

Exhibit O

Deposition of Patrick Lott

Patrick Lott

February 23, 2007

Cleveland, OH

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

216 JAMAICA AVENUE, LLC,

Plaintiff,

vs.

Case No. 06-1288

S&R PLAYHOUSE REALTY CO.,

Defendant.

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DEPOSITION OF PATRICK M. LOTT

FRIDAY, FEBRUARY 23, 2007

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Deposition of PATRICK M. LOTT, a
Witness called by the Plaintiff for examination
under the Applicable Rules of Federal Civil
Procedure, taken before me, Cynthia A. Sullivan,
a Registered Professional Reporter and Notary
Public in and for the State of Ohio, pursuant to
notice and stipulations of counsel at the
offices of Thompson Hine, LLP, 3900 Key Center,
127 Public Square, Cleveland, Ohio, on the day
and date set forth above at 9:50 a.m.

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<p>1 APPEARANCES: 2 On behalf of the Plaintiff: 3 Cooper & Kirk, by 4 DAVID M. LEHN, ESQ. 5 Suite 750 6 555 Eleventh Street, N.W. 7 Washington, D.C. 20004 8 (202) 220-9642 9 10 On behalf of the Defendant: 11 Thompson Hine, LLP, by 12 GARY L. WALTERS, ESQ. 13 STEPHEN D. WILLIGER, ESQ. 14 3900 Key Center 15 127 Public Square 16 Cleveland, Ohio 44114 17 (216) 566-5730 18 ---- 19 20 21 22 23 24 25</p>	<p>1 INDEX (CONTINUED) 2 DEPOSITION OF PATRICK M. LOTT 3 4 Plaintiff's Deposition 5 Exhibit 7 was marked..... 52:22 6 7 Plaintiff's Deposition 8 Exhibit 8 was marked..... 57:23 9 10 Plaintiff's Deposition 11 Exhibit 9 was marked..... 59:6 12 13 Plaintiff's Deposition 14 Exhibit 10 was marked..... 75:23 15 16 Plaintiff's Deposition 17 Exhibit 11 was marked..... 85:16 18 19 20 21 22 23 24 25</p>
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<p>1 INDEX 2 DEPOSITION OF PATRICK M. LOTT 3 4 BY MR. LEHN:..... 5:7 5 BY MR. WALTERS:..... 93:21 6 BY MR. LEHN:..... 96:20 7 8 Plaintiff's Deposition 9 Exhibit 1 was marked..... 11:7 10 11 Plaintiff's Deposition 12 Exhibit 2 was marked..... 16:13 13 14 Plaintiff's Deposition 15 Exhibit 3 was marked..... 33:21 16 17 Plaintiff's Deposition 18 Exhibit 4 was marked..... 38:5 19 20 Plaintiff's Deposition 21 Exhibit 5 was marked..... 40:6 22 23 Plaintiff's Deposition 24 Exhibit 6 was marked..... 42:18 25</p>	<p>1 PATRICK M. LOTT, of lawful age, called 2 for examination, as provided by the Federal 3 Rules of Civil Procedure, being by me first duly 4 sworn, as hereinafter certified, deposed and 5 said as follows: 6 EXAMINATION OF PATRICK M. LOTT 7 BY MR. LEHN: 8 Q. Good morning. 9 A. Good morning. 10 Q. Mr. Lott, I'm David Lehn. I'm here on 11 behalf of the plaintiff, 216 Jamaica Avenue. 12 Just some preliminary issues to go over. Have 13 you been deposed before? 14 A. Yes. 15 Q. So you're familiar with the basic 16 procedure? 17 A. Reasonably. 18 Q. I'll just refresh your memory. I'll 19 ask a question. You'll answer it to the best of 20 your ability. We'll try not to speak over each 21 other. We'll try to speak slowly. It's a 22 little bit artificial, but it helps the reporter 23 to get down the record. 24 A. Okay. 25 Q. If anything is not clear, please, just</p>

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Page 6	<p>1 ask me to clarify what I'm trying to ask. If at 2 any point you want to take a break, it's 3 certainly fine. If there's a pending question, 4 just answer that question, and we'll take a 5 break. 6 A. Okay. 7 Q. This deposition is a 30(b)6 8 deposition, so you are speaking on behalf of S&R 9 Playhouse. So if I use the word you, I'm 10 referring to S&R or you in your capacity as a 11 representative of S&R here. 12 A. Okay. 13 Q. Could you tell me about the cases in 14 which you were deposed previously? 15 A. There was a matter between a tenant 16 and ours here in Cleveland I'd say 10 or 12 17 years ago regarding a sublease opportunity the 18 facts of which kind of leave me. There was a 19 suit in one of our projects in Pittsburgh. 20 MR. WALTERS: I'm sorry to interrupt. 21 I want to be clear. When you say our, you're 22 speaking for S&R, and I don't think that is the 23 case here. 24 THE WITNESS: That is not the case. 25 Q. That was for another entity with --</p>	Page 8	<p>1 Q. Can you give me sort of a resume? 2 Just walk me through your educational and 3 employment history after high school. 4 A. BS Arizona State University. IBM 5 corporation, '68 through '72. That was after 6 graduation. 7 Q. What did you do there? 8 A. Office products sales. 1972 to 1977 9 Coldwell Banker commercial brokerage, office and 10 industrial broker. '77 to '80, vice president 11 manager Sherman Oaks, California, office of CB, 12 Coldwell Banker. 1980 to 1984, vice president 13 resident manager Coldwell Banker, Dallas. '84 14 to '87 senior vice president Rosewood 15 Properties, Dallas, Texas. 1987 to present, 16 senior vice president, Forest City Commercial 17 Group. 18 Q. How did you prepare for this 19 deposition? 20 A. Read the documents, met with lawyers, 21 met with our attorneys. 22 Q. When you say the documents, which 23 documents? 24 A. I believe everything that you've filed 25 and made available to us. I couldn't enumerate</p>
Page 7	<p>1 A. With another entity within Forest 2 City, yes. 3 Q. The second one? 4 A. Another entity, not S&R, regarding a 5 partnership issue. I can't remember the facts 6 of that, either, frankly. That was also about 7 ten years ago. 8 Q. Is that it? 9 A. There may have been one or two others 10 but further, longer ago than that. Those are 11 the only two that stick in my mind. 12 Q. The details of those you don't recall? 13 A. No. 14 Q. Can you just describe for me where you 15 fit in in the Forest City and S&R organization? 16 A. I'm a senior vice president of Forest 17 City Commercial Group. As such I have several 18 buildings totaling square footage maybe 6 or 7 19 million square feet under my purview all of 20 which are with either LLCs or limited 21 partnerships, and my job is to keep those 22 buildings full, S&R being one of them. 23 Q. Well, how many LPs, is it a 24 substantial number? 25 A. It's a substantial number.</p>	Page 9	<p>1 exactly which ones they were. I read them in 2 some detail. I can't say I read every page. 3 Q. You're referring to documents that we 4 filed with the court? 5 A. Yes. 6 Q. In the lawsuit? 7 A. Yes. 8 Q. Did you read the lease? 9 A. I have read the lease, yes. 10 Q. Did you read the 1982 Assignment and 11 Assumption? 12 A. I believe I have, yes. 13 Q. Do you recall reviewing any documents, 14 other than the ones we've just discussed, other 15 than the ones that were filed with the court, 16 the lease in 1982? 17 A. I read the sheaf of documents that 18 were sent over to me. 19 Q. Sent over to you by counsel? 20 A. Yes. 21 Q. Did you discuss this deposition with 22 anyone other than counsel? 23 A. Yes. 24 Q. Who was that? 25 A. Neil Cawsey.</p>

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<p>1 Q. Can you spell his name?</p> <p>2 A. C-A-W-S-E-Y.</p> <p>3 Q. C-A-W-S-E-Y. What is his job?</p> <p>4 A. I believe Neil handles all of our</p> <p>5 outside litigation. He's a Forest City</p> <p>6 employee.</p> <p>7 Q. Is he inside counsel at Forest City?</p> <p>8 A. He's actually not a lawyer, but he</p> <p>9 does act as our liaison with outside counsel in</p> <p>10 litigations. I believe that's what Neil does.</p> <p>11 Q. What was the content of your</p> <p>12 discussion with him?</p> <p>13 A. We discussed various aspects of your</p> <p>14 suit.</p> <p>15 Q. Such as?</p> <p>16 A. I can't remember the specifics of it.</p> <p>17 We've spoken once or twice. I told him I was</p> <p>18 meeting with our lawyers. I told him we were</p> <p>19 having a deposition preparation, just in general</p> <p>20 keeping him aware of what was happening.</p> <p>21 Q. So I want to talk about the lawsuit</p> <p>22 for a minute just so that we have a common</p> <p>23 understanding about what this lawsuit is about.</p> <p>24 You understand the plaintiff is 216 Jamaica</p> <p>25 Avenue, the defendant is S&R Playhouse, and the</p>	<p>1 Q. It's dated May 21st, 1982?</p> <p>2 A. Correct.</p> <p>3 Q. Through this transaction, this</p> <p>4 document, S&R became the lessee under the lease?</p> <p>5 A. Evidently, yes.</p> <p>6 Q. When we say the lease, just for the</p> <p>7 record, it's the 1912 lease on the property</p> <p>8 currently owned by Jamaica?</p> <p>9 A. Correct.</p> <p>10 Q. Why did Halle Brothers Company assign</p> <p>11 it to S&R?</p> <p>12 A. Why did Halle Brothers Company assign</p> <p>13 it to S&R? We bought the property in 1982, and</p> <p>14 obviously we had to assume the underlying ground</p> <p>15 lease at the time we bought the improvements.</p> <p>16 Q. The improvements meaning the building?</p> <p>17 A. Yes.</p> <p>18 Q. I'm sorry. I think I interrupted.</p> <p>19 Are you done? Were you saying and the theme?</p> <p>20 A. No.</p> <p>21 Q. At the time that S&R acquired the</p> <p>22 building, what was S&R's intention for the use</p> <p>23 of the property?</p> <p>24 A. To rehab an old department store into</p> <p>25 an office building, a for-lease office building.</p>
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<p>1 claim by Jamaica is that S&R has breached the</p> <p>2 lease by paying an incorrect amount of rent?</p> <p>3 A. Yes.</p> <p>4 MR. LEHN: I'd like to mark this as</p> <p>5 Exhibit 1.</p> <p>6 -----</p> <p>7 (Thereupon, Plaintiff's Deposition</p> <p>8 Exhibit 1 was marked for purposes</p> <p>9 of identification.)</p> <p>10 -----</p> <p>11 Q. If you want to take a minute to look</p> <p>12 this over, feel free.</p> <p>13 A. Okay.</p> <p>14 Q. Just for the record, can you identify</p> <p>15 this document?</p> <p>16 A. I've seen this document before, yes.</p> <p>17 Q. What is it?</p> <p>18 A. It is an assignment of lessee's rights</p> <p>19 under the original ground lease.</p> <p>20 Q. From whom to whom?</p> <p>21 A. Well, I guess you can read it.</p> <p>22 Q. Well, just for the record, it's</p> <p>23 between Halle Brothers Company who assigned it</p> <p>24 to?</p> <p>25 A. S&R Playhouse Realty Company.</p>	<p>1 Q. Now, in S&R, the S, does that refer to</p> <p>2 Jerome Schottenstein?</p> <p>3 A. I believe so. I was not here at the</p> <p>4 formation of that partnership.</p> <p>5 Q. Do you know whether Jerome</p> <p>6 Schottenstein owned the Halle Brothers Company?</p> <p>7 A. I don't know that.</p> <p>8 Q. Do you have any idea why the Halle</p> <p>9 Brothers Company couldn't rehab the building</p> <p>10 into an office building?</p> <p>11 A. I have an idea. It's supposition on</p> <p>12 my part. Schottenstein is not an office</p> <p>13 developer. He's a retail developer. I believe</p> <p>14 that he determined that he either couldn't or</p> <p>15 didn't want to do it himself, and we were</p> <p>16 brought in, I believe, to develop the building</p> <p>17 because we had an office background.</p> <p>18 Q. When you say we, you're referring to?</p> <p>19 A. Forest City/S&R. S&R is obviously the</p> <p>20 vehicle by which we bought the building.</p> <p>21 Q. S&R didn't really exist before this?</p> <p>22 A. Absolutely not.</p> <p>23 Q. The R in S&R refers to?</p> <p>24 A. My guess is it's Ratner, but again, I</p> <p>25 wasn't here when the formation was done or was</p>

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<p>1 made.</p> <p>2 Q. You don't know which Ratner it is?</p> <p>3 A. There's a lot of them.</p> <p>4 Q. That's why I'm asking.</p> <p>5 A. No. I don't know that.</p> <p>6 Q. After becoming a lessee, S&R obtained</p> <p>7 a number of redevelopment loans; is that</p> <p>8 correct?</p> <p>9 A. Again, I was not here. I joined the</p> <p>10 company in 1987, so my knowledge of the</p> <p>11 underlying financial structuring of the building</p> <p>12 is vague. So, yes, there is some development</p> <p>13 public, public moneys involved, but again, I</p> <p>14 couldn't give you the details on it.</p> <p>15 Q. Do you know who could speak to that</p> <p>16 within the FCE or the S&R organization?</p> <p>17 A. No, I really can't. It was '82. The</p> <p>18 original developer of the building has since</p> <p>19 retired. The lawyer who put it together I</p> <p>20 believe has passed away. I don't really know</p> <p>21 who could give you the background on it.</p> <p>22 Q. Was this an issue that you</p> <p>23 investigated at all in preparation for your</p> <p>24 deposition today?</p> <p>25 A. I didn't.</p>	<p>1 1982 assignment of the property?</p> <p>2 A. Nothing.</p> <p>3 Q. Have you spoken to anyone who does</p> <p>4 know about --</p> <p>5 A. No.</p> <p>6 Q. -- the actual assignment, not the text</p> <p>7 of it, but the discussions or the negotiations?</p> <p>8 A. No.</p> <p>9 Q. Let's put this aside for a minute.</p> <p>10 MR. LEHN: This is going to be</p> <p>11 Exhibit 2.</p> <p>12 -----</p> <p>13 (Thereupon, Plaintiff's Deposition</p> <p>14 Exhibit 2 was marked for purposes</p> <p>15 of identification.)</p> <p>16 -----</p> <p>17 Q. If you want to take a minute to look</p> <p>18 this over, feel free. I don't expect you to</p> <p>19 read the whole thing because we're only going to</p> <p>20 talk about a couple of pieces of it, but as long</p> <p>21 as you're familiar.</p> <p>22 A. I've seen this document before, yes.</p> <p>23 Q. Just for the record, this is what</p> <p>24 document?</p> <p>25 A. I believe this is part of the original</p>
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<p>1 Q. Do you know if somebody else did?</p> <p>2 A. I'd ask my lawyers if they did.</p> <p>3 Q. You have no knowledge yourself?</p> <p>4 A. I have no knowledge.</p> <p>5 Q. Are there any loans that are currently</p> <p>6 outstanding on the property that S&R is the</p> <p>7 debtor on?</p> <p>8 A. Yes.</p> <p>9 Q. What are those loans?</p> <p>10 A. Again, my role within this company and</p> <p>11 the building is to lease the building, not</p> <p>12 really to mind its financial underpinnings. I'm</p> <p>13 aware there is an HSBC loan, I believe. I</p> <p>14 believe that's the first mortgage on the</p> <p>15 building, but again, that's not really my</p> <p>16 purview. We have a finance department.</p> <p>17 Q. Do you know how the assignment came</p> <p>18 about, how Halle Brothers Company and S&R got</p> <p>19 together in the first place?</p> <p>20 A. No, I do not.</p> <p>21 THE WITNESS: Can I have a two minute</p> <p>22 break to get some coffee?</p> <p>23 (Brief recess.)</p> <p>24 Q. Do you know anything about the</p> <p>25 conversations or negotiations surrounding the</p>	<p>1 ground lease.</p> <p>2 Q. The 1912 lease?</p> <p>3 A. Yes.</p> <p>4 Q. It's between The Realty Investment</p> <p>5 Company, they were the owners of the property,</p> <p>6 and the lessees are Salmon Halle and the other</p> <p>7 Halle brother whose name escapes me; is that</p> <p>8 correct? Do you agree with that?</p> <p>9 MR. WALTERS: Objection. The document</p> <p>10 speaks for itself.</p> <p>11 Q. Well, it says on the top, The Realty</p> <p>12 Investment Company to Salmon P. Halle et al.;</p> <p>13 correct?</p> <p>14 A. It appears to be part of the original</p> <p>15 ground lease.</p> <p>16 Q. If we turn to page 2, about two-thirds</p> <p>17 of the way down there's a sentence that says,</p> <p>18 all of said rents shall be paid --</p> <p>19 A. I can't find it.</p> <p>20 MR. WALTERS: I'm going to help, if</p> <p>21 you don't mind. See where it starts here</p> <p>22 (indicating)?</p> <p>23 THE WITNESS: Got it.</p> <p>24 A. May I underline this?</p> <p>25 Q. Of course.</p>

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<p>1 A. Gotcha. Thank you. 2 Q. It says, all of said rents shall be 3 paid in gold coin of the United States of the 4 present standard of weight and fineness by 5 depositing it to the credit of the lessor, its 6 successors or assigns, with the Citizens Savings 7 & Trust Company of Cleveland, Ohio, or in such 8 other place in the City of Cleveland as the said 9 lessor, its successors or assigns, may from time 10 to time designate. 11 We're just going to refer to this as 12 the gold clause for today. 13 A. Okay. 14 Q. Do you have any knowledge as to 15 whether this clause was discussed by anyone at 16 S&R in the course of preparing the 1982 17 assignment? 18 A. No, I do not. 19 Q. You have no knowledge? 20 A. I have no knowledge. 21 Q. Do you know whether prior to the 22 initiation of this litigation anyone at S&R ever 23 discussed this clause with anyone? 24 A. No. I know I didn't. I would have no 25 way of knowing if anybody else that were</p>	<p>1 So that gives you a particular number 2 in eventually ounces. You have to convert the 3 units. You get a number of ounces of gold. 4 It's approximately 1,693. This amount stays 5 constant for the duration of the lease. And the 6 effect of that is as the price of gold varies, 7 the value of the rent varies. 8 The contention of the defendant is 9 that the rent is simply \$35,000 payable in 10 currency. 11 A. I don't know that that's our 12 contention, but go ahead. 13 Q. What do you understand your contention 14 to be? 15 MR. WALTERS: Objection. Just 16 understand that everything that Mr. Lehn has 17 just said is his representation of the parties' 18 contentions. You don't have to accept any of 19 that as true. 20 THE WITNESS: I don't accept the last 21 part of the statement. 22 MR. WALTERS: I'm assuming he's 23 prefacing a question here. 24 Q. Could you tell me what your 25 understanding of what the rent is?</p>
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<p>1 officers of S&R might have. 2 Q. No one ever spoke to you about it? 3 A. No. 4 Q. Do you know whether anyone ever 5 prepared an analysis of this clause? 6 A. No. 7 Q. No, it was never prepared, or no, you 8 don't know? 9 A. No, I don't know. 10 Q. Just to make sure we're clear on 11 things, the way that the plaintiff contends that 12 this clause should be understood is the 13 following. You take the face amount of the 14 rent, and if you back up a couple sentences on 15 this page we can see what the face amount is. 16 Probably the easiest way to find this is to just 17 look for the \$35,000. 18 A. I see it. 19 Q. It says, for the remainder of said 20 term, to wit 89 years, the sum of \$35,000 per 21 year. Plaintiffs contention is that you take 22 \$35,000 and you ascertain how many ounces of 23 gold were in \$35,000 in gold coin of the 24 standard of weight and fineness in 1912. That's 25 defined by statute.</p>	<p>1 A. \$35,000 a year. 2 Q. Period? 3 A. Period. 4 Q. You could pay it, the \$35,000, in one 5 dollar bills? 6 A. Or gold coins. It's still \$35,000. 7 Q. How would you calculate how many gold 8 coins to pay? 9 A. Fewer as the price of gold went up, 10 obviously. 11 Q. It would be the number of gold coins 12 at the price or valued on the day that you paid 13 it that was necessary to equal \$35,000 in cash? 14 A. Of course. 15 MR. WALTERS: Objection. The question 16 is confusing, and Mr. Lott, please allow him to 17 finish the complete question so that the record 18 is clear at the end of this. 19 THE WITNESS: Okay. 20 MR. WALTERS: Thanks. 21 Q. We'll do this in pieces. Is it your 22 understanding of the way that the rent is to be 23 paid under the lease is that you determine the 24 price of gold on the date that you're going to 25 tender the payment, and then the amount of gold</p>

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<p>1 that would be necessary to equal \$35,000 at that 2 price of gold is the amount of gold that you 3 would owe under the lease? 4 MR. WALTERS: Objection, confusing. 5 Answer it if you can. 6 A. It could be done that way, as I 7 understand the language. I don't know anybody 8 in 30 years of real estate that still pays in 9 gold, but the language to me is clear that the 10 rent is \$35,000. 11 Q. What is your understanding then of the 12 purpose of this gold clause? 13 A. My opinion of it is within the context 14 of the time it was written, 1912, where you had 15 certain people that didn't trust the currency, 16 and this clause was inserted to have an 17 alternative method of paying in gold coin if the 18 lessor so preferred. 19 So that you could pay in gold coin if 20 you desired, or you could pay in currency, but 21 it was still \$35,000 for the term of the lease 22 other than in those first years where it was 23 escalated. 24 Q. Have you ever encountered a gold 25 clause in any other properties that you've</p>	<p>1 number? I'm not going to hold you to this. 2 Just for purposes of conversation here, if you 3 were the owner of the property that Jamaica owns 4 and you were going to lease that ground today, 5 approximately -- 6 A. Assuming there was no building on it? 7 Q. Assuming there's no building on it, 8 what would you lease it at? 9 MR. WALTERS: Objection. 10 A. I have no idea. In Cleveland, Ohio, 11 right now I wouldn't lease it. 12 Q. If there was a building on it, what 13 would you lease it for? 14 MR. WALTERS: Objection. 15 A. I have no idea. 16 Q. Does S&R have any properties where it 17 is the lessor or sublessor and the duration of 18 the lease is somewhere around 100 years? 19 A. No. 20 Q. What is the longest lease that S&R is 21 a part of as lessor? 22 A. Well, if you include that S&R owns a 23 portion of the Halle Building, obviously we 24 write leases in the building to tenants who use 25 the space. A typical long term lease in an</p>
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<p>1 worked on? 2 A. No. 3 Q. When I say other properties, I'm 4 including not just properties you manage at S&R 5 but your entire history. 6 A. In 30 years in the real estate 7 business, I've never noticed this clause nor 8 dealt with it in any business setting. 9 Q. When did you first become aware of 10 this gold clause? 11 A. When you filed your lawsuit. 12 Q. If we assume that the gold clause 13 means what you just said it means, how does that 14 actually protect the lessor against currency 15 problems? 16 A. I'm not sure it was designed to. I 17 mean, it was merely a rent. I mean, there are 18 plenty of leases that don't escalate based on 19 indexing, cost of living, or anything else. 20 It's a fixed number. 21 Q. Just approximate -- 22 A. Go ahead. 23 Q. I'm sorry. Please, continue. 24 A. No. That's fine. 25 Q. Could you give me an approximate</p>	<p>1 office building would be 10 to 15 years. Most 2 leases in office space are five, five to ten. 3 Q. When S&R writes those leases, does it 4 determine the rent based on approximately market 5 value at that time? 6 A. Yes. 7 Q. Do any of those leases hold that value 8 constant for the duration of the lease? 9 A. I'm not sure I understand your 10 question. 11 Q. Do any of the leases for which S&R is 12 the lessor specify a rent amount and then keep 13 that rent amount constant for the duration of 14 the lease? 15 A. Define rent. 16 Q. Well, the amount that the lessee pays 17 to the lessor on a periodic basis or sublessee. 18 A. The rent very often will stay 19 constant. Now, there are other charges, 20 utilities, tax increases, et cetera, that the 21 tenant might be responsible for which we would 22 call escalations or pass throughs. So what that 23 tenant may pay us in rent would very definitely 24 be constant for five years. If it's longer than 25 five years, we might try to get an increase say</p>

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<p>1 after the fifth year. 2 There might be charges to the tenant 3 for these operating expenses or tax expenses 4 which could escalate every year, but I'm not 5 sure that's really rent. That's a pass on. 6 That's an expense that we get from the city, 7 from our vendors, from our cleaning agencies, et 8 cetera. Those contracts are usually year to 9 year, and they might increase every year, and we 10 pass those increases on to our tenants year to 11 year on a prorated basis as does every other 12 landlord, office landlord, that I'm aware of. 13 Q. Let's consider those pass throughs and 14 not rent for purposes of this discussion. So if 15 the lease term is longer than about five years, 16 then typically S&R will provide for the rent to 17 be increased after five years? 18 A. I'm not sure typically is correct, but 19 on occasion we will, yes. But we will also 20 write leases longer than five years with a 21 specific flat rent. 22 Q. Do you know what the longest lease is 23 right now that S&R has? 24 A. I'd have to check. I don't really 25 know.</p>	<p>1 there would be a default, a purchase, a 2 bankruptcy. We don't think in terms of that 3 long for office building leases. 4 Q. Did you think it was a wise thing to 5 do for the lessor, assuming this is what the 6 lessor did in this case, to lease this property 7 for \$35,000 a year for 99 years? 8 MR. WALTERS: Objection. 9 A. No idea. 10 Q. Do you think that \$35,000 today will 11 have the same value 99 years from now? 12 MR. WALTERS: Objection. 13 A. No idea. 14 Q. Do you think it likely to be more 15 valuable or less valuable? 16 A. That \$35,000 would have the same 17 value? 18 Q. Yes. 19 A. I think it would have exactly the same 20 value. I don't think it would have the same 21 purchasing power. 22 Q. When I say value, if you want to 23 understand that as purchasing power, then let's 24 do that. 25 A. I have no idea what \$35,000 would be</p>
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<p>1 Q. Approximately. 2 A. Ten years would be the longest lease 3 that we would typically write, but I don't think 4 we've -- we made a ten year lease about two 5 years ago which would now have about eight years 6 to run, but we would rarely write anything 7 longer than ten years. 8 Q. Do you know whether your ten year 9 lease held the rent amount constant for all ten 10 years? 11 A. I can't remember. 12 Q. If you were going to make a 99 year 13 lease, would you hold the rent constant for 99 14 years? 15 MR. WALTERS: Objection. 16 Q. You can answer. 17 A. In 30 years I've never made a 99 year 18 lease. 19 Q. But if you were going to make one? 20 A. I wouldn't. 21 Q. You wouldn't make a 99 year lease? 22 A. No. 23 Q. Why not? 24 A. I don't know many companies that have 25 been around for 99 years. I would expect that</p>	<p>1 worth 99 years from now, less or more. We have 2 inflation, and we have deflation. 3 Q. If the plaintiff's view of this gold 4 clause is correct and you're supposed to be 5 paying an amount up to 1,693 ounces of gold coin 6 a year -- strike that. 7 Since S&R became the lessee in 1982, 8 is it correct that it has paid \$35,000 in 9 currency every year? 10 A. I believe so. 11 Q. Do you have any reason to believe that 12 they have paid a different amount? 13 A. No. 14 Q. If the plaintiff's understanding of 15 the gold clause is correct, then for the past 24 16 years S&R has had a pretty good deal? 17 MR. WALTERS: Objection. 18 A. Pretty good deal, I would say, no, 19 they have not had a pretty good deal. 20 Q. Why is that? 21 A. Because the building has lost money 22 all but a few years since we built it. 23 Q. If you had had to pay -- I'll use the 24 term gold adjusted amount to refer to the rent 25 according to plaintiff's understanding of the</p>

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<p>1 gold clause just so we have a simple way of 2 referring to it. 3 A. Okay. 4 Q. If you had had to pay the gold 5 adjusted amount of rent since 1982 when you 6 became the lessee, your losses would have been 7 much larger than -- 8 A. Yes, they would have. 9 MR. WALTERS: Objection. Foundation. 10 For the record, there's been no establishment of 11 Mr. Lott's knowledge of the rise and fall of the 12 price of gold. 13 Q. You can answer the question. You were 14 saying yes. 15 A. If we had paid the adjusted value, was 16 that your question? 17 Q. Yes. 18 A. Of gold, then yes, our losses would 19 have been greater had we paid it. 20 Q. So to the extent that you were paying 21 the unadjusted amount instead of the adjusted 22 amount, if plaintiff is correct, then you got a 23 benefit -- 24 MR. WALTERS: Objection. 25 Q. -- for having paid the unadjusted</p>	<p>1 should pay that its losses would be even 2 greater? 3 A. Let me make a comment on the line of 4 questioning because I think it's so hypothetical 5 that you're getting into the realm of the 6 ridiculous. The building has lost over its 7 history somewhere each year, at best I think we 8 might have had three or four years, this is 9 again the objective and it will occasionally 10 cash flow, but we've lost millions of dollars on 11 this building. I believe two years ago we lost 12 \$5 million on the building. 13 We couldn't have, S&R could not have 14 paid any more than the \$35,000. If it was the 15 kind of number that you're speculating by your 16 calculation of the price of gold, we would never 17 have paid it. We would have gone into default, 18 and we would allow the building to go back to 19 the lender or to the ground lessor. There is no 20 way that S&R could pay that kind of ground lease 21 payment. 22 Q. You'd be in breach of the lease if you 23 did that; is that right? 24 A. I'm not a lawyer, but I would guess 25 that we would be, yes.</p>
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<p>1 amount? 2 A. I suppose based on the way you've 3 constructed the question, yes. 4 Q. I mean, I'm assuming plaintiff is 5 correct. Obviously, if defendant is correct, 6 then you paid what you were supposed to pay. 7 A. Yes. I answered your question. 8 MR. WALTERS: David, when you get to a 9 short break, if we could take just a couple 10 minutes. 11 (Brief recess.) 12 Q. Do you know what the price of gold is 13 today approximately? 14 A. Not a clue. 15 Q. I'll stipulate to you that it's about 16 \$675 an ounce. 17 MR. WALTERS: He'll represent to you. 18 MR. LEHN: Either way. 19 Q. And I'll represent to you that the 20 gold adjusted amount of rent is approximately 21 \$1.1 million a year. Do you agree that if -- 22 let's assume that S&R is going to lose 23 \$4 million this year on the property. Do you 24 agree that if S&R paid the gold adjusted amount 25 instead of the amount that S&R contends that it</p>	<p>1 Q. Do you know what S&R is going to do 2 with the property if Jamaica wins this lawsuit? 3 MR. WALTERS: Objection. Calls for 4 speculation. 5 A. No. 6 Q. You agree with me in principle, don't 7 you, that if S&R did pay the gold adjusted 8 amount, its loss would be greater than if it 9 doesn't pay the gold adjusted amount for this 10 year let's say? 11 A. Yes, but -- 12 Q. Significantly by about a million 13 dollars? 14 A. It is so hypothetical the way you 15 constructed the question that the answer would 16 be yes, but it's a situation where there's not 17 the money to pay it. 18 Q. Okay. Let's go to another document, 19 Exhibit 3. 20 ----- 21 (Thereupon, Plaintiff's Deposition 22 Exhibit 3 was marked for purposes 23 of identification.) 24 ----- 25 Q. Take a minute to look this over.</p>

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<p>1 A. Okay.</p> <p>2 Q. Have you ever seen this document</p> <p>3 before?</p> <p>4 A. Yes.</p> <p>5 Q. What is it?</p> <p>6 A. It could be called an offset or</p> <p>7 something like that that basically confirms the</p> <p>8 lease being in effect at the time of the</p> <p>9 transfer.</p> <p>10 Q. I'm sorry, which part are you</p> <p>11 referring to?</p> <p>12 A. The document that you just gave me. I</p> <p>13 believe that's what it is. It was executed</p> <p>14 between Halle Cleveland, LLC, and Jamaica</p> <p>15 Avenue, LLC, your client.</p> <p>16 Q. I understand this to be a deed that</p> <p>17 conveys the title in the property.</p> <p>18 A. Okay. Excuse me. If this is the</p> <p>19 deed, that's fine.</p> <p>20 Q. Do you agree with that?</p> <p>21 A. Fine. Yes, I agree.</p> <p>22 Q. When did you become aware that Jamaica</p> <p>23 purchased the property at issue?</p> <p>24 A. At the time I learned of your lawsuit.</p> <p>25 Q. Prior to that you had no idea the</p>	<p>1 December blank, 2001 made to grantor HSBC bank</p> <p>2 USA. Had you ever noticed this provision before</p> <p>3 today?</p> <p>4 A. No.</p> <p>5 Q. Do you know if anyone at S&R was aware</p> <p>6 of this provision before today?</p> <p>7 A. No.</p> <p>8 Q. Do you think it matters that this is</p> <p>9 in here from your perspective, from S&R's</p> <p>10 perspective? Does it affect anything that you</p> <p>11 do?</p> <p>12 A. I don't know. Does it affect anything</p> <p>13 that I do?</p> <p>14 MR. WALTERS: Objection. If you want</p> <p>15 to talk about the estoppel certificate, then he</p> <p>16 should see the estoppel certificate.</p> <p>17 Q. You can answer the question.</p> <p>18 A. I don't know.</p> <p>19 Q. Did you ever look at the deed by which</p> <p>20 Halle Cleveland became the owner of the</p> <p>21 property?</p> <p>22 A. No.</p> <p>23 Q. Do you know if anyone at S&R ever</p> <p>24 looked at it?</p> <p>25 A. No.</p>
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<p>1 property had been sold?</p> <p>2 A. No idea.</p> <p>3 Q. So S&R was not apprised of any sale</p> <p>4 before it happened or after?</p> <p>5 A. I was not. There are other officers.</p> <p>6 There are officers of S&R that could have been.</p> <p>7 Q. You don't have any knowledge as to</p> <p>8 whether they were?</p> <p>9 A. No.</p> <p>10 Q. Did you have any dealings with Halle</p> <p>11 Cleveland while they were the owner?</p> <p>12 A. No.</p> <p>13 Q. Who at S&R did deal with them?</p> <p>14 A. I don't know.</p> <p>15 Q. So S&R is not a party to this</p> <p>16 transaction that's represented in the deed that</p> <p>17 we're looking at; correct?</p> <p>18 MR. WALTERS: The document speaks for</p> <p>19 itself.</p> <p>20 A. It appears that they are not, no.</p> <p>21 Q. When did you first -- well, let me</p> <p>22 back up. Let's turn to page 3 of this document.</p> <p>23 A. That's the Schedule A?</p> <p>24 Q. Schedule A, and then there's point 3.</p> <p>25 It says, subject to: Estoppel certificate dated</p>	<p>1 Q. No, they didn't, or no, you don't</p> <p>2 know?</p> <p>3 A. No, I don't know.</p> <p>4 Q. Is it typical for S&R to look at the</p> <p>5 deed by which -- let me rephrase this. For the</p> <p>6 properties for which S&R is the lessee, is it</p> <p>7 typical for S&R to look at the deed of the</p> <p>8 property?</p> <p>9 A. I don't know of any other properties</p> <p>10 in which S&R is a lessee.</p> <p>11 Q. This is the only one as far as you</p> <p>12 know?</p> <p>13 A. As far as I know.</p> <p>14 Q. Is S&R the lessor of any properties</p> <p>15 other than -- I believe that there are two</p> <p>16 parcels that S&R owns that are contiguous with</p> <p>17 this parcel, and the Halle Building sits on all</p> <p>18 of those; is that correct?</p> <p>19 A. I believe so.</p> <p>20 Q. So S&R is the lessor on those</p> <p>21 properties?</p> <p>22 A. Correct.</p> <p>23 Q. Are there any other properties that</p> <p>24 S&R is the lessor of?</p> <p>25 A. I don't believe so. I believe S&R is</p>

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<p>1 a single asset corporation, as far as I know. 2 Q. Put that aside. 3 MR. LEHN: I think this is Exhibit 4. 4 ----- 5 (Thereupon, Plaintiff's Deposition 6 Exhibit 4 was marked for purposes 7 of identification.) 8 ----- 9 Q. Are you familiar with this? 10 A. I don't believe I've seen this copy 11 before, no. 12 Q. Do you ever see the -- well, this is a 13 copy of a rent check that was delivered to 14 Jamaica. Does that square with what it appears 15 to be to you? 16 A. Yes. It appears to be a quarterly 17 payment. 18 Q. Who writes the checks? 19 A. I believe this comes out of our 20 payables department. I don't. 21 Q. You see the check is from an entity 22 called Forest City Commercial Management, Inc.? 23 A. Yes. 24 Q. You were saying you were the senior 25 vice president of Forest City Commercial Group?</p>	<p>1 A. Sure. 2 Q. -- they are sending these checks? 3 A. Yes. 4 MR. LEHN: The next exhibit will be 5. 5 ----- 6 (Thereupon, Plaintiff's Deposition 7 Exhibit 5 was marked for purposes 8 of identification.) 9 ----- 10 A. Okay. 11 Q. So this is it looks like another 12 quarterly rent payment? 13 A. Uh-huh. 14 Q. Well, it was actually paid to Halle 15 Cleveland, but I'll represent to you that it was 16 forwarded to Jamaica. 17 A. Uh-huh. 18 Q. At the top it lists what appear to be 19 four different account numbers. Do you know 20 what these entities are? 21 A. Yes. 22 Q. So one is Halle Office, and then it's 23 B-U-I-L, Building, I take it? 24 A. Yeah. 25 Q. Then there are three S&R Playhouse</p>
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<p>1 A. Yes. 2 Q. Is that a different entity? 3 A. Yes. 4 Q. What is Forest City Commercial 5 Management? 6 A. They are the company that manages I 7 believe all of our real estate. 8 Q. Our here means Forest City 9 Enterprises? 10 A. Yes. Let me clarify. Forest City 11 Commercial Management manages all of our 12 commercial properties as differentiated from our 13 apartment properties or our land developments. 14 This would be shopping centers and office 15 buildings primarily. 16 Q. Do you know why the rent payment came 17 from Forest City Commercial Management instead 18 of from S&R? 19 A. No. 20 Q. Is there any agreement between S&R and 21 Forest City Commercial Management of who would 22 pay? 23 A. I assume there is, yes. 24 Q. You would assume that pursuant to that 25 agreement --</p>	<p>1 entities? 2 A. Correct. 3 Q. Are those different legal entities? 4 A. Yes. 5 Q. Can you tell me the full name of each 6 of them? 7 A. Well, I'll do my best. Halle Office 8 Building Partnership, S&R Playhouse, Limited, I 9 believe, and S&R Playhouse -- I believe it's all 10 S&R Playhouse Limited, but I couldn't absolutely 11 tell you for sure. 12 Q. When you say it's all S&R Playhouse 13 Limited, you mean the three? 14 A. The three, yes. 15 Q. They are distinct entities? 16 A. Distinct from Halle Office Building, 17 yes. I can't read the whole description here on 18 the stub, so I don't know exactly. 19 Q. But you don't know if they are 20 distinct from each other? 21 A. I don't know. 22 Q. Is there more than one entity under 23 the Forest City umbrella called S&R something? 24 A. I don't know that. I've never heard 25 it being referred to as anything other than S&R</p>

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<p>1 Playhouse Limited.</p> <p>2 Q. You've never had another entity being</p> <p>3 referred to as S&R something?</p> <p>4 A. No.</p> <p>5 Q. Halle Office Building, why are they</p> <p>6 sending or why are they listed as one of the</p> <p>7 payees here or payers here?</p> <p>8 A. I believe that this is how we code</p> <p>9 these payments to the two entities that actually</p> <p>10 own the improvements.</p> <p>11 Q. Those two entities are?</p> <p>12 A. Halle Office Building Limited and S&R</p> <p>13 Playhouse. So I assume that these numbers were</p> <p>14 actually debited to the various accounts or two</p> <p>15 accounts to make up the total of 8,750.</p> <p>16 Q. All right. That's it for that.</p> <p>17 -----</p> <p>18 (Thereupon, Plaintiff's Deposition</p> <p>19 Exhibit 6 was marked for purposes</p> <p>20 of identification.)</p> <p>21 -----</p> <p>22 Q. I don't expect you to read the whole</p> <p>23 thing right now.</p> <p>24 A. Good.</p> <p>25 Q. But maybe if you can just get familiar</p>	<p>1 The Realty Investment Company, as lessor, and</p> <p>2 Salmon P. Halle and Samuel H. Halle, as lessees,</p> <p>3 filed for record, et cetera.</p> <p>4 Let's skip to, which leasehold estate</p> <p>5 was assigned to S&R --</p> <p>6 A. You lost me. Where?</p> <p>7 Q. I'm skipping about three or four</p> <p>8 lines.</p> <p>9 A. Okay.</p> <p>10 Q. There's a parenthesis, Parcel No. 3</p> <p>11 Lease, close parenthesis.</p> <p>12 A. Got it.</p> <p>13 Q. Which leasehold estate was assigned to</p> <p>14 S&R by the Assignment and assumption dated</p> <p>15 May 21, 1982, and filed for record, et cetera.</p> <p>16 So am I correct that Parcel No. 3 is</p> <p>17 the property that Jamaica owns?</p> <p>18 A. I believe so. I'm assuming that</p> <p>19 that's it.</p> <p>20 Q. Then let's go to the bottom of that</p> <p>21 page. Whereas, it is the intention of S&R to</p> <p>22 convey to Halle Office Building Limited</p> <p>23 Partnership (HOB), a certain portion of the</p> <p>24 premises on which is located what is commonly</p> <p>25 known as the fifth, sixth, seventh, eighth,</p>
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<p>1 with what it is, and then I'll point you to</p> <p>2 certain places.</p> <p>3 A. Okay. All right.</p> <p>4 Q. Have you ever seen this document?</p> <p>5 A. I don't believe I've seen this one.</p> <p>6 Q. Do you know what it is?</p> <p>7 A. I could read it.</p> <p>8 Q. It says, deed from S&R Playhouse</p> <p>9 Realty Company to --</p> <p>10 A. I can read that.</p> <p>11 Q. -- Halle Office Building Limited</p> <p>12 Partnership?</p> <p>13 A. Yes.</p> <p>14 Q. I just want to if we go to the second</p> <p>15 page --</p> <p>16 A. This one (indicating)?</p> <p>17 Q. Yes. At the bottom it says JAM 01473.</p> <p>18 A. Yes.</p> <p>19 Q. Toward the bottom of that page, it</p> <p>20 says, whereas, the four parcels of real estate</p> <p>21 which are included within the premises consist</p> <p>22 of, and let's skip to B, one parcel in which S&R</p> <p>23 holds the leasehold estate (hereinafter referred</p> <p>24 to as Parcel No. 3) created by the virtue of an</p> <p>25 indenture of lease dated March 15, 1912, between</p>	<p>1 ninth, tenth, and eleventh floors of building,</p> <p>2 as further described hereinafter, that's defined</p> <p>3 as the fifth through eleventh floors, together</p> <p>4 with certain easements and other rights</p> <p>5 appurtenant thereto, but subject to all</p> <p>6 easements, restrictions, covenants, and</p> <p>7 reservations contained herein (the fifth through</p> <p>8 eleventh floors and said other easements and</p> <p>9 rights being hereinafter collectively referred</p> <p>10 to as HOB's interests.)</p> <p>11 And if we turn the page -- actually,</p> <p>12 we need to go back to get the piece of this just</p> <p>13 one page. This is JAM 01475. There's a</p> <p>14 heading, granting clauses.</p> <p>15 A. Okay.</p> <p>16 Q. It says, now, therefore, S&R in</p> <p>17 consideration of one dollar and other good and</p> <p>18 valuable consideration received to its</p> <p>19 satisfaction from HOB does hereby give, grant,</p> <p>20 bargain, sell, assign, transfer, and convey to</p> <p>21 HOB, its successors and assigns forever, and now</p> <p>22 let's flip the page, under part B, the leasehold</p> <p>23 portion of HOB's interests more particularly</p> <p>24 described as all of S&R's right, title, and</p> <p>25 interest in and to the Parcel 3 lease. Are you</p>

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<p>1 with me?</p> <p>2 A. I'm with you.</p> <p>3 Q. So am I right that the effect of this</p> <p>4 document was basically to create a sublease</p> <p>5 between S&R and HOB for the fifth through</p> <p>6 eleventh floors of the building?</p> <p>7 A. Is it a sublease or is it a deed? I</p> <p>8 mean, it appears to be a conveyance between S&R</p> <p>9 and HOB.</p> <p>10 Q. My understanding is that the deed with</p> <p>11 respect to -- if we back up to the second page</p> <p>12 of the document, the second whereas clause,</p> <p>13 whereas, the four parcels of real estate which</p> <p>14 are included within the premises consist of (a)</p> <p>15 two parcels which S&R owns in fee simple by</p> <p>16 virtue of a deed dated May 21, 1982.</p> <p>17 A. Right.</p> <p>18 Q. I assume that the deed part of this is</p> <p>19 with respect to the properties S&R owns in fee</p> <p>20 simple?</p> <p>21 A. Right.</p> <p>22 Q. And that Parcel 3 is a lease?</p> <p>23 A. That's fine. I'm not really familiar</p> <p>24 with the documents.</p> <p>25 Q. So HOB has an interest in basically</p>	<p>1 60 percent of the rent each month; is that</p> <p>2 right?</p> <p>3 A. I believe so, yes.</p> <p>4 Q. It doesn't pay it directly. It pays</p> <p>5 it directly to the lessor, or does it pay it to</p> <p>6 S&R and then S&R forwards it?</p> <p>7 A. Again, I don't know. I'm not part of</p> <p>8 Forest City Commercial Management. Frankly,</p> <p>9 that's the first check stub that I've seen that</p> <p>10 has anything to do with this building. It</p> <p>11 appears that it's a 60/40 proration between S&R</p> <p>12 and HOB.</p> <p>13 Q. HOB, is that a Forest City entity?</p> <p>14 A. Yes.</p> <p>15 Q. Is there a difference in the way the</p> <p>16 building is used? Is there a difference in the</p> <p>17 way that HOB uses its interest in the building</p> <p>18 and S&R uses its interest in the building?</p> <p>19 A. I don't understand the question.</p> <p>20 Q. Do they both use it for the same</p> <p>21 purpose? Do they both use it for commercial</p> <p>22 office rental?</p> <p>23 A. Yes.</p> <p>24 Q. Is that every floor is used in that</p> <p>25 fashion?</p>
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<p>1 the top roughly half of the building?</p> <p>2 A. Correct.</p> <p>3 MR. WILLIGER: Could you read the last</p> <p>4 question back?</p> <p>5 (Record read.)</p> <p>6 Q. Can we turn to the page that's stamped</p> <p>7 1483, JAM 01483?</p> <p>8 A. Okay.</p> <p>9 Q. It says at the bottom, there's a</p> <p>10 paragraph (b), HOB's share unless specifically</p> <p>11 agreed otherwise -- skip a little bit and turn</p> <p>12 the page -- means 60 percent.</p> <p>13 A. I don't see the 60 percent.</p> <p>14 Q. At the top of the page.</p> <p>15 MR. WALTERS: It's blurred. The very</p> <p>16 first line.</p> <p>17 A. Okay.</p> <p>18 Q. It is a bit blurry. But if you turn</p> <p>19 to page 1486, it defines S&R's share, and I</p> <p>20 believe it defines it as 40 percent?</p> <p>21 A. Right.</p> <p>22 Q. I'm inferring that's a 60 percent for</p> <p>23 HOB.</p> <p>24 A. Right.</p> <p>25 Q. So HOB is responsible for paying</p>	<p>1 A. No.</p> <p>2 Q. What floors are not used in that</p> <p>3 fashion?</p> <p>4 A. The lobby, and we have a downstairs</p> <p>5 basement level food court, mostly vacant I might</p> <p>6 add. In the lobby, there is some retail in it,</p> <p>7 mostly vacant, and the upper floors two and</p> <p>8 above are office space.</p> <p>9 Q. Do you know anything about how the tax</p> <p>10 laws are structured for the Halle Building?</p> <p>11 MR. WALTERS: Objection. Vague.</p> <p>12 A. Do I know anything about it? Some.</p> <p>13 Q. Do you know whether S&R's interest</p> <p>14 under the lease is its own tax lot or is part of</p> <p>15 a larger tax lot that includes the rest of S&R's</p> <p>16 interest in the Halle Building?</p> <p>17 A. I don't really know.</p> <p>18 Q. Who would be able to speak to the way</p> <p>19 in which the tax lots are structured for the</p> <p>20 Halle Building and the properties underneath</p> <p>21 them?</p> <p>22 A. Layton McCown, another associate of</p> <p>23 mine in the building. He's chief financial</p> <p>24 officer for the commercial group.</p> <p>25 Q. Could you spell his name?</p>

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<p>1 A. L-A-Y-T-O-N, M-C-C-O-W-N. 2 Q. What is his job? 3 A. He's chief financial officer for the 4 commercial group, I believe. Or perhaps one of 5 our lawyers, our in-house. Layton probably, 6 though. 7 Q. Do you know how the building is 8 classified for tax purposes? 9 A. No. 10 Q. Do you know whether it's possible to 11 combine a leasehold and a fee simple into a 12 single tax lot? 13 A. No. 14 Q. You don't know? 15 A. I don't know. 16 Q. Do you know whether it's possible to 17 split a leasehold in the air? 18 A. I'm not sure I understand. When you 19 say split, what do you mean? 20 Q. To let's say assign a lease, a portion 21 of a lease, and the way that the portion is 22 determined is by basically the height off the 23 ground, in other words. 24 A. I think you could describe it as such. 25 I don't know that you could get a separate</p>	<p>1 Office Building? 2 A. Right. 3 Q. It's dated 1984 at the bottom. This 4 is defined on the third page of the document. 5 It defines HOB's interest as being the fifth 6 through eleventh floors. Do you follow that? 7 A. Yes. 8 Q. I'm just asking, HOB is not the 9 lessee? 10 A. I don't believe they are, no. 11 Q. For that interest? 12 A. Correct. 13 Q. Do you know why the fifth through 14 eleventh floors were assigned to HOB, why S&R 15 didn't just keep them? 16 A. I believe it was because of a 17 syndication we did for the upper floors of the 18 building which was entitled HOB. Again, this 19 was done before I arrived on the scene. 20 Q. Let's do another document. 21 ----- 22 (Thereupon, Plaintiff's Deposition 23 Exhibit 7 was marked for purposes 24 of identification.) 25 -----</p>
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<p>1 parcel or a lot split. But, again, it's a 2 little out of my field. I'm not a lawyer. 3 Q. But in your experience? 4 A. In my experience you could apportion 5 the responsibility for the payment as we've done 6 here as an accounting provision as to who pays 7 what, but I have no knowledge of whether you 8 could actually get a lot split or a separate tax 9 parcel. 10 Q. HOB is not the lessee under the lease; 11 right? 12 A. It appears not. 13 Q. S&R is the lessee? 14 A. I believe so. 15 Q. Just to be clear, for the entire lease 16 including the part that is assigned to HOB? 17 A. For the entire lease. 18 Q. Including the portion that is defined 19 as HOB's interest? 20 A. Well, I believe -- rephrase that, 21 would you, or ask it again. I may be getting 22 confused. I'm not sure where you're heading 23 with this. 24 Q. If we look at Exhibit 6 for a second, 25 this is the deed from S&R Playhouse to Halle</p>	<p>1 Q. You don't have to read that entire 2 document. Have you ever seen this document 3 before? 4 A. I don't believe I have, no. 5 Q. It says at the top, confidential 6 memorandum? 7 A. Uh-huh. 8 Q. Halle Office Building Limited 9 Partnership. Do you know whether this document 10 -- well, let's find a date on this thing. Would 11 you turn to the third page, FCID 0395? 12 A. Yes. 13 Q. It says the date of this considerable 14 memorandum is September 17, 1984? 15 A. Right. 16 Q. Do you know whether this document was 17 related to the syndication of the upper floor 18 that you were just talking about? 19 A. I don't know. It appears that it is. 20 Q. Let's go to page 51 of the document 21 which is FCID 0450. 22 A. Right. 23 Q. You see the heading federal income tax 24 consequences? 25 A. Okay.</p>

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<p>1 Q. You see there's several pages. If you 2 flip to page 58, it says, in the opinion of 3 counsel, this is toward the top, neither the 4 partnership nor any partner will be personally 5 liable for repayment of the First Mortgage loan 6 and the UDAG loan and such loans more likely 7 than not constitute non-recourse obligations of 8 the partnership. 9 A. Uh-huh. 10 Q. The partners will be entitled to 11 include in their adjusted basis their allocable 12 share (determined in accordance with their 13 interest in partnership profits) of such 14 indebtedness. Do you see that? 15 A. Yes. 16 Q. Let's turn the page once to page 59. 17 There's a carryover paragraph at the top, and 18 the last sentence of it says, the partnership 19 intends to elect to claim cost recovery 20 deductions with respect to the portion of the 21 project constituting 18-year real property over 22 an 18-year period in accordance with the 23 straight line method. The deduction allowable 24 for any given year is limited to the number of 25 months the project is actually in service during</p>	<p>1 paragraph, it says, it is not anticipated that 2 the partnership will be treated as related to 3 any entity that owned the project during 1980 4 nor will the project be leased to any person or 5 entity that owned the project during 1980 or any 6 person related to any owner. 7 Do you know why this is relevant? 8 A. Let me read it again. 9 Q. Okay. Let me ask the question 10 differently. What is the relevance of this 11 sentence to the placement memorandum? 12 MR. WALTERS: Objection. The witness 13 has said that he's never seen this before. 14 A. I don't know what the relevance is. 15 Q. Let's go to page 47. 16 A. Okay. 17 Q. Toward the bottom there's a heading, 18 ground leases, and it says, a portion of the 19 building is situated on parcels which are 20 subject to the following ground leases: 21 A. Indenture of lease dated March 15, 22 1912, by and between The Realty Investment 23 Company, as lessor, and Salmon P. Halle and 24 Samuel H. Halle, as lessees. S&R is successor 25 to the interest of Salmon and Samuel. This is</p>
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<p>1 the year. 2 Are you familiar with any of these tax 3 issues? 4 A. Vaguely. Tax is not my field of 5 expertise. 6 Q. If you go to the next paragraph, the 7 expenditures incurred with respect to a 8 certified rehabilitation of a certified historic 9 structure will add value to and prolong the life 10 of the project and therefore will be added to 11 the recoverable basis of the project. The 12 partnership also intends to claim cost recovery 13 deductions with respect to such rehabilitation 14 expenditures over the applicable recovery period 15 applying the straight line method. 16 So it appears that there were certain 17 tax consequences. We don't have to go through 18 all of them, but there were certain tax 19 consequences to this transaction? 20 A. Sure. 21 Q. Do you know whether these tax 22 consequences were a factor in the decision to 23 assign or partially assign the lease to HOB? 24 A. Well, no, I don't know that. 25 Q. If we go to page 60, the first full</p>	<p>1 referring to the lease at issue in this lawsuit? 2 A. Uh-huh. 3 Q. It says, the Halle lease is for an 4 initial term expiring March 31, 2011. If you 5 want to just take a minute and read the 6 remainder of that paragraph? 7 A. Under the Halle lease? 8 Q. Yes. Basically, the two paragraphs 9 under point A. 10 A. Okay. 11 Q. It doesn't make any reference to the 12 gold clause; does it? 13 A. No. 14 Q. Do you know whether the investors in 15 HOB were ever apprised of the existence of a 16 gold clause? 17 A. No. 18 Q. You don't know the answer? 19 A. I don't know the answer. 20 Q. Let's get a new exhibit. 21 MR. LEHN: This is 8. 22 ----- 23 (Thereupon, Plaintiff's Deposition 24 Exhibit 8 was marked for purposes 25 of identification.)</p>

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<p>1 ----- 2 A. Okay. 3 Q. Have you ever seen any of these 4 documents? 5 A. No. 6 Q. If you turn to the page marked FCID 7 0062? 8 A. Okay. 9 Q. It says, limited partners roster for 10 Halle Office Building Limited Partnership? 11 A. Uh-huh. 12 Q. Then you can turn a couple of pages, 13 and the roster goes on for a while, maybe five 14 pages. 15 A. Okay. 16 Q. Do you know whether these are the 17 limited partners in Halle Office Building? 18 A. I don't know that, but it appears that 19 they are. 20 Q. You don't know whether any of them was 21 ever informed about the existence of the gold 22 clause? 23 A. I do not know. 24 Q. Do you know who would know that? 25 A. No. As I said before, the original</p>	<p>1 are the sole partners doing business under the 2 name of S&R Playhouse Realty Company. Did you 3 follow that? 4 A. Yes. 5 Q. Is that true that Playhouse Square 6 Investment and Forest City Rental are the only 7 partners of S&R? 8 A. As of this date they were. 9 Q. What about today? 10 A. I have no idea. 11 Q. Let's turn a couple more, I guess two 12 more pages to FCID 0139. The heading is general 13 partnership agreement of S&R Playhouse Realty 14 Company. 15 A. Uh-huh. 16 Q. This partnership agreement is made and 17 entered into this 21 day of May 1982. This is 18 the same day as the assignment? 19 A. Yes. 20 Q. If we flip this page over, Article 3, 21 there's a little table, a column for partner and 22 a column for amount. Are these the original 23 partners of S&R? 24 A. I don't know. There's a lot of 25 Schotts.</p>
Page 59	Page 61
<p>1 developer of the building has retired, and the 2 lawyer that was involved since passed away. I 3 don't know of anyone else who would know. 4 Q. Let's put that aside then. 5 ----- 6 (Thereupon, Plaintiff's Deposition 7 Exhibit 9 was marked for purposes 8 of identification.) 9 ----- 10 Q. Mr. Lott, would you like to take a 11 break? 12 A. No. I just need some water. 13 MR. WALTERS: I'll tell you what, 14 let's go off the record for a minute. 15 (Brief recess.) 16 Q. Are you familiar with this document? 17 A. No. 18 Q. Let's go to, well, it's the third 19 physical page. It's marked FCID 0135. 20 A. Okay. 21 Q. It says, amended and restated general 22 partnership certificate of S&R Playhouse Realty 23 Company. It says, the undersigned hereby 24 certificate that: Playhouse Square Investment, 25 and Forest City Rental Properties Corporation</p>	<p>1 Q. Am I right that you have no knowledge 2 as to whether they were ever informed about the 3 gold clause? 4 A. I have no idea. 5 Q. All right. Well, that's it for that 6 one. Have any of the current subtenants in the 7 Halle Building been informed of the existence of 8 a gold clause? 9 A. By subtenants you mean the office 10 tenants in the building? 11 Q. Correct. 12 A. I don't believe they have. I have not 13 informed any of them of it. It wouldn't affect 14 them. 15 Q. Why is that? 16 A. Ground lease payments are not a part 17 of operating expenses of the building. 18 Q. Does it affect, and when I say it, the 19 gold clause, does the gold clause affect HOB? 20 A. If you were to win, I guess it would. 21 Q. Because pursuant to Exhibit 6, HOB is 22 responsible for 60 percent of the rent; correct? 23 A. Correct. 24 Q. Let's go back to actually Exhibit 6. 25 Let's go to the page that's marked JAM 1493.</p>

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<p>1 A. Okay.</p> <p>2 Q. Part eight, assumption of leases, the</p> <p>3 second sentence, each party agrees, and each</p> <p>4 party here refers to HOB and S&R, each party</p> <p>5 agrees with the other to take all steps</p> <p>6 necessary to exercise any and all renewal</p> <p>7 options under the Parcel 3 lease for the maximum</p> <p>8 periods permitted thereby.</p> <p>9 A. Uh-huh.</p> <p>10 Q. Are you familiar with the renewal</p> <p>11 option in the lease?</p> <p>12 A. Only that part that I just read in the</p> <p>13 document you handed to me previously.</p> <p>14 Q. In the lease itself?</p> <p>15 A. Yes.</p> <p>16 Q. Or was it in a different document?</p> <p>17 A. It was in one of these documents. I</p> <p>18 noticed there were a series of renewal options</p> <p>19 that we hold at the same rent for varying</p> <p>20 periods of years at our option.</p> <p>21 Q. Let's go to I think it was Exhibit 2</p> <p>22 which was the lease.</p> <p>23 A. Exhibit 2? Okay.</p> <p>24 Q. Page 5. Roughly in the middle of the</p> <p>25 page you'll see there's a slash that somebody</p>	<p>1 March 31, 2010?</p> <p>2 A. Right.</p> <p>3 Q. So we're not there yet?</p> <p>4 A. We're not there yet.</p> <p>5 Q. Do you know whether S&R intends to</p> <p>6 renew the lease?</p> <p>7 A. No, I do not.</p> <p>8 MR. WALTERS: Objection.</p> <p>9 Q. Have there been any discussions about</p> <p>10 the renewal of the lease?</p> <p>11 A. No, there have not. Not with me.</p> <p>12 Q. Who would participate in that</p> <p>13 decision?</p> <p>14 A. Myself, Dave LaRue.</p> <p>15 Q. Can you spell that, please?</p> <p>16 A. L-A capital R-U-E, president of the</p> <p>17 commercial group; Jim Ratner, chairman of the</p> <p>18 commercial group; and there might be some</p> <p>19 others, but those would be the primary ones.</p> <p>20 Q. Let's go back to that page. I think I</p> <p>21 asked you to stop reading at the second slash.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Let's go to the second sentence after</p> <p>24 that.</p> <p>25 A. In the event of?</p>
<p>1 wrote in, and then it begins it looks like Roman</p> <p>2 numeral XII, the lessor for itself. Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. Why don't you just take a minute and</p> <p>6 read everything between that slash and the next</p> <p>7 slash which is about 12 or so lines down.</p> <p>8 A. Okay. I thought I saw a time quote</p> <p>9 here. Okay.</p> <p>10 Q. So this clause of the lease is giving</p> <p>11 S&R a right to renew the lease?</p> <p>12 A. Right.</p> <p>13 Q. If S&R elects to renew the lease at</p> <p>14 all, it can elect a 25 year, a 50 year, or a 99</p> <p>15 year renewal period?</p> <p>16 A. That's the way I read it, yes.</p> <p>17 Q. In order to exercise this option, S&R</p> <p>18 has to provide to the lessor written</p> <p>19 notification of its intention; correct?</p> <p>20 A. It appears that way.</p> <p>21 Q. That notice has to specify whether</p> <p>22 it's electing the 25, 50, or 99 year period?</p> <p>23 A. Right.</p> <p>24 Q. The notice is due somewhere between</p> <p>25 March -- excuse me -- April 1, 2009, and</p>	<p>1 Q. Yes. Just take a minute to read that</p> <p>2 sentence.</p> <p>3 A. Okay.</p> <p>4 Q. Let's read it. This is the last</p> <p>5 sentence I'm going to ask you. This one is the</p> <p>6 following one after Roman XIII.</p> <p>7 A. Whenever this lease?</p> <p>8 Q. Whenever this lease or renewal</p> <p>9 thereof, just because there's some words that</p> <p>10 aren't clear -- whenever this lease or any</p> <p>11 renewal thereof shall expire without election on</p> <p>12 the part of lessees to renew, then the lessees</p> <p>13 shall vacate said premises at the termination of</p> <p>14 this lease or any renewal thereof as the case</p> <p>15 may be and surrender possession thereof to the</p> <p>16 lessor, its successors and assigns. The copy is</p> <p>17 just not very good.</p> <p>18 A. I see it.</p> <p>19 Q. So if S&R does not elect to renew the</p> <p>20 lease, then it has to vacate the premises; is</p> <p>21 that right?</p> <p>22 A. That's what it says.</p> <p>23 Q. Does S&R have a right to holdover?</p> <p>24 A. I haven't read this entire ground</p> <p>25 lease. I have no idea if there's holdover</p>

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<p>1 provisions or not. I don't believe it says so 2 here. 3 Q. If S&R does elect to renew the lease, 4 it basically gets a new lease for 25, 50, or 99 5 years? 6 A. That's my understanding. 7 Q. Nothing requires S&R to renew the 8 lease? 9 A. I don't believe -- in what I've read 10 that you had asked me to read, it's an option. 11 Q. This might be a little bit difficult 12 to find, but if you recall the sentence that 13 begins after the slash, in the event of such 14 renewal? 15 A. Yes. 16 Q. If we go up about, let's see, three 17 lines, it says, and the lessor and the lessees 18 shall thereupon execute such further instruments 19 and agreements that may at such time be proper 20 or necessary for the full protection of the 21 respective rights of the said parties during 22 such extension of the original term thereof. 23 A. Uh-huh. 24 Q. Do you have any idea what further 25 instruments or agreements might be necessary?</p>	<p>1 election and intention? 2 A. Right. 3 Q. And then if we continue down, and 4 after the service of said notice upon the 5 lessor, such extension and renewal shall become 6 effectual for all purposes. 7 A. Right. 8 Q. That's what you're referring to? 9 A. Right. 10 Q. The notification has the effect of 11 renewing the lease? 12 A. It sounds like it to me. The lessee 13 can say, yes, we're renewing, and it wouldn't be 14 necessary for a mutually executed document. 15 Q. So then the question is, where it 16 refers to such further instruments and 17 agreements, do you have any idea what those 18 might be? 19 A. I have no idea. 20 Q. There's nothing that comes to mind 21 that you think S&R would need? 22 A. Supposition on my part, I would guess 23 that it appears that that language might be in 24 somewhat of a conflict, but I would guess that 25 the two parties would probably feel better if</p>
Page 67	Page 69
<p>1 A. I have an idea. I would guess it 2 would be some kind of formal amendment that 3 would renew the lease. 4 Q. Beyond the notice? 5 A. Well, that's interesting. I thought I 6 read above when we were reading something that 7 it said all you had to do was notify and it 8 would automatically be renewed. Didn't I read 9 that someplace? 10 Q. I think you did. Let's back up a 11 couple of lines. It says, well, if we go about 12 five or six lines, there's a sentence. 13 A. Above? 14 Q. Do you see the word on the left is 15 periods? That's the word that's flush with the 16 left margin. 17 A. How far up? 18 Q. From where we were it's about six 19 lines. 20 A. Got it. 21 Q. In the event that the lessees shall 22 elect to exercise such option for any such 23 extension of this lease, the lessees shall 24 within the period that we've already discussed 25 notify the lessor in writing of lessees'</p>	<p>1 they mutually executed something, but that's 2 just my opinion. 3 Q. So let's flip back for a second to the 4 1984 document between HOB and S&R. 5 A. Which document is that? 6 Q. This was Exhibit 6. 7 A. Okay. 8 Q. We were looking at paragraph 8. 9 A. What page? 10 Q. Jam 01493. 11 A. 93 did you say? 12 Q. Yes. 13 A. Okay. 14 Q. Paragraph 8, in the last sentence of 15 that, each party agrees with the other to take 16 all steps necessary to exercise any and all 17 renewal options under the Parcel 3 lease for the 18 maximum periods permitted thereby. The maximum 19 period under this lease is 99 years? 20 A. Correct. 21 Q. So this is an agreement between S&R 22 and HOB by which S&R is agreeing to renew the 23 lease for 99 years? 24 A. That's the way it reads to me, yes. 25 Q. But there's been no discussions of</p>

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<p style="text-align: right;">Page 70</p> <p>1 whether or not you're going to renew? 2 A. No. 3 Q. If S&R does not renew the lease at 4 all, does that affect S&R's subtenants in the 5 building? 6 A. That calls for a legal opinion, and 7 I'm not sure I'm qualified. I would assume it 8 would, yes, I mean if we have to abandon the 9 premises. Again, though, somebody has got to 10 own it. Those leases would run with the land. 11 Would they affect the tenants in the 12 building? Maybe not. You know, there is -- I'm 13 not sure they would, actually. Somebody has got 14 to own it. The leases would run to whomever 15 would own it, and perhaps they wouldn't be. 16 Q. Do any of the current subtenants of 17 S&R have a sublease that extends beyond 2012? 18 A. Yes. 19 Q. Yes? 20 A. Yes. 21 Q. At this point in time S&R has no right 22 to be on the property beyond 2012; is that 23 right? 24 A. Until such time as we would extend the 25 term, I would guess, yes.</p>	<p style="text-align: right;">Page 72</p> <p>1 A. The same document? 2 Q. Exhibit 2. Toward the bottom, this is 3 Roman XIII, I think we read this a minute ago, 4 whenever this lease or any renewal thereof -- 5 A. Wait a second. I haven't found it on 6 page 2. 7 Q. I'm sorry, page 5, the fifth line from 8 the bottom. 9 A. Got it. Yes. 10 Q. Whenever this lease or any renewal 11 thereof shall expire without election on the 12 part of lessees to renew, then the lessee shall 13 vacate said premises at the termination of this 14 lease or any renewal thereof. 15 A. Okay. 16 Q. So if you don't exercise your renewal 17 option, then you have to vacate; right? 18 A. Right. 19 Q. Because you haven't yet exercised your 20 renewal option, you don't right now have the 21 right to stay after 2012? 22 MR. WALTERS: Objection. Calls for a 23 legal conclusion. 24 A. Are you asking me to answer? 25 Q. Yes.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. To make the record clear, 2012 is when 2 the current lease expires? 3 A. Yes. 4 Q. So right now you have no right to stay 5 beyond 2012. You have to exercise your renewal 6 option? 7 A. Well, I would say we have the right 8 because the renewal option is fairly explicit. 9 So, again, I'm not sure exactly technically if 10 we haven't given our notification that we're 11 extending the term of the lease, if you assume 12 that means no rights beyond that date, then 13 you're correct. 14 The fact that we hold an option for 15 beyond that date would tell me that we have 16 rights. If we had no option, then we would have 17 no rights. But we have an option, so clearly we 18 could contract beyond the date assuming we 19 assume the option. 20 And if we don't, again, that lease may 21 still be in force and effect because someone 22 would own the building, and I believe those 23 leases would still be good. 24 Q. Okay. Let's go back to the lease for 25 a second, page 5.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Based on my -- 2 Q. Based on your experience. 3 A. Well, I think we've already answered 4 the question. Do you want to restate it? 5 Q. If you could restate it for me because 6 we have a lot of questions. 7 MR. WALTERS: He asked and answered 8 that. 9 A. Restate the question. 10 Q. The question is right now because you 11 have not yet exercised any option to renew, you 12 have no right to stay on the property after 13 2012? 14 MR. WALTERS: Objection. Asked and 15 answered. 16 A. I answered the question. My opinion 17 is we have rights because the renewal is fully 18 explained. If there was no option to renew, 19 then we would have no rights. The right is in 20 itself the option to extend the term. 21 Q. If you don't renew, then you have no 22 right to stay on the property after 2012? 23 A. I believe that's correct. 24 Q. Do you know of any situation in which 25 S&R has been able to sublease a property even</p>

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<p>1 though S&R is not the owner of the property or 2 the lessor of the property? 3 A. I don't understand your question. 4 Q. Can S&R sublease a property where the 5 property is not owned by S&R or S&R is not the 6 lessor of the property? 7 A. Because there's two ownerships in the 8 building, let me -- you need to qualify. You 9 need to clarify because there's two owners in 10 the building. Are you asking -- 11 Q. Who are the two owners of the 12 building? 13 A. S&R and HOB. So if it's on the fifth 14 floor or above -- I'm honestly not sure. I 15 believe that the contract that Forest City 16 Commercial Management has with S&R and HOB 17 allows us to make leases in either of those two 18 entities' favor without regard for the actual 19 ownership, the split between the floors. 20 So to the extent that you're asking 21 the question could S&R sublease properties that 22 they don't own -- was that your question? 23 Q. That they don't own or they are not 24 the lessor of. 25 MR. WALTERS: Objection. Calls for a</p>	<p>1 ----- 2 Q. Take a minute to look this over. 3 A. Yes. 4 Q. Have you ever seen this document 5 before? 6 A. I don't believe I've seen this one, 7 no. 8 Q. It's titled certificate, and the first 9 sentence says, this certificate is dated as of 10 December 20, 2001. 11 A. Right. 12 Q. This is an example of something 13 commonly known as an estoppel certificate? 14 A. Yes. 15 Q. Have you seen other estoppel 16 certificates on behalf of S&R or relating to 17 this property? 18 A. No, I have not. 19 Q. Do you know who prepares the estoppel 20 certificate? 21 A. Well, an estoppel is typically 22 prepared by the lender, but I'm not sure who 23 prepared this. 24 Q. So the lender will draft it and 25 forward it to the lessor; is that correct?</p>
<p>1 legal conclusion. 2 A. Again, I'm not sure I'm qualified. 3 Q. Within your experience you're 4 responsible for. 5 MR. WALTERS: Same objection. 6 A. No, they could not. 7 Q. If S&R does not exercise its renewal 8 option, then Halle Office Building has to also 9 vacate the top seven floors -- 10 MR. WALTERS: Objection. 11 Q. -- of the portion of the building that 12 sits on the property that Jamaica owns? 13 MR. WALTERS: Objection. Calls for a 14 legal conclusion. 15 Q. You can answer. 16 A. I believe so. 17 Q. We're in the 1984 document. This is 18 Exhibit 6. 19 A. What page? 20 Q. 1494. Actually, you know what, let's 21 not do that. Let's put that document aside. 22 ----- 23 (Thereupon, Plaintiff's Deposition 24 Exhibit 10 was marked for purposes 25 of identification.)</p>	<p>1 MR. WALTERS: Objection. 2 Mischaracterizes the testimony. 3 A. In -- well, estoppels basically 4 confirm documents for a lender's benefit that 5 all documents are in place, leases, deeds, et 6 cetera. So your question was did the lender 7 prepare this for the lessee? 8 Q. I know you said you don't know. 9 You're not that familiar with the document in 10 particular? 11 A. No, I'm not. 12 Q. But typically when an estoppel 13 certificate is prepared? 14 A. Yes. I'm familiar with estoppels. 15 Q. In a typical case the lender prepares 16 the estoppel certificate? 17 A. Sometimes. Sometimes it's the 18 borrower's form that a lender might have 19 approved, but an estoppel is typically to the 20 best of my knowledge prepared by a lender. 21 Q. Then the lender will typically forward 22 it to the lessor? 23 A. Uh-huh. 24 Q. And the lessor will sign it and return 25 it to the lender?</p>

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<p>1 A. I believe so, yeah.</p> <p>2 Q. Have you seen any of the estoppel</p> <p>3 certificates relating to this property, the</p> <p>4 Jamaica property?</p> <p>5 A. No.</p> <p>6 Q. Does S&R receive a copy of the</p> <p>7 estoppel certificates when they are executed?</p> <p>8 A. I don't know if S&R has received a</p> <p>9 copy of this, no.</p> <p>10 Q. If the lessor didn't sign it, what</p> <p>11 would happen to S&R?</p> <p>12 MR. WALTERS: Objection. Foundation.</p> <p>13 A. I don't know.</p> <p>14 Q. The purpose of this certificate is</p> <p>15 what?</p> <p>16 A. Typically or this?</p> <p>17 Q. This one in particular.</p> <p>18 A. I don't know. I've never seen it</p> <p>19 before.</p> <p>20 Q. Typically what is the purpose?</p> <p>21 A. To confirm various things that a</p> <p>22 borrower, or in this case a borrower would have</p> <p>23 represented to a lender being factual, leases</p> <p>24 that are in place, the amount of rent, the</p> <p>25 expiration date, et cetera. Those are signed by</p>	<p>1 to that question?</p> <p>2 A. Do we look at them after they are</p> <p>3 signed?</p> <p>4 Q. Yes.</p> <p>5 A. The lawyer that was involved in the</p> <p>6 loan or the mortgage loan officer within our</p> <p>7 company. The guy that works for our finance</p> <p>8 department who dealt with the lender to</p> <p>9 refinance or put a new loan on the property</p> <p>10 would know, I presume. I wouldn't look at it.</p> <p>11 Q. You wouldn't look at it?</p> <p>12 A. No.</p> <p>13 Q. Would anyone who was responsible for</p> <p>14 managing the property look at it?</p> <p>15 A. The property manager; is that your</p> <p>16 question?</p> <p>17 Q. Anyone who is responsible for managing</p> <p>18 the property.</p> <p>19 A. I don't know. I would guess. I mean,</p> <p>20 you would look at it at the time it was issued</p> <p>21 by the lender, of course. We're signing off on</p> <p>22 it, so we would look at it. Would we look at it</p> <p>23 after the fact? I have no idea.</p> <p>24 Q. In your experience are estoppel</p> <p>25 certificates ever used to alter the rights of a</p>
<p>1 us as basically underwriting that what we've</p> <p>2 told a lender is true.</p> <p>3 Q. If something in an estoppel</p> <p>4 certificate is inaccurate, does it affect --</p> <p>5 let's say something in here is inaccurate in</p> <p>6 this document. Let's say, for example, on</p> <p>7 page 2, paragraph C, it says the base annual</p> <p>8 rent under the lease --</p> <p>9 A. Okay. I'm reading it.</p> <p>10 Q. Let's say instead of what it actually</p> <p>11 says, let's say it said the base annual rent</p> <p>12 under the lease is \$1 billion per year.</p> <p>13 A. Okay.</p> <p>14 Q. Would S&R then be obligated to pay</p> <p>15 \$1 billion a year in rent?</p> <p>16 MR. WALTERS: Objection. Calls for a</p> <p>17 legal conclusion.</p> <p>18 Q. You can answer. In your experience?</p> <p>19 A. No idea.</p> <p>20 Q. Does S&R look at those documents after</p> <p>21 they are signed?</p> <p>22 MR. WALTERS: Objection. Calls for</p> <p>23 speculation.</p> <p>24 A. No idea.</p> <p>25 Q. Do you know who would know the answer</p>	<p>1 lessee?</p> <p>2 MR. WALTERS: Objection. Calls for</p> <p>3 legal conclusion and foundation.</p> <p>4 A. In my experience would estoppels be</p> <p>5 used to modify an underlying agreement?</p> <p>6 Q. Yes.</p> <p>7 A. No.</p> <p>8 MR. WALTERS: Same objection.</p> <p>9 A. In my experience, no, they do not.</p> <p>10 That's not between the parties. I mean, how</p> <p>11 could it be?</p> <p>12 Q. It's not between the parties to the</p> <p>13 lease?</p> <p>14 A. Sure.</p> <p>15 Q. So then it can't modify the rights?</p> <p>16 A. In my experience.</p> <p>17 Q. Again, you're not a lawyer.</p> <p>18 A. In my experience, no.</p> <p>19 MR. LEHN: Can we take a couple</p> <p>20 minutes?</p> <p>21 MR. WALTERS: Sure.</p> <p>22 (Brief recess.)</p> <p>23 Q. I just want to pull out the deed</p> <p>24 again. This was Exhibit 3, the conveyance</p> <p>25 between Halle Cleveland and Jamaica. On the</p>

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<p>1 third page, point 3, it says, subject to: 2 Estoppel certificate dated December 2001? 3 A. Uh-huh. 4 Q. Am I right that prior to this lawsuit 5 S&R was not aware that Jamaica had acquired the 6 property? 7 A. I said I was not aware of it. S&R 8 could have been. 9 Q. You're speaking in your capacity of 10 S&R. 11 MR. WALTERS: Objection. He doesn't 12 purport to know everything that S&R knows. 13 Q. If the deed had said under subject to 14 estoppel certificate dated December 2001, and 15 the estoppel certificate had said the base 16 annual rent under the lease is \$1 billion a 17 year, would you understand the deed to be 18 modifying your rent, S&R's rent, to be 19 \$1 billion a year? 20 MR. WALTERS: Objection. Asked and 21 answered. 22 MR. LEHN: It was not asked and 23 answered. 24 Q. You can answer the question. 25 A. If I was reviewing this as a lender</p>	<p>1 to whether it would modify it because the 2 hypothetical question is so ridiculous. 3 Q. What if it said -- 4 A. It would be nothing. If I were to 5 read it coming back from the grantor, I would 6 read it as a mistake. 7 Q. What if it said \$40,000 a year instead 8 of \$35,000? 9 MR. WALTERS: Objection. Calls for a 10 legal conclusion. 11 A. The same because I would have known it 12 was \$35,000. If it's anything other than 13 \$35,000, I would consider it a mistake. It's 14 clear in the lease in my opinion it's \$35,000. 15 Q. And it's the lease that defines the 16 rent for you? 17 A. Yes. 18 Q. Not what's in the deed -- 19 MR. WALTERS: Objection. Calls for a 20 legal conclusion. 21 Q. -- between Halle Cleveland and 22 Jamaica? 23 MR. WALTERS: I didn't mean to 24 interrupt. 25 A. The lease calls for \$35,000 a year.</p>
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<p>1 having -- I mean, who exactly -- I don't 2 understand your question. 3 Q. Well, you're S&R here? 4 A. Yes. 5 Q. And you have a lease with Jamaica, and 6 it says \$35,000 payable in gold coins, and we 7 disagree about the meaning of that clause, but 8 that's what it says. Then let's say Halle 9 Cleveland when it executed this estoppel 10 certificate in December of 2001 had specified 11 that the base annual rent was \$1 billion a year. 12 A. Uh-huh. 13 Q. And then in February of 2006 this deed 14 was executed, and it said subject to the 15 estoppel certificate dated December 2001, and in 16 my hypothetical question, the estoppel 17 certificate says that the base annual rent is 18 \$1 billion a year. Would that have the effect 19 of making the rent \$1 billion a year? 20 MR. WALTERS: Objection. Calls for a 21 legal conclusion. 22 Q. You can answer. 23 A. I would consider it a mistake. It's a 24 ludicrous inclusion. Obviously, it would have 25 to be a mistake. I can't form a conclusion as</p>	<p>1 If the estoppel came back with anything other 2 than \$35,000, I would not consider it amended. 3 The lease would be the underlying document. I 4 would consider it a mistake. 5 Q. And you would give the same answer 6 with respect to the deed? If the deed said the 7 rent was \$1 billion a year, you would consider 8 that a mistake and not an amendment of the 9 lease? 10 MR. WALTERS: Objection. Calls for a 11 legal conclusion. 12 A. Yes. I would consider it a mistake. 13 Q. I think this is the last exhibit I 14 have. 15 ----- 16 (Thereupon, Plaintiff's Deposition 17 Exhibit 11 was marked for purposes 18 of identification.) 19 ----- 20 A. Okay. 21 Q. Have you ever seen a page like this 22 before? 23 A. Yes. 24 Q. What is it? 25 A. It is a listing by CB Richard Ellis</p>

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<p>1 who is our broker on the building of various 2 vacancies in the building. 3 Q. In the Halle Building? 4 A. In the Halle Building. 5 Q. In the bottom right-hand corner, you 6 can see it's cut off, but it appears to be dated 7 1-4-2006? 8 A. Yes. 9 Q. Just as an example, the first listing, 10 Suite 105, space available, it says 1,626. 11 That's square feet, I take it? 12 A. Yes. 13 Q. It's priced at 15.50 per square foot 14 per year? 15 A. Yes. 16 Q. Are these rental rates approximately 17 what the current rental rates are? 18 A. Approximately. 19 Q. What proportion of the building is 20 vacant now? 21 A. You mean unleased? 22 Q. Unleased. 23 A. 20 -- I believe about 20 percent. 24 Q. Is vacant? 25 A. Yes.</p>	<p>1 100 percent occupancy we would have to spend 2 about \$40 a square foot for each of these square 3 footages in the year these vacancies were leased 4 which would mean in that particular year the 5 building would be under water. It would not 6 meet debt service because we're expensing tenant 7 improvements. 8 And so for any given year, eventually 9 by making these deals, two or three years later 10 after the money had been spent to put the 11 tenants in it would cash flow. It's good 12 news/bad news. When you make a deal, you get a 13 tenant, but the bad news is you have to spend 14 \$40 a foot to put them in. With the rents of 15 \$17, you can see it takes a few years to get 16 back. 17 Q. Do you have to spend that money -- is 18 that because any new tenants want changes in the 19 space? 20 A. Most. 21 Q. It's not because there's some kind of 22 defect in the space right now? 23 A. No. 24 Q. Who is the property manager for the 25 Halle Building?</p>
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<p>1 Q. So about 80 percent -- 2 A. It's a little bit of a misnomer. We 3 have one tenant that will be going out still in 4 occupancy, but the space is for lease. They 5 have given their notice, but they still have 6 about a year and a half to go. So we know that 7 will be coming available, but we are marketing 8 it. We're still receiving rent from it. 9 Including that, I believe the building would be 10 about 85 percent occupied. 11 Q. When you say the building, we're 12 talking about the entire building on all four 13 parcels? 14 A. Correct, of course. 15 Q. Not just S&R's portion of the 16 building? 17 A. The building in its entirety. 18 Q. If you had 100 percent occupancy at 19 the rates or at the approximate rates that are 20 listed here, would the building be profitable? 21 MR. WALTERS: Objection. 22 A. Would it cash flow above debt service? 23 Q. Yes. 24 A. Barely, yes. It would cash flow. It 25 would be above water. However, to reach</p>	<p>1 A. The person or -- 2 Q. Is there an entity that is considered 3 the property manager? 4 A. Forest City Commercial Management. It 5 was for some time -- you have an invoice here, 6 and CB Richard Ellis was the property manager 7 for some period, but we've taken the property 8 back. We manage it. 9 Q. Who is the individual who is 10 responsible? 11 A. That's a good question. I believe it 12 is now Steve Bir, B-I-R. 13 Q. What does it mean to be the property 14 manager? 15 A. He's responsible for managing the 16 property, collecting the rents, maintenance of 17 the building, janitorial, repairs and 18 maintenance, so everything that happens within 19 the building, the physical building. 20 Q. He doesn't deal with the lease? He 21 doesn't deal with the owner of the property 22 underneath the building; does he? 23 A. What do you mean deal with? 24 Q. Would he have any occasion to 25 communicate with either Jamaica or Jamaica's</p>

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<p>1 predecessor, Halle? 2 A. No. 3 Q. Who are the people within the Forest 4 City organization who have occasion to interact 5 with the owner of the ground? 6 A. I don't think there's been any 7 interaction before this lawsuit with you on the 8 ground. 9 Q. Going back since 1982? 10 A. I never have. There may be somebody 11 that talks with you under the ground. We send 12 out the ground lease payments, and that's it. 13 Q. That's it? 14 A. Sure. 15 Q. The ground lease payments, you said 16 there's an accounts payable department? 17 A. Right, of our commercial. You saw the 18 checks. It would come out of I guess accounts 19 payable. I'm not sure where the checks come 20 from frankly. 21 Q. If today you could exercise your 22 renewal option, of course you can't because the 23 lease provides that you have to do it in 2009, I 24 think? 25 A. Uh-huh.</p>	<p>1 A. Uh-huh. 2 Q. And your expenses are property 3 management, the rent that you pay to Jamaica or 4 Halle Cleveland before, the taxes, things like 5 that? 6 A. Uh-huh. 7 Q. When all that stuff is added? 8 A. Utilities, janitorial, repairs, and 9 maintenance, all of those things. 10 Q. When all of that stuff is added up, 11 you have lost money? 12 A. After debt service. We have a loan on 13 the building. So whatever net income, what we 14 call NOI, is left after you pay the expenses of 15 the building is left over for debt service. We 16 pay the debt service, and what's left over after 17 that, if there is anything left over after that, 18 you have a cash flow. 19 Q. Do you know when the last time was you 20 had a positive cash flow? 21 A. I haven't looked at it before coming 22 over here. I believe it was -- I believe it was 23 a couple years ago, but I couldn't swear to it 24 one way or another honestly. 25 Q. Why has the cash flow been negative?</p>
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<p>1 Q. If today you could do it, who would be 2 the person that would handle that? 3 A. I think you asked that question 4 before, and the answer was Dave LaRue, Jim 5 Ratner, and myself. 6 Q. I think the question I asked before 7 was who would decide whether to renew. 8 A. Wasn't that your question now? 9 Q. My question is, who would actually 10 communicate with the lessor about the renewal? 11 A. I don't know. In-house lawyers is my 12 guess. Jimmy and Dave and I presumably would 13 communicate with a lawyer that would pull the 14 file and make the formal notification of our 15 decision. 16 Q. I believe you testified before that 17 S&R has been losing money on the property. 18 A. The building has been losing money. 19 Q. The building has been losing money? 20 A. Yes. 21 Q. So just so I understand how this is 22 determined, your income is basically the rent 23 that you generate? 24 A. Yes. 25 Q. From your tenants?</p>	<p>1 A. Well, Cleveland is a depressed office 2 market. The building itself would be 3 characterized as a class B building. It's 4 located on Euclid Avenue which has been 5 deteriorating over the past ten years. We lost 6 a couple big tenants, one to bankruptcy, one to 7 a move out. The building has substantial 8 vacancies, and obviously if the building is 9 substantially vacated, your gross income isn't 10 enough to pay expenses and debt service and 11 leave you with cash flow. 12 But overall, I mean, the city of 13 Cleveland suffers from an over 20 percent 14 vacancy downtown. This building is not one of 15 the premier buildings in town. That's why it 16 hasn't done it. 17 MR. LEHN: I think I'm all set. Did 18 you have any questions? 19 MR. WALTERS: Yes. Just a very few. 20 EXAMINATION OF PATRICK M. LOTT 21 BY MR. WALTERS: 22 Q. Mr. Lott, we talked a little bit today 23 about the various floors in the Halle Building 24 itself. Is it possible to split the tenancies 25 between the leasehold and the fee?</p>

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<p>1 A. Horizontally?</p> <p>2 Q. Horizontally.</p> <p>3 A. On each floor, no, absolutely not.</p> <p>4 Q. But physically do tenants at present</p> <p>5 occupy space in both the leasehold and the fee?</p> <p>6 A. Absolutely.</p> <p>7 Q. Describe physically what that looks</p> <p>8 like in the building.</p> <p>9 A. We lease these floor, as does every</p> <p>10 other owner, floor by floor. Occasionally you</p> <p>11 have full floor tenants, and occasionally you</p> <p>12 have multitenants on one floor. No</p> <p>13 acknowledgment is made of where the invisible</p> <p>14 line between the leasehold and the fee property</p> <p>15 underneath the building is made.</p> <p>16 So when we lease a full floor tenancy</p> <p>17 or a partial floor tenancy, that line which</p> <p>18 extends from the center of the earth to infinity</p> <p>19 could fall between and would fall between a</p> <p>20 tenant's on each floor's space. So there would</p> <p>21 be no way of demising, once the tenant was in,</p> <p>22 between the leasehold and the fee as it appears</p> <p>23 in the plan.</p> <p>24 Q. Thank you. With respect to ingress</p> <p>25 and egress in the Halle Building, does Jamaica</p>	<p>1 increased 30 fold?</p> <p>2 A. My opinion of what the result would</p> <p>3 be, is that what you're asking?</p> <p>4 Q. Yes.</p> <p>5 A. We would default on the ground lease</p> <p>6 because there's no money to pay it.</p> <p>7 Q. Thank you. There's been some</p> <p>8 questions today about estoppel certificates, and</p> <p>9 putting aside the notion of whether or not</p> <p>10 estoppel certificates modify anybody's rights,</p> <p>11 is it in your experience with estoppel</p> <p>12 certificates that information that's listed in</p> <p>13 the estoppel certificate be true and accurate?</p> <p>14 A. Yes.</p> <p>15 Q. And in fact, that is a very important</p> <p>16 question?</p> <p>17 A. We take them very seriously.</p> <p>18 MR. WALTERS: That's all I have.</p> <p>19 FURTHER EXAMINATION OF PATRICK M. LOTT</p> <p>20 BY MR. LEHN:</p> <p>21 Q. You had never seen the estoppel</p> <p>22 certificate before, though; had you?</p> <p>23 A. You know, I'll be honest with you. I</p> <p>24 could have seen it in one of our prep sessions.</p> <p>25 I didn't recall this morning seeing it, but I</p>
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<p>1 have full ingress and egress in the Halle</p> <p>2 Building with the portion of the building they</p> <p>3 own?</p> <p>4 A. In its -- specifically for Jamaica,</p> <p>5 that portion?</p> <p>6 Q. Yes.</p> <p>7 A. I believe that on their portion of the</p> <p>8 plan, yes, there is an entrance on the ground</p> <p>9 floor.</p> <p>10 Q. There is an entrance?</p> <p>11 A. I believe so.</p> <p>12 Q. What about with respect to elevators?</p> <p>13 A. There's a freight elevator on their</p> <p>14 side. I'm not sure exactly where the line</p> <p>15 falls, whether the main bank of elevators is on</p> <p>16 the Jamaica side or on the fee side.</p> <p>17 Q. Okay. Thank you. You've been asked a</p> <p>18 lot of questions today by Mr. Lehn with respect</p> <p>19 to payment of rent, if it were \$1 million or</p> <p>20 \$1.1 million. If rent were to be increased, and</p> <p>21 I'm asking you this question on behalf of both</p> <p>22 HOB and S&R, could HOB and S&R pay the increase</p> <p>23 in rent?</p> <p>24 A. No, absolutely not.</p> <p>25 Q. What is the result if the rent is</p>	<p>1 could have. We've viewed a lot of documents, so</p> <p>2 I may have seen it.</p> <p>3 Q. When you said you take estoppel</p> <p>4 certificates very seriously, why is that?</p> <p>5 A. Because it's our representation to a</p> <p>6 lender or to anybody else that requires an</p> <p>7 estoppel that those facts enumerated in the</p> <p>8 document are true when we sign it. So obviously</p> <p>9 we take it seriously.</p> <p>10 Q. I believe you testified earlier that</p> <p>11 you weren't sure whether anyone at S&R looks at</p> <p>12 the estoppel certificates after they are</p> <p>13 executed?</p> <p>14 A. I'm not sure, no.</p> <p>15 Q. But before they are executed someone</p> <p>16 would review it?</p> <p>17 A. Clearly, sure, of course.</p> <p>18 MR. LEHN: I don't have anything</p> <p>19 further.</p> <p>20 MR. WALTERS: I don't, either. We</p> <p>21 will sign.</p> <p>22 -----</p> <p>23 (Deposition concluded at 12:40 p.m.)</p> <p>24 (Signature not waived.)</p> <p>25 -----</p>

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CERTIFICATE

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State of Ohio,)
) SS:
County of Cuyahoga.)

I, Cynthia A. Sullivan, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named PATRICK M. LOTT was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action. I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 26th day of February 2007.

Cynthia A. Sullivan, Notary Public
Within and for the State of Ohio

My commission expires October 17, 2011.

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