density residential, yes. 23 Q. Just so the record's clear, when you're 24 talking about the front, what -- which property are 25 you talking about?</p>
<p style="text-align: right;">Page 51</p> <p>1 about and trying to develop it. They graded it -- 2 actually. They brought many trucks of dirt and they 3 raised the dirt and -- 4 Q. And they weren't able to do so? 5 A. Because the golf course was on the lease 6 which encumbered the property and the lessee would 7 not release that from its lender. So that was the 8 reason that lot never came to fruition. 9 Q. Okay. Anyone else in the neighborhood, 10 inside the neighborhood in 2001 you say you discussed 11 that with? 12 A. I do. I don't recall the names because 13 people at the time, they were not my customers or 14 Clyde Turner that I knew from previous dealings, I 15 wouldn't know. 16 Q. How about people outside of the 17 neighborhood? 18 A. Yes, attorneys. 19 Q. Attorneys? 20 A. Attorneys we hired to look at documents at 21 that time. 22 Q. And who was that? 23 A. I don't recall the name of the attorneys. 24 But I think that subsequently we talked to Sklar 25 about those -- you know, about these items about the</p>	<p style="text-align: right;">Page 53</p> <p>1 A. About 70 acres in the front. 2 Q. The 17 acres in the -- 3 A. 17 -- at the time we closed, we knew we 4 were going to develop the property in pieces, you 5 know, over many years. We did not know we're going 6 to do this in a development agreement. There was no 7 development agreement idea or get zoning for the 8 property in one shot. But, you know, we had an idea 9 of what's going to happen with the property over the 10 years, how we're going to develop it, and that's when 11 we went to the council meeting. 12 Q. But when you closed on the property or 13 when you closed on the entity, you acquired the 14 rights on the property, it was your intention to have 15 mixed use, which you're saying in the front, which is 16 right along Rampart? 17 A. Correct. 18 Q. And then the back, which is where the 19 residences already are, the larger residences, you 20 were going to have low density residences in that 21 area? 22 A. We didn't know how many, what size, what 23 type. But the idea is we put low density and high 24 density in front. 25 Q. And the front being along Rampart, that's</p>

<p style="text-align: right;">Page 54</p> <p>1 right across -- Tivoli is right across the street, 2 correct? 3 A. The 70 acres, we treat it as the front. 4 Q. The 70 acres you treated? 5 A. 70 acres we treat as the front, out of 6 which is 17 we wanted to develop because the market 7 was right. Everything else would be for a later 8 point. 9 Q. So the 17 acres you would develop first 10 and then you said the remainder of the 70 you would 11 develop at a later point in time? 12 A. That was the idea, yes. 13 Q. So as part of -- 14 A. I want to make sure the record is clear. 15 I don't think we would have developed the remainder 16 of the 70 acres in one shot. The idea was to get 17 another parcel map, propose the project separately on 18 each piece, you know, entitle another piece. Get a 19 separate parcel and then do another piece. 20 Q. And then you -- was it your intention -- 21 was to start at the front and then just keep moving 22 back? 23 A. No. The intention was to go to where the 24 market would allow a project to be developed. So you 25 have the project in front of the -- the intention was</p>	<p style="text-align: right;">Page 56</p> <p>1 A. We're going back in time because right now 2 we were post closing. 3 Q. Fair enough. We're backing up. Before 4 you closed, before you acquired the entity, was there 5 any due diligence in terms of looking at the city's 6 zoning that existed on the property? 7 A. Yes. 8 Q. Was there anything done in terms of 9 looking at the city's land use on the property? 10 A. I don't believe so. The issue -- the 11 zoning verification letter. We did a lot -- we went 12 to the city and said, Guys, here's the deal. We just 13 got -- you know, here's the deal we have. We can 14 purchase this piece of property. Because here's what 15 the industry is, and the Peccoles are not doing too 16 well with the property. They want to sell it and we 17 want to know if the property is developable or not. 18 We know the property is developable. They proposed 19 some development on it after that. If the property's 20 not developable and you have any contract or any 21 easement or anything that can prevent the property 22 from being developed, we want to know because we 23 don't want to purchase it. 24 Q. And who at the city did you have that 25 conversation with?</p>
<p style="text-align: right;">Page 55</p> <p>1 to develop the front project because we had an -- -- 2 interest in that piece of property by a third party. 3 And we could have started at the same time. We had 4 an interest -- you know, once we have an interest in 5 the back, we would start in the same time period. 6 Q. The property in the front, that's the 70 7 acres? 8 A. There is three -- there's three. 9 Q. Parcels now? 10 A. No. Two distinguished zonings for the 11 properties. One is PD, planned development, one of 12 the smaller pieces of property, and then there is a 13 {RPD. 14 Q. Well, here's what I'm trying to 15 understand. You just testified a minute ago that you 16 had an interest in the front property by a third 17 party. 18 A. Correct. 19 Q. And who was that? 20 A. It was Calida properties were interested 21 to purchase from us 17 acres, 17 and a half, 18, we 22 didn't know at the time, to put multiple -- 23 multifamily residential for rent. 24 Q. So as part of the due diligence before you 25 started to acquire the entity, do you know --</p>	<p style="text-align: right;">Page 57</p> <p>1 A. With the head of planning. 2 Q. That would be Mr. Perrigo? 3 A. Mr. Perrigo. I also believe that we had 4 the conversation with Mr. Beers, and I believe that I 5 sat here and heard that he doesn't recall any 6 meetings with us on this project prior to almost a 7 year later or nine months later, eight months later. 8 But I know that we went and spoke to him and we spoke 9 to -- spoke to Councilman Ross and Councilman Stavros 10 and the mayor, Mr. Kaufman and the last councilman. 11 What's his name, MacDonald? 12 Q. Tarkanian? 13 A. Mr. MacDonald. And Mr. Tarkanian. Mrs. 14 Tarkanian. Yes, we have discussed with each one of 15 them separately, you know, meetings with them. 16 Here's what we got. We are being offered this piece 17 of property and here's what we're planning to do with 18 it because this was the situation. And we want to 19 know what you're thinking. 20 Q. Okay. So you discussed with each of the 21 council members, including Mr. Beers, before March of 22 2015, what you wanted to do? 23 A. I think it was in 2014 and then again in 24 2015. I think in December of 2014 we spoke to them 25 and then in the week prior to closing we went again</p>

<p style="text-align: right;">Page 58</p> <p>1 to speak with the council of what we want to do. We 2 wanted to develop the front, the multifamily. We are 3 going to keep the property -- we think we can 4 maintain a lease on the property, and we're going to 5 come up with projects in the future, with projects 6 where we go, but we are going to protect the 7 neighbors and protect my house, and this is how we're 8 going to do it.</p> <p>9 We think that multifamily will belong in 10 this area and low level density belongs in the back.</p> <p>11 Q. So did you have any sort of written plans 12 to show them?</p> <p>13 A. No.</p> <p>14 Q. This was just -- did you show them 15 anything in writing when you met with them?</p> <p>16 A. Yes.</p> <p>17 Q. What did you give them in writing?</p> <p>18 A. I think a Google map of the area. We 19 brought a large one, and we showed them what I want 20 to do.</p> <p>21 Q. And on the Google map of the area did you 22 kind of show them roughly where you were proposing 23 these various design elements?</p> <p>24 A. Concept. Here's the concept. We want to 25 know if it's okay with you. What do you think about</p>	<p style="text-align: right;">Page 60</p> <p>1 idea. We want to see more. And I think we will 2 support something like that.</p> <p>3 Q. So when you purchased it, when you 4 purchased the interest in the property, you didn't 5 believe -- let me rephrase it this way.</p> <p>6 When you purchased the property, you 7 didn't do so in reliance on anything that any of the 8 council members had told you?</p> <p>9 A. Of course I did.</p> <p>10 Q. You did?</p> <p>11 A. I relied on the letter that I got from the 12 city. And I relied on what we heard from council 13 from all seven members twice. I actually recall 14 clearly five members that I met with the second time 15 around, but I believe that we met with all seven 16 members on the subsequent meeting that we had with 17 the city prior to closing and showed them the concept 18 again. But if somebody said, no, I will never go for 19 it, we would have probably got more of a discount.</p> <p>20 Q. What do you mean you would have probably 21 gotten more of a discount if somebody had said, no, 22 we will never go forward?</p> <p>23 MR. JIMMERSON: Let the record reflect 24 he's smiling.</p> <p>25 THE WITNESS: We would renegotiate or</p>
<p style="text-align: right;">Page 59</p> <p>1 it? Here's -- we basically showed them the change -- 2 and this is our idea of the -- you know, very long 3 run development of golf course. That exactly was the 4 understanding.</p> <p>5 Q. And did any of the council members express 6 any reservations about what you were telling them?</p> <p>7 A. No. As a matter of fact, I think we've 8 been complimented by every single one of them at that 9 time.</p> <p>10 Q. Did they all tell you they were in support 11 of it?</p> <p>12 A. They told us they think it's an amazing 13 idea of, you know, converting green -- very low 14 density and putting density where density belongs.</p> <p>15 Q. Did any of them indicate to you that they 16 were opposed to it?</p> <p>17 A. No.</p> <p>18 Q. Did they indicate to you -- any of the 19 council members indicate to you that they would 20 support it?</p> <p>21 A. No. They all said they need to learn 22 more. They have to work with staff. And work 23 with -- no, not at all. They liked the idea of it. 24 I don't think they said -- yeah, as a matter of fact, 25 I think that a few of them said this is the greatest</p>	<p style="text-align: right;">Page 61</p> <p>1 rethink where we are with this property.</p> <p>2 BY MR. BICE:</p> <p>3 Q. So if any of the council members had 4 indicated to you they were opposed to this, you might 5 not have purchased the property?</p> <p>6 A. I don't know. I shouldn't have said it. 7 I don't know what I was thinking at the time. I 8 don't know what I would have thought. But I can tell 9 you that nobody opposed. I can tell you that we got, 10 in some cases, Hail does a great visionary for that 11 concept and in some cases they say we want to see 12 more. We want you to work with planning. We want 13 you to take it to the neighbors early, and we've done 14 all of that.</p> <p>15 Q. So before you purchased it, did you talk 16 to any of the homeowners?</p> <p>17 A. Yes, I did.</p> <p>18 Q. And who are the homeowners that you talked 19 with and told them your plans?</p> <p>20 A. I met with various homeowners. I can't 21 tell you exactly who. In particular I remember 22 meeting with Clyde Turner and Howard Bullock, his 23 partner.</p> <p>24 Q. And Howard Bullock?</p> <p>25 A. Right. I met with others but the</p>

<p style="text-align: right;">Page 62</p> <p>1 important meeting for me was with them because Clyde 2 lives there and he's a very -- he's a developer and I 3 I had a lot of respect for him at the time, and I 4 wanted to meet with him prior to closing. 5 Q. And when did you meet with Mr. Turner? 6 A. I believe it was very close to closing, if 7 not within a week of closing. 8 Q. Before closing or after? 9 A. I believe it to be before closing. My 10 recollection is it was before closing. 11 Q. Okay. 12 A. Because I think I said we're about to 13 close on this piece of property. Here's what it is. 14 Here's what's going on. And shared our vision what 15 we think the concept would be, you know, the concept 16 would be behind -- you know, on the 180, as we all 17 call the 180. 18 Q. And what was the vision that you shared 19 with him? 20 A. That we would landscape the property. 21 That we would landscape it like the 180 to create 22 canyons on the property because it's already 23 canyonee, so enhance the canyons and create 24 elevations and create topography on it. And then put 25 landscaping like Shadow Creek and build a very low</p>	<p style="text-align: right;">Page 64</p> <p>1 closed -- 2 Q. I'm trying to figure out who you say you 3 spoke with before you closed. 4 A. I can't recall the timing exactly but at 5 the time that I met with Mr. Turner, I met with 6 others at the time. So at the same time I met with 7 him, other people are coming in. Maybe the Roseners. 8 Q. The Roseners? 9 A. Yes. I think the Roseners I spoke with. 10 And like I said, that was the concept. 11 Q. And they all indicated they supported it? 12 A. I can tell you Clyde Turner did say that. 13 I don't recall what, you know, Dale or his wife said. 14 I can tell you that nobody opposed it. 15 Q. Well, did you show them any drawings or 16 how you were going to move the property -- or how you 17 were going to build out the property? 18 A. No, I don't think so. I think there was 19 only a Google map at the time and I was just drawing 20 on the Google map a piece of paper, a large sheet, 21 the concept. 22 Q. So at the time then -- let's use this 23 exhibit to give a point of reference. 24 (Exhibit Number Num was marked.) 25 ///</p>
<p style="text-align: right;">Page 63</p> <p>1 number of homes on these areas in between. 2 So what the homeowners get, what we get, 3 we get a beautiful landscaping bordering our lots and 4 a view of fascias. You know, we hide the house and 5 then you can see it. And then on the perimeter, 6 where it's a high traffic area, we will build low 7 density and then we'll shift densities into the 8 front. We'll start in and shift to the front. 9 But that was the concept and I 10 particularly remember that Clyde Turner goes, Wow. I 11 think it's going to work. He said to me a few times, 12 I think it's going to work if you hire this landscape 13 architect, and I think that you need to take a 14 helicopter from here to Shadow Creek and back and 15 that's how you're going to sell those estates. 16 That's what he told me. That's my clear recollection 17 of that meeting. 18 Q. Any other homeowners other than Mr. Turner 19 you spoke to? 20 A. I mentioned Howard Bullock. Yes, I met 21 with other owners. I can't recall their names. I 22 met with at least a dozen homeowners at the time. 23 Q. And when you say you met with a dozen, 24 that was before you closed on the property? 25 A. Either before -- either at the time I</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MR. BICE: 2 Q. Showing you what's been marked as Exhibit 3 Number 1, can you tell me what this is? 4 A. I believe it's a zoning notification on 5 four separate pieces of property. 6 Q. And did you request this from the city? 7 A. I believe my office asked for it. 8 Q. Okay. It says ENB companies but that 9 should probably be EHB Companies? 10 A. I don't know what it says. I didn't read 11 it. I just read the top. 12 Q. If you look at the address to where it's 13 sent, I assume that's just a typo, or is there an 14 ENB? 15 A. No. No. 16 Q. Fair enough. I just wanted to make sure. 17 You asked for a verification of the zoning 18 on the property, correct? 19 A. Right. 20 Q. Prior to purchasing -- prior to closing on 21 the transaction, did you know what the property's 22 designation was under the city's general plan? 23 A. I don't know. I don't recall. But I 24 don't think that we dealt with designations because 25 of the zoning. We had a -- we had a due diligence</p>

<p style="text-align: right;">Page 66</p> <p>1 and zoning supersedes everything above it.</p> <p>2 Q. Who told you that?</p> <p>3 A. The lawyers that did the due diligence.</p> <p>4 Q. So you relied upon their advice?</p> <p>5 A. I relied upon our understanding of the law</p> <p>6 and what the city says. The discussion was we want</p> <p>7 to know if we can build on this property. We want a</p> <p>8 letter telling us we can build this property. For</p> <p>9 that very reason you just mentioned right now we</p> <p>10 wanted this letter.</p> <p>11 Q. You wanted a letter to verify that you</p> <p>12 could build on the property?</p> <p>13 A. Mm-hmm.</p> <p>14 Q. And that's what you told the city when you</p> <p>15 requested this letter?</p> <p>16 A. We wanted a zoning verification letter</p> <p>17 because the city expected it. Hard zoning supersedes</p> <p>18 everything above it.</p> <p>19 Q. When did the city tell you that?</p> <p>20 A. December. Prior to December. We went to</p> <p>21 the city remember to -- to testify to it to</p> <p>22 Mr. Perrigo and asked him to tell us to go and do a</p> <p>23 study and figure out these parcels, these pieces of</p> <p>24 property, within the entity that we're purchasing,</p> <p>25 how developable. If the city has a contract, an</p>	<p style="text-align: right;">Page 68</p> <p>1 A. At the city.</p> <p>2 Q. The city?</p> <p>3 A. City planning department.</p> <p>4 Q. Do you remember if Peter Lowenstein was</p> <p>5 there?</p> <p>6 A. I think so. I don't remember. I don't</p> <p>7 want to make a record here for something I'm not for</p> <p>8 sure 100 percent. I know for sure that Mr. Perrigo</p> <p>9 was with others from his department and I'm sure 100</p> <p>10 percent that Mr. Pankratz and myself and somebody</p> <p>11 else was there.</p> <p>12 Q. Was Mr. Rankin there?</p> <p>13 A. Maybe.</p> <p>14 Q. Do you know Jim Lewis?</p> <p>15 A. Yes.</p> <p>16 Q. How do you know Mr. Lewis?</p> <p>17 A. Only from there.</p> <p>18 Q. Was he at that meeting?</p> <p>19 A. We don't refer to him as Mr. Lewis. We</p> <p>20 refer to him as Mr. Binion's attorney in the office.</p> <p>21 Q. Okay.</p> <p>22 A. He may be. I don't know.</p> <p>23 Q. All right. Let's take a break. Mr.</p> <p>24 Jimmerson wanted to take a break.</p> <p>25 THE VIDEOGRAPHER: The time is 3:37 p.m.</p>
<p style="text-align: right;">Page 67</p> <p>1 easement, an instrument that otherwise would prevent --</p> <p>2 construction on this piece of property.</p> <p>3 Q. So you asked Mr. Perrigo to do this</p> <p>4 research in 2014?</p> <p>5 A. Yes.</p> <p>6 Q. Who asked him?</p> <p>7 A. Frank and I in the meetings that we had.</p> <p>8 Q. Mr. Pankratz and yourself?</p> <p>9 A. I apologize, yes.</p> <p>10 Q. Was it just the three of you in this</p> <p>11 meeting?</p> <p>12 A. I believe there were more people.</p> <p>13 Q. Who else was there, do you remember?</p> <p>14 A. There were people on his side. And I'm</p> <p>15 not sure, but I think we had one more person or two</p> <p>16 more persons on our side. I think Al was on our side</p> <p>17 too. Al -- Mr. -- I can't remember his last name.</p> <p>18 MR. JIMMERSON: Mickal.</p> <p>19 THE WITNESS: Al Mickal.</p> <p>20 MR. JIMMERSON: When you have time --</p> <p>21 THE WITNESS: Mr. Harrison was there.</p> <p>22 MR. JIMMERSON: When you have time, we've</p> <p>23 been going an hour and 20 minutes.</p> <p>24 BY MR. BICE:</p> <p>25 Q. And where was this meeting at?</p>	<p style="text-align: right;">Page 69</p> <p>1 and we are off the video record.</p> <p>2 (Whereupon, a recess was had.)</p> <p>3 THE VIDEOGRAPHER: We are back on the</p> <p>4 video record at 3:48 p.m.</p> <p>5 BY MR. BICE:</p> <p>6 Q. So in this meeting that you had at the</p> <p>7 city and at Mr. Perrigo's office, and that was</p> <p>8 sometime in December of 2014 or was it before?</p> <p>9 A. It may be before. Maybe between November</p> <p>10 and December, but it may be December. I can't tell</p> <p>11 you exactly.</p> <p>12 Q. So as part of that discussion, had you</p> <p>13 told the city's planning staff what your vision was</p> <p>14 for the project?</p> <p>15 A. No, no, no. We just want to know if the</p> <p>16 property is developable, if there is an easement or</p> <p>17 instrument that would restrict development of this</p> <p>18 piece of property.</p> <p>19 Q. Well, did you tell them what sort of</p> <p>20 development?</p> <p>21 A. No. The the R-PD7 is residential</p> <p>22 development. You can build up to seven and a half</p> <p>23 units on this property. Is it developable or do you</p> <p>24 have an easement or contract or something that will</p> <p>25 prevent you from doing it?</p>

<p style="text-align: right;">Page 70</p> <p>1 Q. Did you put that request to them in 2 writing? 3 A. I don't believe so. 4 Q. So how did you communicate that request to 5 them? Was this at that meeting? 6 A. I don't know. I don't recall. Maybe Mr. 7 Pankratz sent a letter requesting it in writing. I 8 don't know. 9 Q. But at the meeting, you're saying that the 10 city staff told you that there was nothing that 11 prohibited you from building up to seven units per 12 acre; is that correct? 13 A. No, they didn't tell me anything. They 14 took the information and they said they're going to 15 do a study. I believe the study took three weeks to 16 do. 17 Q. The study took three weeks? 18 A. That's my recollection. Roughly three 19 weeks it took them to do it and get us that letter. 20 Q. And the letter that they sent you is 21 Exhibit 1? 22 A. I believe so, yes. 23 Q. So before I had asked you when did the 24 city tell you that the zoning -- well, strike that. 25 Did you know that what the land use</p>	<p style="text-align: right;">Page 72</p> <p>1 otherwise prevent it from being developed. And it 2 included the property's developable 100 percent. 3 Q. And when did they tell you that? 4 A. They told us that prior to this letter -- 5 within days of this letter or maybe a few -- a couple 6 days, three days we met again. 7 Q. So you met again before this letter? 8 A. Yes. 9 Q. And where did you meet before this letter? 10 A. Within a week of that letter we met. Or 11 after we met. Just really within a few days prior to 12 this letter we met and they said that's their 13 findings. 14 Q. I want to be clear about the timing here. 15 So did you meet with -- you had this meeting with 16 them you said three weeks before this letter? 17 A. Three, four weeks before, my recollection 18 is that time period we met. We had a meeting with 19 them prior, saying we want you to do a study on a 20 piece of property for us and tell us if there is any 21 instrument that will restrict development. Can we 22 build houses on this piece of property. 23 Q. And that's what you told the staff you 24 wanted to do? 25 A. Yes.</p>
<p style="text-align: right;">Page 71</p> <p>1 designation was under the city general plan for the -- 2 property? 3 MR. JIMMERSON: Objection. Asked and 4 answered before but you can answer. 5 THE WITNESS: We didn't know anything 6 about the general plan. 7 BY MR. BICE: 8 Q. And you didn't ask the city that? 9 A. We did not. We asked to know if this 10 piece of property is developable. The conditions 11 occurring on this piece of property that would 12 otherwise make it developable or you have anything 13 that may prevent development that you know. 14 Q. And they said there was nothing; is that 15 right? 16 A. Not in this meeting. They didn't say 17 anything. They're just admitting that you, referring 18 to three weeks prior to this letter, they said it. I 19 think at that time we started having more meetings 20 and I believe at this time that's my recollection. I 21 may be mistaken on that on timing, but when we came 22 to -- before we got the letter, they are saying, it's 23 amazing, this piece of property. You know, they were 24 also very surprised that the property had no 25 agreements, no easements, nothing that would</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. You told them you were going to build 2 houses on it? 3 A. We wanted the zoning, and if there is 4 anything that will prevent development on this piece 5 of property under the zoning category. 6 Q. I want to be clear what you told them. 7 Did you tell them you intended to build houses on it? 8 A. No, I did not. We said we wanted too 9 build the property, build the zoning on this piece of 10 property. Anything that prevents this piece of 11 property from being built. 12 Q. And that was about three or four weeks 13 before December 30 of 2014? 14 A. I think prior to that when we came in, 15 right prior to the letter when we discussed it with 16 them, within that week I recall that we talked to 17 them and we said yes, we want to know how many houses 18 we can build, if you can build this number of homes. 19 And they said, that's the zoning. And we asked them 20 to put it in writing basically. That's our finding 21 and this is the letter. 22 Q. And this is what you got in response? 23 A. Yes. 24 Q. So now you're saying that either shortly 25 before or after this letter you had another meeting</p>

<p style="text-align: right;">Page 74</p> <p>1 with the staff; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And who was in attendance at this meeting?</p> <p>4 A. Same type of people.</p> <p>5 Q. You were there, right?</p> <p>6 A. I was there and Mr. Pankratz was there.</p> <p>7 Q. And Mr. Pankratz was there. And</p> <p>8 Mr. Perrigo was there?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. Okay. And are you saying it's at that</p> <p>11 meeting when they told you that there's nothing that</p> <p>12 precludes you from building houses on this property?</p> <p>13 A. Yes. I think at that point we started</p> <p>14 speaking of how many units per acre can you build on</p> <p>15 this piece of property in the various areas, and they</p> <p>16 had difficulties on the up to seven and a half</p> <p>17 acres -- units, but it's like kind zoning. So you</p> <p>18 get what's next to it. There was discussion, just</p> <p>19 preliminary discussion, what does it mean, but it was</p> <p>20 quite obvious that there's nothing -- to the city,</p> <p>21 there is nothing they can do to prevent -- they said</p> <p>22 any applicant who comes in and develops this piece of</p> <p>23 property.</p> <p>24 Q. So that was -- that was within a week of</p> <p>25 December 30 of 2014 when they told you that?</p>	<p style="text-align: right;">Page 76</p> <p>1 A. We asked to do the study.</p> <p>2 Q. Before this letter they told you the</p> <p>3 zoning --</p> <p>4 A. They didn't tell us, we asked them because</p> <p>5 we want to know if the property -- they were doing</p> <p>6 the conversation saying if you want to know if it's</p> <p>7 vested zoning that supersedes everything else. That</p> <p>8 was the discussion.</p> <p>9 Q. And who at the city said that?</p> <p>10 A. Tom Perrigo. I believe it to be Tom</p> <p>11 Perrigo and maybe someone else there. Doug Rankin.</p> <p>12 Q. And you said that's what you wanted to</p> <p>13 know?</p> <p>14 A. Yes.</p> <p>15 Q. So they came back and they sent you this</p> <p>16 letter, Exhibit Number 1, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And then you say either shortly before</p> <p>19 this or shortly after this, you had this other</p> <p>20 meeting with them, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And at that meeting it was discussed that</p> <p>23 the zoning takes precedence over the city's master</p> <p>24 plan; is that correct?</p> <p>25 A. I don't think master plan. The zoning</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I don't want to pinpoint a date. I -- --</p> <p>2 believe my recollection is within a week.</p> <p>3 Q. Well, it was before you purchased the --</p> <p>4 A. A week before or after. This is at the</p> <p>5 holidays time. So -- but way before we purchased it.</p> <p>6 Q. Way before you purchased it?</p> <p>7 A. Yes.</p> <p>8 Q. So the city -- now earlier I had asked</p> <p>9 you, and as I understood your testimony, you're</p> <p>10 saying that the city told you that the zoning trumps</p> <p>11 the general plan; is that right?</p> <p>12 A. No. The zoning trumps everything. It's</p> <p>13 hard zoning. It's vested zoning. I think they used</p> <p>14 the word vested zoning. That's what we wanted to</p> <p>15 know, is it vested zoning or zoning that has has to</p> <p>16 be act -- there's different kinds of zoning, I guess.</p> <p>17 Q. When did they tell you that?</p> <p>18 A. When we asked the question. I think we</p> <p>19 asked them. We wanted to know what it is. And in</p> <p>20 response, in the discussions, what you want to know</p> <p>21 is it is vested zoning, if this property can be</p> <p>22 developed. You know, it's hard zoned. They used the</p> <p>23 word hard zoned too.</p> <p>24 Q. And that was within a week or so of this</p> <p>25 letter of December 2010 they told you that?</p>	<p style="text-align: right;">Page 77</p> <p>1 takes place over everything. It's hard zoning.</p> <p>2 Basically you can build it.</p> <p>3 Q. Who at that second meeting told you it</p> <p>4 takes precedence over everything?</p> <p>5 A. I can't recall who told me that in the</p> <p>6 meeting, but it was a consensus between the planners</p> <p>7 that that's the case.</p> <p>8 Q. Why didn't you get that in writing?</p> <p>9 A. I think I have it in writing.</p> <p>10 Q. Tell me where in this letter it says that</p> <p>11 zoning takes precedence over everything else.</p> <p>12 A. That's, I believe, the law.</p> <p>13 Q. Why didn't you get that in writing from</p> <p>14 them since you are saying that's what they told you?</p> <p>15 A. I didn't think I needed to get it in</p> <p>16 writing. I didn't think there was any issues with</p> <p>17 it.</p> <p>18 Q. Why did you want this in writing,</p> <p>19 Exhibit 1?</p> <p>20 A. Because we wanted to know the city's</p> <p>21 behind it -- there's not any restriction on it, one,</p> <p>22 and two, we wanted to know -- we had a banker. We</p> <p>23 needed it for our bank financing. We would need a</p> <p>24 zoning verification letter. It's a standard item the</p> <p>25 banks request.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. I understand that you told us a little bit 2 ago you wanted the city to tell you there was nothing 3 that restricted any sort of development on this 4 property, correct? 5 A. That's correct. 6 Q. So why didn't you get that in writing? 7 A. Because there was no issue. There was no 8 controversy at all. So we didn't -- we may -- we 9 probably should have asked for it today, but we 10 didn't ask for it. We didn't think we needed to ask 11 for it. Let's put it this way. 12 Q. You knew that's what you wanted from them 13 but you didn't ask them for it? 14 MR. JIMMERSON: Objection. Misstates the 15 man's testimony. 16 THE WITNESS: I would answer this way. In 17 my prior dealings with the city, with any 18 jurisdiction, building for many years, doing the same 19 exact thing, I've never had to ask for that when we 20 get a zoning verification letter. So there was no -- 21 there was no reason. My answer is no reason to ask 22 for it. 23 BY MR. BICE: 24 Q. What do you mean "there's no reason to ask 25 for it"? You just told us that the whole purpose in</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Why would I need it in writing? 2 Q. Why wouldn't you? 3 A. Why would I need it in writing? Prior to 4 the lawsuit there was no reason to ask for it in 5 writing. 6 Q. Why did you want the zoning verification 7 in writing then? 8 A. You need it for the bank. The bank 9 required zoning verification letter standardized. 10 Q. So this was for the benefit of the bank, 11 not for any other purpose? 12 MR. JIMMERSON: Objection. In fairness to 13 the witness, he did reference earlier one of the 14 reasons was the bank. 15 BY MR. BICE: 16 Q. Is there any other reason other than the 17 bank that you needed Exhibit 1? 18 A. Of course. 19 Q. What other reasons? 20 A. For us to know the property is 21 developable. 22 Q. For you to know the property is 23 developable? 24 A. Correct. 25 Q. So you got Exhibit 1 and and you got</p>
<p style="text-align: right;">Page 79</p> <p>1 going to them was to get that answer. 2 MR. JIMMERSON: Object to the question as 3 being argumentative and also misstates his testimony. 4 THE WITNESS: No. The reason we to go to 5 them is we want to know the property is developable. 6 BY MR. BICE: 7 Q. Why didn't you get that in writing from 8 them? 9 A. I did. 10 Q. So this is the only thing you got from 11 them, is Exhibit 1? 12 A. That's correct. 13 Q. And you got nothing else from them except 14 for Exhibit 1, correct? 15 MR. JIMMERSON: Objection. Misstates the 16 testimony. 17 THE WITNESS: I got available assurances 18 that the property is developable without any 19 questions. All along throughout the process the 20 city, they've upheld that the zoning (inaudible) the 21 hard zoning, property will be developed. 22 BY MR. BICE: 23 Q. That's what I'm asking. My apologies, Mr. 24 Lowie. Why didn't you get those verbal assurances in 25 writing?</p>	<p style="text-align: right;">Page 81</p> <p>1 verbal assurances that it was developable from the 2 city? 3 A. Up through the entire process up to today. 4 Q. Who was it that gave the verbal 5 assurances? 6 A. Head of planning, planners, city attorney, 7 council people, on the record are saying you have 8 rights and the zoning on the property. 9 Q. I'm talking about before you purchased it. 10 A. Before I purchased it? 11 Q. Yep. Who gave you those verbal 12 assurances? 13 A. The planning team at the time. 14 Q. That would be Mr. Perrigo? 15 A. No. Planning team. 16 Q. Planning team? 17 A. Right. 18 Q. So it would be somebody in addition to 19 Mr. Perrigo? 20 A. Yes. 21 Q. So it's more than one? 22 A. Yes. 23 Q. Mr. Lowenstein? 24 A. I believe so too. 25 Q. Mr. Rankin?</p>

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<p>1 A. Maybe.</p> <p>2 Q. Well, do you know or do you not know?</p> <p>3 A. I don't recall. But more than those two</p> <p>4 gentlemen have expressed the same zoning.</p> <p>5 Q. Mr. Lewis?</p> <p>6 A. Mr. Lewis, sure.</p> <p>7 Q. So Mr. Lewis gave you that assurance as</p> <p>8 well?</p> <p>9 A. Yes.</p> <p>10 Q. Mr. Jerbic?</p> <p>11 A. No, I didn't meet Mr. Jerbic at that time.</p> <p>12 Q. All right. Mr. Lowie, have you ever told</p> <p>13 the city that you will sue them if you don't get</p> <p>14 approvals because they gave you assurances?</p> <p>15 MR. JIMMERSON: Let me just object to the</p> <p>16 line of the questioning as being far afield,</p> <p>17 irrelevant to a parcel map issue. I'm not going to</p> <p>18 instruct him not to answer.</p> <p>19 Go ahead sir, you can answer the question.</p> <p>20 THE WITNESS: I may have, yes.</p> <p>21 BY MR. BICE:</p> <p>22 Q. Who have you told you are going to sue</p> <p>23 them because of the verbal assurances they gave you</p> <p>24 before you purchased the property?</p> <p>25 A. No verbal assurances. You represented to</p>	<p>1 end up with a lawsuit with the city over these rights</p> <p>2 in one of the meetings that we had. I recall that,</p> <p>3 yes.</p> <p>4 Q. So it was Mr. Lewis you said that to?</p> <p>5 A. Mr. Lewis, yes. This was in response to a</p> <p>6 letter that he wrote to me.</p> <p>7 Q. So Mr. Lewis wrote you a letter that said</p> <p>8 what?</p> <p>9 A. It said that -- you can't sue the city for</p> <p>10 whatever it is we're asking you to do if you don't</p> <p>11 get it. You can only sue the city on R-PD7, based on</p> <p>12 YOUR zoning and maybe only it will take a judge to</p> <p>13 determine what is going to be built here. Something</p> <p>14 to that effect. Which was a totally ludicrous letter</p> <p>15 to us. That's why we called him Mr. Binion's</p> <p>16 attorney.</p> <p>17 Q. Why did you call him Mr. Binion's</p> <p>18 attorney?</p> <p>19 A. Because we sat in meetings with him for</p> <p>20 periods of time that we really believed -- we didn't</p> <p>21 know him. We thought he was Jack Binion's attorney.</p> <p>22 Q. And why did you think he was Jack Binion's</p> <p>23 attorney?</p> <p>24 A. Because he was representing only the</p> <p>25 Binions and not the neighbors' interest. Not the</p>
Page 83	Page 85
<p>1 us the property is developable. They're just --</p> <p>2 refusing constitutional rights to zoning.</p> <p>3 Q. Mr. Lowie, who have you told you're going</p> <p>4 to sue over the assurances?</p> <p>5 A. I'm sure that I told it to the city</p> <p>6 attorney.</p> <p>7 Q. You told Mr. Jerbic that, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Have you told Mr. Jerbic that you are</p> <p>10 going to sue him personally?</p> <p>11 A. No.</p> <p>12 Q. Have you told anyone else you're going to</p> <p>13 sue them?</p> <p>14 A. No. No. I don't think so.</p> <p>15 Q. Had you told Mr. Lewis you were going to</p> <p>16 sue him?</p> <p>17 A. Mr. Lewis, no, I don't think I said it.</p> <p>18 Q. How about Mr. Perrigo?</p> <p>19 A. No.</p> <p>20 Q. And so you told Mr. Jerbic -- did you tell</p> <p>21 Mr. Jerbic issuing you were going to sue the city</p> <p>22 because you had received assurances that it was fully</p> <p>23 developable before you purchased the property?</p> <p>24 A. No. As a matter of fact, I recall now</p> <p>25 that I said to Mr. Lewis, you know, I won't have to</p>	<p>1 city interest or public interest.</p> <p>2 Q. So the city's interest was different in</p> <p>3 your view than the neighborhood's interests?</p> <p>4 A. No, no, no, no. I don't think so at</p> <p>5 all. I don't think so. I think that Mr. -- Mr.</p> <p>6 Lewis was behaving in a manner that did not represent</p> <p>7 a fair and balanced independent city attorney. He</p> <p>8 behaved as he worked for Mr. Binion.</p> <p>9 Q. And tell me how he did that.</p> <p>10 A. He -- we thought he was Mr. Binion's</p> <p>11 attorney, only representing one client.</p> <p>12 Q. And he was only representing Mr. Binion;</p> <p>13 is that right?</p> <p>14 A. That's what we thought, yes.</p> <p>15 Q. Is it because Mr. Lewis told you you</p> <p>16 didn't have the rights you were claiming to have?</p> <p>17 A. Never said that.</p> <p>18 Q. He didn't?</p> <p>19 A. Quite opposite. He said we have a right</p> <p>20 to develop the property under the R-PD7.</p> <p>21 Q. What was he saying that was supposedly in</p> <p>22 Mr. Binion's interests and not the city's?</p> <p>23 A. All kinds of things we should ask Mr.</p> <p>24 Binion's permission to develop the property.</p> <p>25 Q. Anything else?</p>

<p style="text-align: right;">Page 86</p> <p>1 A. Stuff to that effect. Everything that 2 came up he said you need to go talk to your 3 neighbors, get your neighbors signature to develop 4 the property. And I asked where is it in the 5 constitutional, under zoning I have to go and ask 6 neighbors what I'm going to do with my property? 7 Q. Anything else Mr. Lewis did that said he 8 he was not representing the interests of the city but 9 the interests of Mr. Binion? 10 A. I should say the majority of the portions 11 of what Mr. Lewis said were only to the benefit of 12 Mr. Binion and certain other homeowners in the 13 community. 14 Q. Did you talk to the mayor about Mr. Lewis? 15 A. At one point I believe so, yes. 16 Q. Did you ask the mayor to have Mr. Lewis 17 removed? 18 A. I don't recall. No, I don't think so, but 19 I thought Mr. Lewis was behaving in a manner that -- 20 no, I don't think so. 21 Q. You did not ask the mayor to have Mr. 22 Lewis removed from working on this project because he 23 was -- 24 A. No. 25 Q. -- looking out for the homeowners?</p>	<p style="text-align: right;">Page 88</p> <p>1 negotiation. And I said I don't find we are 2 negotiating fairly, because I think I think that Mr. 3 Lewis is not representing the city, but the 4 homeowners. 5 Q. And that was in the mayor's office, 6 correct? 7 A. Yes. 8 Q. Do you recall when that was? 9 A. No. Early -- early in the process. 10 Q. Early in the process? 11 A. I explained earlier, the summer of 2015. 12 Q. And the mayor was there. And who was 13 there with the mayor? 14 A. The mayor had a liaison and other people 15 were there in the office with the mayor. I've never 16 been with the mayor alone. 17 Q. And you complained to the mayor that Mr. 18 Lewis was being too tough on you? 19 A. Not at all. 20 Q. You said he was being unfair. 21 A. No. I said I don't think he was 22 representing the interests of the city. It seems 23 like he's representing homeowners. That's all I 24 said. I wasn't complaining. It wasn't an issue that 25 was discussed. It was just a comment.</p>
<p style="text-align: right;">Page 87</p> <p>1 A. No, I don't think I did. I said -- I -- -- 2 think I said the city attorney is working for the 3 homeowners, not for the City. 4 Q. But you did talk to the mayor about 5 Mr. Lewis, did you not? 6 A. I think I mentioned he's being very 7 difficult dealing with the city attorney. It seems 8 like he's not representing the city interests. 9 Q. Who was present when you had that 10 discussion with the mayor? 11 A. Our team. Whoever was sitting with us and 12 my consultant. 13 Q. Your consultant, Jay Brown? 14 A. You know, Mr. Brown, Mr. Kaemfer or both. 15 Q. So it would have been you, Mr. Brown, 16 Mr. Kemper at the -- in the mayor's office, correct? 17 MR. JIMMERSON: Object. He didn't say 18 both, Counselor. To be fair, he said -- 19 MR. BICE: I thought I said or. My 20 apologies. 21 BY MR. BICE: 22 Q. Mr. Brown, Mr. Kaemfer or maybe both of 23 them? 24 A. And the other people at the city. And 25 they asked me how this is going with this</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. How long after your meeting with the mayor 2 where you raised the subject matter with the mayor 3 was Mr. Lewis taken off the project? 4 A. I don't think he was taken off the project 5 until he wrote the letter which I had nothing to do 6 with. I believe he was not authorized to write the 7 letter. I was very upset by the letter and demanded 8 a retraction of the letter, and the city attorney 9 invited me and our advisers to his office and told me 10 then that he was absolutely not authorized to write 11 this letter. He had no authority to do so. He have 12 done it on his own accord and the city attorney's 13 office will deal with it. That's what I -- that's 14 the only thing that happened on Mr. Lewis' issue. 15 Q. So he wrote you a letter that said what? 16 A. He wrote a letter that said -- I don't 17 know. Do you have the letter? 18 Q. Do you recall what it said? 19 A. I recall it said something to the effect, 20 you can't sue the city for a project you're asking 21 for but you can sue the city only for the R-PD7 22 zoning that you have. Something to that effect. 23 Q. And this letter upset you? 24 A. Yes. 25 Q. Why?</p>

<p style="text-align: right;">Page 90</p> <p>1 A. Because the whole idea was to work with 2 the city to get the right project for the homeowners 3 and for -- you know, for the developer, and -- 4 listen, the meetings with Mr. Lewis were peculiar at 5 best. The guy was -- never seen anything like it 6 before and I never saw anything like that since. 7 Q. What do you mean? 8 A. He really behaved like he was working for 9 somebody else. Not the the city. 10 Q. And did you tell that to anyone else other 11 than the mayor? 12 A. I think in the office we are calling 13 Mr. Lewis Jack Binion' attorney. 14 Q. Okay. Anyone else in the city who you 15 said that to? 16 A. Prior to the meeting with Brad Jerbic? 17 Q. Yeah. 18 A. No, I don't think I said that to anybody 19 else at the city except Mr. Jerbic that invited me to 20 his office. 21 Q. Approximate at mayor correct. 22 A. And -- I made a comment to the mayor. I 23 don't know where it's going because it seems like 24 we're meeting with Jack Binion's attorney when we go 25 to the meeting, not the city.</p>	<p style="text-align: right;">Page 92</p> <p>1 about wanting Mr. Lewis removed? 2 A. I don't recall. Myself, I don't think so. 3 Q. Anyone on your staff. 4 A. I don't think so. 5 Q. You haven't seen any; is that correct? 6 A. It's correct. 7 MR. JIMMERSON: If there is something, 8 Counsel, you can certainly show him because it's 9 apparent he doesn't recall it. 10 BY MR. BICE: 11 Q. When was your meeting with Mr. Jerbic 12 about Mr. Lewis, do you remember? 13 A. No, I don't recall the time. 14 Q. How close in proximity was it to the 15 letter you received from Mr. Lewis? 16 A. I believe it was very close. Within a -- 17 you know, a week, ten days, two weeks. 18 MR. JIMMERSON: Let me have you pause for 19 a second. Madam Court Reporter, at line 8817, it's 20 not apparently he doesn't recall, I said it's 21 apparent he doesn't recall. Thank you. 22 BY MR. BICE: 23 Q. So you understood at the time that you 24 purchased the property that zoning on the property 25 took precedence over the general plan and everything</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Did you also have that same conversation -- 2 or a conversation like that with Councilman Beers? 3 A. I don't recall. Maybe. 4 Q. Did you meet with Councilman Beers in his 5 office to discuss Mr. Lewis? 6 A. No. In particular for Mr. Lewis, no. 7 Q. Well, whether it was particular to Mr. 8 Lewis or not, did you have a discussion with 9 Mr. Beers in his office about Jim Lewis? 10 A. No, I don't believe so. I don't recall. 11 Q. Did you have a conversation with Mr. Beers 12 at all about Jim Lewis? 13 A. I don't recall having a conversation with 14 Mr. Lewis. I may have but I don't recall at all. 15 Q. Did you -- is it possible that you told 16 Mr. Beers that you wanted Mr. Lewis removed from this 17 project? 18 MR. JIMMERSON: Objection. Calls for 19 speculation as to what's possible. 20 THE WITNESS: I have no idea. I don't 21 think I would have asked any councilman to remove 22 somebody from their position. That's not my 23 business. 24 BY MR. BICE: 25 Q. Did you communicate with anyone in email</p>	<p style="text-align: right;">Page 93</p> <p>1 else, correct? 2 A. Correct. 3 Q. And the city had given you that assurance 4 correct. 5 A. Correct. 6 Q. Verbally? 7 A. In writing too. 8 Q. In writing too. Where did they do that? 9 A. There's nothing here that prevents zoning 10 from being exercised. 11 Q. Other than Exhibit 1, is there any other 12 writings you claim where they gave you assurances 13 that zoning took precedence over everything else? 14 A. My answer was no before on the same thing. 15 Q. Do you recall, Mr. Lowie, that -- do you 16 recall that you actually sought a general plan 17 amendment in November of 2015? 18 A. November 2015? I'm not good with the 19 dates on this, but yes, we seek the general plan 20 amendment on the direction of the city, yes. 21 Q. And who are you saying at the city gave 22 you that direction? 23 A. The planning department. 24 Q. Who in the planning department? 25 A. The project team.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. That would have been Mr. Perrigo?</p> <p>2 A. With Mr. Perrigo. I can't remember who</p> <p>3 requested it as a list of items that they required we</p> <p>4 will file, and that's what we did.</p> <p>5 Q. Do you recall sending them a letter --</p> <p>6 well, strike that.</p> <p>7 (Exhibit Number Num was marked.)</p> <p>8 BY MR. BICE:</p> <p>9 Q. Showing you what's been marked as Exhibit</p> <p>10 Number 2, have you seen Exhibit Number 2 before,</p> <p>11 Mr. Lowie?</p> <p>12 A. No, I don't believe so.</p> <p>13 Q. Well, take a look at it.</p> <p>14 A. I looked at the signature at the back and</p> <p>15 I signed it, but I don't recall seeing it.</p> <p>16 Q. So you signed it but you wouldn't have</p> <p>17 prepared this letter?</p> <p>18 A. No.</p> <p>19 Q. Who would have?</p> <p>20 A. I would assume that Mr. Pankratz would.</p> <p>21 Q. Okay. And why would you sign it then?</p> <p>22 A. Why? They put my name on it for that</p> <p>23 reason instead of EHB Company, LLC. So it's either</p> <p>24 Vicki or myself. The manager signs it.</p> <p>25 Q. Okay. So a manager has to sign it,</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Did I sign one? I don't see my signature</p> <p>2 here.</p> <p>3 Q. I'm talking about Exhibit Number 2, the</p> <p>4 letter you just read.</p> <p>5 A. The justification?</p> <p>6 Q. Yes. That you said was accurate.</p> <p>7 A. It does not say which one. Yes, I believe</p> <p>8 it's the same one.</p> <p>9 Q. Okay. I just want to make sure this</p> <p>10 letter Exhibit Number 2 is the justification letter</p> <p>11 for Exhibit Number 3, correct?</p> <p>12 A. Yes.</p> <p>13 Q. So Exhibit Number 3, what was the general</p> <p>14 plan amendment that you were seeking?</p> <p>15 A. I believe the general plan amendment was</p> <p>16 to change from a PR-OS to -- to a 2H.</p> <p>17 Q. Okay. And in the Exhibit Number 3,</p> <p>18 there's a plan on the third page?</p> <p>19 A. Okay.</p> <p>20 Q. Do you see that it says the subject</p> <p>21 property?</p> <p>22 A. Yes.</p> <p>23 Q. And that's a portion of the parcel,</p> <p>24 existing parcel, correct?</p> <p>25 A. It's a parcel.</p>
<p style="text-align: right;">Page 95</p> <p>1 correct? Okay. So did you read the letter before --</p> <p>2 you signed it?</p> <p>3 A. No, I don't think so. I'm not sure. I</p> <p>4 can't tell you. I don't recall.</p> <p>5 Q. Well, go ahead and read -- I'd ask you to</p> <p>6 read the letter and tell me if there's anything in</p> <p>7 there that you believe is incorrect.</p> <p>8 A. Okay. No. The answer is no.</p> <p>9 Q. The letter is correct?</p> <p>10 A. Yes, I believe so.</p> <p>11 Q. Let's have this one marked next, please.</p> <p>12 (Exhibit Number Num was marked.)</p> <p>13 BY MR. BICE:</p> <p>14 Q. Showing you what's been marked as</p> <p>15 Exhibit number 3, have you seen Exhibit Number 3</p> <p>16 before?</p> <p>17 A. No.</p> <p>18 Q. Did you know that there was a general plan</p> <p>19 amendment dated November 23 of 2015 with the stamp by</p> <p>20 the city GPA62387?</p> <p>21 A. I know the city requested the GPA on this</p> <p>22 piece of property, yes.</p> <p>23 Q. And is Exhibit Number 2 the letter you</p> <p>24 signed, is this the justification letter for that</p> <p>25 general plan amendment?</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. That's a parcel?</p> <p>2 A. Yes.</p> <p>3 Q. If you look at Exhibit Number 2, your</p> <p>4 justification letter, do you see where you told the</p> <p>5 city that it wasn't a separate parcel as of yet? You</p> <p>6 said you were subdividing it. Do you see that?</p> <p>7 A. Parcelizing it. Let's get the dates here.</p> <p>8 Q. If you look at your letter, sir, that you</p> <p>9 just said was accurate, it says -- the second</p> <p>10 sentence says, "The 17 acres is in the process of</p> <p>11 being subdivided." Do you see that? Into a separate</p> <p>12 parcel and will have its own APN number. Do you see</p> <p>13 that?</p> <p>14 A. Okay. It means parcelizing it in this</p> <p>15 instance, yes.</p> <p>16 Q. That's what you were doing, correct?</p> <p>17 That's what you told them in the letter, Exhibit 2?</p> <p>18 A. No. We basically were parcelizing a piece</p> <p>19 out of the parcel, yes.</p> <p>20 Q. So you were creating another parcel,</p> <p>21 correct?</p> <p>22 A. That's correct. That's how you develop in</p> <p>23 this country.</p> <p>24 Q. Okay.</p> <p>25 A. You get another parcel and you develop it</p>

<p style="text-align: right;">Page 98</p> <p>1 and you get entitlements for it.</p> <p>2 Q. And in Exhibit Number 2 -- I'm sorry,</p> <p>3 Exhibit Number 3 you had even shown them in advance</p> <p>4 the number of parcels and how you were going to break</p> <p>5 it up later on, correct?</p> <p>6 A. Yeah. I believe at that time the parcel</p> <p>7 map was already in process, so this is -- this is an</p> <p>8 accurate picture of what was in process.</p> <p>9 Q. The parcel map, you were going to</p> <p>10 subdivide it with the parcel map?</p> <p>11 MR. JIMMERSON: Objection to the question.</p> <p>12 Misrepresents the facts and the law.</p> <p>13 THE WITNESS: Yes. I think you are making</p> <p>14 a wrong assumption and conclusion of the subdividing</p> <p>15 in this instance.</p> <p>16 BY MR. BICE:</p> <p>17 Q. I'm reading your letter.</p> <p>18 A. Our intention and our exact meaning of</p> <p>19 subdividing is subdividing one parcel into two by way</p> <p>20 of a parcel map.</p> <p>21 Q. So that's what you meant in this letter,</p> <p>22 you're subdividing it into two parcels?</p> <p>23 A. Take one parcel and make it into two is</p> <p>24 subdividing or parcellizing, right?</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 100</p> <p>1 want to see prior to entitlements, for the</p> <p>2 entitlements, yes.</p> <p>3 Q. And that included the general plan?</p> <p>4 A. That's correct.</p> <p>5 Q. And so you submitted one, correct?</p> <p>6 A. We submitted what the city asked us to</p> <p>7 submit.</p> <p>8 Q. And that general plan amendment was to</p> <p>9 change the land use designation from PR-OS, correct?</p> <p>10 A. To match to existing, as they call it in</p> <p>11 the city. When you have an inconsistent general plan</p> <p>12 and zoning, when you seek entitlements, everything</p> <p>13 has to match.</p> <p>14 Q. And you'll notice here in Exhibit Number 2</p> <p>15 that you testified was correct, that no where here in</p> <p>16 Exhibit Number 2 did you ever say that the city has</p> <p>17 already told us that the zoning supersedes the land</p> <p>18 use, did you?</p> <p>19 A. Why would we say that? It's common</p> <p>20 knowledge at that point.</p> <p>21 Q. So that's why you didn't say it, because</p> <p>22 was common knowledge?</p> <p>23 A. No, I didn't think we had to say it. The</p> <p>24 the city asked us to file the documents, and we filed</p> <p>25 exactly what they told us to file.</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Easier language would be parcellizing it. --</p> <p>2 That's what it is. It means nothing other than</p> <p>3 parcellizing it and creating another parcel.</p> <p>4 Q. And you were doing that by way of a parcel</p> <p>5 map, right?</p> <p>6 A. Yes. There's no other way to do it.</p> <p>7 Q. And you had submitted, as I understand</p> <p>8 your testimony, you're saying that the city asked you</p> <p>9 to submit Exhibit 3?</p> <p>10 A. The city asked us to subdivide -- to</p> <p>11 parcelize the property into a separate parcel before</p> <p>12 we go to entitlement, and this is a checklist from</p> <p>13 the city of what they want. And I remember the</p> <p>14 discussion on it, because we asked the city to get</p> <p>15 entitlements without a parcel map and the city asked</p> <p>16 us to parcelize the property out from the 70 acres</p> <p>17 separately. It would not allow development on the</p> <p>18 tip of another parcel. They would not allow a parcel</p> <p>19 without entitlements on 100 percent of the parcel or</p> <p>20 else you have to accommodate, like you do in every</p> <p>21 single project, parcelize it out. That's how you do</p> <p>22 it.</p> <p>23 Q. My question was, sir, you are claiming the</p> <p>24 the city wanted the general plan amendment, not you?</p> <p>25 A. The city gave us a checklist of what they</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Now, in around the same time in early</p> <p>2 November, were you asking the city to change its</p> <p>3 general plan so as to allow the city to go above</p> <p>4 eight units per acre?</p> <p>5 A. No.</p> <p>6 Q. You didn't ask for that?</p> <p>7 A. No. The city asked -- the city come up</p> <p>8 with it. I believe staff came up with it. They</p> <p>9 asked us to do it because it's three separate</p> <p>10 companies, and we were trying to shift densities from</p> <p>11 one parcel to the other, and they didn't have a</p> <p>12 mechanism in the code to do it at the numbers we were</p> <p>13 seeking, consulting on, and that's -- that's --</p> <p>14 that's a request from staff.</p> <p>15 Q. A request from staff to do what?</p> <p>16 A. They come up with an idea that they will</p> <p>17 put an amendment to a code or something by, you know,</p> <p>18 to increase the densities to over a certain what was</p> <p>19 allowed in the code for a property as such that you</p> <p>20 want to shift densities.</p> <p>21 Q. Why did you want to increase the</p> <p>22 densities?</p> <p>23 A. Shift densities.</p> <p>24 Q. Shift. Why did you want to do that?</p> <p>25 A. Because if we wanted to build less units</p>

<p style="text-align: right;">Page 102</p> <p>1 below or more at the front, you shift as the R-PD7</p> <p>2 allows you, but you have three separate companies,</p> <p>3 and I think that the GPA was because we were also</p> <p>4 changing to an R3 -- R4, and the R4 zoning was not</p> <p>5 something that was contemplated in the original</p> <p>6 conceptual master plan. Only an R3. So they</p> <p>7 requested a GPA.</p> <p>8 Q. Did you have Greg Borgel working on this</p> <p>9 for you?</p> <p>10 A. Greg Borgel was on one of the teams. I</p> <p>11 don't know that he was working on that.</p> <p>12 Q. Mark this, please.</p> <p>13 (Exhibit Number Num was marked.)</p> <p>14 BY MR. BICE:</p> <p>15 Q. Have you seen Exhibit 4 before, Mr. Lowie?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Did you have Mr. Borgel attend this</p> <p>18 planning commission meeting on your behalf?</p> <p>19 A. I don't recall who attended the meeting on</p> <p>20 our behalf. I don't recall that we had anybody</p> <p>21 attend the meeting on our behalf. I don't recall.</p> <p>22 What date is the meeting?</p> <p>23 Q. November 3 of 2015.</p> <p>24 A. If you will help me out, what meeting is</p> <p>25 this?</p>	<p style="text-align: right;">Page 104</p> <p>1 they requested us to do.</p> <p>2 (Exhibit Number Num was marked.)</p> <p>3 BY MR. BICE:</p> <p>4 Q. Showing you what's been marked as</p> <p>5 Exhibit 5, Mr. Lowie, this is the planning commission</p> <p>6 meeting from September 8, 2015 before you had</p> <p>7 submitted your applications. Were you aware of this</p> <p>8 planning commission meeting?</p> <p>9 MR. JIMMERSON: Object to the form of the</p> <p>10 question. Misstates the evidence.</p> <p>11 THE WITNESS: What -- what application is</p> <p>12 that?</p> <p>13 BY MR. BICE:</p> <p>14 Q. This is an application for the general</p> <p>15 plan amendment, the asterisk as you have called it.</p> <p>16 A. Well, is the other one --</p> <p>17 Q. That was another planning commission</p> <p>18 meeting on the same matter.</p> <p>19 A. So this is subsequent? Then maybe my</p> <p>20 testimony is incorrect. I thought it was the first</p> <p>21 meeting.</p> <p>22 MR. JIMMERSON: Could I ask, which exhibit</p> <p>23 number is this, please?</p> <p>24 MR. BICE: This is Exhibit 5.</p> <p>25 MR. JIMMERSON: Thank you.</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Planning commission meeting.</p> <p>2 A. Okay.</p> <p>3 Q. Did you know at the planning commission</p> <p>4 meeting that staff said this amendment was being made</p> <p>5 for the benefit of Fore Star?</p> <p>6 A. No, I did not.</p> <p>7 Q. Is that true?</p> <p>8 A. I recall from the discussion that we had</p> <p>9 in that weekly meeting, when they came up with the</p> <p>10 idea that -- I believe it's Doug Rankin that came up</p> <p>11 with the idea of putting an asterisk next to</p> <p>12 densities and change it because of other pieces of</p> <p>13 properties in town that would be affected by it.</p> <p>14 That's what I believe the discussion was. That there</p> <p>15 was a city-wide ordinance that needed other pieces of</p> <p>16 property in town. ^</p> <p>17 Q. And you believe that was Mr. Rankin's</p> <p>18 idea?</p> <p>19 A. Yes, I do. Well, I heard it from him at</p> <p>20 the meeting.</p> <p>21 Q. You heard it from him at what meeting,</p> <p>22 sir?</p> <p>23 A. That's what -- we had ongoing Thursday</p> <p>24 meetings usually and in one of the meetings we</p> <p>25 discussed what the city wants to do, and that's what</p>	<p style="text-align: right;">Page 105</p> <p>1 BY MR. BICE:</p> <p>2 Q. Were you aware at the planning --</p> <p>3 A. I want to correct my testimony prior.</p> <p>4 Q. Sure.</p> <p>5 A. Because in the second meeting, I know we</p> <p>6 had people in there. So I don't know. I don't see</p> <p>7 him here on the list of who spoke for us.</p> <p>8 Q. Were you aware at this -- did you have Mr.</p> <p>9 Borgel representing you at this planning commission</p> <p>10 meeting?</p> <p>11 MR. JIMMERSON: Just to make it clear,</p> <p>12 which meeting, please?</p> <p>13 BY MR. BICE:</p> <p>14 Q. The September 8th meeting.</p> <p>15 A. I don't recall. I think so. September I</p> <p>16 think is the subsequent meeting.</p> <p>17 Q. Why would Mr. Borgel be representing you</p> <p>18 at the planning commission meeting on this item?</p> <p>19 A. I don't think that -- again, you are</p> <p>20 confusing two meetings here. I need to understand</p> <p>21 what's Exhibit 4, which meeting it is. Let me read</p> <p>22 it. I want to correct my whole testimony because I'm</p> <p>23 confused between two meetings.</p> <p>24 Q. Go ahead.</p> <p>25 A. The first meeting we had no representation</p>

<p style="text-align: right;">Page 106</p> <p>1 there. We didn't send anybody to represent us, I 2 believe, in the first meeting. It was a city, you 3 know, cleanup, if you will. So the first meeting 4 would be -- the meeting that the city put a 5 representation, you have to direct me, is it the 6 September meeting?</p> <p>7 Q. September meeting is Exhibit 5.</p> <p>8 A. So Exhibit 5.</p> <p>9 MR. JIMMERSON: Comes ahead of four.</p> <p>10 THE WITNESS: So I believe in Exhibit 5 we 11 did not have any representation.</p> <p>12 BY MR. BICE:</p> <p>13 Q. Well, if you looked at the transcript at 14 the back, you'll see that Mr. Borgel was there, 15 Jennifer Lazovich was there. Was Miss Lazovich 16 working for you?</p> <p>17 A. I don't know anything about it. Maybe 18 Frank would know more. I don't.</p> <p>19 Q. Did you know that Mr. Lowenstein, when 20 pressed by Commissioner Freer (ph) as to who it was 21 that this was being sought for, said that it was 22 being sought for -- if you look at CLV000187, 23 Mr. Lowenstein finally identified Fore Star.</p> <p>24 A. What's the point? This is what they asked 25 us to do.</p>	<p style="text-align: right;">Page 108</p> <p>1 put forward.</p> <p>2 Q. Is there a difference between what they 3 want you to do and what you need to do to comply?</p> <p>4 A. We are not in charge of city laws and we 5 as developers don't have land use attorneys to file 6 an application to try to figure out the what the law 7 is. It doesn't work that way.</p> <p>8 Q. Did you also submit to them, subsequently 9 in November, a zone change request?</p> <p>10 A. I don't know.</p> <p>11 MR. JIMMERSON: Take a look. 12 (Exhibit Number Num was marked.)</p> <p>13 THE WITNESS: I need to understand what 14 was the relevance of number 4. I corrected my 15 answer. Number 5 I didn't believe we had anybody 16 that went for this meeting. Apparently people got up 17 and spoke on our behalf. I don't know if we sent 18 them there. I have no idea. That's what you tell 19 me.</p> <p>20 Exhibit number 4, November -- November 21 3rd, we would have had representation.</p> <p>22 BY MR. BICE:</p> <p>23 Q. Okay. 24 (Exhibit Number Num was marked.) 25 ///</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Who asked you to do?</p> <p>2 A. The city.</p> <p>3 Q. The city did?</p> <p>4 A. Yeah. The city asked us to file this 5 application basically for the cleanup. But the city 6 proposed this list, not us.</p> <p>7 Q. The city proposed it, not you?</p> <p>8 A. Yes, the city proposed it, yes.</p> <p>9 Q. Did you ask them to?</p> <p>10 A. No. They came up with the mechanism of 11 how they want to do it. I think you may be mistaken 12 of how this business between the developer and city 13 works. We as developer don't tell the city what to 14 do. We come in and we said, Here's what we want to 15 do. What do you need us to do? What do we need to 16 do in order to get it?</p> <p>17 Q. Okay.</p> <p>18 A. They come up with -- and when there's 19 challenges, they come up with the request of how to 20 do it.</p> <p>21 Q. So the city -- so you told the city this 22 is what you want to do and the city tells you what 23 you have to do in order to comply; is that correct?</p> <p>24 A. What they want you to do, exactly. Not to 25 comply. What they want, what process they want to</p>	<p style="text-align: right;">Page 109</p> <p>1 BY MR. BICE:</p> <p>2 Q. Item number six or Exhibit Number 6, have 3 you seen this zone change request, also dated 4 November 23 of 2015?</p> <p>5 A. I don't recall seeing it.</p> <p>6 Q. Again, if you look at the third page --</p> <p>7 MR. JIMMERSON: Counsel, when you use the 8 words also dated November 23, I don't know that there 9 is an exhibit before this date November 23.</p> <p>10 MR. BICE: I actually think it was the 11 GEA, the general plan amendment. I believe these are 12 all dated at the same time.</p> <p>13 MR. JIMMERSON: Exhibit 4 is November 3, 14 not the November 23.</p> <p>15 MR. BICE: Let me look real quick. Yeah, 16 that's the planning commission meeting. Exhibit 3 is 17 the general plan amendment which is dated November 23 18 of 2015, same day.</p> <p>19 MR. JIMMERSON: Thank you. I object to 20 the question in that you are confusing which exhibits 21 but I agree with you three and your last exhibit 22 appear to have the same date.</p> <p>23 BY MR. BICE:</p> <p>24 Q. Okay. Going to Exhibit 6, is this last 25 map on Exhibit 6, again, as of November 23 of 2015,</p>

<p style="text-align: right;">Page 110</p> <p>1 the land had not been divided?</p> <p>2 A. Parcelized.</p> <p>3 Q. Parcelized?</p> <p>4 A. Parcelized or divided yet.</p> <p>5 Q. Okay. That hadn't been done yet,</p> <p>6 correct?</p> <p>7 A. It was in the process.</p> <p>8 Q. And you subsequently did that by parcel</p> <p>9 map, right?</p> <p>10 A. Of course. Is there any other way?</p> <p>11 (Exhibit Number Num was marked.)</p> <p>12 BY MR. BICE:</p> <p>13 Q. Showing you what's been marked as</p> <p>14 Exhibit 7, have you seen this before?</p> <p>15 A. I don't believe so. I don't think so.</p> <p>16 Q. So you haven't reviewed -- did you ever</p> <p>17 review any of the staff reports from the city</p> <p>18 planning staff?</p> <p>19 A. I may have.</p> <p>20 Q. Okay.</p> <p>21 A. Yes.</p> <p>22 Q. But you don't believe you reviewed this</p> <p>23 one?</p> <p>24 A. No.</p> <p>25 Q. Are you aware that the city was requiring</p>	<p style="text-align: right;">Page 112</p> <p>1 parcelized.</p> <p>2 Q. All right. And how much before or how</p> <p>3 long prior to November of 2015 had you told the city</p> <p>4 that you wanted to divide that property into smaller</p> <p>5 parcels?</p> <p>6 A. Our intention was we wanted only to</p> <p>7 develop this piece of property. We came only with</p> <p>8 that project originally. We did not want to do</p> <p>9 anything other than the original when we purchased</p> <p>10 the property. Our intention was to develop this</p> <p>11 piece. So you're asking me when did we tell the</p> <p>12 city?</p> <p>13 Q. Yes.</p> <p>14 A. Way early in the game.</p> <p>15 Q. So the city knew that you were going to</p> <p>16 divide the property and create a separate 17-acre</p> <p>17 parcel early in the game, correct?</p> <p>18 A. Early in the game, in the spring -- late</p> <p>19 spring of 2015, yes.</p> <p>20 Q. Okay. Right after you purchased the</p> <p>21 property?</p> <p>22 A. Within months of it, within three months</p> <p>23 after.</p> <p>24 Q. Fair enough. Well, do you think that the</p> <p>25 city would have known that prior to July of 2015?</p>
<p style="text-align: right;">Page 111</p> <p>1 you to submit a major modification to the Peccole --</p> <p>2 Ranch Master Plan?</p> <p>3 A. I'm aware that there was a request to</p> <p>4 modify an existing master plan.</p> <p>5 Q. And did you do that?</p> <p>6 A. I don't recall will.</p> <p>7 Q. Sorry?</p> <p>8 A. I don't recall. I think we filed it. You</p> <p>9 know, Frank does entitlements. I don't handle</p> <p>10 entitlements. It's not what I do.</p> <p>11 Q. Had you divided the property by this time,</p> <p>12 March 8 of 2016?</p> <p>13 A. I would say so.</p> <p>14 Q. If you look at the third page of this</p> <p>15 Exhibit--</p> <p>16 A. Yes.</p> <p>17 Q. -- do you see there that there's a map</p> <p>18 that shows a colored in portion of a parcel?</p> <p>19 A. I do.</p> <p>20 Q. And what's that colored in portion?</p> <p>21 A. That's the -- that would be a 17 and a</p> <p>22 half acre justified parcel.</p> <p>23 Q. That was going to become the new parcel?</p> <p>24 A. I think at this time it is a new parcel.</p> <p>25 I'm not sure of the date, but I think it was already</p>	<p style="text-align: right;">Page 113</p> <p>1 A. You know, I'm not sure of the dates but we</p> <p>2 knew that we had to do it. Actually, we went to the</p> <p>3 city. I stand corrected. I testified before that we</p> <p>4 went to the city and we asked them to allow us to</p> <p>5 develop within the 70 a portion for the high density,</p> <p>6 and, you know, at one point they come back and said</p> <p>7 no, we would not allow it. We want you to file a</p> <p>8 separate parcel map for that.</p> <p>9 Q. Okay. If you would go to page CLV000297</p> <p>10 of the staff report, there's a project description.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Did you ever -- who reviews these staff</p> <p>14 reports for you?</p> <p>15 A. Frank, Al, and Brett Anthony. It is a</p> <p>16 whole team of guys.</p> <p>17 Q. All right. Did your company -- company or</p> <p>18 companies ever submit a protest in writing to the</p> <p>19 city saying you disagreed with anything in the staff</p> <p>20 report, to your knowledge?</p> <p>21 A. I have no idea. We were trying not to --</p> <p>22 I have no idea. I don't know what's in the staff</p> <p>23 report, so I can't answer the question.</p> <p>24 Q. But you haven't seen any form of written</p> <p>25 protest to the staff report, have you?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. I have no idea.</p> <p>2 Q. So you might have one somewhere?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay.</p> <p>5 A. I have no idea. I don't know you see</p> <p>6 here where it says, in the first paragraph of the</p> <p>7 project description, "The current land use</p> <p>8 designation of PR-OS does not allow for multifamily</p> <p>9 residential uses." Do you see that?</p> <p>10 A. Okay. That's what it is. PR-OS is not</p> <p>11 allowed for any use. PR-OS is meaningless in zoning.</p> <p>12 Q. You understood that that PR-OS does not</p> <p>13 allow any residential use?</p> <p>14 A. I understand PR-OS is meaningless because</p> <p>15 the zoning supersedes the land used. That's what I</p> <p>16 definitely understand, understood then, understood</p> <p>17 throughout the entire process, understand today and</p> <p>18 it will be understood after the the Court will rule</p> <p>19 on it.</p> <p>20 Q. And do you know why the staff report</p> <p>21 doesn't say that?</p> <p>22 A. It does say that.</p> <p>23 Q. Where does it say that?</p> <p>24 A. I don't know. I didn't read the staff</p> <p>25 report. It only recognizes PR-OS. It does not allow</p>	<p style="text-align: right;">Page 116</p> <p>1 the claim that you just said, that the hard zoning</p> <p>2 supersedes your characterization -- supersedes the</p> <p>3 PR-OS land use designation?</p> <p>4 MR. JIMMERSON: Object to the form of the</p> <p>5 question. It's compound. Two questions pending.</p> <p>6 THE WITNESS: I can tell you the city</p> <p>7 takes the position consistently that the PR-OS is put</p> <p>8 on the property illegally without notice to the</p> <p>9 owner. Peccole have objected prior to it to a PR-OS</p> <p>10 on the property. It was put on it by either in error</p> <p>11 or somebody just wanted to match Google to land</p> <p>12 use -- to a matrix, and that's -- that's what was</p> <p>13 told to us by the city.</p> <p>14 BY MR. BICE:</p> <p>15 Q. Who?</p> <p>16 A. That's the position that the city took,</p> <p>17 the city attorney.</p> <p>18 Q. Mr. Jerbic is the one that told you it was</p> <p>19 put on there illegally?</p> <p>20 A. Yes.</p> <p>21 Q. Without notice to the owner?</p> <p>22 A. Yes.</p> <p>23 Q. When did he tell you that?</p> <p>24 A. He told us that when your clients have --</p> <p>25 started raising concern and issues and litigation</p>
<p style="text-align: right;">Page 115</p> <p>1 for any -- you know, any building.</p> <p>2 Q. Well, go ahead and tell me -- go ahead and</p> <p>3 read the staff report here and tell me where it says</p> <p>4 that the PR-OS designation -- I want to use your</p> <p>5 terminology here --</p> <p>6 MR. JIMMERSON: Let me object to the form</p> <p>7 of the question.</p> <p>8 BY MR. BICE:</p> <p>9 Q. -- is meaningless?</p> <p>10 MR. JIMMERSON: The document certainly</p> <p>11 speaks for itself. He hasn't read it.</p> <p>12 THE WITNESS: That's correct to me. It's</p> <p>13 meaningless.</p> <p>14 BY MR. BICE:</p> <p>15 Q. To you it's meaningless?</p> <p>16 A. To me it's meaningless because the code</p> <p>17 and the statute renders that the general plan has</p> <p>18 been superseded by hard zoning, and zoning -- there's</p> <p>19 hard zoning on the property.</p> <p>20 Q. Do you know why the staff report doesn't</p> <p>21 say that?</p> <p>22 A. I don't know what staff report -- I will</p> <p>23 read the whole thing so I can find out about zoning</p> <p>24 and what they're talking about.</p> <p>25 Q. Have you ever seen any staff report making</p>	<p style="text-align: right;">Page 117</p> <p>1 over -- over this PR-OS.</p> <p>2 Q. So he never told you that at the time of</p> <p>3 this meeting that you say that you had right around</p> <p>4 the time of closing, correct?</p> <p>5 A. I think I told you on -- repeatedly we did</p> <p>6 not discuss any PR-OS or any land use. We only</p> <p>7 discussed zoning.</p> <p>8 MR. JIMMERSON: Object to the question as</p> <p>9 being asked and answered four times.</p> <p>10 BY MR. BICE:</p> <p>11 Q. And so it's sometime after we raised the</p> <p>12 issue is when Mr. Jerbic said for the first time that</p> <p>13 it was PR-OS was somehow -- I want to get your</p> <p>14 terminology correct here -- illegally put on this</p> <p>15 property?</p> <p>16 MR. JIMMERSON: Object to the form of the</p> <p>17 question. The plaintiffs have never raised this</p> <p>18 issue. It's no where within any pleadings or</p> <p>19 arguments or any briefs that's before this court.</p> <p>20 BY MR. BICE:</p> <p>21 Q. Am I right?</p> <p>22 A. I can tell you that when your side raised</p> <p>23 the issue, we have studied it ourself. I have talked</p> <p>24 to the Peccoles about PR-OS. They didn't know that</p> <p>25 the property was PR-OS. They didn't understand what</p>

<p style="text-align: right;">Page 118</p> <p>1 it is. And they said, no, they actually rejected 2 anything that would impede the zoning in the past. 3 So that -- 4 Q. Well, sorry. Let's go back to -- I want 5 to know when you -- when we raised the issue, you 6 said Mr. Jerbic -- 7 A. Yes. 8 MR. JIMMERSON: I'm going to raise the 9 issue when you talk about raising the issue, counsel, 10 I know your -- I hope I understand correctly you're 11 referring in a public forum like city mapping 12 commission or City Council. Before Judge Alf is not 13 an issue before the Court. 14 MR. BICE: I disagree but you can argue 15 whatever you like before the judge. My point is when 16 did Mr. Jerbic raise this with you that he had 17 determined it was somehow illegally placed on there? 18 THE WITNESS: I wrote, I believe, a letter 19 to the city. 20 BY MR. BICE: 21 Q. You wrote a letter to the city? 22 A. No, no. Counsel wrote a letter to the 23 city and demanded the city remove the PR-OS from the 24 property because they have taken -- they have an 25 inconsistent zoning in the general plan, and they</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Yes. Since we did not have any record of 2 legally putting it on, on the property. 3 Q. And that was -- that was sometime after 4 your general plan amendment failed; is that correct? 5 A. I don't know when it was. I can't relate 6 it to when in the process. It may be -- 7 Q. Well, you tried to get a general plan 8 amendment to eliminate the PR-OS, right? 9 A. No. To remove it. 10 Q. To remove it? 11 A. No. General plan amendment -- the general 12 plan amendment was, I believe -- yes, general plan 13 amendment is to remove the PR-OS on the property in 14 favor of the project you're proposing, yes. 15 Q. What happened to your request to eliminate 16 the PR-OS? 17 A. I think the city admitted it was put 18 wrong. Because we put the city in the position 19 saying you have a -- you have a lien on the property. 20 Essentially you have a lien on the property without 21 any legal process. And the city has concluded that 22 it's correct, and consistently I want to tell you, 23 consistently the city -- ever since the issue over 24 the PR-OS was raised, told us you don't have to file 25 anything. It can be changed in letter point. You</p>
<p style="text-align: right;">Page 119</p> <p>1 have taken the units from 7.49 to a {zero inch per -- -- 2 acre, and we asked them to remove it. And they have 3 done their research and they have admitted that it 4 was put illegally on the property. There's no legal 5 basis to put it on. And the ordinance included 6 medium low density on this piece of property on I 7 believe it's either June or July of 2005. And 8 somebody in September, arbitrarily have changed the 9 matrix, take it to counsel and painted a different 10 color on the matrix to match the change into a PR-OS. 11 So that's the answer we got from the city. 12 Q. And you got that from Mr. Jerbic; is that 13 right? 14 A. Got it from Mr. Jerbic. I got it from 15 staff for Mr. Perrigo, I believe, and we got it from 16 Councilman Beers. You know, we had one discussion 17 with him. He admitted that the city doesn't have -- 18 doesn't have the backup for it and it's illegally put 19 on the property. 20 Q. You say your counsel. Is that Mr. 21 Jimmerson wrote a letter to the city? 22 A. I don't recall. Either Todd Davis or 23 Mr. Jimmerson. 24 Q. And asked Mr. Jerbic to remove the PR-OS 25 designation?</p>	<p style="text-align: right;">Page 121</p> <p>1 have to file the plans. You don't have to do a 2 general plan amendment now. You can do a general 3 plan amendment next meeting, after -- two meetings 4 after the zoning after the entitlements. You don't 5 have to and it's not your obligation to do it. We 6 just want to correct it. 7 There's a meeting with -- a few meetings, 8 not just one, it was repeated, with Mr. Perrigo, Mr. 9 Jerbic, Mr. Lowenstein, and others, from planning 10 that set a meeting and they said it numerous times. 11 Q. Did they put -- did they put any of these 12 admissions in writing anywhere that you have seen? 13 A. I don't know. 14 Q. Have you seen any? 15 A. I don't know. I don't think the city 16 would have -- would like to put something, you know, 17 illegal action in writing. 18 Q. Okay. So why did you withdraw your 19 request for a general plan amendment? 20 A. Because -- I have no idea. Maybe because 21 we don't need it anymore. 22 Q. Is that why or do you have no idea? 23 A. I can't tell you why we withdraw this 24 application. I have to think about it. I didn't 25 look at any documents prior to coming here, and I</p>

<p style="text-align: right;">Page 122</p> <p>1 don't have a clear recollection of what happened on 2 those tens of applications we filed. 3 Q. Did you withdraw your general plan 4 amendment because you were told it was going to be 5 denied? 6 A. No. Unless the city asked us to withdraw: 7 Probably the city asked us to withdrw. I don't think 8 we have done anything ourself, except we're doing on 9 our behalf, but every single time we withdraw, I 10 believe, and I might be mistaken, the city requested 11 it. 12 Q. Do you recall you did seek a general plan 13 amendment and it was denied, or do you just not know 14 that? 15 A. I think we seek the general plan amendment 16 on the 61 lots. 17 Q. And what was the general plan amendment to 18 do? 19 A. Removing. 20 Q. The PR-OS on the property? 21 A. Yes. 22 Q. And the city council voted you down, 23 correct? 24 A. Illegally. 25 Q. What's that?</p>	<p style="text-align: right;">Page 124</p> <p>1 to do a major modification to the Peccole Ranch 2 Master Plan. Do you see that? 3 A. If you want to -- if you want me to spend 4 20 minutes reading the whole document, I will. I 5 will be glad to do it. Because if we change for the 6 R4 in this application, then that would require a 7 major mod to something that we have objected to, and 8 I think the city, in the end, agreed that the Peccole 9 Ranch Master Plan was null and void by a resolution 10 of intent in 2005. 11 Q. When did the city tell you that? 12 A. In discussions of -- you know, when 13 reading documents, the zoning letter from -- the Z-17 14 zoning letter from 1990, it has a five year 15 resolution of intent on it. 16 Q. So the city told you that the Peccole 17 Ranch Master Plan has expired? 18 A. That they have never used it -- never -- 19 never took it into consideration when it developed 20 any other property in the vicinity, including One 21 Queensridge Place, Tivoli, Boca park, other 22 properties in Queensridge, did not take into 23 consideration the master plan and changed zoning so 24 the zoning designation that would not otherwise be 25 allowed under the conceptual master plan. The plan</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Illegally, yes. 2 Q. But the City Council made a decision that 3 they would not lift the PR-OS designation, correct? 4 A. The PR-OS designation, again, in the eyes 5 of the court is meaningless. The property has -- the 6 property has zoning and the city knows it. 7 Q. And which court is it that said it's 8 meaningless? 9 A. Court of California stated it's an act of 10 taking, installing a PR-OS on the property. 11 Q. Any others than the Court in California? 12 A. I don't know any others. I can tell you 13 what this city and the city attorney says. It's 14 meaningless to your development, the PR-OS, because 15 the zoning supersedes the general plan, and the 16 general plan was put on illegally. 17 Q. And why did you withdraw your request for 18 a major modification to the Peccole Ranch Master 19 Plan? 20 A. At what time? 21 Q. Ever. 22 A. I don't know. You have to tell me 23 specifically which one you're talking about. 24 Q. Well, in the March 8, 2016 exhibit that's 25 in front of you, specifically discusses that you have</p>	<p style="text-align: right;">Page 125</p> <p>1 was conceptual. It has a time limit of five years 2 resolution of intent which at the time means it 3 expires after five years. 4 MR. JIMMERSON: When you get a chance, 5 we've been going about 75 minutes. 6 MR. BICE: That's fine. We can take a 7 break. 8 THE VIDEOGRAPHER: The time is 5:01 p.m. 9 We're off the video record. 10 (Recess was had.) 11 THE VIDEOGRAPHER: We are back on the 12 video record at 5:11 p.m. 13 BY MR. BICE: 14 Q. So when was it, Mr. Lowie, when you say 15 that the city told you that the Peccole Ranch Master 16 Plan was no longer in effect? 17 A. I don't know they said -- I think they 18 concluded themselves there was a resolution of intent 19 in the Z-17-90 that is expiring in five years which 20 will '95, expiring in 1995. You know, April of '95, 21 five years later. And a year later, just about, in 22 '96, Peccole had filed for a new master plan 23 development called Queensridge that did not contain 24 encumbered land that we currently own. 25 MR. JIMMERSON: Could I just interrupt?</p>

<p style="text-align: right;">Page 126</p> <p>1 At page 120, line 13, the witness said 2005. Here he 2 said correctly 1995. So I would like to call that to 3 your attention, Mr. Bice. That was a misstatement by 4 him.</p> <p>5 Go ahead, sir.</p> <p>6 BY MR. BICE:</p> <p>7 Q. So when did the city tell you that it was 8 no longer in effect?</p> <p>9 A. I believe -- I believe during the 10 discussion they realized that it may be not in 11 effect. However, they never took an action to remove 12 it or to, you know, to do whatever it is with. So 13 they treated it as guidance, consensual master plan 14 development as guidance. And your question was when? 15 I believe it was in the -- maybe in the last year. 16 Maybe late 2016 that they concluded it.</p> <p>17 Q. And who is it that told you it in late 18 2016?</p> <p>19 A. A discussion with staff.</p> <p>20 Q. Again, who at staff?</p> <p>21 A. I don't recall exactly. We have these big 22 meetings with staff. There's so many people sitting 23 in them, 16, 17 people in the meeting, and we had 24 quite a lot of meetings.</p> <p>25 Q. So you didn't ask them to take that</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. You shared with them.</p> <p>2 A. What Billy Bayne said and asked them to 3 check if it's correct.</p> <p>4 MR. JIMMERSON: Let me know -- as you can 5 tell, my client is fatigued and he's slurring his 6 words a little bit. I'm not asking you to stop 7 now -- I'm perceptively observing an hour ago or an 8 hour and a half ago he was much more clear than now.</p> <p>9 BY MR. BICE:</p> <p>10 Q. I will wrap up here for the day.</p> <p>11 Let me ask you this: Did you show any 12 documents to the city to get them to change their 13 position about the master plan being in effect?</p> <p>14 A. I can't tell you if the city changed the 15 position about the master plan because you can see it 16 here, but I believe they told me they were using it 17 as a guidance, the Peccole Ranch Master Plan, because 18 they didn't follow a tool through the entire 25 years 19 since 199 -- 1990.</p> <p>20 Q. Did you submit to them a letter of 21 justification in 2016 seeking a major modification of 22 the plan?</p> <p>23 A. I believe we had to seek major -- they 24 requested a major mod on an R4, a zoning. That was 25 not within the conceptual master plan's guidance.</p>
<p style="text-align: right;">Page 127</p> <p>1 position; is that right?</p> <p>2 A. No, no.</p> <p>3 Q. They came to that conclusion all by 4 themselves.</p> <p>5 A. No. We had discussions we wanted to know 6 what does it say. Actually, this all starts with 7 Peccole. I believe that Peccole -- Billy Bayne had 8 raised the issue that the master plan is -- you know, 9 no longer in effect for a long time.</p> <p>10 Q. Billy Bayne raised this with who?</p> <p>11 A. With me. He came to my office and told me 12 that?</p> <p>13 Q. When?</p> <p>14 A. A year ago, at least.</p> <p>15 Q. A year ago at least?</p> <p>16 A. Yes.</p> <p>17 Q. So sometime prior to July of 2016?</p> <p>18 A. Mid-July -- last time -- that sounds 19 right.</p> <p>20 Q. So then you went to the city and told them 21 you didn't think it was any longer valid?</p> <p>22 A. No. I shared with them what Billy Bayne 23 has said.</p> <p>24 Q. You showed them?</p> <p>25 A. Shared. Shared with them.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. So what I'm trying to understand, Mr. 2 Lowie, is why are you submitting major modification 3 requests if you're saying that it's not in effect?</p> <p>4 MR. JIMMERSON: Objection to the question. 5 Asked and answered. You can answer again.</p> <p>6 THE WITNESS: I don't believe we tell the 7 city what to do. The city tells us what to do.</p> <p>8 BY MR. BICE:</p> <p>9 Q. The city's position is that you needed to 10 submit a major modification, correct?</p> <p>11 A. For something that was outside the 12 guidelines, you know, the unit counts or zoning 13 designation. They had requested -- at the time they 14 took the position it should be -- at the time they 15 took the position that they wanted GPA -- I believe 16 the unit number now is much less within the R-PD7 17 designation, and the zoning categories have not 18 changed. Therefore --</p> <p>19 Q. Well, strike that. Didn't you have to 20 seek a major modification for 17 acres?</p> <p>21 A. The 17 acres was filed for a different 22 designation that was originally in the conceptual 23 master plan development.</p> <p>24 Q. And did you seek a major modification?</p> <p>25 A. For something that was not within the</p>

<p style="text-align: right;">Page 130</p> <p>1 guidance, yes.</p> <p>2 Q. And then did you later drop that major</p> <p>3 modification?</p> <p>4 A. I don't recall what we've done with it.</p> <p>5 Again, it's city guidance. File an application,</p> <p>6 withdraw the application, prepare the application,</p> <p>7 city guidance, except one that I recall that we have.</p> <p>8 Q. You keep saying "city guidance." What</p> <p>9 does that mean, "city guidance"?</p> <p>10 A. City guidance means the planning</p> <p>11 department or city attorney's office instructs you</p> <p>12 what to do. We want you to file this, do this, do</p> <p>13 that.</p> <p>14 Q. Did you ever tell the city you did not</p> <p>15 believe you were obligated to do so?</p> <p>16 A. I told the city I'm not obligated to file</p> <p>17 for a PR-OS removal, yes, I did.</p> <p>18 Q. And when did you tell them that?</p> <p>19 A. When the application was going through and</p> <p>20 one of the requests was on the list, GPA request.</p> <p>21 Q. And when -- did you put that in writing</p> <p>22 that you aren't obligated to do so?</p> <p>23 A. No. Weekly meetings. We had so many</p> <p>24 meetings with the city, so instead of putting a</p> <p>25 letter to the city, we just discussed it with them in</p>	
<p style="text-align: right;">Page 131</p> <p>1 the meetings, either in the --</p> <p>2 Q. Did you ever get the PR-OS designation</p> <p>3 removed from the property for the 17 acres?</p> <p>4 A. I believe that it was removed. I'm not</p> <p>5 sure who filed it, us or the city, but it was</p> <p>6 removed, yes.</p> <p>7 Q. And when was that done?</p> <p>8 A. It was done at the time of these</p> <p>9 documents. It did not have to be but it was done at</p> <p>10 the time of the document.</p> <p>11 Q. So you got a general plan amendment for</p> <p>12 the 17 acres; is that what you're saying?</p> <p>13 A. General plan amendment, yes, I believe so.</p> <p>14 I don't recall. Frank Pankratz would know all those</p> <p>15 details much more than I in the company</p> <p>16 Q. All right. Well, I understand. I agree</p> <p>17 with Mr. Jimmerson it's probably best to cease at</p> <p>18 this point in time but we'll work out schedules.</p> <p>19 Thank you for your time, Mr. Lowie. I appreciate it.</p> <p>20 I hope you make -- you'll have plenty of time to make</p> <p>21 the airport now.</p> <p>22 Let's go off the record.</p> <p>23 THE VIDEOGRAPHER: This concludes today's</p> <p>24 deposition. We're off the record at 5:21 p.m.</p> <p>25</p>	

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Lowie, Yohan August 04, 2017

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Exhibit 4

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DECLARATION OF YOHAN LOWIE

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

1. At all times, I have served as a manager of each of 180 Land Co LLC, Seventy Acres and Fore Stars, (collectively “the Landowners”). I make this declaration in support of Plaintiff Landowners Opposition to the City’s Motion for Summary Judgment and Countermotions to Determine the Two Inverse Condemnation Sub-Inquiries in the Proper Order. I have personal knowledge of the facts stated herein and, if called to testify as a witness, I could and would competently testify as set forth below.

2. I have constructed and developed properties both independently and with my partners, principals of the Landowners for over 25 years. My partners and I have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs homes, and (4) the Nevada Supreme Court and Appellate Court building located in downtown Las Vegas at 408 East Clark Avenue to name a few. We all live in the Queensridge common interest community and One Queensridge Place and are the single largest owners within both developments having built over 40% of the custom homes within Queensridge. There is no other independent developer that has contributed more to, or had a larger impact on, the Queensridge CIC and the surrounding area than my partners and myself.

3. I began working with the Peccole family and developing lots within the Queensridge CIC in 1996 and consistently worked with them thereafter.

1 4. In or about 2001, I was informed by Peccole family members that
2 the Badlands Golf Course was zoned R-PD7 and intended for residential development. I further
3 learned that the original owners of the various parcels that comprised the Badlands Golf Course
4 (sometimes referred to as “the Land” or the “250 Acre Residentially Zoned Property”) had
5 never imposed any restrictions on the use of the Land and that the Land would eventually be
6 developed. I was further informed that the Land is “developable at any time” and “we’re never
7 going to put a deed restriction on the property.” The Land abuts the common interest
8 community commonly known as “Queensridge” (the “Queensridge CIC”).
9

10
11 5. Thereafter in 2001, I retained counsel and learned that the Land is “Not A
12 Part” of the Queensridge CIC, the Land was residentially zoned, there existed rights to develop
13 the Land, the Land was intended for residential development and that as a homeowner within
14 the Queensridge CIC, according to the Covenants, Conditions and Restrictions (the “CC&Rs”) I
15 had no right to interfere with the development of the Land.
16

17 6. In or around 2006, I met with the head planner at the City of Las Vegas, Mr.
18 Robert Ginzer, and was advised that the Land was zoned R-PD7 and that there were no
19 restrictions that would prevent development of that zoning on the Land. Thereafter, in or
20 around 2007 through various other transactions with the Peccole family, I obtained the right to
21 purchase all five parcels that encompassed the Badlands Golf Course. Thereafter, I continued
22 my due diligence on the Land.
23

24 7. In or around June of 2014, the Peccole family gave me six months’ notice to
25 exercise the right to purchase the entire 250 Acres of Residentially Zoned Land. In doing so,
26 we conducted further due diligence which included meeting with the City Planning Department
27 including Mr. Tom Perrigo and Mr. Peter Lowenstein, the highest ranking planners at the City
28

1 of Las Vegas, to confirm whether the Land was developable and if there was anything that
2 would otherwise prevent development. The City Planning Department agreed to do a “study”
3 which took approximately three weeks.

4
5 8. After three weeks the City Planning Department reported that: 1) the 250 Acre
6 Residential Zoned Land had hard zoning and vested rights to develop up to 7 units an acre; 2)
7 “the zoning trumps everything;” and, 3) any owner of the 250 Acre Residential Zoned Land can
8 develop the property.

9
10 9. My team and I requested that the City adopt its three-week study in writing as
11 the City’s official position in order to conclusively establish the developability of the property
12 prior to closing on the property sale. The City agreed and provided the City’s official position
13 through a “Zoning Verification Letter” issued by the City Planning & Development Department
14 on December 30, 2014, stating: 1) “The subject properties are zoned R-PD7 (Residential
15 Planned Development District – 7 units per acre;” 2) “The density allowed in the R-PD District
16 shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to
17 four units per gross acre.);” and, 3) “A detailed listing of the permissible uses and all applicable
18 requirements for the R-PD Zone are located in Title 19 (“Las Vegas Zoning Code”) of the Las
19 Vegas Municipal Code.” The Zoning Verification Letter is the way in which a potential buyer
20 can confirm the zoning of land and is a standard item lenders and title companies request.
21 Lenders and title companies do not and have not in my experience ever inquired about land use
22 designations.
23
24

25 10. Thereafter, I also obtained information that the entire 250 Acre Residential
26 Zoned Land had been zoned R-PD7 since at least 1990. This zoning was reconfirmed in
27 subsequent research by the City through Ordinance 5353 that was passed in 2001.
28

1 11. In all my years of developing in the City of Las Vegas, the process involves
2 meeting with the Planning Department to discuss conceptual plans wherein the City directs
3 what applications are required in order to develop that plan. Thus, we began meeting with the
4 City officials and Planning Department officials in or around September of 2014.

5
6 12. In March 2015, my partners and I acquired the membership interests of Fore
7 Stars which at that time owned the entirety of the parcels (then five parcels) that comprise the
8 250 Residentially Zoned Land. Immediately after acquiring Fore Stars, we began the process
9 with the City of Las Vegas Planning Department for development of the land.
10

11 13. In June 2015, Fore Stars re-drew the boundaries of the various parcels that
12 comprised the 250 Acre Residentially Zoned Land pursuant to the City's request and direction.
13 The City required the filing of parcel maps to separate the land for every area of development.

14 14. In November 2015 ownership of approximately 178.27 acres of the property was
15 transferred to 180 Land Co and approximately 70.52 acres of the property was transferred to
16 Seventy Acres. Fore Stars retained ownership of approximately 4.5 acres of the Property.
17

18 15. Today, 180 Land Co owns the parcels with the following Clark County Assessor
19 Parcel Numbers ("APNs"): APNs 138-31-201-005 (totaling 34.07 acres), 138-31-601-008
20 (totaling 22.19 acres), 138-31-702-003 (totaling 76.93 acres), 138-31-702-004 (totaling 33.8
21 acres), and 138-31-801-002 (totaling 11.28 acres).
22

23 16. Today, Seventy Acres owns the parcels more particularly described by the Clark
24 County Assessor as APNs 138-31-801-003 (totaling 5.44 acres), 138-32-301-007 (totaling
25 47.59 acres), and 138-32-301-005 (totaling 17.49 acres).
26
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1 17. Today, Fore Stars owns the parcels more particularly described by the Clark
2 County Assessor as APNs 138-32-210-008 (totaling 2.37 acres); and 138-32-202-001 (totaling
3 2.13 acres).

4 18. In 2015 the Las Vegas residential real estate market was booming and there was a
5 great demand for single-family and multi-family residential. Additionally, the golf course
6 operations on the Land were failing. Thus, it was our intent to develop as quickly as possible to
7 not only meet market demands, but to reduce the substantial carrying costs. We started with
8 Seventy Acres because developing Seventy Acres was the most financially feasible way to
9 commence development of the Land.
10

11 19. On or around December 16, 2015, I attended a meeting at City Hall with Mayor
12 Caroline Goodman, Councilman Beers, Chris Kaempfer, Frank Pankratz, City Attorney Brad
13 Jerbic, Planning Director Tom Perrigo and others from my office. During that meeting Mayor
14 Goodman informed that due to neighbors' concerns the City would not allow "piecemeal
15 development" of the Land and that one application for the entirety of the 250 Acre Residentially
16 Zoned Land was necessary by way of a Master Development Agreement ("MDA").
17

18 20. Initially we acquiesced to the City's requirement of a development agreement,
19 but as the process continued we strongly opposed this City mandated MDA, because it was
20 significantly increasing the time and cost to develop the entire 250 Acre Residential Zoned
21 Land. Additionally, the City was imposing extraordinary requirements causing further delay
22 and costs. Every single time we agreed to the MDA, which included how the 65 Acre
23 Property would be developed, the City would change the requirements demanding more from
24 us. In an effort to comply so that development could occur, we agreed to the City's demands.
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1 21. These demands include, but are not limited to detailed architectural drawings
2 including 3d digital models for Seventy Acres for topography, elevations, etc., regional traffic
3 studies, complete civil engineering packages, master detailed sewer studies, drainage studies,
4 school district studies. These additional demands caused us to incur more than an additional 1
5 million dollars in fees and costs. In all my years of development and experience such costly
6 and timely requirements are never required prior to the application approval because no
7 developer would make such an extraordinary investment prior to entitlements, ie. approval of
8 the application by the City.
9

10
11 22. The MDA was drafted almost entirely by the City of Las Vegas and included all
12 of the requirements the City demanded.

13 23. After the City delayed the MDA, in late 2016 we met with the City Planning
14 Department regarding development of the 35 Acre Property as a stand-alone parcel and asked
15 the City Planning Department to set forth all requirements the City could impose to develop the
16 35 Acre Property as an individual parcel, rather than as part of the MDA.
17

18 24. The City Planning Department worked closely with us to prepare the residential
19 development applications for the 35 Acre Property and submitted a Staff Report recommending
20 approval of the applications to develop the 35 Acre Property. The City Planning Commission
21 unanimously approved the development of the 35 Acre Property, but the City Council denied
22 those applications citing at the time of the hearing that they did not want “piecemeal
23 development” and over my objections refused to consider the MDA which was on the agenda
24 for consideration. Thereafter, the City continued to make it clear to us that it would not allow
25 development of individual parcels, but demanded that development only occur by way of the
26 MDA. Therefore, we continued our work with the City on the MDA.
27
28

1 25. On August 2, 2017, the MDA was presented to the City Council for approval.
2 Despite offering the MDA as the only application the City would accept to develop the 65 Acre
3 Property, the City's own Planning Staff and Planning Commission recommending approval,
4 repeated assurances from the City, and the fact that the City itself almost entirely drafted the
5 MDA, the City denied the MDA altogether.
6

7 26. The City did not ask us to make more concessions, like increasing the setbacks
8 or reducing the units per acre, it just simply rejected the MDA altogether.
9

10 Dated this 23rd day of November 2020.

11
12 */s/ Yohan Lowie*

13 _____
14 Yohan Lowie
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Exhibit 5

DECLARATION OF YOHAN LOWIE

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

1. I Make this Declaration in support of Plaintiff Landowners' Motion for a New Trial and to Amend Related to: Judge Herndon's Findings of Fact and Conclusions of Law Granting City of Las Vegas Motion for Summary Judgment, Entered on December 30, 2020. This Declaration supplements my previous Declaration submitted in this matter, dated November 23, 2020, and identified as Exhibit 22.
2. The consideration for the acquisition of the membership interest of Fore Stars Ltd comprised of all the assets and liabilities which included five parcels of land amounting to approximately 250 acres of residentially zoned land "250 Acre Residential Zoned Land" or "Land" which was being leased by a third party golf course operator at the time. This acquisition was significant and included : 1) approximately 15 years of work, resources, sacrifice and effort; 2) entering into an approximately \$100 million deal with Peccole (the original owner of the Land) and a third party that involved complex land transactions related to large tracts of land, including Tivoli Village, the Queensridge Towers, Hualapai Commons (at Sahara and Hualapai Way), and Fore Stars Ltd, to obtain the right to acquire the 250 Acre Residential Zoned Land. Within this complex deal, \$45 million was directly allocated to the acquisition of Fore Stars which included the 250 Acre Residential Zoned Land.
3. Additionally, the acquisition of Fore Stars Ltd., which owned the 250 Acre Residential Zoned Land, comprised all of its assets and liabilities, which included the Land, which the golf course was operating on at a substantial loss; the post-closing obligation to resolve a lot line dispute wherein the Queensridge Towers were constructed on part of the 250 Acre Residential Zoned Land; any liabilities of Fore Stars, Ltd.; all existing contracts with suppliers and vendors; and, all leases and agreements associated with any equipment on the land.
4. In all my years of dealings with the Peccoles and with the surrounding properties (since 1996 to the present) that involved a multitude of real estate transactions, the Peccole Ranch Master Plan north of Charleston Blvd. was never mentioned; it never appeared on any document, never appeared on any title to land, never in any CC&Rs, never on any entitlement package, and never on any lenders document. The Peccole Ranch Master Plan was then later used by the

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representatives of the Queensridge Community to hold up development on the 250 Acre Residential Zoned Land after we purchased it.

5. Within months of acquiring the 250 Acre Residential Zoned Land, then-councilman Bob Coffin informed me that a few of the homeowners in the Queensridge Community were demanding that no development occur on the 250 Acre Residential Zoned Land, but that Councilman Coffin would "allow" me to build "anything I wanted" on 70 of the 250 acres if we handed over to these few homeowners 180 Acres of land with the water rights for free.

6. Several months later, in April 2016, Councilman Coffin told me that he would get me 1,000 more units on the 70 acres if I would "hand over" the 180 acres, and all water rights, to these a Queensridge homeowner in perpetuity, for free. I offered the 180 acres for a one dollar per year lease as long as it included a deed restriction to operate as a golf course. Coffin responded it's not going to work and I needed to hand it over for free without the restriction.

7. In 2018, Councilman Seroka told me that I should have negotiated with the Queensridge Community and if I had given them what they wanted, I could have already been building. He suggested that if I negotiated with Frank Schreck, a Queensridge representative, all the lawsuits would go away.

DATED this 27th day of January, 2021.

/s/ Yohan Lowie

Yohan Lowie

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Exhibit 6

DECLARATION OF YOHAN LOWIE

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

I make this Declaration in support of Plaintiff Landowners' REPLY IN SUPPORT OF: Plaintiff Landowners' Evidentiary Hearing Brief #1 Memorandum of Points and Authorities Regarding the Landowners' Property Interest and REPLY IN SUPPORT OF Plaintiff Landowners' Evidentiary Hearing Brief #2 Memorandum of Points and Authorities Regarding the City's Actions Which Have Resulted in a Taking of the Landowners' Property and in response to the Declaration of J. Christopher Molina (the "Molina Declaration").

1. I have never met or spoken with J. Christopher Molina. No person named "J. Christopher Molina" was involved in any transactions with the Peccole family where I was a principal on any side of the transaction.
2. I have been informed that J. Christopher Molina is an attorney at the law firm of McDonald Carano. The law firm of McDonald Carano was not involved in any transactions with the Peccole family where I was a principal on any side of the transaction.
3. I understand "personal knowledge" to mean knowledge gained through firsthand observation or experience. Based on my personal knowledge as stated in #2 and #3 above, the declaration by J. Christopher Molina that he has "personal knowledge" of any transactions with the Peccole family where I was a principal on any side of the transaction is untruthful.
4. In regard to the consideration for the acquisition of the membership interest of Fore Stars Ltd. the information attested to by J. Christopher Molina is replete with material inaccuracies, confusion, and untruthful statements. To name a few and generally:
 - a. The acquisition of the assets and liabilities, which included five parcels of land amounting to approximately 250 acres of residential zoned land, was significant and

1 included: 1) approximately 15 years of work, resources, sacrifice, effort, and earned
2 goodwill; 2) entering into an approximately \$100 million multi-transaction deal with
3 the Peccole family (the original owner of Fore Stars Ltd.) and a third party that
4 involved complex land transactions related to large tracts of land and developments,
5 including Tivoli Village, the Queensridge Towers, Hualapai Commons (at Sahara and
6 Hualapai Way), and Fore Stars Ltd, to obtain the right to acquire the former Badlands
7 properties. The understanding among the parties was that \$45 million in
8 consideration had been exchanged for the acquisition of the property that was owned
9 by Fore Stars Ltd. comprising the "250 Acre Residential Zoned Land".
10

- 11 b. The "Developer" is not Queensridge Towers LLC ("QT").
12
13 c. Fore Stars Ltd. (then owned by the Peccole family) did not agree to transfer 5.13 acres
14 to QT "at no cost". Extensive consideration was exchanged as stated in the
15 Redemption Agreement.
16
17 d. The "Developer" as incorrectly used by J. Christopher Molina in his Declaration, had
18 no obligation to pay the Peccole family \$3 million.
19
20 e. The \$3,150,000 Clubhouse Obligation was owed by Queensridge Towers LLC to
21 Fore Stars Ltd (then owned by the Peccole family), not the other way around, and not
22 owed by the "Developer" or the Landowners' principals, as falsely state by J.
23 Christopher Molina.
24
25 f. The "Developer" never had an obligation to construct a new clubhouse.
26
27 g. In 2012, the Landowners' principals disassociated from QT and relinquished all
28 ownership, management or control of QT. Therefore, any reference to the Developer
as defined by the Molina declaration thereafter is false.

- 1 h. The 2013 Settlement was between QT and Fore Stars Ltd. (then owned by the
2 Peccoles), not the Landowners' principals.
- 3 5. Specifically, the following statements are inaccurate or blatantly false:
4 a. Paragraph 4 in the Molina declaration is false including the statement that the Peccole
5 family is the developer of the 1,539-acre Peccole Ranch Master Plan.
6 b. Paragraph 5 of the Molina declaration is false.
7 c. Paragraph 6 of the Molina declaration is false in that the summary of transactions and
8 obligations as portrayed is false.
9 d. Paragraph 7 of the Molina declaration is false.
10 e. Paragraph 9 of the Molina declaration is inaccurate as it falsely describes sales
11 transactions as recapitalization.
12 f. Paragraph 11 of the Molina declaration references a settlement agreement to which I
13 have no personal knowledge as neither I nor any entity I am affiliated with was a party
14 to that transaction.
15 g. Paragraph 12 of the Molina declaration references a letter attached to the 2013
16 Settlement to which I have no personal knowledge as neither I nor any entity I am
17 affiliated with was a party to that transaction. However, referencing the original
18 agreement and that the obligation to spend 3,150,000 by "the Developer" somehow
19 survived termination is false and defies the plain language of the transactional
20 documents.
21 h. Paragraph 12, 13, and 14 of the Molina declaration is inaccurate and appears to be
22 based upon documents and negotiations that were never executed.
23 i. Paragraph 16 of the Molina declaration is false.
24 j. Paragraph 17 of the Molina declaration is false in its assumed conclusion.
25
26
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1 k. Paragraph 23 of the Molina declaration is false in that the Developer as defined by
2 Molina did not record said parcel map. QT is not and was not the Developer.

3 6. In regard to discovery requested relating to the amount paid for the acquisition of Fore
4 Stars, the documents produced to the City support the testimony that “the aggregate of
5 consideration given to the Peccole family for Fore Stars Ltd, the owner of the former
6 Badlands golf course properties was approximately \$45 million”. After reading the
7 Molina Declaration it is clear that J. Christopher Molina does not comprehend those
8 complex transactions and his testimony within his Declaration relating thereto makes
9 false conclusions. Furthermore, J. Christopher Molina’s continued reference to a “single
10 transaction” for a complex deal that involved a series of transactions is merely deceptive
11 semantics.
12

13
14 7. Upon information and belief: J. Christopher Molina did not attend the August 13, 2018
15 meeting between the City of Las Vegas (“CLV”) and GC Wallace Engineers (“GCW”);
16 The meeting minutes were prepared by GCW, a third party engineering firm; The City
17 did not like that the minutes memorialized what the CLV attendees stated at the meeting,
18 that the City’s ‘top down directive’ to City staff was that they are “not authorized to
19 provide conditional approval on this TDS”, so after receipt of the GCW minutes CLV’s
20 Peter Jackson desperately sought to alter the minutes to remove the City’s unfavorable
21 admissions made during the meeting directing GCW to have them “replaced in its
22 entirety”, and in fact attempted to distance himself from the happenings at the meeting
23 stating in his email “could you please let the minutes reflect that I had to leave the meeting
24 in the first 5 minutes or so to attend another meeting?”; The Plaintiff’s response to
25 accurately reflect everyone’s understandings was that “Seventy Acres LLC is OK with
26 attaching both Peter’s 8/21/18 email and Mark’s 9/12/18 email to the August 13 dated
27
28

1 GCW meeting minutes as CLV's comments to the meeting." It was the City of Las Vegas
2 representatives that sought to falsify the minutes, not GCW, nor Plaintiff. J. Christopher
3 Molina's statement that the "Developer's catch-22 argument relies on falsified evidence"
4 and J. Christopher Molina's statements on what occurred are both false testimonies.

5 8. The technical drainage study submitted on behalf of Plaintiff and discussed between
6 GCW and the CLV engineers was for land (17 Acres) that was already entitled by the
7 City, yet the City refused to allow the drainage work to proceed. J. Christopher Molina
8 confuses the ordinance requirements with the Technical Drainage Study on the entitled
9 17 acres. The CLV put a hard stop on Plaintiff's necessary drainage work with orders
10 coming "from the top". However, as it relates to other parcels not yet developed, the City
11 made it clear through the ordinance that it would not accept an application for
12 development without a drainage study and that no drainage study could be completed
13 until all litigation was resolved in relation to the Landowners' properties.

14 9. Plaintiff's land is residentially zoned property R-PD7. It was hard zoned R-PD7 from
15 U(M) by the City Council by Ordinance No. 5353 PASSED, ADOPTED AND
16 APPROVED on August 15, 2001, signed by Mayor Oscar Goodman and attested by City
17 Clerk Barbara Jo Ronemus. The ordinance did not change the then General Plan Land
18 Use Designation of M-Medium Density residential. In addition to hard zoning the
19 property for R-PD7 residential single and multi-family use, it provides that **"All**
20 **ordinances or part of ordinance or sections, subsections, phrases, sentences, clauses**
21 **or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,**
22 **1983 Edition, in conflict hereby repealed."** The R-PD7 zoning on the property is "the
23 law" of the land, not arguments by J. Christopher Molina declares.
24
25
26
27
28

- 1 10. In 2015, City of Las Vegas Councilman Bob Beers, City Attorney Brad Jerbic, and
2 Planning Director Tom Perrigo admitted to me, in front of my team, that they [Bob, Brad
3 and Tom] have “no idea” how a PR-OS Land Use Designation was purportedly placed
4 on the property, and that no formal City adoption has ever occurred. Additionally, I was
5 told “But it doesn’t matter because zoning supersedes the General Plan”.
6
7 11. J. Christopher Molina’s statements that Plaintiff’s property is “open space and drainage”
8 under the Peccole Ranch Master Plan is a blatant falsity in contradiction to and in
9 complete disregard of the ruling of the Nevada Supreme Court in its Order of Reversal
10 on filed on March 5, 2020. The Supreme Court of the State of Nevada in Case No. 75481
11 ruled that the Peccole Ranch Master Plan does not apply to Plaintiff’s R-PD7 zoned land
12 and that no application for modification of the Peccole Ranch Master Plan was required
13 by Plaintiff to develop its property.
14
15 DATED this 21st day of May, 2021.
16

17 /s/ Yohan Lowie
18 Yohan Lowie
19
20
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Exhibit 7



EXECUTIVE HOME BUILDERS, INC.

9725 West Charleston Blvd., Las Vegas, NV 89117
Telephone: 702-551-5955 Fax: 702-562-8379

May 31, 2007

Mr. Larry Miller
Mr. Bruce Wayne
Fore Stars, Ltd.
851 South Rampart, Suite 150
Las Vegas, NV 89145

Re: Badlands Golf Course, Las Vegas, Nevada

Dear Messrs. Miller and Wayne:

This letter of intent ("Letter of Intent"), when countersigned by Fore Stars, Ltd. (the "Seller"), the owner of the real estate and business operation known as the "Badlands Golf Course", will confirm the intent of Seller and Yohan Lowie, or EHB Development Corporation Ltd., and/or its subsidiary, EBC Ltd., or such other nominee as may be named (the "Purchaser"), with respect to the sale and purchase of real property and business operations of the Badlands Golf Course, upon the terms and conditions hereinafter set forth:

1. **THE PROPERTY.** The property and assets to be purchased by Purchaser (the "Property") shall mean:

- (a) Seller's fee interest in the Badlands Golf Course land, and all of Seller's right, title and interest in and to all improvements on the land together with all easements, covenants, water rights, and all other rights pertaining to the premises; and
- (b) Seller's right, title and interest in the business, personal property, assets and rights (including but not limited to water and trademark rights, if any) comprising the Badlands Golf Course operations.

2. **PURCHASE PRICE.** The purchase price (the "Purchase Price") for the Property shall be Twelve Million Dollars (\$12,000,000), subject to the following:

- (a) The Purchase Price shall be paid at closing in cash.
- (b) The drafting, execution, and delivery of a definitive purchase agreement (the "Purchase Agreement") and related agreements satisfactory in form and substance to Purchaser and Seller shall take place on or before the close of business on the 29th day of June, 2007. The Purchase Agreement shall contain such representations, covenants, conditions, and other provisions as are standard for such an agreement and are mutually agreed to by Seller and Purchaser.

Mr. Larry Miller
Mr. Bruce Bayne
May 31, 2007
Page 2 of 5

(c) Within two (2) business days of the execution of this LOI, Purchaser will deposit, in an interest-bearing escrow account with a mutually acceptable escrow agent, a non-refundable deposit in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the "Earnest Money Deposit"), to be credited to the Purchase Price upon closing.

(d) Upon execution of the Purchase Agreement, the Earnest Money Deposit shall be released to Seller ("Released Funds"). Concurrently therewith, Purchaser shall deposit an additional Two Hundred Fifty Thousand Dollars (\$250,000) ("Additional Earnest Money Deposit") with escrow agent to be held until closing, unless otherwise sooner released pursuant to the terms herein, and credited to the Purchase Price.

(e) The closing shall occur within thirty (30) days after the expiration of the Review Period (as defined below), unless prior to the closing date one of the following occurs:

i. Purchaser opts to extend the closing date by an additional sixty (60) days by releasing the Additional Earnest Money Deposit to Seller ("Additional Released Funds"). The Additional Released Funds shall be credited toward the Purchase Price at closing, and shall only be refundable to Purchaser in the event of the failure of the transaction to close as a result of Seller's default of the Purchase Agreement; or

ii. Purchaser elects to terminate this transaction by notifying Seller of such, in which event, the Additional Earnest Money Deposit, together with any accrued interest thereon, shall be refunded to Purchaser by the escrow agent.

3. **REVIEW PERIOD.** The transaction contemplated herein shall be subject to completion of Purchaser's review, to the reasonable satisfaction and at the sole expense of Purchaser (the "Review Period"). The Review Period shall start upon execution of this Letter of Intent by Seller and be completed by the fifteenth (15th) day following the execution of the Purchase Agreement.

Purchaser certifies that the due diligence review has been substantially completed, other than review of the title exceptions and completion of its water rights opinion.

4. **CLUBHOUSE LLC.** As a material part of this transaction, the parties agree to form a limited liability company ("Clubhouse LLC") for the purpose of constructing a new golf clubhouse on the Badlands Golf Course ("Clubhouse"), under the following terms and conditions:

(a) The Purchaser and Seller shall mutually prepare an Operating Agreement for Clubhouse LLC, to be executed within thirty (30) days after the closing of the sale of the Property.

(b) Purchaser and Seller shall each own fifty percent (50%) of the membership interests in Clubhouse LLC, and share equally in the profits and losses of the company.

(c) Purchaser and Seller shall make capital contributions to Clubhouse LLC for the construction of the Clubhouse, as follows:

Mr. Larry Miller
Mr. Bruce Bayne
May 31, 2007
Page 3 of 5

i. Purchaser shall make an initial capital contribution in the form of construction services valued at Four Million Dollars (\$4,000,000);

ii. Seller shall assign Clubhouse LLC the Four Million Dollars (\$4,000,000) owed to Seller by Queensridge Towers LLC under the Badlands Golf Course Clubhouse Improvement Agreement, and related agreements, payable to Clubhouse LLC as such amounts become due; and

iii. Any additional capital contributions required by the members for the construction of the Clubhouse or conduct of Restaurant Operations (as defined below) shall be equal cash contributions by each the Seller and Purchaser.

(c) The Clubhouse LLC shall construct for the design and construction of the Clubhouse. Clubhouse LLC shall commence diligent pursuit of the programming, design, and construction process.

(d) The Clubhouse shall be programmed for the following uses: i) golf operations, including, but not limited to, a pro-shop, golf concessions, cart storage & maintenance, and a golfer's lounge ("Golf Operations"); and ii) restaurant, bar, and banquet center ("Restaurant Operations").

(e) The Golf Operations shall be owned, funded, managed and the sole responsibility of Purchaser as part of its Badlands Golf Course operations.

(f) As consideration for the construction of the Clubhouse, Clubhouse LLC shall receive an exclusive leasehold ("Lease") for the Restaurant Operations portion of the Clubhouse at a nominal annual rent. The Restaurant Operations shall be owned and operated by Clubhouse LLC. The term of the Lease shall be ten (10) years with two (2) automatic renewal terms of ten (10) years each, at the sole option of Clubhouse LLC.

(h) The Badlands Golf Course Clubhouse Improvement Agreement, and related agreements, shall be amended by the parties, as is necessary to accomplish the intent of the parties outlined herein.

1b

In lieu of a partnership in the clubhouse, Seller will carry a \$10,000,000.00 note, interest only for 2 years at 6.5% per annum. Term of note to be 15 years at 6.5% interest. Additionally, any notice that results in a sale in favor of Seller will also include a share of the proceeds with the only sale to Seller to be the determined monthly dues.

5. **EXCLUSIVE STANDSTILL.** In consideration of the agreements contained herein, from the date hereof until the earlier of the date upon which the Purchase Agreement is executed, or the date of termination of the transaction by the Purchaser in accordance with Paragraph 2(d)(ii) above, Purchaser shall have the exclusive right to purchase the Property and Seller shall not deal or negotiate with any other person during such period. Seller further agrees that until and through the closing date,

Deleted (g)

Deleted (g) Purchaser shall have the right, at any time, to purchase (conveyance) 5

1. the Lease interest from Clubhouse LLC for Four Million Dollars (\$4,000,000) plus the 2% brokerage fee; the members prior to the purchase of Seller's membership interest as provided for in Subparagraph 4(a)(5) below; and 5

2. Seller's membership interest in Clubhouse LLC for which amount to 20% of its share in the ownership of the Clubhouse.

Mr. Larry Miller
Mr. Bruce Bayna
May 31, 2007
Page 4 of 5

unless Purchaser elects to terminate this transaction before the closing date, Seller shall not pursue any sale or partnership negotiations regarding the Property with any other party, nor conduct any development planning, design, or any other development activities, with respect to the subject property, other than repairs to the golf course and the existing facilities.

6. **ACCESS TO PROPERTY AND RECORDS.** Seller shall provide Purchaser access to the Property at all reasonable times during the escrow period so that Purchaser (or its agents and consultants) can conduct such document review, site inspections, testing and sampling as it may deem necessary. Purchaser shall indemnify Seller for any expenses, claims or liens incurred by Seller as a result of any entry by Purchaser and/or its agents. Seller shall deliver to Purchaser the items relating to the Property which are in Seller's possession as may be reasonably requested by Purchaser, within five (5) days after such request is made.

7. **EQUITABLE REMEDIES.** Without limiting the remedies available to the Purchaser, Seller acknowledges that a breach of the covenants in this Letter of Intent may result in injury to the Purchaser for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely, and that:

a. In the event of such a breach (or threat thereof) of Section 5 herein, Purchaser shall be entitled to obtain a temporary restraining order and/or a preliminary or permanent injunction, without the necessity of proving irreparable harm or injury as a result of such breach (or threatened breach), restraining the Seller from engaging in activities prohibited by these sections or activities resulting from a violation thereof; and

b. In the event of a breach of this Letter of Intent by Seller, Purchaser shall be entitled to proceed in an action for specific performance.

8. **GOVERNING LAW.** This Letter of Intent and all transactions contemplated hereby shall be construed, interpreted and governed by the laws of the State of Nevada. In the event of any disputes arising hereunder, the prevailing party in any action shall be entitled to attorney's fees and costs incurred in the enforcement hereof.

9. **DAYS.** All days are calendar days, unless otherwise indicated. If a final day falls on a day which is not a weekday (Monday through Friday) or is a Federal or Nevada State holiday, the day of performance is the preceding weekday.

10. **CONFIDENTIALITY.** The parties agree that the terms and conditions of this LOI, and the Purchase Agreement, shall remain strictly confidential and shall only be disclosed to the extent, and to parties, necessary to proceed with and close the transaction.

11. **LOI DATED JANUARY 4TH, 2007.** Upon execution, this LOI supersedes and terminates all rights and obligations of the Purchaser and Seller under the previously executed LOI dated January 4th, 2007.

//

Mr. Larry Miller
Mr. Bruce Bayne
May 31, 2007
Page 5 of 5

If this Letter of Intent is acceptable to you, please execute the enclosed copies where indicated and return one fully executed copy to me by the end of the business day, Tuesday, June 5th, 2007.

Very truly yours,

By:  6.14.07.
Yohann Louie

Seller hereby accepts the terms of the above Letter of Intent.

FORE STARS, LTD

Date: 6-11-07

By: 
Its: _____

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Exhibit 8

MINUTES OF
SPECIAL MEETING OF BOARD OF DIRECTORS OF
PECCOLE-NEVADA CORPORATION

The Board of Directors of Peccole-Nevada Corporation, a Nevada corporation (this "Corporation") held a special meeting at the office of Sklar Warren Conway & Williams, LLP in Las Vegas, Nevada, on September 6, 2005 at 8:00 p.m., Pacific Time. Larry A. Miller, J. Bruce Bayne, Laurie P. Bayne, and Kerry L. Walters constituting a majority of the members of the Board of Directors of this Corporation, were present in person or telephonically. Wanda Peccole, a member of the Board of Directors did not attend the meeting. Billy Bayne, Jared Shafer, Trustee of the Leann Peccole Georgian 1976 Trust (formerly the Leann Peccole 1976 Trust) and Henry Lichtenberger, Esq., counsel to the Corporation also were in attendance at the meeting. Larry A. Miller, the Chief Executive Officer of this Corporation, served as the Chairman of the meeting and Laurie Bayne served as Secretary of the meeting for the recordation of the minutes hereof.

There being no reports of officers or committees, the same were, accordingly, dispensed with and the purpose of the special meeting was addressed.

The Chairman then announced that it would be appropriate to authorize this Corporation to take certain actions in its capacity as Manager of Queensridge Highrise LLC, a Nevada limited liability company; Queensridge Wash, LLC, a Nevada limited liability company; Sahara Commons Ltd., LLC, a Nevada limited liability company; and Fort Apache Commons Park Ltd., LLC, a Nevada limited liability company (collectively the "Companies"), in order to have its ownership interest (the "Securities") redeemed in each of the Companies. Following discussion, upon motion duly made and seconded, the following resolutions were unanimously carried:

WHEREAS, this Corporation has the right to designate members to the Board of Managers pursuant to the operating agreements of Queensridge Towers LLC, a Nevada limited liability company ("Queensridge Towers"); Fort Apache Commons Park, LLC, a Nevada limited liability company ("Ft. Apache"); Great Wash Park LLC, a Nevada limited liability company ("Great Wash") and Sahara Hualapai LLC, a Nevada limited liability company ("Sahara Hualapai") and that it has not taken any action in such capacity regarding the proposed redemption of the Securities; and

WHEREAS, the Corporation is hereby authorized to enter into those certain Securities Redemption Agreements by and between: (i) Queensridge Highrise LLC as Seller and Queensridge Towers LLC, a Nevada limited liability company as Company; (ii) Fort Apache Commons Park Ltd. LLC as Seller and Fort Apache Commons Park LLC, a Nevada limited liability company as Company; (iii) Queensridge Park LLC as Seller and Great Wash Park LLC a Nevada limited liability company as Company; and (iv) Sahara Commons Ltd LLC as Seller and Sahara Hualapai, LLC, a Nevada limited liability company as Company (collectively the "Agreements") thereunder the Agreements with respect to the redemption of Securities; and

WHEREAS, the Directors desire that the Companies take all actions necessary to consummate the closing of the transactions described in the Agreements for

the sale of the Securities (the "Transactions") and perform their respective obligations thereunder;

NOW, THEREFORE, BE IT RESOLVED: That Larry A. Miller, Chief Executive Officer of the Corporation that is the Manager for each Company is authorized and directed to take any and all actions necessary or appropriate to the closing of the Transactions, including, without limitation, executing all other instruments, agreements and documents necessary, and to cause the Corporation to perform its obligations as the Manager of each Company under the Agreements;

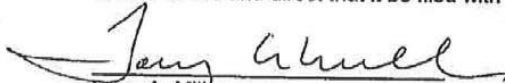
RESOLVED FURTHER: That the execution and delivery of each Agreement and any and all actions of the Corporation or any officer or directors as the Manager of each Company that would have been authorized by the foregoing resolutions except that they were taken prior to the adoption of such resolutions, are hereby ratified, confirmed, approved, and adopted as acts in the name of and on behalf of the Manager of each Company;


RESOLVED FURTHER: That this Corporation is directed to reserve a portion of the proceeds in a separate interest bearing account prior to any distributions to any shareholders of the Corporation from the sale of the Securities of approximately \$30 million to pay off the current loan in full with Nevada State Bank related to the purchase of the leasehold interest of the Badlands Golf Course when such loan can be paid;

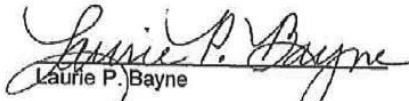
RESOLVED FURTHER: That this consent may be signed by the undersigned in two or more counterparts, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument; and

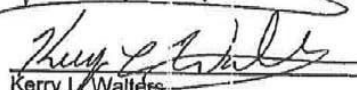
RESOLVED FURTHER: That this consent may be executed by a facsimile of the signature of the undersigned, with the facsimile signature having the same force and effect as if this consent had been executed by the actual signature of the undersigned.

IN WITNESS WHEREOF, the Directors have executed this Instrument as of the date written above and direct that it be filed with the minutes of proceedings of each Company.


Larry A. Miller


J. Bruce Bayne


Laurie P. Bayne


Kerry L. Walters

The undersigned joins in the execution of these minutes to consent to the Transactions on behalf of the Leann Peccole Goodman 1976 Trust (formerly the Leann Peccole 1976 Trust)

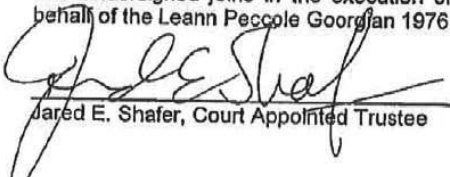

Jared E. Shafer, Court Appointed Trustee

Exhibit 9

MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT (this "Agreement") to be effective December 1st, 2014 is made at Las Vegas, Nevada by and between **THE WILLIAM PETER PECCOLE AND WANDA RUTH PECCOLE FAMILY LIMITED PARTNERSHIP** dated **December 30, 1992**, a Nevada limited partnership ("Seller") and **RAMALTA LLC**, a Nevada limited liability company ("Purchaser") (the foregoing parties are collectively the "Parties" and each one a "Party"). For purposes of this Agreement, "Effective Date" shall be December 1, 2014.

RECITALS

WHEREAS, Seller is the sole member of Fore Stars, Ltd., a Nevada limited liability company ("Fore Stars");

WHEREAS, the Manager of Fore Stars and the General Partner of the Seller is Peccole-Nevada Corporation, a Nevada corporation ("PNC");

WHEREAS, Fore Stars is the owner of that certain real property and improvements, which includes a golf course, driving range, and other facilities located in the City of Las Vegas, Nevada, more particularly described on the attached Exhibit "A", which is incorporated herein by reference (collectively the "Real Property").

WHEREAS, Seller desires to sell all its ownership interest in Fore Stars (the "Securities") and Purchaser desires to purchase the Securities upon and subject to the terms and conditions of this Agreement;

WHEREAS, the Parties have reached an understanding with respect to the transfer by Seller and the acquisition by Purchaser of the Securities; and

NOW, THEREFORE, in consideration of the foregoing and due consideration paid by Purchaser to Seller, the Parties hereby agree:

SECTION 1
Definitions.

For purposes of this Agreement, the following definitions shall apply.

1.01 "Assets" shall mean the following assets of Seller: (1) all of the Seller's fixtures, fittings and equipment associated or used in connection with the Real Property, the equipment is set forth in Exhibit "B"; (2) all of Seller's right, title and interest in and to the use of the name "Badlands Golf Course" used in connection with the Real Property, and any derivatives or combinations thereof; (3) Seller's vendor lists and business records relating to the operation of the golf course and the Real Property; (4) all of the stock of goods owned by Seller used in the operation of the golf course and the Real Property, including without limitation any pro shop, clubhouse, office, and kitchen goods; (5) Seller's existing contracts with its suppliers and vendors, including that certain Water Rights Lease Agreement dated June 14, 2007 between the Seller and Allen G. Nel; (6) all leases and agreements to which Seller is a party with respect to machinery, equipment, vehicles, and other tangible personal property used in the operation of the golf course and the Real Property and all claims and rights arising under or pursuant to the Equipment Leases; (7) all other licenses and permits issued to the Seller (or held by Par 4 as part of the operation of the golf course and would be considered personal to such operation) related to the used in the operation of the golf course, including the liquor license issued by the City of Las Vegas, Nevada identified as License Number L16-00065 (the "Liquor License") and the Real Property; and (8) all rights under the Clubhouse

A	EXHIBIT	49
WITNESS	Bayne	
DATE:	7/16/21	
J VORCE CCR 913		

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LO00004063

LO 00004063 (Confidential)

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Lease. Assets shall not include any and all personal property, goods or rights owned by Par 4 as it relates to the Golf Course Lease.

1.02 "Golf Course Lease" shall mean that certain Golf Course Ground Lease dated as of June 1, 2010, as amended, between Fore Stars and Par 4 Golf Management, Inc., a Nevada corporation (the "Par 4").

SECTION 2
PURCHASE PRICE; DEPOSIT; FEASIBILITY PERIOD; DILIGENCE DOCUMENTS;
PRORATIONS; CLOSING DATE

2.01 Purchase Price. The total Purchase price for the Securities in Fore Stars shall be SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 CENTS (\$7,500,000) (the "Purchase Price"). Purchaser shall pay the Purchase Price as follows:

(a) Initial Deposit. THREE HUNDRED THOUSAND DOLLARS AND NO/100 CENTS (\$300,000.00) as an earnest money deposit (the "Deposit"), by wire transfer to the following account designated by and controlled by PNC for the benefit of the Seller.

(b) Feasibility Period. Purchaser shall have thirty (30) days from the Effective Date of this Agreement to cause Seller to receive written notice of its disapproval of the feasibility of this transaction (the "Feasibility Period"). If Seller has not received such notice of disapproval before the expiration of the Feasibility Period, Purchaser shall be deemed to have approved the feasibility of this transaction. If Purchaser causes Seller to receive written notice of disapproval within the Feasibility Period, this Agreement shall be deemed terminated and shall be of no further force or effect. If no notice is received by the Seller to terminate this Agreement, then the Deposit shall be deemed non-refundable and released to Seller. If the Purchaser elects to proceed and not cancel this Agreement during the Feasibility Period, at the Closing, the Deposit shall be credited towards the Purchase Price with the balance to be paid by wire transfer to Seller using the same account information provided for in Section 2.01(a). Notwithstanding the provisions of this subsection (b), until the Feasibility Period, Purchaser shall have the right to terminate this Agreement and receive a full refund of the Deposit in the event that: (i) Purchaser discovers the existence of any written commitment, covenant, or restriction to any party executed in any capacity by Larry Miller, J. Bruce Bayne, or Fredrick P. Waid in their capacity as an officer and/or director of PNC, which commitment, covenant, or restriction would limit the ability of Purchaser to change the present use of the Real Property; or (ii) Purchaser discovers the presence of any materials, wastes or substances that are regulated under or classified as toxic or hazardous, under any Environmental Law, including without limitation, petroleum, oil, gasoline or other petroleum products, by products or waste.

Seller hereby grants Purchaser, from the date hereof until expiration of the Feasibility Period, upon twenty-four (24) hours' notice to Seller and reasonable consent of Par 4, the right, license, permission and consent for Purchaser and Purchaser's agents or independent contractors to enter upon the Real Property for the purposes of performing tests, studies and analyses thereon. Seller or Par 4 may elect to have a representative of Seller present during Purchaser's site inspections. The parties shall coordinate Purchaser's on site investigations so as to minimize disruption of the golf course operations on the Real Property and impact upon Par 4 and their employees. Purchaser shall indemnify and hold Seller and Par 4 harmless from and against any property damages or bodily injury that may be incurred by Seller or Par 4 as a result of such actions by Purchaser, its employees, agents and independent contractors. Purchaser shall obtain, and shall require that its contractors obtain, liability insurance, naming Seller and Par 4 each as an additional insured, in an amount not less than \$1,000,000 (combined single limit) with respect to all such activities conducted at Purchaser's direction on the Real Property. The rights of Seller and Par 4 and Purchaser's obligations set forth in this subsection shall expressly survive any termination of this Agreement. Purchaser agrees not to permit or suffer and, to the extent so permitted or suffered, to cause

to be removed and released, any mechanic's, materialman's, or other lien on account of supplies, machinery, tools, equipment, labor or materials furnished or used in connection with the planning, design, inspection, construction, alteration, repair or surveying of the Real Property, or preparation of plans with respect thereto as aforesaid by, through or under Purchaser during the Feasibility Period and through the Closing Date.

(e) **Delivery of Documents.** On or before ten (10) business days after the Effective Date, or as otherwise provided below, Seller shall deliver to Purchaser copies of all of the following items, provided Seller has such items in its actual possession (collectively referred to herein as "Documents"):

a. Copies of all development agreements, subdivision improvement agreements, CC&R's, water supply agreements, effluent use agreements, irrigation agreements, or other agreements entered into with the any third parties, the City of Las Vegas, Nevada or any special district, quasi-municipality or municipality having jurisdiction over the Real Property, if any;

b. Copies of all operations, maintenance, management, service and other contracts and agreements relating to operation of the golf course (which agreements may be assumed in full by the Purchaser in Purchaser's sole discretion) and copies of any and all subleases and license agreements relating to the Real Property, if any;

c. Last six (6) months of statements issued to the Seller for water, storm and sanitation sewer, gas, electric, and other utilities connected to or serving the Real Property (if any), including availability and standby charges;

d. Real property tax bills and notices of assessed valuation, including any special assessments, pertaining to the Real Property (if any) for the most recent three (3) tax years, including documents relating to any pending or past tax protests or appeals made by Seller, if any;

e. Any governmental and utility permits, licenses, permits and approvals relating to the Real Property, Assets or Liquor License issued to the Seller, if any;

f. List of personal property owned by Seller together with any security interest or encumbrances thereon that are being conveyed to the Purchaser as the Closing;

g. A copy of any plans and specifications (including "as-builts") of improvements and any other architectural, engineering, irrigation and landscaping drawings, plans and specifications in the Seller's possession;

h. A summary of all pending and threatened claims that were reduced to writing and delivered to the Seller existing at the time of the Effective Date of this Agreement that may result in future liability to Purchaser in excess of \$5,000 and all written notices of violation or enforcement action from governmental agencies served upon Seller that require curative action related to the Real Property, or Assets or involving the golf course operation. After the summary is provided to Purchaser, to the extent that any new claims are delivered in writing to the Seller prior to Closing, Seller shall advise Purchaser in writing;

i. 5.9 The Golf Course Lease.

Purchaser shall retain in strict confidence all Proprietary Information received by Seller, and shall not reveal it to anyone except as may be necessary for the accomplishment of the purposes of such examination and the consummation of the transactions provided for hereby. In the event the sale provided for hereby is not consummated for any reason, for a period of five (5) years, Purchaser shall not,

directly or indirectly: (i) utilize for its own benefit any Proprietary Information (as hereinafter defined) or (ii) disclose to any person any Proprietary Information, except as such disclosure may be required in connection with this Agreement or by law. For purposes of this Agreement, "Proprietary Information" shall mean all confidential business information concerning the pricing, costs, profits and plans for the future development of the Real Property, the Assets or the operation of the golf course, and the identity, requirements, preferences, practices and methods of doing business of specific customers or otherwise relating to the business and affairs of the parties, other than information which (A) was lawfully in the possession of Purchaser prior to the date of disclosure of such Proprietary Information; (B) is obtained by Purchaser after such date from a source other than Seller who is not under an obligation of confidentiality to the Seller; or (C) is in the public domain when received or thereafter enters the public domain through no action of Purchaser. In the event the transactions contemplated hereby are not consummated for any reason, upon receipt of written request from Seller, Purchaser shall return to Seller all Documents and Records received from the Seller (the Documents and Records collectively referred to herein as "Due Diligence Items").

Seller, however, makes no warranty or representation as to the accuracy, correctness or completeness of the information contained in the Due Diligence Items except as expressly set forth in this Agreement. The Due Diligence Items are being provided to Purchaser for Purchaser's informational purposes only with the understanding and agreement that Purchaser will obtain its own soils, environmental and other studies and reports in order to satisfy itself with the condition of the Real Property.

2.02 Prorations.

(a) Credits and Prorations. In addition to the Purchase Price, the following shall be apportioned with respect to the Real Property as of 12:01 a.m., on the day of Closing (the "Cut-Off Time"), as if Purchaser were vested with title to the Real Property during the entire day upon which Closing occurs with the understanding that all or a portion of the charges may be due and owing to Par 4 in accordance with the terms and conditions of the Golf Course Lease, if the date of termination of the Golf Course Lease occurs after the Closing Date, by agreement of Purchaser and Seller: (i) taxes (including personal property taxes on all personal property and Inventory) and assessments levied against the Real Property; (ii) gas, electricity and other utility charges for the golf course operations, if any; (iii) charges and fees paid or payable for licenses and permits transferred by Seller to Purchaser; (iv) water and sewer charges; and (v) any other operating expenses or other items pertaining to the Real Property which are customarily prorated between a purchaser and a seller in the area in which the Property is located including, without limitation, any prepaid expenses. At Closing, Purchaser shall credit to the account of Seller all deposits posted with utility companies serving the Real Property. Any taxes paid at or prior to Closing shall be prorated based upon the amounts actually paid. If taxes and assessments for the current year have not been paid before Closing, Seller shall be charged at the Closing an amount equal to that portion of such taxes and assessments for the period prior to the Cut Off-Time. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation last fixed. To the extent that the actual taxes and assessments for the current year differ from the amount apportioned at Closing, the parties shall make all necessary adjustments by appropriate payments between themselves following Closing. All necessary adjustments shall be made within fifteen (15) business days after the tax bill for the current year is received. As to gas, electricity and other utility charges, such charges to be apportioned at Closing on the basis of the most recent meter reading occurring prior to Closing (but subject to later readjustment as set forth below).

(b) Apportionment Credit. In the event the apportionments to be made at the Closing result in a credit balance (i) to Purchaser, such sum shall be paid at the Closing by giving Purchaser a credit against the Purchase Price in the amount of such credit balance, or (ii) to Seller, Purchaser shall pay

the amount thereof to the Title Company, to be delivered to Seller together with the net proceeds of the Purchase Price by wire transfer of immediately available funds to the account or accounts to be designated by Seller for the payment of the balance.

2.03 Closing. The purchase and sale of the Securities contemplated by this Agreement shall be consummated by a closing (the "Closing") at the offices of Sklar Williams PLLC, 410 South Rampart Boulevard, Suite 350, Las Vegas, Nevada 89145 at 10 a.m. on March 2, 2015 or such earlier date as is mutually acceptable to Seller and Purchaser (the "Closing Date"). The procedure to be followed by the parties in connection with the Closing shall be as follows:

(a) Closing Deliveries by Seller:

- (i) Good Standing Certificate and a copy of the filed Articles of Organization for Fore Stars;
- (ii) executed resignations by PNC as the duly appointed Manager for Fore Stars;
- (iii) amendment to annual list to be filed with the Nevada Secretary of State for Fore Stars to replace PNC as the Manager with a designee of the Purchaser;
- (iv) executed documents (if any) and if not previously delivered showing the sale of the Securities in Fore Stars to the Purchaser that may be required to maintain the Liquor License issued by the City of Las Vegas, Nevada;
- (v) a License Agreement issued by an affiliate of the Seller for Purchaser to have the right to use the mark "Queensridge" in accordance with the terms and conditions set forth therein (the "Trademark License Agreement"); and
- (vi) such other documents as are reasonable or necessary to consummate the transactions contemplated by this Agreement.

(b) Closing Deliveries by Purchaser:

- (i) the balance of the Purchase Price;
- (ii) an executed Trademark License Agreement; and
- (iii) all other documents required to be executed by Purchaser pursuant to the terms of this Agreement.

SECTION 3
REPRESENTATIONS AND WARRANTIES; COVENANTS

3.01 Mutual Representations. As of the date hereof, each Party (with Seller through PNC, its duly appointed Manager for the PNC as the sole member of Fore Stars) hereby represents and warrants to the other Party as follows:

- (a) Fore Stars is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada.
- (b) The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada.
- (c) This Agreement has been duly executed and delivered by such Party. This Agreement and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of such Party, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditor's rights generally, and except as subject to general principles of equity.