

Exhibit X  
to Premo  
Affidavit

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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J.C. PENNEY CORPORATION, INC.

Plaintiff,

-vs-

02-CV-1360

CAROUSEL CENTER COMPANY, LP,

Defendant.

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

Examination Before Trial of  
MICHAEL J. LORENZ, held at the offices  
of THE PYRAMID COMPANIES, Syracuse,  
New York, on September 28, 2005, before  
PAMELA PALOMEQUE, Registered  
Professional Reporter and Notary Public  
in and for the State of New York.



APPEARANCES:

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BY: KEVIN C. MURPHY, ESQ.

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\* \* \*

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\* \* \*

## R E Q U E S T S

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Q. Do you know if a document exists that lists just the members of the Destiny USA team?

A. Yes.

MS. SHIMOMURA: Mr. Murphy, we're going to request a copy of the list of just the Destiny USA team members. I'll send you a request for it.

MR. MURPHY: What date? It's dynamic and constantly changes.

MS. SHIMOMURA: The current list.

MR. MURPHY: As of today's date?

MS. SHIMOMURA: Yes.

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MR. MURPHY: Usual stips with the addition that this deposition is subject to the confidentiality agreement that's been entered into between the parties.

Otherwise -- also, we would want the opportunity for the witness to read his transcript.

Other than that, the normal stips.

MS. SHIMOMURA: Yes, normal stips.

M I C H A E L J. L O R E N Z, having been called as a witness, being duly sworn, testified as follows:

EXAMINATION BY MS. SHIMOMURA:

Q. Good morning, Mr. Lorenz.

A. Hello.

Q. My name is Kim Shimomura; I'm an attorney with Harter Secrest. I'm sure you know there's a case pending between J.C. Penney and Carousel and we're here to ask you a few questions today.

A. Okay.

Q. If you can't understand my question or you don't hear what I'm saying, just let me know and I'll be happy to repeat it or rephrase it for you. If you need a break today, just let me know and we'd be happy to do

1  
2 that.

3 A. Okay.

4 Q. I'm going to ask you say "yes" or "no" or give  
5 words in response to a question because our reporter here  
6 has a tough time with ah-ha or uh-uh or hand motions.

7 A. Okay.

8 Q. So we'll try to give verbal answers today.  
9 Also it gets conversational sometimes but I want you to  
10 be aware we do have a court reporter and she has a tough  
11 time taking two voices at once so I'm going to do my best  
12 to let you finish your answers first before I ask another  
13 question and I'll do -- hopefully you'll do your best to  
14 let me finish my question first.

15 So could you state your full name for the  
16 record, please?

17 A. Sure. My name is Michael Joseph Lorenz, Jr.

18 Q. Your address?

19 A. 5109 Waterford Wood Way, Fayetteville 13066.

20 Q. What's your date of birth?

21 A. April 25th, 1957.

22 Q. Have you ever given deposition testimony  
23 before?

24 A. No.

25 Q. Did you graduate from high school?

1

2 A. Yes.

3 Q. What year?

4 A. 1975.

5 Q. What high school did you attend?

6 A. Carmel High School in Putnam County, New York.

7 Q. Did you attend college?

8 A. Yes.

9 Q. Do you have a four-year degree?

10 A. Four-year degree.

11 Q. Where did you attend college?

12 A. SUNY Binghamton.

13 Q. What was your four-year degree in?

14 A. My four-year degree is in accounting,

15 accounting major.

16 Q. Did you do any graduate work?

17 A. No.

18 Q. Are you currently employed?

19 A. Yes.

20 Q. Where are you currently employed?

21 A. I work for Destiny USA.

22 Q. Do you know the actual name of the Destiny USA

23 that you're employed with?

24 A. No.

25 Q. How long have you been employed with this



1

2 entity?

3 A. March 2001, so what is that, almost -- not  
4 quite five years, four and a half years.

5 Q. What is your current position with Destiny  
6 USA?

7 A. I'm the chief executive officer.

8 Q. Have you been the chief executive officer  
9 since March of 2001?

10 A. No.

11 Q. What was your first position? I assume you  
12 were with the same entity though?

13 A. Yes.

14 Q. The whole time?

15 A. Yes. I was hired as a senior executive of the  
16 team with no specific title.

17 Q. How long did you continue with Destiny USA  
18 without a specific title?

19 A. Approximately three years.

20 Q. So March of '01 to March of '04?

21 A. Yes.

22 Q. In March of '04 did you acquire a title at  
23 Destiny USA?

24 A. Yes.

25 Q. Is that title CEO?

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A. Yes, chief executive officer.

Q. Between March of '01 and March of '04, in your capacity as a Destiny USA team member without a specific title, what were your duties and responsibilities?

A. Generally to work on any major aspect of the initiative that was important.

Q. Is there any more detailed description that you could give of your job during that time?

A. I worked on much of the strategy for the project, idea, the business model that supported it. I worked on some of the marketing ideas, some of the general financing structure ideas, many of the relationships that we formed with our corporate partners, the technology companies or service businesses that would help us in the development of the idea.

Q. In your capacity as the chief executive officer of Destiny USA what have been your duties and responsibilities?

A. My primary responsibility is to make sure that our group is focused on the priorities that we've established and that we're executing plans with respect to priorities on a daily basis and to assist in the strategy and contributing to the strategic level of the initiative.

1

Michael J. Lorenz

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2

Q. You mentioned that you are a team member?

3

A. Yes.

4

Q. What do you mean by that?

5

A. We have a culture whereby the people that

6

participate with us in Destiny USA work in a fairly flat

7

organizational structure and that enables us to respond

8

quickly to opportunities and activities and priorities we

9

assign and have to get responded to in a fairly open and

10

communicative environment.

11

Q. Can you tell me the names of the other team

12

members currently?

13

A. I can give you a list of those team members.

14

We have about 45 employees that are part of our team, our

15

current team.

16

MS. SHIMOMURA: Would you mark this as a

17

deposition Exhibit, please? We're starting

18

today at number 58.

19

(Exhibit 58, team member listing,

20

marked for identification this date.)

21

Q. I'm going to hand you a document that's been

22

marked Deposition Exhibit 58. Is that the document that

23

you just referred to, the list of team members?

24

A. Let me put my glasses on.

25

Q. Take your time. For the record this document

1

2 is Bates stamped C 17037 through C 17040.

3 A. Would you repeat your question?

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

6 A. So on this document there's many of the team  
7 members that work with us. Some of the folks are gone,  
8 some -- there's been some new members. It's dynamic;  
9 there's changes being made but for the most part many of  
10 these people represent the team.

11 Q. Can we refer to this team as the Destiny USA  
12 team?

13 A. Yes. There are -- there may be a couple  
14 people on here who represent and work for other entities.  
15 I notice, for example, Rob Schoeneck, he's not part of  
16 the Destiny USA team.

17 Q. Have you seen this document before,  
18 Mr. Lorenz?

19 A. No. It looks like a phone listing but --

20 Q. Do you know if a document exists that lists  
21 just the members of the Destiny USA team?

22 A. Yes.

23 MS. SHIMOMURA: Mr. Murphy, we're going  
24 to request a copy of the list of just the  
25 Destiny USA team members. I'll send you a

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request for it.

MR. MURPHY: What date? It's dynamic and constantly changes.

MS. SHIMOMURA: The current list.

MR. MURPHY: As of today's date?

MS. SHIMOMURA: Yes.

MR. MURPHY: Okay.

BY MS. SHIMOMURA:

Q. I assume you know Robert Congel?

A. Yes.

Q. Do you consider him a member of the Destiny USA team?

A. Yes.

Q. Do you know what his official position would be on the Destiny USA team?

A. He's the chairman of our company.

Q. When you refer to "our company", you mean Destiny USA?

A. Destiny USA, yes.

Q. What are his duties and responsibilities with respect to Destiny USA?

A. Bob's primary responsibility is to provide the overall vision, inspiration, motivation, encouragement for keeping Destiny USA's strategy and vision in as clear

1  
2 a state as possible, and he sets the overall direction  
3 for the things we do.

4 Q. Have you ever held a position with Pyramid  
5 Company of Onondaga?

6 A. No.

7 Q. Have you ever held a position with Carousel  
8 Center Company, LP?

9 A. No.

10 Q. Prior to March of '01, were you employed?

11 A. Yes.

12 Q. Where were you employed?

13 A. I worked for CABLExpress Technologies in North  
14 Syracuse.

15 Q. What was your position with CABLExpress  
16 Technologies?

17 A. I was the president.

18 Q. What were your dates of employment with  
19 CABLExpress?

20 A. I joined there January of 1999 through July of  
21 2000.

22 Q. Did you have any employment between July of  
23 2000 and March of 2001?

24 A. Yes; I started my own company.

25 Q. What was the name of that company?

1

2 A. Tomorrow's Vision.

3 Q. What did Tomorrow's Vision do?

4 A. I provided a variety of professional  
5 operational services to five or six companies in the  
6 community that had needs so --

7 Q. What type of --

8 A. Full range of strategy, financial marketing,  
9 executive decision making, and I worked for those  
10 businesses.

11 Q. Through Tomorrow's Vision, did you work with  
12 Destiny USA?

13 A. No.

14 Q. Did you work with the Pyramid Company of  
15 Onondaga --

16 A. No.

17 Q. -- through Tomorrow's Vision? Did you work  
18 with Robert Congel at all through Tomorrow's Vision?

19 A. Yes, I worked with Bob.

20 Q. How did you work with Mr. Robert Congel with  
21 Tomorrow's Vision?

22 A. I gave Bob input and ideas regarding personal  
23 business thinking and career transitioning leadership,  
24 expertise I had in my prior career.

25 Q. Did any of the work that you did with Robert

1  
2 Congel through Tomorrow's Vision involve Carousel Center  
3 mall?

4 A. No.

5 Q. Did it involve Destiny USA?

6 A. No.

7 Q. Why did you -- let me start over. How did you  
8 acquire your position with Destiny USA?

9 A. After having met Bob and doing the work, the  
10 consulting work I was helping him on, he offered me a  
11 position to join him full-time on this project.

12 Q. Where were you employed just prior to January  
13 of '99?

14 A. Galson Corporation located in East Syracuse.

15 Q. What was your position with Galson  
16 Corporation?

17 A. I was the president of Galson.

18 Q. What were the dates that you worked with  
19 Galson Corporation?

20 A. I was there from -- let me just think for a  
21 second. I joined October 31st, 1991 until December of  
22 1999 -- 1998, prior to going to CABLExpress.

23 Q. What does Galson Corporation do?

24 A. It's a professional engineering and consulting  
25 services company.



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2

Q. I assume you receive a paycheck for your employment with Destiny USA, correct?

3

4

A. Yes.

5

6

Q. Do you know what entity is listed as paying your salary?

7

8

A. I'm unsure. It's a Destiny USA entity. I'm unsure of the exact corporate title.

9

10

Q. When you say "a Destiny USA entity", is that a blanket title you use for a certain type of company?

11

A. No, we have --

12

MR. MURPHY: Object. You can answer.

13

14

15

16

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18

A. No. We have a couple different entities under the Destiny family of companies for tax reasons, so I am unsure if it's Destiny Corporation, LLC or Destiny Development Corporation, LLC. I can check on that but it's one of those entities. I'm not sure exactly of the proper name.

19

20

Q. Currently is Destiny USA planning to expand the Carousel Center mall?

21

MR. MURPHY: Objection. You can answer.

22

23

24

25

A. Is Destiny USA planning to expand -- Destiny USA is a large project. It does affect the Carousel Center site. Exactly how that expansion will get done is still unclear. There is -- that expansion that is

1  
2 between the Carousel and Destiny, that's unclear at this  
3 point.

4 Q. Is a retail expansion currently planned for  
5 the Carousel Center?

6 A. Yes.

7 Q. How many square feet, approximately, is this  
8 expansion going to be, is it planned to be?

9 MR. MURPHY: Objection. Unless I say  
10 something, if I say objection, you can go  
11 ahead and answer.

12 THE WITNESS: Okay.

13 A. Approximately 850,000 square feet of what I'll  
14 call commercial space inside the building. It's bigger  
15 than that.

16 Q. I'm going to refer to the approximately  
17 850,000 square foot expansion simply as the Carousel  
18 expansion as we go forth, just for ease.

19 A. Okay.

20 Q. What entities are involved in this Carousel  
21 expansion?

22 MR. MURPHY: Objection.

23 A. I don't know.

24 Q. Do you play a role in the Carousel expansion?

25 MR. MURPHY: Objection.

1

2 A. Not directly.

3 Q. Do you play a role indirectly with the  
4 Carousel expansion?

5 A. Yes, as it relates to what impact, if any, it  
6 would have on Destiny's plans.

7 Q. What are Destiny's plans?

8 MR. MURPHY: Objection.

9 A. Can you clarify that slightly? Destiny's  
10 plans relative to --

11 Q. You just referred to the fact that you play an  
12 indirect role in the expansion of the Carousel Mall to  
13 the extent they impact Destiny's plans. I'm just trying  
14 to clarify what you meant in that answer.

15 A. Okay. Destiny is a much bigger, larger  
16 concept to embody many different elements beyond what the  
17 shopping center would be inclusive of, so my focus, my  
18 primary focus is in that area of overseeing the  
19 development and thinking around that multi-billion dollar  
20 idea.

21 Q. You said earlier that you -- I believe you  
22 said earlier that you participated in some of the  
23 financing aspects for Destiny USA; is that correct?

24 A. Yes.

25 (Exhibit 59, loan agreement, marked for

1

2

identification this date.)

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9

Q. Mr. Lorenz, I'm going to hand you a large document that we've marked as Deposition Exhibit 59. For the record this document is Bates stamped SIDA, S-I-D-A, 3578 through 5570. This document is entitled loan agreement, Carousel Center Company LP and German American Capital Corporation. Have you ever seen this document before, Mr. Lorenz?

10

A. No.

11

12

Q. Are you familiar with any of the parts of this document?

13

14

15

MR. MURPHY: Make sure you take enough time to look at the document. It is large and voluminous.

16

17

A. This appears to me to be the construction loan document.

18

Q. Do you know who prepared this document?

19

A. No.

20

21

Q. I'm going to ask you to look at a page that's been Bates stamped SIDA 3736.

22

23

MR. MURPHY: Down in the lower right corner.

24

A. 3736.

25

Q. Have you ever seen this page before?

1

Michael J. Lorenz

20

2

A. I can't remember. I've seen similar pages.

3

They all look the same at some point.

4

Q. Do you know who prepared this document?

5

A. No.

6

Q. Just this page? Do you see in the far bottom

7

right corner where it says Destiny USA Development, LLC?

8

A. (Nodding.)

9

Q. Have you ever heard of that entity before?

10

A. Yes.

11

Q. What does that entity do? What is its

12

function?

13

MR. MURPHY: Objection.

14

A. What do you mean? What's the purpose?

15

Q. Yeah, what is the purpose of that company?

16

A. I'm unsure.

17

Q. Do you know if Destiny USA Development, LLC

18

has a role in the Carousel expansion?

19

MR. MURPHY: Objection.

20

A. I'm unsure.

21

Q. Do you know if Destiny USA Development, LLC

22

has any employees?

23

MR. MURPHY: Objection.

24

A. I'm unsure about that.

25

Q. Have you ever heard of the company Carousel

1

2 Destiny Holdings, Inc.?

3 A. No.

4 Q. Have you ever heard of a company Carousel  
5 Center CLG, LLC?

6 A. No.

7 Q. Do you know what people, if any, make  
8 decisions for Destiny USA Development, LLC?

9 MR. MURPHY: Objection.

10 A. No.

11 Q. Do you know if Robert Congel is involved in  
12 the decision-making process for Destiny USA Development,  
13 LLC?

14 MR. MURPHY: Objection.

15 A. I don't know.

16 Q. Do you know if Bruce Kenan is involved in the  
17 decision-making process for Destiny USA Development, LLC?

18 MR. MURPHY: Objection.

19 A. I don't know that either.

20 Q. I believe you testified earlier that you had  
21 heard of this company, Destiny USA Development, LLC; is  
22 that correct?

23 A. Yes.

24 Q. What do you know about this company?

25 A. I know it's one of the Destiny USA companies.

1

2 Beyond that, I don't know specifics.

3 Q. What does that mean to you, one of the Destiny  
4 USA companies?

5 A. Well, as I mentioned earlier, we have a couple  
6 different companies that have legal names and I'm  
7 unfamiliar with them. I just never really focused much  
8 time on which entity exactly plays what role in the  
9 transactions.

10 Q. Do you know what entity is undertaking the  
11 Carousel expansion?

12 MR. MURPHY: Objection.

13 A. No.

14 Q. Is it a Destiny USA company --

15 MR. MURPHY: Objection.

16 Q. -- as you referred to them earlier?

17 A. I'm unsure.

18 Q. Do you have any reason to believe that any  
19 entity other than a Destiny USA company is undertaking  
20 the expansion of the Carousel Mall?

21 MR. MURPHY: Objection.

22 A. It's a possibility.

23 Q. Have you ever heard of the term or -- I  
24 apologize, let me start over. Have you ever heard of the  
25 company Carousel Center Company, LP?

1

2 A. Yes.

3 Q. What have you heard about this company?

4 MR. MURPHY: Objection.

5 A. Just that it's one of the entities associated  
6 with the Carousel Center.

7 Q. Do you know what people, if any, make  
8 decisions on behalf of Carousel Center Company, LP?

9 A. No.

10 Q. Do you know if Robert Congel plays any role  
11 with Carousel Center Company, LP?

12 A. I have no knowledge of that.

13 Q. Do you have any knowledge as to whether Bruce  
14 Kenan plays any role --

15 A. No knowledge, sorry.

16 Q. -- in Carousel Center Company, LP?

17 A. Sorry, no knowledge of that either.

18 Q. Have you heard of the company Pyramid Company  
19 of Onondaga?

20 A. Yes.

21 Q. And as we look at this chart that we've  
22 referenced as SIDA 3736, do you see at the very top where  
23 it says Pyramid Company of Onondaga?

24 A. Yes.

25 Q. Above that it says "partners 100 percent"?



1

2 A. Yes.

3 Q. Above that it lists a number of people and  
4 entities?

5 A. Yes.

6 Q. In your understanding are those the current  
7 partners of Pyramid Company of Onondaga?

8 MR. MURPHY: Objection.

9 A. I'm unsure.

10 Q. Are you a partner of Pyramid Company of  
11 Onondaga?

12 A. No.

13 Q. Do you know if Pyramid Company of Onondaga has  
14 any role in the Destiny -- in Destiny USA -- strike that.  
15 I apologize.

16 Do you know if Pyramid Company of Onondaga has  
17 any role in the Carousel expansion?

18 MR. MURPHY: Objection.

19 A. I have no knowledge of that either.

20 Q. Do you know whose idea it was to expand the  
21 Carousel Mall?

22 MR. MURPHY: Objection.

23 A. No.

24 Q. You spoke a little bit earlier about the  
25 company, Carousel Center Company, LP. Do you know if

1  
2 Carousel Center Company, LP has consented to an expansion  
3 of the Carousel Mall?

4 MR. MURPHY: Objection.

5 A. I have no knowledge of that.

6 Q. If one were to request Carousel Center  
7 Company, LP's consent to anything, who would they direct  
8 that request to?

9 MR. MURPHY: Objection.

10 A. I don't know.

11 Q. Have you ever heard of the company Carousel  
12 General Company, LLC?

13 A. No.

14 Q. Have you ever heard of Carousel Center  
15 Holdings, Inc.?

16 A. No.

17 Q. Have you ever heard of Carousel Enterprises  
18 Company, LLC?

19 A. No.

20 Q. I'm going to run through a long list of  
21 company names, just so that you know. I'd like to know  
22 if you have ever heard of any of these companies. Have  
23 you ever heard of Carousel Landing Company, LLC?

24 A. Yes.

25 Q. What is the purpose of Carousel Landing

1  
2 Company, LLC?

3 MR. MURPHY: Objection.

4 A. I'm unsure.

5 Q. In what context have you heard of Carousel  
6 Landing Company, LLC?

7 A. Just generally in discussions about Carousel  
8 Center.

9 Q. Can you tell me more about the nature of the  
10 discussions that linked Carousel Landing Company, LLC and  
11 Carousel Center?

12 MR. MURPHY: Objection.

13 A. Relates just to marketing material or things  
14 that were some -- as I recall, of some other entities.  
15 Nothing specific.

16 Q. Is Carousel Landing Company, LLC involved in  
17 the Carousel expansion?

18 MR. MURPHY: Objection.

19 A. I don't know.

20 Q. Do you know who holds the ownership interest  
21 of Carousel Landing Company, LLC?

22 A. No.

23 Q. Do you know if Carousel Landing Company, LLC  
24 has any employees?

25 A. I'm not sure.

1

2

MR. MURPHY: Objection. Can you keep

3

your voice up? I can't hear what you're

4

saying.

5

A. I'm unsure.

6

Q. Have you ever heard of the company Carousel

7

Management Company, LLC?

8

A. No.

9

Q. Have you ever heard of Destiny USA, Inc.?

10

A. I'm unsure.

11

Q. Have you ever heard of Destiny USA 1, LP?

12

A. No.

13

Q. Have you ever heard of Destiny USA

14

Construction Company, LLC?

15

A. No.

16

Q. What about Destiny USA Enterprises, LLC?

17

A. Not specifically.

18

Q. What about Destiny USA General, Inc.?

19

A. Not specifically.

20

Q. When you say "not specifically", what do you

21

mean?

22

A. Well, as I had mentioned previously, we have

23

some Destiny entities set up for special purposes. I'm

24

unsure exactly of the names that those companies or those

25

entities have and what, if any, activity may be in those

1  
2 companies.

3 Q. We've discussed a number of entities here  
4 today and the fact you don't know precisely what each of  
5 these companies does. Who would know what each of these  
6 companies does?

7 MR. MURPHY: Objection.

8 A. Probably our attorneys.

9 Q. Are you referring to Mr. Murphy?

10 A. I'm unsure if he would know.

11 Q. Are you referring to inhouse counsel?

12 A. No.

13 Q. Okay. What attorneys are you referring to?

14 A. We have a list of business attorneys that  
15 represent us on the Destiny company side. They would  
16 have some knowledge.

17 Q. Okay. Can you give me the name of those  
18 attorneys?

19 MR. MURPHY: Objection. Don't answer the  
20 question.

21 Q. When you say "us", are you referring to --  
22 what are you referring to?

23 A. Destiny.

24 Q. We spoke a little bit earlier about Robert  
25 Congel. To your knowledge is he a partner in Pyramid

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Company of Onondaga?

A. Yes.

Q. Do you know if there is any sort of relationship between Pyramid Company of Onondaga and Carousel Center Company, LP?

MR. MURPHY: Objection.

A. I'm unsure if there's a relationship between those two.

Q. Do you know where the offices of Pyramid Company of Onondaga are located?

A. No.

Q. Do you know where the offices of Carousel Center Company, LP are located?

A. No.

Q. Do you know where the offices of the Destiny USA entities as you have referred to them earlier are located?

A. Yes.

Q. Where are the offices of Destiny USA located?

A. The primary offices are in this building, 4 Clinton Square.

Q. When you say "the primary offices", what do you mean?

A. Well, we have space that we rent at a couple

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other places in town.

Q. Do you mean just the majority of the offices are located at the Clinton Exchange?

A. Yes.

Q. Is your office at the Clinton Exchange?

A. Yes.

Q. Where do you rent space -- where does Destiny USA rent space outside of the --

MR. MURPHY: Objection, what's the relevance of this to this litigation, which is an alleged breach of lease?

MS. SHIMOMURA: I'd like to know where are the offices all these companies are located because they're the same company for the most part.

MR. MURPHY: Well, I'll let it go but we're treading far afield from what's supposed to be a breach-of-lease litigation. You can answer the question if you know the answer.

BY MS. SHIMOMURA:

A. We rent space at the Syracuse Technology Incubator at the base of MONY Tower.

Q. Are there any Destiny USA offices located at the Carousel Mall?

1

2 A. No.

3 Q. Do you know who Scott Congel is?

4 A. Yes.

5 Q. Is he a member of the Destiny USA team?

6 A. No.

7 Q. Do you know what he does?

8 A. No.

9 Q. Do you know what entity he works for, if  
10 anything?

11 A. No.

12 Q. Do you know Steven Congel?

13 A. Yes.

14 Q. Is he a member of the Destiny USA team?

15 A. Yes.

16 Q. What is his role with the Destiny USA team?

17 A. He's a team member, along with the other folks  
18 on the list that you showed me.

19 Q. Does he have any role in particular?

20 A. No.

21 Q. What does he do in the context of the Destiny  
22 team?

23 A. He helps with our strategy regarding content;  
24 for Destiny USA, design, architectural vision for what  
25 the project could look like. He works with a lot of



1

2 our -- helping us develop relationships with design firms  
3 and other people that could play a role in the content,  
4 hotels. Primarily the activity-based aspect of Destiny  
5 USA.

6 Q. Is Bruce Kenan a member of the Destiny USA  
7 team?

8 A. Yes.

9 Q. What is his role in the Destiny USA team?

10 A. Bruce's role is to assist in the architectural  
11 aspect of the physical nature of the project as well as  
12 also contributes in the overall strategy of what we're  
13 trying to accomplish and participates in those  
14 discussions with us as well.

15 Q. Is Mr. David Aitken a member of the Destiny  
16 USA team?

17 A. Yes.

18 Q. What is his role?

19 A. David takes care of a lot of our public  
20 relations activity; also is involved with looking at the  
21 issues associated with building Destiny from a right to  
22 build and some of the technical natures associated with  
23 the property and those types of things.

24 Q. Have you ever heard the name Mark Malfitano?

25 A. Yes.

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Q. Do you know if he's currently a partner in  
Pyramid Company of Onondaga?

3

4

A. I'm unsure about that.

5

Q. Was he ever a part of the Destiny USA team?

6

A. Yes.

7

Q. What was his role with the Destiny USA team?

8

A. He, similar to the others, played a general  
department role with us, general team member role,  
participated for a short period of time in our strategy  
discussions and some of the relationships we were  
establishing with corporate partners, technology  
companies and others of that nature.

13

14

Q. I believe you said you were the CEO of Destiny  
USA; is that correct?

15

16

A. Yes.

17

Q. Mr. Robert Congel was the chairman?

18

A. Yes.

19

20

Q. What is your position in relation to Robert  
Congel's position? Does one outrank the other? How does  
that work?

21

22

MR. MURPHY: Objection.

23

A. I work for Bob.

24

Q. We can set aside this document for now.

25

A. Okay.

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2

Q. I'd like you to take a look at a document that's previously been marked Deposition Exhibit number 45.

4

5

A. Okay.

6

Q. Do you recognize this document, Mr. Lorenz?

7

A. Yes.

8

Q. What is this document?

9

A. This is an interview that I had with a reporter from Globe Street Retail earlier this year.

10

11

Q. For the record this document appears to be entitled Destiny USA, has a Destiny USA logo on the top left entitled "Destiny USA's Mike Lorenz" dated March 14, 2005. As you review this article you'll recall the discussion in the second paragraph calling the Destiny USA project America's first retail city, and it notes that you plan to run it without tenant leases; is that correct?

18

19

A. Yes.

20

Q. Who came up with the idea to run Destiny USA without tenant leases?

21

22

A. It was an idea that evolved from our team. I'm not sure it was attributable to any one individual.

23

24

Q. Was Robert Congel involved in the development of this idea?

25

1

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A. Yes.

3

4

Q. Was Bruce Kenan involved in the development of this idea?

5

A. Yes.

6

7

Q. Why do you refer to this idea as a retail city concept?

8

A. The idea of running without tenants?

9

Q. Yes.

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A. The reality of the distinction of what Destiny will be. The idea of renting without leases with our tenants refers to a single-owner model.

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Q. Can you describe the single-owner model to me?

A. Sure. Fundamentally we would own the entire structure and all of the spaces inside of the structure. We would establish a business relationship with an operator who would be paid a fee to operate that space on our behalf under their brand. We will pay them a fee based upon revenue and they would share the profits with us. When I say us, Destiny USA. We would finance the entire construction of that space as well as pay for the entire buildout of that space, furniture, fixtures and equipment. The operator would have the control over their brand, their merchandising of their product and overall how that business operated under their expertise.

1  
2 We would provide them, in addition to the facilities,  
3 with an environment of employees they would select from  
4 that would work in that environment for them and they  
5 would have direction and control over those employees and  
6 what those employees did and how they performed and would  
7 provide feedback and would be able to manage that  
8 independent of us interfering, and that would be the same  
9 model for each of the venues; dining, shopping,  
10 entertainment and hospitality.

11 Q. Have you approached any of the current tenants  
12 of the Carousel Mall with the idea of the single-owner  
13 model?

14 A. In an official capacity, no.

15 Q. So none of the stores have entered into an  
16 agreement to operate under the single-owner model?

17 A. That's correct.

18 Q. You'll see at the bottom of the first page of  
19 this exhibit it says "but under this model wouldn't it be  
20 hard to have department stores that sell a lot of  
21 different brands under one roof," and you responded "I  
22 think the department store concept is something we're  
23 still working on."

24 A. Yes.

25 Q. How does Destiny USA envision integrating

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department stores into this single-owner model?

MR. MURPHY: Objection.

A. That's unclear at this point.

Q. Have you had any discussions with anyone about how J.C. Penney particularly would be integrated into the single-owner model?

MR. MURPHY: Objection.

A. I do not know.

Q. Have you had any discussions with anyone about SIDA using the eminent domain process to implement the single-owner model?

A. I have not, no.

Q. Do you know if SIDA has been approached about using its eminent domain power to implement the single-owner model?

MR. MURPHY: Objection.

A. I'm unaware if that's happened.

Q. Does Destiny USA plan to actually implement the single-owner model?

MR. MURPHY: Objection.

A. Yes.

Q. Do you know when Destiny USA plans to implement the single-owner model?

MR. MURPHY: Objection.

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2           A.     It will be in place when it opens, when  
3     Destiny opens.

4           Q.     When we refer to "when Destiny opens", are you  
5     referring to when the approximately 850,000 square feet  
6     of the Carousel expansion opens?

7           A.     No.

8                     MR. MURPHY:  Objection.

9           Q.     How do you distinguish the Carousel expansion  
10    from Destiny USA?

11          A.     The Destiny USA project is much larger and  
12    more encompassing in scope than the 800,000 square foot  
13    expansion of the mall.  It involves hotels, entertainment  
14    and much more square footage and a lot of other  
15    entertainment elements that are not involved in the  
16    current expansion plans.

17          Q.     Just so I understand, Destiny does not plan to  
18    implement the single-owner model with the Carousel  
19    expansion?

20                     MR. MURPHY:  Objection.

21          A.     No, I thought your question was when will it  
22    be used, and I mention it will be in place when Destiny  
23    USA opens.  I'm unsure of what, if any, model  
24    modifications may occur with Carousel Center.

25          Q.     With the expansion?

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A. With the expansion of Carousel Center.

Q. Why does Destiny USA want to use the single-owner model?

MR. MURPHY: Objection. What relevance does this have to the breach-of-lease litigation?

MS. SHIMOMURA: What relevance does this have?

MR. MURPHY: What relevance does this line of questioning have to the breach-of-lease litigation?

MS. SHIMOMURA: We'd like to know what, if anything, is planned with our lease and there are different ways to figure out what's happening.

MR. MURPHY: I understand J.C. Penney might want to go on a fishing expedition but what does it have to do with the litigation that's pending in Federal Court?

MS. SHIMOMURA: I think a number of times Administrative Judge Peebles has asked both of us what is happening with us, what rights are planning to be taken, and nobody's giving any answers so we're trying to figure out the



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scope of rights.

MR. MURPHY: I would say you direct your questions to the breach-of-lease question that is currently pending. It has nothing to do with a single-owner model.

MS. SHIMOMURA: If Destiny USA and Pyramid and Carousel plan on taking our entire lease, it does have --

MR. MURPHY: There's no evidence in the record or evidence anywhere other than you read newspaper articles which are not necessarily accurately reporting events.

MS. SHIMOMURA: Are we instructing the witness not to answer any questions --

MR. MURPHY: I'm inquiring -- I'll let the -- this line of questioning go but you have to get back to what this case is about at some point in time this morning. You can -- if you could reread the question, the witness can answer.

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

MR. MURPHY: Objection.

A. We believe it's a better way to operate a

1  
2 mixed-use environment for the consumer and having one  
3 owner allows you to integrate many of the technology  
4 systems and customer service systems seamlessly between  
5 the various venues, and we also shift much of the  
6 financial risk away from the tenant to the owner by  
7 paying for all the capital necessary to build the store  
8 and all the furniture and fixtures and paying the  
9 operator a fee for what takes place in that space as well  
10 as sharing with them a high level of consumer insight  
11 which is currently unavailable to those independent  
12 tenants based upon a fragmented model that's tenant-lease  
13 driven.

14 MS. SHIMOMURA: Could we mark this as the  
15 next deposition exhibit, please.

16 (Exhibit 60, Destiny USA overview,  
17 marked for identification this date.)

18 Q. I'm handing you a document that's been marked  
19 Deposition Exhibit 60.

20 A. Thank you.

21 Q. This document is Bates stamped C 16880 to  
22 16956. It's entitled "Destiny USA Overview." Have you  
23 ever seen this document before, Mr. Lorenz?

24 A. Yes.

25 MR. MURPHY: While he looks at that, can

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you clarify the record as to the date of this document?

MS. SHIMOMURA: I don't know what the date of the document is. It's not bearing a date.

MR. MURPHY: Okay. Thank you.

A. I'm unfamiliar with this document as a document. I am familiar with much of the content which represents elements of marketing materials that we've used to explain and present our project to various audiences over time. I've never seen it assembled in this complete -- I don't remember ever seeing it assembled in this complete fashion before.

Q. This appears to be a draft document, as you'll notice a number of pages?

A. Yes, it's missing information.

Q. Do you know if there's a final document similar to this one?

A. We have hundreds of marketing documents. It's difficult to be definitive about one in particular, so I don't have an answer to that question in terms of timing here, what's missing.

Q. Do you know an approximate date of this document?

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Michael J. Lorenz

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2           A.     No. The front of the document is familiar to  
3 me. The back of the document is less familiar or  
4 unfamiliar to me.

5           Q.     I'm going to ask you to turn to the page that  
6 bears the Bates stamp C 16928.

7           A.     Okay.

8           Q.     Does that page describe the -- I believe the  
9 single-owner model that we have discussed earlier?

10          A.     Yes, it does.

11          Q.     Do you know who created this page?

12          A.     Are you referring to the content on it or the  
13 actual marketing production of it?

14          Q.     The content.

15          A.     No. It likely was the outcome of a group  
16 meeting that we had to capture the essence of this and it  
17 was converted to a marketing slide.

18          Q.     Who participated in the meeting discussing  
19 this content?

20                   MR. MURPHY: Objection.

21          A.     Unsure specifically who that would be. We've  
22 had many meetings on this topic over many months.

23          Q.     Mr. Robert Congel would have participated in  
24 this meeting; is that correct?

25                   MR. MURPHY: Objection.

1

2           A.     In a particular meeting, I'm unsure. He  
3 certainly has participated in developing and furthering  
4 the strategy of the single-owner model with us over the  
5 time frame.

6           Q.     If you turn to the page that's Bates 16933.  
7 Do you recognize this page?

8           A.     Yes.

9           Q.     Do you know who put together the content on  
10 this page?

11                   MR. MURPHY:  Objection.

12           A.     Again, I'm unsure specifically who would have  
13 done that.

14           Q.     You see in the center of the page, "operating  
15 partner receives a percent of gross revenue"?

16           A.     Yes.

17           Q.     Do you know what percentage that would be or  
18 would that vary?

19           A.     That would vary.  The accuracy of this  
20 information has been -- this is a previous draft idea of  
21 how this may work.  In terms of the numbers, the concepts  
22 are the same but the numbers are still being worked on.

23           Q.     So the numbers represented on this page, the  
24 10 percent in the center of the page and the 75 percent  
25 and 25 percent --

1

2 A. Yes.

3 Q. -- are not hard numbers currently?

4 A. That's correct.

5 Q. There are no hard numbers currently reflecting  
6 those numbers?

7 A. That's correct.

8 MS. SHIMOMURA: Off the record.

9 (Discussion off the record.)

10 (A recess was then taken.)

11 (Exhibit 61, parking garage  
12 architectural plans, marked for  
13 identification this date.)

14 (Exhibit 62, Sequence A site/civil  
15 plans, marked for identification this date.)

16 (Exhibit 63, retail building  
17 architectural plans, 5/23/05, marked for  
18 identification this date.)

19 BY MS. SHIMOMURA:

20 Q. Are you familiar with the current plans for  
21 the expansion of the Carousel Mall?

22 A. I have some knowledge of the expansion plans.

23 Q. I'm going to show you what's been marked  
24 Deposition Exhibit 61. For the record that document is  
25 entitled Carousel Center expansion parking garage

1  
2 architectural plans and the Bates stamps on these  
3 documents are C 16466 through C 16516. I'd like you to  
4 look at the page that's marked C 16475.

5 A. 16475?

6 Q. Yes. Do you know if this plan represents the  
7 current plan for the parking garage at the Carousel  
8 expansion?

9 MR. MURPHY: Objection.

10 A. I'm unsure.

11 Q. Are you familiar with the current plans for  
12 the expansion -- the Carousel Mall expansion parking  
13 garage?

14 A. No.

15 Q. Do you know how many levels the parking garage  
16 is currently planned to be?

17 MR. MURPHY: Objection, asked and  
18 answered. You can answer it.

19 A. No.

20 Q. Do you know when construction is scheduled to  
21 begin on the parking garage at the Carousel expansion, if  
22 at all?

23 A. No.

24 Q. Do you know if any portion of the J.C. Penney  
25 store at the Carousel Center mall is planned to be

1  
2 demolished in connection with building the Carousel  
3 Center expansion?

4 MR. MURPHY: Objection.

5 A. Not to my knowledge.

6 Q. Who would know when, if at all, construction  
7 on the garage will be done in connection with the  
8 expansion of the Carousel Mall, will begin?

9 MR. MURPHY: Objection.

10 A. I don't know.

11 Q. Would Robert Congel know?

12 A. No.

13 Q. Would Bruce Kenan know?

14 A. No.

15 Q. Do you know when construction is scheduled to  
16 start, if at all, on the retail portion of the expansion  
17 for the Carousel mall?

18 MR. MURPHY: Objection.

19 A. No.

20 Q. Who would know?

21 A. I'm also unsure about that.

22 Q. Do you know if there will be any entrance  
23 between the J.C. Penney store and the parking garage as  
24 planned for the Carousel Center?

25 MR. MURPHY: Objection.



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A. Don't know.

Q. I'm now handing you what's been marked as Deposition Exhibit 62 which is entitled Carousel Center expansion, Sequence A site/civil. It's Bates stamped C 16567 through 16547. I'd like you to take a look at the documents.

A. (Witness complies)

Q. Have you seen these plans before, Mr. Lorenz?

A. No.

Q. Have you ever participated in any discussions about the I-81 slip ramp that goes from I-81 south into the Carousel Mall in connection with the expansion?

MR. MURPHY: Objection.

A. No.

Q. So you don't know if the slip ramp will be impacted by the Carousel expansion, do you?

MR. MURPHY: Objection.

A. No.

Q. I'm going to ask you to take a look --

MR. MURPHY: Before we go to the next exhibit, Exhibit 62 has some pages which appear to have some yellow highlighting on them and my question is if -- I don't know if they were produced that way or if those were

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added by --

MR. MURPHY: No, they were not produced that way.

BY MS. SHIMOMURA:

Q. I'm going to ask you to take a look at what's been marked as Deposition Exhibit 63. For the record, this is Carousel Center expansion retail building architectural plans Bates stamped C 16602 through C 16704. Have you ever seen those drawings before, Mr. Lorenz?

A. No.

Q. These drawings are dated as the bid set 5/23/05. Do you know if this is the most current set of drawings for the retail expansion of the Carousel Center?

MR. MURPHY: Objection.

A. No. I'm sorry, I don't know if they are.

Q. I'm going to ask you to look at the page that's marked C 16620. Is it your understanding that there will be a retail space built as an expansion of the Carousel Mall adjacent to the J.C. Penney store?

MR. MURPHY: Objection.

A. I'm unsure. Where does Penney's start, here?

Q. For the record, Mr. Lorenz just pointed to a portion of the plans on page 16620 where the J.C. Penney

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store is located.

Do you know if the J.C. Penney store will have an entrance to the Carousel Center expansion?

MR. MURPHY: Objection.

A. I'm unsure.

Q. Do you know where J.C. Penney's loading docks are located at the current Carousel Mall?

A. No.

Q. Have you had any discussions with anyone about J.C. Penney's loading docks at the Carousel Mall?

A. No.

Q. Do you know where the loading docks will be located for the J.C. Penney store in connection with the expansion of Carousel Mall?

MR. MURPHY: Objection.

A. No.

Q. Have you had any conversations about the locations of the loading docks with the expansion of the Carousel Mall?

MR. MURPHY: Objection.

A. No.

MS. SHIMOMURA: Could you please mark that as an exhibit?

(Exhibit 64, 12/14/04 letter from

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Dal Pos, marked for identification this date.)

Q. I want to show you what's been marked as Deposition Exhibit 64. For the record it's Bates stamped C 6625 through C 6626. It's a letter on Dal Pos stationery dated December 14, 2004. Have you ever seen this letter before, Mr. Lorenz?

A. No.

Q. Have you ever heard of George Mezey?

A. Yes.

Q. Who is Mr. Mezey?

A. George Mezey was a consultant hired to help us prepare the preliminary construction program for the 800,000 square feet.

Q. Is Mr. Mezey employed by Destiny USA?

A. No, he's been a consultant, independent consultant.

Q. Is he currently a consultant for Destiny USA?

A. I'm unsure what his current status is.

Q. Were you aware -- let me start over. Are you aware of whether the retail expansion to the Carousel Mall and the current space as it is now in the Carousel Mall will have a 6 foot differential on the second floor?

MR. MURPHY: Objection.

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A. No.

Q. Do you know whether any tenants have signed leases for the Carousel expansion space?

A. No.

Q. "No", you don't know?

A. No, to my knowledge no one has signed a lease for the Carousel Center expansion.

Q. Will the Carousel Mall be known as Destiny USA after the Carousel expansion?

MR. MURPHY: Objection.

A. On its own, will the expansion on its own?

Q. Will the expansion and the space that exists now as the Carousel Mall, that grouping, will that be known as Destiny USA?

A. No, it won't.

MS. SHIMOMURA: Could we have this marked please.

(Exhibit 65, 9/1/05 website print-out, marked for identification this date.)

Q. Mr. Lorenz, I'm going to show you a document that's been marked as Deposition Exhibit number 65. For the record this document is a print-out from the Destiny USA website dated 9/1/2005. Have you ever seen this web page before, Mr. Lorenz?

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2 A. No.

3 Q. I'd like you to review this document and let  
4 me know if this document fairly describes what we've  
5 discussed earlier as your vision for Destiny USA.

6 A. Okay.

7 MR. MURPHY: Objection.

8 A. Would you please repeat the question?

9 MS. SHIMOMURA: Could we have that read  
10 back, please.

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

13 A. I think this document reflects part of the  
14 content portion of the project. It suggests it's a  
15 smaller piece of the overall vision for Destiny USA.

16 Q. Is there a date on which Destiny USA plans to  
17 begin construction for Destiny USA?

18 A. No.

19 Q. I'd like to take you back and talk a little  
20 bit about the Carousel expansion again. Bids have been  
21 solicited for the work on the Carousel expansion,  
22 correct?

23 MR. MURPHY: Objection.

24 A. I'm unsure. I'm uninvolved with that project  
25 from that level of detail.

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Q. Who would know whether bids have been solicited for the Carousel expansion?

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MR. MURPHY: Objection.

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A. Most likely the company that the bank hired to oversee the process. I'm not sure who else may know that.

7

8

Q. Do you know the name of the company that the bank hired to oversee construction?

9

10

A. No.

11

Q. Is it Hunt Construction?

12

A. No.

13

Q. Have you ever heard the name hunt construction?

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15

A. Yes.

16

Q. Do they play a role in the Carousel expansion?

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MR. MURPHY: Objection.

18

A. Yes. Early on they were involved in some of the planning aspects.

19

20

Q. Is Hunt Construction a construction manager for the Carousel expansion?

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MR. MURPHY: Objection.

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A. I'm unsure.

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Q. Is the construction for the Carousel expansion currently planned to begin on October 3rd?

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MR. MURPHY: Objection.

A. Unsure.

Q. Did Destiny USA obtain a construction loan from Deutsche Bank for \$340 million?

A. I don't know who -- what entity obtained the construction loan. There was a construction loan from Deutsche Bank for approximately \$340 million. I'm not sure what entity was involved in that transaction.

MS. SHIMOMURA: Could you mark this as a deposition exhibit please.

(Exhibit 66, 9/17/04 building and security loan agreement, marked for identification this date.)

Q. I'm going to hand you what's been marked as Deposition Exhibit 66. It is entitled building and loan security agreement dated September 17, 2004 among Destiny USA Development, LLC, Deutsche Bank Trust Company Americas and Deutsche Bank Securities, Inc. Does this document help refresh your recollection as to the entity that entered into a loan with Deutsche Bank?

MR. MURPHY: Objection.

A. I've never seen this document.

Q. Is it your understanding that Destiny USA Development, LLC entered into a loan for \$340,000 million



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with Deutsche Bank?

MR. MURPHY: Objection.

A. It's my recollection there is a \$340 million loan agreement with Deutsche Bank. I'm not sure what entity is involved. This agreement has Destiny USA Development, LLC on it but I was not involved in that transaction.

Q. Who was involved in that transaction?

MR. MURPHY: Objection.

A. I'm unsure who's involved directly with that.

Q. Is Destiny USA, if you know, seeking to replace the Deutsche Bank financing with a different type and amount of financing for the construction of the expansion?

MR. MURPHY: Objection.

A. There is a process underway to replace Deutsche Bank as the primary construction lender on the expansion, yes.

Q. Why are you seeking to replace the Deutsche Bank financing?

MR. MURPHY: Objection.

A. The primary driver of that decision is twofold: It's more capital, the new loan, and it's a more efficient structure with the pilot bonds.

1  
2 Q. Do you know if one of the requirements for the  
3 Deutsche Bank loan was that the consent of all the anchor  
4 tenants be obtained?

5 MR. MURPHY: Objection.

6 A. I'm unfamiliar with the details in the loan  
7 agreement.

8 Q. Who would be familiar with those types of  
9 details?

10 MR. MURPHY: Objection.

11 A. Probably Bruce.

12 Q. Bruce Kenan?

13 A. Yep.

14 Q. Have you had any conversations about whether  
15 SIDA will condemn lease rights held by tenants at the  
16 Carousel Mall?

17 MR. MURPHY: Objection.

18 A. Can you explain the question, if I had --

19 Q. Have you had any conversations with anyone  
20 from Destiny USA or Pyramid or Carousel discussing simply  
21 the possibility that SIDA might condemn rights held by  
22 anchor tenants at the Carousel Mall?

23 A. The topic has come up from time to time.

24 Q. Do you know whether it's currently planned  
25 that SIDA will condemn lease rights held by the anchor

1

2 tenants at the Carousel Mall?

3 A. I think that process has started and  
4 concluded, to some degree, with the exception of sending  
5 notice.

6 Q. What kind of notice?

7 A. SIDA's intent to take a lease right.

8 Q. Is it your understanding that SIDA must give  
9 this notice you referred to or negotiate the anchor  
10 tenant's consent before proceeding with construction of  
11 the Carousel expansion?

12 MR. MURPHY: Objection. Can you repeat  
13 the question.

14 (Whereupon, the pending question was then  
15 read back by the Reporter.)

16 MS. SHIMOMURA: I'm going to ask another  
17 question instead.

18 Q. Is it your understanding that SIDA must give  
19 this notice you referred to or Carousel must negotiate  
20 the tenant's consent to the Carousel expansion before  
21 construction can go forward?

22 MR. MURPHY: Objection.

23 A. I'm unsure exactly what the tenants' rights  
24 are or what the process would be before construction can  
25 begin on the expansion.

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Q. Do you know whether anchor tenants' consent to the expansion has been sought at all?

3

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MR. MURPHY: Objection.

5

6

A. I'm aware of some activity has taken place to seek that consent.

7

8

Q. Are you aware of whether J.C. Penney's consent to the expansion has been sought?

9

10

A. Yes, I believe there was an attempt made to seek that consent quite a while back.

11

12

13

Q. Do you know who, the person who would have been involved in seeking J.C. Penney's consent to the Carousel expansion?

14

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16

17

A. I'm unsure who may have been doing that. I was not involved with that, any conversations that may have taken place. There may have been more than one person. I'm unsure.

18

19

Q. Do you know whether any anchor tenants have consented to the Carousel expansion?

20

A. I'm unaware if any have consented.

21

22

23

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Q. You just mentioned earlier that you were aware SIDA had to send some sort of notice to condemn the tenants' lease rights. Do you know whether SIDA has actually sent that notice?

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A. No, I'm not aware if they sent that notice.

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MS. SHIMOMURA: I didn't hear it. Could you reread it.

(Whereupon, the last answer given was then read.)

Q. Has SIDA been requested to send the notice?

MR. MURPHY: Objection.

A. I'm unaware of that as well.

Q. Did you have any involvement in a condemnation of the tenants' lease rights?

A. A direct involvement? No. It was a topic that came up at one point a while ago that was discussed, one of our meetings, one of many things we talk about.

Q. Do you recall a particular meeting during which this was discussed?

A. No. It was a while ago. It would have been a fair amount of time.

Q. Do you recall who was involved in these discussions?

A. No.

Q. Do you recall whether Bob Congel was involved with these discussions?

A. Yes.

Q. And was he involved with these discussions?

A. At some point.

1

2 Q. Was Mr. Bruce Kenan involved with these  
3 discussions?

4 A. Yes.

5 Q. Was Mr. David Aitken involved with these  
6 discussions?

7 A. I'm unsure about David.

8 Q. I'm going to ask you to take a look at  
9 Exhibit 59 which we looked at earlier. It's the document  
10 that's entitled "loan agreement" dated December 17, 2004  
11 between Carousel Center Company and German American  
12 Capital Corporation. The Bates stamp is 3578 through  
13 3967. I'm going to ask you to turn to the page that's  
14 Bates stamped SIDA 3858. Do you recognize this document?

15 A. No.

16 Q. This page? You've never seen this page  
17 before?

18 A. No, haven't seen it.

19 Q. Have you ever participated in a discussion  
20 during which which rights in the J.C. Penney lease will  
21 be taken by SIDA?

22 MR. MURPHY: Objection.

23 A. I participated in general meetings regarding  
24 the condemnation process. As it relates to specific  
25 rights, no, I don't have any knowledge of specifically

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how that would work.

Q. So you have no knowledge of which rights in the J.C. Penney lease will be taken by SIDA?

A. I have a knowledge that the J.C. Penney lease lists a general right of approval for expansion. Beyond that, I have no idea how that whole process works per se.

Q. Do you know whether anyone's requested that SIDA condemn that general right of approval that you just referenced?

MR. MURPHY: Objection.

A. I have no knowledge of that.

Q. Have you ever seen an appraisal of the J.C. Penney store?

A. No.

Q. Are you aware of whether an appraisal of the J.C. Penney store exists?

A. No

Q. Have you been a part of any conversations during which an amount that J.C. Penney could be compensated for its lease rights was discussed?

A. Which lease rights?

Q. Lease rights that could be condemned by SIDA?

A. Generally, no. I'm familiar with the concept that there is value that needs to be paid if a right is

1  
2 taken. Beyond that, I've been uninvolved in any of that  
3 process.

4 Q. Who is involved in that process?

5 MR. MURPHY: Objection.

6 A. Directly would be our attorneys representing  
7 us in the process.

8 Q. Is Bruce Kenan involved in that process?

9 A. I'm unsure if he's involved in that process.

10 Q. Is Robert Congel involved in that process?

11 A. I'm unsure but I'm confident not.

12 MS. SHIMOMURA: Off the record.

13 (Discussion off the record.)

14 (Exhibit 67, 9/10/05 Post Standard  
15 article, marked for identification this  
16 date.)

17 BY MS. SHIMOMURA:

18 Q. I'm going to show you what's been marked  
19 Deposition Exhibit 67. For the record this document is  
20 an article that appeared in the Post-Standard on  
21 September 10th of 2005 entitled "City Hall issues  
22 Carousel expansion permits". So Mr. Lorenz, is it true  
23 that Destiny USA has obtained building permits to build  
24 the Carousel expansion and the garage associated with the  
25 Carousel expansion?



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A. Yes -- well, the permits were for -- did not include the garage permit and other than me picking the permits up, I'm unsure the entity that the permits were issued to but we could pick those permits up on Friday, night, Friday afternoon.

7

Q. You see five lines down it says, "Destiny paid \$650,000 for the five permits"?

8

9

A. Yes.

10

Q. Is that true?

11

A. Yes.

12

(Exhibit 68, Permit, int/ext demolition and reconstruction of existing covered mall building, marked for identification this date.)

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(Exhibit 69, Permit permitting construction of mall building, marked for identification this date.)

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19

Q. I show you what's been marked Deposition Exhibit 68. This document is Bates stamped C 17027 through C 17036. It's entitled "permit issued to Destiny USA permitting INT/EXT demolition and reconstruction of existing covered mall building, 1 Carousel CT" dated September 9th, 2005. Do you recognize this document, Mr. Lorenz?

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1  
2 A. I recognize the first page of the document.  
3 This appears to be a series of documents stapled together  
4 and I recognize the first page and the last page which I  
5 signed and the second-to-last page, so I -- the first,  
6 17027, and 17035 and 17036. The other documents I'm  
7 unfamiliar with.

8 Q. 17035 and 17036 --

9 A. Yes.

10 Q. -- for the record, that is the permit  
11 application and the certificate application. The three  
12 documents that you reference, the first document 17027  
13 and the last two, 17035 and 36, are those the documents  
14 that you picked up --

15 A. Yes.

16 Q. -- from the City of Syracuse? To your  
17 knowledge is this the permit that will allow demolition  
18 at the Carousel Center mall?

19 MR. MURPHY: Objection.

20 A. I picked up five permits and did so without  
21 really focusing on the details of what the permits are  
22 for. Reading it sounds like interior/exterior demolition  
23 of existing covered mall building.

24 Q. Do you know if this permit allows for a  
25 demolition of a portion of the J.C. Penney store?

1

2 A. I'm unaware of that.

3 Q. Who would know whether this permit allows for  
4 demolition of a portion of the J.C. Penney store of the  
5 Carousel Mall?

6 A. The architects.

7 Q. Who are the architects?

8 A. Dal Pos.

9 Q. Okay. Do you know when construction -- I'm  
10 sorry, let me start again. Do you know when work  
11 pursuant to this permit will begin at the mall?

12 A. No, I do not know.

13 Q. Who would know?

14 A. I don't know who would know that.

15 Q. I'd like you to turn to page 17035. You said  
16 this is one of the pages you recognize?

17 A. Yes.

18 Q. That is your signature about one-third down on  
19 the page?

20 A. Yes.

21 Q. Do you see where it says "contractor, Destiny  
22 USA"?

23 A. Yes.

24 Q. Okay. Did you fill in that space?

25 A. No.

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Q. Who filled in that space?

A. I'm unsure.

Q. Did the city fill that space in?

A. When I signed it, this had already been completed with the exception of my name and my signature.

Q. Was it completed by someone from Destiny USA?

A. I'm unsure. When I got there to the office, this is what they gave me to sign. It was already -- the package was already put together. The gentleman at the city gave it to me.

Q. Are you aware of a contractor with the name Destiny USA?

A. No.

Q. Why is Destiny USA listed as a contractor on this form?

MR. MURPHY: Objection.

A. I don't know.

Q. I'm going to show you what's been marked Deposition Exhibit 69. Do you recognize this package of documents? For the record this document is Bates stamped C 17014 through C 17026. It is "entitled permit issued to Destiny USA permitting construction three-story plus/minus 840,000 SF type 1-A covered mall building" dated September 9th, 2005. I'll repeat my question.

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Do you recognize this document we've marked  
Deposition Exhibit 69?

A. I recognize the first page, 17014, and the  
last two pages, 17025 and 17026.

Q. Again, 17025 bears your signature; is that  
correct?

A. That's correct.

Q. That document is entitled "permit application"  
and document 17026 entitled "certificate application"  
also bears your signature; is that correct?

A. Yes.

Q. Are the three pages that you just referenced,  
17016, 17025 and 26, the documents you picked up from the  
City of Syracuse?

A. Yes, they are.

Q. Were the documents in between those pages,  
were they included when you picked up those pages from  
the City of Syracuse?

A. I have no recollection of ever seeing these.  
They gave me a package of information. It may have been  
in there. I know that I had this, the first page, and  
the last two pages attached to it. The middle documents,  
I have --

Q. Do you know if this document is the permit to

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construct the retail portion of the Carousel expansion?

A. Yes.

Q. It is that permit?

A. Yes. I have no knowledge of the other.

Q. Do you know when construction pursuant to this permit will begin at all?

A. I have no knowledge of when the construction will begin.

Q. Again, would the architects know that?

A. No. Regarding when the building process will start, I don't know who would know that.

Q. Has steel -- has a company ordered steel to be used at the Carousel expansion?

A. Yes.

Q. What company ordered that steel, if you know?

A. I don't know the specific company that ordered that steel.

Q. Was it a Destiny USA company?

A. It was likely a Destiny USA company.

Q. How much steel has been ordered?

A. A lot of steel has been ordered. I'm unsure exactly the quantity. Something like 130 carloads, railroad carloads. It's 25,000, 30,000 tons, something in that order of magnitude.

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2 Q. Do you know the dollar value of the amount of  
3 steel that's been ordered?

4 A. Overall, close to \$15 million, which I think  
5 5 million or so has been on its way either -- it's in the  
6 process of getting here. The rest of it is being  
7 created.

8 Q. A portion of the steel has already been  
9 delivered; is that correct?

10 A. Yes.

11 Q. Where is the steel that's been delivered being  
12 stored?

13 A. The steel that's been delivered is being  
14 stored on the south side of Hiawatha Boulevard in the lot  
15 that's on the west side of Solar Street, across from the  
16 Hess gas station.

17 Q. Do you know what, if anything, must be done  
18 before construction can begin?

19 A. Not specifically. It's a bunch of preparation  
20 work that I think has to get done. I'm not sure exactly  
21 what those things are.

22 Q. Does the financing need to be worked out with  
23 the city before construction can begin?

24 A. Yes. SIDA needs to be a party to the  
25 financing transaction and the closing is associated with

1  
2 those loans.

3 Q. Do the rights contained in the tenants' leases  
4 have to be addressed in some manner before construction  
5 can begin?

6 A. That's my understanding.

7 Q. Do you know when the steel was ordered?

8 A. No.

9 Q. Do you have a ballpark, like a week ago, a  
10 month ago, a year ago?

11 A. Two months, two, two and a half months,  
12 something like that.

13 Q. Is there a plan for the use of the steel if  
14 the expansion isn't built?

15 A. No.

16 Q. Has Destiny USA hired people to work on the  
17 expansion?

18 A. We've hired people to work as part of our  
19 company, and it's intended that at some point they'll  
20 help out on some of the construction elements of the  
21 expansion.

22 Q. Are we talking about approximately 200 people?

23 A. We actually have received and extended  
24 official acceptances to, I think, 180 people who are  
25 starting as we speak.



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2 Q. You just referenced 180 acceptances?

3 A. Yes.

4 Q. And they're "starting as we speak" is what you  
5 just said? Are they starting employment today?

6 A. We had some start last -- this Monday and next  
7 Monday the -- Monday is the 27th. Actually the first  
8 group started the 20th of September and the group -- next  
9 group will start October 3rd and I believe the -- every  
10 two weeks after that through October.

11 Q. How many people started on September 20th?

12 A. Ten.

13 Q. What do these people do for Destiny USA?

14 A. Right now they're going through a training  
15 program.

16 Q. What will their jobs be for Destiny USA?

17 A. They will, like the rest of us, work on things  
18 that are a priority nature, ranging from helping us with  
19 our plans and marketing, development of our ideas right  
20 through the construction of anything that we undertake as  
21 a construction project, and when complete, with whatever  
22 it is we construct as relates to Destiny USA, will have  
23 an opportunity to work inside of that project.

24 Q. Are these people going to work on the Carousel  
25 expansion?

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A. That's a possibility. It's yet to be finalized.

Q. Earlier we discussed kind of that this Carousel expansion, we discussed that in separate terms as opposed to the Destiny USA project. Are these employees of the Destiny USA project or are these employees that will work on the Carousel expansion?

A. These are employees that are part of Destiny USA. They may work on the expansion. That's yet to be decided.

Q. Do you know how many people will start on October 3rd?

A. 50.

Q. And the remainder of the 180 that you referenced will start at intervals of every two weeks?

A. I think it's two or three weeks. I have to check but sometime in that time frame, short time frame.

Q. Of the 180 jobs that we just referenced, are any of those jobs contingent on the Carousel expansion being built?

A. No. Well, let -- no more than any one of us, including my own job is contingent on Destiny being built. They're here to build Destiny; that's the deal. They're getting paid now and will get paid.

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MS. SHIMOMURA: Off the record.

(Discussion off the record.)

BY MS. SHIMOMURA:

Q. Have you personally had any discussions with anyone from the Syracuse Industrial Development Agency about condemnation of Carousel Mall's tenants' lease rights?

A. No.

Q. I'm going to show you a document that has previously been marked Deposition Exhibit 18. I'm going to ask you to take a look at that and tell me if you recognize it?

A. Okay.

Q. For the record this document is Bates stamped SIDA 2434 through SIDA 2451. It's entitled Resolution of the City of Syracuse Industrial Development Agency dated April 30, 2002.

A. Do you mind repeating the question?

Q. Have you ever seen this document before, Mr. Lorenz?

A. No.

Q. Are you -- you're generally aware of the fact though that SIDA may condemn Carousel mall tenants' lease rights; is that correct?

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A. Yes, it is.

Q. When was the first time you heard of this concept?

A. I'm unsure of the date but it was a while ago. It was certainly years as opposed to months.

Q. Do you remember the context in which you first heard of this, of the fact that SIDA may condemn the Carousel Mall tenants' lease rights?

A. No. I don't recall, just a general discussion over a variety of topics at one point and someone mentioned that was a possibility.

Q. Do you know who first came up with this idea?

A. No.

Q. I believe you just mentioned that you had been a party to some discussions about the general fact that SIDA may condemn J.C. Penney's -- let me start over.

You mentioned you had been involved in some conversations during which the potential for SIDA's condemnation of Carousel Mall tenants' lease rights was discussed. Who was involved in those discussions?

A. Some of our team members; some attorneys; typically, you know, literally hundreds of people from time to time. It's difficult to keep track of all of them. It was a meeting of that nature, general planning,

1  
2 talking about what we were trying to do back then and  
3 what some of the questions or issues were.

4 Q. Who made the decision that -- let me start  
5 over. Was there ever a decision made that you're aware  
6 of that SIDA would be requested to condemn the Carousel  
7 Mall tenants' lease rights?

8 A. I don't know how that decision got made or how  
9 it actually got initiated.

10 Q. Are you aware of whether SIDA was ever  
11 actually requested to condemn the Carousel Mall tenants'  
12 lease rights?

13 A. I don't know how that process began or how  
14 that initiated.

15 Q. Have you ever heard the term "The Pyramid  
16 Companies"?

17 A. Yes.

18 Q. What does that term, The Pyramid Companies  
19 refer to?

20 A. I'm unsure. I have a definition for it.  
21 It -- I know in our particular case I've made a point  
22 with the media that we're separate from Pyramid. I've  
23 always made that point, even to today, so we get all  
24 lumped together. I don't know what it refers to.

25 Q. Have you been involved in any discussions

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Michael J. Lorenz

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2 during which the fact that SIDA will only acquire the  
3 Carousel Mall tenants' lease rights by eminent domain at  
4 Pyramid's request? Have you ever been a party to that  
5 type of conversation?

6 MR. MURPHY: Objection.

7 A. No.

8 Q. Are you aware of whether Pyramid Company of  
9 Onondaga will compensate SIDA for any costs incurred in  
10 connection with a condemnation of the Carousel Mall  
11 tenants' lease rights?

12 MR. MURPHY: Objection.

13 A. I'm unsure the details of which specific  
14 entities are involved in the process. I do know there's  
15 been conversations regarding payment that SIDA would have  
16 to make for whatever rights they took during any  
17 condemnation process.

18 Q. Will a Destiny USA entity compensate SIDA for  
19 the costs incurred during the condemnation proceed?

20 MR. MURPHY: Objection.

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

22 Q. Just so I understand, some entity whether it's  
23 Pyramid Company of Onondaga or Destiny USA entity but  
24 your belief is some entity will compensate SIDA for  
25 condemnation of the Carousel Mall tenants' lease rights?

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MR. MURPHY: Objection.

A. The only thing that I know is that SIDA has to compensate whomever they take a right from. I'm unsure exactly how SIDA does that and how the money flows between whoever's involved in that transaction, so I don't know whether it's an entity -- Pyramid entity or Destiny entity. I'm unsure how that happens.

MR. MURPHY: Would this be a good time for a break?

MS. SHIMOMURA: We can take a break here, okay.

(Whereupon, a lunch recess was then taken).

BY MS. SHIMOMURA:

Q. I'm going to hand you what's been marked Deposition Exhibit number 3. Do you recognize this document?

A. No.

Q. This document is Bates stamped C 439 through C 467. It bears the name Destiny USA at the top and it has a title of "Presentation to GMAC" dated May 7th through 8th, 2003. Have you ever seen this document before?

A. No.

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Q. Are you involved in any presentations to lenders for financing regarding the Carousel expansion?

A. No.

Q. Who is involved in --

MR. MURPHY: Objection.

Q. If you know, who is involved in presentations to potential lenders for funding for the Carousel expansion?

A. Bruce has been involved, Bruce Kenan. A few other internal people, Andrew Sussman, has been involved. Rich has been involved, Rich Pietrafesa has been involved, one of our team members. Those are the primary people.

Q. Do you see the front of this document, it says regarding financing on Destiny USA-phase 1 Carousel Center expansion?

A. Yes.

Q. Do you refer to the Destiny USA project in phases?

A. No.

Q. Do you have any idea why the Carousel Center expansion is considered phase 1 of the Destiny USA project?

MR. MURPHY: Objection.



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A. I don't know where you are.

Q. The Destiny USA on this?

A. Internally, no.

Q. Let me ask you to refer to page C 454. It's the Bates stamp at the bottom of the page. This page is entitled "unique development incentives". Have you ever seen this page before?

A. No.

Q. Have you ever participated in any conversations during which SIDA's authority to condemn provisions of tenants' leases would eliminate time otherwise required to obtain tenant approvals for expansion of the mall?

MR. MURPHY: Objection.

A. Could you restate that question, please.

Q. Have you been involved in -- let me start over. Do you see the first bullet point that's two tabs over that says "eliminate time otherwise required to obtain tenant approvals for development"?

A. Yes.

Q. Do you see that?

A. Yes.

Q. Have you been involved in any conversations during which SIDA's ability to condemn mall tenants'

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lease rights was discussed in the context of it -- the condemnation would eliminate time that would otherwise be used to obtain a tenant's approval?

A. No.

Q. Have you been involved in any discussions about the cost of SIDA's condemnation of mall tenants' lease rights?

A. No.

Q. Have you been in any conversations during which the potential cost of obtaining a tenant's consent to the mall expansion was discussed?

A. No.

Q. Have you ever been involved in the process of obtaining a tenant's right to a mall expansion?

A. No.

MR. MURPHY: Objection.

Q. Did a representative of the Pyramid Company of Onondaga approach SIDA and request that SIDA condemn the Carousel Mall tenants' lease rights?

MR. MURPHY: Objection.

A. I guess I stated it earlier, I'm unsure exactly how that process was initiated. I wasn't involved in that.

Q. I'm going to show you a document that was

1  
2 previously marked as deposition Exhibit 14 and ask that  
3 you take a look at that. This document is Bates stamped  
4 C 794 through C 795 entitled "Draft Summary of Tenants'  
5 Rights Needed."

6 I'd like you to take a look at the second page  
7 on C 795?

8 A. Okay.

9 Q. Do you recognize this document at all?

10 A. No.

11 Q. Do you see the word "draft" at the top of this  
12 page?

13 A. Yes.

14 Q. Have you ever seen a document that you believe  
15 to be the final copy of this document?

16 A. No.

17 Q. Have you ever participated in any  
18 conversations during which the exact provisions in the  
19 J.C. Penney lease that may hinder a Carousel expansion?

20 MR. MURPHY: Objection.

21 A. No, general conversations only.

22 Q. So my understanding is you're generally aware  
23 that SIDA may condemn some of the mall tenants' lease  
24 rights; is that correct?

25 MR. MURPHY: Objection.

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Q. You have a general knowledge of this topic but nothing specific; is that correct?

A. That's correct.

Q. Do you know whether anyone informed J.C. Penney that SIDA intended to condemn a portion of its lease rights?

MR. MURPHY: Objection.

A. I'm unaware if anyone informed J.C. Penney of that process.

Q. Did you participate in any discussions during which whether Carousel Mall tenants would be notified of SIDA's potential condemnation was discussed?

MR. MURPHY: Objection.

A. I do remember the topic coming up at one of our meetings, conversation about how, if SIDA took that action, tenants would be notified, and I don't recall exactly how that was resolved or whether, in fact, there was ever any communication with those tenants.

Q. Did you participate in this conversation?

A. Again, it would have been, you know, my recollection we have our team meetings from time to time and specific people, no. Generally we -- it was one of my meetings that the topic came up.

Q. You just referenced team meetings that occur

1  
2 from time to time. How often do these team meetings  
3 occur?

4 A. Well, depending upon the topic, just in the  
5 ordinary course of business we meet regularly, oftentimes  
6 multiple times during the day on a variety of things.

7 Q. How often do you meet with Robert Congel?

8 MR. MURPHY: Objection.

9 A. Can you be more specific, in terms of --

10 Q. How often do you meet with Robert Congel to  
11 discuss the Carousel expansion, if at all?

12 A. Very, very infrequently do he and I talk about  
13 the Carousel expansion.

14 Q. Could you be more specific? Did you meet once  
15 a week, once a month?

16 A. It would be hard to estimate. I would say the  
17 bulk of our relationship and time is talking about the  
18 bigger initiative called Destiny USA and a very, very  
19 small percentage of time -- and it varies. Right now  
20 there's a lot of activity going on with the city  
21 financing, comes up more often. Normally for me,  
22 virtually none of the time so it would fit into that kind  
23 of small range.

24 Q. Have you participated in any discussions  
25 during which whether J.C. Penney was aware that their

1 rights would be condemned was discussed?

2 MR. MURPHY: Objection.

3 A. Are you asking me if I was part of any  
4 conversations whether J.C. Penney knew its rights were  
5 being condemned?  
6

7 Q. (Nodding.)

8 A. No.

9 Q. Are you aware of some pile-driving activities  
10 that occurred at the Carousel Mall in I believe the fall  
11 of 2002?

12 A. I'm aware of a event that took place where we  
13 tested a pile as part of that event.

14 Q. You said "tested a pile"?

15 A. Yes. I think I saw one pile last five seconds  
16 going into the ground and then it was over.

17 Q. Do you know how many piles were driven in the  
18 ground at the Carousel Mall in the fall of 2002?

19 A. One. I don't -- one or -- that's about it.  
20 That's all I saw.

21 Q. Do you know that only one pile was driven in  
22 the ground at Carousel Mall in the fall of 2002?

23 A. No. I know that I saw one being driven. I  
24 saw one that was driven.

25 Q. You don't know whether more were driven?

2 MR. MURPHY: Objection.

3 Q. Is that correct?

4 A. That's correct.

5 Q. Do you know what entity had that pile driven  
6 in the Carousel Mall parking lot?

7 A. No.

8 Q. Do you know what people were involved in the  
9 decision as to whether a pile would be driven in the  
10 Carousel Mall parking lot?

11 MR. MURPHY: Objection.

12 A. Could you be more specific in terms of -- we  
13 had discussions about that happening as a group. I'm  
14 unsure who -- what individual said let's do that, per se.

15 Q. Were you involved in the decision as to  
16 whether piles -- a pile or piles would be driven into the  
17 Carousel Mall parking lot in the fall of 2002?

18 A. Yes.

19 Q. Was Robert Congel involved in that decision  
20 also?

21 A. Yes.

22 Q. Was Bruce Kenan involved in that decision?

23 A. Yes.

24 Q. Was David Aitken involved in that decision?

25 A. I'm unsure about David. I don't recall when

1  
2 he joined our team.

3 Q. It's fair to say at some point a decision was  
4 made --

5 A. Yes.

6 Q. -- to drive one pile at least into the  
7 Carousel Mall parking lot?

8 A. Yes.

9 Q. Were you involved in any discussions during  
10 which whether the Carousel Mall tenants' consent to that  
11 pile-driving activity would be requested was discussed?

12 MR. MURPHY: Objection.

13 A. I don't recall having that conversation.  
14 There was no intention to build anything, per se, so I  
15 don't remember that conversation.

16 Q. You said there was no intention to build  
17 anything. What was the intent of driving the pile into  
18 the Carousel Mall parking lot?

19 A. As I recall, that was the fall of the  
20 Governor's election and we were anxious to move forward  
21 with Destiny and had some ideas on how to do that, and it  
22 coincided with the Governor's re-election, and so we had  
23 an event to announce the beginning of that process where  
24 we were going to be thinking about building a hotel as  
25 the first element. However, the reason I said what I



1  
2 said is at the time the issues with the city were still  
3 unresolved regarding hotels so it really was the intent  
4 to show what we wanted to do as opposed to actually doing  
5 something.

6 Q. I'm going to ask you to take a look at what  
7 has been marked Deposition Exhibit 48. This record --  
8 this document bears the Bates stamp C 2255 through C 2256  
9 entitled "Permit has been issued to Destiny USA 1,  
10 construction of piles and pile caps at work area 'A'"  
11 dated February 10 -- I apologize, dated October 23rd,  
12 2002. Have you ever seen this document before,  
13 Mr. Lorenz?

14 A. No, I have not.

15 Q. I'd like you to look at the second page. Is  
16 that a permit application.

17 MR. MURPHY: Objection.

18 A. This looks like a permit application, yes.

19 Q. Do you see under "description of work" where  
20 it says "parking deck for Grand Destiny hotel project"?

21 A. It's actually very poorly copied except that  
22 one sentence which looks like someone wrote over it,  
23 parking deck for Grand Destiny hotel project.

24 Q. Do you know if this is the permit that was  
25 obtained to drive the pile or piles into the parking lot

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of the Carousel Center mall in the fall of 2002?

A. I do not know if this was the permit that was used for that purpose.

Q. In the fall of 2002 was it intended that a parking deck for the Grand Destiny hotel be built at the Carousel Center mall?

A. In the fall of 2002 we had plans to build a hotel; however, the time frame and process to do that was very premature at that point in time.

Q. What do you mean by "premature"?

A. Well, we had no specific plan per se and the city hadn't agreed that building a hotel was part of our pilot agreement, so we had our own ideas and had to work through the process to get those ideas approved and that would prove to take some time before we could actually start construction. More than a symbolism of driving a pile.

MR. MURPHY: I'd like to note for the record that the page C 2256 of Exhibit 48, that this copy appears to have missing lines. At the same location that there is -- there are words that can be read, when compared to the rest of the document, it is very light in color and very difficult to read. We note

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that observation on the record.

MS. SHIMOMURA: I'd also like to note that this was a document that was produced by the defendant Carousel Center in this action. This document obviously has not been altered since it was produced.

BY MS. SHIMOMURA:

Q. I'm going to ask you to take a look at a document that's been marked Deposition Exhibit 25, if you would. And take as much time as you need to review it. For the record this document is Bates stamped C 1665, an article entitled "Destiny breaks for holiday".

A. I think this article ends prematurely in the bottom of the left-hand column.

Q. Okay. I'd like to draw your attention to a section about two-thirds of the way down the page. It's a paragraph that starts with "'Our goal was to try to get construction underway as soon as possible says,' Destiny executive Michael J. Lorenz." We wanted to minimize construction around the holiday season?

A. Yes.

Q. Do you recall giving that quote?

A. No.

Q. Do you -- are you authorized to speak to the

1  
2 press on behalf of Destiny USA?

3 A. Yes.

4 Q. Do you for any reason think that quote is  
5 inaccurate?

6 A. No, I have no reason to believe it's accurate  
7 or inaccurate. It's a while ago and I'm always  
8 interested in what people think I've said when I'm quoted  
9 in the paper. I'm sure it's -- could represent what I  
10 said. I just don't remember.

11 Q. In the fall of 2002 was Destiny USA's goal to  
12 get construction underway?

13 A. Our goal has been to get construction underway  
14 as soon as possible. It's the "as soon as possible"  
15 that's been hard to define. There's a lot of things  
16 involved in that definition.

17 Q. Were there any piles driven in the fall of  
18 2002 that were driven in connection with the parking  
19 garage for the Destiny USA?

20 A. I don't remember. Reading this article it  
21 sounds like there may have been. I don't remember. I do  
22 remember whatever was driven, if it was more than the one  
23 that I saw, as the article says, was covered over with  
24 snow and plowed and left as a parking lot, which is what  
25 it is to this date.

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2 Q. Just below the section that we looked at  
3 there's a paragraph that begins with "'Soon Destiny plans  
4 to solicit bids for remaining pile driving work, the  
5 foundation work for the deck and the piles and foundation  
6 work for the 1,300 room hotel,' Lorenz said. 'It expects  
7 to resume construction in January,' he said." Was there  
8 a time that you expected to resume construction in  
9 January of 2003?

10 MR. MURPHY: Objection.

11 A. I'm noticing that there are no quotes on any  
12 of those words compared to the last question which -- and  
13 my comment which had quotes. I have no knowledge of  
14 remembering -- my recollection is in the fall of 2002 we  
15 were very optimistic we could work with the city to allow  
16 them to include hotels into the project which at that  
17 point were questionable on the part of the city. It's  
18 possible that our expectations of how quickly the city  
19 would respond were overly optimistic, which seems to be  
20 the pattern we've been operating under for a while. I  
21 don't recall specifically what our intent was back then  
22 to -- I just remember there was a lot of things that  
23 would have had to happen for that to occur.

24 Q. If the Carousel Mall expansion and Destiny USA  
25 don't go forward, was there any purpose to the piles that

1  
2 have been driven in the Carousel Mall parking lot in the  
3 fall of 2002?

4 MR. MURPHY: Objection.

5 A. I don't know. Certainly, you know, there's an  
6 element of testing the ground and determining what was  
7 possible, I guess. Beyond that, I don't know.

8 Q. If it weren't for the plan to go forward with  
9 Destiny USA and/or the Carousel Mall expansion, a pile  
10 wouldn't have been driven into the ground; is that  
11 correct?

12 MR. MURPHY: Objection.

13 A. Could you repeat that?

14 MS. SHIMOMURA: Can we have that read  
15 back?

16 (Whereupon, the pending question was then  
17 read back by the Reporter.)

18 A. I guess, yeah, that's -- I mean, if -- yeah.

19 Q. There was a sort of celebration in the fall of  
20 2002, commonly referred to as a ground breaking; is that  
21 correct?

22 MR. MURPHY: Objection.

23 A. That we had an event classified as a ground  
24 breaking sometime in that fall, yes, which is where I  
25 first saw the pile driven.

MS. SHIMOMURA: Off the record.

(Discussion off the record.)

(Exhibit 70, 6/3/04 letter to Kenan and Lorenz, marked for identification this date.)

(Exhibit 71, letter, marked for identification this date.)

Q. I am going to ask you to take a look at what's been marked as Deposition Exhibit 70. For the record that document is Bates stamped SIDA 3150 through SIDA 3153. It is a letter to Bruce A. Kenan and Michael Lorenz dated June 3rd, 2004.

A. Okay.

Q. Do you recognize that document, Mr. Lorenz?

A. I have a vague recollection of getting this letter.

Q. Did you have any role in drafting a response to that letter?

A. No.

Q. Who drafted a response to that letter?

MR. MURPHY: Objection.

Q. If you know?

A. I'm not sure who would have drafted a response.

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Q. Are you aware of whether there was a response drafted to that letter?

A. No, I have no specific recollection, although typically we respond so I -- you know, I don't know typically in this case who would have done that.

Q. Did you participate in any discussions during which that letter was discussed?

A. No. I think -- well, I don't recall if we had discussions about this letter at that time.

Q. I'm going to ask you to take a look at what's been marked Deposition Exhibit number 71. Have you ever seen this letter before?

A. No recollection of seeing that letter.

Q. Did you participate in any discussions during which the contents of this letter was discussed?

A. I do not recall. We have discussions generally about a lot of things. It's difficult to remember a specific response to a letter.

Q. I'd like you to look at Exhibit 70 again which is the June 3rd letter to you and Mr. Kenan. I'd like you to look at the second page of that letter, SIDA 3151.

A. Yes.

Q. When you received this letter, did it have a signature, if you recall?



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2           A.     I would have thought so. But when I was  
3 reading it just now, I thought it was odd that the  
4 signature was missing.

5           Q.     Do you see the first paragraph on the first  
6 page of Exhibit 70 where it says "thank you for  
7 responding to our request for a briefing on the status of  
8 the proposed project at the agency's meeting on May 25th,  
9 2004?"

10          A.     Yes.

11          Q.     Did you brief SIDA on the status of Destiny  
12 USA at a meeting on May 25th, 2004?

13          A.     Yes.

14          Q.     Did you do that with Mr. Kenan?

15          A.     Yes.

16          Q.     Was eminent domain discussed during that  
17 meeting?

18          A.     I don't recall if it was discussed.

19          Q.     What was your role in the presentation to SIDA  
20 on May 25th?

21          A.     My role would have been to provide an overview  
22 as to the status of what we were doing in general with  
23 respect to the project at that meeting.

24          Q.     Could you be a little more specific?

25          A.     Well, as I recall, the SIDA invited us to

1  
2 attend a meeting to give them "overview" or "update" or  
3 what the status of Destiny has been, and we would have  
4 done from time to time, and I would have been there in  
5 the capacity of presenting Destiny and overview and  
6 updating on the specific progress or plans that we had  
7 underway.

8 Q. Do you recall if Mr. Kenan discussed eminent  
9 domain with SIDA at the May 25th meeting?

10 A. I have no recollection as to whether the  
11 eminent domain issue was raised at that meeting.

12 Q. I'd like to draw your attention to the second  
13 page of Deposition Exhibit number 71. It's Bates stamped  
14 SIDA 3155.

15 A. Okay.

16 Q. I'd like you to review the paragraph that  
17 begins with "since last fall" and the paragraph following  
18 that.

19 A. (Witness complies.) Okay.

20 Q. Do you see where it references "the specific  
21 interests have been identified in draft EDPL Article 4  
22 petitions for each." Do you see that line?

23 A. Yes, I do.

24 Q. Do you know what that refers to?

25 A. No, I don't.

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Q. Do you know whether -- do you know what an EDPL Article 4 petition is?

A. No, I don't.

Q. Do you know the interest in the J.C. Penney lease that SIDA may condemn in connection with the Carousel expansion?

A. No, I don't specifically. I generally know in their lease some rights to approval of expansion or changes to the center.

Q. Do you see where that paragraph continues "we believe, and believe that SIDA counsel believes, that it would be inappropriate to publicly disclose the details at this time. Such a step might and likely would jeopardize or delay SIDA's efforts to acquire such interests."

Do you remember participating in any discussions regarding this topic?

A. No, I don't.

Q. I'd like to draw your attention to the fourth page of Deposition Exhibit number 71. It's Bates stamped SIDA 3157. About in the center of the page there's a paragraph that begins with "your letter of June 3, 2004, also requested we execute at its June 19, 2003 meeting."  
Do you see that?

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A. Yes, I do.

Q. Are you aware of the fact that SIDA has approved a new agency agreement?

MR. MURPHY: Objection.

Q. Are you aware an agency agreement exists between SIDA and Pyramid Company of Onondaga?

A. No. I should say there's -- the only thing that I'm aware of is the agency agreement that is referred to here as one July 6th. The parties to that agreement I'm unaware of.

Q. You are aware there's a July 6th, 2001 agency agreement?

A. Yeah. I'm just unsure who's on the Pyramid Destiny entity side, what entity is really involved with that.

Q. Are you aware SIDA had approved another form agency agreement?

A. Yes.

Q. Do you know whether the new form of agency agreement that SIDA approved in June of 2003 is different from the July 6th, 2001 agency agreement?

A. Yes, it is.

Q. Do you know how those two agreements differ?

A. No.

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Michael J. Lorenz

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Q. Who would know?

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MR. MURPHY: Objection.

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A. Again, I don't know specifically. My guess would be our attorney who represented us would know.

6

Q. Do you think Bruce Kenan would know? He's the one that signed this letter.

8

MR. MURPHY: Objection.

9

A. I'm unaware if he would know the differences.

10

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Q. On that same page, the fourth page of the letter marked SIDA 3157 --

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A. Yes.

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Q. -- the last paragraph begins with "lastly, we again request that SIDA proceed as soon as possible to commence EDPL Article 4 proceedings." Do you know whether SIDA has commenced EDPL Article 4 proceedings?

17

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A. I don't know what the EDPL Article 4 proceedings are, so I'm not sure if they've done that.

19

(Exhibit 72, 7/29/05 letter from

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McDonough to Davis, marked for

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identification this date.)

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Q. Showing you what's been marked Deposition Exhibit number 72.

24

A. Okay.

25

Q. Have you ever seen this letter before?

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A. I think I saw this letter in the newspaper or some version of it and subsequently received a fax copy from the newspaper.

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Q. For the record, this document is a letter from Dale McDonough of J.C. Penney to Irwin Davis of July 29th, 2005.

8

9

A. I would note that the letter was copied to Bob Congel. I do know we never received this letter.

10

Q. You do know that Mr. Congel never received it?

11

12

A. Yes. I remember asking him specifically when I got a copy.

13

14

Q. Did you have discussions with anyone regarding this letter?

15

A. Hmm, mm, yes.

16

17

Q. Did you have -- who did you have discussions with regarding this letter?

18

A. Bob and others, others of our team.

19

Q. Could you tell me who they were?

20

21

22

A. Came up at a general team meeting. I'm not sure who else was there other than Bob. Dave may have been involved, Dave Aitken.

23

Q. What about Bruce Kenan?

24

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A. I do not remember if Bruce was involved in those conversations.

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Michael J. Lorenz

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2 Q. I'd like to bring your attention to the third  
3 paragraph. The end of it, it says "The only message  
4 J.C. Penney has received from Pyramid is that if  
5 J.C. Penney will not outright agree to whatever plans  
6 Pyramid has in regard to the Destiny USA project, there's  
7 nothing to discuss." Did you have any conversations  
8 about that portion of this letter?

9 MR. MURPHY: Objection.

10 A. The only thing I recall is it was unsure that  
11 I -- I remember Bob mentioning that he had sent a letter  
12 to J.C. Penney offering to make sure that their business  
13 would be financially protected from anything we did.

14 Q. Do you see the language "Pyramid has never  
15 shared any final plans with J.C. Penney"?

16 A. Yes, I see that.

17 Q. Did you have a discussion regarding that  
18 portion of this letter?

19 A. That specific portion, no.

20 Q. Do you know whether Pyramid has shared what it  
21 considers final plans with J.C. Penney?

22 MR. MURPHY: Objection.

23 A. I do not know.

24 Q. In the last paragraph on the first page of  
25 this letter, about in the center it says, "Pyramid has

1  
2 stated that it will go beyond condemning our approval  
3 rights under our lease and will condemn our entire lease  
4 and close our business."

5 Are you aware of whether Pyramid has told  
6 J.C. Penney it will condemn its entire lease and close  
7 its business?

8 A. I am unaware of that. I would find that  
9 highly, highly unlikely. I'm just reading that smiling  
10 at that statement.

11 Q. Have you had any discussions during which a  
12 condemnation of J.C. Penney's entire lease at the  
13 Carousel Mall has been discussed?

14 A. Any discussion -- have we had those  
15 discussions internally?

16 Q. Yes.

17 A. Not that I recall.

18 Q. So you've never heard of the concept of  
19 condemning J.C. Penney's entire lease at the Carousel  
20 Mall?

21 A. Well, the concept of condemning the entire  
22 lease I've heard of. In terms of us or SIDA's condemning  
23 J.C. Penney's entire lease, no. It's a fairly dramatic  
24 letter. I would expect it coming from their marketing  
25 department.



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Q. Did you discuss that portion of the letter at a team meeting?

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MR. MURPHY: Objection. Which portion of the letter?

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Q. The portion that we're discussing, "Pyramid has stated it will go beyond condemning our approval rights under our lease and will condemn our entire lease and close our business"?

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A. We discussed that -- the whole paragraph in context, so that part you're stating is halfway through a sentence about our plans to run the store, which I explained in our single-owner model was never the intention of us with respect to any business relationship that we were going into. So we discussed this. It was unclear to us where this whole concept came from and how this -- how these assertions, what they were based on as it seemed all kind of totally out of context and overplayed.

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Q. Have you had any discussions about using SIDA's power of eminent domain to implement the single-owner model?

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23

A. No. I should also clarify with respect to J.C. Penney, single-owner model?

24

25

Q. Yes.

1

2

A. No.

3

4

Q. Have you had any conversations about using SIDA's power of eminent domain to implement the single-owner model in connection with any tenants at Carousel Mall?

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A. No. We've had conversations about eminent domain and its power and what it means. No specific application to any one tenant under any -- no specific context other than generally discussing it.

11

12

Q. Well, what were these discussions about the eminent domain's power and what it means?

13

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A. Just that, what is the range of eminent domain powers and what does it mean and how does it work and just trying to understand better the dynamics of it.

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Q. Who were these discussions with?

A. Would be part of our team dynamic. We discuss a variety of topics daily on a number of things and we went through that process.

20

21

(Exhibit 73, letter, marked for identification this date.)

22

23

24

(Exhibit 74, 8/19/04 from Kenan to McDonough, marked for identification this date.)

25

Q. I'm going to show you a letter that's been

1  
2 marked Deposition Exhibit 74 and ask you to take a look  
3 at that. For the record this document is a letter on  
4 Destiny USA stationery from Bruce Kenan to Dan McDonough  
5 of J.C. Penney dated August 19, 2004. Have you ever seen  
6 this letter before, Mr. Lorenz?

7 A. Yes.

8 Q. Did you have input in drafting this letter?

9 A. No. I saw this letter after it was sent.

10 Q. Do you see the second paragraph of the letter  
11 where -- the second portion of that paragraph it says "as  
12 we have indicated before in writing and in person we are  
13 prepared to negotiate a mutually acceptable business  
14 relationship consistent with the short-term and long-term  
15 vision for Destiny USA." Do you see that language?

16 A. Yes, I see that language.

17 Q. What is a short-term mission for Destiny USA?

18 MR. MURPHY: Objection.

19 Q. If you know.

20 A. I'm unsure what Bruce is referring to. I  
21 would only be guessing. I don't know what he's referring  
22 to.

23 Q. Do you know whether any negotiations as would  
24 be referred to in this paragraph have occurred since the  
25 date of this letter, August 19, 2005?

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Michael J. Lorenz

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MR. MURPHY: Objection.

3

A. I'm unaware of any communication we may have had with anyone from J.C. Penney since this letter.

4

5

Q. I'm going to ask you to take a look at what's been marked Deposition Exhibit 73.

6

7

A. Okay.

8

Q. Have you ever seen this letter before?

9

A. Yes, I've seen this letter.

10

11

Q. Did you have any input into drafting this letter?

12

A. No.

13

14

Q. The fourth paragraph of this letter says, "SIDA's prepared petitions and is poised to imminently commence proceedings to acquire certain Carousel Center interests pursuant to EDPL section 402?"

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16

17

A. Yes.

18

Q. Do you know if that's true?

19

A. I have no knowledge of whether that's true.

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MS. SHIMOMURA: That's all the questions I have for you right now.

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MR. MURPHY: I have no questions.

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STATE OF NEW YORK

ss.

COUNTY OF ONONDAGA

CERTIFICATE OF WITNESS

I, Michael J. Lorenz, Jr., hereby certify that I have read the foregoing transcript of my deposition taken September 28, 2005, at Syracuse, New York, pursuant to the applicable rules of Federal Civil Procedure, and that the foregoing 107 of pages of transcript are in conformity with my testimony given at that time (with the exception of any corrections made by me, in ink, and initialed by me on the attached errata sheet).

\_\_\_\_\_  
Michael J. Lorenz, Jr.

STATE OF NEW YORK

COUNTY OF ONONDAGA

SUBSCRIBED AND SWORN to before me, the undersigned authority on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_ County, State of New York

My Commission Expires \_\_\_\_\_

REPORTER'S CERTIFICATE

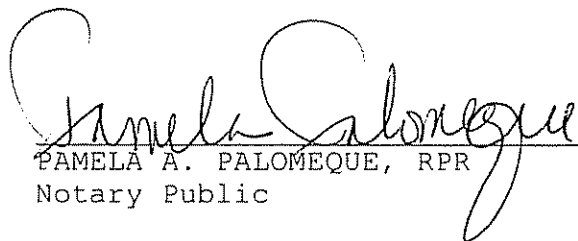
I, PAMELA PALOMEQUE, Court Reporter and  
Notary Public, certify:

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