

Exhibit F to Premo Affidavit

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

J.C. PENNEY CORPORATION, INC.

Plaintiff,

-vs-

02-CV-1360

CAROUSEL CENTER COMPANY, LP,

Defendant.

C O N F I D E N T I A L

Examination Before Trial of
ROBERT J. CONGEL, held at the offices of
THE PYRAMID COMPANIES, Syracuse,
New York, on September 29, 2005, before
PAMELA PALOMEQUE, Registered
Professional Reporter and Notary Public
in and for the State of New York.



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* * *

EXHIBITS

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* * *

IT IS HEREBY STIPULATED by and between counsel for the respective parties that this Deposition is to be held pursuant to the provisions of the Federal Rules of Civil Procedure; that the presence of a Referee is waived; that the witness may be sworn by PAMELA PALOMEQUE, Registered Professional Reporter and Notary Public in and for the State of New York; and that all objections, except those as to form are reserved until the time of the trial.

* * *

MR. MURPHY: Just so Bob knows, you'll have the opportunity to take a look at your transcript. The other thing is this litigation in general and this deposition is subject to a confidentiality agreement.

MR. PREMO: Right.

1
2 R O B E R T J. C O N G E L having been called as
3 a witness, being duly sworn, testified as follows:

4

5 EXAMINATION BY MR. PREMO:

6 Q. Could you please state your name for the
7 record?

8 A. Robert Joseph Congel.

9 Q. Mr. Congel, my name is Edward Premo. I'm an
10 attorney with Harter, Secrest & Emery and I'm here
11 representing J.C. Penney in a lawsuit with Carousel
12 Center Company, LP and you're being deposed in that
13 action. I take it you've been deposed before?

14 A. Yes.

15 Q. About how many times?

16 A. Several.

17 Q. Various types of cases?

18 A. Yes.

19 Q. Cases involving construction?

20 A. I think so.

21 Q. Well, I'm sure you're somewhat familiar but
22 let me go over what I'll call some ground rules. I'm
23 going to be asking you a number of questions. If for
24 some reason you don't hear what I said or the question is
25 unclear, please let me know. I can rephrase the question

1

2 or repeat it. Okay?

3 A. Sure.

4 Q. If you go ahead and answer the question, I'll
5 assume you understand it. Correct?

6 A. Correct.

7 Q. Okay. And also, as we're doing here, please
8 be sure to verbalize your answer. The court reporter
9 can't take down a shrug or a shake of the head and we
10 need to, both of us, say words, okay?

11 A. Right.

12 Q. And please let me finish my questions before
13 you start to answer and I'll be sure to let you finish
14 your answer before I ask you the next question, okay?

15 A. Yeah.

16 Q. Where did you graduate from high school?

17 A. Christian Brothers Academy.

18 Q. Where is that located?

19 A. Syracuse.

20 Q. Have you lived in Syracuse all your life?

21 A. Yes.

22 Q. And what did you do after you graduated from
23 high school?

24 A. I went to Fordham University.

25 Q. About what years were you at Fordham

University?

A. '54 to '58.

Q. What did you study at Fordham University?

A. I majored in math and economics.

Q. After Fordham what did you do?

A. I became a contractor.

Q. Was that in your own business or were you working for somebody else?

A. My own business.

Q. And what did you start off doing as a contractor?

A. I was a water pollution contractor.

Q. And could you describe for me the type of work that involved?

A. Yes. The Clean Water Act was adopted by the United States of America and there was a big bond issue and they wanted to clean up the polluted water in the United States and treat it and do the proper job as far as the environment was concerned. So I saw that bond issue and my father was a construction worker, so I thought I knew a little bit about construction, and my grandfather was a small contractor, put in driveways and things, so I became a contractor to do that type of work.

Q. When you graduated from Fordham, what degrees

1 did you have?

2 A. Math and economics.

3 Q. Bachelor degrees?

4 A. Yes.

5 Q. Did you ever get anything beyond a Bachelor's
6 degree?

7 A. No.

8 Q. Did there come a time when you started being
9 involved in the construction of shopping centers?

10 A. Yes.

11 Q. And when did you start going into that
12 business?

13 A. I think in the early '70s.

14 Q. And what lead you into that business?

15 A. I was entrepreneurial and when you did work
16 for the government, it was profitable and gave the
17 government half and you kept half. At that time the tax
18 laws allowed you to maintain much more profitability and
19 you had an asset that would go on and on and regenerate
20 itself.

21 Q. Was there any particular type of shopping
22 center that you started specializing in in the early
23 '70s?

24 A. Well, it's kind of interesting. It was very
25

1
2 difficult to get into the mall business, so we started
3 building small strip shopping centers and spent a great
4 deal of time trying to get into the mall business but it
5 was pretty locked in business between the retailer, the
6 lender and the developer, and it took many years to get
7 into that and get them to go along because they pretty
8 much controlled.

9 Q. And when did you start -- when did you build
10 your first mall?

11 A. I think -- I guess maybe 1972.

12 Q. And how many malls have you constructed since
13 then?

14 A. Probably in excess of 20.

15 Q. In your business to develop malls did you
16 start doing business with J.C. Penney?

17 A. Yes.

18 Q. When did you start doing business with
19 J.C. Penney?

20 A. Mid-'70s.

21 Q. And what was the first mall that you did where
22 J.C. Penney was a tenant?

23 A. Glens Falls, New York.

24 Q. And about what year was that?

25 A. About -- I think it was around '75, '74,

1
2 something like that, mid-'70s.

3 Q. Who was your initial contact at J.C. Penney?

4 A. I'm trying to remember. It was a long time
5 ago. I think a guy named Frank Lanzi.

6 Q. Do you recall how --

7 A. L-A-N-Z-I.

8 Q. Did there come a time when you met a gentleman
9 named Paul Freddo?

10 A. Yes.

11 Q. When did you first meet Mr. Freddo?

12 A. A long time ago but I don't remember the
13 dates.

14 Q. Have you been involved with Mr. Freddo in a
15 number of your malls?

16 A. Yes.

17 Q. Do you know how many of your malls have
18 J.C. Penney stores in them?

19 A. Most of them.

20 Q. So you've -- you've had a relationship with
21 J.C. Penney for about 30 years, would that be about
22 right?

23 A. I suppose so, yeah.

24 Q. And do you know how many of those years
25 Mr. Freddo was your main -- did there come a time when

1

2 Mr. Freddo was your main contact with J.C. Penney?

3 A. Yes.

4 Q. And do you know for how many of those 30 years
5 Mr. Freddo was your main contact?

6 A. No. No.

7 Q. Now, what's your -- where are you currently
8 employed?

9 A. I am currently employed by Destiny.

10 Q. Do you know the exact name of the company that
11 currently employs you?

12 A. Destiny something.

13 Q. And do you draw a salary from Destiny?

14 A. No.

15 Q. Do you -- are you a general partner in any
16 partnerships?

17 A. I'm not positive as to what's formed and
18 what's not formed.

19 Q. Are you a general partner in Pyramid Company
20 of Onondaga?

21 A. Yes.

22 Q. And do you know when Pyramid Company of
23 Onondaga was formed?

24 A. I think '89.

25 Q. And what's the business of Pyramid Company of

2 Onondaga?

3 A. It's mall development encompassing real estate
4 and retailers.

5 Q. Is that the main vehicle you've used for mall
6 development since the time it was formed?

7 A. Is what the main vehicle?

8 Q. Pyramid Company of Onondaga?

9 A. No.

10 Q. Has there been -- is there one major
11 partnership that you've used for development of various
12 malls?

13 A. No.

14 Q. Have you formed different partnerships for
15 each mall?

16 A. Yes.

17 Q. When you're a partner in these various mall
18 partnerships, do you receive a partnership draw from the
19 profits of the partnership?

20 A. If there's draws available you do. Are you
21 asking me that question or the partners?

22 Q. I'm asking you that question.

23 A. No. The answer is no.

24 Q. You don't receive a draw?

25 A. I don't know what you mean by "a draw".

1

2

Q. Do you receive a share of the profits from the partnership?

3

4

A. Yes.

5

6

Q. In the malls that you've had J.C. Penney stores in, have any of those malls undergone expansions where you've had to obtain J.C. Penney's consent to those expansions?

7

8

A. Yes.

9

Q. Can you recall the names of those malls?

10

A. No.

11

Q. Could you recall how many malls there were?

12

A. No.

13

Q. More than five?

14

A. I can't recall.

15

Q. How -- would there be records I could look at

16

that would help me determine which malls you obtained

17

J.C. Penney's consent for expansion?

18

A. I would say probably, yes.

19

Q. Do you know what entity would hold those

20

records?

21

A. The management company.

22

Q. And what would be the name of that management

23

company?

24

A. I think it's Pyramid Management Group.

25

1
2 Q. What's the business of Pyramid Management
3 Group? What does that entity do?

4 A. It manages the real estate.

5 Q. At all of your malls?

6 A. Yes.

7 Q. Would that include the Carousel Center mall?

8 A. Yes. I believe so. I have not been involved
9 in Pyramid in many years.

10 Q. When was the last time you were involved
11 with -- when you say "Pyramid", do you mean Pyramid
12 Company of Onondaga?

13 A. No, the Pyramid Companies.

14 Q. Can you describe to me what the Pyramid
15 Companies are?

16 A. The Pyramid -- I'm referring to the Pyramid
17 Management Group. The Pyramid Companies is just a name.
18 The real estate is managed by the Pyramid Management
19 Group.

20 Q. I notice when you come in your reception area
21 here at Clinton Exchange there's a sign that says the
22 Pyramid Companies?

23 A. Yeah.

24 Q. Is there a formal entity, a corporate entity
25 known as the Pyramid Companies?

1

Robert J. Congel

15

2

A. No. I don't believe so.

3

Q. Is it a name that's typically used to refer to

4

the various mall businesses that you have?

5

A. Yes.

6

Q. And are those various mall businesses operated

7

jointly?

8

MR. MURPHY: Objection.

9

A. No.

10

Q. Well, are they operated under your direction?

11

A. No.

12

Q. Were they at one time operated under your

13

direction?

14

A. At one time.

15

Q. Do you recall the Carousel Center Company, LP

16

was formed in October of 1995?

17

A. No.

18

Q. Do you recall that?

19

A. No.

20

(Exhibit 75, Limited Partnership

21

Agreement, 10/95, marked for identification

22

this date.)

23

Q. Let me show you what's been marked as Exhibit

24

number 75. It's a document entitled Agreement of Limited

25

Partnership of Carousel Center Company, LP as of October

1

Robert J. Congel

16

2 1995. And it was a document that was produced to us
3 through discovery in this action and ask for you to take
4 a look at it and particularly the last pages which
5 contain some signatures.

6 A. Okay. The last page? Just the last page?
7 It's only Bruce Kenan.

8 Q. Okay, the last -- there's actually two
9 signature pages, the last page and then about three or
10 four pages in.

11 A. That's Bruce Kenan also.

12 Q. Yes. Is Bruce Kenan a partner of yours?

13 A. Yes.

14 Q. And is he a partner of yours in Pyramid
15 Company of Onondaga?

16 A. Yes.

17 Q. And is he a partner of yours in various other
18 mall partnerships?

19 A. A few, yes.

20 Q. And how long have you been doing business with
21 Mr. Kenan?

22 A. Probably 35 years or something like that.

23 Q. Did Mr. Kenan at one point work as an
24 architect --

25 A. Yes.

2 Q. -- on some of your projects?

3 A. No -- yeah, maybe he did.

4 Q. Did you eventually, the two of you, decide to
5 become partners together --

6 A. Yes.

7 Q. -- in a number of ventures?

8 A. Yes.

9 Q. Does that refresh your recollection as to when
10 the Carousel Center Company, LP was formed?

11 A. I didn't look at the dates. I'll look at the
12 date. It says October 6th, 1995.

13 Q. Do you recall why that company was formed?

14 A. No.

15 Q. Do you recall that that company was formed for
16 the purpose of holding title to the Carousel Center mall?

17 A. No.

18 Q. You don't recall that one way or the other?

19 A. I don't recall it at all.

20 Q. Taking a look at that document, does that --
21 do you recall that the general partner of Carousel Center
22 Company was Carousel General Company, LLC and limited
23 partner was Pyramid Company of Onondaga?

24 A. No.

25 Q. If the document says that, you --

1

2

A. If that's what the document says, fine, but

3

I -- I don't recall it.

4

(Exhibit 76, Waiver Consent

5

Contribution and Assignment Agreement,

6

marked for identification this date.)

7

Q. Mr. Congel, let me show you what's been marked

8

as deposition Exhibit number 76. It's a document

9

entitled waiver consent contribution and assignment

10

agreement. It indicates it's among various parties,

11

including yourself, James A. Tuozzolo --

12

A. You're pretty close, Tuozzolo.

13

Q. Bruce Kenan, Marc Malfitano, Michael P.

14

Shanley, Bruce A. Kenan Living Trust, and Moselle

15

Associates. I ask you to take a look at that document.

16

A. What is the question?

17

Q. Do you recognize that document?

18

A. No.

19

Q. Taking a look at page 5 of that document --

20

A. Page 5.

21

Q. -- and the reference -- this is a document

22

that's produced by Carousel, the reference on it is

23

C 0030.

24

A. Okay.

25

Q. Do you see your signature on that document?

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A. Yes. Yeah.

Q. But sitting here today you don't recall why you signed this document?

MR. MURPHY: Objection.

Q. Feel free to take a look at it if you want to.

A. I can see it.

Q. Do you recall why you executed this document?

A. I was asked to.

Q. Do you know the purpose for the document?

A. No.

Q. At that time -- the document indicates that it was signed in February of -- February 14th of 2001. Do you recall a restructuring of the interest of Carousel Center at that time?

A. I don't recall.

Q. What's the -- do you know what the business of Carousel Center Company, LP is?

A. Specifically this company? No.

Q. Does Carousel Center Company, LP own and operate the Carousel Center mall?

A. I don't know.

Q. Who would know that?

A. I don't know. You know, we have outside attorneys that prepare a great deal of this material and

2 they put it on my desk and I sign it.

3 Q. Is the Carousel Center mall operated out of
4 the Clinton Exchange Building?

5 A. Yes. By "operated" what do you mean? There's
6 an operations group that operate it on site.

7 Q. Is there also a management group for the
8 Carousel Center mall that has its offices at the Clinton
9 Exchange?

10 A. The management group is responsible for
11 collecting rents and they operate out of this building.
12 There's a central area that oversees that -- the
13 administration of the --

14 Q. It would be fair to say that the Clinton --
15 excuse me, the Carousel Center mall is operated by more
16 or -- one or more entities under the name the Pyramid
17 Companies?

18 MR. MURPHY: Objection.

19 A. The Pyramid Companies I don't believe is an
20 entity. I don't believe it's anything but a name.

21 Q. I take it you have an ownership interest in
22 the Carousel Center mall?

23 MR. MURPHY: Objection.

24 A. Did you -- I didn't hear your question.

25 Q. Do you have an ownership interest in the

2 Carousel Center mall?

3 A. Yes.

4 Q. Is that through various entities?

5 A. I don't think so. I think it's -- I have
6 ownership in that mall. I don't think there's other
7 entities involved.

8 Q. Mr. Kenan, let me show you --

9 A. Congel.

10 Q. Congel, excuse me.

11 A. Premo.

12 MR. PREMO: Off the record.

13 (Discussion off the record.)

14 BY MR. PREMO:

15 Q. Mr. Congel, if you could take a look at what's
16 been previously marked as Deposition Exhibit number 59.

17 A. Yes.

18 Q. It's entitled a loan agreement dated as of
19 December 17, 2004 between Carousel Center Company, LP as
20 borrower, and German American Capital Corporation as
21 lender. Have you seen this document before?

22 A. I never even heard of German American Capital
23 Corporation.

24 Q. Did you know that in December of 2004 Carousel
25 Center Company had entered into a loan agreement to

refinance its interest in the Carousel Center mall?

A. Not in any detail. I may have heard about it and I may have had documents sent to me that I executed and basically that's it.

Q. Do you know if that refinancing was part of financing necessary for an expansion of the Carousel Center mall?

A. I don't know.

Q. Mr. Congel, if you could take a look -- I'll note for the record that this was a document produced to us by the City of Syracuse Industrial Development Agency. Back into the document quite a few pages, on page Bates stamp SIDA 003736 is a chart.

A. Do you want me to find that in here?

Q. I can find it for you.

A. That probably would be expeditious.

Q. Mr. Congel, do you recognize that chart?

A. Vaguely.

Q. Does this chart show the ownership structure with respect to Carousel Center Company, LP and Destiny USA Development, LLC?

MR. MURPHY: Objection.

A. I'll let you know this is the first time I've seen this. State the question again, please.

2 MR. PREMO: If you could read back the
3 question please.

4 (Whereupon, the pending question was then
5 read back by the Reporter.)

6 A. Well, not describing the whole chart, there is
7 a reference to both here.

8 Q. Am I correct that the partners in Pyramid
9 Company of Onondaga hold all of the ownership interest in
10 Carousel Center Company, LP?

11 A. I'm not sure where they hold it but there is a
12 partnership that holds all of the ownership; that I think
13 it's the same group of partners that have been in it from
14 the beginning, I believe.

15 Q. Would those partners currently be yourself,
16 Moselle Associates, Bruce Kenan, Bruce Kenan Living
17 Trust, James Tuozzolo and Stephen Congel?

18 A. Tuozzolo.

19 Q. And Stephen J. Congel?

20 A. I believe so.

21 Q. And are those the partners that also hold all
22 the ownership interest in Destiny USA Development, LLC?

23 A. I don't know the answer to that.

24 Q. Are the individuals that I just named and the
25 partnerships that are in the top of the chart at

1 SIDA 003736 the sponsors of the Destiny USA project?

2 MR. MURPHY: Objection.

3 A. What does "sponsor" mean?

4 Q. Well, let me point you to, if I could, another
5 page of this document.

6 A. Okay.

7 Q. Let me show you page 25 of the document which
8 is -- has been marked as Exhibit number 59 and the page
9 that has been Bates stamped SIDA 003606, and there's a
10 reference at the top to a definition of sponsor. Does
11 that refresh your recollection as to whether those
12 individuals are the sponsors of the Destiny USA project?

13 MR. MURPHY: Objection.

14 A. If this is all part of this document, it says
15 it.

16 Q. Would they also be the sponsors of the
17 Carousel Center expansion?

18 MR. MURPHY: Objection.

19 A. I don't know the answer to that. Would you
20 like this back?

21 MR. PREMO: Off the record.

22 (Discussion off the record.)

23 BY MR. PREMO:

24 Q. Let me show you the page of Exhibit number 59
25

1

Robert J. Congel

25

2 which has been marked SIDA 003714 which contains a
3 signature and it's on behalf of the borrower and it
4 references Carousel Center Company, LP, a limited
5 partnership, by Carousel Company, LLC, a New York limited
6 liability company, its general partner, by Carousel
7 Center Holdings, Inc., a New York corporation, its
8 managing member, and then there's a signature line
9 underneath, is indicated Bruce A. Kenan, vice president,
10 and ask if you can take a look at that signature and
11 whether you recognize that as Mr. Kenan's signature?

12 A. You know, I'm not a signature expert but it
13 resembles what I'm used to seeing.

14 Q. Would Mr. Kenan be authorized to execute a
15 loan document on behalf of Carousel Center Company, LP?

16 MR. MURPHY: Objection.

17 A. I would assume so.

18 Q. And I assume that would be something he would
19 have discussed with you --

20 A. Zero.

21 Q. -- as part of this?

22 A. No.

23 Q. But he's your partner?

24 A. Hmm, mm.

25 Q. And as your partner he'd be authorized to

1 execute this document?

2 A. He's authorized but it doesn't mean he
3 discussed it with me because I'm sure he didn't.

4 Q. I assume Mr. Kenan would be authorized to make
5 any representations on behalf of Carousel Center Company,
6 LP that's included in this document?

7 MR. MURPHY: Objection.

8 A. I don't know the answer to that.

9 Q. What is Moselle Associates?

10 A. It's a name.

11 Q. Is it a partnership?

12 A. I'm -- I don't know.

13 Q. Do you know if you have an interest in Moselle
14 Associates?

15 A. I don't know.

16 Q. Who makes decisions on behalf of Carousel
17 Center Company, LP?

18 A. There's a management group. There's trusts.
19 I would say that the responsible parties for this are the
20 trustees that represent the Kenan family and the Congel
21 family.

22 Q. Would those be the partners in Pyramid Company
23 of Onondaga, those various individuals and trusts?

24 A. I would think so, yes.

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Q. And those would be the decision makers for
Carousel Center Company, LP?

A. I'm not sure.

Q. Well, let me ask you, the same individuals and
trusts also hold all the ownership interest in Destiny
USA Development, LLC?

MR. MURPHY: Objection.

A. I don't know who it is.

Q. Let's take a look back at --

MR. MURPHY: Off the record.

(Discussion off the record.)

BY MR. PREMO:

Q. Taking a look back at Exhibit number 59 and
the chart that's at SIDA 003736, does that refresh your
recollection as to whether the individuals and trusts and
partnerships that constitute the partners of Pyramid
Company of Onondaga hold all the ownership interest in
Destiny USA Development, LLC?

MR. MURPHY: Objection.

A. I don't know. I can't tell.

Q. You can't tell from reading that chart?

A. No.

Q. Who makes the decisions as to what actions are
undertaken by Destiny USA Development, LLC?

1

Robert J. Congel

28

2

MR. MURPHY: Objection.

3

A. Ask the question again.

4

MR. PREMO: Sure. If you could read back

5

the question.

6

(Whereupon, the pending question was then

7

read back by the Reporter.)

8

A. I'm not sure.

9

Q. Are you the chairman of Destiny USA?

10

A. I may be. I don't know -- I honestly don't

11

know what I am.

12

Q. Are you the driving force behind the project

13

known as Destiny USA?

14

A. There are many facets to it. There is a legal

15

team in that process, I guess, and then there's the

16

vision of Destiny USA and that's the only role I play.

17

I'm the guy that hangs around and thinks.

18

Q. What's the next step coming up in the Destiny

19

USA project that you want to undertake at the Carousel

20

Center mall?

21

MR. MURPHY: Objection.

22

A. You know, Destiny is a process and a movement.

23

There's not a lot of certainty to it right now.

24

Q. Have you indicated in public that the next

25

stage of Destiny USA would be an 848,000 square foot

2 expansion of the Carousel Center mall?

3 A. I probably did.

4 Q. In your vision is that the next step in the
5 project known as Destiny USA?

6 A. That is an obligation. It's an obligation to
7 the community.

8 Q. Sorry, go ahead. What do you mean by "an
9 obligation to the community"?

10 A. You know, this is a community project. It's
11 for the people of this community. It's -- you know, I
12 need to separate things here. 800,000 feet is not part
13 of Destiny. It's part of Carousel, and there is an
14 economic program that's put together from the economic
15 agency, that was put together many years ago which has
16 been the somewhat road map to eventually coming to a
17 conclusion that we haven't come to yet in total, as to
18 what steps would be taken here.

19 Q. Is the construction of an 848,000 square foot
20 expansion of the Carousel Center mall necessary to allow
21 the mall to continue to receive favorable tax treatment
22 under a payment in lieu of taxes agreement?

23 A. Yes.

24 Q. When you say there's an obligation to the
25 community, is that the obligation you're referring to?

A. The obligation to the community is one of economic development, enhancing the economy of this area.

(Exhibit 77, 9/29/05 Post-Standard article, marked for identification this date.)

Q. Let me show you what's been marked as Deposition Exhibit number 77. It's a print-out from the Post-Standard website of a story that appeared today in the Post-Standard newspaper by Rick Moriarty and as I indicated appeared today on September 29th, 2005. I take it you're familiar with the Post-Standard newspaper?

A. Yes.

Q. And I take it from time to time you talk to Mr. Moriarty?

A. Very seldom. People here do but I don't.

Q. But he's the business writer for the Post-Standard?

A. I don't know what he is. He says staff writer here.

Q. Has he written a number of different articles about the Destiny USA project?

A. Yes.

Q. Going down to the next-to-the-last paragraph, there's a statement and it's not in quotes. I'll note

1

2 that for the record. It says Congel said he's ready to
3 begin the first phase of Destiny in addition to his
4 Carousel Center shopping mall south of Onondaga Lake. Do
5 you see that statement?

6

A. Yes.

7

Q. Did you make that statement to Mr. Moriarty?

8

A. I don't recall it.

9

Q. Do you recall saying to anyone at the
10 Post-Standard that the addition to the Carousel shopping
11 mall was the first phase of Destiny USA?

12

A. I don't recall that, no.

13

Q. In the article there's a reference that you've
14 recently received a study -- strike that -- a master plan
15 from Falcon's Treehouse, LLC. Do you see a reference to
16 that?

17

MR. MURPHY: Can you clarify when you say
18 "you", are you talking about Mr. Congel
19 personally or some entity? I haven't read the
20 article. I have no idea what it says.

21

MR. PREMO: First, let me ask him if he's
22 received such a master plan.

23

A. No.

24

Q. Do you know if the Destiny USA entities have
25 received such a master plan?

1

2 A. No.

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

4 A. I don't know one way or the other.

5 Q. Do you know if Falcon's Treehouse, LLC was
6 retained to develop a master plan for the Destiny USA
7 project?

8 A. I don't know.

9 Q. There is a reference, if you take a look at
10 the article, the eighth article -- eighth paragraph,
11 Destiny Executive David Aitken says the company's plan is
12 200 pages thick and will be shared with the public as we
13 move forward with the project.

14 I take it you know Mr. Aitken?

15 A. Yes.

16 Q. He works with Destiny USA?

17 A. Yes.

18 Q. Have you talked to him about whether he's
19 received a 200 page thick plan?

20 A. No, I haven't talked to him about that.

21 Q. Taking a look at the chart that was part of
22 Exhibit number 59, referenced as SIDA 003736, and taking
23 a look at all of the entities referenced there, do all
24 those entities have offices here at the Clinton Exchange?

25 A. I would say no.

1

2 Q. Do you know which entities may have offices
3 someplace else?

4 A. I don't think these entities have offices.

5 Q. Are many of the entities just simply vehicles
6 for financing?

7 A. I would assume so.

8 Q. And they don't actually have any personnel or
9 employees themselves?

10 A. That's correct.

11 Q. What's the -- do you know what the business of
12 Destiny USA Development, LLC is?

13 A. That specific LLC? No.

14 Q. Would you know if that's the entity
15 undertaking the expansion of the Carousel Center mall?

16 A. I don't believe it is.

17 Q. Do you know if that is the entity that had
18 applied for and received building permits from the City
19 of Syracuse?

20 A. I don't know that.

21 Q. Who would be the person on the Destiny USA
22 team who would know that?

23 A. Probably Bruce Kenan.

24 Q. Is it under the name Destiny USA that --
25 strike that.

1
2 Is it a Destiny USA entity that's pursuing the
3 expansion of the Carousel Center mall?

4 A. The expansion of Carousel Mall is Carousel.
5 That's their -- that's their property.

6 Q. Do you know if the Carousel Center mall LP has
7 agreed to an assignment of a portion of the Carousel
8 Center site to Destiny USA Development, LLC for the
9 purpose of doing the mall expansion?

10 A. I don't believe so.

11 MR. MURPHY: Objection to the last
12 question.

13 Q. Taking a look at the chart that we've marked
14 as part of Exhibit number 59, SIDA 003736, at the bottom
15 you will see there's an arrow pointing from Carousel
16 Center Company, LP to Destiny USA Development, LLC. And
17 underneath the arrow it says "conditional assignment of
18 SIDA installment sale agreement (expansion property
19 only").

20 A. Yeah, I don't know what that means.

21 Q. Who would know what that means?

22 A. I'll give you Bruce's name.

23 Q. Now, it's your understanding that it's the
24 Carousel Center, LP that's pursuing an 848,000 square
25 foot expansion of the Carousel Center mall?

1
2 A. It's Carousel, whatever -- whoever owns that
3 mall is the one that's pursuing the --

4 Q. The owner of the mall has consented to that
5 expansion?

6 MR. MURPHY: Objection.

7 Q. Do you need the question back?

8 A. Yes.

9 MR. PREMO: Can you read the question
10 back.

11 (Whereupon, the pending question was then
12 read back by the Reporter.)

13 MR. PREMO: Let me rephrase the question.

14 Q. Has Carousel Center Company LP consented to
15 the expansion of the proposed expansion by 848,000 square
16 feet?

17 A. 840 --

18 Q. 848,000 square feet, excuse me, of the
19 Carousel?

20 A. Lawyers normally have problems with numbers,
21 off the record.

22 MR. MURPHY: Objection. Not to the
23 comment, the question.

24 MR. PREMO: Could I have the question
25 back this time?

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A. I'm not sure.

3

(Whereupon, the pending question was then

4

read back by the Reporter.)

5

6

A. I don't know the answer to that question. Can we take a break for the men's room?

7

Q. Sure. Absolutely.

8

(A recess was then taken.)

9

BY MR. PREMO:

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Q. The document you had in front of you, Exhibit number 59, which is a loan agreement between Carousel Center Company, LP and German American Bank, is to help to provide financing for an expansion of the Carousel Center mall; is that correct?

15

A. I don't know the answer to that.

16

17

18

Q. You don't know the answer. Did you know that in December of 2004 there was financing put in place to -- for the expansion of the Carousel Center mall?

19

A. I didn't know that.

20

21

Q. Did use notice any newspaper articles in December 2004 about that?

22

A. If I did, I don't recall.

23

24

25

Q. Did you know of any loans for the construction of the expansion to the Carousel Center mall with Deutsche Bank?

1
2 A. You know what, I just got the connection.
3 German American Capital Corporation is Deutsche Bank? I
4 apologize. I had not recognized that name at all.

5 Q. How does that change your answers?

6 A. That's a good question. I am familiar with
7 Deutsche Bank.

8 Q. Was there an agreement in 2004 with Deutsche
9 Bank to finance the expansion of the Carousel Center
10 mall?

11 A. Yes.

12 Q. And that agreement included the loan document
13 in front of you between Carousel Center Company, LP and
14 the German American Capital Corporation?

15 A. I assume so, yes.

16 Q. And, therefore, Carousel Center Company, LP
17 must have consented to the expansion of the Carousel
18 Center mall, correct?

19 MR. MURPHY: Objection.

20 A. I don't know the details. I can't make
21 assumptions. I don't know the details.

22 Q. But an expansion of the Carousel Center mall
23 wouldn't go forward without Carousel Center Company, LP
24 consenting to it; isn't that correct?

25 MR. MURPHY: Objection.

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Robert J. Congel

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A. I can't make assumptions. I don't know. I

3

really don't know. I don't get into that type of detail.

4

Q. The partners of Pyramid Company of Onondaga

5

that are identified on the ownership chart which is part

6

of Exhibit 59, have they all agreed to the expansion of

7

the Carousel Center mall?

8

MR. MURPHY: Objection.

9

A. I don't know the answer to that.

10

Q. Well, you personally have agreed to it, you

11

think it's a good idea?

12

A. I don't know if I have agreed to it or not.

13

Q. How about Mr. Kenan?

14

A. I don't know.

15

Q. How about Stephen J. Congel is your son?

16

A. Yes.

17

Q. Has he agreed to it?

18

A. I don't know.

19

Q. Do you know if Pyramid Company of Onondaga has

20

agreed to the expansion?

21

A. I don't know.

22

Q. When you say you don't think -- you're not

23

sure if it's a good idea, why is that?

24

MR. MURPHY: Objection.

25

A. I don't understand the question either.

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Q. I thought one of your answers, you indicated you're not sure that the expansion of the Carousel Center mall is a good idea. You're not sure if you agreed to it?

A. Oh, I didn't say that it wasn't a good idea. That I thought it was a good or bad -- I didn't think about it. I'm not sure whether I agreed to it or not.

Q. Did there come a time -- come a point in time when a decision was made not to proceed with financing with Deutsche Bank for the expansion of the Carousel Center mall?

MR. MURPHY: Objection.

A. To the best of my knowledge Deutsche Bank financing is in place.

Q. Has there been any indication that there might be other financing provided by Citigroup?

A. Yes.

Q. And can you explain to me what that financing is about, what that financing is for?

A. That financing is for the expansion of the Carousel Center.

Q. Would that financing replace the financing from Deutsche Bank?

A. It would eventually.

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2

Q. And do you know why financing from Citigroup
is being pursued?

3

4

A. I assume it's financial engineering. When
markets change, things change, and one thing I do know
that the Pyramid Companies do is constantly refinancing
their real estate depending on market conditions. Better
deals, interest goes up and down.

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Q. Do you know the difference between the
financing that was to be provided by Deutsche Bank and
the financing from Citigroup?

10

11

12

A. No.

13

Q. And who would know those details?

14

A. I'm not sure.

15

16

Q. Have you reviewed any loan documents from
Citigroup?

17

A. No.

18

19

Q. Any proposed loan documents for the expansion
of the Carousel Center mall?

20

MR. MURPHY: Objection.

21

A. No.

22

23

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MR. MURPHY: Are we going to link any of
these questions to the alleged breach of lease
that this case is about or are we going to
talk about loan documents all morning? I

1
2 believe the magistrate set a -- I forget his
3 direct word -- a focused deposition.

4 MR. PREMO: The magistrate also held that
5 issues concerning the expansion, timing and
6 the nature of the expansion are relevant
7 issues and that's why we finally had obtained
8 various documents concerning the expansion and
9 financing of it, so I'm trying to tie down
10 this issue because it goes directly to the
11 issue of breach and damages to J.C. Penney.

12 MR. MURPHY: I don't think the magistrate
13 did rule that things related to Destiny
14 necessarily relate to any alleged breach and I
15 don't think any of your questions have linked
16 anything, and if we're talking about focused
17 deposition, I'd like you to start to link
18 them.

19 MR. PREMO: Well, certainly, Kevin, we've
20 been talking about a loan document between
21 Carousel Center Company, LP and a bank to
22 finance expansion of the Carousel Center mall
23 and that that's being done without
24 J.C. Penney's consent or even an attempt to
25 try to work out something with J.C. Penney.

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Robert J. Congel

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MR. MURPHY: There's no obligation to get J.C. Penney's consent to securing the financing.

4

5

MR. PREMO: That's the issue in the lawsuit. If I could have my last question before Mr. Murphy's objection, please.

6

7

8

(Whereupon, the requested record was then read.)

9

10

BY MR. PREMO:

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Q. Any term sheets?

12

A. No.

13

Q. Let me show you what's been marked as

14

Deposition Exhibit number 45. It's a print-out of an

15

article that had appeared on the Destiny USA website of

16

an interview with Michael Lorenz. I'd ask you to take a

17

look at that document.

18

A. Very interesting.

19

Q. Mr. Congel, have you seen that interview with

20

Mr. Lorenz before?

21

A. No.

22

Q. Have you ever had any discussions with -- for

23

the record, what's Mr. Lorenz's position with Destiny

24

USA?

25

A. You don't get many titles here. He probably

1

2 directs most of the operations.

3 Q. Do you have meetings with him a few times a
4 day about Destiny USA?

5 A. If need be, once a day with him.

6 Q. When does that meeting usually take place?

7 A. 6:00 a.m. in the morning.

8 Q. Is that a team meeting of the people involved
9 in Destiny USA and the Carousel Center mall expansion?

10 A. Yes.

11 Q. Who else --

12 A. Say that question again.

13 MR. PREMO: I'm sorry.

14 (Whereupon, the requested portion of the
15 record was then read.)

16 MR. MURPHY: Objection.

17 Q. The answer was yes?

18 A. I'm trying to -- there's no Carousel people
19 involved in that meeting.

20 Q. At the 6:00 a.m. team meeting for Destiny USA
21 would you discuss the expansion of the Carousel Center
22 mall?

23 A. The 6:00 a.m. meeting is mostly about
24 innovation. That's my role.

25 Q. And innovation of what?

1

2 A. Of the creativity, the vision, what Destiny
3 will be like.

4 Q. Would you discuss issues such as the mall
5 expansion and the timing of it and financing for it at
6 that 6:00 a.m. meeting?

7 A. Probably not.

8 Q. Who would normally be at the 6:00 a.m.
9 meeting?

10 A. Most of the Destiny team.

11 Q. And who would that typically involve?

12 A. Mr. Kenan, my son, Stephen; it's a pretty
13 wide-open meeting, secretaries attend. It's operated as
14 an open culture, just to create innovations and thought.

15 Q. Would Mr. Lorenz typically be involved?

16 A. Yes.

17 Q. Mr. Aitken?

18 A. Yes.

19 Q. Your son, Stephen, is he involved in the
20 Destiny USA project? Is that his focus?

21 A. Yes.

22 Q. You have another son, Scott?

23 A. Yes.

24 Q. Does Scott work within the organization here
25 at Clinton Square?

2 A. No.

3 Q. What's Scott currently doing?

4 A. Scott lives in Denver. He has his own
5 operations. He heads up the Pyramid Companies from
6 Denver and is in here occasionally and is heavily
7 responsible for the financing of the Pyramid portfolio.

8 Q. Does he have anything to do with Destiny USA?

9 A. No.

10 Q. Have you ever discussed with Mr. Lorenz the
11 retail city concept noted in the interview?

12 A. Yes.

13 Q. And could you explain for the record what the
14 retail city concept is?

15 A. In a few words, it's a very different concept
16 than retailing of today. And not perfected but lots of
17 discussion going on about it, lots of outside consultants
18 involved.

19 Q. Under the retail city model would there be
20 department stores such as J.C. Penney within the retail
21 city?

22 A. None of that has been really concluded or
23 solidified. It's -- it's, you know, concepts. There's a
24 lot of concepts that involve and that's what retail city
25 is.

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Q. Would all the employees under the retail city concept be employed -- strike that.

If Destiny USA were to use the retail city concept, would all the people working at Destiny USA be direct employees of Destiny USA?

MR. MURPHY: Objection.

A. It's, you know, under research right now and it could be; probably would but not concluded.

Q. Did you have a meeting with Mr. Freddo in the beginning of September of this year?

A. Yes.

Q. And did that meeting take place here in Clinton Square -- I mean Clinton Exchange?

A. I can't remember where it was. I think -- I think we were here and then we were at our conference center.

Q. Is the conference center at the Carousel Center mall?

A. No. It's at -- halfway between Rochester and Syracuse.

Q. Did -- was there a presentation made to Mr. Freddo at that meeting?

A. I don't believe there was a presentation. I don't recall.

1
2 Q. Did you have any discussions with him
3 concerning the retail city concept at that meeting?

4 A. Oh, we discussed a lot of things. You know,
5 we had a lot of visions we're trying to put together and
6 I think one of them was retail city, sure.

7 Q. Did you indicate to Mr. Freddo that if
8 J.C. Penney wasn't willing to agree to the Destiny USA
9 vision, that you would ask the City of Syracuse
10 Industrial Development Agency to condemn the entire
11 leasehold interest of J.C. Penney at the Carousel Center
12 mall?

13 A. I don't recall that.

14 Q. You don't recall whether you said that or not?

15 A. I don't believe I said that.

16 Q. Did you have any discussions with Mr. Freddo
17 about making requests to the City of Syracuse Industrial
18 Development Agency to condemn interests held by
19 J.C. Penney?

20 A. I don't have any control over the
21 condemnation.

22 Q. Isn't it true that Destiny USA has been
23 requesting that the City of Syracuse Industrial
24 Development Agency commence proceedings under the Eminent
25 Domain Procedure Law against J.C. Penney?

1
2 A. Let me take you back to the beginning. The
3 thing that started this expansion was a request from this
4 community. They had just received a research report that
5 they spent several hundred thousand on and the end -- the
6 ending conclusion was that the only thing you had here
7 that could attract tourism was Carousel.

8 County executive came in and asked me if I
9 would be willing to do that and I said, we don't have any
10 plans for that right now and we're really tied up in
11 other places, as far as I know, and he said, you got to
12 do it. The community very badly needs it. I said, it's
13 complicated and we are very busy other places. And he
14 said, let me talk to the economic development people, and
15 he came back to me and he said, what -- you know, we need
16 to have this happen. This is for the community. It's a
17 public-purpose project. Can you look at it that way?

18 At the time I wasn't quite certain what a
19 public-purpose project was but I did learn as the process
20 went on and every court upheld it, so I tried to
21 accommodate our community as they needed economic help.

22 Q. You've done other expansions of malls in which
23 J.C. Penney was located already, correct?

24 A. Hmm, mm.

25 Q. You negotiated with J.C. Penney to get their

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consent to those mall expansions?

A. Yes.

Q. And have you always been successful in getting their consent?

A. No.

Q. Where were you not successful?

A. I don't know. I know we weren't.

Q. In working with J.C. Penney did you typically have to give them some sort of inducement to obtain their consent to a mall expansion?

A. You know, I don't recall.

Q. Well, did you, for example, ever agree to money for re-laying their store after a mall expansion?

A. I don't recall.

Q. Did you ever give them particular updated entrances into the store?

MR. MURPHY: Objection.

A. I don't recall.

Q. Do you recall any inducements at all?

A. I don't recall. I just don't.

Q. Do you know why the decision was made to have the City of Syracuse Industrial Development Agency adopt a resolution authorizing a condemnation of certain provisions of the J.C. Penney lease requiring

1 J.C. Penney's approvals to alteration of the Carousel
2 Center mall?
3

4 A. Please do that again.

5 Q. Sure.

6 MR. PREMO: If we could read it back.

7 (Whereupon, the pending question was then
8 read back by the Reporter.)

9 THE WITNESS: Could you read it again?

10 (Whereupon, the pending question was then
11 read.)

12 MR. MURPHY: Objection.

13 A. I'm not familiar with it, the resolution or
14 anything.

15 Q. Do you know that in April of 2002 the City of
16 Syracuse Industrial Development Agency adopted a
17 resolution that authorized condemnation of what was known
18 as Carousel Center interests which would include the
19 rights of tenants to give approvals to alterations to the
20 Carousel Center mall?

21 MR. MURPHY: Objection.

22 A. I was familiar with some type of adoption. I
23 have no recollection or was involved in any of the
24 details.

25 Q. Well, in most of your malls the anchor tenants

1
2 typically require a provision in their lease that they
3 consent to any changes to the mall; is that correct?

4 MR. MURPHY: Objection.

5 A. Yes.

6 Q. And was a decision made that that would be an
7 impediment to the Destiny USA project, if the anchor
8 tenants at Carousel Center mall still had those rights?

9 MR. MURPHY: Objection.

10 A. I don't know the answer to that question.

11 Q. But you knew in April of 2002 that SIDA was
12 taking action to potentially condemn those rights?

13 MR. MURPHY: Objection.

14 A. I have no recollection of dates.

15 Q. Do you know in general that at some time the
16 City of Syracuse Industrial Development Agency took
17 action to condemn those rights, including J.C. Penney's
18 rights?

19 A. I know they took action. What the detail was,
20 I don't know.

21 Q. Do you know why that course of action was
22 pursued instead of obtaining the consents from
23 J.C. Penney?

24 A. No.

25 MR. MURPHY: Objection.

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Q. You don't know why that was done?

A. No.

Q. Let me show you what's been marked previously as Deposition Exhibit number 18. It's a copy of a resolution from the City of Syracuse Industrial Development Agency of a meeting held in the City of Syracuse on April 30th, 2002. It was produced by the City of Syracuse Industrial Development Agency and bears Bates stamp numbers SIDA 002434 through SIDA 002451.

Mr. Congel, have you seen that document before?

A. No. Do you want me to read the whole thing?

Q. No. Well, I can point you to some things but feel free if you want to read the whole thing. Take a look at page -- the second page which is SIDA 002435.

A. Okay.

Q. And in there there's a reference to the Carousel Landing project and there's a reference to The Pyramid Companies (TPC). Do you see that reference?

A. Hmm, mm.

Q. What was the Carousel Landing project?

A. It was just a theoretical project that was envisioned and never happened.

Q. Did that project then evolve into what's now

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known as Destiny USA?

A. No.

Q. That project was set aside?

A. Yeah.

Q. Take a look at the next page, SIDA 002436, and I'm trying to show you the definitions of some phrases. There's a reference to the grant of certain financial assistance to TPC.

A. Okay.

Q. Which was The Pyramid Companies, its successor or designees called "The Company." Do you see how that's defined?

A. Yes.

Q. Then go to the next page, 002437, the whereas clause, not the last one but the next-to-the-last one. Maybe if you could read that clause.

A. (Witness complies.) Okay.

Q. Then if you could read the next clause, the next one on that page.

A. (Witness complies.)

Q. That resolution refers to "The Company" as being The Pyramid Companies, its successor or designees. Did you see that reference in the document?

MR. MURPHY: It was on the prior page.

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A. Okay. I'll assume what you're saying is

3

correct.

4

Q. Would that include Carousel Center Company,

5

LP? Is that a successor assigned to The Pyramid

6

Companies?

7

MR. MURPHY: Objection.

8

A. I don't know.

9

Q. Would it be a designee of The Pyramid

10

Companies?

11

A. I don't know.

12

Q. How about Destiny USA Development, LLC?

13

A. I don't know.

14

Q. Taking a look at SIDA 002438 and the fifth

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whereas clause. It reads: "Whereas, the company has

16

requested that the agency acquire certain real property

17

interest in or affecting the existing center land within

18

the existing Carousel Center mall to the extent necessary

19

or appropriate to construct proposed modifications to

20

Carousel Center, necessary or appropriate to transfer it

21

into the Destiny USA project called the Carousel Center

22

interest."

23

MR. MURPHY: Objection. I don't believe

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the word mall was in the whereas clause.

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MR. PREMO: Let me try again, I

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apologize.

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Q. "Whereas, the Company has requested that the agency acquire certain real property interest in or affecting existing center land within the existing Carousel Center to the extent necessary or appropriate to construct the proposed modifications to Carousel Center, necessary or appropriate to transfer it into the Destiny USA project ("Carousel Center interest")."

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Do you recall someone from The Pyramid Companies making a request to SIDA to acquire interest held by tenants at the Carousel Center mall in order to allow the Destiny USA project to go forward?

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15

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A. I don't recall.

Q. Do you recall anyone telling you about that?

A. I know there was eminent domain taking place.

I don't know any of the detail.

18

19

Q. Was it your understanding the eminent domain was taking place at the request of --

20

21

A. The county --

Q. -- the Destiny USA project?

22

23

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A. I assume, to the best of my knowledge at the time, that we were following the direction of SIDA through the legislation in the county and the legislation in the city, and that was the first piece of direction we

1
2 had; that SIDA would do what was necessary, which would
3 include this, because they needed economic development
4 very desperately in this community.

5 Q. Was it your understanding that the Destiny USA
6 project would reimburse SIDA for the cost of proceeding
7 with that condemnation?

8 A. I don't recall. I was not involved in the
9 detail.

10 Q. Who would know those details?

11 A. The lawyers.

12 Q. That being Mr. Malfitano?

13 A. No. I don't believe he was involved in this
14 at all. I think we had outside counsel.

15 Q. Would it be Mr. Faucher?

16 A. Could be, yes.

17 Q. Would it be -- would Mr. Aitken know?

18 A. I don't know.

19 Q. Would Mr. Kenan know?

20 A. I don't know.

21 Q. Let me show you what's been marked previously
22 as Deposition Exhibit number 3.

23 THE WITNESS: Can we take a lunch break
24 because there is a call I have to make?

25 MR. PREMO: Why don't we do that now and

1

2 I'll ask you a question.

3 (Whereupon, a lunch recess was then
4 taken.)

5 BY MR. PREMO:

6 Q. Mr. Congel, before we went on the break I
7 handed you what had been previously marked as Deposition
8 Exhibit number 3 which was a document produced to us by
9 Carousel Center. It's entitled Destiny U.S.A.
10 presentation to GMAC regarding financing at Destiny USA,
11 phase 1, Carousel Center expansion, and it's dated
12 May 7th-8th, 2003. Have you seen this document before?

13 A. No.

14 Q. Were you ever involved in any presentation to
15 GMAC?

16 A. No.

17 Q. Did you know of a presentation being made to
18 GMAC?

19 A. No.

20 Q. Did you know that in general in 2003 the
21 Carousel Center mall expansion project was being
22 presented to various banks and finance institutions in
23 order to obtain financing?

24 MR. MURPHY: Objection.

25 A. I don't recall.

1

2 Q. Do you know who prepared this document?

3 A. No.

4 Q. Taking a look at this document, page number --
5 I'll use the Bates stamp numbers C 00454. Maybe if you
6 could just take a look at that page.

7 Mr. Congel, have you seen this document
8 before, this one page?

9 A. No.

10 Q. Were you ever involved in any discussions with
11 anyone in Destiny U.S.A. that the condemnation power
12 exercised by SIDA would provide clear benefits including
13 eliminating time otherwise required to obtain tenant
14 approvals for development?

15 A. In this -- with reference to this document?

16 Q. No, in general.

17 A. Yeah, I've heard discussions about that, yes.

18 Q. Who did you have those discussions with?

19 A. I don't recall.

20 Q. Did you personally view it as a good idea that
21 SIDA was going to condemn these rights so it would speed
22 up the process of obtaining tenant approval?

23 A. Yes.

24 Q. Did you find that in the past having been a
25 difficult process?

1

2 A. Yes.

3 Q. Were any anchor tenants more difficult to deal
4 with than others?

5 A. More difficult than Penney? No.

6 Q. Did you have any concern about the May Company
7 consenting to the expansion of the Carousel Center mall?

8 A. Didn't give it a lot of thought.

9 Q. Did you have any concern about Penney's
10 consenting to the expansion of the Carousel Mall?

11 A. Didn't give it a lot of thought.

12 Q. Going back to that same page C 000454. It
13 mentions one of the benefits of SIDA's condemnation power
14 is minimize costs associated with the relocation of
15 tenants and the negotiation/settlement process to
16 compensate tenants for rights taken. Do you recall being
17 involved in any discussions concerning that benefit?

18 A. Not directly, no.

19 Q. Do you know if any comparison was done as to
20 the cost of condemning tenants' rights to consent to the
21 expansion of the mall versus negotiating consents from
22 such tenants?

23 A. No.

24 Q. Did you have a view they would be cheaper to
25 condemn them than to negotiate?

1

2 A. Had nothing to do with my thinking, no.

3 Q. Whose thinking did it have to do with?

4 A. I don't know but that was not a factor in my
5 mind. Maybe I can explain myself, if my attorney will
6 allow it.

7 MR. MURPHY: Sure.

8 Q. Okay.

9 A. I only have one purpose here. It was not a
10 cost factor. It was a factor of getting this project
11 built for this community and for the United States of
12 America. That's all I've cared about for the last five
13 years and that's why it is taking the time that it is
14 taking to develop the technology that all of the good
15 things that come out of this project, and time is a
16 factor and ease is a factor and I have a great respect
17 and fondness for the people at J.C. Penney and especially
18 Paul Freddo, but -- all of them, because without
19 J.C. Penney I don't know where I would be today.

20 And I didn't want J.C. Penney to be hurt and I
21 wrote them a letter saying, look, I believe that you will
22 be enhanced but I will protect you from any downside, any
23 loss of profit and this is a public project. It was
24 directed by the public. It's directed by the county
25 executive, the City of Syracuse, SIDA, and I was just a

1

2 vehicle to do something good.

3

4 It was not profit motivated. I was not
5 deterred by cost. The only intent was in creating an
6 economic benefit to this community.

6

7 If I can be facetious, I did not want to go to
8 weddings in 20 different places because we are having our
9 20th grandchild. I was hoping they could find
10 opportunity here because right now, as in all Upstate
11 New York, there is a huge brain drain of our youth.

11

12 Q. In the letter you had sent to J.C. Penney
13 where you indicated that you would protect their
14 downside, didn't you also request in return that you
15 receive a share of any additional profits they would
16 make?

16

17 A. Yes, I did, only -- I'll continue and my
18 attorney may get upset. Only because I wanted them to
19 know that I felt there would be a huge upside for them.

19

20 Q. Have you made any attempts since 2002 --
21 strike that. Has Destiny taken the position that they're
22 not going to do any further negotiations with J.C. Penney
23 until such time as SIDA files a petition under the
24 Eminent Domain Procedure Law?

24

25 MR. MURPHY: Objection. You can answer.

25

A. I believe that, first of all, there were

1
2 efforts early on to sit down with J.C. Penney. I then
3 made an effort to sit down with Paul Freddo and told him
4 I would be willing to come to Dallas and meet with
5 whomever he wanted. He's the head of real state. I
6 would meet with their chairman, because of the need of a
7 project like this going forward and the fact that we had
8 agreed to protect their downside. We continue to do
9 that. There was no negotiation. There was just a
10 cut-off with that letter, can you do that?

11 But anyway, you know, I'm going to be wide
12 open with you. You know, I think it's important that
13 there's understandings and we made heavy-duty effort to
14 sit down with J.C. Penney, right up until recently.

15 Q. Have you heard any complaints from J.C. Penney
16 that they don't know the details of what the expansion of
17 the Carousel Center mall is going to be and that,
18 therefore, they can't -- they haven't been able to have
19 meaningful negotiations?

20 A. No, I have not heard that but we don't have a
21 perfected set of plans yet. We never go to Penney until
22 our plans are perfected. I did spend a lot of time with
23 Paul in a global view explaining exactly where this
24 project went, where it would be, what it meant, what I
25 thought it would mean to them from their benefit. I

1
2 didn't want them to get hurt and I, again, would be glad
3 to go down to Dallas and meet with them. I never heard
4 back from them. I -- you know, if you want to negotiate
5 with someone, when you make an offer like that, you
6 typically get a call back but we haven't.

7 Q. Wouldn't J.C. Penney be typically interested
8 in details such as what's going to happen to the loading
9 dock, their signs, their parking, their entrances and
10 similar things about the actual site plan?

11 MR. MURPHY: Objection.

12 A. You know, this plan is -- is in evolution. I
13 just wanted to -- my goal was to protect J.C. Penney
14 against any downside. Something I didn't have to do.
15 The law didn't call for it and, again, I made an effort
16 to go -- to agree to go down and meet with whomever he
17 wanted me to meet with, including his chairman. Never a
18 call back and I think that it's very telltale, the next
19 thing is that we're sitting here. I think when times are
20 right, people can resolve anything and I do. I feel a
21 huge obligation to Penney because without Penney, I don't
22 know where I would be today. They're our major anchor in
23 every project that we have. So I want to go overboard
24 with J.C. Penney. I can't go overboard with facts I
25 don't have and we have not done a thing on that site to

1

2 hurt them one drop during this whole process.

3 Q. Hasn't Destiny U.S.A. received building
4 permits for the mall expansion?

5 A. I don't know who's received building permits.
6 I don't know what entity has received building permits.
7 All I know is Carousel, Carousel owns all of that real
8 estate on the north side of Hiawatha Boulevard. They're
9 the only ones that are formally entitled to do anything.

10 Q. Some entity has received building permits to
11 start actual construction; is that correct?

12 A. Yes.

13 Q. And the construction -- why hasn't the
14 construction moved forward?

15 A. We need further approval from the City of
16 Syracuse. Syracuse is holding it up right now.

17 Q. What are the approvals you need from the City
18 of Syracuse?

19 A. To finalize -- I don't know, half a dozen
20 things. I'm not even sure what they are.

21 Q. Who would know what they are?

22 A. Probably our lawyers who are negotiating.

23 Q. Is one of the things you have to finalize
24 financing with respect to the mall expansion?

25 A. That's a hard question to answer. We already

1
2 have financing. We're in the financing engineering
3 business, as I told you earlier. We're constantly
4 watching the marketplace, refinancing. There's a lot
5 of -- the documentation you see here, because there's an
6 area that that's all they do, watch the marketplace and
7 refinance. We've done billions and billions of dollars
8 worth of refinancing and we do it all the time. It's
9 second nature to us. That's what we're doing now with
10 the city.

11 Q. What's the financing you have in place with
12 Deutsche Bank?

13 A. Yes.

14 Q. Is that the financing you're going to use for
15 the mall expansion?

16 A. Hopefully not because we have better financing
17 with Citibank. That's what we do. We try to make things
18 better and better all the time.

19 Q. Didn't the Deutsche Bank financing have
20 construction starting on September 15th of 2005?

21 A. Whenever it was, they continue to extend it.
22 They're one of our major banks. They're very
23 cooperative.

24 Q. And there's been steel purchased for this
25 project, hasn't there?

1

2 A. Yes.

3 Q. About \$15 million worth of steel?

4 A. Yes.

5 Q. It's being delivered --

6 A. As you're sitting there.

7 Q. As I'm sitting there?

8 A. That's right.

9 Q. It's being delivered across Hiawatha
10 Boulevard?

11 A. Where --

12 Q. From the mall?

13 A. I don't know where they're delivering it to.

14 (Exhibit 78, 7/6/01 agreement between
15 SIDA and Pyramid Company of Onondaga, marked
16 for identification this date.)17 Q. Let me show you what's been marked as Exhibit
18 number 78. It's an agreement by and between the City of
19 Syracuse industrial development agency and Pyramid
20 Company of Onondaga dated July 6th, 2001. First I'd like
21 to ask you to take a look at the last page of that
22 document and tell me if you recognize the signature on
23 the last page?

24 A. I think so.

25 Q. Do you see Mr. Kenan's signature on that page?

1

2 A. I believe that's Mr. Kenan's.

3 Q. He was authorized to sign on behalf of Pyramid
4 Company of Onondaga?

5 A. I assume so.

6 Q. He's a partner in that?

7 A. Yes.

8 Q. And is there a signature from someone from the
9 City of Syracuse industrial development agency?

10 A. There is a signature and printing underneath
11 that says Vito Sciscioli, vice-chairman.

12 Q. Were you involved at all in the negotiation of
13 this July 6th, 2001 document?

14 A. No.

15 Q. Do you have any knowledge of --

16 A. Yeah, peripheral. Nothing in detail. It was
17 my birthday and I really wasn't paying attention.

18 Q. Do you know if whether pursuant to this
19 agreement SIDA agreed to only acquire real property
20 interest at the request of Pyramid?

21 A. I have no way to answer that question.

22 Q. The only way you would answer it is go and
23 read the document and see what it says; is that correct?

24 A. I don't even know if I read it, if I would
25 understand it.

1

2 Q. Do you know anything about whether that
3 agreement provides for SIDA being reimbursed for expenses
4 with respect to condemnation actions?

5 A. I think we said earlier that they were and I
6 understood that from wherever, not this document.

7 Q. Let me show you what's been marked as
8 Deposition Exhibit number 14. It's a copy of a document
9 that was produced to us by Carousel. It's listed as
10 "draft". It has under it two columns. One is name of
11 tenant and the other is rights to be acquired in concert
12 with 800k square foot expansion plan. Have you seen this
13 document before, Mr. Congel?

14 A. No.

15 Q. Do you know who prepared it?

16 A. No.

17 Q. Did you review any similar documents?

18 A. No.

19 Q. Have you ever reviewed any listing of the
20 rights of J.C. Penney that would need to be acquired to
21 allow the Destiny U.S.A. plan to go forward?

22 MR. MURPHY: Objection.

23 A. No. Am I answering too fast?

24 MR. MURPHY: Yes. Slow down just a sec.

25 Q. Do you know if there's been a proposed new

1
2 agency agreement to replace the July 6th, 2001 agreement
3 which has been marked as Exhibit number --

4 MR. MURPHY: 78.

5 Q. -- 78?

6 A. Do I know if there's a new one?

7 Q. If there's a new one proposed by the City of
8 Syracuse Industrial Development Agency?

9 A. There may have been.

10 Q. I'm sorry, I didn't hear the question (sic).
11 Did you say --

12 A. I said there may have been.

13 Q. You don't have any personal knowledge of that?

14 A. No.

15 Q. Have you had any discussions with anyone
16 concerning proposals by the City of Syracuse Industrial
17 Development Agency to amend the agency agreement?

18 A. I don't recall.

19 Q. Do you know if the City of Syracuse Industrial
20 Development Agency has asked for an amended agency
21 agreement before they'll go forward with condemnation of
22 J.C. Penney's rights?

23 A. I'm not aware of that.

24 Q. Let me show you what's been previously marked
25 as Deposition Exhibit number 70. It's a letter dated --

1
2 it's an unsigned letter dated June 3rd, 2004 to Bruce A.
3 Kenan and Michael Lorenz of Pyramid Company of Onondaga.
4 It indicates it's to be signed "very truly yours".
5 There's no signature indicated but this document was
6 produced by SIDA and bears SIDA Bates stamp numbers
7 SIDA 003150 to SIDA 003153 and ask if you'll take a look
8 at that and whether you recognize that document?

9 A. (Witness complies.)

10 Q. Mr. Congel, do you recall seeing that document
11 before?

12 A. No.

13 Q. Let me show you what's been marked as
14 Deposition Exhibit number 71. It's a letter dated
15 July 16, 2004 which was once again given to us by SIDA.
16 It appears to be from Bruce A. Kenan on behalf of Destiny
17 USA to Irwin Davis, chairman of the City of Syracuse
18 Industrial Development Agency and it bears SIDA stamps
19 SIDA 003154 through SIDA 003158 and ask you if you can
20 take a look at that document?

21 A. Do I have to read it all if I didn't ever see
22 it?

23 Q. You never saw that?

24 A. Not that I remember. I'll glance through it.

25 Q. Maybe take a look at the last page of that.

1

2 Is that Mr. Kenan's signature?

3 A. Yes.

4 Q. Do you recall having discussions in July of
5 2004, in that time frame, with Mr. Kenan about responding
6 to requests for further information from the City of
7 Syracuse Industrial Development Agency?

8 A. It's possible. I just don't remember all this
9 stuff.

10 Q. Take a look at the second page, the first full
11 paragraph. It reads since last fall (2003) we have
12 worked closely with SIDA counsel and SIDA's appraiser
13 regarding identifying and valuing Carousel Center
14 interests. Based on design information regarding the
15 first phase, J.C. Penney, Kaufmann's, Lord & Taylor and
16 Border's Book and Music have been identified to date as
17 having Carousel Center interests. Work has progressed to
18 the point where SIDA can make an offer pursuant to EDPL
19 Article 3 and to the extent needed, commence an EDPL
20 Article 4 proceeding to acquire such interest.

21 Do you recall knowing that the Destiny USA
22 team was working with SIDA and SIDA's counsel in
23 appraising the Carousel Center interest?

24 MR. MURPHY: Objection.

25 A. No, I don't have any recollection.

1

2 Q. Do you recall being told that Destiny USA was
3 urging SIDA to move forward with condemning interest held
4 by J.C. Penney in July of 2004?

5 MR. MURPHY: Objection.

6 A. I don't recall.

7 Q. Going down to the last paragraph of that
8 sentence, it says in the first sentence, "at this time we
9 are not actively negotiating with any of the tenants
10 whose interests are to be condemned. We have engaged in
11 negotiations in the past to no avail. Do you see that?

12 A. Yes.

13 Q. The next sentence, "in our experience none
14 will engage in any serious dialogue until SIDA commences
15 the EDPL Article 4 proceeding." Do you see that
16 sentence?

17 A. Yes.

18 Q. Then it goes on to state, "as you are
19 undoubtedly aware, J.C. Penney, Kaufmann's and Lord &
20 Taylor are pursuing litigation to prevent the
21 transformation of Carousel Center into Destiny USA. This
22 litigation is requesting that a court enforce the very
23 interests which SIDA has determined to condemn. They
24 have each communicated they will continue to pursue such
25 litigation, although each has acknowledged SIDA's

1

2 unqualified power to eliminate these rights pursuant to
3 condemnation. We intend to contact them once SIDA has
4 commenced the EDPL Article 4 proceeding to acquire the
5 Carousel Center interest."

6

Was there a decision made in July of 2004 that
7 Destiny USA wouldn't negotiate any further with
8 J.C. Penney until the Article 4 proceeding was commenced?

9

MR. MURPHY: Objection.

10

A. I'm not familiar with that.

11

Q. There's an indication in the next sentence,
12 "to date we have had discussions with Border's and expect
13 to continue to do so." Do you know of any discussions
14 with Border's?

15

A. No.

16

Q. Do you know the result -- you don't know of
17 any results of reaching a decision with Border's?

18

A. No.

19

Q. Going to page 4 out of 5 of that letter.

20

A. Same letter?

21

Q. Yes, please.

22

A. The pages aren't numbers.

23

Q. On the top.

24

A. At the top? Okay. Okay.

25

Q. It goes, "lastly, we again request that SIDA

1

2 proceed as soon as possible to commence --"

3 A. Where are you starting?

4 MR. MURPHY: At the bottom.

5 Q. "Lastly, we again request that SIDA proceed as
6 soon as possible to commence the EDPL proceedings". You
7 see that sentence?

8 A. Yes.

9 Q. Do you know how many times prior to July 16,
10 2004 Destiny USA had requested that SIDA proceed with the
11 EDPL Article 4 proceedings?

12 A. I had no idea.

13 Q. Were you aware such requests were being made?

14 A. I don't recall.

15 Q. Do you recall that you knew that Mr. Kenan was
16 making the request again in July of 2004?

17 MR. MURPHY: Objection.

18 A. I don't recall.

19 Q. Do you know if the request has been made since
20 July of 2004 to SIDA to commence an Article 4 proceeding?

21 A. I don't know.

22 Q. Do you know if anyone from Destiny USA has
23 been involved in the drafting of petitions for an Article
24 4 proceeding?

25 A. Do I know?

1

2 Q. Yes.

3 A. I don't believe I know.

4 Q. Have you ever reviewed any draft petitions for
5 an Article 4 proceeding?

6 A. No.

7 Q. Are you aware that in January 2004 SIDA had
8 had an appraiser review the J.C. Penney store for the
9 purpose of doing an appraisal report under the Eminent
10 Domain Procedure Law?

11 A. No.

12 Q. Have you ever received any information of any
13 report or conclusions from an appraiser for SIDA?

14 A. No.

15 Q. Have you ever had any discussions with anyone
16 from SIDA about an offer of compensation to J.C. Penney
17 for the acquisition of its approval rights?

18 A. Not that I recall.

19 Q. Do you ever recall anybody telling you what
20 dollar amount was being considered?

21 A. No.

22 Q. Let me show you what's been marked as
23 Deposition Exhibit number 72, it's a letter dated
24 July 29, 2005 from J.C. Penney signed by Dale McDonough,
25 J.C. Penney real estate asset manager director, to Irwin

1

2 Davis, chair of the Syracuse Industrial Development
3 Agency.

4 Have you seen this letter before, Mr. Congel?

5 A. I may have.

6 Q. The letter indicates that there was a copy
7 sent to you. Do you know if you received a copy?

8 A. I didn't realize that. Yeah, because the
9 letter looked familiar to me.

10 Q. Taking a look at the letter that Mr. McDonough
11 sent, and the third full paragraph, last sentence, "the
12 only message J.C. Penney has received from Pyramid is
13 that if J.C. Penney will not outright agree to whatever
14 plans Pyramid has in regard to the Destiny USA project,
15 there is nothing to discuss." Do you see that?

16 A. Where is that? In the third paragraph down?

17 MR. MURPHY: Where is it again?

18 MR. PREMO: The second part of the third
19 paragraph, starts off with "the only message
20 J.C. Penney has received."

21 MR. MURPHY: Right here.

22 A. Yeah, that's not true. It's absolutely not
23 true.

24 Q. It's not true?

25 A. No, because I told Paul I would come out there

1

2 and meet with him.

3 Q. The next sentence reads "Pyramid has never
4 shared any final plans with J.C. Penney's"; is that
5 correct?

6 A. We don't have final plans.

7 Q. But someone has pulled a building permit?

8 A. You don't have to have final plans to pull a
9 building permit. You can get foundation plans; you can
10 get structural plans; all kinds of plans you can get.
11 There is a lot that has to go into a set of plans to
12 complete a project, yes.

13 Q. Do you know when you'll have final plans ready
14 for the Carousel Center mall expansion?

15 A. No, I don't.

16 Q. Taking a look at the third paragraph -- excuse
17 me, the fourth paragraph of that, starts off "Pyramid has
18 also advised J.C. Penney that part of Pyramid's plan is
19 to utilize its own employees to run the J.C. Penney store
20 and to share in the profits, although J.C. Penney's
21 expected to furnish all merchandise at J.C. Penney's sole
22 cost". Do you see that sentence?

23 A. Yes.

24 Q. Was that statement made by Pyramid to
25 J.C. Penney?

1
2 A. As far as I'm concerned, no, and this comes
3 back from a discussion, I assume, with Paul Freddo,
4 because we discussed what we were thinking about doing,
5 visualizing, talking, saying we have to do something new
6 with retail because it's getting mundane. Malls are
7 getting beat up pretty badly by these new centers that
8 they're building right now and we have to make it
9 exciting. We get thousands and thousands of complaints
10 today about your service. That's the discussion we had,
11 and you ought to think about this because it -- it's a
12 model and it could be a research store for you. Very
13 nice conversation.

14 Q. The new sorts of shopping centers you're
15 talking about are sometimes called power centers?

16 A. Lifestyle centers.

17 Q. Lifestyle centers?

18 A. That's right.

19 Q. And they tend to have department stores that
20 are kind of more of a stand-alone structure?

21 A. Yeah.

22 Q. You park right in front of the store and go
23 right inside?

24 A. Hmm, mm.

25 Q. Versus an enclosed regional mall?

1

2 A. Pretty much so, yes.

3 Q. And that seems to be where retail is heading,
4 in your view?

5 A. Yes.

6 Q. And is one of the factors there that the
7 customers are looking for convenience, access to the
8 department stores?

9 MR. MURPHY: Objection.

10 A. No, I don't think so. I don't think it's an
11 access thing at all. I think it's a presentation and
12 it's something different, and I think when competition is
13 nipping at your Achilles tendon, you have to do something
14 about it. That's what Paul and I were talking about.

15 Q. Let me show you what's been marked as
16 Deposition Exhibit number 74. It's a letter dated
17 August 19, 2005 from Bruce A. Kenan on behalf of Destiny
18 USA to Dale McDonough at J.C. Penney. The stamp
19 indicates it actually comes from the J.C. Penney Real
20 Estate Department with a copy to Mr. Davis as chairman.
21 Have you seen this letter before?

22 A. May have. I can't tell. Sometimes I glance
23 at these things if it comes across my desk. Most of the
24 time I don't.

25 Q. At the bottom of the second paragraph there's

1

2 a statement -- by the way, do you recognize Mr. Kenan's
3 signature --

4 A. Yes.

5 Q. -- on this document? On the bottom of the
6 second paragraph it states, as we have indicated before
7 in writing and in person, we are prepared to negotiate
8 with -- we are prepared to negotiate a mutually
9 acceptable business relationship consistent with the
10 short-term and long-term vision for Destiny USA. Do you
11 see that reference?

12 A. Yeah.

13 Q. Do you know what Mr. Kenan was referring to
14 when he said an acceptable business relationship?

15 A. I had explained to Mr. Kenan that I left it
16 with Mr. Freddo that we would be willing to go out and
17 sit down with anyone at the Penney Company and take them
18 through whatever they wanted as to where we were now.
19 We're still in somewhat of a vision stage but there is a
20 lot to talk about, and I never got a return call. And I
21 told Mr. Kenan about this. I said, isn't it funny after
22 spending a whole day with Mr. Freddo, explaining what we
23 were doing here and how I thought it would benefit them
24 and how we would protect them on their downside, that
25 this is the response that we get.

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And I think that's where this letter came from, because I was telling Mr. Kenan it's always better to negotiate than not to negotiate. That's why I spent a day with Mr. Freddo, and it was a long day, and we went through all of this and I was explaining how excited I was about this and how excited I was about it enhancing Penney and how I would cover their downside so they weren't hurt and never heard a word from Mr. Freddo.

If someone wants to negotiate, they ought to pick the phone up and be at least responsive. I agreed to drag myself out to sit down with he, his lawyers, his construction department and his chairman. That's what I offered to do and I think we got some credibility issues here with this type of response from Penney.

Q. Do you know Mr. McDonough?

A. Very well.

Q. You've dealt with Mr. McDonough in the past?

A. Yes. In fact I like him a lot and I like Mr. Freddo a lot.

Q. In Mr. Kenan's letter where it refers to an acceptable business relationship, is he referring to the retail city model?

A. No, not at all. He's talking about a discussion. When we came back, I said, I had a great

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2 meeting with Paul Freddo today or yesterday, because we
3 didn't end up until late, and I said -- I told him I
4 would come down and sit down with anybody he wanted at
5 Penney and I would bring all the information along and we
6 would sit down with his chairman who I know, and, you
7 know, with the relationship we've had over the years we
8 ought to be able to do that but nothing happened. And so
9 if they call tomorrow, it's gone; it's too late.

10 Q. Why is it too late?

11 A. It's just too late. I can't deal with people
12 that come back the way Mr. Freddo came back. I'm really
13 disappointed in him. We've been doing business for 20
14 years and it's -- you know, all of a sudden you lose
15 trust. I took a full day to spend with him and I told
16 him I would come out there again, and I told him I would
17 protect their downside, and I told him I felt they would
18 only have an upside, and I told him about all the things
19 that we were thinking about doing. I just opened up my
20 heart to the man.

21 Q. What was Mr. Freddo's reaction to the idea of
22 in essence you guaranteeing the downside but also wanting
23 a share of the profits?

24 A. You know, we didn't discuss that an awful lot
25 except that that's what we would do. If we were going to

1
2 do something. If they were afraid of a downside, don't
3 worry about I'll pay for your downside and we'll share
4 your upside and it's a negotiation. There wasn't even a
5 response to it.

6 Q. Taking a look at the last -- next-to-last
7 paragraph of Mr. Kenan's letter, "if the parties are
8 unable to reach such a mutually acceptable business
9 relationship, it is our understanding that SIDA has
10 determined to acquire interest in J.C. Penney and is
11 prepared to do so." Does that mean that unless
12 J.C. Penney agrees to the -- an acceptable business
13 relationship --

14 A. I didn't say that.

15 Q. -- you're going to ask SIDA to condemn all of
16 J.C. Penney's interest in the mall?

17 MR. MURPHY: Objection.

18 A. I didn't say it. I said we would come out and
19 negotiate with them. We didn't threaten them. But this
20 is a fact. We've been through all the courts in the
21 State to be in this position.

22 Q. What interests of J.C. Penney has SIDA
23 determined to acquire?

24 A. I don't know.

25 Q. Have you asked SIDA to condemn J.C. Penney's

1

2 entire leasehold interest if they don't agree to a
3 business relationship?

4

MR. MURPHY: Objection.

5

A. No.

6

Q. Let me show you what's been marked as --
7 previously marked as Deposition Exhibit number 73. It's
8 a letter dated, once again, August 19, 2005 from David
9 Aitken, Destiny USA, to Irwin Davis, chair, City of
10 Syracuse Industrial Development Agency. Mr. Congel, have
11 you seen that letter before today?

12

A. No.

13

Q. Were you involved in any discussions with
14 Mr. Aitken about writing a letter to Mr. Davis?

15

A. No.

16

Q. In that letter Mr. Aitken states that SIDA has
17 prepared petitions. You haven't seen those petitions,
18 have you?

19

A. Let me see this. I may have seen this letter.
20 What was your question?

21

Q. Have you seen any draft petitions from SIDA?

22

A. No. I did see this letter.

23

Q. There's an indication in there that the
24 petitions do not acquire all of J.C. Penney's leasehold
25 rights. Do you see that reference?

1

2 A. Where is that, what paragraph?

3 Q. The fourth paragraph.

4 A. Okay.

5 Q. Second sentence.

6 A. Yeah. Okay.

7 Q. Do you know if anyone from Destiny USA has
8 reviewed the petitions?

9 A. I don't know, no.

10 Q. Do you have an understanding of what SIDA is
11 proposing to acquire in those petitions?

12 A. No.

13 Q. Mr. Congel, let me show you what has been
14 previously marked as Deposition Exhibit 61, 62 and 63.
15 Exhibit number 61 is a set of drawings for the Carousel
16 Center expansion parking garage. Exhibit 62 is a set of
17 drawings for the Carousel Center expansion, site/civil,
18 and the third one is Carousel Center expansion, retail
19 architectural.

20 A. Okay. Which one do you want to start with?

21 Q. Have you seen these drawings before?

22 A. No.

23 Q. On each set of drawings who is indicated as
24 the owner?

25 MR. MURPHY: Objection.

1

2 A. Destiny.

3 Q. Is it Destiny USA Development, LLC?

4 A. That's what it says, yes.

5 Q. With the address at the Clinton Exchange?

6 A. Yes.

7 Q. You haven't seen these drawings before?

8 A. No. No, I've seen different varieties but I
9 haven't seen this set.10 Q. Do you know if these were drawings submitted
11 to the City of Syracuse in order to obtain building
12 permits?13 A. I told you I didn't see these drawings so I
14 don't know. I don't know what was submitted.15 Q. Have you seen any basic site plans for the
16 Carousel Center expansion?

17 A. Basic? Yes.

18 Q. Do you know if there's been any changes made
19 to the -- excuse me. Those drawings indicate a last
20 revision date of June 20th, 2005?

21 A. Yeah. I don't know the answer to that.

22 Q. You don't know if there's been any revised set
23 since then?

24 A. No. I don't.

25 Q. Do you have any idea how large the parking

1

2 garage is -- strike that.

3

4 Do you know the size of the proposed parking
5 garage that was to be built as part of the Carousel
6 Center expansion?

6

MR. MURPHY: Objection.

7

A. No. The answer is no anyway.

8

9 Q. Do you know where that parking garage will be
10 located in the Carousel Center site?

10

11 A. I don't know where anything is going to be
12 located but -- I guess. I'm not even sure that the
13 parking garage is going to be built there. I think
14 there's been discussion about it but I don't know.

14

15 Q. Do you know of any proposal that
16 J.C. Penney -- let me ask you this: Do you know if
17 J.C. Penney currently has a dedicated loading dock for
18 its store at the Carousel Center mall?

18

A. I'm sure they do.

19

20 Q. Do you know what the -- what's proposed to
21 happen with that in the Carousel Center expansion?

21

A. No.

22

23 Q. You don't know whether that dedicated loading
24 dock is proposed to be eliminated or not?

24

A. I don't know.

25

Q. In general do anchor tenants at malls insist

1

2 on having a dedicated loading dock?

3

MR. MURPHY: Objection.

4

5 A. The answer is typically, from my knowledge is
6 yes.

7

8 Q. And that's because of concern about such
9 things as inventory shrinkage and control of their
10 merchandise; is that correct?

11

MR. MURPHY: Objection.

12

13 A. I don't know what the reason is but they want
14 it.

15

16 Q. Do you know what the impact of the proposed
17 Carousel Center expansion will be on the number of
18 parking spaces per thousand foot of floor area?

19

MR. MURPHY: Objection.

20

21 A. I believe none.

22

23 Q. You do know that the proposed expansion is
24 848,000 square feet?

25

MR. MURPHY: Objection.

26

27 A. Approximately, yes.

28

29 Q. Do you know that the proposed parking garage
30 is about 3,300 parking spaces?

31

32 A. I'm not sure what it is.

33

34 Q. Are you familiar with the slip ramp from I-81
35 south going onto the Carousel Center site?

1

2

MR. MURPHY: Objection.

3

A. Yes.

4

Q. And do you know from your own knowledge where that traffic generally goes -- strike that.

6

Does that slip ramp have traffic go in the general area of parking in front of the J.C. Penney store?

8

9

MR. MURPHY: Objection.

10

A. I don't know the traffic counts so I can't answer that question.

11

12

Q. Do you know if there's any proposal as part of the Carousel Center expansion to move or modify the slip ramp from I-81?

14

15

MR. MURPHY: Objection.

16

A. I don't know.

17

Q. Have any tenants signed leases for the space in the proposed expansion?

18

19

MR. MURPHY: Objection.

20

A. The answer is no.

21

Q. Have any tenants given you letters of intent indicating that they would move into the proposed expansion?

23

24

MR. MURPHY: Objection.

25

A. No.

1

2 Q. Are you currently in negotiation with any
3 proposed tenants for the expansion area?

4 MR. MURPHY: Objection.

5 A. No.

6 Q. After the 848,000 square foot expansion --
7 strike that.

8 If the 848,000 square foot expansion in the
9 Carousel Center mall is built, do you intend to change
10 the name of the mall?

11 MR. MURPHY: Objection.

12 A. Not that I'm aware of.

13 Q. You don't intend to change it to Destiny USA?

14 A. Not that I'm aware of.

15 Q. Aren't there signs up at the Carousel Center
16 mall that say the future home of Destiny USA?

17 A. I haven't seen them if they are.

18 MR. PREMO: Can I have a five minute
19 break, if I could.

20 MR. MURPHY: Sure.

21 (A recess was then taken.)

22 BY MR. PREMO:

23 Q. Let's go back. Take a look at Exhibit
24 number 63 and take a look at the drawing that's marked
25 C 16620.

1

2 A. You said on 63?

3 Q. Does that indicate as part of the expansion
4 there'll be new retail area built next to the J.C. Penney
5 store?

6 MR. MURPHY: Objection.

7 A. Ask the question again, please.

8 MR. PREMO: Sure. If you could read it
9 back.

10 (Whereupon, the pending question was then
11 read back by the Reporter.)

12 A. This plan indicates, yes.

13 Q. Taking a look at -- in the same exhibit,
14 16609, does that also show the new retail area next to
15 the J.C. Penney store?

16 MR. MURPHY: Objection.

17 A. Yes, it does.

18 Q. And does it indicate a new walkway within the
19 retail area?

20 A. A new walkway? Point it out.

21 Q. New courtyard area about in the middle of that
22 area?

23 A. Oh, yes.

24 Q. Does it indicate any connection between that
25 area and the J.C. Penney store?

1

2 A. No.

3 Q. I take it you don't recall having seen these
4 drawings before?

5 A. No.

6 Q. Take a look at drawing 16616. This drawing,
7 C 16616 shows demolition drawings. Is that correct,
8 Mr. Congel?

9 MR. MURPHY: Objection.

10 A. I see it says that, "demolition notes."

11 Q. Does it indicate that the loading area for the
12 J.C. Penney store is going to be removed?13 MR. MURPHY: Objection, if you can tell
14 from these drawings.

15 A. I can't tell from these drawings.

16 Q. Let me show you what's drawing 16642. It's
17 labeled level 1 floor plan, area 3. Do you know if that
18 shows the new loading docks that will be built as part of
19 the proposed expansion?

20 MR. MURPHY: Objection.

21 A. It's hard to tell but it looks like that.
22 Looks like a lot of them. These are what you're looking
23 at right here? Right in column line --24 Q. Indicating what appear to be parking spaces
25 for trucks --

1

2 A. Yes.

3 Q. -- in the lower right-hand corner of that
4 drawing?

5 A. Hmm, mm. Yes.

6 Q. Are you able to tell from looking at this
7 where those loading docks would connect to the existing
8 J.C. Penney store?

9 MR. MURPHY: Objection.

10 A. I can't tell.

11 Q. Thank you. Let me show you what's been
12 previously marked as Deposition Exhibit number 60. It's
13 a document that was produced to us by Carousel Center.
14 The Bates numbers on it are C 16880 to C 16956. It's
15 entitled Destiny USA Overview, appears to be a print-out
16 of a Power Point presentation?

17 A. It says "confidential" on it.

18 Q. It says "confidential"?

19 A. Can I look at it?

20 Q. Yes.

21 A. Is that all right? Okay.

22 MR. PREMO: Off the record.

23 (Discussion off the record.)

24 BY MR. PREMO:

25 Q. Have you seen this document before?

1

2 A. I don't know.

3 Q. Have you gone to any presentations that were a
4 Power Point presentation entitled Destiny USA Overview?

5 A. It's highly likely but I don't know if this
6 exact one or one like it.

7 Q. Take a look at page 16925.

8 A. Okay.

9 Q. Is that a representation of the retail city
10 model we discussed earlier?

11 A. Yeah, it's a rough one but I would say it
12 indicates that -- what Destiny's thinking is on the part
13 of the Destiny project.

14 Q. If all the employees at the new Destiny USA
15 were direct Destiny employees, does that result in
16 enhanced tax credits for Destiny USA under the Empire
17 Zone program?

18 A. I don't know a direct answer to that but it's
19 likely.

20 Q. Who would know the -- do you know who would
21 know the answer to that?

22 A. It's public information.

23 Q. Taking a look at page 16928, have you seen
24 this document before?

25 A. I don't know if I've seen the document. I

1

2 understand the content.

3 Q. Is this basically, once again, the retail city
4 model?

5 A. Yes.

6 Q. And taking a look at document 16933, is that
7 once again a representation of the retail city model?

8 A. Yes.

9 Q. Now, in that document, when it references
10 "operating partners", who would that be?

11 A. Anyone that's part of the content of Destiny
12 USA.

13 Q. Would that be a retailer of certain products
14 such as The Gap?

15 A. It could be anyone, anyone who wanted to have
16 a research product to try out of. You know, all these
17 retailers have several thousand stores. This gives them
18 an opportunity if they're a forward-thinking retailer,
19 which is what we want, to try something new on one store
20 out of a thousand.

21 Q. And then you -- the proposal that's reflected
22 here is that Destiny USA would receive a 10 percent
23 return on invested capital and the remaining profits
24 would be split 75 percent for Destiny USA and 25 percent
25 for the operating partner?

1

2 A. That's what it says.

3 Q. Is that the sort of proposal you made to

4 J.C. Penney?

5 A. No, I didn't make any proposal to J.C. Penney,

6 and I want to make that very clear. I did not make any

7 proposal. I told them some of the ideas that we were

8 thinking of that I would share with him so that he could

9 think about it. So I want to make that very clear.

10 Q. Mr. Congel, we had talked before about some
11 contingencies to the 848,000 square foot expansion of the
12 Carousel Mall going forward. I believe you mentioned one
13 of the contingencies, there's some contingencies about
14 financing?

15 A. Yes.

16 Q. Is it your understanding that the City of
17 Syracuse is reviewing a financing package from Citigroup?

18 A. Yes.

19 Q. And how is that presented to the City of
20 Syracuse?

21 A. It is being presented to them as a financing
22 package.

23 Q. Are there draft or -- are there draft loan
24 documents similar to those --

25 A. I don't know --

1

2 Q. Similar to those of Deutsche Bank?

3 A. I don't know where the detail stands on that.

4 Q. Do you know if the City of Syracuse has been
5 provided any documentation?

6 A. I don't know.

7 Q. Do you know where they are in the review
8 process?

9 A. No.

10 Q. Have you received any indication of when the
11 review will be complete?

12 A. No.

13 Q. Do they have any outstanding requests to you
14 for additional information?

15 MR. MURPHY: Objection.

16 A. They probably do.

17 Q. Do you have plans to provide them any
18 additional information?

19 MR. MURPHY: Objection.

20 A. I don't know the answer to that.

21 Q. Let me show you what's been previously marked
22 as Deposition Exhibit number 66. It's entitled building
23 loan and security agreement dated December 17, 2004,
24 among Destiny USA Development, LLC, as borrower, and
25 Deutsche Bank Trust Company Americas and Deutsche Bank

1

2 Security, Inc. Take a look at that.

3

Have you seen that document before?

4

A. No.

5

Q. I believe you mentioned before in December of
6 2004 there was financing that was entered into for the
7 building expansion with Deutsche Bank?

8

MR. MURPHY: Objection.

9

A. Yes.

10

Q. Taking a look at this document, page 36 of the
11 document, SIDA -- the Bates number on it is SIDA 004012.
12 Do you see that? There's a definition of the word
13 "sponsor." Do you see that?

14

A. Yeah.

15

Q. And that includes -- the definition includes
16 Robert J. Congel, Moselle Associates --

17

A. James Tuozzolo.

18

Q. -- Bruce Kenan, Bruce Kenan Living Trust and
19 Stephen J. Congel, right?

20

A. Yes.

21

Q. Take a look at page SIDA 004034, page 58.
22 There's a reference under guaranties, indemnities,
23 paragraph 3.4, it says "sponsor will deliver to
24 administrative agent the completion guaranty, the
25 guaranty of recourse obligations, the limited payment

1

2 guaranty, the deficiency guaranty, the environmental
3 indemnity, and the litigation indemnity, and construction
4 loan guarantor shall have delivered to administrative
5 agent the parent guaranty, the parent pledge and the
6 parent account agreement." Do you see that?

7 A. Yes.

8 Q. Are the sponsors giving any guaranties with
9 respect to this loan agreement?

10 MR. MURPHY: Objection.

11 A. I don't know the answer to that.

12 Q. You don't personally know if you're giving a
13 guaranty with respect to this loan?

14 A. I honestly don't know.

15 Q. And it's my understanding that you're
16 attempting to replace this loan with one from Citigroup?

17 MR. MURPHY: Objection.

18 A. Yes.

19 Q. Will this loan from the Citigroup loan be in a
20 lesser dollar amount?

21 A. No.

22 Q. It would still be in the amount of the
23 Deutsche Bank loan?

24 A. No. We only have one -- it will be more.

25 Q. How much is the loan you're trying to obtain

1

2 from Citicorp?

3 A. It's not totally financed yet but I think it's
4 around \$40 million more.

5 Q. And the status of that loan is you're waiting
6 to hear back from the City of Syracuse?

7 A. You know, it's under negotiation.

8 Q. Do you currently have any start date for the
9 start of construction of the expansion of the Carousel
10 Center mall?

11 A. I don't know.

12 Q. Are there any contractors who are under
13 contract for that work?

14 A. No.

15 Q. Do you know if Destiny USA plans to start that
16 work before the end of the year?

17 A. Do you mean Carousel Center or the -- the
18 owner?

19 Q. Yes.

20 A. Are you talking about the owner?

21 Q. Yes.

22 A. Which is.

23 Q. Carousel Center Company, LP. Do they plan to
24 start that work before the end of the year?

25 A. I would hope so.

1

2 Q. Do you know if they planned on starting it in
3 the month of October?

4 A. That I don't know.

5 Q. Is another contingency to that work starting
6 obtaining either consents from the anchor tenants with
7 approval rights or having those rights condemned by SIDA?

8 A. I don't know the answer to that.

9 Q. Were you involved at all in the negotiation of
10 the initial lease agreement for the J.C. Penney store at
11 the Carousel Center mall?

12 A. I don't recall. That's a long time ago.

13 Q. Do you know a Raol Sunku?

14 A. Yes.

15 Q. Who is Raol Sunku?

16 A. He's another good friend at Penney's.

17 Q. Do you know what his position is at Penney?

18 A. Site planner.

19 Q. Have you worked with Mr. -- has The Pyramid
20 Companies worked with Mr. Sunku on a number of different
21 J.C. Penney stores?

22 A. Yes.

23 Q. Do you recall having any meetings with him
24 concerning the J.C. Penney store at Carousel Center mall?

25 MR. MURPHY: Objection.

1

2 A. I may have. I don't recall.

3 Q. Do you recall having any meetings with Paul
4 Freddo concerning the lease for the store at the Carousel
5 Center mall?

6 MR. MURPHY: Objection.

7 A. Would you repeat that question?

8 (Whereupon, the pending question was then
9 read back by the Reporter.)

10 MR. MURPHY: Objection. Are you talking
11 about when the lease was negotiated?

12 MR. PREMO: When the lease was
13 negotiated.

14 A. I don't recall who it was.

15 Q. Do you recall, regardless of who it was,
16 having discussions with anyone from J.C. Penney, as the
17 lease was being negotiated, concerning important features
18 that they wanted at the -- for their store at the
19 Carousel Center mall?

20 MR. MURPHY: Objection.

21 A. I don't recall.

22 Q. Do you recall anything about the -- that they
23 wanted a particular location in the mall?

24 MR. MURPHY: Objection.

25 A. Probably.

1

2 Q. Well, do you recall?

3 A. No, not directly but probably. You know,
4 they're --

5 Q. The exact location would be important to
6 J.C. Penney, correct?

7 A. Would be.

8 Q. And they would want good visibility for their
9 store, correct?

10 MR. MURPHY: Objection.

11 A. You know, it's a hard question to answer.
12 It's been a long time and every site is different.

13 Q. In the lease agreements you've had with
14 J.C. Penney over the years, do they always insist that
15 they have approval rights with respect to any changes to
16 the mall?

17 MR. MURPHY: Objection.

18 A. The leases are what the leases are. They're
19 all a little bit different and I don't get into that much
20 detail.

21 Q. Well, based on your recollection, do they
22 always insist they have a provision if there's any change
23 to the site plan as attached to the lease agreement, that
24 they give their consent to any such change?

25 MR. MURPHY: Objection.

1

2 A. There's lease provisions. What they are
3 directly, you know, I can't answer that right now.

4 Q. You know that provision is in the Carousel
5 Center lease?

6 MR. MURPHY: Objection.

7 A. Do I know?

8 Q. Yes.

9 A. Are you sure?

10 Q. I'm asking.

11 A. I can't answer questions to provisions. You
12 know, there's a lease. The lease -- whatever the lease
13 says, the lease says.

14 Q. You don't have any -- do you recall any
15 discussions with anyone from J.C. Penney concerning the
16 condemnation provisions of the lease for the Carousel
17 Center mall?

18 A. I don't, no.

19 Q. Who would have been involved from -- well, at
20 that time it was the Pyramid Company of Onondaga, in
21 negotiating the terms of the lease agreement with
22 J.C. Penney?

23 A. Could have been one of the attorneys. It
24 could have been -- I don't really know right now. Could
25 have been an outside attorney. Could have been -- I

1

2 don't know.

3

MR. PREMO: Let's mark this as the next
Exhibit 79.

4

5

(Exhibit 79, J.C. Penney lease, marked
for identification this date.)

6

7

Q. Let me show you what's been marked as
Deposition Exhibit number 79. It's a copy of the entire
lease agreement between the Pyramid Company of Onondaga
and J.C. Penney Company, including the rent riders and
amendments to the agreement, including the second
amendment of lease. I would note that a copy of this
document has been attached to various pleadings where the
financial terms have -- were taken out. This one has all
the terms in it, and just ask you to take a look at that
document.

12

A. Where do you want me to look?

13

Q. I guess have -- do you recall having seen the
J.C. Penney lease before?

14

15

A. I don't recall. I don't even know who signed
it.

16

17

Q. I'll tell you now.

18

A. Okay.

19

Q. Taking a look at page 55 of the lease
agreement, does it indicate that Marc Malfitano signed on

20

1

2 behalf of Pyramid Company of Onondaga?

3 A. Yes.

4 Q. And that he signed as a general partner?

5 A. Yes.

6 Q. And I take it Mr. Malfitano was the general
7 partner of the Pyramid Company of Onondaga in January of
8 1990?

9 A. I would assume so.

10 Q. Do you know -- Mr. Malfitano no longer works
11 for The Pyramid Companies; is that correct?

12 A. Right.

13 Q. When did he leave?

14 A. Several years ago.

15 Q. And does he have an interest in any of the
16 partnerships --

17 A. The only one I know about is that he doesn't
18 in this one.

19 Q. Now, there came a time when this lease
20 agreement was assigned from the Pyramid Company of
21 Onondaga to Carousel Center Company, LP?

22 A. I can't help you there.

23 Q. You don't recall that?

24 A. No.

25 Q. You don't recall any negotiations or

1

2 discussions concerning the provisions of this lease
3 agreement with J.C. Penney?

4 A. No.

5 Q. Would Mr. Malfitano have been someone who
6 would have negotiated the provisions of these on behalf
7 of The Pyramid Company?

8 A. I don't know that.

9 Q. How about Mr. Michael Shanley?

10 A. I don't know that either.

11 Q. How about Mr. Kenan?

12 A. I don't know.

13 Q. Let me show you what's been marked as --
14 previously as Deposition Exhibit number 64. It's a
15 letter from John A. Bartolotti. Sound pretty close?

16 A. A lot closer than Tuozzolo.

17 Q. AIA who's a partner in Dal Pos Architects, LLC
18 to George Mezey at Destiny USA. Have you seen that
19 document before?

20 A. No.

21 Q. At the end of the -- at the bottom of the last
22 page there is -- excuse me, the bottom of the first page
23 it states "level 1 has been established to line with
24 level 1 of the existing Carousel Center at elevation 18
25 feet 0 inches and level 2 is established at elevation 42

1

108

2 feet 0 inches which is 6 feet higher than the existing
3 Carousel Center level 2." Do you know anything about the
4 issue of the elevations --

5 A. No.

6 Q. -- being different? In the beginning of this
7 letter from Mr. Dal Pos, there's a reference to there
8 being a 6,046 car open parking structure. Do you see
9 that on the first paragraph of the letter?

10 A. First paragraph.

11 Q. Yes.

12 A. Yes, I see it.

13 Q. Do you know if that was the proposal, the plan
14 as it existed in December of 2004?

15 A. Could have been. It's a work in process.

16 Q. Do you know what the proposal is for how large
17 the parking garage is now?

18 A. No.

19 Q. Would you have to look at the drawings to
20 figure that out?

21 MR. MURPHY: Objection.

22 A. Yeah. I don't know and I don't know why it's
23 a factor.

24 (Discussion off the record.)

25 BY MR. PREMO:

1

2 Q. Is there anybody from Destiny USA who's the
3 point person for dealing with the City of Syracuse
4 Industrial Development Agency

5 A. It depends on the topic and we have outside
6 attorneys that handle a great deal of it.

7 Q. How about the topic being the condemnation of
8 tenants' approval rights?

9 A. There's attorneys involved in that.

10 Q. How about Mr. Aitken, would he be a point
11 person for that?

12 A. No. No, I mean he's -- he has no authority.
13 I mean, this is being handled by attorneys. That's the
14 big scourge of this world right now.

15 Q. Which attorney in particular?

16 A. It would probably be Kevin's law firm.

17 Q. Would that be once again Mr. Faucher or --

18 A. Probably.

19 Q. Was there a Mr. Kuracina involved at one
20 point?

21 A. Yeah, there's several.

22 Q. Was he involved at one time in drafting
23 resolutions for the Syracuse Industrial Development
24 Association?

25 A. I don't know exactly what they do. There's

1

2 several attorneys involved.

3 Q. As we -- well, let me ask you this: Do you
4 know if there are final plans for the Carousel Center
5 mall expansion of 848,000 square feet?

6 A. I know there's not. There's permittable plans
7 but they're a long way from finite plans as far as lots
8 of parts of it.

9 Q. Do you have any intention in sharing any final
10 plans with J.C. Penney?

11 MR. MURPHY: Objection.

12 A. Well, you know, I -- I don't know the answer
13 to that. I'll have to get legal advice.

14 MR. PREMO: That's all I have.

15 MR. MURPHY: I have no questions.

16 MR. PREMO: Thank you very much for your
17 time.

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3 STATE OF NEW YORK

4 ss.

5 COUNTY OF ONONDAGA

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CERTIFICATE OF WITNESS

8 I, Robert J. Congel, hereby certify that I have read

9 the foregoing transcript of my deposition taken

10 September 29, 2005, at Syracuse, New York, pursuant to

11 the applicable rules of Civil Procedure, and that the

12 foregoing 110 of pages of transcript are in conformity

13 with my testimony given at that time (with the exception

14 of any corrections made by me, in ink, and initialed by

15 me on the attached errata sheet).

16

Robert J. Congel

17

18 STATE OF NEW YORK

19 COUNTY OF ONONDAGA

20 SUBSCRIBED AND SWORN to before me, the undersigned

21 authority on this the ____ day of _____, 20__.

22

23 Notary Public in and for

24 _____ County, State of New York

25 My Commission Expires _____

REPORTER'S CERTIFICATE

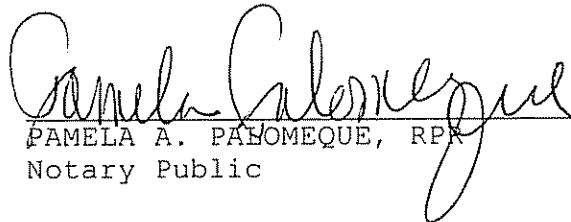
I, PAMELA PALOMEQUE, Court Reporter and
Notary Public, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken;

I further certify that I am not a relative or
employee of any attorney or of any of the parties nor
financially interested in the action.


PAMELA A. PALOMEQUE, RPR
Notary Public