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**ATTORNEYS FOR NEXPOINT REAL ESTATE PARTNERS, LLC,  
f/k/a HCRE PARTNERS, LLC**

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

|  |   |                                 |
|--|---|---------------------------------|
| <b>In re:</b>  | § |                                 |
|  | § | <b>Chapter 11</b>               |
| <b>HIGHLAND CAPITAL<br/>MANAGEMENT, L.P.,</b>                                | § |                                 |
|  | § | <b>Case No. 19-34054-SGJ-11</b> |
|  | § |                                 |
| <b>Debtor.</b>   | § |                                 |
| <hr/>  |   |                                 |
| <b>HIGHLAND CAPITAL<br/>MANAGEMENT, L.P.,</b>                                | § |                                 |
|  | § |                                 |
|  | § |                                 |
| <b>Movant,</b>   | § |                                 |
|  | § | <b>Contested Matter</b>         |
| <b>v.</b>  | § |                                 |
|  | § |                                 |
| <b>NEXPOINT REAL ESTATE<br/>PARTNERS, LLC, F/K/A HCRE<br/>PARTNERS, LLC,</b> | § |                                 |
|  | § |                                 |
|  | § |                                 |
| <b>Respondent.</b>   | § |                                 |

**NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC  
AMENDED WITNESS AND EXHIBIT LIST WITH RESPECT TO  
EVIDENTIARY HEARING TO BE HELD ON NOVEMBER 1 AND 2, 2022**



NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC (“NREP” or “Claimant”) files its amended list of potential witness and exhibits with respect 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 [Dkt. No. 906] as it relates to NREPS’s Claim No 146, which the Court has set for hearing at 9:30 a.m. on November 1 and 2, 2022 (Central Time) in the above-styled bankruptcy case.

Dated: October 31, 2022

/s/ Charles W. Gameros, Jr.  
Charles W. Gameros, Jr., P.C.  
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**ATTORNEYS FOR  
NEXPOINT REAL ESTATE PARTNERS, LLC,  
F/K/A HCRE PARTNERS, LLC**

**CERTIFICATE OF SERVICE**

This is to certify parties which have so registered with the Court, including counsel for the Debtor, the United States Trustee, and all persons or parties requesting notice and service shall receive notification of the foregoing via the Court’s ECF system, and are considered served pursuant to the Administrative Procedures incorporated into the Order Adopting Administrative Procedures for Electronic Case Filing, General Order 2003-01.2.

/s/ Charles W. Gameros, Jr.  
Charles W. Gameros, Jr., P.C.

**I.**

**POTENTIAL WITNESSES**

- (1) James Donderro
- (2) Matt McGraner
- (3) Tim Cournoyer
- (4) David Klos
- (5) Mark Patrick (through deposition testimony only)
- (6) Barker Viggato, LLP (Mark Barker) (through deposition testimony only)
- (7) BH Equities, LLC (Dustin Thomas) (through deposition testimony only)
- (8) Any witness designated or called by any other party
- (9) Any rebuttal or impeachment witnesses

**II.**

**CLAIMANTS' POTENTIAL EXHIBITS**

| <b>Exhibit</b> | <b>Desc.</b>  | <b>ID</b>       | <b>Offer</b> | <b>Obj.</b> | <b>Stip.</b> | <b>Admit</b> |
|----------------|---|-----------------|--------------|-------------|--------------|--------------|
| Claimant's 1   | LLC Agreement   | Patrick Exh. 2  |              |             |              |              |
| Claimant's 2   | First Amended LLC Agreement   | Patrick Exh. 4  |              |             |              |              |
| Claimant's 3   | Bridge Loan Agreement   | Donderro Exh. 3 |              |             |              |              |
| Claimant's 4   | Proof of Claim No. 146  | Claim 146       |              |             |              |              |
| Claimant's 5   | 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  | Dkt. No. 906    |              |             |              |              |
| Claimant's 6   | 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 | Dkt. No. 1212   |              |             |              |              |
| Claimant's 7   | Disclosure Statement for Fifth Amended Plan   | Dkt. No. 1473   |              |             |              |              |
| Claimant's 8   | Notice of Executory Contracts to be Assumed   | Dkt. No. 1648   |              |             |              |              |
| Claimant's 9   | Second Notice of Executory Contracts to be Assumed  | Dkt. No. 1719   |              |             |              |              |
| Claimant's 10  | Third Notice of Executory Contracts to be Assumed   | Dkt. No. 1749   |              |             |              |              |
| Claimant's 11  | Fifth Amended Plan of Reorganization  | Dkt. No. 1808   |              |             |              |              |
| Claimant's 12  | Fourth Notice of Executory Contracts to be Assumed  | Dkt. No. 1847   |              |             |              |              |

| <b>Exhibit</b> | <b>Desc.</b>   | <b>ID</b>     | <b>Offer</b> | <b>Obj.</b> | <b>Stip.</b> | <b>Admit</b> |
|----------------|--|---------------|--------------|-------------|--------------|--------------|
| Claimant's 13  | Fifth Notice of Executory Contracts to be Assumed  | Dkt. No. 1873 |              |             |              |              |
| Claimant's 14  | Order Confirming Fifth Amended Plan  | Dkt. No. 1943 |              |             |              |              |
| Claimant's 15  | Confirmation Date and Bar Date for Filing Objections   | Dkt. No. 1948 |              |             |              |              |
| Claimant's 16  | Notice of Effective Date   | Dkt. No. 2700 |              |             |              |              |
| Claimant's 17  | Responses and Objections to NexPoint Real Estate Partners, LLC's Second Set of Requests for Production and Interrogatories |               |              |             |              |              |
| Claimant's 18  | Deposition Excerpts - Thomas   |               |              |             |              |              |
| Claimant's 19  | Deposition Excerpts - Barker   |               |              |             |              |              |
| Claimant's 20  | Deposition Excerpts - Patrick  |               |              |             |              |              |
|                | Documents entered or filed in this Bankruptcy Case or related cases and for which the Court may take judicial notice       |               |              |             |              |              |
|                | Exhibits identified by any other party at hearing  |               |              |             |              |              |
|                | Rebuttal Exhibits  |               |              |             |              |              |
|                | Impeachment Exhibits   |               |              |             |              |              |

Claimant reserves the right to supplement this Witness and Exhibit List as necessary and appropriate.

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

4 \_\_\_\_\_  
5 IN RE: )  
6 ) CHAPTER 11  
7 HIGHLAND CAPITAL )  
8 MANAGEMENT, L.P., ) CASE NO. 19-34054-SGJ11  
9 )  
10 Reorganized Debtor. )  
11 \_\_\_\_\_ )

12  
13 REMOTE ORAL DEPOSITION OF  
14 BH EQUITIES, LLC

15 BY AND THROUGH ITS DESIGNATED REPRESENTATIVE

16 DUSTIN THOMAS

17 Des Moines, Iowa

18 Thursday, August 4, 2022  
19  
20  
21  
22

23 REPORTED REMOTELY BY:

24 JANICE K. McMORAN, CSR, RDR, CRR, TCRR

25 JOB NO. 213053

Claimant's  
EXHIBIT

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1 BH EQUITIES, LLC - D. MILLER  
2 A. Project Unicorn was a marketing  
3 phrase for a portfolio of -- I believe it was  
4 26 properties marketed by -- by CBRE as  
5 Starwood was -- as Starwood or Starwood  
6 affiliates were selling these properties, and  
7 they were purchased by SE Multifamily LLC.  
8 Q. All right. Do you know why this  
9 project was given the name Project Unicorn?  
10 A. No, sir.  
11 Q. Sometimes people use the word unicorn  
12 to refer to something unique. Did you ever  
13 participate in any discussions with anybody  
14 where they suggested that they were, you know,  
15 unique or rare features of a transaction of  
16 this type?  
17 A. My understanding is the designation  
18 was given by the marketing firm, which would be  
19 in line with precedent that the investment bank  
20 or brokerage firm would give the project its  
21 name. And it's typically under -- included in  
22 the NDA and things like that.  
23 Q. Okay. Do you know when BH Equities  
24 first learned of Project Unicorn?  
25 A. Specifically, no. It would have been

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1 BH EQUITIES, LLC - D. MILLER  
2 signatory to the KeyBank loan, is it?  
3 A. That's correct.  
4 Q. Okay. Did BH Equities provide any  
5 services or any resources, including capital of  
6 any kind, in connection with the negotiation or  
7 drafting of the KeyBank loan?  
8 A. That's a bit nuanced. There was  
9 underwriting and things like that done on  
10 behalf of all parties involved. Underwriting,  
11 diligence, those kinds of things, which I'm  
12 certain was used as part of the negotiation  
13 work with KeyBank to secure the loan.  
14 Q. Were you working with Highland on  
15 obtaining the KeyBank loan?  
16 A. Again, it's nuanced. Directly  
17 working as an agent or things like that, no.  
18 Q. Were they keeping you informed?  
19 A. In parts, yes. It was an important  
20 capitalization to the transaction.  
21 Q. Is it BH Equities' understanding that  
22 the KeyBank loan was a necessary component to  
23 the closing of the transaction on September  
24 26th?  
25 A. Yes.

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1 BH EQUITIES, LLC - D. MILLER  
2 the summer of 2018.  
3 Q. Do you know how BH Equities learned  
4 about Project Unicorn?  
5 A. I believe it was introduced to us  
6 through the -- I'm going to use your term  
7 prior, kind of Highland broadly, the HCRE, HCM,  
8 you know, group.  
9 Q. Is BH Equities aware that HCRE and  
10 HCMLP entered into an LLC agreement with  
11 respect to SE Multifamily in August of 2018?  
12 A. We were given copies of that at some  
13 point along the way, yes.  
14 Q. Are you aware that HCRE, HCMLP, and  
15 certain other borrowers obtained a loan from  
16 KeyBank in September 2018 related to Project  
17 Unicorn?  
18 A. Yes.  
19 Q. Did BH Equities have anything to do  
20 with the KeyBank loan?  
21 MR. GAMEROS: Objection -- objection,  
22 form.  
23 BY MR. MORRIS:  
24 Q. That's fair. Let me restate the  
25 question, Mr. Thomas. BH Equities is not a

Page 33

1 BH EQUITIES, LLC - D. MILLER  
2 Q. SEC Multifamily -- withdrawn.  
3 To the best of BH Equities'  
4 knowledge, SE Multifamily could not have  
5 financed the acquisition of the 26 properties  
6 at the end of September without obtaining the  
7 KeyBank loan; is that fair?  
8 A. That's my understanding.  
9 Q. Did there come a time when  
10 BH Equities began to negotiate with Highland  
11 about a potential participation interest in SE  
12 Multifamily?  
13 A. Yeah, it was always expected we would  
14 participate in the -- in the LLC through  
15 capital and, you know, sharing of return of  
16 capital and profits and things, yes.  
17 Q. Okay. Focusing solely on 2018, did  
18 BH Equities loan any money to SE Multifamily in  
19 the year 2018?  
20 A. Not to my knowledge.  
21 Q. Do you know if BH Equities loaned  
22 money to anybody in connection with Project  
23 Unicorn in 2018?  
24 A. Not -- not to my knowledge.  
25 Q. And as opposed to loans, do you know

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1 BH EQUITIES, LLC - D. MILLER  
 2 MR. DOHERTY: That's just my humble  
 3 suggestion there, but I'll -- okay. All  
 4 right.  
 5 MR. MORRIS: I appreciate that.  
 6 BY MR. MORRIS:  
 7 Q. In the amended agreement as executed,  
 8 did BH Equities obtain a 6 percent equity  
 9 interest in SE Multifamily?  
 10 A. Again, it's more nuanced than that.  
 11 We have six -- we have an interest of 6 percent  
 12 after the return of capital and those things,  
 13 as the agreement was written.  
 14 Q. Okay. So after capital is returned,  
 15 SE Multifamily -- withdrawn.  
 16 After the original capital investment  
 17 is returned, BH Equities would have a 6 percent  
 18 interest in SE Multifamily. Do I have that  
 19 right?  
 20 A. Yes, that's a correct  
 21 characterization.  
 22 Q. Okay. And at what point in time was  
 23 an agreement reached that BH Equities would  
 24 receive 6 percent of SE Multifamily after the  
 25 return of the initial capital? Was that done

Page 40

1 BH EQUITIES, LLC - D. MILLER  
 2 want to make sure I'm answering the question  
 3 you're asking here.  
 4 Q. Sure. Like a loan like an IOU where  
 5 you give someone money with the expectation  
 6 that it would be returned with interest that's  
 7 not -- that's not dependent on the outcome of  
 8 the enterprise.  
 9 A. No, I don't believe there were any  
 10 loans provided by either party.  
 11 Q. All right. Let's get to the LLC  
 12 agreement itself.  
 13 MR. MORRIS: If we can put that on  
 14 the screen. We'll mark it as BH  
 15 Exhibit 2.  
 16 (Exhibit 2 marked.)  
 17 BY MR. MORRIS:  
 18 Q. And you've seen this document before,  
 19 right, sir?  
 20 A. Yes, sir.  
 21 Q. And you've reviewed it in preparation  
 22 for today's deposition, correct?  
 23 A. I have.  
 24 Q. All right.  
 25 MR. MORRIS: If we could go to the

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1 BH EQUITIES, LLC - D. MILLER  
 2 in 2018? I'm just trying to get a timeline.  
 3 A. That was -- that was finalized in  
 4 March of '19 formally.  
 5 Q. Okay. So at the time in 2018 that  
 6 BH Equities laid out the \$21 million, there not  
 7 only had not been a written agreement, but  
 8 there had not yet been an agreement as to the  
 9 nature and extent of BH Equities' interest in  
 10 SE Multifamily. Is that fair?  
 11 MR. DOHERTY: Objection, form.  
 12 You may answer, Mr. Thomas.  
 13 A. I don't think that it's fair. There  
 14 was multiple discussions and things like that.  
 15 No written agreement is fair. But there was  
 16 ongoing discussions trying to formalize things.  
 17 Q. Okay. Let's turn our attention to  
 18 HCRE. Do you know whether HCRE ever loaned any  
 19 money to SE Multifamily?  
 20 A. I don't believe they did.  
 21 Q. Do you know if HCMLP ever loaned any  
 22 money to SE Multifamily?  
 23 A. Could I ask for clarification around  
 24 the idea of "loan," just so we're on the same  
 25 page there? For both HCRE and HCM. I just

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1 BH EQUITIES, LLC - D. MILLER  
 2 signature page.  
 3 BY MR. MORRIS:  
 4 Q. Do you see that the document was  
 5 signed on behalf of HCMLP and HCRE by James  
 6 Dondero?  
 7 A. I do.  
 8 Q. Do you know who Mr. Dondero is?  
 9 A. Yes.  
 10 Q. And who do you understand Mr. Dondero  
 11 to be?  
 12 A. My understanding is he was a primary  
 13 owner of both parties and a manager or  
 14 executive in that capacity as well, you know,  
 15 CEO type.  
 16 Q. And what's the basis for that  
 17 understanding?  
 18 A. Just understanding of the parties',  
 19 you know, business as -- you know, and our  
 20 perspective as a partner.  
 21 Q. Did anybody from Highland ever  
 22 explain to you or anybody at BH Equities who  
 23 Mr. Dondero was?  
 24 A. Not specifically, no. But -- at  
 25 least not to my understanding.

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1 BH EQUITIES, LLC - D. MILLER  
 2 MR. MORRIS: I'll rephrase the  
 3 question.  
 4 MR. DOHERTY: Okay.  
 5 BY MR. MORRIS:  
 6 Q. At any time prior to the -- to March  
 7 15th, did anybody acting on behalf of Highland  
 8 inform BH Equities that it believed any aspect  
 9 of the amended agreement was inconsistent with  
 10 Highland's intent?  
 11 A. Not that I'm aware.  
 12 MR. MORRIS: Hey, Casey, you were  
 13 spot on. Thank you. That was a better  
 14 question.  
 15 BY MR. MORRIS:  
 16 Q. At the time BH Equities signed the  
 17 amended agreement, did BH Equities have any  
 18 reason to believe that the amended agreement  
 19 contained any errors or mistakes?  
 20 A. No, I don't believe so.  
 21 Q. Was BH Equities aware of any error or  
 22 mistake in the amended agreement at the time it  
 23 signed it?  
 24 A. No. Not related to anything that we  
 25 were focused on.

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1 BH EQUITIES, LLC - D. MILLER  
 2 complete or accurate, just let me know, okay?  
 3 A. Okay.  
 4 Q. All right. So this is Schedule A to  
 5 the amended agreement. Do you see that?  
 6 A. Yes.  
 7 Q. And you've seen this page before,  
 8 correct?  
 9 A. Correct.  
 10 Q. And this page shows that Highland  
 11 Capital Management, L.P. made a capital  
 12 contribution of \$49,000. Do I have that right?  
 13 A. Yes.  
 14 Q. And it also shows that Highland  
 15 Capital Management, L.P. had a 46.06 percentage  
 16 interest in SE Multifamily, correct?  
 17 A. Yes, that's what it says.  
 18 Q. Okay. And those facts were known to  
 19 BH Equities at or before the time it signed  
 20 this amended agreement, correct?  
 21 A. Correct.  
 22 Q. In fact, BH Equities agreed that  
 23 HCMLP would hold a 46.06 percentage interest in  
 24 SE Multifamily while making a capital  
 25 contribution of \$49,000, correct?

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1 BH EQUITIES, LLC - D. MILLER  
 2 Q. Did anybody acting on behalf of  
 3 Highland ever inform BH Equities prior to the  
 4 execution of the agreement that Highland  
 5 believed there was an error or mistake in that  
 6 document?  
 7 A. No, not to my knowledge.  
 8 Q. All right.  
 9 MR. MORRIS: Let's go to Schedule A,  
 10 please.  
 11 MR. DOHERTY: And, Mr. Morris, is  
 12 this -- Mr. Thomas, this has been sent to  
 13 you in the chat, right, the entire  
 14 document, so he could pull it open if he  
 15 wanted to, or he could print it out if he  
 16 wanted to? I just wanted to let you know.  
 17 Virtual depositions are hard.  
 18 THE WITNESS: I was not aware. Thank  
 19 you, Casey.  
 20 BY MR. MORRIS:  
 21 Q. And again, Mr. Thomas, this is not a  
 22 memory test. I am not trying to trick you. I  
 23 really appreciate your counsel's suggestion and  
 24 observation. If there's anything you need to  
 25 see to make your answers, you know, more

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1 BH EQUITIES, LLC - D. MILLER  
 2 A. Again, clarifying a little bit on  
 3 the -- when the percentages came into play  
 4 being subject to capital being returned, yes.  
 5 Q. And by that, just to clarify, you  
 6 mean that the percentage interests only kicks  
 7 in after the capital contributions are returned  
 8 in full, correct?  
 9 A. Yes, that's what I mean.  
 10 Q. So for purposes of the waterfall, do  
 11 I have this right -- and there may be some  
 12 exceptions to this -- but the money had to get  
 13 paid back to KeyBank first, right?  
 14 A. Yes.  
 15 Q. And then any money that was original  
 16 capital above and beyond the KeyBank loan would  
 17 then have to be paid back, right?  
 18 A. Yes.  
 19 MR. DOHERTY: Object -- sorry.  
 20 BY MR. MORRIS  
 21 Q. And it was only after at least those  
 22 two events occurred that the remaining value  
 23 would be distributed in accordance with the  
 24 percentages under the percentage interest  
 25 column. Is that fair?

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1 BH EQUITIES, LLC - D. MILLER  
 2 going, that's fine.  
 3 MR. MORRIS: Casey, if you could just  
 4 hold on, I've just got two more provisions  
 5 and then we'll take a break.  
 6 MR. DOHERTY: Sure. No problem. I  
 7 just wanted to flag it.  
 8 BY MR. MORRIS:  
 9 Q. Section 6.1(a), do you see that, sir?  
 10 A. Yes, sir.  
 11 Q. Okay. And that provision deals with  
 12 the distribution of distributable cash as  
 13 defined, correct?  
 14 A. Yes.  
 15 Q. And subject to Article VI and  
 16 Article IX, distributable cash is going to be  
 17 distributable in the same percentages as the  
 18 percentage interests set forth in Schedule A,  
 19 correct?  
 20 A. Correct.  
 21 Q. And that's -- that's what the parties  
 22 intended when they wrote this provision and  
 23 agreed to it, correct?  
 24 A. That's what we agreed to, yes.  
 25 MR. MORRIS: Okay. Can we go to

Page 60

1 BH EQUITIES, LLC - D. MILLER  
 2 back at 12:10?  
 3 MR. DOHERTY: We can go off of the  
 4 record, too. I'm fine with that. I know  
 5 it's getting around -- I'm good on  
 6 lunchtime. I don't know how much time, if  
 7 you want to talk, John, me and you after,  
 8 but I'm fine to come back in five minutes  
 9 from break.  
 10 MR. MORRIS: Okay. 12:10. Seven  
 11 minutes. Thank you.  
 12 MR. DOHERTY: Okay.  
 13 (Recess taken 11:03 a.m. Central Time  
 14 - 11:12 Central Time.)  
 15 BY MR. MORRIS:  
 16 Q. Let's go back to Schedule A, please.  
 17 Mr. Thomas, can you hear me okay?  
 18 A. Yes.  
 19 Q. Okay. Before signing this amended  
 20 agreement, did BH Equities ever raise any  
 21 concerns with Highland about HCMLP receiving a  
 22 46.06 percentage interest while putting in  
 23 capital of \$49,000?  
 24 A. I don't recall any specific concerns.  
 25 Q. In fact, it was acceptable to

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1 BH EQUITIES, LLC - D. MILLER  
 2 Section 9.3, please? All right. So if we  
 3 could just go to the top of it.  
 4 BY MR. MORRIS:  
 5 Q. All right. So this Section 9.3 deals  
 6 with liquidation. Do you see that?  
 7 A. Yes.  
 8 Q. And it -- is it fair to say that  
 9 Section 9.3, if we can scroll down just a  
 10 little bit, is intended to provide for the  
 11 waterfall in a liquidation scenario?  
 12 A. Yes.  
 13 Q. And is it fair to say that after the  
 14 expenses and payments are made in Sections  
 15 9.3(a) through (d), that any remaining cash or  
 16 assets would be distributed to the members of  
 17 SE Multifamily in the same percentage as the  
 18 percentage interests set forth on Schedule A?  
 19 A. Yes.  
 20 Q. And that's what the parties intended  
 21 when they signed this agreement, to the best of  
 22 BH Equities' understanding, correct?  
 23 A. Correct.  
 24 MR. MORRIS: Okay. We can take that  
 25 break now. It's 12:03. Can we just come

Page 61

1 BH EQUITIES, LLC - D. MILLER  
 2 BH Equities that Highland Capital Management,  
 3 L.P. receive a 46.06 percentage interest in SE  
 4 Multifamily in exchange -- withdrawn.  
 5 It was acceptable to BH Equities that  
 6 Highland Capital Management, L.P. make a  
 7 capital contribution of \$49,000 to SE  
 8 Multifamily while receiving a 46.06 percentage  
 9 interest, correct?  
 10 A. I would say we were somewhat  
 11 indifferent, as it didn't affect our economics  
 12 in -- you know, beyond the 6 percent that we  
 13 understood we were getting into.  
 14 Q. You agreed to it, correct?  
 15 A. Yes.  
 16 Q. And you didn't voice any objections  
 17 about that, correct?  
 18 A. Not to my knowledge.  
 19 Q. And you knew that that was part of  
 20 the overall deal, correct?  
 21 A. Yes.  
 22 Q. Before signing this agreement, did  
 23 BH Equities have any understanding as to why  
 24 Highland Capital Management, L.P. was going to  
 25 be a member of SE Multifamily?

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1 BH EQUITIES, LLC - D. MILLER

2 A. I don't believe we did.

3 Q. Did BH Equities ever speak with

4 Highland about why HCMLP was participating in

5 this transaction?

6 A. Not to my knowledge.

7 Q. Did BH Equities ever ask Highland why

8 HCMLP was obtaining a 46.06 percent interest?

9 A. I don't recall that we did.

10 Q. So this was -- Schedule A was

11 something that BH Equities knew about and

12 agreed to at the time it signed this agreement.

13 Fair?

14 A. Yes.

15 Q. Okay. Let's go to Section 6.4(a) on

16 page 12, please. Okay. Do you see in Section

17 6.4(a), there's a -- well, 6.4 deals with

18 allocations of profits and losses.

19 Do you see that?

20 A. Yes.

21 Q. In Section 6.4(a), the parties agreed

22 that except as provided in that section, 94

23 percent of SE Multifamily's profits and losses

24 would be allocated to HCMLP; is that fair?

25 A. Yes.

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1 BH EQUITIES, LLC - D. MILLER

2 Q. Did he describe any reason for

3 allocating 94 percent of SE Multifamily's

4 profits and losses to HCMLP?

5 A. No.

6 Q. Am I correct that under the terms of

7 the amended agreement, none of SE Multifamily's

8 profits and losses would be allocated to HCRE,

9 correct?

10 A. That's correct.

11 Q. Did BH Equities ask Highland why none

12 of the profits and losses were being allocated

13 to HCRE?

14 A. I don't believe so.

15 Q. Did anybody acting on behalf of any

16 of the other members ever discuss with

17 BH Equities why HCRE was not being allocated

18 any of SE Multifamily's profits or losses?

19 A. I don't believe so.

20 Q. To the best of -- withdrawn.

21 To the best of BH Equities'

22 knowledge, does paragraph 6.4(a) accurately

23 reflect the parties' intent?

24 A. To the best of our knowledge, yes.

25 Q. Did anybody acting on behalf of any

Page 63

1 BH EQUITIES, LLC - D. MILLER

2 Q. Was this allocation the subject of

3 any negotiation?

4 MR. DOHERTY: Objection, form.

5 MR. MORRIS: Withdrawn.

6 BY MR. MORRIS:

7 Q. Was the allocation of 94 percent to

8 6 percent for BH Equities on profits and losses

9 the subject of any negotiation?

10 A. It was on a phone call between myself

11 and Mr. Broaddus, it came up as it, you know,

12 wasn't exactly normal. But it was an issue

13 that, you know, was kind of internal, so it

14 wasn't broadly negotiated past or those things,

15 as we were, again, somewhat indifferent.

16 Q. And what does it mean that it was not

17 exactly normal?

18 A. Normally the allocation of profit and

19 losses would also follow an allocation -- the

20 waterfall allocation or those things more

21 closely.

22 Q. And did Mr. Broaddus provide any

23 explanation as to why Highland wasn't following

24 that course that you just described?

25 A. Not in any -- not in detail.

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1 BH EQUITIES, LLC - D. MILLER

2 member to the SEM amended agreement ever inform

3 BH Equities that Section 6.4(a) was incorrect

4 in any way?

5 A. I don't believe so.

6 Q. Do you know if the amended agreement

7 that we're looking at was ever amended for any

8 reason at any time?

9 A. There was a slip page at some

10 point -- and I believe it was after this --

11 just to update capital. But it was a

12 nonsubstantial update.

13 Q. I think we'll get to that in a few

14 minutes.

15 Other than the slip page that you

16 just described, is BH Equities aware of any

17 amendment to the amended agreement as we've

18 defined it here today?

19 A. No.

20 Q. BH Equities never signed an amendment

21 to the amended agreement, correct?

22 A. Correct.

23 Q. And BH Equities was never informed by

24 anybody acting on behalf of HCRE or any of the

25 other members to the agreement that the amended

Page 66

1 BH EQUITIES, LLC - D. MILLER  
 2 agreement had been amended, correct?  
 3 A. Correct.  
 4 Q. Did BH Equities ever receive in  
 5 writing any draft agreement to the amended  
 6 agreement?  
 7 A. I don't believe so.  
 8 Q. Did -- after the time that this  
 9 agreement was executed, did BH Equities ever  
 10 discuss with any member whether this amended  
 11 agreement would be further amended?  
 12 A. Yes.  
 13 Q. Can you describe for me when those  
 14 conversations take place or communications took  
 15 place?  
 16 A. Sure. There was e-mails expressing  
 17 our desire to amend our 6 percent amount, right  
 18 around the time of signing and a couple of  
 19 times thereafter. I don't remember specific  
 20 dates.  
 21 So, you know, starting in March of --  
 22 of '19 and then occasionally thereafter, we  
 23 expressed a desire to expand our 6 percent  
 24 number.  
 25 Q. And what was BH -- what did Highland

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1 BH EQUITIES, LLC - D. MILLER  
 2 A. I am not.  
 3 Q. Let's -- let's start to look at some  
 4 other documents.  
 5 (Exhibit 3 marked.)  
 6 MR. MORRIS: Let's put up on the  
 7 screen what we've marked as Exhibit 3.  
 8 And so we're going to go back in time a  
 9 little bit to prior to the execution of  
 10 the agreement.  
 11 BY MR. MORRIS:  
 12 Q. And I'm directing your attention to a  
 13 document that's been marked, if we could look  
 14 at the bottom, Bates stamp BH 92. I'm going to  
 15 skip the zeros.  
 16 MR. DOHERTY: Mr. Morris, with  
 17 e-mails, I always like to, you know, if  
 18 possible, have it so I can start reading  
 19 from the bottom of the conversation. Will  
 20 these be put in the chat as where we're  
 21 going?  
 22 MR. MORRIS: Oh, yeah, we'll put it  
 23 in the chat.  
 24 MR. DOHERTY: Okay.  
 25 MR. MORRIS: I don't think there's

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1 BH EQUITIES, LLC - D. MILLER  
 2 say in response?  
 3 A. I believe in the e-mail  
 4 correspondence it said something along the  
 5 lines of there may be future amendments needed  
 6 or something along that line.  
 7 Q. But it never happened; is that fair?  
 8 A. That is fair.  
 9 Q. And is it also fair that any  
 10 discussion of any amendment that BH Equities is  
 11 aware of would be reflected in the e-mails that  
 12 BH Equities produced in response to the  
 13 subpoena?  
 14 A. Could you reask the question? I just  
 15 want to make sure I answer it correctly.  
 16 Q. Sure. Are the communications  
 17 concerning a possible amendment to the amended  
 18 agreement reflected in the e-mails that  
 19 BH Equities produced in response to the  
 20 subpoena?  
 21 A. Yes.  
 22 Q. Are you aware of any communications  
 23 concerning a possible amendment that are not  
 24 reflected in the e-mails that BH Equities  
 25 produced in response to the subpoena?

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1 BH EQUITIES, LLC - D. MILLER  
 2 anything below what I'm asking about, but  
 3 can you scroll --  
 4 MS. CANTY: It's in there now.  
 5 MR. DOHERTY: These virtual  
 6 depositions, I know it's -- you go to the  
 7 top, you don't have context. So I just  
 8 wanted to -- I'll let you go. Thank you.  
 9 BY MR. MORRIS:  
 10 Q. So do you see -- if we could just put  
 11 this whole e-mail up on the screen right there.  
 12 Okay. It's an e-mail from Mr. Roby to Matt  
 13 McGraner, do you see that, from October 7,  
 14 2018?  
 15 A. Yes.  
 16 Q. Okay. We talked -- I think you  
 17 mentioned or maybe I mentioned Mr. McGraner  
 18 earlier. Do you have an understanding as to  
 19 whose interest Mr. McGraner was representing in  
 20 these communications?  
 21 A. We would have viewed them as -- or  
 22 Matt as representing kind of the broader -- you  
 23 know, again, we viewed it as a bilateral  
 24 negotiation, so BH -- and then I'm going to use  
 25 air quotes again -- Highland broadly, the other

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

4 \_\_\_\_\_  
5 IN RE: )  
6 ) CHAPTER 11  
7 )  
8 )  
9 )  
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HIGHLAND CAPITAL )  
MANAGEMENT, L.P., ) CASE NO. 19-34054-SGJ11  
Reorganized Debtor. )

9  
10  
11  
12  
13 REMOTE ORAL DEPOSITION OF  
14 BARKER VIGATTO LLP  
15 BY AND THROUGH ITS DESIGNATED REPRESENTATIVE  
16 MARK BARKER  
17 Dallas, Texas  
18 Friday, August 5, 2022  
19  
20  
21  
22

23 REPORTED REMOTELY BY:  
24 JANICE K. McMORAN, CSR, RDR, CRR, TCRR  
25 JOB NO. 215016



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1 BARKER VIGGATO LLP - M. BARKER  
 2 office space, and he had indicated in a verbal  
 3 conversation that the agreement was drafted in  
 4 a way such that the allocations would provide  
 5 flexibility between HCRE and HCMLP.  
 6 Q. Is that a common -- have you seen  
 7 that feature before where you have the  
 8 flexibility that you just referred to?  
 9 A. I would say it's -- you know, it  
 10 happens, you know.  
 11 Q. Well, when you -- I'm sorry. Are you  
 12 finished with your answer?  
 13 A. Yes.  
 14 Q. What flexibility are you referring  
 15 to?  
 16 A. The flexibility regarding  
 17 allocations.  
 18 Q. Allocations of what?  
 19 A. Income. Income or loss.  
 20 Q. So it's your understanding that this  
 21 agreement provided flexibility to adjust the  
 22 allocation of SE Multifamily's profits and  
 23 losses between the members?  
 24 A. Yes.  
 25 Q. And was it just between HCRE and

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1 BARKER VIGGATO LLP - M. BARKER  
 2 that's kind of the concept of Subchapter K in  
 3 the Internal Revenue Code is that partnerships  
 4 and their related partners have some  
 5 flexibility to, I guess, determine their  
 6 allocations amongst themselves.  
 7 Q. Okay. Is this document a document  
 8 that was relevant to BV's work in connection  
 9 with the preparation of SE Multifamily's tax  
 10 returns?  
 11 A. When you say "document," are you  
 12 referring to the amended agreement?  
 13 Q. Yes, I am.  
 14 A. Okay. Well, yeah, no, it was  
 15 relevant to our preparation of the tax return.  
 16 Q. And did BV rely upon the amended  
 17 agreement to prepare SE Multifamily's tax  
 18 returns?  
 19 A. Well, we relied both on the agreement  
 20 as well as e-mail and verbal conversations that  
 21 we had with our client.  
 22 Q. Is BV aware of any written amendment  
 23 or modification to this amended agreement?  
 24 A. No.  
 25 Q. So BV has never been presented with a

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1 BARKER VIGGATO LLP - M. BARKER  
 2 HCMLP, or was it between and among all of the  
 3 members?  
 4 A. Effectively, I think it was between  
 5 HCMLP, HCRE, and BH Equities.  
 6 Q. Do you know what factors are  
 7 considered in deciding how to allocate  
 8 SE Multifamily's profits and losses among the  
 9 members?  
 10 A. I'm not sure I understand your  
 11 question. When you say "factors," can you be a  
 12 little more specific?  
 13 Q. Sure. You said that there's  
 14 flexibility in that the profits and losses  
 15 could be allocated between and among the  
 16 members. Is it in any fashion that the members  
 17 decide?  
 18 A. Well, I don't know that it's in any  
 19 fashion, but under the Internal Revenue Code,  
 20 partners do have leeway to share allocations as  
 21 they determine.  
 22 Now, there are certain, I guess,  
 23 regulatory allocations that can impact losses  
 24 and how income or loss would be allocated under  
 25 those regulatory allocations. But generally,

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1 BARKER VIGGATO LLP - M. BARKER  
 2 written amendment or modification to the  
 3 amended agreement, correct?  
 4 A. Correct.  
 5 MR. MORRIS: Okay. Can we scroll  
 6 down to Section 1.7?  
 7 BY MR. MORRIS:  
 8 Q. Do you see here, sir, that Section  
 9 1.7 addresses company ownership?  
 10 A. Yes.  
 11 Q. And do you see that each of the  
 12 members of SE Multifamily is identified and  
 13 their respective ownership interests are stated  
 14 in Section 1.7?  
 15 A. Yes.  
 16 Q. Is this section relevant to any of  
 17 the work that BV did in preparing  
 18 SE Multifamily's tax returns?  
 19 A. Well, the -- this paragraph here,  
 20 1.7, addresses company ownership. There's  
 21 another paragraph -- I don't remember the  
 22 paragraph number off the top of my head -- that  
 23 addresses how allocations of income would be  
 24 shared. And so that was a little -- to me  
 25 that's more relevant as to how the allocations

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1 BARKER VIGGATO LLP - M. BARKER  
2 will be shared.  
3 Q. And do you know if the allocations  
4 are shared consistent with the percentage  
5 interests of company ownership?  
6 A. They are not.  
7 Q. Okay. Let's take a look -- when you  
8 talk about allocation, are you talking about  
9 allocation of profits and losses or are you  
10 talking about distributable cash?  
11 A. No, I'm talking about allocations of  
12 profits or losses.  
13 Q. Okay. But on the K-1, the K-1 does  
14 identify the ownership, the capital interests  
15 of each member in the enterprise, correct?  
16 A. It does.  
17 Q. And would Section 1.7 be the portion  
18 of the -- or one portion of the amended  
19 agreement that BV relies upon to prepare that  
20 portion of the K-1s?  
21 A. Yes.  
22 Q. Okay.  
23 MR. MORRIS: Can we go to -- let's  
24 just go to Schedule -- actually, we'll do  
25 it in order. Let's go to Section 6.1,

Page 36

1 BARKER VIGGATO LLP - M. BARKER  
2 that is a different question. The manager  
3 decides what to do in the manager's own  
4 discretion, right?  
5 A. Right.  
6 Q. Okay. So is it BV's job to determine  
7 whether or not the manager is following the  
8 waterfall set forth in Section 6.1?  
9 A. No, it's not -- I mean, I guess it's  
10 not BV's responsibility to say, well, the  
11 agreement says X, you distributed cash under  
12 some different provision. I'm going to rely on  
13 a -- what I would consider a very sophisticated  
14 client to determine its own allocations since  
15 they have specifically said that this  
16 agreement, as a whole, was drafted in order to  
17 provide flexibility between the partners as to  
18 how they determine allocations of income or  
19 loss and I guess also how they distributed  
20 cash.  
21 Q. Okay. Do you believe that HCRE is a  
22 sophisticated client?  
23 A. I didn't hear that. What?  
24 Q. Do you believe -- from BV's  
25 perspective, is HCRE a sophisticated client?

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1 BARKER VIGGATO LLP - M. BARKER  
2 please.  
3 BY MR. MORRIS:  
4 Q. And are you familiar with Section 6.1  
5 of the agreement? And we can scroll down, if  
6 you'd like, to look at more.  
7 A. Yes, I'm familiar with this  
8 provision, yes.  
9 Q. Do you understand this is the  
10 waterfall for distributions?  
11 A. Yes.  
12 Q. And it sets forth the order in which,  
13 you know, claims and debts and obligations must  
14 be satisfied before cash is distributed to the  
15 equity holders; is that fair?  
16 A. Well, I think that's fair, but it is  
17 the client that ultimately has determined what  
18 was distributed, when it was distributed, and  
19 to whom it was distributed.  
20 Q. And whether or not -- that's right,  
21 but -- but is it your understanding that  
22 Section 6.1 is the parties' agreement on how  
23 that's supposed to happen?  
24 A. Yes.  
25 Q. Whether or not the manager followed

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1 BARKER VIGGATO LLP - M. BARKER  
2 A. Yes.  
3 Q. Do you think that they pay attention  
4 to details?  
5 A. Yes.  
6 Q. Do you think that they understand the  
7 agreements that they sign?  
8 A. I think that's a question for HCRE.  
9 Q. Do you have any reason to believe  
10 that HCRE didn't understand this agreement at  
11 the time it signed it?  
12 A. No. I don't have a reason to believe  
13 they didn't.  
14 Q. Okay. Nobody acting on behalf of  
15 HCRE has ever informed BV that it didn't  
16 understand the amended agreement at the time it  
17 signed it, correct?  
18 A. Correct.  
19 Q. And if you look at Section 6.1(a),  
20 that sets forth how distributable cash will be  
21 distributed among the members of  
22 SE Multifamily, correct?  
23 A. Well, I think that's one part of it.  
24 I think you have to look at Section 6.1 as a  
25 whole and not just look at 6.1(a).

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1 BARKER VIGGATO LLP - M. BARKER  
 2 lender on behalf of such member to pay  
 3 principal and interest on loan -- any loan  
 4 incurred by such member to fund such member's  
 5 capital contributions.  
 6 Q. So what do you understand that to  
 7 mean?  
 8 A. Well, I'm just saying that that's  
 9 a -- it's part of the whole overall view of  
 10 distributions.  
 11 Q. Okay.  
 12 A. So I think -- again, I don't know how  
 13 else to say it. I think you have to look at  
 14 6.1(a) in totality, and whether (e) was germane  
 15 or not, I cannot say. I'm just saying that  
 16 provision is there, and to me the way it's  
 17 there, you don't necessarily fall squarely  
 18 under 6.1(a).  
 19 Q. You know what, I don't mean to  
 20 quarrel with you at all, sir. Let me try it  
 21 this way. You understand that Section 6.1 is  
 22 the agreement relating to the waterfall?  
 23 A. We'll agree with that, yeah.  
 24 Q. And would you agree that when we use  
 25 the phrase "waterfall," we're talking about the

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1 BARKER VIGGATO LLP - M. BARKER  
 2 distributable cash has to be allocated and  
 3 distributed to its members in accordance with  
 4 the percentages set forth in 6.1(a)?  
 5 A. Well, that is what is drafted in this  
 6 agreement.  
 7 Q. Okay.  
 8 A. Now, I will say that, again, it's my  
 9 understanding that there was a -- I'll call it  
 10 a related party relationship between HCMLP and  
 11 HCRE/NexPoint that allowed them to make  
 12 determinations of how cash was to be  
 13 distributed.  
 14 Q. Can you point to something in the  
 15 document that would allow a deviation from  
 16 Section 6.1(a) when the manager was going to  
 17 make distributions in accordance with that  
 18 section? Where is the flexibility for that?  
 19 A. It's not -- perhaps it's not drafted  
 20 in this agreement, but, again, I go back to  
 21 initial conversations that I had with -- with  
 22 Paul that said, look, we've drafted this  
 23 agreement, but it was drafted in such a manner  
 24 to allow flexibility regarding the economics of  
 25 the partners.

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1 BARKER VIGGATO LLP - M. BARKER  
 2 order in which cash is distributed from  
 3 SE Multifamily to its members?  
 4 A. Right. But, again, you have to  
 5 consider the totality of Section 6.1.  
 6 Q. I'm trying to do exactly that. 6.1  
 7 contains a waterfall, right?  
 8 A. Yes.  
 9 Q. And it tells the members the order of  
 10 priority in which cash is going to be  
 11 distributed before it gets to the next level of  
 12 the waterfall. Fair?  
 13 A. Right.  
 14 Q. And we don't have to debate about  
 15 what the levels are. At some point cash might  
 16 be distributed pursuant to Section 6.1(a),  
 17 correct?  
 18 A. Right. Or it could be distributed or  
 19 deemed distributed under 6.1(e).  
 20 Q. Correct. But -- but 6.1(e) has to be  
 21 completed before you get to 6.1(a), right?  
 22 That's why it says notwithstanding?  
 23 A. Right.  
 24 Q. Okay. So at some point in time, if  
 25 you get to 6.1(a), would you agree that the

Page 45

1 BARKER VIGGATO LLP - M. BARKER  
 2 Q. In your professional opinion, are the  
 3 parties to this agreement allowed to rely on  
 4 the terms set forth therein?  
 5 A. Yes. I mean, it's --  
 6 Q. Did Mr. Broaddus ever point to you  
 7 any provision in the agreement that would allow  
 8 him to distribute cash in a manner inconsistent  
 9 with Section 6.1(a)?  
 10 A. Well, I was never consulted in any  
 11 form or fashion regarding how the cash was  
 12 distributed. I was provided a financial  
 13 statement, and that financial statement said,  
 14 all right, capital contributions were X,  
 15 capital distributions were Y, and the  
 16 distributions were distributed to each partner  
 17 in a specified amount. I was never consulted  
 18 in any way regarding how those distributions  
 19 were made.  
 20 Q. Do you have -- does Barker Viggato  
 21 have a view as to whether or not the manager  
 22 complied with the agreement when making  
 23 distributions of cash?  
 24 A. No.  
 25 Q. Has Barker Viggato done any work to

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1 BARKER VIGGATO LLP - M. BARKER  
 2 these types of arrangements. The rest of it  
 3 was split 94/6.  
 4 In 2020, we were specifically  
 5 directed again that the income should be  
 6 allocated to, slash, HCRE or NexPoint.  
 7 Q. Okay. And 6.4(a) doesn't show any  
 8 allocation to HCRE; is that fair?  
 9 A. That's fair.  
 10 Q. And so is it BV's understanding that  
 11 the allocation of profits and losses to HCRE in  
 12 2020 -- withdrawn.  
 13 So in 2018, BV allocated profits and  
 14 losses as directed by Mr. Broaddus; is that  
 15 fair?  
 16 A. Yes.  
 17 Q. And it wasn't -- did BV -- withdrawn.  
 18 Did BV make any inquiry to determine  
 19 whether or not the allocation of profits and  
 20 losses that it was being directed to effectuate  
 21 was consistent with the amended agreement?  
 22 A. Well, again, we were told at the  
 23 onset that there was to be flexibility amongst  
 24 the partners as to how allocations occurred,  
 25 and as part of the whole 2020 process, again,

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1 BARKER VIGGATO LLP - M. BARKER  
 2 make a determination as to whether or not  
 3 Mr. Broaddus' directions were consistent with  
 4 the terms and provisions of the amended  
 5 agreement?  
 6 A. Now, again, I'm looking to apply it  
 7 here. That, to me, is a sophisticated client  
 8 with respect to all financial and tax matters,  
 9 and, again, HCMLP/HCRE as related parties, and  
 10 then they were making the determination of how  
 11 they wanted allocations completed.  
 12 Q. Okay. And I just want to put a fine  
 13 point on it. Was it -- did BV make any effort  
 14 to ascertain whether the instructions that it  
 15 was receiving were consistent with the terms of  
 16 the amended agreement?  
 17 A. Well, to me it seemed reasonable to  
 18 perform the allocations the way they did since  
 19 the distributions of cash to which we, again,  
 20 had no input in whatsoever, that the income in  
 21 2020 would be consistent with how they had  
 22 distributed the cash.  
 23 Q. So it's BV's position that the  
 24 allocation of profits and losses as directed by  
 25 Mr. Broaddus is consistent with the agreement?

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1 BARKER VIGGATO LLP - M. BARKER  
 2 we were directed to do the allocations by the  
 3 client, and they also provided that statement  
 4 that apparently their legal counsel had  
 5 drafted -- and, again, I don't know if that's  
 6 HCRE, I don't know if it's HCMLP. I mean, I  
 7 don't have visibility into what was happening  
 8 sort of behind the curtain between those two  
 9 parties. All I know is that I was provided the  
 10 statement, and as a result of that and clear  
 11 direction from the client that this should be  
 12 attached to the return and made part of the  
 13 records, and that the losses -- or, I'm sorry,  
 14 not losses -- the income were to be allocated  
 15 in a manner in which they prescribed.  
 16 Q. Okay. I'm going to just try and  
 17 simplify this if I can.  
 18 With respect to the allocation of  
 19 profits and losses, is it fair to say that BV  
 20 relied upon Mr. Broaddus to make -- withdrawn.  
 21 Is it fair to say that BV relied upon  
 22 Mr. Broaddus to report the allocation of  
 23 SE Multifamily's profits and losses?  
 24 A. Yes.  
 25 Q. Is it fair to say that BV did not

Page 53

1 BARKER VIGGATO LLP - M. BARKER  
 2 Is that BV's position?  
 3 A. Again, I'm not saying that it is  
 4 consistent with the agreement. I'm saying it  
 5 is consistent with the direction that they  
 6 provided to us to make these allocations.  
 7 Q. And I appreciate that. That's the  
 8 point that I'm trying to make. BV did as  
 9 instructed by Mr. Broaddus with respect to the  
 10 allocation of profits and losses; is that fair?  
 11 A. That's fair.  
 12 Q. And BV did not undertake any effort,  
 13 nor was it its responsibility to determine,  
 14 whether or not those instructions complied with  
 15 the terms and conditions in the amended  
 16 agreement. That wasn't your job, right?  
 17 A. Right. It wasn't.  
 18 Q. And you didn't do that, correct?  
 19 A. Right. Well, especially when you're  
 20 provided a statement from I guess what I  
 21 thought to be outside legal counsel  
 22 representing SE Multifamily from a tax  
 23 perspective that said, please attach Statement  
 24 1 to the return, and, therefore --  
 25 Q. You're talking specifically about the

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1 BARKER VIGGATO LLP - M. BARKER

2 A. Correct.

3 Q. But you have not yet prepared the

4 returns for 2021, and it's not yet clear

5 whether your firm will perform that service for

6 SE Multifamily, correct?

7 A. Correct.

8 Q. Okay. So what we've put up on the

9 screen, the 2018 equity roll. Do you see that?

10 A. I see it.

11 Q. And how long in advance of September

12 2019 did BV prepare this document?

13 A. You know what, I don't remember the

14 exact dates. It was, you know, probably some

15 number of weeks, maybe a month before the

16 return was due on extension.

17 Q. Okay. So is it fair to say somewhere

18 between two and five weeks before the September

19 15th deadline, this document was prepared?

20 A. Yes.

21 Q. Okay. And where did BV obtain the

22 information that it used to create the 2018

23 equity roll?

24 A. It was from the financials provided

25 by the client.

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1 BARKER VIGGATO LLP - M. BARKER

2 Q. There's one piece of the equity roll

3 that's set forth under GAAP capital accounts,

4 and then there's another piece that's set forth

5 under tax capital accounts. Do you see that?

6 A. Well, again, I mean, there's two sets

7 of columns, one obviously for the GAAP capital

8 accounts and another set of columns for the tax

9 capital accounts.

10 Q. Okay. And can you explain to me what

11 the difference is?

12 A. Yes. The GAAP capital accounts

13 reflect the client-provided financials and the

14 information they gave us as recorded on the

15 books that they were using internally to track

16 this entity, and then the tax capital

17 accounts -- the primary difference, as you can

18 see, is on what I'll call Row 13, the income or

19 loss. And so those amounts were different

20 under GAAP rules versus tax rules.

21 Q. And can you explain to me in layman's

22 terms, if you're able, what the difference is

23 between the tax treatment and the GAAP

24 treatment of income and losses?

25 A. Well, for example, I think in this

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1 BARKER VIGGATO LLP - M. BARKER

2 Q. And to the best of your knowledge,

3 does this document accurately set forth the

4 information that was presented?

5 A. Yes.

6 Q. Are you aware of any errors in this

7 document as you sit here today?

8 A. No.

9 Q. Has anybody ever told BV that any of

10 the information that's reflected in this

11 document is inaccurate or incorrect?

12 A. We have not been told that anything

13 is incorrect.

14 Q. Okay. Do you see that it shows that

15 HCRE made a capital contribution of

16 approximately \$288 million? And I'm looking

17 specifically in Box B-11?

18 A. Yes.

19 Q. Do you know the source of that

20 capital contribution? Do you know where HCRE

21 got that money?

22 A. I do not.

23 Q. Is that relevant to BV's work in

24 preparing SE Multifamily's tax returns?

25 A. No.

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1 BARKER VIGGATO LLP - M. BARKER

2 year they had taken a -- I'll call it a

3 substantial amount of depreciation in their

4 GAAP financials, and the tax depreciation was

5 considerably less. I think that is the most

6 significant item in that particular year

7 between the GAAP capital accounts -- well,

8 between the GAAP income -- or I should say GAAP

9 loss and the tax income. But there were also

10 the other differences as well. I mean, we will

11 account for prepaid items differently and a

12 host of other items.

13 But, I mean, by and large what it is

14 is under the Internal Revenue Code, we have

15 very precise rules of how certain items are

16 treated and depreciated, et cetera. And so

17 that's really, in layman's terms, the

18 difference.

19 Q. And I think you mentioned earlier

20 that Mr. Broaddus gave direction to BV as to

21 how to allocate the profits and losses in each

22 year. Do I have that right?

23 A. Yes.

24 Q. Is Mr. Broaddus's directions

25 reflected in the GAAP capital accounts or in

Page 78

1 BARKER VIGGATO LLP - M. BARKER  
 2 go to the next document, please,  
 3 Exhibit 7.  
 4 BY MR. MORRIS:  
 5 Q. And this is just a short e-mail  
 6 exchange, and I'm focused first on your e-mail  
 7 there to Paul Broaddus. Do you see that?  
 8 A. Yes.  
 9 Q. Can you help me to understand the  
 10 substance of your second paragraph there where  
 11 you're referring to the GAAP and tax issues for  
 12 Liberty?  
 13 A. Well, I believe it must have been,  
 14 because they were showing a total distribution  
 15 of 17 million to Liberty, and what this is  
 16 really getting at is how much of the  
 17 distribution was returning their capital versus  
 18 a return at the specified preferred return rate  
 19 on their capital.  
 20 Q. And is it the latter issue that  
 21 caused BV -- no, withdrawn.  
 22 Is the latter issue -- withdrawn.  
 23 Is it BV's understanding that the  
 24 latter issue is what caused Mr. Broaddus to  
 25 allocate approximately 3 percent of

Page 80

1 BARKER VIGGATO LLP - M. BARKER  
 2 received from Mr. Broaddus?  
 3 A. Yes.  
 4 Q. Okay. And you asked the question in  
 5 the next paragraph, should HCRE be receiving an  
 6 income allocation this year. Do you see that?  
 7 A. Yes.  
 8 Q. Why did you ask that question, if you  
 9 remember?  
 10 A. I don't remember.  
 11 Q. Did you ever have any discussion with  
 12 anybody at HCRE as to whether or not any of  
 13 SE Multifamily's profits or losses should be  
 14 allocated to HCRE?  
 15 A. Now, again, they provided the  
 16 direction of, you know, how they wanted the  
 17 allocations done in '18 and '19 and '20.  
 18 Q. Okay.  
 19 A. In fact, I was just being thorough in  
 20 asking the question.  
 21 Q. Okay.  
 22 MR. MORRIS: We can take this down.  
 23 BY MR. MORRIS:  
 24 Q. You're familiar with the IRS form  
 25 K-1; is that right?

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1 BARKER VIGGATO LLP - M. BARKER  
 2 SE Multifamily's profits to Liberty in 2019?  
 3 A. Yeah, I don't recall the percentage  
 4 that ends up getting allocated to them, but,  
 5 yes, we were trying to allocate Liberty CLO  
 6 income equal to the amount of their preferred  
 7 return.  
 8 Q. All right. And what do you mean in  
 9 the next sentence beginning with the word  
 10 "Remainder"? "Remainder of income is allocated  
 11 to HCMLP and BH based on their common equity  
 12 ownership percentages on a pro-rata basis."  
 13 What does that mean?  
 14 A. Well, just the fact that the  
 15 remainder of the income is going to be  
 16 allocated based on the ratios of 94/6.  
 17 Q. So after allocating the portion of  
 18 the income attributable to Liberty, is the  
 19 question you're asking whether the balance of  
 20 the income should be allocated 94/6 --  
 21 A. Yes.  
 22 Q. -- consistent with the agreement?  
 23 A. Yeah.  
 24 Q. Okay. And is that, in fact, what --  
 25 is that, in fact, the direction that BV

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1 BARKER VIGGATO LLP - M. BARKER  
 2 A. Yes.  
 3 Q. Can you just describe for me your  
 4 understanding of what a Form K-1 is?  
 5 A. Yeah. In essence, it is reporting to  
 6 each partner each partner's allocable share of  
 7 either income, loss, deductions, credits,  
 8 et cetera, and that's presented on -- on the  
 9 K-1. So each partner knows how much income or  
 10 loss they have been allocated in a given year  
 11 and that they need to reflect on their tax  
 12 returns.  
 13 Q. And did the K-1s also identify the  
 14 interest that each member has in the  
 15 enterprise?  
 16 A. Yes.  
 17 Q. And does the client --  
 18 A. That is, I guess, a judgment call as  
 19 to what's presented there as far as the  
 20 ownership percentage. It can either be on  
 21 stated percentages or it can be on actual  
 22 allocations of income in that year.  
 23 Q. Or can it be both in certain  
 24 circumstances?  
 25 A. Well, I mean, you only present one

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1 BARKER VIGGATO LLP - M. BARKER  
 2 profit or loss ratio at the end of the year,  
 3 and so it's likely either one or the other.  
 4 Q. Did BV prepare the K-1s for each of  
 5 the members of SE Multifamily for the tax years  
 6 2018, '19, and '20?  
 7 A. Yes.  
 8 Q. Do you know whether any of those K-1s  
 9 have ever been amended?  
 10 A. Not to my knowledge.  
 11 Q. Has BV ever had any discussion with  
 12 anybody at any time as to whether the K-1s  
 13 should be amended in any respect?  
 14 A. No.  
 15 Q. And the information for the K-1s, is  
 16 that obtained from the client?  
 17 A. Yes.  
 18 Q. Is there any information that's in a  
 19 K-1 that BV obtains independent from the  
 20 client?  
 21 A. No.  
 22 Q. Is it fair to say that BV relies on  
 23 the accuracy and the completeness of the  
 24 information that it receives from the client in  
 25 order to prepare the K-1?

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1 BARKER VIGGATO LLP - M. BARKER  
 2 A. Yes.  
 3 Q. That is BV's understanding, correct?  
 4 A. Correct.  
 5 Q. Would it be fair to characterize BV's  
 6 client as SE Multifamily, as directed by its  
 7 manager, HCRE?  
 8 A. Yes.  
 9 Q. That would be accurate, correct?  
 10 A. Yeah, I think so, yes.  
 11 Q. You don't have any reason to believe  
 12 that HCMLP was ever the manager of  
 13 SE Multifamily, correct?  
 14 A. Correct.  
 15 Q. And you don't have any reason to  
 16 believe that HCMLP was ever authorized to cause  
 17 SE Multifamily to file tax returns, right?  
 18 A. Right.  
 19 (Exhibit 8 marked.)  
 20 MR. MORRIS: Let's go through the  
 21 K-1s. So if we could put up Exhibit 8,  
 22 please.  
 23 BY MR. MORRIS:  
 24 Q. Just so you -- I am trying to get  
 25 through this quickly and then I'm probably

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1 BARKER VIGGATO LLP - M. BARKER  
 2 A. Yes.  
 3 Q. And in the case of SE Multifamily,  
 4 who exactly is BV's client?  
 5 A. Well, I guess a combination to me,  
 6 really, of HCRE and HCMLP.  
 7 Q. And is SE Multifamily the client,  
 8 too?  
 9 A. Yes.  
 10 Q. And is BH Equities the client?  
 11 A. Well, they're obviously a partner in  
 12 the partnership, but I don't know that I view  
 13 them, quote/unquote, as a -- necessarily as a  
 14 client.  
 15 Q. Are you -- are you familiar with the  
 16 phrase "manager" in the context of limited  
 17 liability companies?  
 18 A. Yes.  
 19 Q. Do you know who the manager of  
 20 SE Multifamily is?  
 21 A. I believe it was HCRE.  
 22 Q. Do you know whether under the amended  
 23 agreement HCRE, as the manager, had the  
 24 exclusive responsibility for causing SE  
 25 Multifamily's tax returns to be prepared?

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1 BARKER VIGGATO LLP - M. BARKER  
 2 close to done.  
 3 I'm going to go through each K-1,  
 4 through each of the four members of  
 5 SE Multifamily, first in 2018, then in 2019,  
 6 and then in 2020.  
 7 A. Okay.  
 8 Q. And, Mr. Barker, I really -- I'll  
 9 just pause for a second and say I greatly  
 10 appreciate your patience, and I'll repeat again  
 11 that if there's anything that you need to see  
 12 that's not on the screen, let me know, okay?  
 13 A. Okay.  
 14 Q. This is -- do you recall in BV's  
 15 production there was a set of K-1s that was  
 16 produced as the original K-1s and there was  
 17 another set that was produced as drafts?  
 18 A. Yes.  
 19 Q. Okay. I'm going to represent to you  
 20 that what I've attempted to do, anyway, is to  
 21 extract from the original pile the K-1s for  
 22 each of the members in 2018 and '19, okay? So  
 23 that's my representation to you is that this --  
 24 this is the 2018 K-1 for HCMLP. Do you see  
 25 that?

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1 BARKER VIGGATO LLP - M. BARKER

2 A. I see it.

3 Q. Okay. And it shows -- it shows that

4 HCMLP, at the beginning of the -- withdrawn.

5 2018 is kind of a stub year, right?

6 It's only for a portion of the year because

7 SE Multifamily was created in August of 2018.

8 Do I have that right?

9 A. Right.

10 Q. Okay. And, in fact, this is just for

11 the period October 1st through the end of the

12 year, right?

13 A. Right.

14 Q. And if we could scroll down just a

15 little bit, you'll see that on HCMLP's 2018

16 K-1, it was reported as having approximately 46

17 percent of the profits and losses at the

18 beginning and the end of the reporting period.

19 Have I read that correctly?

20 A. You've read that correctly.

21 Q. And 46 percent of the capital of

22 SE Multifamily at the beginning and at the end

23 of the reporting period, correct?

24 A. Correct.

25 Q. Okay. The information on this

Page 88

1 BARKER VIGGATO LLP - M. BARKER

2 Q. Well, who determined the numbers that

3 are in Box J?

4 A. I would say BV did.

5 Q. And where did BV get the information

6 that's in Box J?

7 A. From the LLC agreement.

8 Q. If I put the LLC agreement up on the

9 screen, would you be able to show me where in

10 the LLC agreement?

11 A. Yep.

12 Q. Do you know BV relied upon or what

13 provision BV relied upon to set the profit and

14 losses at 46 percent?

15 A. Yes.

16 Q. Okay. Can you tell me, please?

17 A. Yeah, it's Article 6.1.

18 Q. And what provision of Article 6.1 did

19 BV rely upon for purposes of --

20 A. I believe it was 6.1(a).

21 Q. Okay. So does 6.1(a) --

22 A. Well, you know what? The other

23 thing, too, is -- hold on. If you go to

24 Schedule A, which is attached to the LLC

25 agreement --

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1 BARKER VIGGATO LLP - M. BARKER

2 document -- you know what, I'm going to speed

3 this up.

4 Are you familiar with the K-1s that

5 BV prepared for each of SE Multifamily's

6 members in 2018, '19, and '20?

7 A. Yes. I mean, I don't know how

8 detailed you're going to get. Do I remember

9 exact numbers and amounts? No, probably not.

10 Q. Okay. And has any member ever

11 suggested to you that any of the K-1s were

12 wrong or inaccurate in any way?

13 A. No.

14 Q. Do you know why the K-1 for 2018 for

15 HCMLP showed profits and losses at 46 percent

16 rather than the 94 percent we saw in the

17 amended agreement?

18 A. Well, as we've discussed earlier,

19 these percentages are the common ownership

20 percentages in the agreement. I mean, there's

21 some latitude there in what percentages are

22 presented in what I call Box J. And so -- but

23 they don't necessarily -- they don't have a

24 bearing, you know, on the overall allocation of

25 profits.

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1 BARKER VIGGATO LLP - M. BARKER

2 Q. Yes, sir.

3 A. -- that's really -- I mean, the

4 stated percentages, ownership percentages are

5 really coming from that schedule.

6 Q. Okay. So that's where -- Schedule A

7 is where BV got the information from --

8 A. Yes.

9 Q. -- for J?

10 A. Yes.

11 Q. I think you have a printed-out copy

12 of the amended agreement?

13 A. I do, yes.

14 Q. And if you can flip to Section

15 6.4(a), do you see that profits and losses --

16 A. Uh-huh.

17 Q. -- allocated 94 percent to HCMLP and

18 6 percent to BH?

19 A. Right.

20 Q. Do you know why the profits and

21 losses on this K-1 were not allocated 94

22 percent to HCMLP?

23 A. Again, it goes back to the direction

24 we were provided. And the amounts are the

25 percentages presented in Box J. I mean,

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

4 IN RE: )  
5 ) CHAPTER 11  
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REMOTE ORAL DEPOSITION OF

MARK PATRICK

Dallas, Texas

Tuesday, August 2, 2022

REPORTED BY:

JANICE K. McMORAN, CSR, RDR, CRR, TCRR

JOB NO. 214839

Claimant's  
EXHIBIT

20

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,

Page 12

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. DANENEAU: 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 income.  
 3 Just during this time period, my  
 4 understanding is that the cash and these real  
 5 estate deals are, generally speaking, directed  
 6 to pay off the lending group. You know, so the  
 7 equity, unfortunately, receives the taxable  
 8 income, but there's not cash readily available  
 9 to make a tax distribution to its partners.  
 10 It's a very common problem that occurs in real  
 11 estate transactions.  
 12 MS. WINOGRAD: Okay. I'm going to  
 13 move to strike that answer because it  
 14 wasn't directly responsive to my question.  
 15 BY MS. WINOGRAD:  
 16 Q. Do you know if HCRE ever had profits  
 17 allocated to it?  
 18 A. If it had profits allocated to it.  
 19 There's only been -- ever had -- to my  
 20 understanding, there's only two documents.  
 21 There's the original and the amended. And  
 22 Highland filed for bankruptcy in the fall of  
 23 2019. So, again, there was not an opportunity  
 24 to allocate -- do different allocations.  
 25 So I guess what I'm saying is no, it

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1 M. PATRICK  
 2 MS. DANDENEAU: Objection to form.  
 3 A. No, I'm not aware of any taxes that  
 4 Highland has paid with respect to this because  
 5 it is a pass-through entity.  
 6 BY MS. WINOGRAD:  
 7 Q. Can you identify the owners of  
 8 Highland?  
 9 MS. DANDENEAU: Objection to the  
 10 form. And are you talking about a  
 11 specific time period?  
 12 MS. WINOGRAD: As of the time this  
 13 amended LLC agreement was entered into.  
 14 A. Please restate the question again.  
 15 BY MS. WINOGRAD:  
 16 Q. Are you aware of the owners of  
 17 Highland?  
 18 MS. DANDENEAU: Objection to form  
 19 unless you're going to qualify it by as of  
 20 the time this LLC agreement was entered  
 21 into, the original LLC agreement.  
 22 BY MS. WINOGRAD:  
 23 Q. Mr. Patrick, can you identify the  
 24 owners of Highland as of the time the amended  
 25 LLC agreement was entered into?

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1 M. PATRICK  
 2 was my understanding the -- HCRE has not been  
 3 allocated taxable income for the reasons that I  
 4 explained.  
 5 Q. Okay. Are you aware that the owners  
 6 of Highland purport to be charitable  
 7 foundations?  
 8 MS. DANDENEAU: Objection to form.  
 9 A. Purport -- the owners of Highland  
 10 purport to be charitable foundations. No,  
 11 I'm -- I'm not aware that the owners of  
 12 Highland purport themselves to be charitable  
 13 foundations.  
 14 BY MS. WINOGRAD:  
 15 Q. Are you aware that the owners -- the  
 16 ultimate owners of Highland are exempt from  
 17 paying taxes?  
 18 MS. DANDENEAU: Object to form.  
 19 A. I would say the ultimate owners of  
 20 Highland are subject to taxable income, is my  
 21 awareness.  
 22 BY MS. WINOGRAD:  
 23 Q. Has -- are you aware of any taxes  
 24 that Highland ever paid on SE Multifamily's  
 25 profits?

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1 M. PATRICK  
 2 A. Yes, I believe it was Strand  
 3 Advisors, an entity called Hunter Mountain, and  
 4 then perhaps some other small interests. But I  
 5 don't have the precise amounts or the names.  
 6 Q. Can you identify the ultimate  
 7 beneficial owners of Highland as of the time  
 8 this amended LLC agreement was entered into?  
 9 A. Ultimate beneficial owners of  
 10 Highland. I would say Hunter Mountain.  
 11 Q. Was there any other beneficial owner  
 12 of Highland?  
 13 A. Any other beneficial owner. Any  
 14 other beneficial --  
 15 Q. Let me rephrase the question.  
 16 A. Okay, look, what do you mean by  
 17 "beneficial"? Please define that.  
 18 Q. Who owns Hunter Mountain?  
 19 A. My understanding, it's an entity  
 20 called Beacon, LLC. It might be Beacon  
 21 Mountain, LLC.  
 22 Q. Are you aware of any other beneficial  
 23 owners of Hunter Mountain?  
 24 A. No.  
 25 Q. Isn't the purpose of allocating 94

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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 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