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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

**REORGANIZED DEBTOR'S AMENDED WITNESS AND EXHIBIT LIST
WITH RESPECT TO TRIAL TO BE HELD ON NOVEMBER 1, 2022**

Highland Capital Management, L.P. (the "Reorganized Debtor"), submits the following amended witness and exhibit list with respect to the *First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No*

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



Liability Claims; and (F) Insufficient-Documentation Claims [Docket No. 906] (**solely with respect to Proof of Claim No. 146 Filed by HCRE Partners, LLC**), which the Court has set for trial at 9:30 a.m. (Central Time) on November 1, 2022 (the “Trial”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

A. Witnesses:

1. James Dondero;
2. Matt McGraner;
3. Mark Patrick (by deposition designation);
4. Barker Viggato, LLP (by deposition designation);
5. BH Equities, LLC (by deposition designation);
6. James P. Seery, Jr.;
7. Any witness designated or called by any other party; and
8. Any witness necessary for impeachment or rebuttal.

B. Exhibits:

Ex. No.	Exhibit	Offered	Admitted
1	Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims [Docket No. 906]		
2	Nexpoint Real Estate Partners LLC’S Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims [Docket No. 1212]		
3	Deposition excerpts of Dustin Thomas (BH Equities, LLC 8/4/22 Deposition)		
4	Deposition excerpts of Mark Barker (Barker Viggato, LLP 8/5/22 Deposition)		

Ex. No.	Exhibit	Offered	Admitted
5	Limited Liability Company Agreement, dated as of August 23, 2018 (Mark Patrick 8/2/22 Deposition Exhibit 2, J. Dondero 10/4/22 Deposition Exhibit 2, HCRE 10/11/22 Deposition Exhibit 2)		
6	Bridge Loan Agreement dated as of September 26, 2018 (J. Dondero 10/4/22 Deposition Exhibit 3)		
7	First Amended and Restated Limited Liability Company Agreement, dated as of March 15, 2019 to be effective as of August 23, 2018 (Mark Patrick 8/2/22 Deposition Exhibit 4, BH Equities, LLC 8/4/22 Deposition Exhibit 2, Barker Viggato, LLP 8/5/22 Deposition Exhibit 3, J. Dondero 10/4/22 Deposition Exhibit 9, HCRE 10/11/22 Deposition Exhibit 9)		
8	Proof of Claim #146 of HCRE Partners, LLC (Mark Patrick 8/2/22 Deposition Exhibit 5, J. Dondero 10/4/22 Deposition Exhibit 20, HCRE 10/11/22 Deposition Exhibit 20)		
9	Email from Mark Patrick dated July 28, 2018 to Alex McGeoch, Mark Patrick re Available LLC Names		
10	INTENTIONALLY OMITTED		
11	INTENTIONALLY OMITTED		
12	Email from Mark Patrick dated February 28, 2019 to Tim Cournoyer, Freddy Chang, David Klos (cc: various others) attaching (i) First Amended and Restated Limited Liability Company Agreement and (ii) Redline (Mark Patrick 8/2/22 Deposition Exhibit 12, J. Dondero 10/4/22 Deposition Exhibit 5, HCRE 10/11/22 Deposition Exhibit 5)		
13	Email chain dated February 28, 2019 – March 4, 2019 re SE Multi-Family Holdings LLC: Amended and Restated		
14	Email chain dated February 28, 2019 – March 4, 2019 re SE Multi-Family Holdings LLC: Amended and Restated and attaching First Amended and Restated Limited Liability Company Agreement		
15	Email chain dated February 28, 2019 – March 4, 2019 re SE Multi-Family Holdings LLC: Amended and Restated (Mark Patrick 8/2/22 Deposition Exhibit 15)		

AMENDED WITNESS AND EXHIBIT LIST FOR TRIAL ON NOVEMBER 1, 2022

Ex. No.	Exhibit	Offered	Admitted
16	Email from Mark Patrick dated March 4, 2019 to Paul Broaddus (cc: Shawn Raver, Rick Swadley) attaching draft of First Amended and Restated Limited Liability Company Agreement		
17	Email from Mark Patrick dated March 7, 2019 to Matt McGraner (cc: Freddy Chang, Rick Swadley, Paul Broaddus, Shawn Raver) attaching latest revisions to First Amended and Restated Limited Liability Company Agreement		
18	Email from Mark Patrick dated March 8, 2019 to Paul Broaddus (cc: Rick Swadley, Shawn Raver) re First Amended and Restated Limited Liability Company Agreement (Mark Patrick 8/2/22 Deposition Exhibit 18)		
19	Email from Paul Broaddus dated March 8, 2019 to Mark Patrick (cc: Rick Swadley, Shawn Raver) re Unicorn - LLC Agreement		
20	Email from Paul Broaddus dated March 15, 2019 to Mark Patrick re Unicorn Combined Underwriting		
21	Email from Ben Roby dated March 16, 2019 to Matt McGraner, Freddy Chang, Paul Broaddus, and Dusty Thomas Paul Broaddus (cc: Shawn Raver, Rick Swadley) attaching fully executed First Amended and Restated Limited Liability Company Agreement (signed via DocuSign)		
22	Email from Paul Broaddus dated March 18, 2019 to Mark Patrick, Shawn Raver (cc: Rick Swadley) attaching fully executed First Amended and Restated Limited Liability Company Agreement		
23	Email from Shawn Raver dated October 17, 2019 to Mark Patrick, Paul Broaddus attaching fully executed First Amended and Restated Limited Liability Company Agreement (signed via DocuSign)		
24	INTENTIONALLY OMITTED		
25	Email from Mark Barker dated September 8, 2019 to Paul Broaddus, Jae Lee (cc: Ross Kirshner) attaching SE Multifamily Holdings LLC 2018 tax return and workbook		
26	Email dated March 16, 2019 attaching fully executed First Amended and Restated Limited Liability Company Agreement, dated as of March 15, 2019 to be effective as of		

AMENDED WITNESS AND EXHIBIT LIST FOR TRIAL ON NOVEMBER 1, 2022

Ex. No.	Exhibit	Offered	Admitted
	August 23, 2018 (Mark Patrick 8/2/22 Deposition Exhibit 28)		
27	Highland Capital Management L.P.'s Notice of Amended Subpoena Directed to BH Equities, LLC [Docket No. 3363] (BH Equities, LLC 8/4/22 Deposition Exhibit 1)		
28	Email chain dated October 7-10, 2018 re Unicorn Portfolio (BH Equities, LLC 8/4/22 Deposition Exhibit 3)		
29	Email from Ben Roby dated November 7, 2018 to Paul Broaddus (cc: Kim Supercynski) re SEMF LLC (BH Equities, LLC 8/4/22 Deposition Exhibit 4)		
30	Email from Paul Broaddus to Dusty Thomas, Ben Roby (cc: Matt McGraner) dated March 15, 2019 attaching Contribution Schedule (BH Equities, LLC 8/4/22 Deposition Exhibit 5, J. Dondero 10/4/22 Deposition Exhibit 6, HCRE 10/11/22 Deposition Exhibit 6)		
31	Email chain re Unicorn Combined Underwriting (BH Equities, LLC 8/4/22 Deposition Exhibit 6, HCRE 10/11/22 Deposition Exhibit 7)		
32	Email chain dated March 15, 2019 re Unicorn Combined Underwriting (BH Equities, LLC 8/4/22 Deposition Exhibit 7, HCRE 10/11/22 Deposition Exhibit 8)		
33	Email from Paul Broaddus dated March 15, 2019 to Ben Roby, Dusty Thomas, Matt McGraner, and Freddy Chang attaching First AR LLCA of SE Multifamily Holdings LLC for execution (BH Equities, LLC 8/4/22 Deposition Exhibit 8)		
34	Email chain re First AR LLCA of SE Multifamily Holdings LLC (BH Equities, LLC 8/4/22 Deposition Exhibit 9)		
35	Email from Paul Broaddus dated September 10, 2020 to Matt Mulcahy (cc: Dusty Thomas) re SE Multifamily Follow Up (BH Equities, LLC 8/4/22 Deposition Exhibit 10)		
36	Email chain dated November 7-19, 2020 re Unicorn Proposed Distribution and Detail Schedules (BH Equities, LLC 8/4/22 Deposition Exhibit 12, HCRE 10/11/22 Deposition Exhibit 10)		
37	Email chain dated June 9, 2021 re SE Multifamily Holdings distribution (BH Equities, LLC 8/4/22 Deposition Exhibit 13, HCRE 10/11/22 Deposition Exhibit 11)		

AMENDED WITNESS AND EXHIBIT LIST FOR TRIAL ON NOVEMBER 1, 2022

Ex. No.	Exhibit	Offered	Admitted
38	SE Multifamily Holdings LLC 2019 tax return (BH Equities, LLC 8/4/22 Deposition Exhibit 14)		
39	BH Equities, LLC 2020 K-1 (BH Equities, LLC 8/4/22 Deposition Exhibit 15)		
40	Highland Capital Management L.P.'s Notice of Amended Subpoena to Barker Viggato LLP [Docket No. 3417] (Barker Viggato, LLP 8/5/22 Deposition Exhibit 1)		
41	Letter dated July 26, 2022 from Matthew Roberts enclosing Barker Viggato, LLP's production of documents responsive to Subpoena		
42	2018 SE Multifamily LLC Equity Roll – GAAP (Barker Viggato, LLP 8/5/22 Deposition Exhibit 4)		
43	2019 SE Multifamily LLC Equity Roll – GAAP (Barker Viggato, LLP 8/5/22 Deposition Exhibit 5)		
44	2020 SE Multifamily LLC Equity Roll – GAAP (Barker Viggato, LLP 8/5/22 Deposition Exhibit 6)		
45	Email from Paul Broaddus dated August 3, 2020 to Mark Barker (cc: Tina Thottichira, Ross Kirshner, Kristin Martin) re SEMFH (Barker Viggato, LLP 8/5/22 Deposition Exhibit 7)		
46	HCMLP 2018 K-1 (Barker Viggato, LLP 8/5/22 Deposition Exhibit 8, J. Dondero 10/4/22 Deposition Exhibit 12)		
47	HCRE 2018 K-1 (Barker Viggato, LLP 8/5/22 Deposition Exhibit 9)		
48	BH Equities, LLC 2018 K-1		
49	Liberty CLO Holdco, Ltd 2018 K-1		
50	HCMLP 2019 K-1 (Barker Viggato, LLP 8/5/22 Deposition Exhibit 12)		
51	HCRE 2019 K-1		
52	BH Equities, LLC 2019 K-1		
53	Liberty CLO Holdco, Ltd 2019 K-1		
54	E-mail chain dated September 13-14, 2020 re SEMFH Statement (Barker Viggato, LLP 8/5/22 Deposition Exhibit 16, HCRE 10/11/22 Deposition Exhibit 17)		

AMENDED WITNESS AND EXHIBIT LIST FOR TRIAL ON NOVEMBER 1, 2022

Ex. No.	Exhibit	Offered	Admitted
55	HCMLP 2020 K-1 (Barker Viggato, LLP 8/5/22 Deposition Exhibit 17)		
56	HCRE 2020 K-1		
57	BH Equities, LLC 2020 K-1		
58	Liberty CLO Holdco, Ltd 2020 K-1		
59	Email from Mark Patrick dated February 28, 2019 to Shawn Raver re Unicorn (J. Dondero 10/4/22 Deposition Exhibit 4, HCRE 10/11/22 Deposition Exhibit 4)		
60	Highland Capital Management, L.P.'s Third Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC [Docket No. 3528] (HCRE 10/11/22 Deposition Exhibit 1A)		
61	INTENTIONALLY OMITTED		
62	Transcript of August 11, 2021 Deposition of Rob Wills		
63	Transcript of August 13, 2021 Deposition of Mark Patrick		
64	Transcript of September 16, 2021 Deposition of Robert Kehr		
65	Transcript of September 17, 2021 Deposition of Ben Selman		
66	Transcript of August 2, 2022 Deposition of Mark Patrick		
67	INTENTIONALLY OMITTED		
68	INTENTIONALLY OMITTED		
69	INTENTIONALLY OMITTED		
70	Transcript of October 4, 2022 Deposition of James Dondero		
71	Transcript of October 11, 2022 Deposition of HCRE/Matt McGraner		
72	Debtor's Notice of Rule 30(b)(6) Deposition to NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC [Docket No. 1898]		
73	Debtor's Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC [Docket No. 1965]		

AMENDED WITNESS AND EXHIBIT LIST FOR TRIAL ON NOVEMBER 1, 2022

Ex. No.	Exhibit	Offered	Admitted
74	Debtor's Third Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC [Docket No. 2134]		
75	Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [Docket No. 2196]		
76	Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [Docket No. 2197]		
77	Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [Docket No. 2198]		
78	Response to Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC [Docket No. 2278]		
79	Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [Docket No. 2294]		
80	Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [Docket No. 2893]		
81	Highland's Memorandum of Law in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [Docket No. 2894]		
82	Declaration of Kenneth H. Brown in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [Docket No. 2895]		
83	Response and Brief in Opposition to Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and Related Relief [Docket No. 2927]		
84	Supplemental Appendix in Support of NexPoint Real Estate Partners, LLC's Response and Brief in Opposition to Debtor's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP [Docket No. 2928]		

AMENDED WITNESS AND EXHIBIT LIST FOR TRIAL ON NOVEMBER 1, 2022

Ex. No.	Exhibit	Offered	Admitted
85	Highland's Reply in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [Docket No. 2952]		
86	Hearing Held on November 30, 2021 re: Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief (No Image Available) [Docket No. 3071]		
87	Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [Docket No. 3106]		
88	Highland Capital Management L.P.'s Notice of Subpoena Directed to Barker Viggato LLP [Docket No. 3383]		
89	Highland Capital Management, L.P.'s Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC [Docket No. 3385]		
90	Highland Capital Management, L.P.'s Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC [Docket No. 3386]		
91	Highland Capital Management, L.P.'s Second Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC [Docket No. 3418]		
92	Highland Capital Management, L.P.'s Notice of Rule 30(b)(6) Deposition to NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC [Docket No. 3453]		
93	SE Multifamily Holdings: Schedule of Distributions		
94	Nexpoint Real Estate Partners, LLC f/k/a HRCR Partners, LLC's Amended Responses and Objections to Debtor's Second Set of Discovery Requests dated July 8, 2022		
95	SE Multifamily check		
96	Email chain with Key Bank dated September 27, 2018 re: Return of 750K		
97	Email from Mathew Goetz to David Klos and Kristin Hendrix dated November 16, 2018 re Fee Rebate		
98	Email from Mathew Goetz to David Klos and Kristin Hendrix dated November 16, 2018 re wire from Key Bank		
99	Email from Kristin Hendrix to Corporate Accounting dated November 16, 2018 re wire from Key Bank		

AMENDED WITNESS AND EXHIBIT LIST FOR TRIAL ON NOVEMBER 1, 2022

Ex. No.	Exhibit	Offered	Admitted
100	Email from Kristin Hendrix to David Klos and Corporate Accounting dated November 16, 2018 re wire from Key Bank		
101	Email from Kristin Hendrix to David Klos and Corporate Accounting dated November 16, 2018 re confirmation of wire		
102	Email chain dated November 19, 2018 re Opening Balance Sheets		
103	Deposition excerpts of Mark Patrick (Mark Patrick 8/2/22 Deposition)		
104	Any pleadings, reports, or other documents entered or filed in the Bankruptcy Case or related adversary proceedings, including any exhibits thereto		
105	All exhibits necessary for impeachment and/or rebuttal purposes		
106	All exhibits identified by or offered by any other party at the Trial		

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Dated: October 31, 2022.

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

HAYWARD PLLC

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Counsel for Highland Capital Management, L.P.

EXHIBIT 103

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

4	IN RE:)	
)	CHAPTER 11
5	HIGHLAND CAPITAL)	
	MANAGEMENT, L.P.,)	CASE NO. 19-34054-SGJ11
6)	
	Reorganized Debtor.)	
7	<hr/>)	
)	
8	HIGHLAND CAPITAL)	
	MANAGEMENT, L.P.,)	
9)	
	Plaintiff,)	ADVERSARY PROCEEDING
10)	
	VS.)	NO. 21-03000-SGJ
11)	
	HIGHLAND CAPITAL)	
12	MANAGEMENT FUND ADVISORS,)	
	L.P., NEXPOINT ADVISORS,)	
13	L.P., HIGHLAND INCOME)	
	FUND, NEXPOINT STRATEGIC)	
14	OPPORTUNITIES FUND,)	
	NEXPOINT CAPITAL, INC.,)	
15	AND CLO HOLDCO, LTD.,)	
)	
16	Defendants.)	

REMOTE ORAL DEPOSITION OF
MARK PATRICK
Dallas, Texas
Tuesday, August 2, 2022

REPORTED BY:
JANICE K. McMORAN, CSR, RDR, CRR, TCRR
JOB NO. 214839

Page 10

1 M. PATRICK
 2 let me know?
 3 A. I will.
 4 Q. Okay. And do you understand that
 5 everything you say during today's deposition is
 6 under oath?
 7 A. Yes, I do.
 8 Q. Okay. And if you need to take a
 9 break to use the restroom, let me know. But if
 10 we do, it just can't be in the middle of a
 11 question. Is that fair?
 12 A. Yes.
 13 Q. Okay. Did you do anything to prepare
 14 for this deposition?
 15 A. Yes.
 16 Q. What did you do to prepare?
 17 A. I met with the law firm of Baker
 18 McKenzie and spoke to Debra Dandeneau.
 19 Q. Okay. Did you review any documents?
 20 A. Yes, I did.
 21 Q. What documents did you review?
 22 A. I reviewed my prior deposition
 23 testimony with respect to the Wick Phillips
 24 disqualification and the related exhibits.
 25 Q. Did you -- other than your lawyers,

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1 M. PATRICK
 2 and -- and I helped facilitate any tax issues
 3 that -- and address tax issues that may arise
 4 from time to time, as well as doing a variety
 5 of tax planning.
 6 Q. Okay. Were there any other people
 7 who worked in that department with you?
 8 A. Yes.
 9 Q. Who were they?
 10 A. Well, personnel changed from time to
 11 time, but at the end of my employment, I
 12 believe Rick Swadley, he is our chief
 13 compliance officer of tax, chief tax compliance
 14 officer. Paul Broaddus was also in the tax
 15 department as a senior tax manager. I'm not
 16 exactly sure the status of the other folks as
 17 far as who else was there at the time that I
 18 left, because there were people kind of coming
 19 and going from time to time. So I might be
 20 mistaken.
 21 Q. Okay.
 22 A. But I believe there were at least two
 23 other tax professionals at the time of my
 24 termination from Highland.
 25 Q. While you were employed at Highland,

Page 11

1 M. PATRICK
 2 did you speak to anybody else to prepare for
 3 this deposition?
 4 A. No.
 5 Q. Okay. Mr. Patrick, are you currently
 6 employed?
 7 A. Yes, I am.
 8 Q. Where are you employed?
 9 A. In Dallas, Texas.
 10 Q. Can you tell me the name of the
 11 company you're employed by?
 12 A. Yes. Skyview Group, I believe, is
 13 the name.
 14 Q. Okay. And when did you become
 15 employed by Skyview Group?
 16 A. In March of 2021.
 17 Q. Okay. And who was your employer
 18 before Skyview?
 19 A. Highland.
 20 Q. Okay. How long were you employed by
 21 Highland?
 22 A. A little over ten years, I believe.
 23 Q. Okay. And what was your role at
 24 Highland?
 25 A. I worked in the tax department,

Page 13

1 M. PATRICK
 2 did you ever perform any services for any
 3 affiliates of Highland?
 4 MS. DANDENEAU: Objection to form.
 5 A. I'll take a -- I guess a broad
 6 definition of affiliates and say yes.
 7 BY MS. WINOGRAD:
 8 Q. Okay. What's your definition of
 9 affiliates?
 10 A. I guess any -- any entity that might
 11 have either a relationship or ownership with
 12 Highland.
 13 Q. So while you were employed at
 14 Highland, were you ever involved in any
 15 projects undertaken by affiliates of Highland?
 16 A. Involved in --
 17 MS. DANDENEAU: Objection to form.
 18 BY MS. WINOGRAD:
 19 Q. Any projects undertaken by affiliates
 20 of Highland.
 21 A. Yeah, I apologize. I'm missing the
 22 second word of your question.
 23 Q. While you were employed by Highland,
 24 were you ever involved in any projects
 25 undertaken by those affiliates?

Page 14

1 M. PATRICK

2 A. Oh, oh, undertaken. Excuse me. That

3 was the word that was tripping me up. I

4 apologize. Yes.

5 Q. Is it fair to say that while you were

6 employed at Highland, you performed services

7 for entities owned and controlled by James

8 Dondero?

9 MS. DANDENEAU: Objection to form.

10 A. Yes.

11 BY MS. WINOGRAD:

12 Q. Okay. Have you heard of the term

13 Project Unicorn?

14 A. Yes.

15 Q. Are you familiar with the term

16 Project Unicorn?

17 A. Yes.

18 Q. Do you have an understanding of what

19 Project Unicorn is?

20 A. Yes.

21 Q. What is your understanding of Project

22 Unicorn?

23 A. It was a special purpose vehicle

24 organized to acquire certain real estate

25 assets.

Page 16

1 M. PATRICK

2 Q. What specific role did Highland play

3 in Project Unicorn?

4 A. As I indicated, you have personnel

5 that helped facilitate the organization of

6 Project Unicorn and other aspects of it. But

7 in addition, Highland became a partner in

8 subsequent LLC agreements that, you know, did

9 not use the word "Unicorn" in it. So Highland

10 was also a partner in the predecessor entity,

11 for lack of a better word.

12 Q. Okay.

13 MS. WINOGRAD: La Asia, could we

14 please show Exhibit 2?

15 (Exhibit 2 displayed and to be

16 marked.)

17 BY MS. WINOGRAD:

18 Q. Mr. Patrick, do you see the document

19 on the screen?

20 A. Yes, I do.

21 Q. Okay. Have you seen this document

22 before?

23 A. Yes, I have.

24 Q. Are you familiar with this document?

25 A. Yes, I am.

Page 15

1 M. PATRICK

2 Q. Okay. So is it fair to say the

3 purpose of Project Unicorn was to acquire

4 certain real estate assets?

5 A. Yes.

6 Q. Did you play a role in any aspect of

7 Project Unicorn?

8 A. Yes, I did.

9 Q. What role did you play?

10 A. I helped coordinate and facilitate

11 the underlying LLC agreement with respect to

12 Project Unicorn.

13 Q. Highland was involved in Project

14 Unicorn, right?

15 A. Who?

16 Q. Highland.

17 A. That is correct.

18 Q. Do you know why Highland was involved

19 in Project Unicorn?

20 A. From my review of the documentation

21 yesterday, it did refresh my recollection.

22 What you'll find is a variety of personnel at

23 Highland that was involved in Project Unicorn,

24 from the legal department to the tax department

25 to corporate financing.

Page 17

1 M. PATRICK

2 Q. This is the SE Multifamily Holdings

3 LLC Limited Liability Company Agreement,

4 correct?

5 A. Correct.

6 Q. You're aware that this agreement was

7 subsequently amended and restated, correct?

8 A. Correct.

9 Q. Can we refer to this as the LLC

10 agreement going forward, and at times I might

11 refer to it as the original LLC agreement?

12 A. Yeah, I prefer --

13 MS. DANDENEAU: And, Ms. Winograd, I

14 think -- yeah, I was going to say the same

15 thing. I think to avoid confusion, if we

16 refer to the original LLC agreement and

17 the amended LLC agreement, that would be

18 easier --

19 MS. WINOGRAD: Sure.

20 MS. DANDENEAU: -- for the record.

21 MS. WINOGRAD: We can refer to this

22 as the original LLC agreement, and if

23 there's ever a question about which one

24 I'm referring to, just let me know and

25 I'll specify, if I forget to use the word

Page 18

1 M. PATRICK

2 "original."

3 BY MS. WINOGRAD:

4 Q. It's dated August 23rd, 2018,

5 correct?

6 A. Correct.

7 MS. WINOGRAD: La Asia, can we please

8 scroll to page 17 of the agreement, which

9 is PDF page 17?

10 BY MS. WINOGRAD:

11 Q. Okay. The original LLC agreement is

12 signed by Mr. Dondero on behalf of Highland,

13 correct?

14 A. Correct.

15 Q. And it's signed by Mr. Dondero on

16 behalf of HCRE Partners, LLC, correct?

17 A. Correct.

18 Q. Can we refer to HCRE Partners, LLC as

19 HCRE going forward?

20 A. Yes.

21 Q. Would you be surprised if I said I

22 have documents to and from you in regard to the

23 original LLC agreement?

24 A. No.

25 MS. DANDENEAU: Objection to form.

Page 20

1 M. PATRICK

2 Q. When you were involved in this, did

3 you report to anyone?

4 A. I reported to the CFO of Highland,

5 Frank Waterhouse.

6 Q. Okay.

7 MS. WINOGRAD: La Asia, could we

8 scroll back to page 2 of the agreement,

9 which is PDF page 2?

10 BY MS. WINOGRAD:

11 Q. Do you know the purpose of the

12 original LLC agreement?

13 MS. DANDENEAU: Objection to form.

14 A. Are we on page 2?

15 BY MS. WINOGRAD:

16 Q. This is page 2 and PDF page 2.

17 A. Okay. Okay. I just couldn't see the

18 page number.

19 Generally speaking, again, the

20 purpose of this LLC was to acquire certain real

21 estate assets.

22 Q. Pursuant to the original LLC

23 agreement, SE Multifamily LLC was created,

24 correct?

25 A. Correct.

Page 19

1 M. PATRICK

2 BY MS. WINOGRAD:

3 Q. So you were involved in the process

4 of drafting the LLC agreement, correct?

5 A. No.

6 Q. Were you involved with any aspect of

7 the original LLC agreement?

8 A. Yes, I was.

9 Q. What part of the process were you

10 involved with?

11 MS. DANDENEAU: Objection to form.

12 A. Yeah, I -- I was involved in the

13 coordination, the putting together, if you

14 will, of using a variety of professionals,

15 internal and external, to review and comment

16 and draft this document.

17 BY MS. WINOGRAD:

18 Q. Okay. How did you get involved with

19 the original LLC agreement?

20 A. It came to my attention that this

21 transaction, Project Unicorn, was occurring,

22 and that there would be a need for a joint

23 venture type entity, and -- and then I reached

24 out to Hunton & Williams to prepare the LLC

25 agreement, the original LLC agreement.

Page 21

1 M. PATRICK

2 Q. Can we refer to this entity as SE

3 Multifamily?

4 A. Yes.

5 Q. Do you know the purpose of SE

6 Multifamily?

7 A. Yes. Was to acquire certain real

8 estate assets.

9 Q. Is it fair to say that SE Multifamily

10 was a part of Project Unicorn?

11 A. I believe so. I believe they're --

12 yes.

13 Q. At the time the original LLC

14 agreement was executed, the members of SE

15 Multifamily were Highland and HCRE, correct?

16 A. Correct.

17 Q. Do you know if the original LLC

18 agreement was subject to negotiations between

19 HCRE and Highland?

20 MS. DANDENEAU: Objection to form.

21 A. Mr. Dondero was the manager of HCRE,

22 and he was also, I believe, the president of

23 Strand Advisors, the GP of Highland. So if

24 there was a -- if you want to use the word

25 "negotiation," it was an internal negotiation,

Page 22

1 M. PATRICK
 2 if you will, with himself balancing the
 3 equities between the two parties.
 4 BY MS. WINOGRAD:
 5 Q. Okay. Do you know if Highland got
 6 independent legal advice with respect to the
 7 original LLC agreement?
 8 A. Yeah, I would ask you to restate the
 9 question. The word "independent," is sort of
 10 confusing to me.
 11 Q. Sure. Do you know if any particular
 12 individual was responsible for reviewing the
 13 original LLC agreement to make sure it
 14 reflected Highland's intent?
 15 A. Yes. I would say internal and
 16 external professionals.
 17 Q. Who was that internal professional?
 18 A. I would begin with the legal team.
 19 Tim Cournoyer, he was a corporate attorney. I
 20 believe he reported to Thomas Surgent, and
 21 another gentleman named Freddy Chang. He was a
 22 more real estate lawyer, I imagine, during this
 23 time period. They were effectively responsible
 24 for conveying Highland's overall intent with
 25 respect to this documentation.

Page 24

1 M. PATRICK
 2 at.
 3 Q. Are you familiar with the entity
 4 HCRE?
 5 A. Yes, I am.
 6 Q. Do you know what it stands for?
 7 A. No, I do not.
 8 Q. Do you know when HCRE was formed?
 9 A. I cannot recall.
 10 Q. Do you know who controls HCRE?
 11 A. Yes, I do.
 12 Q. Who is that?
 13 A. Mr. James Dondero.
 14 Q. Does Mr. Dondero also manage HCRE?
 15 A. Yes.
 16 Q. Do you know who is authorized to make
 17 decisions on behalf of HCRE?
 18 A. Mr. Dondero.
 19 Q. Do you know if the identity of the
 20 decision maker has ever changed since HCRE was
 21 formed?
 22 A. Not to my knowledge that it has
 23 changed.
 24 Q. Do you know whether HCRE has ever had
 25 any employees?

Page 23

1 M. PATRICK
 2 Q. Do you know if any particular
 3 individual was responsible for reviewing the
 4 original LLC agreement to make sure it
 5 reflected HCRE's intent?
 6 A. Professionals -- professionals that
 7 were a part of the real estate team would be
 8 responsible for -- for at least providing input
 9 and comments to Mr. Dondero in his capacity as
 10 the manager of HCRE to provide HCRE's, if you
 11 will, intent.
 12 Q. Can you identify any of those
 13 individuals?
 14 A. The head of the real estate team
 15 would be Matt McGraner. There were other
 16 folks, Matt Goetz, and some others that I
 17 cannot recall offhand.
 18 Q. Did Matt McGraner work at Highland?
 19 A. Unfortunately, I don't really know
 20 what legal entity he worked for and received a
 21 W-2 income, if you will.
 22 Q. And do you know what entity Matt
 23 Goetz worked at?
 24 A. Again, it would be the same answer.
 25 I'm not sure what legal entity he was employed

Page 25

1 M. PATRICK
 2 A. I do not know whether or not it has
 3 had employees.
 4 Q. At the time HCRE became a member of
 5 SE Multifamily, do you know if HCRE was
 6 capitalized?
 7 MS. DANDENEAU: Objection to form.
 8 A. I do not know.
 9 BY MS. WINOGRAD:
 10 Q. Do you know who owns HCRE?
 11 A. I have a general understanding of the
 12 ownership.
 13 Q. What is your general understanding of
 14 the ownership?
 15 A. That it is owned by principally three
 16 individuals.
 17 Q. Who are those three individuals?
 18 A. Mr. James Dondero, Matthew McGraner,
 19 and Scott Ellington.
 20 Q. Do you know what percentage interest
 21 Scott Ellington has in HCRE?
 22 A. I do not.
 23 Q. Do you know the percentage interest
 24 of the other owners?
 25 A. I do not.

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1 M. PATRICK

2 Q. Do you know if any of the owners ever

3 put any capital in the form of debt or equity

4 into HCRE?

5 A. I cannot recall.

6 Q. Do you know if the owners of HCRE

7 have ever changed?

8 A. Not to my knowledge.

9 Q. During the time the original LLC

10 agreement was being drafted, did HCRE rely on

11 Highland employees to perform services for

12 HCRE?

13 A. I would -- I would at least say some

14 services. There may be other services that I'm

15 not aware of that HCRE relied upon other

16 entities.

17 MS. WINOGRAD: La Asia, can we scroll

18 to PDF page 18 of the agreement? That's

19 it. Okay.

20 BY MS. WINOGRAD:

21 Q. Mr. Patrick, do you see Schedule A?

22 A. Yes, I do.

23 Q. Do you see the column that says

24 "Capital Contribution"?

25 A. Yes, I do.

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1 M. PATRICK

2 LLC agreement, correct?

3 A. Correct.

4 Q. Do you know why Highland was involved

5 in SE Multifamily?

6 A. Yes.

7 Q. Can you explain?

8 A. Highland -- Highland provided

9 infrastructure, if you will, and support, as

10 well as a partner that had resources.

11 Q. What kind of resources are you

12 referring to?

13 A. I refer generally to what I would

14 call structural resources as well as monetary

15 resources. And so it essentially allowed

16 flexibility within this joint venture between

17 the two parties.

18 Q. What do you mean by the term

19 "flexibility"?

20 A. It allowed the opportunity to

21 allocate cash, tax, and potentially any -- any

22 other items or issues that may come up with

23 respect to a complex real estate transaction

24 like this. It's essentially a big -- big

25 partner, well resourced.

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1 M. PATRICK

2 Q. Do you know what this means?

3 A. Yes, I do.

4 Q. What does it mean?

5 A. It generally refers to the initial,

6 if you will, capital which could be reflective

7 of either cash or assets that were placed into

8 the partnership.

9 Q. Okay. So if it says 51 for HCRE,

10 that means HCRE put in \$51 to SE Multifamily;

11 is that correct?

12 A. That would be --

13 MS. DANDENEAU: Objection to form.

14 THE REPORTER: I'm sorry. I didn't

15 hear the end of your answer. That would

16 be --

17 A. That would be correct.

18 THE WITNESS: And I'll slow down to

19 give Debra a chance to object. I

20 apologize, Debra.

21 BY MS. WINOGRAD:

22 Q. Do you know where that \$51 came from?

23 A. From -- I do not know.

24 Q. As we discussed earlier, Highland was

25 a member of SE Multifamily under the original

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1 M. PATRICK

2 Q. Do you know whose idea it was to

3 involve Highland in SE Multifamily?

4 A. Do I know who -- I'm sorry?

5 Q. Do you know whose idea it was to

6 involve Highland?

7 MS. DANDENEAU: Objection to form.

8 A. No, I -- no, I cannot recall.

9 BY MS. WINOGRAD:

10 Q. Do you know if there were tax

11 advantages to Highland's involvement in SE

12 Multifamily?

13 A. Yes.

14 MS. DANDENEAU: And, Hayley, I'm

15 just -- I'm going to -- the only reason

16 I'm objecting to form is the use of the

17 term "involvement," which is somewhat --

18 it's ambiguous to me. So I don't really

19 want to interrupt the flow of this, but --

20 because Mr. Patrick has testified that

21 involvement also means providing services.

22 I think you're referring to the ownership.

23 So I just -- again, I don't want to

24 interrupt the flow, but...

25

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1 M. PATRICK

2 BY MS. WINOGRAD:

3 Q. Okay. Mr. Patrick, just to go back

4 for a minute, I'm going to rephrase the

5 question to see if it's more clear to you.

6 Do you know whose idea it was to

7 involve Highland as a member in SE Multifamily?

8 A. No, I do not recall.

9 Q. Okay. So you mentioned there were

10 tax advantages to Highland's involvement in SE

11 Multifamily?

12 A. Well, look, let me sort of explain

13 what -- how I interpret the word "tax

14 advantages." As I indicated, Highland Capital

15 Management is a well resourced entity. It had

16 a strong balance sheet, if you will, as well as

17 it had structural advantages of being a

18 partnership.

19 And so in these types of joint

20 ventures where you may have, you know, a

21 smaller partner, if you will, owned by

22 individuals and a larger partner, a partnership

23 that's well resourced, it can allow for

24 flexibility from time to time to allocate

25 taxable income in accordance with Subchapter K

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1 M. PATRICK

2 A. I would characterize it as it was

3 beneficial for both parties. When you have a

4 joint venture, two parties coming together, you

5 know, there's generally speaking a mutual

6 benefit. So HCRE must have had some mutual

7 benefit from their perspective. But that's

8 about as far as I can go. I don't like to

9 speculate too much as to the intent of the

10 parties. But I think in this case, it's clear

11 when you have a joint venture, there's some --

12 there is some mutual benefit.

13 BY MS. WINOGRAD:

14 Q. What is your understanding of the

15 benefit of the flexibility?

16 MS. DANDENEAU: Objection to form.

17 A. I think I've answered that, but, you

18 know, again, when you have a partnership with a

19 large, well resourced entity as well as another

20 entity that, if you will, has the substantial

21 knowhow, which is what I would call HCRE, you

22 know, so that's the benefit.

23 BY MS. WINOGRAD:

24 Q. Okay. You mentioned a minute or so

25 ago that Highland benefited from this, correct?

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1 M. PATRICK

2 of the Internal Revenue Code to one of the

3 partners.

4 So it adds -- it adds a tremendous

5 amount of flexibility, if you will, in those

6 sorts of allocations.

7 That's how I view tax advantages.

8 It's very common in a variety of joint

9 ventures, including real estate ventures.

10 Q. Okay. So just -- just to make sure

11 that I understand, why did -- do you know why

12 HCRE wanted this flexibility to do -- to have

13 this tax flexibility that you explained?

14 MS. DANDENEAU: Objection to form.

15 A. I'm not -- it's -- it's hard for me

16 to say that I was in a position to know what

17 HCRE wanted. So maybe you can rephrase your

18 question.

19 BY MS. WINOGRAD:

20 Q. Sure. You said that the

21 transaction -- that Highland's -- Highland as a

22 member in SE Multifamily allowed the

23 transaction flexibility. So I'm asking, why

24 did HCRE want this flexibility?

25 MS. DANDENEAU: Objection to form.

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1 M. PATRICK

2 A. Correct.

3 Q. How did Highland benefit from this?

4 A. Well, you know, it's one of those

5 situations where the -- the race ended

6 relatively quick before we could see how it

7 finished. This entity was organized in August

8 of 2018. Highland ended up filing for

9 bankruptcy in the fall of 2019. You know,

10 but -- so it's -- at this window time period,

11 it is hard to say either one of the parties

12 really benefited, if you will, unless -- just

13 sort of -- the creation of this entity that

14 would help facilitate the acquisition of the

15 assets.

16 Q. Do you know if Highland's

17 participation as a member in SE Multifamily was

18 expected to reduce or minimize HCRE's tax

19 liability arising from its investment in SE

20 Multifamily?

21 A. No. I would not characterize that it

22 was expected to -- yeah, I would not

23 characterize it in that format.

24 Q. Is it your understanding that

25 Highland's bankruptcy filing changed the nature

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1 M. PATRICK
 2 of the members' relationship?
 3 MS. DANDENEAU: Objection to form.
 4 A. I would say it definitely changed
 5 the -- sort of the nature of when you have one
 6 partner that files for bankruptcy, you know, it
 7 causes unexpected outcomes, I suppose.
 8 BY MS. WINOGRAD:
 9 Q. What were those unexpected outcomes
 10 in the context of HCRE and Highland?
 11 A. Well, this document was designed to
 12 be what I view as a fluid document. From my
 13 e-mails, you can -- fluid meaning that it would
 14 change essentially annually, you know, upon the
 15 discretion of its manager, Mr. James Dondero,
 16 with respect to the variety of the activities
 17 that would occur in it.
 18 And so, like, for instance, you see
 19 an e-mail when we're working on the amended LLC
 20 agreement that we were amending -- there's a
 21 tax rule that you can amend a partnership
 22 agreement up until March 15th to apply
 23 retroactively to the previous year. As you can
 24 see in this exhibit right here, we have blanks
 25 for specified company assets which were left

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1 M. PATRICK
 2 Q. Do you see where it says under
 3 Article 6.1(a) "Distributable Cash"?
 4 A. Yes, I do.
 5 Q. It says: Except as otherwise
 6 specifically provided in this Article VI and
 7 IX, all distributable cash shall be distributed
 8 51 percent to HCRE and 49 percent to Highland
 9 at such time and in such amounts as determined
 10 by the manager.
 11 Do you see that?
 12 A. Yes, I do.
 13 Q. Is it your understanding that these
 14 allocations of distributable cash under Article
 15 6.1 were intended to be consistent with the
 16 members' percentage interest in SE Multifamily?
 17 MS. DANDENEAU: Objection to form.
 18 A. No.
 19 BY MS. WINOGRAD:
 20 Q. Can you explain to me what
 21 distributable cash means, then?
 22 A. Well, it's a defined term, so I would
 23 ask that we would go to the definition and
 24 point to that definition.
 25 Q. Okay. But what -- if you could just

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1 M. PATRICK
 2 blank because this is the start of the joint
 3 venture. But the sort of view, presumably, as
 4 there were sales going forward, then we would
 5 have the opportunity to take a look at the
 6 realizations, the tax consequences of those
 7 sales, and amend the document from -- from time
 8 to time.
 9 So for -- so it appears that the
 10 Highland bankruptcy sort of stalled that
 11 original view of this sort of fluid document
 12 that would be amended from time to time after
 13 looking at, if you will, in a colloquial sense,
 14 the P&L, the variety of sales within this
 15 entity and then making adjustments according to
 16 what the partners want to adjust.
 17 Q. Okay.
 18 MS. WINOGRAD: La Asia, can we stay
 19 on this document but scroll to page 10,
 20 which is also PDF page 10? And if we go
 21 down just a little bit. There we go.
 22 BY MS. WINOGRAD:
 23 Q. Mr. Patrick, do you see where it says
 24 "Distributions of Cash" under Article 6?
 25 A. Yes, I do.

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1 M. PATRICK
 2 explain it to me in simple terms.
 3 MS. DANDENEAU: Objection to form.
 4 A. Yeah. Essentially, subject to all
 5 the variety of definitions -- you know, the
 6 formula for the distributable cash, essentially
 7 it's the amount of cash, you know, that fits
 8 within that definition that James Dondero, in
 9 his discretion as the manager of HCRE, can
 10 determine from time to time to take whatever
 11 amount that he decides meets that definition
 12 and cause a distribution.
 13 BY MS. WINOGRAD:
 14 Q. Okay. So is it your testimony that
 15 the percentages under "Distributable Cash" have
 16 nothing to do with the members' percentage
 17 interest in SE Multifamily?
 18 MS. DANDENEAU: Objection to form.
 19 A. Yes.
 20 MS. WINOGRAD: Okay. La Asia, can we
 21 scroll down to PDF page 18?
 22 BY MS. WINOGRAD:
 23 Q. Okay. Do you see here Schedule A to
 24 the original LLC agreement?
 25 A. Yes, I do.

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1 M. PATRICK

2 A. It is the same numbers, but it does

3 not have a definitional reference to the

4 percentage interest.

5 Q. At the time the original LLC

6 agreement was entered into, was it your

7 understanding that the allocations of profits

8 and losses would be allocated in the same ratio

9 as the members' percentage interests?

10 A. I do not recall my understanding.

11 Q. You're aware that one of the

12 amendments to the original LLC agreement was

13 to -- was to the allocations of profits and

14 losses, correct?

15 A. Correct.

16 Q. Since the time SE Multifamily was

17 formed, were any of SE Multifamily's profits

18 and losses ever allocated to HCRE?

19 MS. DANDENEAU: Objection to form.

20 A. Both -- both the original and the

21 amended, I recall -- okay. Okay. I'm sorry,

22 I'm just getting -- you're referring to --

23 you're referring -- your question also

24 implicates the amended, but your question is

25 whether any profits and losses were allocated

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1 M. PATRICK

2 activities were allocated this way?

3 A. No, I do not recall.

4 Q. Okay.

5 MS. WINOGRAD: La Asia, can we go to

6 Exhibit 4, please?

7 (Exhibit 4 displayed and to be

8 marked.)

9 BY MS. WINOGRAD:

10 Q. Okay. Mr. Patrick, do you recognize

11 this document?

12 A. Yes, I do.

13 Q. This is SE Multifamily Holdings LLC

14 First Amended and Restated Limited Liability

15 Company Agreement, correct?

16 A. Correct.

17 Q. Can we refer to this as the amended

18 LLC agreement going forward?

19 A. Yes.

20 Q. It's dated as of March 15th of 2019,

21 correct?

22 A. Correct.

23 Q. Do you know why it's dated March 15th

24 of 2019?

25 A. Because the last amendments, it's my

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1 M. PATRICK

2 to HCRE. And under 6.4(a), they were.

3 BY MS. WINOGRAD:

4 Q. Okay. But as we talked about, this

5 was later amended, which we'll get to later.

6 A. Correct.

7 Q. Okay. Under Article 6.4(b), it

8 says all -- do you see Article 6.4(b)?

9 A. Yes, I do.

10 Q. It says, "All profits and losses from

11 the company's rental and leasing activities

12 shall be allocated 99 percent to HCMLP and 1

13 percent to HCRE."

14 Do you see that?

15 A. Yes, I do.

16 Q. Is it your understanding that at the

17 time the original LLC was entered into, the

18 members intended that the profits and losses

19 from SE Multifamily's rental and leasing

20 activities would be allocated 99 percent to

21 Highland and 1 percent to HCRE?

22 A. Yes, because it's reflected in the

23 document.

24 Q. Okay. Do you know why the profits

25 and losses for the rental and leasing

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1 M. PATRICK

2 understanding, occurred on that date.

3 Q. Was there -- was there a deadline for

4 amending the original LLC agreement?

5 A. Yes, there was. As I mentioned

6 earlier, there's a certain tax deadline where

7 the partners can come together and amend their

8 partnership agreement and make it effective for

9 the prior taxable year. And that deadline is

10 March 15th.

11 Q. Okay. Did you have any role in

12 connection with the amended LLC agreement?

13 A. Yes, I did.

14 Q. Okay. Were you involved in drafting

15 the amended LLC agreement?

16 A. No, I was not.

17 Q. What parts of the LLC agreement were

18 you involved with?

19 A. The tax allocation part. But I was

20 not involved in the part with respect to BH.

21 Q. Okay.

22 MS. WINOGRAD: La Asia, can we scroll

23 to page 18 of the amended LLC agreement?

24 BY MS. WINOGRAD:

25 Q. Okay. Do you see here that James

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1 M. PATRICK
 2 Dondero signed on behalf of both Highland and
 3 HCRE?
 4 A. Yes, I do.
 5 Q. Do you know if the amended LLC
 6 agreement was subject to negotiations between
 7 HCRE and Highland?
 8 A. I would again refer to my earlier
 9 testimony, that Mr. Dondero, as far as his role
 10 as the manager, weighed the equities between
 11 the two entities and -- and reached a decision,
 12 essentially negotiating with himself. That's
 13 what I'm saying. You know, you can -- you can
 14 weigh the variety of the equities when you have
 15 these kind of situations and make decisions
 16 upon it. And, you know, so -- and I'm -- you
 17 know, I'm sure he received input, if you will,
 18 from other folks.
 19 Q. Uh-huh. Do you know if Highland got
 20 independent legal advice with respect to the
 21 amended LLC agreement?
 22 A. Yes.
 23 Q. Who gave Highland this independent
 24 legal advice?
 25 A. Alex McGeoch at Hunton & Williams.

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1 M. PATRICK
 2 amended LLC agreement to make sure it reflected
 3 Highland's intent?
 4 A. Yes.
 5 Q. Who was that?
 6 A. Again, I would say the legal
 7 department, Tim Cournoyer, who reported to
 8 Thomas Surgent, and Freddy Chang. Both lawyers
 9 and legal professionals that reviewed this
 10 document were involved in the review and
 11 commenting of this document.
 12 Q. Do you know if any particular
 13 individual was responsible for reviewing the
 14 amended LLC agreement to make sure it reflected
 15 HCRE's intent?
 16 A. I -- I do not. The real estate team
 17 was copied on the document, but I don't know if
 18 there was anybody necessarily appointed for
 19 that role.
 20 Q. Do you recall who the individuals on
 21 the real estate team that were copied were?
 22 A. Well, I noted from my refresh
 23 yesterday that Mr. Matthew McGraner was copied
 24 on an e-mail that appears that I sent out on
 25 this amended LLC agreement.

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1 M. PATRICK
 2 Q. Do you know if HCRE got independent
 3 legal advice with respect to the amended LLC
 4 agreement?
 5 A. I do not.
 6 Q. So was it -- so is it your testimony
 7 that Hunton Williams was only representing
 8 Highland and not HCRE?
 9 A. I struggle with that word
 10 "representing," especially in this sort of
 11 context of an affiliate-type joint venture.
 12 Q. So let me rephrase that a little bit.
 13 Was it your understanding that Hunton Williams
 14 was giving independent legal advice only to
 15 Highland and not HCRE in connection with the
 16 amended LLC agreement?
 17 A. I would view it as they were giving
 18 independent legal advice to the entity with
 19 respect to the partnership agreement.
 20 Q. And when you say "to the entity," are
 21 you referring to Highland --
 22 A. No, I'm -- yeah, I'm referring to SE
 23 Multifamily Holdings LLC.
 24 Q. Do you know if any particular
 25 individual was responsible for reviewing the

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1 M. PATRICK
 2 MS. WINOGRAD: Okay. Could we scroll
 3 to page 18, which is PDF page 19?
 4 BY MS. WINOGRAD:
 5 Q. Okay. Do you see that Liberty CLO
 6 Holdco --
 7 MS. WINOGRAD: Actually, can you go
 8 up a little bit, La Asia? A little bit --
 9 I guess, yeah, a little bit more. Yeah,
 10 sorry, down, down. There we go.
 11 Q. Do you see that Liberty Holdco, Ltd.
 12 was a party to the amended LLC agreement?
 13 A. Yes, I do.
 14 Q. Can I refer to them as Liberty?
 15 A. Yes, you can.
 16 Q. Do you know who Liberty was?
 17 A. Yes, I do.
 18 Q. Who was Liberty?
 19 A. Liberty is an entity, I believe, that
 20 was directly owned by Charitable DAF Fund, L.P.
 21 Q. Do you know why Liberty was brought
 22 in as a member of SE Multifamily?
 23 A. Yes. Yes, I do.
 24 Q. Why?
 25 A. Two-fold. One, it was -- it was

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1 M. PATRICK
2 Paul Broaddus that the contribution schedule
3 should reflect the equity capital from the debt
4 bridge, did you not?
5 A. Yes, it appears so in this e-mail.
6 Q. Can you think of anything other than
7 the KeyBank loan that this debt bridge would
8 have been referring to?
9 MS. DANDENEAU: Objection to form.
10 A. I just don't have a recollection of
11 when I used that word "debt bridge" in this
12 e-mail, what I was referring to.
13 BY MS. WINOGRAD:
14 Q. You know that HCRE's capital
15 contribution was proceeds from a loan, though,
16 right?
17 A. No, I --
18 MS. DANDENEAU: Objection to form.
19 A. I do not have a recollection.
20 BY MS. WINOGRAD:
21 Q. It's your testimony that you have no
22 recollection of where the \$291 million came
23 from?
24 A. That is correct.
25 Q. And you have no recollection as to

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1 M. PATRICK
2 Q. Okay. You were involved with
3 drafting this provision, right?
4 A. No, I was not.
5 MS. WINOGRAD: Okay. Could we show
6 Exhibit 15, please?
7 (Exhibit 15 displayed and to be
8 marked.)
9 MS. WINOGRAD: Okay. Can we scroll
10 to the third e-mail down?
11 BY MS. WINOGRAD:
12 Q. Do you see this e-mail, Mr. Patrick?
13 A. Yes, I do.
14 Q. Did you write this?
15 A. Yes, I did.
16 Q. It's dated March 4th of 2019, right?
17 A. Correct.
18 Q. Okay. And it's to Freddy Chang,
19 right?
20 A. Correct.
21 Q. Okay. And you say, "I'd like to get
22 this to the return preparer ASAP to get sign
23 off on the tax allocations," correct?
24 A. Correct.
25 Q. Does this refresh your recollection

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1 M. PATRICK
2 whether this was a loan?
3 A. What is a loan? I'm sorry, what --
4 Q. The \$291 million, was that proceeds
5 from a loan?
6 A. Yeah, I have no recollection.
7 Q. Can you think of any type of loan
8 that your e-mail would have been referring to
9 when you say debt bridge?
10 MS. DANDENEAU: Objection to form.
11 A. Again, I don't recall what I was
12 referring to when I wrote this e-mail.
13 MS. WINOGRAD: La Asia, let's scroll
14 to page 12, PDF page 12.
15 MS. CANTEY: You mean the amended
16 agreement or stay on --
17 MS. WINOGRAD: I tell you, let's go
18 to Exhibit 4, the amended and restated LLC
19 agreement.
20 MS. CANTEY: Okay.
21 BY MS. WINOGRAD:
22 Q. Okay. Do you see here where it says
23 Article 6.4, "Allocations of Profits and
24 Losses"?
25 A. Yes, I do.

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1 M. PATRICK
2 about your involvement in Article 6.4?
3 MS. DANDENEAU: Objection to form. I
4 think that the question that you asked him
5 was whether he was involved in drafting
6 Article 4.
7 BY MS. WINOGRAD:
8 Q. Mr. Patrick, were you involved with
9 Article 6.4?
10 A. Yes.
11 MS. DANDENEAU: Objection to form.
12 BY MS. WINOGRAD:
13 Q. How were you involved?
14 A. I was involved in the discussions
15 with respect to the allocation percentages that
16 would be placed into 6.4.
17 MS. WINOGRAD: Okay. La Asia, could
18 we go back to Exhibit 4, PDF page 12,
19 please?
20 BY MS. WINOGRAD:
21 Q. Okay. Let's look at Article 6.4(a).
22 It says -- okay. Well, first, who did you
23 discuss this article with?
24 A. This article was discussed with Rick
25 Swadley, our chief of tax compliance; Paul

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1 M. PATRICK
 2 Broaddus; Dave Klos in corporate. I cannot
 3 recall offhand if anybody on the legal team was
 4 involved. And then Mr. James Dondero.
 5 BY MS. WINOGRAD:
 6 Q. Okay. What was said during those
 7 discussions?
 8 A. The tax compliance team in 2019 had
 9 made an assessment, if you will, of the taxable
 10 income in loss from this entity, SE Multifamily
 11 Holdings. And because we had the March 15th
 12 date, it allows the partnership to make a
 13 determination of the allocations of the taxable
 14 income.
 15 I recall that Mr. Swadley and
 16 Mr. Broaddus gave a presentation with respect
 17 to the dollar amounts of the taxable income,
 18 and there was discussion with respect to how
 19 that taxable income for 2018 could be allocated
 20 amongst the partners. And the final
 21 determination of that discussion is reflected
 22 here at 6.4(a).
 23 Q. Okay. And as we discussed earlier,
 24 the profits and losses in the original LLC
 25 agreement were 51 percent to HCRE and 49

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1 M. PATRICK
 2 A. I don't -- I do not recall.
 3 Q. Okay. So do you know who made the
 4 decision to change the profits and losses?
 5 A. To change -- so you're referring to
 6 changing the original 6.4(a) allocation to the
 7 6.4(a) allocation in the amended LLC agreement,
 8 right? That's your --
 9 Q. To change it, right.
 10 A. Yeah, yeah, yeah, yeah. No, no, no,
 11 that determination was made by the manager of
 12 HCRE, Mr. James Dondero, per a presentation by
 13 the Highland, you know, tax department.
 14 Q. Okay. Do you know why 94 percent of
 15 the profits and losses was allocated to
 16 Highland?
 17 THE REPORTER: I'm sorry. I saw your
 18 lips move, but I didn't hear you.
 19 MS. WINOGRAD: I said, do you know
 20 why the 94 percent profits was allocated
 21 to Highland?
 22 THE REPORTER: Yes, I heard your
 23 question. I didn't hear the answer.
 24 A. Yeah. No, I was just formulating the
 25 answer in my mind. When we made -- when that

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1 M. PATRICK
 2 percent to Highland, right?
 3 A. Correct.
 4 Q. Okay. Do you know why the tax
 5 allocations were changed?
 6 A. Yes. So at the beginning of 2019,
 7 the tax compliance team was able to take a look
 8 at the taxable income, the profit and losses.
 9 That's what 6.4 is referring to, taxable income
 10 profit and losses under the definition.
 11 So they had a -- they had an
 12 assessment of what the profit and losses of the
 13 partnership were. And so when I refer back to
 14 my earlier testimony, this was a fluid document
 15 intended to be amended annually with respect to
 16 the variety of items, the sale and dispositions
 17 of assets with respect to cash, with respect to
 18 tax items. So this was going to be what I
 19 would view as a reoccurring discussion.
 20 So that's why it changed, because we
 21 had information now that we didn't have, you
 22 know, at the time of the original LLC agreement
 23 with respect to the taxable income and loss of
 24 this entity.
 25 Q. How much taxable income was there?

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1 M. PATRICK
 2 discussion with the tax team and Mr. Dondero
 3 occurred, it's -- the -- the determination was
 4 to make this allocation because Highland,
 5 again, was a more well resourced entity,
 6 resourced structurally as well as financially,
 7 than HCRE. And I seem to recall that there was
 8 not cash, if you will, available within the
 9 overall entity to make -- for that entity to
 10 make a, if you will, a tax distribution.
 11 And so you have HCRE, which is owned
 12 by individuals, you have HCMLP, which is a well
 13 resourced entity, and so it made a lot of sense
 14 to make that allocation to Highland, at least
 15 initially at the beginning of this endeavor.
 16 Q. Okay. Do you know if any profits
 17 were ever allocated to HCRE?
 18 A. Again, this sort of -- the race began
 19 and ended relatively quick per the filing of
 20 Highland's bankruptcy. You know, so the
 21 expectation was that the 2019 P&L, there would
 22 be a meeting sometime in 2020, before March
 23 15th, where there would be an assessment with
 24 respect to the allocation of cash, of the
 25 properties being sold, as well as the taxable

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1 M. PATRICK
 2 percent of profits and losses to Highland to
 3 eliminate the payment of taxes associated with
 4 any of SE Multifamily's profits?
 5 MS. DANDENEAU: Objection to form.
 6 A. No.
 7 BY MS. WINOGRAD:
 8 Q. So can you explain to me again just
 9 so that I have an understanding of what the
 10 purpose of allocating 94 percent of profits to
 11 Highland was?
 12 MS. DANDENEAU: Objection to form.
 13 Is that a question?
 14 MS. WINOGRAD: Yes, it was a
 15 question. I'm asking if he could explain
 16 to me again the purpose of allocating 94
 17 percent of the profits and losses to
 18 Highland.
 19 A. The purpose was that Highland
 20 vis-a-vis the other -- HCRE, if you will, was a
 21 well resourced entity.
 22 BY MS. WINOGRAD:
 23 Q. Was there -- was there a tax purpose
 24 of allocating 94 percent of profits and losses
 25 to Highland?

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1 M. PATRICK
 2 A. No.
 3 BY MS. WINOGRAD:
 4 Q. Are you familiar with the term
 5 "economic substance"?
 6 A. Yes, I am.
 7 Q. Do you know if there was any economic
 8 substance in allocating 94 percent of the
 9 profits and losses to Highland?
 10 A. Yes, there was.
 11 Q. What was that economic substance?
 12 A. The economic substance is that over
 13 time within the partnership, as the partnership
 14 would make sales and distributions, if you
 15 will, of cash, that there's -- that there would
 16 be an expectancy of such distribution in the
 17 future, and that gives it economic substance to
 18 the earlier allocation under Subchapter K.
 19 Q. Do you know if there were any -- ever
 20 any projections that showed losses to SE
 21 Multifamily?
 22 A. I'm sorry, say that again.
 23 Q. Do you know if there were ever any
 24 projections that showed losses to SE
 25 Multifamily?

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1 M. PATRICK
 2 MS. DANDENEAU: Objection to form.
 3 A. Yeah, I don't -- I don't know what
 4 you mean by "tax purpose."
 5 BY MS. WINOGRAD:
 6 Q. Is it your understanding that the
 7 allocation of profits and losses to Highland
 8 was one of the reasons that Highland was
 9 brought into this deal?
 10 MS. DANDENEAU: Objection to form.
 11 A. One of the reasons. I cannot recall
 12 precisely.
 13 BY MS. WINOGRAD:
 14 Q. Okay.
 15 A. I mean, I heard you say one of the
 16 reasons. And, you know, I do -- I would say
 17 yes, because I think, as I earlier described,
 18 the organizational nature of Highland being a
 19 partnership.
 20 Q. Okay. And if I asked this already,
 21 then I apologize, but I'm just trying to
 22 understand this. Are you aware of any taxes
 23 Highland has ever paid on SE Multifamily's
 24 profits?
 25 MS. DANDENEAU: Objection to form.

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1 M. PATRICK
 2 A. I cannot recall, but I'm not clear --
 3 I'm not clear what kind of projections you're
 4 referring to.
 5 Q. Projections showing what the taxable
 6 profits for SE Multifamily were.
 7 A. Yeah, I -- I don't recall.
 8 MS. WINOGRAD: Okay. La Asia, can we
 9 pull up Exhibit 12?
 10 (Exhibit 12 displayed and to be
 11 marked.)
 12 BY MS. WINOGRAD:
 13 Q. Okay. Mr. Patrick, do you recognize
 14 this e-mail?
 15 A. Yes, I do.
 16 Q. Okay. You wrote this e-mail, right?
 17 A. Correct.
 18 Q. This e-mail relates to the amended
 19 LLC agreement that we've been discussing,
 20 correct?
 21 A. Correct.
 22 Q. What's the date on the e-mail?
 23 A. February 28th, 2019.
 24 Q. Exactly. Okay. This is an e-mail
 25 from you to Tim Cournoyer, Freddy Chang, David

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1 M. PATRICK

2 Klos, cc'ing some other Highland employees,

3 correct?

4 A. Correct.

5 Q. In the first line of the e-mail, you

6 stated, "We have a March 15 tax deadline that

7 permits the retroactive amendment of this

8 partnership agreement."

9 Do you see that?

10 A. Yes, I do.

11 Q. And the partnership agreement is

12 referring to the LLC agreement, correct, the

13 original LLC agreement? Correct?

14 A. Correct.

15 Q. And we discussed this tax deadline

16 earlier. Can you help me understand again what

17 this tax deadline was? I just want to make

18 sure I understand.

19 A. Sure. So after the close of a

20 year -- in this case it's 2018 -- the

21 partnership rules allow the partners to come

22 together and allocate to make cash allocations

23 and tax allocations effective for the prior

24 taxable year, so the 2018 year, doing it in the

25 subsequent year. Here it would be 2019. But

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1 M. PATRICK

2 Q. Okay. During your involvement in

3 these amendments, who did you report to?

4 A. Frank Waterhouse, the chief financial

5 officer of Highland.

6 Q. Okay. Do you consider yourself to be

7 a careful professional?

8 MS. DANDENEAU: Objection to form.

9 A. Yes.

10 BY MS. WINOGRAD:

11 Q. Yes, okay. Do you pay attention to

12 detail when you draft documents?

13 A. I don't draft documents.

14 Q. Okay. Let me rephrase the question.

15 Do you pay attention to detail when

16 you review documents?

17 A. To the best of my ability.

18 Q. Okay. And when you're reviewing

19 documents in your professional capacity, are

20 you careful to make sure the documents reflect

21 the intent of the people you are working for?

22 A. To the best of my ability.

23 Q. Okay. So the first amendment in this

24 e-mail you refer to is BH ownership. Do you

25 see that?

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1 M. PATRICK

2 you have until March 15th to amend your

3 partnership agreement to sort of decide how

4 you're going to split the pie amongst the

5 partnership.

6 Q. Okay. So to confirm, does it mean

7 that the amended LLC agreement had to be signed

8 by March 15th of 2019 to be effective as of

9 August 23rd of 2018?

10 A. There needed to be an agreement

11 amongst the partners before March 15th to make

12 it effective in August of 2018.

13 Q. Okay. So do you know why the

14 original LLC agreement was being amended?

15 A. Yes, because information after the

16 end of the year came to the -- came to the tax

17 department as far as having a general

18 understanding of the taxable income and loss of

19 the partnership, as well as availability of

20 cash.

21 Q. Okay. Did you -- did you draft the

22 amendments you refer to in your e-mail?

23 A. No.

24 Q. Okay. Did you review them?

25 A. I believe I did.

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1 M. PATRICK

2 A. Yes, I do.

3 Q. Does this refer to BH Equities coming

4 in as an owner to SE Multifamily?

5 A. I believe it would.

6 Q. When BH Equities was coming in as an

7 owner to SE Multifamily, do you know if there

8 was ever discussions about whether HCRE would

9 make any additional capital contributions?

10 A. I'm not aware of that. I have no

11 knowledge.

12 Q. Okay. The third amendment you refer

13 to in this e-mail is the amendment to the cash

14 distributions and tax allocations section.

15 Do you see that?

16 A. Yes, I do.

17 Q. Okay. And it looks like there's a

18 couple of attachments in this e-mail, right?

19 A. Yes.

20 MS. WINOGRAD: Okay. La Asia, can we

21 scroll down to PDF page 29?

22 BY MS. WINOGRAD:

23 Q. Okay. Mr. Patrick, this is one of

24 the attachments that you attached to your

25 e-mail, correct?

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1 M. PATRICK

2 A. Correct.

3 Q. It's a redline of changes made to the

4 original LLC agreement, correct?

5 A. Correct.

6 Q. Did you make these changes?

7 A. I don't believe I was involved in the

8 redline, of creating the redline.

9 Q. But you reviewed them, right?

10 A. Yes, I did review the redline.

11 Q. Okay.

12 MS. WINOGRAD: La Asia, can we scroll

13 to PDF 38, which is page 10 of this

14 redlined agreement.

15 BY MS. WINOGRAD:

16 Q. Okay. Do you see that the

17 distributable cash for HCRE has changed from 51

18 percent to 47.94 percent?

19 A. Yes, I do.

20 Q. Do you see that the distributable

21 cash for Highland has changed from 49 percent

22 to 46.06 percent?

23 A. Wait, I think -- wait -- oh, correct.

24 Yes, I do.

25 Q. Okay. And these amended percentages

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1 M. PATRICK

2 recall. I just don't -- I just know I didn't

3 do it.

4 Q. Okay. And these -- like we just

5 talked about, the same percentage adjustments

6 are made throughout other sections of the

7 document, aren't they?

8 A. Pardon?

9 Q. These same percentage adjustments are

10 made throughout other sections of this

11 document, aren't they?

12 A. The same -- I don't know, you'd have

13 to refresh my memory and show me the other

14 percentages. I don't think they are the same

15 percentages.

16 Q. Okay.

17 MS. WINOGRAD: Can we scroll to PDF

18 page 47?

19 BY MS. WINOGRAD:

20 Q. Do you see Schedule A here?

21 A. Yes, I do.

22 Q. And do you see that under "Percentage

23 Interest," do you see the same percentage

24 adjustments made here that were made to

25 distributions --

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1 M. PATRICK

2 for cash distributions were arrived at by

3 reducing Highland's and HCRE's respective

4 ownership interests by 6 percent, right?

5 A. That would appear so, but I was not

6 kind of involved in these -- the creation of

7 these numbers or calculation of these numbers.

8 Q. Okay. That 6 percent, though, to the

9 best of your knowledge, based on this document,

10 was allocated to BH Equities, correct?

11 A. It would appear so.

12 Q. Okay. The amendments to the cash

13 distributions you refer to in your e-mail that

14 we just talked about is referring to these

15 changes we are looking at in Article 6.1(a),

16 correct?

17 A. Correct.

18 Q. This isn't the only place the changes

19 are made, is it?

20 A. No, I don't think so.

21 Q. Okay. Do you know who was

22 responsible for making these changes?

23 A. Like, actually drafting --

24 Q. Yeah.

25 A. -- the changes? No, I -- I don't

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1 M. PATRICK

2 A. Yes, I do see the same numbers on

3 that Schedule A.

4 Q. And these amended percentages were

5 arrived at by reducing Highland's and HCRE's

6 respective ownership interests in SE

7 Multifamily by 6 percent, right?

8 A. I'm -- ownership interest is not -- I

9 don't believe is defined in this document. So,

10 you know, I would answer no, because it's not

11 defined in the documents. It's reducing the

12 percentage interest in Schedule A.

13 Q. Okay. So isn't percentage interest

14 the same thing as ownership interest in SE

15 Multifamily?

16 A. I'd have to see --

17 MS. DANDENEAU: Objection to form.

18 A. I'd have to read --

19 MS. DANDENEAU: Mr. Patrick, let

20 me -- give me time to state my objections,

21 please.

22 Objection to form.

23 A. I would have to read the definition,

24 but I wouldn't -- if percentage interest in the

25 definitions does not refer to ownership, I

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1 M. PATRICK
 2 would call that conflation.
 3 BY MS. WINOGRAD:
 4 Q. Okay. But it says percentage
 5 interest, right?
 6 A. Yes.
 7 Q. And it's percentage interest in SE
 8 Multifamily, right?
 9 A. Yes.
 10 Q. Okay. And so these amended
 11 percentages --
 12 MS. DANDENEAU: Objection.
 13 Objection, misstates the document. I'm
 14 sorry for -- it does not in anywhere on
 15 the page I'm looking at say percentage
 16 interest in SE Multifamily.
 17 THE WITNESS: No.
 18 BY MS. WINOGRAD:
 19 Q. Okay. Mr. Patrick, do you have any
 20 reason to think that the percentage interests
 21 listed in Schedule A are anything other than
 22 the members' percentage interests in SE
 23 Multifamily?
 24 A. No.
 25 MS. DANDENEAU: Objection to form.

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1 M. PATRICK
 2 A. Yes, I do.
 3 Q. Do you see these same percentages for
 4 company ownership that were made to the other
 5 provisions we just talked about in Schedule A
 6 and in distributable cash?
 7 A. Yes.
 8 Q. Okay. And to confirm, these amended
 9 percentage ownerships of the members were
 10 arrived at simply by reducing Highland's and
 11 HCRE's respective ownership interests by
 12 6 percent, correct?
 13 A. Correct.
 14 Q. Okay. When you sent this e-mail out,
 15 you knew all these percentage changes were made
 16 throughout this document, right?
 17 A. Yes.
 18 Q. And when you sent this e-mail out,
 19 those changes are what you intended, correct?
 20 MS. DANDENEAU: Objection to form.
 21 BY MS. WINOGRAD:
 22 Q. You intended to make these changes?
 23 A. Yeah, I would -- you're saying these
 24 changes are what I intended. I did not intend
 25 one way or another. What I was trying to do,

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1 M. PATRICK
 2 BY MS. WINOGRAD:
 3 Q. Can you answer that again,
 4 Mr. Patrick?
 5 A. Yes. No, I do not.
 6 Q. Thank you. And these amended
 7 percentages under "Percentage Interest" were
 8 arrived at by reducing Highland's and HCRE's
 9 respective percentage interest in SE
 10 Multifamily by 6 percent, right?
 11 A. It would appear so.
 12 Q. Okay. And these -- these changes to
 13 the members' percentage interest are made in
 14 other places in this document, too, aren't
 15 they?
 16 A. Changes in the -- can you restate
 17 that question?
 18 Q. Sure. So why don't we go to --
 19 MS. WINOGRAD: La Asia, let's go to
 20 PDF page 31.
 21 BY MS. WINOGRAD:
 22 Q. Okay. Do you see Article 1.7?
 23 A. Yes.
 24 Q. Okay. Do you see under Article 1.7,
 25 it says "Company Ownership"?

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1 M. PATRICK
 2 if you will, is just work with people that made
 3 these changes and distributed out to see -- to
 4 the larger group to see if this is consistent
 5 with the overall intent.
 6 Q. Okay. But you intended to send this
 7 document out, correct?
 8 A. I intended to send -- yes, I intended
 9 to send the document out for review and comment
 10 that these percentages were consistent with the
 11 overall intent.
 12 Q. Okay.
 13 MS. WINOGRAD: Could we go to PDF
 14 page 1 of the e-mail?
 15 BY MS. WINOGRAD:
 16 Q. Okay. All of the recipients of this
 17 e-mail were given the opportunity to look at
 18 the changes in your attached documents,
 19 correct?
 20 A. Correct.
 21 Q. Did any recipient of this e-mail ever
 22 tell you there was a mistake in the percentage
 23 changes that are set forth throughout the
 24 attachment in your e-mail?
 25 A. I do not recall.

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1 M. PATRICK

2 Q. Okay. At the time you sent the

3 e-mail, did any of the recipients in this

4 e-mail work for HCRE?

5 A. I didn't -- I didn't have visibility

6 as to who worked for HCRE.

7 Q. Okay. But they all have Highland

8 e-mail addresses, right?

9 A. Yeah.

10 Q. Does that indicate that they all

11 worked for Highland?

12 A. Look, again --

13 MS. DANDENEAU: Objection, asked and

14 answered -- objection, asked and answered.

15 You asked him this question already.

16 MS. WINOGRAD: I did not ask this

17 specific question already.

18 MS. DANDENEAU: You did. You asked

19 him before who were -- he answered that he

20 thought maybe Freddy Chang worked for

21 HCRE.

22 MS. WINOGRAD: I'm asking --

23 MS. DANDENEAU: I'm just --

24 MS. WINOGRAD: -- in this e-mail. I

25 did not ask about the recipients on this

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1 M. PATRICK

2 percentage changes in this document that we

3 just went through before the amended LLC

4 agreement was executed?

5 MS. DANDENEAU: Objection to form.

6 A. It's my understanding when Paul

7 Broadus was, I guess, working to include BH

8 ownership in this transaction, he was

9 discussing with them and others. I believe I

10 was on vacation or out of pocket during that

11 time period. So I -- you know, all I know is

12 that Paul was interfacing with BH in discussing

13 those percentages. I don't know who else

14 internally he spoke to about the percentages.

15 BY MS. WINOGRAD:

16 Q. Okay. From your perspective, at the

17 time you sent out this e-mail with this

18 attachment, the percentages reflected the

19 parties' intent.

20 A. Correct.

21 Q. Okay.

22 A. Correct.

23 Q. Otherwise, you would have said

24 something, right?

25 A. I'm sorry, otherwise what?

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1 M. PATRICK

2 e-mail. I'm going to move forward,

3 though, because he already answered the

4 question.

5 MS. DANDENEAU: Okay, I'm sorry.

6 Please answer -- okay.

7 BY MS. WINOGRAD:

8 Q. Mr. Patrick, prior to the execution

9 of the amended LLC agreement, did anyone ever

10 tell you that the percentage changes made

11 throughout the attachment was -- were a

12 mistake?

13 A. I do not recall.

14 Q. These percentage changes were

15 accepted and adopted into the amended LLC

16 agreement, correct?

17 A. Correct.

18 Q. Did anyone ever discuss the changes

19 in these percentages before the amended LLC

20 agreement was executed?

21 MS. DANDENEAU: Objection to form.

22 A. Wait. Restate the question one more

23 time.

24 BY MS. WINOGRAD:

25 Q. Did anybody ever discuss the

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1 M. PATRICK

2 Q. Otherwise you would have said

3 something.

4 A. I would have said something?

5 MS. DANDENEAU: Objection, form.

6 A. No --

7 MS. DANDENEAU: Mr. Patrick, please

8 give me time to lodge my objection.

9 Objection to form. You can slow

10 down.

11 A. I was asked -- when I sent this

12 e-mail out, it's essentially I'm asking the

13 parties that are directed -- the "To" parties,

14 you know, Tim Cournoyer, Freddy Chang, Dave

15 Klos. I'm also directing it at Paul Broadus,

16 Matt McGraner, Rick Swadley, Frank Waterhouse

17 to review the document and tell me does this

18 reflect the intent. I'm not telling them this

19 is the intent. I'm asking them to provide

20 review to make sure it's consistent with the

21 overall agreement, if you will, understanding

22 of the agreement.

23 BY MS. WINOGRAD:

24 Q. And when you were trying to get that

25 clear, nobody told you that it did not reflect

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1 M. PATRICK
 2 the parties' intent, correct?
 3 A. I don't remember. I mean, for all I
 4 know, you could show me an e-mail with someone
 5 saying something. I just don't remember.
 6 Q. To the best of your knowledge today,
 7 nobody told you that there was a mistake in
 8 these percentages, correct?
 9 A. That is correct.
 10 Q. Okay.
 11 MS. WINOGRAD: Can we go to Exhibit
 12 18, please?
 13 BY MS. WINOGRAD:
 14 Q. Okay. Do you see this e-mail,
 15 Mr. Patrick?
 16 A. Yes, I do.
 17 Q. Did you write it?
 18 A. Yes, I did.
 19 Q. It's dated March 8th of 2019, right?
 20 A. Yes.
 21 Q. What's the subject?
 22 A. It says "Unicorn - LLC Agreement."
 23 Q. Okay. This relates to the amended
 24 LLC agreement, correct?
 25 A. Correct.

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1 M. PATRICK
 2 BY MS. WINOGRAD:
 3 Q. When you said, "Please have this
 4 signed," were you referring to this document?
 5 I think you answered --
 6 A. Yeah, I'd have to kind of see the
 7 rest of the document. I'm a little unsure if
 8 this was the document that I was -- I wanted
 9 them to sign or the document that Paul would
 10 have to work with during the time period of my
 11 absence.
 12 Q. Okay. This is the attachment,
 13 though, you were referring to in your e-mail,
 14 when you were directing them to a document,
 15 correct?
 16 A. Yeah. If it's electronically
 17 attached to it, I would say yes.
 18 Q. Okay.
 19 MS. WINOGRAD: Can we scroll back up
 20 to the e-mail, please?
 21 BY MS. WINOGRAD:
 22 Q. In your e-mail you say, "The
 23 contribution schedule should reflect the equity
 24 capital from the debt bridge."
 25 Do you see that?

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1 M. PATRICK
 2 Q. This e-mail is sent to Paul Broaddus,
 3 correct?
 4 A. Correct.
 5 Q. And he was in the tax department at
 6 Highland, correct?
 7 A. Yes.
 8 Q. Do you see where you say, "Please
 9 have this signed while Shawn and I are out"?
 10 A. Yes.
 11 Q. Okay.
 12 MS. WINOGRAD: La Asia, can we scroll
 13 a little bit down to the attachment?
 14 BY MS. WINOGRAD:
 15 Q. Okay. And, Mr. Patrick, is this the
 16 attachment you were referring to in your
 17 e-mail?
 18 A. I believe so. Well, I --
 19 Q. When you said, "Please have this
 20 signed" --
 21 A. Yeah, yeah, yeah. I think so.
 22 THE REPORTER: Wait, wait, wait,
 23 wait. I didn't hear the question because
 24 there was overspeak.
 25

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1 M. PATRICK
 2 A. Yes, I do.
 3 MS. WINOGRAD: And then could we
 4 scroll back to PDF page 20?
 5 BY MS. WINOGRAD:
 6 Q. Okay. Can you explain to me what you
 7 meant by that in terms of the capital
 8 contribution?
 9 MS. DANDENEAU: Objection to form.
 10 BY MS. WINOGRAD:
 11 Q. Well, let me rephrase it.
 12 A. Yeah.
 13 Q. The contribution schedule that you're
 14 referring to in your e-mail, are you referring
 15 to this "Capital Contribution" column on
 16 Schedule A that we're looking at?
 17 A. Yeah. I would -- I would believe so.
 18 Q. Okay. So is it fair to say you
 19 intended that column to be adjusted?
 20 A. Yes.
 21 MS. DANDENEAU: Objection to form.
 22 MS. WINOGRAD: And then can we go
 23 back up to the e-mail a little bit, just
 24 to the top one?
 25

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1 M. PATRICK

2 BY MS. WINOGRAD:

3 Q. Do you see here where you say the

4 percentage interests could remain?

5 A. Yes.

6 MS. WINOGRAD: La Asia, could we go

7 back to PDF page 20?

8 BY MS. WINOGRAD:

9 Q. When you refer to the percentage

10 interests in your e-mail, are you referring to

11 the "Percentage Interest" column on Schedule A

12 that we're looking at?

13 A. I would believe so.

14 Q. Okay. So when you sent this e-mail,

15 you intended for these percentage interests in

16 percentage interest -- in the "Percentage

17 Interest" column to stay the same, right?

18 MS. DANDENEAU: Objection to form.

19 A. No, not necessarily. I think what I

20 was indicating is that they don't have to

21 adjust if the partners don't want them to

22 adjust.

23 BY MS. WINOGRAD:

24 Q. Okay. Did you have an idea when you

25 wrote this e-mail of whether the partners

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1 M. PATRICK

2 BY MS. WINOGRAD:

3 Q. Okay. So then why did -- why did you

4 say, then, the percentage interest can remain

5 the same?

6 A. Because the capital contribution and

7 the percentage interest don't necessarily have

8 to adjust vis-a-vis the partners' committed or

9 contributed capital. That's the flexibility of

10 partnership agreements.

11 Q. Did anyone ever tell you the

12 percentage interests should be adjusted?

13 A. I do not recall.

14 MS. WINOGRAD: Okay. Let's take a

15 five-minute break. It is 10:56. Let's

16 actually come back at 11:05, if that works

17 for everybody.

18 MS. DANDENEAU: That's fine.

19 (Recess taken 9:56 a.m. Central Time

20 - 10:05 a.m. Central Time.)

21 MS. WINOGRAD: La Asia, can we go

22 back to the document we were just on,

23 which I believe was Exhibit 18 and PDF

24 page 20?

25

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1 M. PATRICK

2 wanted them to adjust?

3 A. I --

4 MS. DANDENEAU: Objection to form.

5 A. I did not.

6 MS. DANDENEAU: Objection to form.

7 Mr. Patrick, please give me time.

8 BY MS. WINOGRAD:

9 Q. Can you just explain, Mr. Patrick,

10 what you meant by the percentage interest can

11 remain the same? I'm just trying to

12 understand.

13 A. Yeah. I think what I am doing is

14 educating the group about the flexibility with

15 respect to these LLC agreements, that the

16 amount of capital contributed may not

17 necessarily have to adjust the percentage,

18 although they can frequently.

19 You know, so all I'm indicating is

20 there is flexibility as to what the partners

21 want to do.

22 Q. Okay. But you directed them to

23 change the capital contribution, right?

24 MS. DANDENEAU: Objection to form.

25 A. Yes. From -- yes.

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1 M. PATRICK

2 BY MS. WINOGRAD:

3 Q. Okay. Mr. Patrick, just going back

4 to something you were explaining before, I want

5 to make sure I understood you correctly.

6 From your perspective, the percentage

7 interests on Schedule A don't necessarily have

8 to correspond to the capital contribution,

9 correct?

10 A. Correct.

11 Q. It can be whatever the members decide

12 even if it's not consistent with the capital

13 contribution, correct?

14 A. Correct.

15 Q. And at the time you sent out this

16 document, was it your understanding that these

17 percentage interests were what the members

18 decided at the time?

19 A. Yes.

20 Q. Okay. Okay. So prior to the time

21 the amended LLC agreement was executed, did

22 anyone ever tell you the percentage interests

23 were wrong?

24 A. No.

25 Q. Did anyone ever tell you that there

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1 M. PATRICK
 2 was a mistake with respect to any of the
 3 percentages that we see here on Schedule A?
 4 A. No.
 5 Q. To the best of your knowledge, did
 6 the parties ever amend Schedule A to change the
 7 percentage interests?
 8 MS. DANDENEAU: Objection to form.
 9 A. I --
 10 MS. DANDENEAU: Are you referring
 11 to -- are you referring to --
 12 Ms. Winograd, are you referring to
 13 Schedule A as on the amended LLC
 14 agreement?
 15 MS. WINOGRAD: Exactly. I'm
 16 referring to the one we're looking at
 17 right now that was -- that Mr. Patrick
 18 testified was adopted and accepted into
 19 the amended LLC agreement.
 20 A. My understanding is the last
 21 amendment to the LLC agreement was the
 22 amendment executed on March 15th, 2019.
 23 BY MS. WINOGRAD:
 24 Q. Right. But did the -- to the best of
 25 your knowledge, did the parties ever amend the

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1 M. PATRICK
 2 A. Correct.
 3 Q. And it's cc'd to a number of
 4 individuals at both Highland and BH Equities,
 5 correct?
 6 A. It appears so.
 7 Q. Okay. So Freddy Chang says the fully
 8 executed LLCA is attached.
 9 Do you see that?
 10 A. Yes, I do.
 11 Q. He's referring to the amended LLC
 12 agreement, correct?
 13 A. It appears so.
 14 Q. Okay.
 15 MS. WINOGRAD: And can you scroll
 16 down a little, La Asia? Up just a little
 17 bit to show the attachment.
 18 BY MS. WINOGRAD:
 19 Q. Okay. So this is the amended LLC --
 20 the fully executed amended LLC agreement was
 21 circulated the day after execution, correct?
 22 A. It appears so, yes.
 23 Q. Do you know if anyone that was a
 24 recipient of this e-mail ever said that any
 25 part of the amended LLC agreement was a

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1 M. PATRICK
 2 amended LLC agreement?
 3 A. To the best of my knowledge, the
 4 parties have not made an amendment after March
 5 15th, 2019 to the LLC agreement.
 6 Q. Okay.
 7 MS. WINOGRAD: Okay. La Asia, could
 8 we show Exhibit 28?
 9 (Exhibit 28 displayed and to be
 10 marked.)
 11 BY MS. WINOGRAD:
 12 Q. Okay. Do you see this e-mail,
 13 Mr. Patrick?
 14 A. Yes, I do.
 15 Q. You were a recipient, correct?
 16 A. Yes, it appears so.
 17 Q. It's dated March 16th, 2019, correct?
 18 A. Correct.
 19 Q. This is the day after the amended LLC
 20 agreement was executed, correct?
 21 A. Yes.
 22 Q. It's from Freddy Chang, correct?
 23 A. Correct.
 24 Q. And it's sent to Paul Broaddus and
 25 Ben Roby, correct?

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1 M. PATRICK
 2 mistake?
 3 A. I have no knowledge whether or not.
 4 Q. Did anybody ever tell -- so let me
 5 rephrase that.
 6 So to confirm, nobody ever told you
 7 that, correct?
 8 A. That is correct.
 9 Q. Okay. Okay. So moving on, are you
 10 familiar with the firm Barker Viggato, LLP?
 11 A. That name is not coming to my
 12 recollection.
 13 Q. Okay. Are you aware that a firm
 14 prepares SE Multifamily's tax returns?
 15 A. Yes.
 16 Q. Okay. But you don't know if that's
 17 Barker Viggato, correct?
 18 A. That is correct.
 19 Q. Okay. Have you ever communicated
 20 with anyone at the firm that prepares SE
 21 Multifamily's tax returns?
 22 A. I do not recall.
 23 Q. Okay. Is it your understanding that
 24 the manager of SE Multifamily is responsible
 25 for communicating with the firm -- with the

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1 M. PATRICK
2 preparer of their tax returns?
3 A. I don't -- I don't recall what is
4 provided with respect to that.
5 Q. Well, are you -- are you -- do you
6 know if any particular person at SE Multifamily
7 was responsible for making sure that the firm
8 that prepares its taxes received all relevant
9 information relating to SE Multifamily's taxes?
10 A. I just don't recall.
11 Q. Okay. Do you know if -- do you know
12 if SE Multifamily's taxes -- tax returns were
13 ever amended?
14 A. I do not know one way or the other.
15 Q. Do you know if there was ever a
16 mistake in SE Multifamily's tax returns?
17 A. Not to my knowledge.
18 Q. Okay.
19 MS. WINOGRAD: La Asia, can we show
20 Exhibit 5?
21 (Exhibit 5 displayed and to be
22 marked.)
23 BY MS. WINOGRAD:
24 Q. Okay. One more question. Did you
25 ever discuss with anyone a possible amendment

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1 M. PATRICK
2 Q. Okay.
3 MS. WINOGRAD: So can we go down to
4 PDF page 5, which is Exhibit A to the
5 document?
6 BY MS. WINOGRAD:
7 Q. Okay. If you look at the third
8 sentence here, it says, "Claimant contends that
9 all or a portion of debtor's equity, ownership,
10 economic rights, equitable or beneficial
11 interests in SE Multifamily does" -- and there
12 should probably be a 'not' there, 'does not,'
13 it looks like a typo -- does not belong to the
14 debtor or may be the property of claimant."
15 So this is a proof of claim filed by
16 HCRE in which it alleges that there is a
17 mistake in Highland's equity in SE Multifamily,
18 correct?
19 A. Where is the word "mistake"?
20 Q. Well, let me ask it this way. Did
21 you -- so strike that question. Let me
22 rephrase it.
23 Did you have any involvement in
24 preparing this?
25 A. No.

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1 M. PATRICK
2 to SE Multifamily's tax returns?
3 A. Not that I can recall.
4 Q. Did you ever recommend to anyone that
5 SE Multifamily's tax returns be amended?
6 A. Not that I can recall.
7 Q. Did you ever hear any suggestion that
8 they should be amended?
9 A. Just not that I can recall.
10 Q. Okay. So looking at Exhibit 5 here,
11 have you seen this document before? And if you
12 need us to scroll down or up, we can.
13 A. Yes.
14 Q. You have seen it before?
15 A. Yes.
16 Q. Okay. This is a proof of claim filed
17 by HCRE in the Highland bankruptcy, correct?
18 A. It appears so.
19 MS. WINOGRAD: Can we scroll up a
20 little bit to the date?
21 BY MS. WINOGRAD:
22 Q. And it's dated April 8th of 2020,
23 correct?
24 A. That's what the -- that's what the
25 document shows, correct.

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1 M. PATRICK
2 Q. Have you seen this before today?
3 A. I saw it for the first time
4 yesterday.
5 Q. Okay. Did you ever discuss this with
6 anyone before yesterday?
7 A. No.
8 Q. Do you know who prepared this?
9 A. It's come to my understanding
10 yesterday, the law firm of Bonds Ellis.
11 MS. WINOGRAD: Okay. I just want to
12 take three minutes to figure out if I'm
13 done or close to being done, so I will be
14 back at 11 -- just in three minutes,
15 11:19.
16 MS. DANDENEAU: Okay. Thank you,
17 Hayley. We'll stay on the line.
18 (Recess taken 10:16 a.m. Central Time
19 - 10:19 a.m. Central Time.)
20 BY MS. WINOGRAD:
21 Q. So I just want to go back to
22 something we discussed at the beginning of the
23 deposition, and I want to just understand it
24 more. You mentioned earlier that you believed
25 that Tim Cournoyer and Freddy Chang were

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1 M. PATRICK
 2 looking out for Highland's interests in
 3 relation to the amended LLC agreement while it
 4 was being drafted, correct?
 5 A. I would say that they were looking --
 6 in their review, that they were reviewing the
 7 document with respect that it reflected the
 8 overall agreement of the parties.
 9 BY MS. WINOGRAD:
 10 Q. Okay. So they were looking out for
 11 the interests of the joint venture of SE
 12 Multifamily, then, correct?
 13 MS. DANDENEAU: Objection to form.
 14 A. What do you mean by "looking out"?
 15 BY MS. WINOGRAD:
 16 Q. Making sure that the amended LLC
 17 agreement reflected Highland's intent.
 18 A. I would agree with that.
 19 Q. You would agree with what exactly?
 20 A. That part of the responsibility was
 21 to make sure that it reflected the overall
 22 intent of the joint venture.
 23 Q. Okay. So it's your understanding
 24 that they were working on behalf of the joint
 25 venture, correct?

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1 M. PATRICK
 2 agreement reflects both parties, both parties'
 3 overall agreement.
 4 Q. Okay. Both parties' agreement
 5 meaning the agreement -- so both -- let me --
 6 let me -- you know, I think that I have what I
 7 need. I don't think I have any more questions
 8 on this.
 9 I just want to clear up, when we say
 10 the agreement, we mean the amended LLC
 11 agreement, right?
 12 A. And the original.
 13 Q. And the original. Okay.
 14 MS. WINOGRAD: All right.
 15 Mr. Patrick, I'm done with my questioning.
 16 Thank you very much for being here today.
 17 I really appreciate it.
 18 THE WITNESS: You're welcome.
 19 MS. DANDENEAU: Did Mr. Gameros -- I
 20 just want to make clear, is Mr. Patrick
 21 dismissed? Is there any further
 22 questioning.
 23 MR. GAMEROS: I was going to say,
 24 NexPoint Real Estate Partners reserves our
 25 questions, if any, until the time of

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1 M. PATRICK
 2 A. On behalf of the joint venture, yes.
 3 Q. Okay. And you had mentioned that
 4 there was a real estate group that was looking
 5 out for HCRE's interests, meaning that they
 6 were looking out to make sure that the amended
 7 LLC agreement reflected HCRE's intent, correct?
 8 A. I think -- like the legal team, I
 9 think they were reviewing this document to make
 10 sure that it reflected the overall business
 11 arrangement of the joint venture.
 12 Q. Okay. Do you know if there was any
 13 lawyer who was looking out solely for HCRE's
 14 interest in relation to the amended LLC
 15 agreement?
 16 A. Again, Hunton & Williams, when they
 17 were asked to draft this document, I think,
 18 again, they were -- as any good lawyer, just
 19 wanted to make sure it's reflective of the two
 20 partners' agreement.
 21 Q. Okay. So -- so they were looking out
 22 for the joint venture the way you were
 23 describing before, correct?
 24 A. They were -- they were in this
 25 situation invariably making sure that the LLC

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1 M. PATRICK
 2 trial.
 3 Thank you for your time today,
 4 Mr. Patrick.
 5 THE WITNESS: You're welcome.
 6 MS. DANDENEAU: All right. Thank
 7 you.
 8 THE REPORTER: Before everyone
 9 leaves, could I just get orders from
 10 everyone? I have a standing order, I
 11 think, from you, Ms. Winograd.
 12 MS. DANDENEAU: I assume that
 13 somebody will send us a transcript if they
 14 want Mr. Patrick to review it. I mean, I
 15 don't otherwise need a copy.
 16 THE REPORTER: Okay. Mr. Gameros?
 17 MR. GAMEROS: I'll take a copy, a
 18 condensed. We don't need the exhibits.
 19 I've already got those.
 20 THE REPORTER: Okay.
 21 (Time noted: 10:24 a.m.)
 22
 23
 24
 25